



Notice of Agenda Briefing Session

To be held on 20 November 2024 and to commence at 5:00pm
To be held at the Council Chambers in Donnybrook
(1 Bentley Street, Donnybrook)

Authorised:

A handwritten signature in black ink, appearing to read 'N. O'Connor', is positioned to the right of the 'Authorised:' label.

Nicholas O'Connor, Chief Executive Officer

Prepared:

15 November 2024

Disclaimer:

Please note the items and recommendations in this document are not final and are subject to change or withdrawal.

MEASURES OF CONSEQUENCE

LEVEL	RATING	HEALTH & SAFETY	FINANCIAL	SERVICE INTERRUPTION	COMPLIANCE	REPUTATION	PROPERTY	ENVIRONMENT
1	Insignificant	Negligible injuries	Less than \$5,000	No material service interruption	No noticeable regulatory or statutory impact	Unsubstantiated, localised low impact on community trust, low profile or no media item	Inconsequential or no damage.	Contained, reversible impact managed by on site response
2	Minor	First aid injuries	\$5,000 - \$20,000 Or < 5% variance in cost of project	Temporary interruption to an activity – backlog cleared with existing resources	Some temporary non compliances	Substantiated, localised impact on community trust or low media item	Localised damage rectified by routine internal procedures	Contained, reversible impact managed by internal response
3	Moderate	Medical type injuries	\$20,001 - \$100,000 Or > 5% variance in cost of project	Interruption to Service Unit/(s) deliverables – backlog cleared by additional resources	Short term non-compliance but with significant regulatory requirements imposed	Substantiated, public embarrassment, moderate impact on community trust or moderate media profile	Localised damage requiring external resources to rectify	Contained, reversible impact managed by external agencies
4	Major	Lost time injury	\$100,001 - \$1M	Prolonged interruption of Service Unit core service deliverables – additional resources; performance affected	Non-compliance results in termination of services or imposed penalties	Substantiated, public embarrassment, widespread high impact on community trust, high media profile, third party actions	Significant damage requiring internal & external resources to rectify	Uncontained, reversible impact managed by a coordinated response from external agencies
5	Catastrophic	Fatality, permanent disability	More than \$1M	Indeterminate prolonged interruption of Service Unit core service deliverables	Non-compliance results in criminal charges or significant damages or penalties	Substantiated, public embarrassment, widespread loss of community trust, high widespread multiple media profile, third party actions	Extensive damage requiring prolonged period of restitution Complete loss of plant, equipment & building	Uncontained, irreversible impact

MEASURES OF LIKELIHOOD

LEVEL	RATING	DESCRIPTION	FREQUENCY
5	Almost Certain	The event is expected to occur in most circumstances	More than once per year
4	Likely	The event will probably occur in most circumstances	At least once per year
3	Possible	The event should occur at some time	At least once in 3 years
2	Unlikely	The event could occur at some time	At least once in 10 years
1	Rare	The event may only occur in exceptional circumstances	Less than once in 15 years

RISK MATRIX

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	MODERATE (5)	HIGH (10)	HIGH (15)	EXTREME (20)	EXTREME (25)
Likely	4	LOW (4)	MODERATE (8)	HIGH (12)	HIGH (16)	EXTREME (20)
Possible	3	LOW (3)	MODERATE (6)	MODERATE (9)	HIGH (12)	HIGH (15)
Unlikely	2	LOW (2)	LOW (4)	MODERATE (6)	MODERATE (8)	HIGH (10)
Rare	1	LOW (1)	LOW (2)	LOW (3)	LOW (4)	MODERATE (5)

RISK ACCEPTANCE CRITERIA

RISK RANK	DESCRIPTION	CRITERIA FOR RISK ACCEPTANCE	RESPONSIBILITY
LOW	Acceptable	Risk acceptable with adequate controls, managed by routine procedures and subject to annual monitoring	Operational Manager
MODERATE	Monitor	Risk acceptable with adequate controls, managed by specific procedures and subject to semi-annual monitoring	Operational Manager
HIGH	Urgent Attention Required	Risk acceptable with excellent controls, managed by senior management / executive and subject to monthly monitoring	Director / CEO
EXTREME	Unacceptable	Risk only acceptable with excellent controls and all treatment plans to be explored and implemented where possible, managed by highest level of authority and subject to continuous monitoring	CEO / Council

Information on Agenda Briefing Sessions and Ordinary Council Meetings

Agenda Briefing Sessions

All Agenda Briefing Sessions are held in the Council Chamber at 5:00pm on the third Wednesday of the month (except for the month of December when it is held on the first Wednesday).

Agenda Briefings are open to the public to attend and observe however, any questions, deputations or petitions are to be presented to the Ordinary Council Meeting.

Ordinary Council Meetings

All Ordinary Council Meetings are held in the Council Chamber at 5:00pm on the fourth Wednesday of the month (except for the month of December when it is held on the second Wednesday).

Agendas

The Agenda for the upcoming Agenda Briefing Session and Ordinary Council Meeting is available on the Shire's website www.donnybrook-balingup.wa.gov.au from the Friday prior to the Agenda Briefing Session or Ordinary Council Meeting.

Agenda Briefing Guidelines

The objectives of Councillor Agenda Briefing Sessions are:

1. For the Executive to brief Councillors on Agenda items; and
2. For Councillors to ask questions of the Executive, to better inform themselves in relation to Agenda items.

The following guidelines aim to ensure proper standards of probity and accountability at Councillor Agenda Briefing Sessions:

1. There is to be no decision-making during Agenda Briefing Sessions.
2. Agenda Briefing Sessions are to be held in the Council Chamber (or other nominated venue) and are open to the general public, unless discussing confidential items.
3. Agenda Briefing papers will endeavour to be distributed to all Councillors at least three days (72 hours) prior to the meeting.
4. Agenda Briefing documents will be uploaded to the Shire's website 2 days (48 hours) prior to the briefing session.

5. The Agenda Briefing Session Chair is to be the Shire President. If the Shire President is unavailable, the Deputy Shire President shall be the Chair. If the Deputy Shire President is unavailable, the attending Councillors shall select a Chair.
6. Relevant Managers, staff and other parties, as required by the Chief Executive Officer for the provision of information to Councillors, shall attend Agenda Briefing Sessions.
7. Councillors, employees, consultants and other participants shall disclose their financial and conflicting interests in matters to be discussed.
8. Interests are to be disclosed in accordance with the provisions of the Act as they apply to Ordinary Council Meetings. Persons disclosing a financial interest will not participate in that part of the briefing relating to their interest and will leave the meeting room.
9. There is to be no opportunity for a person with an interest to request that they continue in the briefing.
10. As no decisions will be made during the Agenda Briefing Session, there is no requirement to keep a formal record (minutes) for each meeting.
11. Items to be addressed will be limited to matters listed on the forthcoming agenda or completed and scheduled to be listed within the next two meetings.
12. Briefings will only be given by staff or consultants for the purpose of ensuring that Councillors are more fully informed; and
13. There will be no debate-style discussion as this needs to take place in the Ordinary Meeting of Council when the issue is set for decision. This is particularly important when Shire planning matters are discussed. Councillors are to avoid expressing their opinions for or against a proposal. Under the provisions of the Town Planning Scheme and other relevant State Acts, decision-makers are required to maintain a high degree of independence from the process leading up to the decision being made.

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1. Declaration of Opening / Announcement of Visitors

Acknowledgement of Country:

The Shire President to acknowledge the continuing connection of Aboriginal people to Country, culture and community, including traditional custodians of this land, the Wardandi and Kaneang People of the Noongar Nation, paying respects to Elders, past and present.

The Shire President to declare the meeting open and welcome the public gallery.

The Shire President to advise that the meeting is being live streamed and recorded in accordance with Council Policy EM/CP-2. The President to further state the following:

“This Briefing Session is being livestreamed and digitally recorded in accordance with Council Policy.

Members of the public are reminded that no other visual or audio recording of this meeting by any other means is allowed without the permission of the chairperson.

Whilst every endeavour has been made to only record those who are actively participating in the meeting, loud comments or noises from the gallery may be picked up on the recording.”

Agenda Briefings are open to the public to attend and observe however, any questions, deputations or petitions are to be presented to the Ordinary Council Meeting.

There will be no debate-style discussion as this needs to take place in the Ordinary Meeting of Council when the issue is set for decision.

Suspension of clause 8.2 (members to rise) of *Meeting Procedures Local Law 2017*.

- At the start of each council meeting a resolution should be carried suspending clause 8.2 (members to rise) of the Standing Orders as having councillors stand when debating interferes with the sound quality for livestream.

2. Attendance

Councillors Present:

Cr Vivienne MacCarthy

Cr Lisa Glover

Cr John Bailey

Cr Alexis Davy

Cr Peter Gubler

Cr Anita Lindemann

Cr Anne Mitchell

Cr Grant Patrick

Cr Deanna Shand

Staff Present:

Nick O'Connor, Chief Executive Officer

Ross Marshall, Director Operations

Loren Clifford Acting Director Finance and Corporate

Michelle Dennis, Manager Development Services

Samantha Farquhar, Administration Officer Corporate Services

Other Members Present:

Public Gallery:

2.1. Apologies

Nil.

2.2. Approved Leave of Absence

Nil.

2.3. Application for Leave of Absence

Nil.

3. Announcements from the Presiding Member

4. Declarations of Interest

Division 6: Sub-Division 1 of the *Local Government Act 1995*. Care should be taken by all Councillors to ensure that a financial/impartiality interest is declared and that they refrain from voting on any matter, which is considered to come within the ambit of the Act.

Ross Marshall, Director Operations declared an impartiality interest regarding item 9.1.2 as the applicant is a dear friend.

Loren Clifford, Acting Director Finance and Corporate declared a proximity interest regarding item 9.1.8 as the applicant is seeking to propose changes to the use of land adjoining land she resides at.

Emma Thomas, Acting Manager Corporate Services declared a proximity and impartiality interest regarding item 12.1.1 as her spouse has an interest in land that is located on Cundinup Kirup Road.

5. Public Question Time

5.1. Responses to previous public questions that were taken on notice

Nil.

5.2. Public Question Time

Not applicable - Agenda Briefings are open to the public to attend and observe however, any questions, deputations or petitions are to be presented to the Council Meeting.

6. Presentations

6.1. Petitions

Not applicable - Agenda Briefings are open to the public to attend and observe however, any questions, deputations or petitions are to be presented to the Council Meeting.

Petition received at its September Ordinary Council Meeting held on the 25th of September regarding the Donnybrook senior room. Item 9.2.4 addresses the petition.

6.2. Presentations

Not applicable - Agenda Briefings are open to the public to attend and observe however, any questions, deputations or petitions are to be presented to the Council Meeting.

David Atwood from LGIS will be presenting the 3 Steps to Safety Award to the Shire.

6.3. Deputations

Not applicable - Agenda Briefings are open to the public to attend and observe however, any questions, deputations or petitions are to be presented to the Council Meeting.

6.4. Delegates' Reports

Nil.

7. Confirmation of Minutes

7.1. Ordinary Council Meeting held on 23 October 2024

Minutes of the Ordinary Council Meeting held 23 October 2024 are attached as [Attachment 7.1\(1\)](#).

Executive Recommendation:

That the Minutes from the Ordinary Council Meeting held 23 October 2024 be confirmed as a true and accurate record.

8. Reports of Committees

8.1. Bush Fire Advisory Committee Meeting held on 23 October 2024

Minutes of the Bush Fire Advisory Committee Meeting held 23 October 2024 are attached as [Attachment 7.8\(1\)](#).

Executive Recommendation:

That the Minutes from the Bush Fire Advisory Committee Meeting held 23 October 2024 be received.

9. Reports of Officers

9.1. Director Operations

9.1.1. Lot 176 Fire Break Order Cost Recovery

Report Details:

Prepared by: Ross Marshall, Director Operations

Manager: Nicholas O’Conner, Chief Executive Officer

Applicant: WA Subdivisions Pty Ltd

Location: Lot 176 South Western Highway, Donnybrook WA 6239

File Reference: A568

Voting Requirement: Simple Majority

Attachment(s):

9.1.1(1) Summary of Evidence as Submitted to the Magistrates Court 19 October 2024.

Executive Recommendation

That Council:

1. Requests the Chief Executive Officer to

1.1. represent the Shire Offer dated 5 September 2024 as First and Final, and

1.2. failing receipt of payment, seek recovery of debt owing in accordance with the *Bush Fires Act 1954*.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 2 - A safe and healthy community.

Objective: 3.2 - Develop community readiness to cope with natural disasters and emergencies.

Item: Nil.

The following outcomes from the Council Plan relate to this proposal:

Outcome: 12 - A well respected, professionally run organisation.

Objective: 2.3 - Maintain community safety.

Item: Nil.

Executive Summary

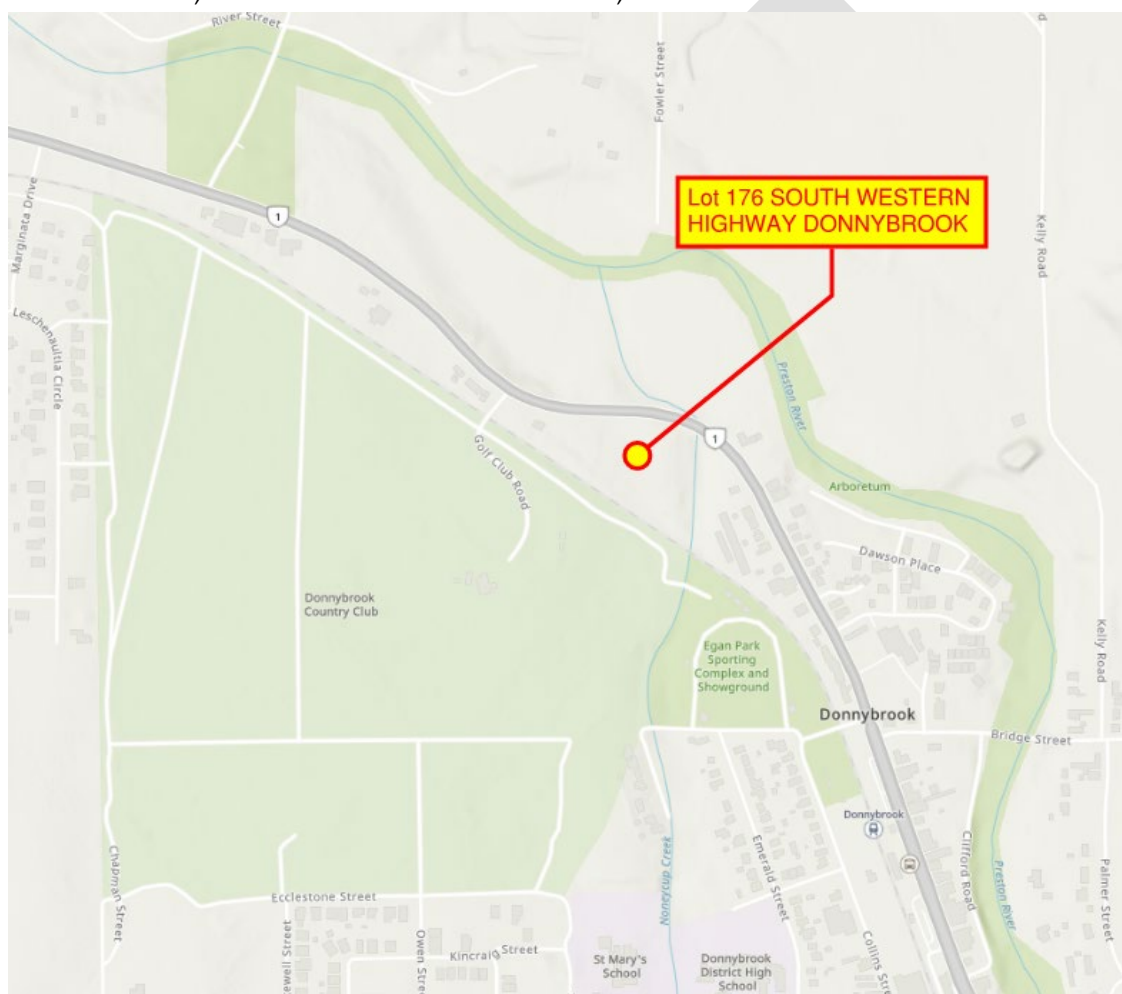
The Owner for the property located at Lot 176 South Western Highway Donnybrook failed to carryout fire mitigation works in accordance with Fire Break Order 2023/24. A Works Order for fire mitigation was issued mid-December 2023. Due to inaction by the property Owner, works and cost recovery was carried out in accordance with the *Bush Fires Act 1954* in January 2024.

The Owner lodged a Minor Case Claim with the Magistrates Court 16 March 2024. Directions hearings have been held on 19 August 2024 and 28 October 2024. At the most recent hearing the Applicant requested the opportunity for Council to reconsider the scope and costs of the recovery claim. Refer to page 14 of [Attachment 9.1.1\(1\)](#). This report is put before Council for this consideration.

Background

Each year Council issues the Fire Break Order (FBO, refer to pages 4 and 5 of [Attachment 9.1.1\(1\)](#)) as a prescribed notice in accordance with the Local Government and Bush Fires Acts. Fire mitigation is required to be complete by 1 December, the scope of fire mitigation is detailed in the FBO.

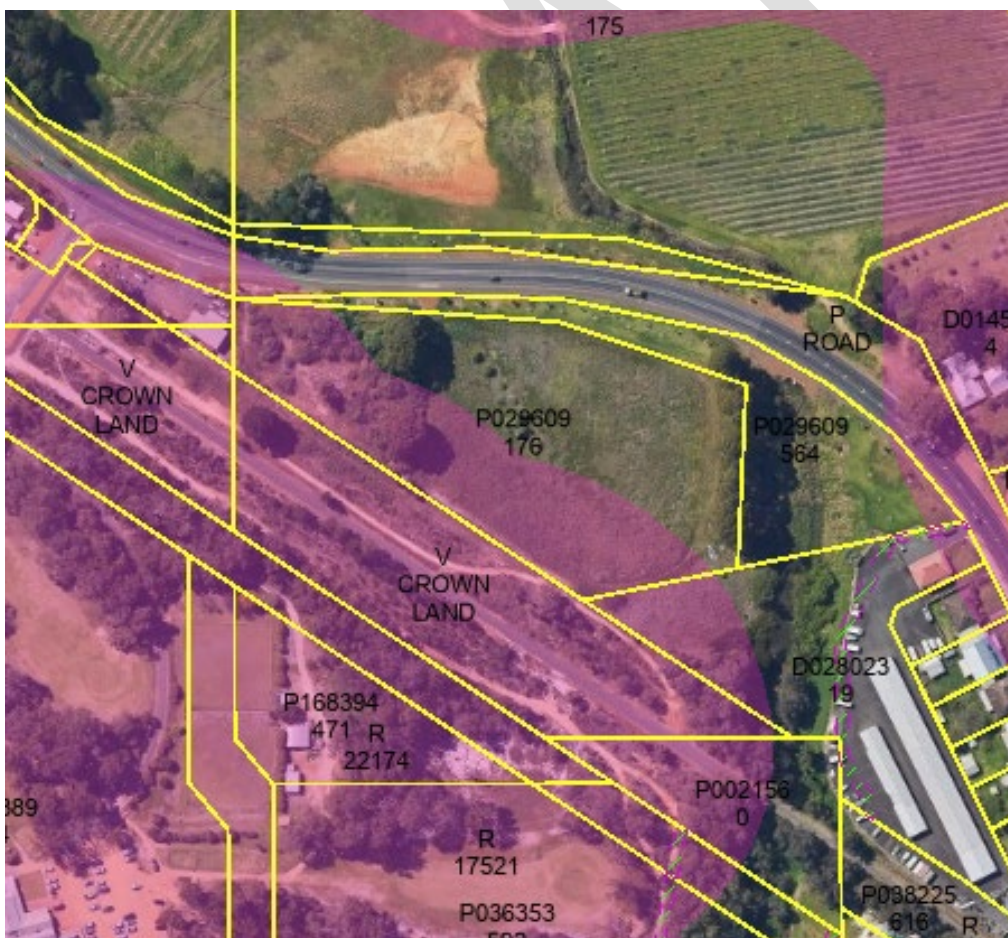
The property located at Lot 176 South Western Highway Donnybrook (Lot 176) is located within Townsite Land, within the Bush Fire Prone Area, and is zoned Commercial.



Picture 1 – Property Location, Maps



Picture 2 – Property Location, satellite



Picture 3 – Bush Fire Prone Area, highlighted in magenta.

The property was purchased by WA Subdivisions Pty Ltd in April 2019.

On 4 December 2023 the designated Bush Fires Officer (Rangers) carried out FBO inspection at Lot 176 and found the property to be non-compliant.

Rangers contacted the owner 4 December 2023 requesting contact regarding the non-compliance. The owner provided advice regarding having difficulty securing a contractor for the works. Rangers responded with contact details for 3 known providers in the area.

Rangers carried out a follow up inspection of Lot 176 on 8 January 2024, and found the property as still non-compliant, there was no visual evidence of that any attempt had been made to comply with the FBO, and the owner did not communicate any further with the Shire or Rangers. Infringement I.10123 was issued post inspection.

A review of your property's previous seasons compliance history also noted the following:

- infringement I.10035 was issued on 12/01/2022 for non-compliant fire breaks, with the infringement paid on 05/04/2022; and
- Infringement I.10478 was issued on 17/12/2022 for non-compliant fire breaks, with the infringement paid on 22/02/2023.

Due to this history of non-compliance and the risks that the property presented to the Donnybrook townsite, based on the density and dryness of vegetation (fuel load), it was determined to seek a quote from a contractor to undertake fire mitigation works in accordance with the FBO.

The quote was noted to have a higher square metre rate than for similar works on other private properties, however due to the following factors it was deemed a reasonable offer for the undertaking of the required mitigation works:

- The fuel load was well above what was applicable for other private properties where the Shire had to intervene in accordance with our fire break orders, to undertake mitigation works.
- The Shire was experiencing a particularly dry season with very high fire risks.
- Due to the risks of these mitigation works being undertaken in January, close to town, in a high fuel load area, a spotter and fire suppression equipment were also required to be provided by the contractor, plus the works were only deemed safe to be undertake in the cooler morning hours, over several days.
- To mitigate the risks that the property presented to the Donnybrook townsite, the contractor needed to be available ASAP to undertake the works.

The contractor completed the work on the 15 January 2024. The engagement of the contractor to undertake the mitigation works was carried out in accordance with Shire delegations. A final demand notice was sent via post for the outstanding infringement on the 6 February 2024. On the 12 February 2024, payment was received for infringement: I.10123.

The Owner wrote to the Shire to dispute the cost for the fire mitigation works and made allegations of dumping of sand, unauthorised removal of native vegetation, and unlawful property entry. Shire

Officers reviewed the costs and history of the property and deemed that the actions and invoiced costs were appropriate for the property's current condition and historic non-compliance with FBOs. The Shire Officers have not issued the applicable penalty for the non-compliance which carries a penalty amount of \$5,000.

The owner lodged a Minor Case Claim with the Magistrates Court dated 16 March 2024 – refer to [Attachment 9.1.1\(1\)](#) Summary of Evidence as Submitted to the Magistrates Court on 19 October 2024. The claim amount being \$10,178.60 for items summarised in bold, with Shire position after as follows.

It is alleged that the Shire of Donnybrook Balingup did in January 2024 remove vegetation and dump sand at Lot 176 South Western Hwy Donnybrook, whilst purporting to construct a firebreak on said property.

The Shire did under *Section 33 (4) of the Bush Fires Act 1954* remove non-native vegetation using mechanical methods. Neither the Shire nor its contractors have dumped sand on property lot 176 South Western Highway. Images are available from Google Street view showing evidence of the sand in question stockpiled on the property- dated March 2008 and November 2009.

The Shire claims that any work done on the property was under their instruction but refuse to voluntarily reveal the alleged contractor.

As per Section 33 (5) The amount of any costs and expenses incurred by the bush fire control officer or other officer in doing the acts, matters, or things provided for in subsection (4) —

(a) shall be ascertained and fixed by the local government and a certificate signed by the mayor or president of the local government shall be prima facie evidence of the amount.

There is no requirement for the Local Government to provide this information.

The invoice 23023 (issued by the Shire of Donnybrook) is for an amount higher than that prescribed by the Act has no legal effect.

As per Section 33 (5) of the Bush Fires Act 1954 the amount of any costs and expenses incurred by the bush fire control officer or other officer in doing the acts, matters, or things provided for in subsection (4) —

(a) may be recovered by the local government in any court of competent jurisdiction as a debt due from the owner or occupier of land to the local government.

The Shire has included in their 2023/2024 fees and charges:

Section 5.2.1 Installing of fire breaks – Contract works - Actual Cost

Section 5.2.2 Administration fee to arrange non-complaint firebreaks - \$120.00.

The invoiced amount is that of the contractor fee plus a \$120.00 admin fee.

The Shire of Donnybrook refuses to supply a section 33(5) certificate under the bushfires Act. The Shire only has lawful authority to do a firebreak, not clear native vegetation, slash, dump sand or otherwise.

As per mentioned section of the Act a certificate was provided signed by the President of the Local Government.

The notice issued under *Section 33 (1) of the Bush Fires Act 1954* provides in *Section 3. Townsite Land (includes residential, commercial, and industrial land)*

- a. *Where the land exceeds 2024m2 clear fire breaks not less than two metres wide, unless otherwise specified in the Local Planning Scheme, immediately inside all external boundaries of the land, and also immediately surrounding all buildings situated on the land. Grass on the remaining area of the land must be either grazed, cut for fodder, or totally removed from the land.*
- c. *The Shire of Donnybrook Balingup, in consultation with the relevant Fire Control Officer, may vary these conditions in certain circumstances.*

In this case the Shire enacted *Section 33 (4) of the Bush Fires Act 1954*

- (a) the local government may direct its bush fire control officer, or any other officer of the local government, to enter upon the land of the owner or occupier and to carry out the requisitions of the notice which have not been complied with;*
- (b) the bush fire control officer or other officer may, in pursuance of the direction, enter upon the land of the owner or occupier with such servants, workmen, or contractors, and with such vehicles, machinery, and appliances as he deems fit, and may do such acts, matters and things as may be necessary to carry out the requisitions of the notice.*

The Shire engaged a contractor to install fire breaks and slash grasses on the land which in the opinion of the local government's duly authorised officer was likely to be conducive to the outbreak of a bush fire or the spread or extension of a bush fire.

The Shire did not remove native vegetation from the land. Furthermore the Shire referred to a Bush Fire Management Plan for the property completed by Smith Consulting in July 2019. The report identifies in Section 2. Environmental considerations: *"The site is effectively clear of native vegetation. It contains tress that are introduced species, Tagasaste, and grassland."*

Subsection 2.1. Native Vegetation states *"The site is effectively clear of surface and near surface native vegetation, except of the grass. There are a limited number of isolated individual native scrub and tree species."*

The Shire of Donnybrook contrary to section 3.31 of the local Government Act entered upon the property.

As per Section 3.31 of the Local Government Act 1995, Notice was issued to the owner of the land within the Fire Break Order stating that –

Inspections will be carried out by an Authorised Officer. Fire breaks shall be constructed to a mineral earth standard free of all flammable material and maintained throughout the entire compliance period. Failure to comply with the requirements of this order may result in the issuing of an infringement notice or prosecution. The Shire of Donnybrook Balingup may also arrange for works to be carried out at the expense of the owner or occupier.

On 12/12/2023 with the issuing of a Bush Fire Prevention Order 2023/2024 – WORK ORDER (OCOR60488) and on the 08/01/2024 with the issuing of Infringement Notice I.10123 (OCOR60815) the Shire advised the owner of the land that if the required work is not completed it may engage a contractor to undertake the work at their expense.

After seeking legal advice, an offer to settle was presented to the owner of Lot 176 dated 5 September 2024 (see copy of letter in attachment). This offer was rejected.

During the directions hearing 28 October 2024, the Owner mentioned the following.

- The allegation regarding dumping of sand is withdrawn.
- A settlement offer for fire mitigation works of \$3,500.00, with rights of appeal or remedy reserved.

This verbal offer of settlement from the owner is for Council to consider as the Council Delegation 1.2.24 restricts debts right off to amounts below \$1,000.

In good faith, and in accordance with legal advice and Council Delegation 1.2.24, the Director Operations offered to waiver the \$120 administration fee as documented in the offer dated 5 September 2024.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Possible	Moderate	Moderate (6)
Risk Description:	Poorly maintained property and non-compliance with Fire Break Orders resulting in damage to persons or property.		
Mitigation:	Fire mitigation in accordance with the annual Fire Break Orders.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Unlikely	Minor	Low (4)
Risk Description:	Resource time and legal costs for regulatory enforcement of Fire Break Orders, works orders, infringements and penalties.		
Mitigation:	Fire mitigation in accordance with the annual Fire Break Orders.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Major	High (12)
Risk Description:	Failure of designated Bush Fire Officers undertaking Fire Break Order inspections and management of non-compliance.		
Mitigation:	Allocation of resources and planned FBO inspections in accordance with the annual Fire Break Orders.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Environment	Unlikely	Minor	Low (4)
Risk Description:	Damage or destruction of native vegetation that has environmental value.		
Mitigation:	Consideration of native vegetation in accordance with the Acts.		

Financial Implications

At this point in time the following costs have been incurred.

Invoice JA30 – Southwest Fire Mitigation Services, \$5,786.00, dated 30/1/2024

Invoice 135287, McLeod's Lawyers legal advice, \$1,944.80, dated 30/4/2024

Invoice 136158, McLeod's Lawyers legal advice, \$858.00, dated 31/5/2024

Invoice 140754, McLeod's Lawyers legal advice, \$650.98, dated 30/8/2024

Invoice 141308, McLeod's Lawyers legal advice, \$1,301.96, dated 30/9/2024

Applicable Council Fees and Charges, \$120.00

Staff time for this matter is summarised as per the following estimates;

Rangers, approx. 8 hours; and

Manager Works and Services, approx. 8 hours; and

Director Operations, approx. 40 Hours

Policy Compliance

Nil.

Statutory Compliance

Local Government Act 1995

Bush Fires Act 1954.

Environmental Protection Act 1986

Under section 33(4)(a) Local Governments may direct Bush Fire Control Officers or other Local Government Officers to enter land of the Owner or occupier to carry out the requirements of a fire break order that has not been met by the land Owner or occupier. This includes any works people, contractors or vehicles and machinery required to undertake the works. The cost incurred for these activities to bring the land into compliance with the fire break order are recoverable and if the debt due to the Local Government remains unpaid, it may be pursued via court action under s.33(5).

A tax invoice received by a Local Government from a contractor engaged to perform the work is sufficient evidence of costs raised under section 33(8) and, if needed, the basis for the amount stated in the certificate prepared under section 33(5). A Local Government may commence debt recovery action in accordance with section 33(8) through the normal accounts receivable process and this may be a debt due against the land, a charge against the land, or recoverable in the same manner as rates.

Consultation

As noted above, there has been various correspondence with the land owner, and two Magistrate Court direction hearings. Refer to [Attachment 9.1.1\(1\)](#) Summary of Evidence as Submitted to the Magistrates Court on 19 October 2024.

Officer Comment

The Fire Break Orders are issued every year to ensure that property owners understand their obligations under the Bush Fires Act. Compliance with the Fire Break Orders remains a fundamental fire mitigation activity for all land owners for the fire safety of the community within the Shire of Donnybrook Balingup.

Council has been requested by the owner to reduce the debt owing, this report provides Council with information and opportunity to consider and respond.

9.1.2. Scheme Amendment No. 14 to Shire of Donnybrook Balingup Local Planning Scheme No. 7

Report Details:

Prepared by: Principal Planner
Manager: Manager Development Services
Applicant: Cherry View Estate Pty Ltd & Scaffidi Super Company Pty Ltd
Location: Lot 384 Marshall Road, Argyle
File Reference: A736 **Voting Requirement:** Simple Majority
Attachment(s):

9.1.2(1) Scheme Amendment No. 14 Report

Executive Recommendation

That Council:

- A. Resolves in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* to:
1. Adopt for the purpose of advertising, Scheme Amendment No. 14 that proposes to amend the Shire of Donnybrook Balingup Local Planning Scheme No. 7 by:
 - 1.1 Amending the zoning for Lot 384 Marshall Road, Argyle from 'General Agriculture' to 'Rural Residential';
 - 1.2 Removing Lot 384 from 'Development Investigation Area 1' and replace with 'RR2' planning area;
 - 1.3 Incorporating provisions into Schedule 2 of the Scheme; and
 - 1.4 Amending the scheme map accordingly.
 2. Determine that proposed Scheme Amendment No. 14 is a standard amendment under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:
 - 2.1 The amendment relates to a zone that is consistent with the objectives identified in the above Local Planning Scheme; and
 - 2.2 The amendment is consistent with the Local Planning Strategy for the scheme that has been endorsed by the Commission.
 3. Refer a copy of the proposed Standard Scheme Amendment No.14 to the Department of Planning, Lands and Heritage (DPLH) for review in accordance with section 83A of the *Planning and Development Act 2005*.
 4. Refer a copy of the proposed Standard Scheme Amendment No.14 to the Environmental Protection Authority (EPA) for review in accordance with section 81 of the *Planning and Development Act 2005*.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

- Outcome:** 6 - The built environment is responsibly planned and well maintained.
- Objective:** 6.1 - Ensure sufficient land is available for residential, industrial and commercial uses.
- Item:** Nil.

Executive Summary

The purpose of this report is for Council to consider Scheme Amendment No. 14 for adoption for advertising. Following advertising, the proposal will be referred to Council along with any submissions for further consideration.

Officers do not have delegation to adopt scheme amendments for advertising where the scheme amendment is not minor or procedural and the matter is therefore referred to Council for consideration. Under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2005* officers consider that the proposal is a standard amendment and recommend it be adopted for advertising to allow further processing.

Background

The proposal seeks to amend the Shire of Donnybrook Balingup Local Planning Scheme No.7 (LPS7) by amending the zoning for Lot 384 from 'General Agriculture' to 'Rural Residential'. This amendment involves the removal of the 'Development Investigation Area 1' and the imposition of 'Rural Residential Area No. 2' (RR2) that will incorporate provisions into Schedule 2 of LPS7 to guide future subdivision of Lot 384.

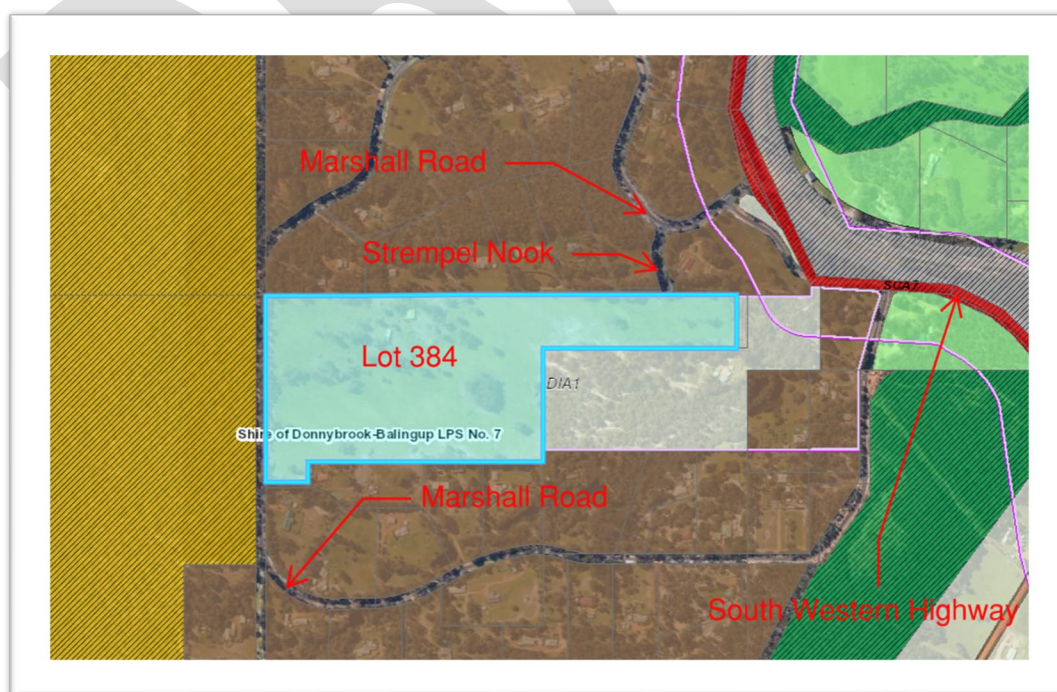


Figure 1 - Location Plan

Lot 384 Marshall Road, Argyle was originally to be rezoned under Scheme Amendment 11 with the intent of creating 19 lots. Scheme Amendment 11 was recommended for approval by Council at its Ordinary Council Meeting in March 2020, but it was thereafter refused by the Western Australian Planning Commission (WAPC) in October 2020 for the following reasons:

1. *The proposal has not satisfactorily addressed the bushfire issues arising from the intensification of the land use; and*
2. *The amended bushfire management plan has not demonstrated consistency with State Planning Policy 3.7 in regard to:*
 - a) *vegetation classification.*
 - b) *assessment of bushfire hazards.*
 - c) *vehicular access and the preparation of a satisfactorily bushfire attack level (BAL) contour map.*
 - d) *information provided is not sufficient to confirm that no development site is classified as BAL-40, BAL FZ or extreme BHL or that vehicles can move safely to/from and through the development site at all times.*

Scheme Amendment No. 14 addresses the concerns raised by the Western Australian Planning Commission (WAPC) by reducing the number of additional lots from 18 (Figure 2) to just 5 additional lots (Figure 3). The reduction in lot numbers, reduces the environmental footprint compared to the earlier proposal. The reduced number of lots combined with the revised Bushfire Management Plan addresses the concerns regarding vegetation classification, bushfire hazard assessments, and emergency access. A copy of Scheme Amendment No. 14 is contained in [\(Attachment 9.1.2\(1\)\)](#).

Below is an excerpt of Appendix 4 of the Scheme Amendment report demonstrating the proposed 19 lot layout of the previous concept subdivision plan under Scheme Amendment No. 11.

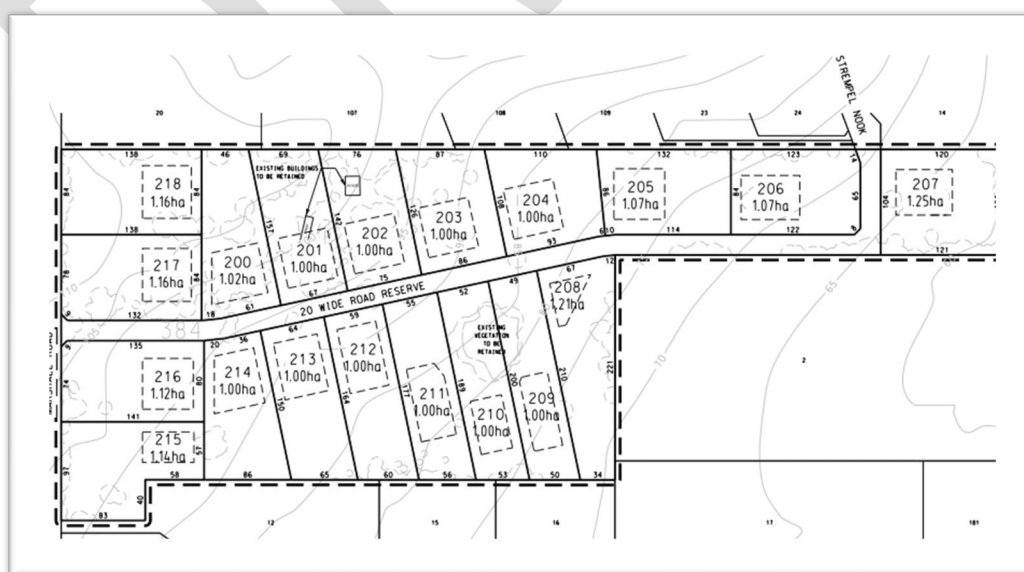


Figure 2 - Intended outcome of Scheme Amendment No. 11

Below is an excerpt of Appendix 4 of the Scheme Amendment report demonstrating the proposed 6 lot layout of the new proposed concept subdivision plan under Scheme Amendment No. 14.

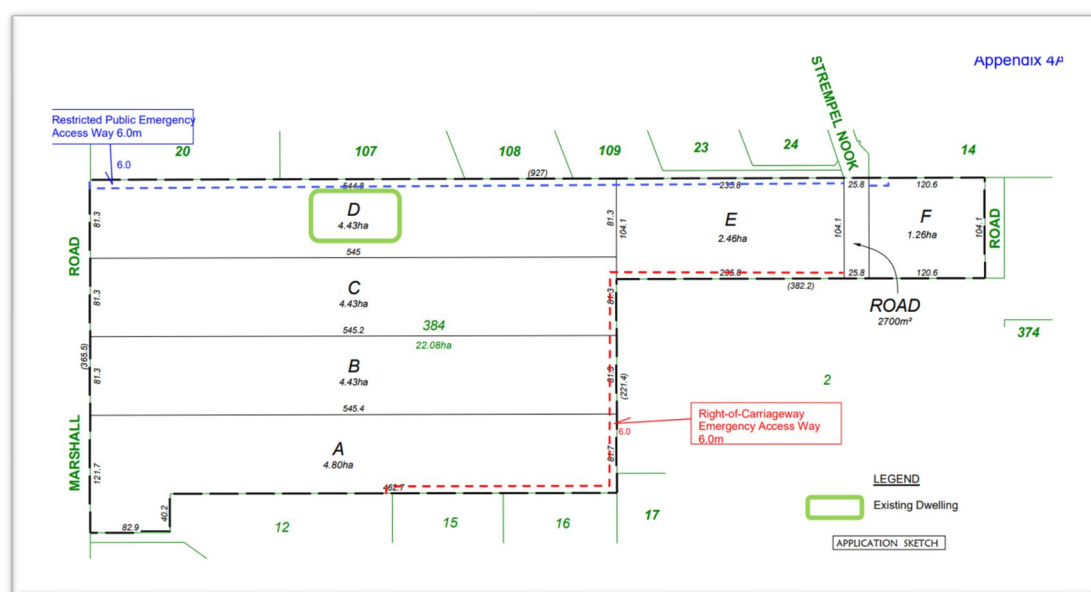


Figure 3 - Intended outcome of Scheme Amendment No. 14

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Environment	Possible	Moderate	Moderate (5)
Risk Description:	There are Jarrah and Marri tree species on site. These trees may provide habitat for the Carnaby's Cockatoo (Endangered), Baudin's Cockatoo (Endangered) and Forest Red-tailed Black Cockatoo (Vulnerable).		
Mitigation:	Limiting the development to the subdivision concept plan will limit the development to a maximum lot yield of six (6) lots that will significantly reduce the environmental footprint compared to the earlier proposal.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Property	Rare	Catastrophic	Moderate (5)
Risk Description:	Protection of persons and property in the event of a fire.		
Mitigation:	Scheme Amendment No. 14 is accompanied by a Bushfire Management Plan. Scheme Amendment No. 14 will be referred to Department of Fire and Emergency Services (DFES) for comment as part of the consultation process.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Insignificant	Low (3)
Risk Description:	Impact on local community.		
Mitigation:	The Scheme Amendment No. 14 will be made available to the community for comment as part of the consultation process and matters raised in submissions will be considered by Council thereafter.		

Financial Implications

Costs associated with advertising and staff time are recovered under the statutory assessment fee.

Policy Compliance

State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP 3.7).

The intent of this policy is to implement effective risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure. The Policy is supported by Guidelines for Planning in Bushfire Prone Areas (Guidelines). The Scheme Amendment No. 14 report that contains a Bushfire management Plan will be referred to Department of Fire and Emergency Services (DFES) and Main Roads WA for consideration and comment during the consultation period, if adopted by Council for advertising.

Statutory Compliance

The following statutory planning instruments of the State Planning Framework and Local Planning Framework are of relevance to considering this proposed standard amendment to the Scheme:

Planning and Development Act 2005

Part 5 of the *Planning and Development Act 2005* outlines the processes and requirements for amending local planning schemes. This includes Section 81 that details the need for an Environmental Decision by the EPA prior to formal public advertising starting.

Planning and Development (Local Planning Schemes) Regulations 2015

Part 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, (Regulations) details the processes for standard amendments to local planning schemes, including advertising requirements.

46A.(1) After completing the preparation of a proposed standard amendment to a local planning scheme or the consideration of a proposed standard amendment to a local planning scheme proposed by an owner of land in the scheme area, the local government must resolve —

- (a) to proceed to seek approval to advertise the proposed amendment, without modification, under section 83A of the Act; or*
- (b) to proceed to modify the proposed amendment and to seek approval to advertise the modified proposed amendment under section 83A of the Act; or*
- (c) not to proceed with the proposed amendment.*

Shire of Donnybrook Balingup Local Planning Strategy 2014

The Shire's Local Planning Strategy provides the long-term vision for the Shire and identifies the land as "Rural Residential Investigation".

The intent of this designation is to:

- (a) Identify areas suitable for potential future rural residential development;
- (b) Ensure that new development has regard to environmental features;
- (c) Not create conflicts with or constrain future agricultural development; and
- (d) Provide a variety of lot sizes.

Shire of Donnybrook Balingup Local Planning Strategy Draft 2024

Below is an excerpt of the area provisions for Planning Area A. Marshall Road under the Draft LPS 2024.

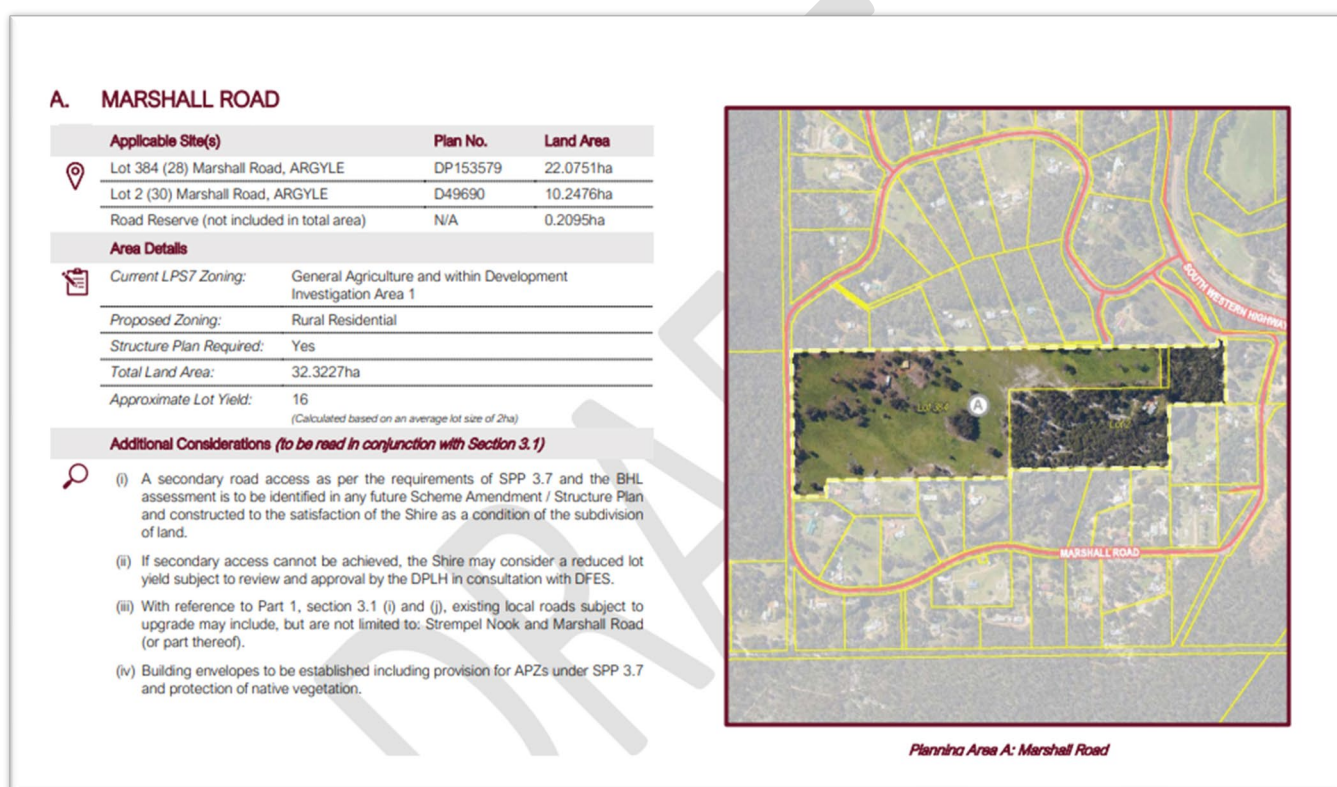


Figure 4 - Area Provisions for Planning Area A. Marshall Road under the Draft LPS 2024.

The approximate lot yield for Planning Area A consisting of both Lot 384 and Lot 2 is 16. This allows for one lot per 2ha. The maximum lot yield for Lot 384 under the Draft LPS 2024 is thus 11 lots. The application under Scheme Amendment No. 14 proposes 6 lots in lieu of the intended 11 lots. The scheme amendment report proposes a preferred option for a secondary road access. The proposed access together with the reduced lot yield would need to be considered by Main Roads WA and DFES during the consultation period if Council adopt the proposal for advertising.

Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7)

Below is an excerpt of the LPS7 map that demonstrates the zoning for Lot 384 is 'General Agriculture' and that the lot is subject to the scheme provisions relating to 'Development Investigation Area 1'.

Under LPS7 the land use expectation for Lot 384 is “Rural Residential” subject to the following matters being addressed at structure plan stage:

- a) The protection of native vegetation that has been identified as worthy of protection by the Department of Parks and Wildlife and the local government.
- b) Identification of building envelopes within the larger lots to protect vegetation.
- c) The provision of safe access to the existing local road network.
- d) Fire management associated with the close proximity to State Forest.

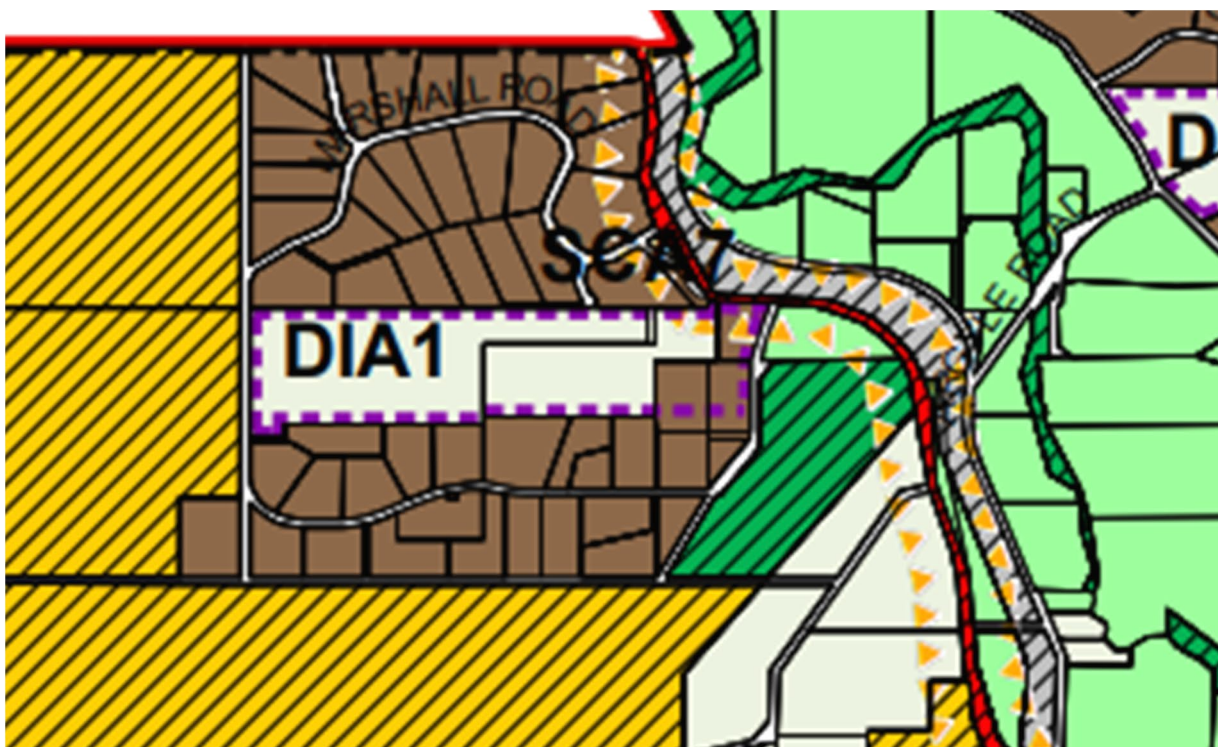


Figure 5 – Excerpt of LPS7 map

Consultation

Subject to the Council resolution, the amendment documentation will be forwarded to the Environmental Protection Authority (EPA) and Department of Planning Lands and Heritage (DPLH) for 30 days for review and then advertised following their response.

Standard amendments are advertised for a period of not less than 42 days in accordance with *the Planning and Development (Local Planning Schemes) Regulations 2015*.

Following advertising, the amendment proposal would be returned to Council for its further consideration, together with any submissions received during the statutory advertising period.

Officer Comment

The amendment proposes to rezone the land to “Rural Residential” and the purpose and objectives of the zone are as follows:

3.3.1 Purpose

The purpose of the Rural Residential zone is to provide for low density residential development in a rural setting, which provides for an alternative residential lifestyle, which is consistent and compatible with adjacent land use activity, landscape and environmental attributes of the land.

3.3.2 Objectives

The local government’s objectives in managing and guiding land use, development and subdivision within the Rural Residential zone are to –

- (i) provide the opportunity for subdivision where identified in an endorsed Local Planning Strategy, in order to provide for a more efficient use of existing rural-residential areas in close proximity to existing townsites (where essential services are available and where the existing landscape and conservation values of the locality will not be compromised);*
- (ii) direct and control the form that rural residential subdivision takes to prevent a demand for the unreasonable and uneconomic provision or extension of services and facilities;*
- (iii) discourage ribbon development so as to maintain the rural ambience of major roads;*
- (iv) maintain the rural character of the locality, maintain a high level of residential amenity and minimise disturbance to the landscape through appropriate construction of buildings and structures, clearing, earthworks and access roads;*
- (v) encourage a variety of lot sizes and appropriate designs which accommodate environmental opportunities and constraints and landscape protection requirements;*
- (vi) encourage opportunities for innovative design and clustering of houses and other structures to minimise the impact on adjacent land uses, protect landscape and remnant vegetation and to more efficiently use services;*
- (vii) discourage development on hilltop ridges and skylines;*
- (viii) facilitate the conservation of native vegetation, water courses and water bodies and other environmental features and, where appropriate, to provide for environmental enhancement;*
- (ix) encourage and promote appropriate bush fire risk management;*
- (x) provide for a range of land uses compatible with the residential occupation of the land while providing for agricultural production on smaller lots where such production does not interfere with the amenity or rural residential character of the area; and*
- (xi) discourage or prohibit development not compatible with the predominantly rural nature and residential amenity of the zone.*

The proposed Scheme Amendment No. 14 will result in a rural lifestyle development of the intended 6 lots that would accommodate dwellings, sheds and water tanks that complies with the purpose of the zone and the objectives to maintain the rural character of the locality.

Scheme Amendment No. 14 proposes to introduce the following additional requirements into Schedule 2 of LPS7 to be considered and complied with further at subdivision stage:

1. Subdivision and development to be generally in accordance with the subdivision concept plan.

2. Sewage is to be discharged via an on-site effluent disposal system and a Site and Soil Evaluation (SSE) will be provided at the subdivision stage in accordance with the Government Sewerage Policy 2019.
3. Construction of a fully operational 50,000L water tank for firefighting purposes in preference to 10,000 tank per lot holding.
4. Construction of an Emergency Access Way connecting to South Western Highway.
5. Construction of Emergency Access Ways, via an internal Right of Carriageway and a Restricted Public Emergency Access Way within the subdivision to facilitate access to Strempel Nook.
6. Construction of the portion of Marshall Road fronting the subdivision site.
7. Construction of the portion of Strempel Nook providing access to new lots as a result of the subdivision of the land.
8. Any proposal for subdivision is to be accompanied by an Urban Water Management Plan demonstrating how stormwater is to be managed.

Conclusion

The proposed scheme amendment has been assessed against the relevant planning framework and is generally consistent. The amendment is considered to be a standard scheme amendment under the *Planning and Development (Local Planning Schemes) Regulations 2015*. Officers consider the proposed 'standard' Scheme Amendment No. 14 to the Shire of Donnybrook Balingup Local Planning Scheme No. 7 to be consistent with the future planning context for the area, and as such recommend that Council adopt the amendment for advertising.

9.1.3. Development Application P24023: Proposal to re-approve extractive industry (gravel extraction) – Lot 130 Morrissey Road, Yabberup

Report Details:

Prepared by: Principal Planner and Planning Officer

Manager: Manager Development Services

Applicant: D Mazza

Location: Lot 130 Morrissey Road, Yabberup

File Reference: A3653

Voting Requirement: Simple Majority

Attachment(s):

- 9.1.3(1) Pit Management Plan July 2024
- 9.1.3(2) Site Plan 2009
- 9.1.3(3) Public Submissions
- 9.1.3(4) Agency Submissions
- 9.1.3(5) Copy of previous approval P12047
- 9.1.3(6) Assessment under Clause 67
- 9.1.3(7) Applicant's response to Submissions

Executive Recommendation

That Council:

- A. Pursuant to Schedule 2, Part 9, Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7), approves the Development Application P24023 Industry-Extractive (gravel extraction) on Lot 130 Morrissey Road, Yabberup, subject to the following conditions and advice:

VALIDITY

1. This approval is valid for a period of ten (10) years after the date of issue or within any extended period as determined, in writing, by the Shire.
2. This approval allows the excavation and transportation of 202,000 tonnes of gravel.

APPROVED PLANS

3. The layout of the site and location of crusher, stockpiles, access route and works permitted must always accord with 'The Wild Fig Company Pty Ltd Morrissey Road Gravel Pit Extractive Industries Management Plan (Revised and updated: D. Mazza – July 2024) (Attachment 9.1.3(1)) and Morrissey Road Gravel Pit Site Plan' (Attachment 9.1.3(2)) and/or conditions of approval and must not be altered or modified without the further written consent of the Shire.

DUST MANAGEMENT

4. Prior to works commencing, a Dust Management Plan must be submitted to and approved by the Shire and thereafter implemented. The Dust Management Plan must be prepared in accordance with the *Shire of Donnybrook Balingup Animals*,

Environment and Nuisance Local Law 2017 to the satisfaction of the Shire. Once approved, the plan will form part of this approval and must be complied with at all times for the life of this approval.

5. A suitable supply of water for the purposes of all site management operations is to be provided to the satisfaction of the Shire.

WEED AND DIEBACK MANAGEMENT

6. Weed management is to be undertaken to the satisfaction of the Shire. Any declared weeds found to be within the site need to be appropriately treated and removed prior to any further excavation works.
7. Dieback measures to reduce the spread of dieback into adjoining properties in particular the adjoining State Forest 29 area are to be undertaken to the satisfaction of the Shire in consultation with the Department of Biodiversity, Conservation and Attractions.
8. A minimum 10m buffer/setback is to be provided between the extraction area and adjacent existing native vegetation. The 10m exclusion area is to be clearly demarcated to ensure vehicles, extraction works, detention pond, and stockpile areas are located outside the 10m buffer zone to the satisfaction of the Shire.

STORMWATER MANAGEMENT

9. Prior to the commencement of the use, a Stormwater Management Plan is to be submitted to and approved by the Shire demonstrating compliance with the Shire's stormwater management standards and the *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017*. Stormwater is to be managed thereafter by the landowner in accordance with the approved Stormwater Management Plan to the satisfaction of the Shire.
10. Any erosion and/or sedimentation issues that occur due to insufficient drainage and/or stormwater management from the proposed development, including any driveway or accessway, is to be rectified, so as not to impact any surrounding waterways and/or properties, including any infrastructure, to the satisfaction of the Shire.
11. Extraction works are not to exceed a depth of 1.9m below the existing natural ground level unless otherwise approved, in writing, by the Shire, in consultation with the Department of Water and Environmental Regulation.
12. No groundwater is to be exposed on the surface of the pit floor. Should groundwater be exposed during excavation works, all works are to cease, and the Shire is to be notified. Any remedial works, as required by the Shire, in consultation with the Department of Water and Environmental Regulation, are the responsibility of the operator to rectify. No dewatering is permitted.
13. Any refuelling and/or activities that carry a risk of fuel or chemical spills are not to be undertaken in close proximity to the detention basin or stormwater flow paths.

NOISE MANAGEMENT

14. Prior to works commencing, a Noise Management Plan must be submitted to and approved by the Shire and thereafter implemented. The Noise Management Plan must be prepared in accordance with the *Environmental Protection (Noise) Regulations 1997* to the satisfaction of the Shire. Once approved the plan will form part of this approval and must be complied with at all times for the life of this approval.

ONGOING COMPLIANCE AND MONITORING

15. A complaints register is to be established including:
 - a. Details of the subject of the complaint;
 - b. Actions undertaken by the applicant/landowner to rectify the complaint; and
 - c. The on-site publication of appropriate contact details where complaints are to be directed (in the first instance).
16. A suitable report is to be prepared and submitted to the Shire every 3 months including information relating to:
 - a. A copy of the complaints register as per Condition 15; and
 - b. Any other information as deemed necessary by the Shire.

REHABILITATION AND PIT CLOSURE MANAGEMENT

17. Prior to the commencement of works, a Rehabilitation and Pit Closure Management Plan shall be submitted to and approved by the Shire. The plan must demonstrate (but not limited to) the following:
 - a. Stages of rehabilitation.
 - b. Details of the establishment of pasture post-extraction with plant species, density of planting and maintenance measures.
 - c. Weed identification and management measures to occur every six months (Autumn and Spring).
 - d. Dieback identification and management measures.
 - e. Demonstrate that it is consistent with the Department of Water and Environmental Regulation's WQPN 15 and the Guidelines for Preparing Mine Closure Plans. The proponent is to adhere to the agreed intended staging and ensure successful rehabilitation to the final landform and land use.
 - f. Management and compliance reporting shall be included to ensure successful implementation.
 - g. Demonstrate compliance with the conditions for sites under the *Shire of Donnybrook Balingup Extractive Industry Local Law 2016*.
 - h. The revegetation of areas used for stockpiles.
 - i. Extraction of subsequent stages may only commence if rehabilitation of the previous extraction site has substantially commenced.
 - j. A suitable amount of gravel to be provided to the Shire for the resheeting of Morrissey Road from the pit entrance to Donnybrook-Boyup Brook Road.
 - k. The Lot 130 southern boundary fencing to be in good condition to prevent grazing stock from entering the adjacent State Forest. Once approved, the proponent is

responsible to ensure that the development is carried out at all times and in all respects in accordance with the plan.

18. Pit closure works, and rehabilitation of the entire site is to be completed within two (2) years of the end of extraction works or the expiration of this approval (whichever is sooner) unless otherwise extended, in writing, by the Shire.
19. A \$20,000 bond (cash or unconditional bank guarantee in favour of the Shire of Donnybrook Balingup) is required for the works identified by the Rehabilitation Management Plan in Condition 17.

OPERATING HOURS

20. Operating hours of the extractive works are restricted to between 7:00am to 6:00pm Monday to Friday and 7:00am to 1:00pm on Saturdays. No operations are permitted on Sundays or Public Holidays unless otherwise agreed, in writing, by the Shire.
21. Trucks are not to operate between 7:30am to 8:40am and 3:20pm to 4:20pm on any given school day on a school bus route.

VEHICULAR MANAGEMENT

22. Prior to the commencement of works, the intersection of Morrissey Road and Donnybrook – Boyup Brook Road to be upgraded including bitumen sealing the first 30 metres to the satisfaction of the Shire in consultation with Main Roads WA.
23. The cost to relocate and/or remove any services/infrastructure that may be required for the purposes of meeting Condition 22, are the responsibility of the landowner/applicant.
24. The applicant to install advance warning truck entering signs at the intersection of Morrissey Road and Donnybrook – Boyup Brook Road and along Morrissey Road (at the access to the pit) to the satisfaction of the Shire in consultation with Main Roads WA.

OTHER

25. Prior to the commencement of works, a copy of a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation operations.

ADVICE NOTES

- a. This development approval is not an Extractive Industry Licence. No works are to be undertaken until such time as all conditions of the Development Approval have been satisfied and an Extractive Industry Licence has been granted under the *Extractive Industry Local Law 2016*.
- b. The proposed operations are likely categorised as a Prescribed Premises, as per Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations). The applicant is advised to refer to the information and Industry Regulation Guide to Licensing available at [http://www.der.wa.gov.au/our work/licences-and-](http://www.der.wa.gov.au/our_work/licences-and-)

works-approvals. Please contact the Department of Water and Environmental Regulation at info@dwer.wa.gov.au or (08) 6364 7000 regarding requirements.

- c. With regard to Condition 5, Department of Water and Environmental Regulation advises that the applicant is to quantify their water requirements for all aspects of the proposed extraction and provide evidence of a secure water source as the use of water from existing dams or water courses may be subject to approval. It is recommended that the applicant contact the Department of Water and Environmental Regulation's Bunbury Water licensing branch for further information.
 - d. With regards to Condition 9, stormwater management shall:
 - (i) be implemented to ensure the surface flows during, and post-extraction will not detrimentally impact downstream properties. The management measures imposed must mitigate the risk of stormwater runoff and include details such as detention pond sizing, batters etc. The Department of Biodiversity Conservation and Attractions require the development result in no direct or indirect impacts, including surface water run-off, drainage, erosion, pollution and/or *Phytophthora* dieback spread from the site into the adjoining State Forest.
 - (ii) cover the proposed extraction area and be prepared in accordance with the Department of Water and Environmental Regulation's WQPN 15 'Basic raw materials extraction' (July 2019) where applicable, to ensure environmental risks are appropriately mitigated.
 - e. The gravel pit is proposed to be rehabilitated to productive pasture for grazing stock. The Department of Biodiversity Conservation and Attractions require that the southern boundary fencing be maintained in good condition to prevent grazing stock from entering the adjacent State Forest.
 - f. With regards to Condition 19, return of the bond will be measured against the works identified within the Rehabilitation and pit closure measures contained in the approved plan as determined by the Shire. Shire records indicate that a bond of \$4,000 is being held with interest recorded against the amount. The total currently held in "Trust" against this development is \$5,153.96. The applicant is to increase the bond amount to \$20,000.00.
 - g. Management of all activities involving hazardous chemicals (including plant refuelling and/or servicing) shall be in accordance with the Department of Water and Environmental Regulation's WQPN 56 'Toxic and Hazardous Substance Storage and Use' (Dec 2018).
 - h. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. An application must be made within 28 days of the determination.
- B. Authorises the Chief Executive Officer to issue an Extractive Industry License for the extraction of gravel at Lot 130 Morrissey Road, Yabberup upon complying with the conditions of the above development approval and subject to the following conditions:

1. The extractive operation shall comply with the Shire of Donnybrook-Balingup *Extractive Industry Local Law 2016* at all times.
2. This Extractive Industry License is valid for a period of 10-years from the date of issue.
3. Compliance with all approved plans and any conditions/advice contained in Development Approval P24023 at all times during the life of the extractive industry to the satisfaction of the Shire.
4. A licensee shall pay to the local government the annual licence fee in accordance with the Schedule of Fees and Charges adopted each year in the Shire annual budget prior to the commencement of extraction.
5. The operator is required to submit to the Shire an annual 'Progress Report' on the 30 December, detailing progress of the pit over the previous 12-month period. The Report should provide details on the following:
 - (a) Extent of extraction undertaken (volume and area);
 - (b) Completion of stages;
 - (c) Rehabilitation of completed stages.
 - (d) Site survey plan.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

- Outcome:** 6 - The built environment is responsibly planned and well maintained.
- Objective:** 6.1 - Ensure sufficient land is available for residential, industrial and commercial uses.
- Item:** Nil.

Executive Summary

The purpose of this report is for Council to consider an application for development approval for an Industry-Extractive for gravel extraction and processing on Lot 130 Morrissey Road, Yabberup.

Officers do not have delegation to determine applications for development approval where concerns/objections are received.

Officers note the submissions received and community interest/concerns raised in the submissions received. Officers consider that the proposal may proceed and recommend it be granted approval subject to conditions/advice. The conditions/advice on the approval address the matters raised in the public/government agency submissions.

Background

The property has been the subject of previous development approvals for Industry-Extractive (gravel extraction and processing) and was originally approved in May 2009, extended in 2013 and 2023 to cease in April 2024.

Development Application P24023 was received on 26 August 2024 and processed in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Proposal

The proposal is contained in [Attachment 9.1.3\(1\)](#) and summarised below:

Application Details	
Lot	Lot 130
Lot Area	58.4745 hectares
LPS7 Zoning	General Agriculture
Permissibility in the Zone	'A' advertised discretionary use
Hours of Operation	7.00am to 6.00pm – Mondays to Fridays 7.00am to 1.00pm – Saturdays No work on Sundays and Public holidays
Total Extraction Area	4.5 hectares (7.7% of Lot Area) The entire pit is approximately 190m wide at the northern end, (adjacent to the fence-line) and the deposit narrows to a width of approximately 75m with the pit length of 410m (see Figure 2). Pit operations commenced at the northern boundary of the site and proceed in a southerly direction towards the highest point of the pit. An area of up to 3 hectares is worked at any one time which is then to be rehabilitated.
Extraction Depth	Indicated depth of the material is between 0.5m to 1.8m.
Extraction Length (Years)	10 years
Rehabilitation	Progressively The gravel will be extracted when required for road projects and the land will be progressively rehabilitated back to pasture after completion of extraction activities.
Extraction Volume	202,000 tonnes (Gravel volume extracted 2009-2024 was 95,000 tonnes from the original 300,000 tonnes). Geological drilling (completed in 2017) estimates there is approximately 202,000 tonnes of gravel material remaining in the deposit
Truck Haulage Volume	Over the past 15 years of gravel operation on site, the average project has required 5000 tonnes of gravel over roughly four weeks or 10 truck trips per workday on average. The largest project in the past 15 years was 18,000 tonnes over nine weeks for Main Roads at an average of 15 truck trips per day.

Application Details	
	<p>The number of trucks entering and exiting the site is inconsistent from year to year and dependent on the geographic location of approved projects in relation to the gravel pit. The demand and volume of gravel required varies by project and truck movements usually occur in campaigns.</p> <p>Most of the truck movements to date have been by semi-trailers (24 tonnes).</p>
Haulage Route	<p>From the existing driveway along Morrissey Road onto Donnybrook-Boyup Brook Road. Main Roads WA have requested the applicant upgrade the intersection of Morrissey Road and Donnybrook - Boyup Brook Road including bitumen sealing the first 30 metres to the specifications and satisfaction of Main Roads at the full cost of the applicant.</p>

The applicant/owner has provided the updated Pit Management Plan (July 2024) to support the renewal of the extractive industry on Lot 130 Morrissey Road, Yabberup to continue extracting and processing laterite gravel products.

The original approval was granted in 2009 and extended in April 2013 allowing the excavation and transportation of 300,000 tonnes of gravel. The applicant has advised that from 2009 to 2024, the operations has produced approx. 95,000 tonnes of gravel and geological drilling (completed in 2017) estimates there is approximately 202,000 tonnes of gravel material remaining in the deposit.

The applicant is requesting development approval for a new 10-year period with the same conditions attached to the 2013 licence. The site plan and footprint of the extraction area remains the same as from the original 2009 approval - see [Attachment 9.1.3\(2\)](#).

The applicant advises the proposal will involve the following activities on the lot:

- a. The pit site is located on previously cleared pastoral land.
- b. Gravel material is extracted, processed and stockpiled within the footprint of the working stage.
- c. The gravel products are sold mostly ex-pit to Main Roads WA, local Shires and contractors.
- d. The gravel resource is processed in campaigns dependent on demand. A campaign is typically between four to six weeks usually in Summer or Autumn.
- e. A bulldozer is used to push the topsoil and overburden from the staged area to the edges of the extraction area. A minimum thickness of 100mm of topsoil and root-layer will be stripped.
- f. The bulldozer then rips and pushes the material up into windrows.
- g. A mobile crushing and screening plant is relocated to site and starts at one end of the windrow and is usually fed with an excavator.
- h. A crushing campaign is typically 10,000m³. The crushed gravel product is collected and stockpiled in small 2000m³ "flat top" stockpiles up to five metres high. Where possible the stockpiles are located close to the access road to act as screening for the pit and works.

- i. Samples from the stockpiles are collected/tested to ensure compliance with Main Roads WA gravel specifications.
- j. There is no blasting on-site.
- k. The extraction will lower the ground level however the site is relatively level on top of a hill requiring little if any battering.
- l. The access track to the pit from Morrissey Road has been constructed from the north-western boundary of the property (280m north of Katrina Heights) and the access is dedicated to the gravel pit usage only.
- m. The number of trucks entering and exiting the site is inconsistent from year to year.
- n. Measures to limit noise and dust from the operations and address stormwater management and future rehabilitation back to pasture will be implemented.
- o. The pit floor will be contoured to prevent ponding and encourage drainage from the entire site to the permanent stormwater retention pond near the northern boundary of the extraction area.
- p. To complete rehabilitation of the pit area, the floor will be ripped along the contour using a dozer at approximately 6m intervals to a depth between 0.5m – 1.0m to enable rapid root penetration with the final land surface returned to a similar grade to the original surface but 1.2m – 1.8m lower and the topsoil will be spread evenly across the ripped area using a dozer. Sufficient topsoil will be withheld to provide coverage of stockpile sites and access tracks due for later rehabilitation.

Location Plan

Lot 130 is bounded by Morrissey Road to the west and located within a general agricultural area that supports a range of rural activities (some with dwellings) including farming, horticulture, gravel extraction and tourist facilities/accommodation on the surrounding properties, (see image below). The southern boundary of the lot adjoins State Forest 29 managed by the Department of Biodiversity, Conservation and Attractions.



Figure 1 - Lot 130 Morrissey Road, Yabberup bordered in red

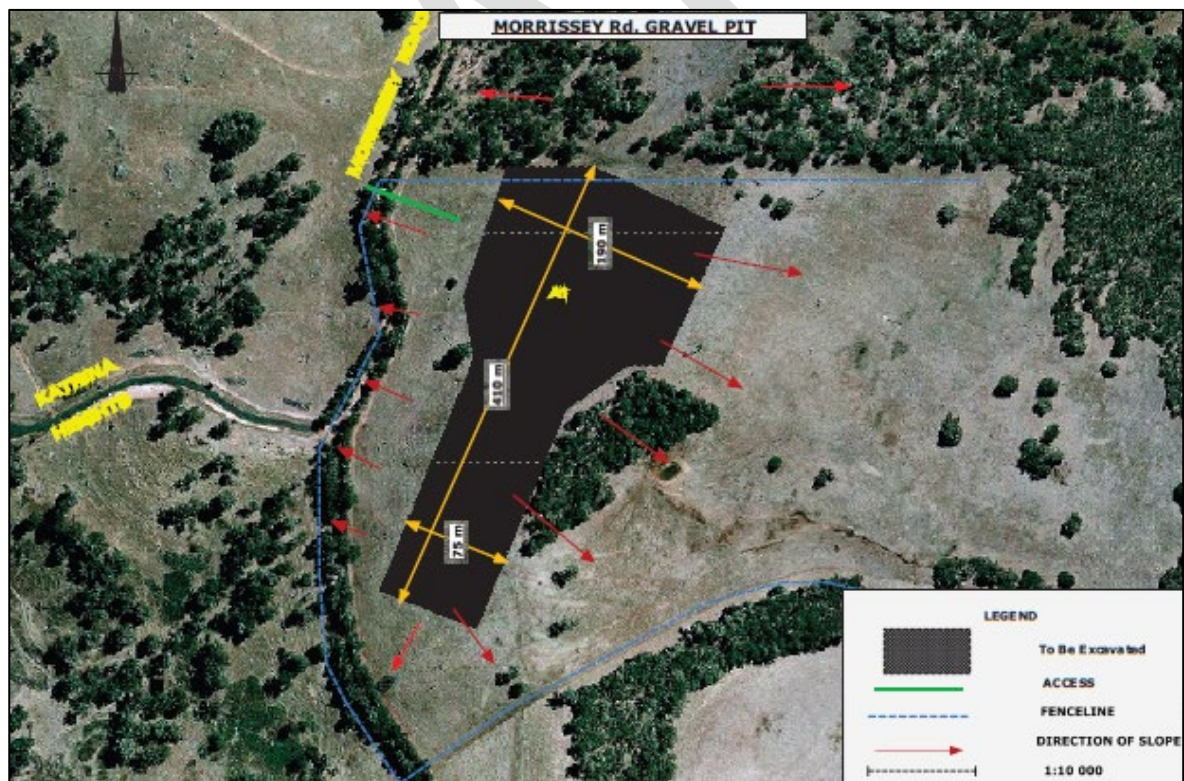


Figure 2 - Pit area on Lot 130 Morrissey Road, Yabberup

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Environment	Possible	Moderate	Moderate (5)
Risk Description:	Inadequate conditions to mitigate environmental impacts.		
Mitigation:	Requesting, as conditions of approval, weed management, a dust management plan, noise management plan, stormwater management plan and a rehabilitation plan at pit closure would ensure environmental impacts are appropriately considered, monitored and mitigated.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Insignificant	Low (3)
Risk Description:	Impact on local community.		
Mitigation:	Matters raised in submissions are considered by Council in the consultation section of this report and address through the imposition of conditions.		

Financial Implications

All relevant application fees have been paid by the applicant.

If the application is refused by Council the applicant may exercise the right to have the decision reviewed by the State Administrative Tribunal. If that is the case then it may be likely that there will be additional resourcing required (staff time and/or the cost of appointing a consultant to represent the Shire).

A bond of \$20,000 is required to be paid to the Shire prior to the issue of the licence in accordance with the *Shire of Donnybrook Balingup Extractive Industries Local Law 1998*. Shire records indicate that a bond of \$4,000 is being held with interest recorded against the amount, the total bond held is \$5,153.96. A condition is recommended that the applicant increase the bond amount to \$20,000. This bond is refundable on completion of rehabilitation of the site in accordance with an approved rehabilitation management plan.

Once the extractive industry licence has been granted a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

Policy Compliance

Local Planning Policy 9.7 Interpretation (Extractive Industry)

The application is for a commercial extractive industry and not covered by the Policy.

Statutory Compliance

The application has been assessed against the relevant and applicable statutory Shire of Donnybrook Balingup Local Planning Scheme No.7 (LPS7) provisions as follows:

Part 3 – Zones and the Use of Land

The lot is zoned General Agriculture under LPS7, and the purpose and objectives of the zone are as follows:

Purpose

The purpose of the General Agriculture zone is to provide for the sustainable use of rural land which primarily accommodates a broad range of rural pursuits and complementary non-agricultural uses that are compatible with the capability of the land, and which retain the rural character and amenity of the locality.

Objectives

The local government's objectives in managing and guiding land use, development and subdivision within the General Agriculture zone are:

- (i) encourage the protection of rural infrastructure and agricultural land resources;*
- (ii) encourage the use of rural land for commercial agricultural production including grazing, cropping, agro forestry, tree plantations, and intensive agriculture (where permitted);*
- (iii) seek to protect the economic viability of the area;*
- (iv) seek to encourage developments which will improve the Shire's population base;*
- (v) recognise the aesthetic and tourism importance of the scenic landscape, realise the need to retain the rural scenic character of a site and of the district by ensuring through siting and landscaping provision that any development does not detrimentally change the scenic rural character;*
- (vi) recommend support for subdivision where it provides for boundary adjustments, realignments and farm restructuring and new lot creation which promotes effective land management practices, environmental and landscape enhancement and infrastructure provision;*
- (vii) support non-rural uses where they are compatible with adjacent and nearby rural and other uses, and where environmental, landscape and servicing considerations are appropriately addressed;*
- (viii) support the retention and protection of portions of land within that zone that are not cleared of remnant vegetation and that are valuable to the rural and natural landscape values and ecological systems of the district; and*
- (ix) encourage and promote appropriate bush fire risk management*

The renewal of the proposed extractive industry is considered to achieve the objectives of the General Agriculture zone as it would enable the gravel resource to be extracted with the land then being returned to pasture and reused for grazing when completed. The proposal is adequately setback and screened from the road by existing roadside vegetation and will not detrimentally affect the scenic rural character of this area. The proposal does not require any clearing of remnant vegetation and has previously operated without complaint from neighbours.

Land Use Permissibility

The proposed development is considered consistent with the definition of 'Industry – Extractive' within LPS7 which means:

An industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone or similar material from the land and includes the treatment and storage of those materials or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry-mining.

'Industry – Extractive' is an 'A' advertised discretionary land use in the General Agriculture zone which means:

The use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the deemed provisions.

LPS7 requires all applications for an extractive industry on General Agriculture zoned properties within the Shire requires advertising/referral and consideration of submissions prior to consideration of the application by the Shire.

Part 4 – General Development Requirements

4.8 Clearing native vegetation

The Scheme allows the Shire to limit and control the clearing of native vegetation associated with any development proposal.

The applicant advises:

- a. *The pit area is located on the top of a ridge of open land.*
- b. *The land was cleared many years prior to current ownership to build a runway and was left in a heavily disturbed state with large gravel rocks on the surface making the area difficult to traverse.*
- c. *The slope to the east of the pit is covered in bush. This bushland shall not be affected by pit operations.*
- d. *There are no rare flora species or Priority Ecological Communities in the extraction area.*

This generally achieves the requirements of Cl.4.8. The protection of the existing native vegetation can be secured with a buffer of 10m between the pit edge and bushland to form part of the conditions of approval, if granted.

Clause 4.17 General Appearance of Buildings and Preservation of Amenity

The Scheme requires the Shire ensure that development is in harmony with surrounding developments and allows the Shire to place conditions on approvals to ensure the development will not have an adverse impact on the character of the area or the amenity and landscape quality of the

locality. The use of land for extractive industries can have the potential to create adverse visual amenity impacts whilst they operate.

The applicant advises:

- a. *The Morrissey Road gravel pit site is located on private property and on top of a ridge.*
- b. *No one is overlooking the pit.*
- c. *There is a natural visual buffer of >100m which will be retained between the western boundary of the pit area and Morrissey Road. Pit operations may possibly be visible from a small section of Morrissey Road, near the access track. Morrissey Road has a verge of native bush adjacent to the property.*
- d. *There are no structures <500m to the outer boundary of the extraction area. There are two structures between 500m and 1000m of the extraction area. One being directly north and the other west of the pit boundary.*
- e. *Due to the hilly nature of the district, pit operations are not visible from either of the structures. There are also areas of extensive vegetation to the north and west of the gravel pit.*

The proposal does not significantly affect the appearance of the site from outside the property and when combined with the screening provided along the road reserve by existing stands of remnant vegetation generally achieves the requirements of Cl.4.17.

Clause 4.32 Vehicle Crossovers/Entrances

The Scheme allows the Shire to set standards on the position and development of crossovers onto roads. The proposal will utilise the existing crossover onto Morrissey Road and driveway constructed to service the pit.

Clause 4.42 Bush Fire Hazard and Fire Management Plans

The Scheme requires the Shire assess applications for development approval where the land is a bushfire risk and ensure that development complies with relevant State and local government policy on bushfire protection. The majority of the pit area is designated as bushfire prone by the Department of Fire and Emergency Service mapping. The pit area is already cleared and there are no habitable buildings required. As such, the development is a low-risk and considered exempt from the requirements of State Planning Policy 3.7 'Planning in Bushfire Prone Areas'. Notwithstanding, the applicant will need to comply with the Shire's annual Fire Prevention Order, DFES Total Fire Ban days and Shire Harvest Vehicle Movement Bans during operations.

4.54 General Agriculture Zone

The Shire's policies in controlling development and influencing subdivision within the General Agriculture zone are to:

- (i) *encourage a diversity of well managed and sustainable rural and agricultural activities where landowners and operators contain impacts on their own properties and where they adopt 'good neighbour' practices;*
- (ii) *confirm that rural residential or rural smallholdings subdivisions will not be supported unless and until the land is identified in an endorsed Local Planning Strategy for Rural Residential or Rural Smallholdings and has been rezoned for that purpose; and*
- (iii) *require proposals for non-agricultural uses to be supported and justified by an Agricultural Impact Assessment unless otherwise varied by the local government.*

Cl.4.54.2 'Subdivision and development standards – general' requires the Shire have due regard to State Planning Policy 2.5. 'Rural Planning' when considering applications for development approval.

The proposal is considered consistent with the SPP 2.5 which recognises the importance of securing and extraction of basic raw materials within rural areas and recognises that gravel pits are a rural land use and form part of primary production activities undertaken in areas zoned for agriculture.

Cl.4.54.8 contains the following development standards for the General Agriculture zone:

Development Standards	Proposal	Complies Yes / No
Min. Front Setback 30 m	The extraction area is between approx. 80m – 150m from the front boundary to Morrissey Road.	Yes.
Min. Side Setback 20 m	The existing approval allows extraction up to the northern side boundary to Lot 129 used for general agriculture purposes and over 900m from southern side boundary with State Forest 29.	Relaxation of setback already in place under previous approval.
Min. Rear Setback 20 m	The extraction area is approx. 220m – 400m from the rear boundary to Lot 3245 used for general agriculture and horticultural purposes.	Yes.
Where the land adjoins State Forest, National Park, Conservation Reserve or other timbered Crown or local government controlled land, in the opinion of the local government the setback from the common boundary shall be 100 metres.	As noted above, the extraction area is over 900m from southern side boundary with State Forest 29.	Yes.

Cl.4.54.8.7 of LPS7 requires the Shire, in assessing applications for development approval for extractive industries, ensure that the setbacks assist in maintaining environmental and landscape qualities of the locality, so they are not detrimentally affected. The pit area has been established since 2009 and is well sited on the property to avoid any direct views from outside the property and has not detrimentally affected the existing environmental or rural landscape qualities of the area. Given the proposal has a lifespan of 10-years and the extraction area will be rehabilitated back to pasture this will assist in maintaining the long-term environmental and landscape qualities of the locality.

Cl.4.54.8.8 of LPS7 requires the Shire consider the following in assessing applications for development approval within the General Agriculture zone, the Shire will consider the following:

- (i) *The availability of services required to support the proposed development and the economic impact of the provision of, extension or upgrading of those services that may be required;*

- (ii) *The adequacy of the roads, existing or proposed in the area which may be needed to support the amount of road traffic expected to be generated by the development; and*
- (iii) *The need to enforce such conditions as the local government deems appropriate, in order to minimise any adverse effect, the development may have on the general environment of the area.*

The proposal is considered to comply with these requirements on the basis that:

- a. Water supply will be sourced from existing dams owned by applicant.
- b. No on-site effluent disposal is required.
- c. The applicant has advised *“the average project has required 5000 tonnes of gravel over roughly four weeks or 10 truck trips per workday on average. The largest project in the past 15 years was 18,000 tonnes over nine weeks for Main Roads at an average of 15 truck trips per day”*.
- d. In lieu of a financial contribution, the Shire Works and Services have considered the application and have requested a condition requiring the applicant to provide 3000 tonnes of suitable gravel to the Shire for the resheeting of Morrissey Road from the pit entrance to Donnybrook-Boyup Brook Road in the final year of the pit licence. The applicant has agreed to this refer ([Attachment 9.1.3\(7\)](#)). This is recommended to be included as part of the rehabilitation and pit closure plan.
- e. The application was referred to Main Roads WA and they have provided a recommended condition that if approval is granted to upgrade the intersection of Morrissey Road and Donnybrook-Boyup Brook Road.
- f. The proposal requires the placement of conditions of approval, if granted, to ensure the activity is managed to minimise any potential adverse impacts. The conditions should be updated from those granted in 2013 to reflect current Shire standards and contemporary rehabilitation practices.

Cl.4.54.10 of LPS7 allows the Shire to refuse an application for development approval where in its opinion the proposed development will:

- (i) *Adversely affect the rural landscape;*
- (ii) *Adversely impact upon the agricultural use of the land and adjacent/nearby areas;*
- (iii) *Cause detrimental environmental impacts;*
- (iv) *Result in unacceptable fire management risk;*
- (v) *Place unacceptable servicing requirements which have not been appropriately addressed by the applicant;*
- (vi) *Result in the impacts of the proposed use/development not being adequately contained on the application site;*
- (vii) *In the opinion of the local government, result in an undesirable planning outcome.*

The proposal is not considered to warrant a refusal on the basis that:

- There will be a potential short-term impact on the visual amenity and local landscape from the extractive industry. However, when the activity ceases in 10-years, the land will have been returned to pasture consistent with the surrounding rural landscape;
- The extraction of the gravel resource is unlikely to impact the ability of the land or surrounding area to continue to be used for agriculture as has been the case for the past 15 years, and the Department of Primary Industries and Regional Development (DPIRD) has no objection to the renewal of the proposed extractive industry;

- a. The proposal does not create a fire management risk;
- b. The proposal has adequate servicing available to support the development;
- c. The proposal includes measures to be implemented during operations to address and manage potential noise, dust and stormwater runoff impacts to be contained on-site and not adversely impact adjoining properties; and
- d. The proposal is effectively a renewal of the existing gravel extraction and processing activities and can be appropriately managed through conditions of approval, and this would prevent an undesirable planning outcome being created.

Local Planning Strategy

The lot is identified as General Agriculture under the Shire of Donnybrook-Balingup Local Planning Strategy (LPS).

The LPS (Cl.5.4.1) advises:

In the consideration of development proposals within the “General Agriculture” and “Priority Agriculture” areas, the local government will take into account the following:

- *Discourage land uses unrelated to agriculture from locating on agricultural land (unless the proponent suitably demonstrates there are exceptional circumstances and that these can be compatible with agricultural uses to the satisfaction of the local government);*
- *Provide adequate separation distance between potential conflicting land uses;*
- *Introduce management requirements that protect existing agricultural land uses;*
- *Discourage development that may result in land or environmental degradation; and*
- *Appropriate land management and consideration of sequential land use change.*

The use of land for extractive industries has been included as an “advertised” land use within the General and Priority Agriculture zones in the Shire and the proposal is considered consistent with the LPS requirements. The gravel resource will be progressively extracted, and the land returned to pasture.

Shire of Donnybrook Balingup Extractive Industries Local Law 2016

The Shire’s Local Law requires a person carrying out an extractive industry, in addition to a development approval, to hold a valid and current extractive industry licence. The criteria within the Local Law are generally assessed through the planning process.

The Local Law deals with the operational aspects of the extractive industry including licensing requirements, licence fees, transfer/cancellation/renewal of licence (including the power for the Shire to cancel a licence for non-compliance with this Local Law), payment of bonds for restoration and reinstatement works, limitations on excavation near boundaries/setbacks, blasting controls, public liability insurances required, compliance with Mines Safety and Inspection Act and Environmental Protection Act, ceasing operations/works to be carried out on cessation of operations, objections & appeals and modified penalties/fines for non-compliance.

The Extractive Industry Licence issued under the Local Law, complements the development approval and the recommended conditions, to ensure the proposal operates without generating adverse impacts on the surrounding area.

Consultation

The application was advertised on the Shire's website and referred to landowners within a 1km radius of the subject lot boundaries, for a period of two weeks. In total, 8 submissions were received at the conclusion of the public advertising period (7 submissions objecting and 1 submission supporting). The Public Submissions are contained in [Attachment 9.1.3\(3\)](#).

A summary of key issues/concerns raised within the submissions and Officer response is provided below:

Issue Raised in Submission	Officer Response
Noise	
<p>A number of objections relate to the negative impact of noise from the extractive industry operations and truck movements on the liveability of the area.</p>	<p>The existing extractive industry has operated since 2009 with no Shire records of complaint and must comply with the EP Noise Regulations at all times.</p> <p>The recommended separation distance for extractive industries without blasting (categories 5, 12 and 70), as per the WA EPA's <i>Guidance Statement No. 3: Separation Distances between Industrial and Sensitive Land Uses</i> (EPA, 2005) (GS3) is case by case, however for a Screening Works (Category 12), the distance is 500 metres.</p> <p>The closest residence off-site (approx. 500m from the pit on Katrina Heights) has provided written support for the continued operation of the gravel pit.</p> <p>Whilst it is accepted that there have been additional residences constructed in the area since 2009, this has not led to an increase in complaints regarding the extractive industry.</p> <p>It is also prudent that new residents to the area acknowledge and accept that there is a wide range of activities undertaken within a rural area generally including grazing of animals, cropping using machinery, horticulture using gas guns, tree plantations, tourism facilities with live music or outdoor entertainment</p>

Issue Raised in Submission	Officer Response
	<p>areas etc that have operations that will impact on the expected lifestyle to be enjoyed from time to time.</p>
Dust	
<p>A number of objections were received with relation to dust impacts.</p>	<p>The applicant acknowledges that crushing and stockpiling activities typically generate dust. They note <i>"However, over the past 15 years of processing material on this site, which is mostly rock, the crushing process produced little dust."</i></p> <p>The applicant will also implement the following measures to reduce dust impacts in the area generally:</p> <ol style="list-style-type: none"> The windrow of topsoil and overburden along the edges of the extraction area to provide an additional dust barrier. As a precaution the contractors mobilise a water cart to site. To minimise dust from trucks carting gravel out of the pit, trucking contractors are notified that the speed limit on Morrissey Road is limited to 30km/h. <p>The recommended separation distance for gravel extractive industries without blasting as per the WA EPA's <i>Guidance Statement No. 3: Separation Distances between Industrial and Sensitive Land Uses</i> (EPA, 2005) (GS3) is 1000 metres.</p> <p>Officers note that there are five structures between 500m and 1000m of the extraction area. Although the proposal, based on its previous history, has operated successfully without complaint concerns raised regarding dust warrants further consideration under a dust management plan. Consistent with other extractive industry operations in this locality a condition is recommended for a dust management plan to be prepared. This will ensure ongoing compliance with an approved dust management plan to ensure similar controls are being complied with.</p>
Truck Impacts and Local Roads	

Issue Raised in Submission	Officer Response
<p>A number of submissions noted the extractive industry will increase truck traffic on local roads and negatively impact the road network and traffic safety.</p>	<p>The proposed vehicular access and impact of traffic on local roads has been considered through the assessment process.</p> <p>Both Main Roads WA and the Shire's Works and Services have not objected to the proposal and determined that upgrade to the intersection of Morrissey Road and Donnybrook - Boyup Brook Road is required. It is also recommended that advance warning signs be placed along local roads during trucking activity.</p> <p>The applicant has advised:</p> <ol style="list-style-type: none"> All trucking contractors are notified that the speed limit on Morrissey Road is limited to 30km/h between the Donnybrook-Boyup Brook Road and the entrance to the gravel pit. This is to minimise the risk of accidents with light vehicles and reduce dust. All neighbouring landowners are notified by text before a trucking campaign commences and when the project has been completed. Further information received from the applicant (Attachment 9.1.3(7)) states that <i>the last notification to neighbours was sent out in May 2019 before Main Roads carted gravel. Since then, movements have been small volumes and as previously, phone numbers will be collected, and the process continue going forward.</i> <p>The Shire can include limits on vehicle operating hours including during school bus times through the imposition of conditions as recommended, if approval is granted.</p>
Visual Amenity and Impact to Present and Future Character of Area	
<p>A number of submissions were concerned with the potential loss of rural character if the development was to proceed including:</p> <ol style="list-style-type: none"> Impact on quality of life enjoyed. Impact on the surrounding tourist activities. 	<p>The visual impact of the proposal has been considered through the assessment process. The development of extractive industries generally has the potential to create adverse visual amenity impacts.</p>

Issue Raised in Submission	Officer Response
c. It is inconsistent with the surrounding area.	<p>As noted previously, the pit is well setback from Morrissey Road and screened by the topography of the lot and the existing remnant vegetation within the road reserve. It is acknowledged there may be a minor impact in the short-term on the visual amenity and local landscape from the extractive industry. However, when the activity ceases in 10-years, the land will be returned to a pastured hillside consistent with the rural landscape in the area and will not affect the long-term amenity and visual character of the area or adjacent land.</p> <p>The extractive industry is relatively small in area (4.5 hectares in total) and common in rural areas and each proposal must be assessed on its individual merits and the Scheme provisions and Local Laws etc. that apply at the time. This proposal has existed in some form since 2009 and has not negatively impacted existing tourist activities including tourist accommodation and other attractions in the area.</p> <p>The proposal is consistent with WA Planning Commission State Planning Policy 2.5 'Rural Planning' that seeks to protect and preserve rural zoned land for a broad range of rural purposes including extraction of basic raw materials.</p>

Consultation with Government/Service Agencies

The proposal was referred to the Department of Energy, Mines, Industry Regulation and Safety; Department of Planning, Lands and Heritage; Main Roads WA; Department of Biodiversity, Conservation and Attractions; Department of Primary Industries and Regional Development; and the Department of Water and Environmental Regulation for comment. The submissions are contained in [Attachment 9.1.3\(4\)](#) and summarised below along with an Officer Response.

The agencies noted the application was to renew the previously approved gravel extraction activity and had no objection to the proposal proceeding or provided conditions/advice to be considered on the new approval, if granted.

Department of Energy, Mines, Industry Regulation and Safety (DEMIRS)

- a. DEMIRS has determined this proposal raises no significant issues with respect to mineral and petroleum resources, geothermal energy, and basic raw materials.

- b. It would be appreciated if DEMIRS continues to be notified of all applications for Extractive Industry Licence's in the Shire of Donnybrook Balingup.

Officer Response

The DEMIRS comments are noted. No action is required from the submission.

Department of Planning, Lands and Heritage (DPLH)

- a. DPLH does not have any objection or comment to make with respect to the proposed continuation of an Extractive Industry (gravel pit) at Lot 130 Morrissey Road, Yabberup, having consideration for State Planning Policies 2.4 (Planning for Basic Raw Materials) and 2.5 (Rural Planning).

Officer Response

The DPLH comments are noted. No action is required from the submission.

Main Roads WA (MRWA)

- a. From a search of records, it appears that the previous planning application was not referred to MRWA for comments.
- b. The following conditions are requested:
 - i. The intersection of Morrissey Road and Donnybrook - Boyup Brook Road to be upgraded including bitumen sealing the first 30 metres to the specifications and satisfaction of Main Roads at the full cost of the applicant. Detailed designs for the intersection upgrading will need to be approved by MRWA and the applicant will need to submit an application for minor works in the road reserve for approval of MRWA prior to any works being undertaken.
 - ii. The applicant to install advance warning truck entering signs at the intersection to the specifications and satisfaction of MRWA.

Officer Response

The MRWA comments are noted and are recommended to form part of the conditions/advice of approval, if granted.

Department of Biodiversity, Conservation and Attractions (DBCA)

- a. Retained vegetation
- b. DBCA recommends that a 10 metre wide demarcated retained vegetation buffer be provided between the extraction area and the remnant vegetation, with the buffer being measured from the crown drip zone rather than the tree trunk, to protect the retained trees and tree roots from accidental vehicle damage, soil compaction and tree root exposure.
- c. DBCA recommends that bunds and stockpiles are located a sufficient distance to the demarcated retained vegetation buffer and the northern and western boundaries, to ensure soil spread does not occur within the retained vegetation buffer zone.
- d. DBCA-managed land
- e. The subject land immediately adjoins Wilga State Forest on its southern boundary. This part of the State Forest is a gazetted Disease Risk Area (DRA). The DBCA objective for management of

DRAs is to ensure that there is minimal risk from activities that may introduce or spread *Phytophthora* dieback.

The proposed development should not result in impositions being placed upon the management of the adjoining DBCA-managed land. There should be no direct or indirect impacts, including surface water run-off, drainage, erosion, pollution and/or *Phytophthora* dieback spread from the site into the adjoining state forest.

The application states that the pit is proposed to be rehabilitated to productive pasture for grazing stock, however it is unclear if stock currently graze within Lot 130. The Lot 130 southern boundary fencing should be maintained in good condition to prevent grazing stock from entering the adjacent State Forest. This is recommended to be included as part of the rehabilitation and pit closure plan.

Officer Response

The DBCA comments are noted and are recommended to form part of the conditions/advice of approval, if granted.

Department of Primary Industries and Regional Development (DPIRD)

- a. Do not object to the proposed renewal of an extractive industry licence to allow for the continued operation of the gravel pit at the abovementioned lot.
- b. Have assessed the Weed Management Plan and found that it fulfils the basic requirements. It is important that rehabilitation is done as per the Rehabilitation Plan to ensure that each stage is rehabilitated after completion as indicated in the plan.

Officer Response

The DPIRD comments are noted and are recommended to form part of the conditions/advice of approval, if granted.

Department of Water and Environmental Regulation (DWER)

- a. This proposal is for the continued extraction of gravel material over a 10 year period at the above subject property. About 202,000 tonnes of material is estimated to remain for extraction.
- b. DWER notes that no advice on dust or noise has been specifically requested by the Shire in its submission.
- c. In the event that the applicant determines that a works approval or licence application is required under Part V of the *Environmental Protection Act 1986* (EP Act), the advice provided does not prejudice and must not be considered to infer the outcome of the EP Act licence and works approval process.
- d. In the event there are modifications to the proposal that may have implications on aspects of environment and/or water management, DWER should be notified to enable the implications to be assessed.
- e. DWER has identified that the proposal has the potential for impact on the environment and water resource management. Key issues and recommendations are provided below, and these matters should be addressed:

Issue 1: The proposed operations may be categorised as Prescribed Premises under the *Environmental Protection Regulations 1987*.

Advice 1:

- a) As the proposed crushing/screening is likely to exceed the threshold for a prescribed premises (Category 12: >50,000 tonnes/year or Category 70: >5,000 tonnes/year but <50,000 tonnes/year), the proposal is likely to require a works approval/license for a Prescribed Premises under the EP Act 1986.
- b) As such, the applicant is to be advised to contact DWER's Industry Regulation branch regarding a works approval/license at info@dwer.wa.gov.au or 6364 7000.
- c) The Applicant is to refer to the information and Industry Regulation Guide to Licensing available at <http://www.der.wa.gov.au/our-work/licences-and-works-approvals>.

Issue 2: Groundwater Protection

Advice 2: Recommended condition: The maximum pit floor depth shall be established to 1.9m from the natural surface to minimise the risk of groundwater being intercepted. No dewatering works are to be undertaken without DWER consultation. The Local Government is to be notified within 24 hours if the water table is intercepted and remedial works undertaken.

Issue 3: Stormwater management

Advice 3: The following is advised:

- a) Recommended condition: A Stormwater Management Plan is to be prepared and approved to the satisfaction of the Shire, consistent with WQPN 15.
- b) Advice Note: The Stormwater Management Plan shall cover the proposed extraction area, in context of mitigating the risk of stormwater runoff, which should include details such as, but not limited to the detention pond sizing, batters and any other relevant measures.

Issue 4: Water Supply

Advice 4: Recommended condition: The applicant is to quantify their water requirements for all aspects of the proposed extraction and provide evidence of a secure water source, to the satisfaction of the Shire.

Issue 5: Environmental Risks

Advice 5: Recommended condition: The proposed extraction is to be implemented in accordance with DWER's Water quality protection note (WQPN) no. 15 '*Basic raw materials extraction*' (July 2019) where appropriate to the site situation to ensure environmental risks are appropriately mitigated.

Issue 6: Staging Plan

Advice 6: Recommended condition: Extraction must be undertaken in accordance with an agreed staging plan, as approved by the local government. Commencement of the subsequent extraction stage shall be subject to the previous extraction site having substantially commenced rehabilitation.

Issue 7: Rehabilitation Plan and Final Landform

Advice 7: The following is advised:

- a) Recommended condition: A Rehabilitation Plan is to be prepared and approved to the satisfaction of the Shire consistent with WQPN 15 and the Guidelines for Preparing Mine Closure Plans 1, and covering the intended staging, final landform, proposed post extraction land use and successful rehabilitation criteria.
- b) Advice: To avoid erosion issues, a final batter slope of 1:6 is preferred. For steeper batters, supporting information that erosion and safety risks can be mitigated must be provided to the satisfaction of the Shire.
- c) Advice: Due to the agricultural zoning of the subject land, the Shire is advised to consult with DPIRD regarding the potential impacts the removal of material would have on the agricultural land use post-rehabilitation.

Issue 8: Fuel and Chemical Management

Advice 8: Recommended condition: Management of all activities involving hazardous chemicals (including plant refuelling and/or servicing) shall be in accordance with DWER's WQPN 56 – *'Toxic and Hazardous Substance Storage and Use'* (Dec 2018).

Officer Response

The Department's comments are noted and are recommended to form part of the conditions/advice of approval, if granted.

Internal Shire Development Control Unit

The application was assessed by the Shire's Development Control Unit. The application and proposed management controls covering impacts on Morrissey Road, dust, noise, stormwater management and rehabilitation measures were generally supported.

Staff requested that similar conditions to the 2013 approved Development Application (P12047 IND01/26) Extractive Industry – Excavation and transportation of 300,000 tonnes of gravel be applied. As noted above, the conditions should be updated from those granted in 2013 to reflect current Shire standards and contemporary rehabilitation practices.

Officer Comment

The proposal has been assessed in accordance with Schedule 2, Part 9, Clause 67 (2) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. A full assessment is contained in [Attachment 9.1.3\(6\)](#).

Under LPS7, the land is zoned General Agriculture, and the proposed extractive industry is an 'A' use, meaning it requires local government approval after public notice. The industry has been operating for 15 years, but its development approval and licence have expired, prompting the current reapplication. The development approval process which included consultation with relevant agencies

and the community provides an opportunity for the revision of the current conditions to ensure the operation meets current best practice standards.

Key matters raised during consultation that resulted in amended conditions are related to dust, noise, truck impacts on local roads, visual amenity, stormwater management, and rehabilitation.

Dust and Noise

Crushing and screening activities have the potential to impact nearby residences, primarily due to dust and noise. The EPA Guidelines Statement No. 3 recommends a minimum separation distance of 1000m to mitigate these impacts, which could affect at least five residences.

While the applicant has addressed dust and noise in the Pit Management Plan [Attachment 9.1.3\(1\)](#), the management measures provided are considered insufficient. The applicant's response in [Attachment 9.1.3\(7\)](#) notes that the last crushing campaign was in January 2017 and that crushing typically occurs over 3-4 weeks in summer using modern diesel-electric equipment to reduce noise.

However, a comprehensive noise management plan is required to specify crusher location and demonstrate how noise will be reduced to comply with the *Environmental Protection (Noise) Regulations 1997*. It is recommended that a condition be imposed requiring the preparation of a noise management plan.

Given the concerns regarding dust, further consideration is needed under a dedicated dust management plan. It is recommended that a condition be imposed requiring the preparation of a dust management plan, consistent with other extractive industries such as the approval under P22022 on Lot 10, to ensure compliance with best practice controls.

Impacts on local roads

The applicant has advised that typical projects require around 5,000 tonnes of gravel over four weeks, equating to about 10 truck trips per workday. The largest project in the past 15 years involved 18,000 tonnes over nine weeks for Main Roads, with an average of 15 truck trips per day.

The application has been referred to Main Roads WA, who have recommended a condition requiring the applicant to upgrade the intersection of Morrissey Road and Donnybrook-Boyup Brook Road, including bitumen sealing the first 30 metres, at the applicant's expense. This is consistent with conditions applied to other recent extractive industry referrals.

Additionally, the Shire Works and Services have requested that the applicant provide suitable gravel for resheeting Morrissey Road from the pit entrance to Donnybrook-Boyup Brook Road. This is recommended as part of the rehabilitation conditions, ensuring that the bond is not returned until the works are completed.

Visual amenity

The lot sits within the Preston River Valley and the extraction site is on the hillside which slopes up from 260mAHD to 271mAHD and located in the northern part of the property. The pit edge is between 80m - 140m from Morrissey Road and partly screened by the topography of the site and the remnant vegetation along the road reserve (see Figure 3 and 4).



Figure 3 - Entrance to pit area on Lot 130 Morrissey Road, Yabberup



Figure 4 - View into Lot 130 Morrissey Road, Yabberup from Katrina Heights intersection

The photos in Figure 5 and 6 below show the extraction area that sits on top of the hill and generally out of view from neighbours.



Figure 5 - Photo taken in a northerly direction (August 2024)



Figure 6 - Photo taken in a southerly direction (August 2024)

When the activity ceases in 10-years, the land will be returned to a pastured hillside consistent with the rural landscape in the area and will not affect the long-term amenity and visual character of the area or adjacent land. This proposal has existed in some form since 2009 and has not negatively impacted existing tourist activities including tourist accommodation and other attractions in the area.

Stormwater management

The application has been referred to the Department of Water and Environmental Regulation (DWER), who have recommended a condition requiring the preparation of a Stormwater Management Plan in accordance with WQPN 15. The plan must cover the entire extraction area and address stormwater runoff risks, including details on detention pond sizing, batters, and other relevant measures.

During a site visit in August 2024, water was observed ponding in parts of the extraction area, which could be problematic during operations. To manage this risk, it is recommended that a condition be imposed requiring the applicant to prepare a comprehensive Stormwater Management Plan.

Rehabilitation

Although the application report contains information about the rehabilitation of the land to pasture Department of Water and Environmental Regulation has recommended that a Rehabilitation Plan be prepared to ensure rehabilitation works comply with Water Quality Protection Note No. 15 and the Guidelines for Preparing Mine Closure Plans 1.

The Rehabilitation and Pit Closure Management Plan is expected to provide a framework to guide the rehabilitation of the land, ensure compliance with regulatory requirements, and address concerns regarding biodiversity, land use, and water quality. The specific points outlined for the Rehabilitation and Pit Closure Plan are to be well-defined to ensure a systematic, monitored, and transparent approach to the rehabilitation process. Below is a breakdown of the key components to be contained in the plan:

- a. Stages of rehabilitation.
- b. Details of the establishment of pasture post-extraction with plant species, density of planting and maintenance measures.

- c. Weed identification and management measures to occur every six months (Autumn and Spring).
- d. Dieback identification and management measures.
- e. Demonstrate that it is consistent with the Department of Water and Environmental Regulation's WQPN 15 and the Guidelines for Preparing Mine Closure Plans. The proponent is to adhere to the agreed intended staging and ensure successful rehabilitation to the final landform and land use.
- f. Management and compliance reporting shall be included to ensure successful implementation.
- g. Demonstrate compliance with the conditions for sites under the *Shire of Donnybrook Balingup Extractive Industry Local Law 2016*.
- h. The revegetation of areas used for stockpiles.
- i. Extraction of subsequent stages may only commence if rehabilitation of the previous extraction site has substantially commenced.
- j. A suitable amount of gravel to be provided to the Shire for the resheeting of Morrissey Road from the pit entrance to Donnybrook-Boyup Brook Road.
- k. The Lot 130 southern boundary fencing to be in good condition to prevent grazing stock from entering the adjacent State Forest.

The proposed rehabilitation measures, including the resheeting of Morrissey Road and maintenance of the southern boundary fencing, ensure that both environmental and community needs are addressed. Resheeting the road will improve local infrastructure, while maintaining the fencing prevents stock from entering the adjacent State Forest, protecting local biodiversity. These actions, alongside other rehabilitation efforts, align with best practice guidelines, ensuring the site will be comprehensively rehabilitated without lasting environmental impact.

Development considerations

When considering a development application, clause 68 (2) of the Deemed Provisions outlines the following options for determination:

The local government may determine an application for development approval by -

- (a) Granting development approval without conditions; or*
- (b) Granting development approval with conditions; or*
- (c) Refusing to grant development approval.*

Staff have assessed the application, including the public submissions and advice from government agencies and other Shire service divisions. Staff consider the proposal capable of being approved and managed through reasonable and achievable conditions of approval.

Conclusion

The proposal, to renew the expired extractive industry, is considered generally compliant with the purpose and objectives and LPS7 requirements for the General Agriculture zone and considered compatible with the surrounding developments and the amenity and character of the rural area.

Matters raised from the referral period have been appropriately addressed and can be managed by conditions/advice. Staff consider that the application complies with the requirement of orderly and proper planning and recommend conditional approval of the application.

9.1.4. Bliss Festival 2025 – Event Application

Report Details:

Prepared by:	Manager Development Services	
Manager:	Director Operations	
Applicant:	Soul Fusion Australia/The Liberators	
Location:	The Berry Delightful, 19503 South Western Highway, Brookhampton	
File Reference:	A1975	Voting Requirement: Simple Majority
Attachment(s):		
9.1.4(1)	Site Map	

Executive Recommendation

That Council:

1. Considers the event application, Bliss Festival 2025, as temporary works and use and therefore exempt from development approval under clause 61(1)(a)(17) and 61(2)(f) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Refuses the event, Bliss Festival 2025, proposed to be held at The Berry Delightful, 19503 South Western Highway, Brookhampton from 24 to 27 January 2025 for the following reasons:
 - 2.1. Forest fuel loads in the immediate area to the premises are over 10 years old, contributing to a fire risk rating of “extreme”.
 - 2.2. The premises has little to no safe areas of refuge to allow for patrons to muster during a fire emergency response.
 - 2.3. Limited access and egress to this property would impede the safe evacuation of patrons during an emergency and negatively impact access for firefighting resources.
 - 2.4. Mobile service and emergency radio communications are limited in this area which may negatively impact emergency response to this premises.
3. Encourages the applicant to consider an event at the premises outside of the Shire’s high threat period i.e. outside of the period 1 December to 31 March.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

- | | |
|-------------------|---|
| Outcome: | 2 - A safe and healthy community. |
| Objective: | 2.2 - Facilitate, encourage and support a diverse range of festivals, community events, arts and cultural activities. |
| Outcome: | 9 - A thriving economy. |
| Objective: | 9.2 - Attract and retain a diverse mix of businesses and investment opportunities. |
| Outcome: | 10 - A popular destination for visitors and tourists. |
-

Objective: 10.1 - Encourage more people to stop, shop and experience the Shire of Donnybrook Balingup.

Executive Summary

The Shire is in receipt of an event application for Bliss Festival 2025 (the event). The applicant has held similar events at this property in the past. As this is a multi-day, multi-staged event it is being referred to Council for determination. While it is considered that the event may be deemed temporary works and use and therefore exempt from development approval, the bushfire risks associated with conducting an event of this nature, at this site, during January are considered too high. Refusal is therefore recommended.

Background

An application has been received from Soul Fusion Australia/The Liberators (the applicant) to host Bliss Festival 2025 at The Berry Delightful at 19503 South Western Highway, Brookhampton (the premises). The event is proposed over four days being 24 – 27 January 2025, with set up commencing 20 January and pack down completed by 29 January. It will be a public ticketed event with a cap of 400 patrons, 25 performers and 75 volunteers i.e. 500 people in total. Food will be provided by a caterer from the existing registered food premises, temporary water tanks will supply potable water and temporary ablutions will be brought to the premises. It is proposed to be an alcohol and drug free, health focused holistic event, open to ages 18 years and over with camping to be available for three nights on site. Along with their completed event application form the applicant has provided a Risk Management Plan and run sheet and is committed to complying with any conditions imposed by the Shire. Amplified noise is proposed until 10:00 pm on Friday 24 January, midnight Saturday 25 January with only acoustic music proposed for Sunday 26 January.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Health	Likely	Catastrophic	Extreme (20)
Risk Description:	Fire risk to attendants; inability to adequately respond to an emergency given the nature of the site and surrounding area at the time of year proposed.		
Mitigation:	Application refusal i.e. not permitting the event to occur on this site at this time of year.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Likely	Major	High (16)
Risk Description:	Approval of the event during an established bushfire high threat period.		
Mitigation:	Application refusal and recommendation that the applicant consider an event at this site outside of the bushfire high threat period.		

Financial Implications

This event application attracts an application fee of \$250. Should Council determine to approve the event the following additional fees are applicable:

- a. Application fee Temporary Camping - \$100
- b. Water Sampling fee (per sample) - \$188
- c. Application fee Regulation 18 - \$1,000
- d. Notification letters - (to be determined)

Policy Compliance

Nil.

Statutory Compliance

Under clause 61(1)(a)(17) and 61(2)(f) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, events can be considered as exempted development where they meet the definition of “temporary works”. Temporary works are defined as “the works are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period”.

Events in Western Australia are assessed under the following legislation:

- a. The *Health (Public Buildings) Regulations 1992* (primary legislation);
- b. *Caravan Parks and Camping Grounds Regulations 1997* (Temporary camping);
- c. *Regulation 18 Environmental Protection (Noise) Regulations 1997* (Noise exemptions);
- d. *Food Act 2008* (Temporary food businesses/mobile food stalls); and;
- e. *Bush Fires Act 1954* (Total Fire Bans and Harvest Vehicle Movement Bans).

The water quality of the dam for swimming will need to be assessed against the National Health and Medical Research Council (NHMRC) *Guidelines for Managing Risks in Recreational Waters*.

Due to the premises being accessed from a declared road, Traffic Management will need to be referred to Main Roads for their specific approval under the provisions of the *Main Roads Act 1930*.

Consultation

The event assessment process is a collaborative effort between Shire staff across the Operations directorate, who each provide recommendations specific to their area of expertise. The outcome of this referral process is discussed further under officer comment.

Officer Comment

The Shire supports, delivers, and facilitates a wide range of events including fairs, cake stalls, car rallies, concerts, dances, and festivals. It is important for our community to have access to a wide range of different events that cater for different tastes and demographics. There is a balance between attracting visitors to the Shire while considering the potential impacts of an event on a locality.

While bushfires can happen all year round, the risk is highest during the hottest and driest times of the year. The established high threat period for the Shire is 1 December until 31 March i.e. January is considered a high risk for bushfire in our Shire. In their response to the internal referral, the Shire's Community Emergency Services Manager referred to the Department of Fire and Emergency Services Bushfire Risk Management System. This system indicates that the forest fuel loads in the immediate area to the premises are over 10 years old. This has influenced the risk rating, which is marked as 'extreme' and shown in red in Figure 1. Much of the property and those properties in the surrounding locality are also identified as bushfire prone (refer to Figure 2). It is considered that the premises has little to no 'safe' areas of refuge, with dams not considered to be safe zones in a fire emergency.



Figure 1 – Bushfire Risk Management System (Plan generated 8/11/2024)



Figure 2 – Map of Bushfire Prone Areas (marked pink)

As illustrated on the submitted site map ([Attachment 9.1.4\(1\)](#)) there is limited access and egress to this premises. Should a fire emergency occur on this premises or in the area of this premises, the evacuation of 500 people would negatively impact access for firefighting resources. It is also considered that there is insufficient space to safely 'muster' 500 people to enable emergency access or to safely perform aerial operations.

It should be noted that both mobile service and emergency radio communications are limited in this area as it is known blackspot, despite every attempt to improve this issue. Poor communications could also negatively impact emergency response in the area.

While the event application is considered to have merit it is not considered suitable to be approved during January 2025. Refusal of the event application is therefore recommended with the applicant encouraged to consider events of this nature outside of the high threat period.

9.1.5. Adoption of Council Policy COMD/CP-6 Events

Report Details:

Prepared by: Manager Development Services

Manager: Director Operations

File Reference: ADM 11

Voting Requirement: Simple Majority

Attacment(s):

9.1.5(1) Draft Council Policy COMD/CP-6 - Events

Executive Recommendation

That Council resolves to advertised draft Council Policy COMD/CP-6 Events (Attachment 9.1.5(1)) for public comment for a period of 28 days.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 2 - A safe and healthy community.

Objective: 2.2 - Facilitate, encourage and support a diverse range of festivals, community events, arts and cultural activities.

Item: Nil.

Outcome: 10 - A popular destination for visitors and tourists.

Objective: 10.1 - Encourage more people to stop, shop and experience the Shire of Donnybrook Balingup.

Item: Nil.

Executive Summary

Council is requested to consider the draft Council Policy COMD/CP-6 Events ([Attachment 9.1.5\(1\)](#)) for advertising with a future report to be presented for Council's consideration of the outcome of the consultation. The new policy outlines when an event application is required and when an event application will be referred to Council for determination.

Background

At its Ordinary Council meeting held 27 March 2024 Council resolved the following:

"COUNCIL RESOLUTION 35/24

That Council:

- 1. Receives the detailed Meliora New Years Arts and Music Festival Debrief Summary Report as per Attachment 9.1.1(1).*
- 2. Endorses the publication of the Frequently Asked Questions (FAQs) on the Shire website as per Attachment 9.1.1(2).*
- 3. Notes the Chief Executive Officer will present a report to Council for review no later than June 2024, this report will outline procedures and protocols, incorporating community engagement strategies, that will govern the approval process for future events. These events may be proposed by either community or commercial entities and are intended to take place within the Shire".*

The attached policy responds to part 3 of the above resolution, incorporating the outcomes of the Councillor Workshop held 10 July 2024.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Moderate	Moderate (9)
Risk Description:	Not seen to be consistent in assessment of events, misalignment with community expectations.		
Mitigation:	A policy provides guidance to both applicants and officers when considering event applications.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Possible	Major	High (12)
Risk Description:	Inconsistent application or noncompliance with legislation administered by the Shire.		
Mitigation:	A policy communicates the Shire's position with respect to discretionary legislation provisions such as the determination of temporary works and land use.		

Financial Implications

The proposed advertising can be accommodated within the Shire's current budget.

Policy Compliance

Council Policy EXE-CP-8- Policy Framework

This policy provides direction on the development of policies in response to an issue. It is considered that the proposed policy provides direction in response to events – which involve a multidisciplinary response across the organisation. The referenced Operational Procedure – COMD/OP-3 Community Engagement Framework recommends a minimum 28 day consultation period, where no other statutory provisions apply.

Statutory Compliance

Section 2.7(2)(b) of the *Local Government Act 1995* stipulates that the role of council is to “*determine the local government’s policies*”.

Consultation

Councillors participated in a workshop in July to discuss the establishment of an event policy. Council has also determined several event applications since March 2024, providing insight into the types of applications received and the conditions imposed, which has informed the draft policy.

In addition to the broader public notice, if endorsed for advertising, the proposed policy will be forwarded to recent event proponents.

Officer Comment

The proposed new policy outlines when an event application is required and when an event application will be referred to Council for determination. It also confirms Council’s views on what can be deemed as temporary works and use under the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* i.e. what is exempt from requiring development approval under the Shire of Donnybrook Balingup Local Planning Scheme No. 7.

Advertising of this proposed policy for public comment is therefore recommended.

9.1.6. Proposed Budget Variation E-Waste Infrastructure Grants

Report Details:

Prepared by: Principal Environmental Health Officer
Manager: Manager Development Services
Location: Shire of Donnybrook Balingup Waste Management Facilities
File Reference: HLT 08/1 **Voting Requirement:** Absolute Majority
Attachment(s):
 Nil.

Executive Recommendation

That Council:

1. Approve by Absolute Majority unbudgeted expenditure of \$70,003 for E-Waste Infrastructure Grants Project: Construction of e-waste storage shed at the Balingup Waste Transfer Station and purchase of stillages (or the like) for the collection and transport of e-waste from the Donnybrook Waste Management Facility and Balingup Waste Transfer Station.
2. Endorse the following 2024/2025 budget variation to unbudgeted expenditure as outlined below:

Expenditure (excl GST)	
Shed Construction and Purchase of Stillage Cages	\$64,003
Approvals and Siteworks	\$6,000
Total	\$70,003

Revenue (excl GST)	
E-waste Infrastructure Grant Funding	\$64,003
Allocation from Waste Management Reserve	\$6,000
Total	\$70,003

3. Authorise the Chief Executive Officer to endorse the E-Waste Infrastructure Grants Project Grant Agreement.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

- Outcome:** 12 - A well respected, professionally run organisation.
- Objective:** 12.1 - Deliver effective and efficient operations and service provision.
- Item:** 12.1.1 - Prepare grant applications to secure funds needed to address community priorities and implement major projects.

Executive Summary

Shire staff have been successful in procuring \$64,003 from the Department of Water and Environmental Regulation through the E-Waste Infrastructure Grants Program. The grant funding will deliver the construction of an e-waste storage shed at the Balingup Waste Transfer Station and the purchase of stillages (or the like) for the collection and transport of e-waste from the Donnybrook Waste Management Facility and Balingup Waste Transfer Station to a processing facility (currently in Perth).

The total cost of the project is predicted to be \$70,003. Of this amount, \$6,000 is for approvals, certification and siteworks which is not supported as part of the grant funding. It is proposed that this be allocated from the waste management reserve.

Background

On the 1 July 2024 the State Government implemented an e-waste to landfill ban in WA. To support this statewide ban the Department of Water and Environmental Regulation administered the E-waste Infrastructure Grants Program. More than \$10 million in funding was offered from 2023 through a series of competitive grant rounds. The grants program supports the ban by funding increased e-waste collection, storage and/or reuse including e-waste processing/recycling.

The Shire has been successful in its application for funding to support the construction of an e-waste storage shed at the Balingup Waste Transfer Station and purchase of stillages for the collection and transport of e-waste from the Donnybrook Waste Management Facility and Balingup Waste Transfer Station.

The project seeks to provide storage space for over 10 tonnes of e-waste in the Shire of Donnybrook Balingup, assisting with the diversion of e-waste from landfill. The shed will facilitate the establishment of an e-waste collection point at the Balingup Waste Transfer Station providing a responsible disposal option in the Balingup area. It will also provide a weatherproof storage option to facilitate the storage of e-waste. The cages will provide additional storage at both facilities and an organized and safer disposal option for residents.

The total cost of the project is predicted at \$70,003, with the grant funding providing \$64,003. The \$6,000 difference is for approvals, certification and siteworks which are not covered under the grant funding criteria and must be covered by the Shire. It is proposed that \$6,000 is transferred from the waste management reserve to cover these costs to allow the project to proceed.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Moderate	Moderate (9)
Risk Description:	Without a designated e-waste collection point near Balingup there is a risk of illegal dumping. If e-waste is dumped outside Balingup Waste Transfer Station or elsewhere, the Shire will need to pay additional costs to dispose responsibly.		
Mitigation:	Approve the unbudgeted expenditure		
Reputational	Possible	Moderate	Moderate (9)
Risk Description:	Not providing residents with easy access disposal points for e-waste to support the statewide ban.		
Mitigation:	Approve the unbudgeted expenditure		

Financial Implications

It is proposed that the net effect of \$6,000 be transferred from the waste management reserve which has a balance of \$1,251,809.

Policy Compliance

Nil.

Statutory Compliance

Section 6.8 of the *Local Government Act 1995* refers to expenditure from the municipal fund not included in the Annual Budget. In the context of this report, where no budget allocation exists, expenditure is not to be incurred until such time as it is authorized in advance, by an absolute majority decision of the Council.

The *Waste Avoidance and Resource Recovery (e-waste) Regulations 2024* prohibit the disposal of regulated e-waste to landfill by e-waste service providers, significant business or public entities, and landfill operators; or those who collect, aggregate, sort, recycle, process, store and dispose of e-waste.

Consultation

Discussions about the grant funding and its practical application were undertaken with our site management contractor Hastie Waste.

Due to infrastructure requirements, the Shire doesn't currently offer a full E-Waste drop off service in Balingup with numerous enquiries received from Balingup residents. This grant will enable like for like services to be available at both waste management facilities.

Officer Comment

The total amount applied for was \$65,000 and the Department of Water and Environmental Regulation offered \$64,003. The remaining \$997 which was allocated for approval and certification fees was deemed ineligible. Siteworks were known to be ineligible for funding and would be undertaken at our cost (\$5,000).

Approval and certification includes application for building permit, external services for certificate of design compliance, building services levy and construction training fund levy.

Siteworks includes the works associated with preparing the site for the pouring of a concrete slab.

It's requested that Council consider the unbudgeted expenditure as per the executive recommendation.

DRAFT

9.1.7. Local Planning Policy LLP-1- Temporary Residential Accommodation

Report Details:

Prepared by: Manager Development Services

Manager: Director Operations

File Reference: TP 03

Voting Requirement: Absolute Majority

Attachment(s):

9.1.7(1) Draft Policy - Policy LLP-1- Temporary Residential Accommodation

Executive Recommendation

That Council:

1. Pursuant to Schedule 2, Part 2, Clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to advertise proposed Local Planning Policy LLP-1- for public comment for a period of 21 days.
2. Adopts BY Absolute Majority a new application fee of \$350 for applications for temporary residential accommodation.
3. Adopts by Absolute Majority a renewal fee of \$250 for renewal of a temporary residential accommodation approval.
4. Request the CEO to provide local public notice of the proposed new fees, with these to take effect from Thursday 12 December 2024.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 6 - The built environment is responsibly planned and well maintained.

Objective: 6.1 - Ensure sufficient land is available for residential, industrial and commercial uses.

Item: 6.1.3 - Review Local Planning Policies.

Executive Summary

With the recent changes to the *Caravan Parks and Camping Grounds Regulations 1997* it has been identified that a new policy, Temporary Residential Accommodation, is needed to establish an approval pathway for applications, considering all the relevant legislation applied by local government. The policy attempts to find the balance between community need while mitigating risks to occupants and neighbours.

Council is requested to resolve to advertise the new policy ([Attachment 9.1.7\(1\)](#)) with a future report to be presented for Council's consideration of the outcome of the consultation. Council is also requested to endorse a new fee and charge to facilitate the assessment of these applications.

Background

The current housing crisis has resulted in the Minister for Local Government effecting changes to the *Caravan Parks and Camping Grounds Regulations 1997* from 1 September 2024 enabling local governments to consider requests for the occupation of caravans for up to 24 months. In considering such applications, the local government is to be satisfied that both the land and the caravan/camp are suitable for camping especially with respect to safety, health and access to services.

Conditions are able to be imposed on any approval and there are separate approval pathways/rights of review via the Minister.

While this power exists under one statutory instrument administered by local government, the use of caravans within many of the Shire's Scheme zones is not currently supported by Local Planning Scheme 7 e.g. it is an "x" use in the residential zone. However, where a land use is deemed to be temporary, it can be considered as exempted development for 48 hours or as extended by Council and provide a lawful basis for consideration of temporary residential accommodation requests. The proposed policy aims to communicate the circumstances where the Shire is willing to consider these requests and the likely conditions to be imposed.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Moderate	Moderate (9)
Risk Description:	Not seen to be responding to community needs or providing inconsistent responses.		
Mitigation:	Adopt a policy which clearly communicates where such applications are able to be considered.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Health	Possible	Catastrophic	High (15)
Risk Description:	Serious injury or exposure to risks associated with use of temporary accommodation in inappropriate locations.		
Mitigation:	Adopt a policy which sets the minimum standards that the Shire is prepared to consider.		

Financial Implications

The proposed advertising can be accommodated within the Shire's current budget.

The Shire does not currently have a fee or charge for applications of this nature and parts 2,3 and 4 of the executive recommendation includes such a consideration. This fee is proposed under the provisions of the *Local Government Act 1995* for assessment of an application under the provisions of the *Caravan Parks and Camping Grounds Regulations 1997* and is in addition to any charges where a development application is required.

A desktop review of Shires in the Southwest identified the following adopted fees in relation to consideration of temporary accommodation applications:

Shire	Application Fee	Renewal Fee
Manjimup	\$105	\$130
Nannup	\$130	
Boyup Brook	\$164	
Busselton	\$274	
Bridgetown-Greenbushes	\$433.30	

While outside of the Southwest, the Shire of Esperance has recently proposed an application fee of \$600 and a renewal fee of \$300.

Policy Compliance

Local Planning Policy 9.16 Transportable Structures

This policy does not support the use of any form of transportable structure within the Residential zone. However, it is considered that this policy does not apply where development can be considered as exempted development.

Pending the outcome of the advertising for the proposed policy LPP 9.16 will be reviewed.

Statutory Compliance

Schedule 2, Part 2, Clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015* Procedures for making local planning policy states:

- (1) *If the local government resolves to prepare a local planning policy the local government must, unless the Commission otherwise agrees, advertise the proposed policy as follows —*
 - (a) *publish in accordance with clause 87 the proposed policy and a notice giving details of — (i) the subject and nature of the proposed policy; and*
 - (ii) *the objectives of the proposed policy; and*
 - (iii) *how the proposed policy is made available to the public in accordance with clause 87; and*
 - (iv) *the manner and form in which submissions may be made; and*
 - (v) *the period for making submissions and the last day of that period;*
 - (b) *if, in the opinion of the local government, the policy is inconsistent with any State planning policy, give notice of the proposed policy to the Commission;*
 - (c) *give notice of the proposed policy in any other way and carry out any other consultation the local government considers appropriate.*
- (2) *The period for making submissions specified in a notice under subclause (1)(a)(v) must not be less than the period of 21 days after the day on which the notice is first published under subclause (1)(a).*
- (3) *After the expiry of the period within which submissions may be made, the local government must —*
 - (a) *review the proposed policy in the light of any submissions made; and*

(b) resolve to —

- (i) proceed with the policy without modification; or*
- (ii) proceed with the policy with modification; or*
- (iii) not to proceed with the policy*

Under clause 61(1)(a)(17) and 61(2)(f) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, temporary residential accommodation can be considered as exempted development where they meet the definition of “temporary works” and “temporary use”. Temporary works are defined as “the works are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period”; and temporary use is defined as “the use is in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period”.

Regulation 11A of the *Caravan Parks and Camping Grounds Regulations 1997* Camping on private land with local government approval states the following:

- (1) A person may apply in writing to a local government for approval to camp on land the person owns or has a legal right to occupy if the land is in the local government’s district.*
- (2) The local government may approve the person camping on the land for a period specified in the approval not exceeding 24 consecutive months.*
- (3) The approval is subject to the following conditions —*
 - (a) that any caravan or camp in which the person is camping on the land is maintained in such a condition that it is not a hazard to safety or health;*
 - (b) that the land is maintained in such a condition that it is suitable for camping, particularly in relation to —*
 - (i) safety and health; and*
 - (ii) access to services;*
 - (c) any other conditions specified by the local government in the approval.*
- (4) The local government is taken to have refused the application if the local government does not give the approval within 63 days of the application.*
- (5) The local government may revoke an approval given by the local government, by written notice to the holder of the approval, if the local government is satisfied that a condition of the approval has been breached.*
- (6) Before revoking the approval, the local government must —*
 - (a) give written notice to the holder of the local government’s intention to revoke the approval unless, within 35 days after the notice is given, the holder shows cause why the approval should not be revoked; and*
 - (b) consider any written response to the notice received from the holder during that period.*

The draft policy addresses areas where the land use is an “x” use by proposing a maximum 12 month exemption period and where the land use is not an “x” use 24 months is proposed.

Under section 6.16(1) and 6.16(3) of the *Local Government Act 1995* a local government may impose (by absolute majority) and recover a fee or charge for any goods or service it provides or proposes to

provide, other than a service for which a service charge is imposed. Fees and charges are to be imposed when adopting the annual budget but may be imposed during a financial year and/or amended from time to time during a financial year (by absolute majority).

Section 6.19 of the *Local Government Act 1995* states:

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

(a) its intention to do so; and

(b) the date from which it is proposed the fees or charges will be imposed.

Consultation

It is proposed that the proposed policy be advertised for a period of 21 days.

Officer Comment

Caravans, tents, buses or tiny homes on wheels are not intended to be used for long term accommodation outside of designated caravan parks. This is because they do not need to comply with any building or construction standards or contain the minimum facilities expected within a residential accommodation building. These provisions are accommodated through the provision of facilities, fire safety measures, utilities etc. available or accessible within a designated caravan park. A caravan park would be subject to development approval where supporting documentation, such as site specific Bushfire Management Plans or Bushfire Emergency Evacuation Plans would be supplied.

The draft policy ([Attachment 9.1.7\(1\)](#)) lists the criteria where development approval is not required and is largely linked to there already being a building permit in place for a permanent dwelling or a dwelling already existing on site. Minimum lot sizes are proposed to reduce potential offsite/amenity issues for existing residents. In an effort to reduce the occupant's exposure to risk it is proposed that applications are not supported in areas that are designated as bushfire prone with an established Bushfire Attack Level of more than BAL-LOW. While it is identified as a planning policy in order to ensure that the Shire can meet its obligations under LPS7, it will also be used to guide existing authorised officers when assessing applications under Regulation 11A of the *Caravan Parks and Camping Grounds Regulations 1997*.

Where a proposal does not meet the policy provision they will require both development approval and approval under Regulation 11A of the *Caravan Parks and Camping Grounds Regulations 1997*.

Advertising of this proposal for public comment is therefore recommended.

9.1.8. Temporary Accommodation Request – 115 Palmer Street, Donnybrook

Report Details:

Prepared by: Manager Development Services
Manager: Director Operations
Applicant: Landowner
Location: 115 Palmer Street, Donnybrook
File Reference: A1050 **Voting Requirement:** Simple Majority
Attachment(s):
Nil.

Executive Recommendation

That Council:

1. Considers the request for temporary accommodation at 115 Palmer Street Donnybrook, as temporary works and use and therefore exempt from development approval under clauses 61(1)(a)(17) and 61(2)(f) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Approves temporary accommodation at 115 Palmer Street Donnybrook in a caravan for a maximum of twelve (12) months from the date of building approval for the permanent dwelling subject to the following:
 - 2.1. All wastewater generated is to be collected and disposed of in fit for purpose receptacles or an approved onsite effluent disposal system, subject to separate written approval to the satisfaction of the Shire.
 - 2.2. The use of a generator on site for the running of the caravan is permitted up to a maximum of two (2) hours per day between the hours of 7:00 am and 7:00 pm Monday to Saturday inclusive and 9:00 am and 7:00 pm on a Sunday or public holiday.
 - 2.3. The sleeping compartment of the caravan is to be fitted with a suitable smoke detector and carbon monoxide detector.
 - 2.4. The power connection to the caravan is to be protected by a suitable residual current device (RCD).
 - 2.5. The property is to be provided with a suitable crossover, subject to separate written approval to the satisfaction of the Shire.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 6 - The built environment is responsibly planned and well maintained.
Objective: 6.1 - Ensure sufficient land is available for residential, industrial and commercial uses.
Item: Nil.

Executive Summary

Council is requested to determine an application for the occupation of a caravan on a residential zoned lot for a period of 12 months. While the Shire has several authorized persons appointed under the provisions of the *Caravan Parks and Camping Grounds Act 1995* in the absence of a Policy as well as the implications under the Shire's operating Local Planning Scheme, this matter is being referred to Council for determination.

Conditional approval is recommended.

Background

The Shire is in receipt of a request from a landowner to reside on their property, within a caravan, while they construct their permanent dwelling. They have recently received notice of their current landlord's intention to terminate their existing lease agreement and are finding it difficult to find a replacement rental.

The applicant has lodged a development application and is ready to lodge their building and onsite effluent disposal applications once their development application has been determined.

They have obtained their owner builder registration and envisage that building works will be completed within 12 months of obtaining building approval.

The land is zoned residential and coded R20 within the Shire of Donnybrook Balingup Local Planning Scheme No . 7 (LPS7). As illustrated in Figure 1, the lot, outlined in red, is not designated as bushfire prone which is shaded in pink. The lot is 7,869m² in area.



Figure 1 – Excerpt of DFES Map of Bushfire Prone Areas

The current housing crisis has resulted in the Minister for Local Government effecting changes to the *Caravan Parks and Camping Grounds Regulations 1997* enabling local governments to consider requests for the occupation of caravans for up to 24 months. In considering such applications, the local government is to be satisfied that both the land and the caravan/camp are suitable for camping especially with respect to safety and health and access to services.

Conditions are able to be imposed on any approval.

While this power exists under one Statutory Instrument, the use of caravans on residential zoned properties is not currently supported by LPS7 i.e. is an “x” use in the residential zone. However, where a land use is deemed to be temporary, it can be considered as exempted development and provide a lawful basis for consideration of this request.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Moderate	Moderate (9)
Risk Description:	Not seen to be responding to community needs.		
Mitigation:	Consideration of an application on its merits.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Environment	Possible	Insignificant	Low (3)
Risk Description:	Impacts from use of temporary facilities.		
Mitigation:	The applicant proposes to use self contained facilities until they are able to install an approved onsite effluent disposal system. The property is reasonably large and it is considered that there would be minimal impact to neighbouring properties should an overflow occur.		

Financial Implications

Nil. The Shire does not currently have an adopted fee or charge for applications of this nature.

Policy Compliance

Local Planning Policy 9.16 Transportable Structures

This policy does not support the use of any form of transportable structure within the Residential zone. However it is considered that this policy does not apply where development can be considered as exempted development.

Statutory Compliance

Under clause 61(1)(a)(17) and 61(2)(f) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, temporary accommodation can be considered as exempted development where they meet the definition of “temporary works” and “temporary use”. Temporary works are defined as “the works are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period”; and temporary use is defined as “the use is in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period”.

Regulation 11A of the *Caravan Parks and Camping Grounds Regulations 1997* Camping on private land with local government approval states the following:

- (4) *A person may apply in writing to a local government for approval to camp on land the person owns or has a legal right to occupy if the land is in the local government’s district.*
- (5) *The local government may approve the person camping on the land for a period specified in the approval not exceeding 24 consecutive months.*
- (6) *The approval is subject to the following conditions —*
 - (c) *that any caravan or camp in which the person is camping on the land is maintained in such a condition that it is not a hazard to safety or health;*
 - (d) *that the land is maintained in such a condition that it is suitable for camping, particularly in relation to —*
 - (j) *safety and health; and*
 - (ii) *access to services;*
 - (c) *any other conditions specified by the local government in the approval.*
- (4) *The local government is taken to have refused the application if the local government does not give the approval within 63 days of the application.*
- (5) *The local government may revoke an approval given by the local government, by written notice to the holder of the approval, if the local government is satisfied that a condition of the approval has been breached.*
- (6) *Before revoking the approval, the local government must —*
 - (a) *give written notice to the holder of the local government’s intention to revoke the approval unless, within 35 days after the notice is given, the holder shows cause why the approval should not be revoked; and*
 - (b) *consider any written response to the notice received from the holder during that period.*

Any decision of a local government with respect to these applications may be reviewed upon request by the Minister for Local Government.

Consultation

Nil.

Officer Comment

In relation to the suitability of the site for camping in relation to safety, health and access to services, the applicant has indicated that it is their intention to utilise a fully self-contained caravan with onboard sullage tanks to collect all waste water generated. They will make regular trips to the local dump point until such time as their onsite effluent disposal system has been installed – which they indicate is a priority.

Scheme water is available to the property and an application is pending for connection of power. The applicant indicates that they have solar power for the caravan as well as a generator for intermittent use. In the interest of amenity of the area, it is recommended that conditions be included regarding the use of the generator. There are existing measures within the *Environmental Protection (Noise) Regulations 1997* regarding specified equipment and it is suggested that for the purpose of this application the generator be considered specified equipment. This restricts the use to a maximum of 2 hours per day between the hours of 7:00 am and 7:00 pm Monday to Saturday inclusive and 9:00 am and 7:00 pm on a Sunday or public holiday.

For the safety of the occupants, it is recommended that the sleeping compartment of the caravan be fitted with a suitable smoke detector and carbon monoxide detector and that any power connection be protected by an RCD (including the temporary builder power supply).

The applicant has requested that bins be provided to the property. Clause 2.1 of the *Shire of Donnybrook-Balingup Waste Local Law 2017* Supply of receptacles states:

- (1) *The local government is to supply, for the use of each premises situated within the area covered by the kerbside collection service, receptacles that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal, from those premises, of collectable waste.*
- (2) *The owner of premises to which subclause (1) applies must-*
 - (a) *ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and*
 - (b) *ensure that each receptacle is used, in respect of those premises, in accordance with this local law.*

Given the location of this property is within an existing kerbside collection service area it is considered that it is eligible for a bin collection service.

The landowner has commenced the development application process for their permanent dwelling – required due to their land being located in a Special Control Area, namely a Structure Plan Area (SPA8/SPA4). It is considered that the occupation of their caravan is intended to be temporary i.e. while they construct their permanent dwelling on the site. It is for this reason that the proposal is considered to be temporary works and temporary use and able to be supported without the need for specific development approval for the use of the caravan.

Conditional approval is therefore recommended.

9.1.9 Proposed Budget Variation Thank a Volunteer Day

Report Details:

Prepared by: Manager Development Services
Manager: Director Operations
File Reference: FRC 10A **Voting Requirement:** Absolute Majority
Attachment(s):
 Nil.

Executive Recommendation

That Council:

1. Approve, by Absolute Majority, unbudgeted expenditure and income of \$1,000 for the Thank a Volunteer Day Grants Program 2024 event planned by the Argyle-Irishtown Volunteer Bush Fire Brigade.
2. Endorse the following 2024/2025 budget variation as outlined below:

Expenditure (excl GST)		
Account Number		
9092	Projects	\$1,000

Revenue (excl GST)		
Account Number		
4962	Grants - Projects	\$1,000

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 3 - The natural environment is well managed for the benefit of current and future generations.
Objective: 3.2 - Develop community readiness to cope with natural disasters and emergencies.
Item: 3.2.4 - Provide support for emergency services volunteers.

Outcome: 13 - Increased community capacity.
Objective: 13.1 - Enable community organisations and community champions to deliver services and projects to meet local needs.
Item: 13.1.3 - Partner with key stakeholders to support, encourage and recognise community volunteers.

Executive Summary

The Argyle-Irishtown Volunteer Bush Fire Brigade were recently successful in obtaining a \$1,000 Thank a Volunteer Day Grant from the Department of Communities. The grant was unable to be paid directly to an unincorporated organization and has therefore been obtained under the auspice of the Shire. There is a net zero impact on the budget, however both the expenditure and income need to be accounted for. A budget variation is therefore recommended.

Background

In 1985, the United Nations designated 5 December as International Volunteer Day. It encourages organisations to celebrate the efforts of their volunteers, while raising public awareness of their contributions in the community. The Department of Communities delivers an annual Thank a Volunteer Day Grants Program which offers grants of up to \$1,000 for organisations to host volunteer recognition events or associated activities to celebrate International Volunteer Day.

The Argyle-Irishtown Volunteer Bush Fire Brigade (the Brigade) have been successful in this year's round of grants, obtaining \$1,000 to hold a Thank a Volunteer Community Open Day in December. The grant conditions required that where the organisation undertaking the project is not incorporated, the grant is required to be made under the auspice of either a not for profit, incorporated organisation or a local government authority. The Shire has therefore received the funding on behalf of the Brigade and is responsible for the administrative responsibility, terms and conditions of the grant and provide reporting information.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Insignificant	Low (3)
Risk Description:	The Shire needs to meet its statutory obligations regarding budget allocations and account for variations.		
Mitigation:	Approve the unbudgeted expenditure.		
Reputational	Possible	Moderate	Moderate (9)
Risk Description:	Not complying with the grant conditions may jeopardise future grant eligibility/success.		
Mitigation:	Ensure that reporting obligations are clearly communicated with the group responsible for the function.		

Financial Implications

There is a net effect of \$0 on the Shire's budget. It is considered that there is capacity within the existing staffing to accommodate reporting responsibilities associated with this grant.

Policy Compliance

Nil.

Statutory Compliance

Section 6.8 of the *Local Government Act 1995* refers to expenditure from the municipal fund not included in the Annual Budget. In the context of this report, where no budget allocation exists, expenditure is not to be incurred until such time as it is authorized in advance, by an absolute majority decision of the Council.

Consultation

The Argyle-Irishtown Volunteer Bush Fire Brigade are aware of the grant reporting obligations.

Officer Comment

The Open Day is an opportunity to recognise current members with a service medal award ceremony as well as showcase existing equipment in an effort to encourage new community volunteers. Members of the Argyle-Irishtown Bush Fire Ready Group will also be in attendance to share information with members of the community in order to raise bushfire awareness and preparedness within the community.

It is requested that Council consider the unbudgeted income and expenditure as per the executive recommendation.

9.2. Director Finance and Corporate

9.2.1. Schedule of Accounts Paid as at 31 October 2024

Report Details:

Prepared by: Finance Officer

Manager: Manager Financial Services

File Reference: FNC

Voting Requirement: Simple Majority

Attachment(s):

9.2.1(1) Schedule of Accounts Paid Under Delegation

Executive Recommendation

That Council receive the accounts for payment report for the period ended October 2024 as per Attachment 9.2.1(1).

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 12 - A well respected, professionally run organisation.

Objective: 12.1 - Deliver effective and efficient operations and service provision.

Item: Nil.

Executive Summary

That in accordance with Regulation 13 (3) of the *Local Government (Financial Management) Regulations 1996*, Council receive the "Schedule of Accounts Paid" covering the period 1 October 2024 to 31 October 2024, the schedule contains details of the following transactions:

1 Municipal Account – payments totalling \$2,969,897.37.

Credit Card payments	3583-3586A
EFT Payments	EFT29451D – EFT29662B
Cheque Payments	53810 – 53814
Direct Debit payments	DD28008, 28035 & 28059

Background

In accordance with Delegation 1.2.23 – payments from the Municipal or Trust funds adopted by Council on 18 September 2024, the Chief Executive Officer is authorised to incur expenditure in accordance with the Annual Budget provisions and limited over-expenditure subject to subsequent budget amendments. In doing so, section 13 of the *Financial Management Regulations 1996* is to be adhered to with a list of accounts for approval to be presented to Council each month.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Unlikely	Minor	Low (2)
Risk Description:	Additional checks and balances of accounts paid by the Shire.		
Mitigation:	Monthly reporting on accounts paid.		
Compliance	Unlikely	Minor	Low (2)
Risk Description:	Meeting legislative requirement of financial reporting to the Council		
Mitigation:	Monthly reporting on accounts paid.		

Financial Implications

All liabilities settled have been in accordance with the Annual Budget provisions.

Policy Compliance

- FIN/CP-4 Purchasing
- FIN/CP-5 Regional Price Preference
- FIN/CP-7 Credit Card

Statutory Compliance

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Where the local government has delegated the CEO the exercise of its power to make payments from the municipal fund or the trust funds, Regulation 13 requires that a list of accounts paid by the CEO is to be prepared each month showing for each account paid:

- (a) The payee's name; and
- (b) The amount of the payment; and
- (c) The date of the payment; and
- (d) Sufficient information to identify the transaction.

This list of accounts is to be:

- (a) Presented to Council at the next ordinary meeting of the Council after the list is prepared; and
- (b) Recorded in the minutes of that meeting.

Consultation

Relevant staff have been consulted and have authorised the payments.

Officer Comment

For a detailed listing of payments see [Attachment 9.2.1\(1\)](#).

Please raise any queries prior to the meeting to enable questions to be investigated and a response prepared.

DRAFT

9.2.2. Statement of Financial Activity report as at 30th September & 31st October 2024

Report Details:

Prepared by: Acting Manager Financial Services

Manager: Acting Director Finance & Corporate

File Reference: Nil

Voting Requirement: Simple Majority

Attachment(s):

9.2.2(1) Statement of Financial Activity September and October 2024

Executive Recommendation

That Council:

1. **Receive the Statement of Financial Activity report for the period ending 30th September 2024 as per** Attachment 9.2.2(1)
2. **Receive the Statement of Financial Activity report for the period ending 31st October 2024 as per** Attachment 9.2.2(1)

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 12 - A well respected, professionally run organisation.

Objective: 12.1 - Deliver effective and efficient operations and service provision.

Item: Nil.

Executive Summary

Pursuant to Section 6.4 of the *Local Government Act 1995* (the Act) and *Regulation 34(4) of the Local Government (Financial Management) Regulations 1996* (the Regulations), a local government is to prepare, on a monthly basis, a monthly financial report presented to Council details the Shire's performance in relation to its adopted/amended budget and actuals.

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the Shire's financial performance for the period ending 30th September 2024 and 31st October 2024

Background

The Regulations detail the form and manner in which the monthly financial report is to be presented to the Council, and is to include the following:

- a. Annual budget estimates; and
- b. Budget estimates to the end of the month in which the statement relates; and
- c. Actual amounts of revenue and expenditure to the end of the month in which the statement relates; and

- d. Material variances between budget estimates and actual revenue/expenditure; and
- e. Net current assets at the end of the month to which the statement relates.

Additionally, and pursuant to Regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year.

At its Special Meeting of Council on 18th September 2024 Council adopt the following material variance reporting thresholds for the 2024/25 financial year:

A material variance for reporting of \$10,000, for 2024/2025, pursuant to Regulation 34(5) of the Local Government (Financial Management) Regulations 1996.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Unlikely	Moderate	Moderate (6)
Risk Description:	Monetary loss that may or may not be managed within existing budget or may not impact a program or services		
Mitigation:	Reporting financials monthly		
Compliance	Unlikely	Minor	Low (4)
Risk Description:	Meeting legislative requirement of financial reporting to the Council		
Mitigation:	Monthly reporting on financial reports.		

Financial Implications

Budget

There are no financial implications relevant to this proposal.

Long Term

As no assets/infrastructure are being created, there are no long-term financial implications relevant to this proposal.

Policy Compliance

Nil

Statutory Compliance

Section 6.4 of the *Local Government Act 1995* and Regulation 34 of the *Local Government (Financial Management) Regulations 1996* detail the form and manner in which a local government is to prepare financial activity statements.

Consultation

The Shire's Executive Team, Department Managers and Finance staff monitor the Shire's monthly revenue and expenditure.

Approved budget amendments are recorded in the financial statements to always reflect the Shire's current budget and financial position.

Officer Comment

The September and October Financial Statements are compared to year-to-date expenditure and revenue against the 2024-25 Budget.

DRAFT

9.2.3 Making Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024

Report Details:

Prepared by: Acting Manager Corporate Services

Manager: Acting Director Finance and Corporate

Location: Shire of Donnybrook Balingup

File Reference: CNL 25 **Voting Requirement:** Absolute Majority

Attachment(s):

- 9.2.3(1) Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024
- 9.2.3(2) *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017*
- 9.2.3(3) Draft Local Public Notice

Executive Recommendation

That Council:

2. In accordance with section 3.12(4) of the *Local Government Act 1995*, resolve to make the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 as proposed (Attachment 9.2.3(1));
3. In accordance with section 3.12(5) of the *Local Government Act 1995*, after making the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024:
 - 2.1. Publish the Local Law in the Western Australian Government Gazette; and
 - 2.2. Provide a copy of the Local Law to the Minister for Local Government;
4. In accordance with section 3.12(6) of the *Local Government Act 1995*, after the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 has been published in the Western Australian Government Gazette, give local public notice (Attachment 9.2.3(3)):
 - 4.1. Stating the title of the Local Law; and
 - 4.2. Summarizing the purpose and effect of the Local Law; and
 - 4.3. Specifying the date on which the Local Law comes into operation; and
 - 4.4. Advising that the Local Law is published on the Shire of Donnybrook Balingup website; and
 - 4.5. Advising that copies of the Local Law may be inspected at or obtained from the Shire of Donnybrook Balingup Administration Office;
5. In accordance with section 3.12(7) of the *Local Government Act 1995* and *Local Laws Explanatory Memoranda Directions 2010* given by the Minister for Local Government, within ten working days of the publication date of the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 in the Western Australian Government Gazette, provide a copy of the Local Law with Explanatory Material to the Parliament of Western Australia, Joint Standing Committee on Delegated Legislation;
6. Authorise the Shire President and Chief Executive Officer to affix the Common Seal of the Shire of Donnybrook Balingup to the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 (Attachment 9.2.3(1));

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

- Outcome:** 11 - Strong, visionary leadership.
- Objective:** 11.1 - Provide strategically focused, open and accountable governance.
- Item:** 11.1.2 - Provide a review of local laws.

Executive Summary

At its 28 August 2024 Meeting, Council resolved to commence the process of making the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024. This stage of the legislative process included advertising and seeking submissions on the proposed Local Law, with results of the public consultation to be presented to Council for consideration after the closing date. Council is now asked to consider the submissions received from public advertising and Ministerial referral, and to make the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 as proposed.

Background

At the Ordinary Council Meeting on 28 August 2024, Council resolved the following:

"Council Resolution: 144/08-24

1. *In accordance with section 3.12(3)(a) of the Local Government Act 1995, local public notice be given stating that:*
 - 1.1. *The Shire of Donnybrook Balingup propose to make the 'Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024', with a summary of its purpose and effect as follows:*
 - 1.1.1. *Purpose: To amend the Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017 to delete clause 3.10(b), and in clause 2.2(b) delete the words 'or is' and replace them with 'and is not'; and*
 - 1.1.2. *Effect: The Shire of Donnybrook-Balingup Animals, Environment and Nuisance Local Law 2017 is amended.*
 - 1.1.3. *Copies of the proposed local law may be inspected or obtained from the Shire's Administration Office or the Shire's website; and*
 - 1.1.4. *Submissions on the proposed local law may be made to the Shire within a period of not less than 6 weeks after the notice is given;*
2. *In accordance with section 3.12(3)(b) of the Local Government Act 1995, as soon as the notice is given a copy of the proposed local law and public notice be sent to the Minister for Local Government;*
3. *In accordance with section 3.12(3)(c) of the Local Government Act 1995, a copy of the proposed local law be supplied to any person requesting it; and*
4. *The results of the public consultation be presented to Council for consideration of any submissions received.*

Carried by absolute majority: 8/0"

The *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017* ([Attachment 9.2.3\(2\)](#)) was published in the Western Australian Government Gazette on 14 June 2017. After gazettal and subsequent submission as required to the Parliament of Western Australia, Joint Standing Committee on Delegated Legislation (JSCDL), the JSCDL wrote to the Shire requesting several amendments be made.

The Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 ([Attachment 9.2.3\(1\)](#)) has been prepared to incorporate the amendments specified by the JSCDL. In accordance with Council's resolution detailed above, local public notice seeking submissions and Ministerial referral of the proposed Local Law has been undertaken.

To progress the making of the amendment Local Law, Council is to consider the submissions received and resolve to make the Local Law either as proposed, or in a form that is not significantly different. If Council wishes to make a significant change to the proposed Local Law, it would be required to recommence the procedure for making a local law in accordance with s. 3.13 of the *Local Government Act 1995*.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Almost Certain	Moderate	High (15)
Risk Description:	Non-compliance with legislation for the <i>Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017</i> .		
Mitigation:	Resolve to make the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 as proposed.		

Financial Implications

The cost associated with Council's decision to make the proposed Local Law for this stage of the process is estimated at:

- Local public notice: \$347. (half of total costs given joint advertising with proposed Shire of Donnybrook Balingup Waste Amendment Local Law 2024: \$550 South Western Times and \$145 Preston Press).
- Publication in the Western Australian Government Gazette: between \$300 to \$400. The quoted amount is based on one page of text, with the final cost determined on submission, review and final formatting by the Government Gazette.

Policy Compliance

Nil.

Statutory Compliance

Section 3.5 of the *Local Government Act 1995* (the Act) enables local governments to make local laws. Section 3.12 of the Act sets out the process for making a local law.

Section 3.12(8) of the Act further defines *making* in relation to a local law, which encompasses making a local law to amend the text of, or repeal, a local law.

Section 3.12(7) of the Act enables the Minister for Local Government to give directions to local governments requiring them to provide to the Parliament of Western Australia copies of local laws they have made and any explanatory or other material relating to them. The *Local Laws Explanatory Memoranda Directions 2010* issued in Ministerial Circular No. 04-20210, stipulate that within ten working days of the publication date of a local law in the Western Australian Government Gazette, a copy of the local law with specific Explanatory Material must be submitted to the Parliament of Western Australia, Joint Standing Committee on Delegated Legislation for review.

Regulation 3 of the *Local Government (Functions and General) Regulations 1996* outlines the requirement for the Presiding Member of a meeting to give notice of the purpose and effect of the local law.

Consultation

Conway Highbury, a consultant specialising in local government matters, particularly local laws, was engaged to assist with drafting the proposed Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024. An internal review of the local law has also been undertaken by Shire staff.

Following the Council resolution at its Meeting on 28 August 2024, and to pursuant to section 3.12(3)(a) of the *Local Government Act 1995* (the Act), the Shire gave local public notice of the proposed local law, including its purpose and effect, and invited submissions from the public over a 7-week (52-days) consultation period. This meets the minimum requirement of 6-weeks (42-days), of which must be 'clear' days – s. 61 of the *Interpretation Act 1984* prescribes this to mean that the day on which it is published and the day on which submissions close cannot be counted in the 42-day period. In addition, the final day for submissions must not fall on a Saturday, Sunday or public holiday. If it does, the final day is taken to be the next normal working day.

The public submission period officially commenced on Monday 9 September 2024 and closed on Friday 1 November 2024. The Council endorsed local public notice was advertised to comply with legislative requirements as follows:

1. Published on the Shire's website under the 'Latest News' section from 9 September 2024;
2. Displayed on the Shire Administration Office noticeboard from 9 September 2024;
3. Displayed on the Shire's Donnybrook Library and Balingup Library noticeboards;
4. Published in the South Western Times newspaper on 12 September 2024;
5. Published in the Shire's E-Connect email newsletter on 9 October 2024;
6. Published on the Shire's Facebook page on 11 September 2024; and

7. Published in the Preston Press community newspaper October 2024 edition.

A copy of the proposed Local Law, along with a copy of the *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017* and local public notice was also referred to the Minister for Local Government in accordance with s.3.12(3)(b) of the Act.

Officer Comment

Submissions received

No submissions from members of the public were received during the advertised community consultation period for the proposed Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024.

A submission was received on 4 October 2024 by the Department of Local Government, Sport and Cultural Industries (Department), as a result of the referral of the proposed Local Law to the Minister for Local Government (Minister) during the consultation period. The Department advised they had no critical comments to make with regards to the proposed Local Law.

Information was provided by the Department in relation to the Minister's Directions pursuant to s.3.12(7) of the *Local Government Act 1995* (the Act), advising that once the Shire has published the Local Law in the Government Gazette, it must comply with the requirements of the Minister's *Local Laws Explanatory Memoranda Directions 2010*. As per the provided information the Shire must, within 10 working days of the gazettal publication date, submit the completed and signed Explanatory Memoranda material to the Parliament of Western Australia, Joint Standing Committee on Delegated Legislation (JSCDL) for review. Failure to comply with the Minister's Directions may render the Local Law inoperable.

At its 28 August 2024 Meeting, Council also resolved to commence the process of making the Shire of Donnybrook Balingup Waste Amendment Local Law 2024, which coincided with the process of making the proposed Animals, Environment and Nuisance Amendment Local Law. No submissions from members of the public were received during the advertised community consultation period for the proposed Waste Amendment Local Law. However, the Shire is currently awaiting comment from the Department of Water and Environmental Regulation (DWER) and the Waste Authority as a result of the referral of the proposed Local Law to the Minister for Environment. The formal results of the public consultation for the proposed Waste Amendment Local Law, including the submissions from DWER and the Waste Authority, will be presented to Council for consideration at a future meeting of Council.

Local law-making procedure

The procedure for making local laws is detailed in the Act. There is a specific legislative process that must be adhered to for the proposed Local Law to be accepted by the JSCDL and ultimately by Parliament.

In accordance with s.3.12(4) of the Act, after the last day for submissions Council is to consider any submissions made and may resolve to make the local law by Absolute Majority as proposed, or that is not significantly different from what was proposed and advertised. Should Council wish to make a significant change to the local law, in accordance with s. 3.13 of the Act the procedure for making a local law is required to recommence.

In the event that Council resolves to make the Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 as proposed, the following sequence of events will commence for this stage of the process:

1. The Council resolved version of the Local Law will be published in the Western Australian Government Gazette and provided to the Minister for Local Government;
2. After publication in the Government Gazette, local public notice will be given:
 - 2.1. Stating the title of the Local Law;
 - 2.2. Summarizing its purpose and effect;
 - 2.3. Advising that the Local Law is published on the Shire website; and
 - 2.4. Advising that copies of the Local Law may be inspected at or obtained from the Administration Office;
3. Within ten working days of publication in the Government Gazette, a copy of the Local Law with required Explanatory Material will be submitted to the JSCDL.

Regulation 3 of the *Local Government (Functions and General) Regulations 1996* also requires that, in making a local law, the person presiding at a Council meeting is to give notice of the purpose and effect of the local law by ensuring that:

- a) the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- b) the minutes of the meeting of the Council include the purpose and effect of the proposed local law.

In view of this, the purpose and effect of the proposed Shire of Donnybrook Balingup Animals, Environment and Nuisance Amendment Local Law 2024 is:

- a) Purpose: To amend the *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017* to delete clause 3.10(b), and in clause 2.2(b) delete the words 'or is' and replace them with 'and is not'.
- b) Effect: The *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017* is amended.

9.2.4. Petition – New fee structure for Senior Room hire

Report Details:

Prepared by: Manager Recreation and Library Services, Manager Corporate Services

Manager: Acting Director Finance and Corporate

File Reference: CNL 33

Voting Requirement: Simple Majority

Attachment(s):

9.2.4(1) Petition

Executive Recommendation

That Council:

1. **Receives the petition submitted by Angela Brooke regarding the new fee structure for the hire charges of the use of the Seminar Room, commonly known as the “Seniors Room” at Donnybrook Community Library; and**
2. **Requests the Chief Executive Officer to inform the petitioners that no changes will be made to the adopted fees and charges.**

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 12 - A well respected, professionally run organisation.

Objective: 2.1 - Improve access to facilities and services to support community health and wellbeing.

Executive Summary

Council is requested to receive the petition submitted by Angela Brooke regarding the new fee structure for the hire charges of the use of the Seminar Room, commonly known as the “Seniors Room” at Donnybrook Community Library, and to request the petitioners be respond to with Councils decision.

Background

On 25 September 2024, Council received a petition concerning the new fee structure for the hire charges of the use of the Seminar Room, commonly known as the “Seniors Room” at Donnybrook Community Library, specifically those affecting commercial hirers. The petition, submitted by Ms. Angela Brooke, includes 62 signatures and complies with the petition requirements outlined in Clause 6.10 of the *Meeting Procedures Local Law 2017*.

The revised fee structure was introduced following a comprehensive review of Shire-operated facilities to ensure fairness and consistency between community and commercial hirers. The Seminar Room

(Seniors Room) located at the Donnybrook Community Library, which the petition refers to, is a hireable space currently utilised by senior clubs, community groups, and commercial stakeholders.

Over the past five years, the fees for hiring the Seminar Room (Seniors Room) have remained unchanged, with no significant reviews or adjustments made. This was highlighted during a recent assessment of all Shire-operated facilities, which sought to bring the fee structure in line with similar local government facilities and ensure fairness across different types of users.

From 2019 to 2023, the fee for hiring the Seminar Room (Seniors Room) was set at a flat rate of \$17.50 per hour, regardless of whether the booking was for a community or commercial purpose. This single rate did not account for the different purposes that various hirers had in using the room, such as those providing community services versus those offering commercial, for-profit classes.

The fees as outlined in the 2024/25 schedule of Fees and Charges is tabled below:

Ref	Description	23/24 (GST Inc)	24/25 GST Ex	24/25 GST	24/25 GST Inc
11.6.3	Room Hire - Seniors Room				
	Not for Profit Group (Governed by a Board) Community (per hour)	\$18.30	\$19.45	\$1.95	\$21.40
	Commercial (per hour)	New	\$31.27	\$3.13	\$34.40
	Use of kitchen	2.55	\$2.55	\$0.25	\$2.80

The Seminar Room (Seniors Room) is regularly hired by both community and commercial groups. Its most common use is for fitness classes, meetings, and social gatherings. Commercial users, including those offering fitness classes, make up 7 out of 14 regular weekday bookings. These bookings generated an average income of approximately \$6,000pa, its anticipated that the new fee structure will see an increase of \$1,500pa.

Council reviewed the petition during the October Agenda Briefing and decided to deliberate further in a workshop. It was then discussed at the Council workshop held on 30 October, where Council requested it be brought back for consideration at the November meeting.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Property	Rare	Insignificant	Low (1)
Risk Description:	Failure to effectively manage the day-to-day operations of facilities resulting in maintenance issues. (Ineffective fee increases)		
Mitigation:	Imposing hire fees at an appropriate amount to ensure the effective management and maintenance of the facility, which aims to maintain high standards of facility management, thereby reducing the risk of maintenance issues and ensuring a positive experience for all users.		

Financial Implications

Nil.

Policy Compliance

Nil.

Statutory Compliance

Dealing with a Petition

The provisions relevant to receiving and dealing with a petition are outlined under Clause 6.10 of the *Shire of Donnybrook Balingup Meeting Procedures Local Law 2017*.

Section 1 of the clause outlines the form a petition should take with Sections 2 and 3 outlining how a petition should be dealt with as follows:

6.10 Petitions

1. *A petition is to:*
 - a) *be addressed to the President;*
 - b) *be made by electors of the district;*
 - c) *state the request on each page of the petition;*
 - d) *contain the name, address and signature of each elector making the request, and the date each elector signed;*
 - e) *contain a summary of the reasons for the request; and*
 - f) *state the name of the person to whom, and an address at which, notice to the petitioners can be given.*
2. *Upon receiving a petition, the local government is to submit the petition to the relevant officer to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to subclause (3).*
3. *At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless:*
 - a) *the matter is the subject of a report included in the agenda; and*
 - b) *the Council has considered the issues raised in the petition.*

If Council choose to make amendments to the fees and charges the following should be considered.

Local Government Act 1995

Section 6.16(1) and (2) states:

1. *A local government may impose and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*
2. *A fee or charge may be imposed for the following —*

- a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;*
- b) supplying a service or carrying out work at the request of a person;*
- c) subject to section 5.94, providing information from local government records;*
- d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;*
- e) supplying goods;*
- f) such other service as may be prescribed.*

Section 6.17(1) states:

In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —

- a) the cost to the local government of providing the service or goods;*
- b) the importance of the service or goods to the community; and*
- c) the price at which the service or goods could be provided by an alternative provider.*

Section 6.19 of the *Local Government Act 1995* states:

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

- (a) its intention to do so; and*
- (b) the date from which it is proposed the fees or charges will be imposed.*

Consultation

Regular room hirers were consulted on the new fee structure, informing them of the upcoming changes and were encouraged to contact the Shire with any questions or concerns. Several users contacted the Shire to discuss the potential impact of the fee increase on their operations. The main concern was around the impact on their participants.

The follow-up consultation provided by the Shire clarified the new fee structure and offered alternative cost-effective venue options within the Shire.

Angela Brooke who submitted the petition was not one of these users.

Council reviewed the petition during the October Agenda Briefing and decided to deliberate further in a workshop. It was then discussed at the Council workshop held on 30 October, where Council requested it be brought back for consideration at the November meeting.

Officer Comment

The revised fee structure introduces a new rate for commercial bookings, defined as those where participants are charged to attend and the hirer profits from delivering a service. As set out in the 2024/25 Schedule of Fees and Charges, the fee for commercial bookings is set at \$34.25 per hour. In contrast, community groups continue to benefit from a lower rate of \$21.40 per hour.

This adjustment ensures fairness by recognising the distinction between community-focused and commercial uses of the space. Additionally, it aligns the fees with those of other Shire-owned facilities, promoting consistency in space hire practices. The increase reflects the potential for commercial users to profit from bookings, aligning with similar local government facility rates. Furthermore, alternative venues within the Shire, such as the mezzanine floor at the Recreation Centre, are available for commercial users at a lower rate. Finally, the increase addresses rising operational costs that had not been accounted for in previous years.

Alternatively, to support these individuals, Council can utilise the Community Grants and Donations Policy. Specifically, assistance can be provided through Clause 3.4 (Facility Hire Fee Waivers) or Clause 3.5 (Minor Cash Donations).

DRAFT

9.2.5 Policy Review: FIN/CP-7-Credit Card

Report Details:

Prepared by: Acting Director Finance and Corporate

Manager: Acting Director Finance and Corporate

File Reference: ADM 11/4

Voting Requirement: Simple Majority

Attachment(s):

9.2.5(1) Draft Council Policy FIN/CP-7-Credit Card

9.2.5(2) Current Council Policy FIN/CP-7-Credit Card with tracked changes

Executive Recommendation

That Council:

- 1. Notes the review of Council Policy FIN/CP-7-Credit Card** (Attachment 9.2.5(2)); **and**
- 2. Adopt the draft Council Policy FIN/CP-7-Credit Card** (Attachment 9.2.5(1)), **inclusive of the amendment as outlined in** Attachment 9.2.5(2).

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 11 - Strong, visionary leadership.

Objective: 11.1 - Provide strategically focused, open and accountable governance.

Item: Nil.

Executive Summary

Council is requested to note the policy review undertaken and adopt the major amendment made to Council Policy FIN/CP-7-Credit Card as outlined in this report and [Attachment 9.2.5\(2\)](#).

Background

Council first adopted its Credit Card policy in 2013, since this time there has been no major amendments made.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Unlikely	Insignificant	Low (2)
Risk Description:	Failing to conduct regular reviews of Council policies.		
Mitigation:	Continuously improve governance, and oversight, implement regular monitoring, strengthen internal controls, ensure proper segregation of duties, and conduct comprehensive audits. The immediate mitigation is to adopt the draft policy for dissemination and integration.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Minor	Moderate (6)
Risk Description:	External Theft and Fraud - Financial Fraud <ol style="list-style-type: none"> 1. Social Engineering: Manipulating individuals into divulging confidential information or transferring funds. 2. Fake Invoices: Submission of fraudulent invoices for payment. 3. Account Takeover: Unauthorised access to financial accounts to steal funds. 4. Investment Scams: Fraudulent investment opportunities targeting the organisation. 		
Mitigation:	Continuously improve governance, and oversight, implement regular monitoring, strengthen internal controls, ensure proper segregation of duties, and conduct comprehensive audits.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Minor	Moderate (6)
Risk Description:	Misconduct - Governance and Oversight <ol style="list-style-type: none"> 1. Lack of Supervision: Insufficient oversight and monitoring of employee activities. 2. Weak Internal Controls: Inadequate checks and balances to detect unauthorised actions. 3. Poor Segregation of Duties: Employees having access to multiple functions that should be separated. 4. Inadequate Auditing: Lack of regular and thorough audits to identify policy breaches. Misconduct - Governance and Compliance <ol style="list-style-type: none"> 1. Lack of Policies: Absence of clear policies and procedures for data protection and fraud prevention. 2. Non-Compliance: Failure to comply with regulatory requirements and industry standards. 3. Inadequate Training: Employees not trained on recognising and preventing fraud and cyber threats. 4. Poor Incident Response: Ineffective response plans for dealing with security breaches and fraud incidents. 		
Mitigation:	Continuously improve governance, and oversight, implement regular monitoring, strengthen internal controls, ensure proper segregation of duties, and conduct comprehensive audits.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Service Interruption	Possible	Minor	Moderate (6)
Risk Description:	Inadequate Document Management Processes -Documentation Capture 1. Inconsistent Practices: Varied methods of capturing documentation leading to gaps. 2. Lack of Training: Staff not trained on proper documentation procedures. 3. Manual Processes: Reliance on manual processes prone to human error. 4. Technology Limitations: Inadequate or outdated technology for capturing documents.		
Mitigation:	Continuously improve governance, and oversight, implement regular monitoring, strengthen internal controls, ensure proper segregation of duties, and conduct comprehensive audits.		

Financial Implications

Nil.

Policy Compliance

Council Policy EXE/CP-8- Policy Framework

The review and amendments made to Council Policy FIN/CP-7-Credit Card are in line with the requirements of the Council Policy EXE/CP-8- Policy Framework.

Statutory Compliance

Local Government Act 1995

Section 2.7 states that the role of Council is to determine the local governments policies.

Consultation

Internal consultation has been undertaken in relation to the policy review.

Officer Comment

To ensure the appropriate and responsible use of corporate credit cards for Shire business, this policy outlines the guidelines for the issuance, use, and management of corporate credit cards, ensuring compliance with current legislation and the Department of Local Government, Sport and Cultural Industries' Use of Corporate Credit Cards Guide: Local Government Operational Guidelines.

Policy Objective and Scope

The primary objective of this policy is to ensure that corporate credit cards are used solely for Shire business in a manner that is transparent, accountable, and in compliance with the Shire's policies and

procedures. The policy applies to all cardholders and encompasses all transactions made using corporate credit cards.

Key policy provisions include:

- Issuance and Use: Corporate credit cards are issued to permanent or fixed-term contract employees for the procurement of goods and services necessary for Shire operations. Council Members are not eligible for corporate credit cards.
- Expenditure Controls: All expenditures must be necessary, reasonable, and directly related to Shire activities. Personal expenditures are strictly prohibited.
- Cardholder Responsibilities: Cardholders must use the cards in accordance with Shire procedures and are responsible for the safe custody of the cards. Any personal expenditure must be reimbursed promptly.
- Monitoring and Reporting: Regular monitoring and review of credit card usage will be conducted to ensure compliance. All transactions will be reported to the Council in the schedule of accounts paid.
- Recordkeeping: Documentation related to credit card use will be retained in accordance with the Shire's Recordkeeping Plan.

Policy Compliance and Review

This policy aligns with the Department of Local Government, Sport and Cultural Industries guidelines and current legislation, ensuring that all practices are up-to-date and legally compliant. Based on the policy's risk rating, its review frequency is scheduled for biennial evaluation.

By adhering to these guidelines, the Shire aims to maintain high standards of financial management and accountability in the use of corporate credit cards.

This policy has been reviewed in accordance with the Council's policy framework. All changes have been documented and are provided in [Attachment 9.2.5\(2\)](#) with tracked changes.

9.2.6. Budget Variation Request – Urgent air-conditioning replacement for Lot 58 (No. 70) South Western Highway, Donnybrook

Report Details:

Prepared by: Acting Manager Corporate Services
Manager: Acting Director Finance and Corporate
Location: Shire of Donnybrook Balingup
File Reference: L017 **Voting Requirement:** Absolute Majority
Attachment(s):
9.2.6(1) Quotes - Confidential

Executive Recommendation

That Council:

1. Approve by absolute majority, unbudgeted expenditure of \$10,000 (GST Exclusive) to replace the air-conditioning unit at Lot 58, (No. 70) South Western Highway, Donnybrook;
2. Approve funding the unbudgeted expenditure for the replacement of the air-conditioning unit from the Building Reserve; and
3. Grant consent to Donnybrook Capel Districts Community Financial Services Limited, as Lessee of Lot 58 (No. 70) South Western Highway, Donnybrook, to install one additional air-conditioning unit in the premises by a licensed air conditioning technician, at no cost to the Shire of Donnybrook Balingup, subject to:
 - a. Compliance with the current conditions of Lease for the premises; and
 - b. Prior approval from the Shire's Chief Executive Officer regarding the installation location in the premises.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 12 - A well respected, professionally run organisation.
Objective: 12.1 - Deliver effective and efficient operations and service provision.
Item: Nil.

Executive Summary

The Shire is the property owner of Lot 58 (No. 70) South Western Highway, Donnybrook. The premises are leased to the Donnybrook Capel Districts Community Financial Services Limited as the Community Bank Donnybrook, currently a branch of Bendigo Bank. The Shire received notification from the Lessee that the air-conditioner unit inside the building is non-operable and requires replacement. Council is asked to consider a variation to the 2024-2025 Budget to enable the required works to be undertaken in accordance with the Lease.

Background

In 2003, the Shire entered into a commercial lease with Donnybrook Capel Districts Community Financial Services Limited for the Community Bank Donnybrook, located at Lot 58 (No. 70) South Western Highway, Donnybrook. An extension of lease was executed in 2009, 2013 and 2018. The final lease extension expired on 30 June 2023. The lease is now in 'Holding Over' with the Lessee as tenant from month to month in accordance with clause 15.5. This is a result of the Lessee inquiring into the prospect of purchasing the premises from the Shire prior to the lease extension expiry. The Shire is currently awaiting confirmation from the Lessee on the status of their decision to progress with presenting a formal offer of purchase to the Shire. Notwithstanding this, the current Lease requires Council to replace the non-functioning air-conditioning unit.

It is anticipated that Council will review this asset as part of its proposed asset optimisation process. All terms and conditions of the Lease so far as they can be applied to a monthly tenancy apply during the holding over period.

As Lessor, the Shire is responsible for the provision of the air conditioning system in the premises as an existing fixture. The Lessee is required to maintain a service agreement with a reputable and qualified air conditioning specialist which provides for all maintenance and repair of the system. The Lessee representative has confirmed that the existing unit has been serviced on an ongoing basis and repaired as necessary. Recent inspection by licensed technicians arranged by the Lessee have identified that the system requires repair, however that parts are not readily available due to the age of the unit. The existing air-conditioner at the premises has not been replaced by the Shire since the commencement of the Lease in 2003.

The Lessee has also requested that the Shire provide an additional air-conditioner unit to be installed in a separate office area in the premises to improve the temperature regulation of additional areas in the premises. An additional system has not been included in the Asset Management Plan for the building, and consequently no amount has been budgeted for this. The Lease enables the Lessee to apply for alteration of the premises, subject to the consent of the Shire as Lessor, which in accordance with the Lease shall not unreasonably be withheld. The Lessee has advised Shire staff that the replacement of the existing non-functioning air conditioning unit, and possible installation of an additional unit, is urgently required to ensure that workplace health and safety requirements are complied with by the Lessee.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Possible	Major	High (12)
Risk Description:	Breach of Lease by the Shire as Lessor of the premises.		
Mitigation:	Endorse a Budget variation to allow for the required works in accordance with the Lease agreement.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Minor	Moderate (6)
Risk Description:	Financial implications from legal action by the Lessee of the premises.		
Mitigation:	Endorse a Budget variation to allow for the required works in accordance with the Lease agreement.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Minor	Moderate (6)
Risk Description:	Substantiated, localised impact on community trust with the Lessee of the premises. Potential low profile media item.		
Mitigation:	Endorse a Budget variation to allow for the required works in accordance with the Lease agreement.		

Financial Implications

There is no allocation to replace the existing air-conditioning unit at the premises in the Council adopted 2024-2025 Budget. Recommended approval of unbudgeted expenditure of \$10,000 (GST Exclusive) has been determined based on the quotes sourced for a replacement (Attachment X.X.X(1)). It is proposed that the unbudgeted expenditure be funded by transfer from the Building Reserve.

Policy Compliance

Nil.

Statutory Compliance

Section 6.8 of the *Local Government Act 1995* refers to expenditure from the municipal fund not included in the Annual Budget. In the context of this report, where no budget allocation exists, expenditure is not to be incurred until such time as it is authorised in advance, by an Absolute Majority decision of the Council:

“6.8. Expenditure from municipal fund not included in annual budget

(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —

- (a) is incurred in a financial year before the adoption of the annual budget by the local government; or*
- (b) is authorised in advance by resolution*; or*
- (c) is authorised in advance by the mayor or president in an emergency.*

** Absolute majority required.”.*

Consultation

Shire staff have liaised with the Lessee representative regarding the existing and proposed air-conditioning systems for the premises. The Lessee sourced quotes from licensed air-conditioning technicians, providing three options for the replacement of the existing unit. Shire staff sourced additional quotes providing for two replacement options. All quotes are contained in [Attachment 9.2.6\(1\)](#).

Officer Comment

Council approval of unbudgeted expenditure, funded from the Building Reserve as outlined in the Executive Recommendation, will ensure the Shire meets its obligations in accordance with the Lease for the premises by enabling the replacement of the non-functioning air-conditioning unit.

Granting consent to the Lessee to install an additional air-conditioning unit in the premises, at the Lessee's cost, will enable the Lessee to provide improved working conditions for its staff and clients. Prior approval from the Shire's Chief Executive Officer regarding the additional unit's proposed location will enable Shire staff to confirm suitability and ensure compliance with the current conditions of Lease for the premises.

9.3. Chief Executive Officer

Nil.

10. Elected Member Motions of which previous notice has been given

10.1.1 Development Applications

Report Details:

Prepared by: John Bailey, Shire Councillor

Manager: Nick O'Connor, Chief Executive Officer

File Reference: CNL 33

Voting Requirement: Simple Majority

Attachment(s):

Elected Member Motion

That Council;

1. Instructs the Chief Executive Officer to amend processes to:

1.1. provide Councillors with copies of Development Applications (DA's) within five (5) business days of the lodgement date with the Shire; and

1.2. Obtain all declarations of interest from Councillors and employees within ten (10) business days of the lodgement date with the Shire; and

1.3. Ensure that development applications presented to Council for consideration contain reasonably accurate cost estimates for each proposed condition.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 12 - A well respected, professionally run organisation.

Objective: 12.1 - Deliver effective and efficient operations and service provision.

Item: Nil.

Elected Member Background

Often, the Council does not have sufficient time to thoroughly research Development Applications (DAs). Additionally, there are concerns about declarations of interest not being made or adequately clarified during meetings.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Likely	Minor	Moderate (8)
Risk Description:	Failure to correctly identify, interpret, assess, respond and communicate laws and regulations because of extra administrative burden. This could result in fines, penalties, litigation or increase scrutiny from regulators or agencies. This includes, new or proposed regulatory and legislative changes, in addition to the failure to maintain updated legal documentation (internal and public domain) to reflect changes.		
Mitigation:	Continue to utilise the streamlined processes in place. This approach helps minimise red tape and ensure timely decision-making. Alternatively, resources should be allocated accordingly to support these improvements.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Service Interruption	Almost Certain	Moderate	High (15)
Risk Description:	<p>Errors, omissions or delays in operational activities because of unintentional errors or failure to follow due process.</p> <p>Causal Factors –</p> <ul style="list-style-type: none"> • Lack of Training: Insufficient training leading to mistakes and oversights, • Fatigue: Employees experiencing fatigue or burnout, affecting their performance. • Time Pressure: High-pressure environments where speed is prioritised over accuracy. • Cultural Issues: Organisational culture that does not prioritise accuracy and due process. • Resource Constraints: Limited resources leading to rushed or incomplete work. • Lack of Accountability: No clear accountability for errors and omissions. • Data Entry Mistakes: Mistakes in data entry due to human error. • Lack of Automation: Manual processes that are prone to human error. <p>Inadequate Tools: Inadequate or inappropriate tools for the task at hand.</p>		
Mitigation:	Continue to utilise the streamlined processes in place. This approach helps minimise red tape and ensure timely decision-making. Alternatively, resources should be allocated accordingly to support these improvements.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Almost Certain	Moderate	High (15)
Risk Description:	Non-compliance with statutory timeframes, resulting in deemed refusal and a SAT appeal.		
Mitigation:	Continue to utilise the streamlined processes in place. This approach helps minimise red tape and ensure timely decision-making. Alternatively, resources should be allocated accordingly to support these improvements.		

Policy Compliance

Code of Conduct for Council Members, Committee Members and Candidates and Code of Conduct for Employees

The Shire of Donnybrook's Code of Conduct mandates that both employees and council members are responsible for declaring their own interests, with clear implications for anyone who breaches this requirement.

Statutory Compliance

Local Government Act 1995

Council Members

Regardless of the type of interest Council Members have, in any matter to be discussed at a Council or Committee meeting, the Council Member, must disclose the nature of that interest either:

1. in a written notice given to the CEO before the meeting; or
2. at the meeting itself, immediately before the matter is discussed.

Employees

Under section 5.70, employees, including the CEO, must disclose an interest and the nature of their interest, when giving the advice or report and when required by the Council or Committee to do so, disclose the extent of their interest.

Section 5.71A provides for the CEO disclosing interests in reports or advice they provide, arising from gifts they may receive. A CEO must have approval under section 5.71B to provide a report or advice in the case of an interest arising from a gift.

The employee (including the CEO) is not however required to leave the room.

Section 5.70 requires an employee with delegated authority to disclose to the CEO, or if they are the CEO, to the president, any interest they have in a decision for which they have delegated authority to make.

Consultation

Nil.

Officer Comment

Current Process and Rationale

Councillors are currently provided with a monthly update of applications received, their progress, anticipated Ordinary Council Meeting (OCM) dates (if relevant), and applications determined. Additionally, advance notice of applications that will be more broadly advertised or potentially contentious is provided to Councillors on an as-needed basis. Applications are referred to Council for determination when they do not meet the conditions of Council's current (Delegation 9.2.1 *Local Planning Scheme No. 7 - Development Applications*).

Under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the Shire has seven (7) business days to consider whether an application can be accepted for assessment and notify the applicant accordingly. Following this, statutory timeframes must be adhered to, previously outlined in the presentation to Councillors who attended the workshop in February 2024.

Conditions of Development

Conditions are developed in consultation with referral agencies and internal departments. The Department of Planning outlines that for a condition to be valid, it must:

- a. Have a planning purpose or fulfill a planning purpose; and
- b. Fairly and reasonably relate to an application and have a direct link to the proposal and its effect on its surroundings (referred to as the “need and nexus” of a condition); and
- c. Be reasonable or not unreasonable; and
- d. Not rely on consents or authorizations of a third party where the applicant has no influence on the outcome (e.g., road closures or access easements).

The cost of compliance with a condition is not a consideration when determining the validity of a condition. Proponents will determine if their proposal, once determined, is economically viable based on their own relationships with consultants/contractors and their capacity to undertake their own works. They maintain the opportunity to seek review of decisions or specific conditions or alternatively request a modification to an existing approval.

Concerns with Proposed Changes

While Shire staff welcome opportunities to improve communications with Councillors, the proposed changes are not considered ideal for the following reasons:

1. **Administrative Burden:** Providing copies of DAs within five business days and obtaining declarations of interest within ten business days would incur additional administrative burdens. This could divert officers away from their operational duties and erode staff confidence in the work they undertake on behalf of the Shire.
2. **Existing Effective Communication:** The current process already ensures that Councillors are well-informed through monthly updates and advance notices for contentious applications. This system balances the need for information with the practicalities of administrative workload.
3. **Cost Estimates:** Including reasonably accurate cost estimates for each proposed condition in development applications may not be practical or necessary. The validity of conditions is based on planning purposes and their direct link to the proposal, not on the cost of compliance. Additionally, providing cost estimates could impact timing and potentially result in inaccurate estimates that applicants might rely on, which is not practical or necessary given the planning-based validity of conditions.

4. Statutory Timeframes: The Shire must adhere to statutory timeframes for assessing and notifying applicants about their applications. The proposed changes could complicate this process and potentially lead to delays.

Declarations of Interest

It is the responsibility of each individual to declare their interests.

Processes are in place for staff to declare any interests before commencing work. The employee with delegated authority is then not allowed to exercise their powers or discharge the duty of this delegation. The matter would instead need to be referred to another decision maker.

Council Members should submit their declarations to the CEO in writing prior to the meeting or verbally at the meeting immediately before the relevant matter is discussed. The Declaration of Interest form is provided to Council Members along with the agenda to facilitate timely disclosure. Additionally, Council Members and employees are prompted to declare any interests before discussions at Agenda Briefings and Council Meetings.

In conclusion, while the intention behind the proposed changes is appreciated, it is important to find the right balance between implementing these changes and managing administrative burdens. The current processes are designed to ensure efficient and effective communication and decision-making without placing undue strain on Shire staff.

10.1.2 Pedestrian Crossing

Report Details:

Prepared by: John Bailey, Shire Councillor

Manager: Nick O'Connor, Chief Executive Officer

File Reference: CNL 33

Voting Requirement: Simple Majority

Attachment(s):

Nil.

Elected Member Motion

That Council requests the Chief Executive Officer to advance a safe pedestrian crossing (refuge island) over the South Western Highway, (Bridgetown Road) Balingup to the Village Green play area and toilets.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 8 - Safe and convenient movement of people into and around the district.

Objective: 8.3 - Provide safe, well connected paths for pedestrians, cyclists and gophers.

Item: Nil.

Background

Several months ago, I initiated contact with both Main Roads and the Shire regarding the provision of a legally safe crossing. While initial discussions did not generate a clear resolution, some progress was made with Shire staff. However, this progress has since stalled.

Currently, the only safe refuge island crossing in town is located in front of the General Store, approximately 250 meters from the proposed crossing site. This distance poses a significant challenge for individuals with disabilities, who do not have a safe means to cross the highway. This situation could potentially be addressed through available funding sources.

Councillor Mitchell has engaged in informal discussions with Main Roads and may be able to provide additional information on this issue.

The safety of crossing the highway remains a serious concern for the general public, particularly for the elderly and children. I urge the council to consider this matter with the urgency it deserves.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Moderate	Moderate (9)
Risk Description:	The Shire may incur significant costs for the survey, design, and potential construction phases without guaranteed funding from MRWA.		
Mitigation:	Continue to advocate to MRWA for the inclusion of the pedestrian crossing in their planned works		

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Unlikely	Insignificant	Low (2)
Risk Description:	Delays or failure to deliver the project could impact the Shire's reputation and community trust.		
Mitigation:	Consult with the community to evaluate the project's priority before initiation, and subsequently keep the community informed about the project's progress and any potential delays.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Service Interruption	Likely	Moderate	High (12)
Risk Description:	Limited in-house capacity to manage the project may lead to delays and increased costs if outsourced.		
Mitigation:	Due to capacity constraints, outsource the survey and design work to ensure timely and professional completion.		

Financial Implications

The Shire will need to allocate funds for the survey and design phase to meet MRWA's satisfaction. The estimated cost for this phase ranges from \$10,000 to \$20,000. Given the Shire's current capacity constraints, it is recommended that this work be outsourced.

Further financial implications include the potential costs of construction, which remain unknown until the design phase is completed and approved by MRWA.

Policy Compliance

Nil.

Statutory Compliance

Nil.

Consultation

Consultation Between the Shire and Main Roads WA (MRWA)

The Shire has been in ongoing communication with MRWA regarding the project. Key points from recent correspondence include:

- MRWA has confirmed that the project can remain on the relevant report at the South West Regional Road Group (SWRRG) Elected Members meeting.
- The design for the intersection upgrade is well advanced, requiring only minor amendments.
- MRWA has acknowledged the impact of increased truck movements from the Greenbushes mine but noted that crash data is a significant factor in prioritising projects.
- The Shire has been advised that pedestrian safety improvements, including central island refuges, will be included in the project scope once funding is available.

Officer Comment

The planned upgrade of the South Western Highway intersection with Southampton Road was recently placed on hold by Main Roads Western Australia (MRWA), as referenced at the Regional Road Group (RRG) Elected Members Meeting held on 27th November 2023. This upgrade is understood to include two requested pedestrian crossings over the highway, with central island refuges.

Following this advice, the Shire sent a letter to MRWA requesting confirmation that the two pedestrian crossings will be included in the design. If MRWA does not include these crossings, the alternative would be for the Council to allocate the Shire's own funding.

The completed design would need to be approved by MRWA before any construction can commence. This process would require a detailed survey and the engagement of a road designer to undertake the design.

It is recommended that the Shire advocate to MRWA for the inclusion of the pedestrian crossings in their planned works. Alternatively, the Council should consider allocating funds for the survey and design phase in the next budget cycle.

10.1.3 Strategic Plan development - Senior High School for the district

Report Details:

Prepared by: John Bailey, Shire Councillor

Manager: Nick O'Connor, Chief Executive Officer

File Reference: CNL 33

Voting Requirement: Simple Majority

Attachment(s):

Nil.

Elected Member Motion

That Council:

1. Requests the Chief Executive Officer to develop a strategic plan aimed at securing a state-of-the-art senior high school for Donnybrook, to be presented at the December Ordinary Council Meeting.

Strategic Alignment

The following outcomes from the Council Plan relate to this proposal:

Outcome: 9 - A thriving economy.

Objective: 9.4 - Facilitate access to quality education, training and work opportunities to attract and retain students.

Item: Nil.

Elected Member Background

Currently, many students travel to Busselton and Bunbury for their education, resulting in the formation of friendships outside our Shire and a weakening of local connections. Establishing a senior high school in Donnybrook would not only retain our young people within the community but also bring substantial social and economic benefits to the entire Shire.

The development of a strategic plan aimed at securing a state-of-the-art senior high school for Donnybrook is essential. By getting Donnybrook on the list for a new high school, we can ensure that our community thrives and prospers.

Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Insignificant	Low (3)
Risk Description:	Inadequate Engagement Practices concerning community and stakeholder expectations and miscommunication.		
Mitigation:	Address this opportunity during the consultation phase of the upcoming review of the Council Plan and its objectives.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Possible	Minor	Moderate (6)
Risk Description:	Inadequate Resources: Insufficient allocation of resources such as budget, personnel, and time.		
Mitigation:	Address this opportunity during the consultation phase of the upcoming review of the Council Plan and its objectives along with careful consideration of the Shire's Long-Term Financial Plan.		

Financial Implications

Engaging consultants and experts, along with additional staff time and resources, will be required to develop the strategic plan, manage stakeholder engagement, and conduct community consultations, all of which will incur significant costs.

Policy Compliance

COMD/CP-3- Community Engagement Framework

Requires that the community is actively involved in the planning process through consultations and feedback sessions.

Statutory Compliance

Nil.

Consultation

Nil.

Officer Comment

While the proposal to develop a strategic plan for securing a state-of-the-art senior high school for Donnybrook has merit, it is suggested proposed action is deferred. Instead, it is suggested that this matter be addressed during the consultation phase of the upcoming review of the Council Plan and its objectives. This approach ensures that the proposal is thoroughly evaluated within the broader context of the Shire's strategic priorities and community needs.

The Integrated Planning and Reporting (IPR) process for local governments in Western Australia involves extensive community consultation and a careful consideration of the Long-Term Financial Plan. This process is designed to ensure that all significant projects and initiatives are aligned with the community's aspirations and the Shire's financial capacity. Developing a strategic plan for a new high school without this comprehensive consultation could lead to misalignment with the Shire's long-term goals and financial constraints.

An alternative approach would be to advocate to the state government on the importance of a new high school for the Donnybrook Balingup district. This advocacy could be incorporated into the IPR process during the review of the Council Plan (Strategic Community Plan). By raising this issue through the established planning framework, the Shire can ensure that the proposal is considered alongside other strategic priorities and receives the necessary support and resources for successful implementation.

DRAFT

11. New Business of an urgent nature introduced by Decision of the Meeting
Nil.

12. Meetings Closed to the Public

12.1. Matters for which the Meeting may be closed

12.1.1 RFT 01/2425 CUNDINUP KIRUP AND BALINGUP NANNUP ROAD UPGRADES

This report is confidential in accordance with Section 5.23(c) of the *Local Government Act 1995*, which permits the meeting to be closed to the public.

(c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.

12.2. Public reading of Resolutions that may be made public

Nil.

13. Closure

The Shire President to advise that the next Ordinary Council Meeting will be held on 27 November 2024 at 5:00PM, in the Shire of Donnybrook Balingup Council Chamber.