



## ITEMS FOR DEBATE

### COUNCIL MEETING 15 NOVEMBER 2023

#### **ADOPTION BY EXCEPTION RESOLUTION**

##### **RECOMMENDATION**

That the Committee Recommendations for items 10.1, 10.2, and 10.3 and the Officer Recommendations for items 11.2 and 15.1 be adopted en bloc:

10.1	Busselton Margaret River Airport Operations Update
10.2	List of Payments Made – September 2023
10.3	Monthly Financial Report – Year to Date 30 September 2023
11.2	DA21/0659 - Vacant Land (Bulk Fill of Future Subdivision) Special Control Area
15.1	Elected Member Information Bulletin

#### **ITEMS TO BE DEALT WITH BY SEPARATE RESOLUTION**

Item No.	Item Title	Reason
10.4	Budget Amendments – Infrastructure and Environment	Absolute Majority Required
11.3	2023/2024 Community Assistance Program Round 2 Outcomes	Disclosure of Impartiality Interest Maxine Palmer

## **ITEMS FOR DEBATE**

<b>Item No.</b>	<b>Application for Development Approval (DA22/0806) - Single House - Lots 41 &amp; 42 Caves Road, Marybrook</b>	<b>Pulled by</b>	<b>Page 35</b>
<b>11.1</b>		<b>Cr Cox</b>	

### **ALTERNATIVE RECOMMENDATION**

**That the Council determines:**

- 1. That application DA22/0806 submitted for development of a Single House on Lots 41 and 42 Caves Road, Marybrook is considered by the Council to not be consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located: and**
- 2. To refuse to grant development approval for the following reasons:**
  - a. It can be reasonably demonstrated that this proposal does not meet the following Design Principles 3.1 – Building Setbacks of the R-Codes. This application fails to satisfy the deemed to comply criteria of the R-Codes by requesting a significant reduction in the East boundary (1.5m instead of the required 7.5m) and West boundary (1.6m instead of the required 7.5m) setbacks. This will result in the bulk of the buildings being located far too close to the neighbouring boundaries and further, the loss of significant areas of native vegetation on these lots which are located wholly within an area of high landscape value.**
  - b. This site is zone residential R2.5 which subsequently allows for the construction of a single dwelling (1 dwelling per 4000m2). This development application could not be considered to be a single dwelling and is therefore inconsistent with the minimum area required per dwelling.**
  - c. This application does not comply with cl.5.4.2 of LPS 21 as the size and location of the building footprint will require the removal of a substantial amount of native WA Peppermint Tree's (*Agonis Flexuosa*) which will adversely impact the WRP habitat. In addition the requirement of additional siteworks and fill of up to 1.4m to achieve the finished floor of 3.4 AHD will also have a significantly detrimental effect on the flora located within these lots.**

### **REASONS FOR ALTERNATIVE**

- 1. This application comprises two lots, Lot 41 and 42. It has been identified in the Officers Report that the intention of the land owner is to apply to the WAPC to amalgamate these lots together to create one lot with an overall area of 4696m2. If this occurs, it will provide adequate space for the landowner to adhere to the 7.5m setbacks specified in Design Principles 3.1 – Building Setbacks of the R-Codes.**
- 2. The two separate built forms are of substantial size and yet classified by Officers as one dwelling. The main residence has 4 bedrooms, each with an ensuite. The second building identified as “sleeping accommodation” is 200m2 in size and comprises 3 bedrooms, 2 bathrooms and additional toilet facilities. Although the applicants have indicated that it is not their intention to install a kitchen or laundry into the “sleeping accommodation”, we cannot presuppose what this second building will be used for in the future if the property was to be sold.**

Due to the scale of the development it is reasonable to conclude that this proposal for a single dwelling is functionally capable of being characterised as two separate buildings. The argument that the “sleeping accommodation” could be retrofitted to be used as an independent dwelling is absolutely a relevant planning consideration.

3. The Department of Biodiversity, Conservation and Attractions (DBCA) commented in their submission that “the site contains extensive WA Peppermint Tree canopy with very high habitat suitability for the critically endangered Western Ringtail Possum. DBCA further noted that “the proponents should be required to refer their proposal to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) for assessment in accordance with the EPBC Act and no decision made on the development application until a decision on the referral has been made.” These lots are located within a landscape value area and the application for development will result in the removal of a substantial amount of significant remnant vegetation. The applicant has outlined that 51% of the vegetation will be retained, however without undertaking a comprehensive flora and fauna survey, it is difficult to assess whether this figure is accurate. I am not comfortable supporting an application without a further more comprehensive assessment of any adverse impact to the environment.

#### **OFFICER COMMENT**

##### **State Planning Policy 7.3 Residential Design Codes:**

- While the lots have a residential density of R2.5, they are more closely aligned, in terms of size and frontage, to an R10 or R12.5 density. Historically, these lots were coded R2.5 to prevent further subdivision of the area as they are not connected to deep sewerage. That means, however, that the lots are much narrower than would normally be the case with R2.5 coded lots and as a result development is not able to meet R2.5 setback standards.
- The frontage (width) of the lots are 18m and 25m – as noted above, equivalent to an R10 or greater density. If the 7.5m deemed to comply side setback of the R2.5 density coding were strictly applied to these two lots, as individual lots they would have 3m wide and 10m developable strips in the middle. Certainly that would make one of the lots essentially undevelopable. However, if the lots were coded R10, the side setback would be based on the height and length of the wall (as per Table 2 of the R-Codes).
- That would result, given the height and length of the wall, in a deemed-to-comply setback of 2.3 metres to the western boundary, whereas 1.5m is proposed.
- To the eastern boundary, it would result in a deemed-to-comply setback of 2.5 metres to the western boundary, whereas 1.6m is proposed.

##### **Footprint of the proposed development**

- Clause 4.3 of the Scheme prescribes a building envelope on land coded R2, R2.5 and R5 of 1,000m<sup>2</sup>. As the development is across two lots, two building envelopes of 1,000m<sup>2</sup> could be proposed in accordance with the Scheme. However, in this instance, the development proposes a building footprint of less than 1,000m<sup>2</sup> across the two lots. In addition, the development complies with the deemed-to-comply criteria of *State Planning Policy 7.3 Residential Design Codes* (R-codes) in relation to open space of 80%.

### **Dwelling Design**

- While the development is proposed to be two buildings it is considered that overall the development will function as a Single House with the two buildings reliant on shared facilities, including a kitchen and driveway.
- Notwithstanding the above, the development is across two lots which the applicant has proposed to amalgamate into one. Currently, each of the lots have their own dwelling and the owner has a right to develop a dwelling on each of the lots. The applicant is proposing to amalgamate the lots and therefore will remove their development potential for two dwellings.
- If the amalgamation was not proposed, a condition requiring a boundary realignment to ensure the structural elements of each building are contained on a single lot could be proposed. A boundary realignment would still allow for 2 dwelling on the 2 lots (1 dwelling per lot with the potential for an ancillary dwelling).

### **Non-compliance:**

- The City cannot refuse an application for Development Approval based on future potential non-compliance and must assess an application based on its merits as they are proposed, unless it is clear that conditions/requirements were unworkable or unenforceable and that the consequences of that render the development unsupportable.

### **Landscape Value Area:**

- The intent of the Landscape Value Area is to provide the City the opportunity to consider the visual impact of development from public spaces as well as the clearing of vegetation in areas where the City would not otherwise have controls in relation to these matters. It is considered, that due to the amount of vegetation proposed to be retained as well as the single storey design, that the development will not detract from the visual amenity / scenic character when viewed from Caves Road to the south or the foreshore reserve to the north. In relation to the clearing of vegetation, it is considered that the amount of vegetation to be removed is appropriate to facilitate development and is discussed further below.

### **Clearing:**

- The extent of clearing proposed is only for the development footprint and fire prevention which is considered reasonable based in size (above).
- The application was referred to Department of Biodiversity, Conservation and Attractions who advised that it is the proponent's obligation to refer the application to refer an application to the Federal Department of Climate Change, Energy, the Environment and Water. The City can only advise an applicant of their obligations under different legislation and it is proposed that, should the application be approved, an advice note regarding this will be included on the decision. A copy of the referral comments from DBCA are provided as an attachment to the Council report.

- It is considered that relocating the development to the centre of the lot has the potential to require the removal of additional vegetation as the current locations located closer to the adjoining properties has an overlapping Asset Protection Zone (APZ).
- It is arguable that the City could have required submission of a flora survey to allow more detailed examination of the impact of the clearing. The City, however, usually seeks to take a practical approach and does not generally require single house applicants to provide flora surveys in support of applications.

**LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT**

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations* 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

Item No.	Application for Development Approval (DA22/0806) - Single House - Lots 41 & 42 Caves Road, Marybrook	Pulled by	Page 35
11.1		Cr Ryan	

### **ALTERNATIVE RECOMMENDATION**

**That the Council determines:**

1. **That application DA22/0806 submitted for development of a Single House on Lots 41 and 42 Caves Road, Marybrook is considered by the Council to not be consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located: and**
2. **To refuse to grant development approval for the following reasons:**
  - a. **The development is not considered a single house but more than one dwelling and is therefore inconsistent with the minimum site area per dwelling requirements of the R2.5 density code (4,000m<sup>2</sup> per dwelling).**
  - b. **The development does not comply with cl. 5.4.2 (b) and (c) of LPS 21 as the building footprint requires removal of substantial strands of native vegetation, including Peppermint trees (*Agonis flexuosa*) which provide the habitat and the primary food source for the ‘critically endangered’ Western Ringtail Possums, which species are protected by Federal legislation.**
  - c. **The significantly reduced setbacks to the boundaries and the sprawl of the dwellings across the lots do not satisfactorily meet the relevant Design Principles 3.1 – Building Setback of the R Codes. The buildings are set far too close to the lot boundaries and require the removal of substantial areas of native vegetation which in doing so, increases the impact of building bulk on the neighbouring properties in a low-density residential area, the character of which is defined by its exceptionally high-quality landscape values and natural environment qualities.**
  - d. **The amenity of the neighbours will be severely impacted.**

### **REASONS FOR ALTERNATIVE**

1. The proposed development in form and layout is not a single dwelling, irrespective of the current Applicant intentions. It could easily be converted to two (2) grouped dwellings which would then not meet the minimum area requirements under the R2.5 density code.
2. The Department of Biodiversity, Conservation and Attractions (DBCA) has advised the Council that a Western Ringtail Possum Survey was not submitted within the Application. It states in its referral response that both lots contain ‘extensive WA peppermint tree overstorey canopy’ which have a ‘very high habitat suitability for the critically endangered Western Ringtail Possum’. The proposed development requires substantial clearing of this habitat. For this reason, and particularly in the absence of a proper survey, the DBCA have firstly recommended a referral to the Government Department of Climate Change, Energy, the Environment and Water (DCCEEW) for assessment in relation to clearing threatened fauna habitat, in accordance with the EPBC Act.

The subject lots are identified as being within a mapped core habitat area for the endangered Western Ringtail Possum. The 'Significant Impact Guidelines' of the DCCEEW identify that clearing of more than 50% of a remnant habitat that is between 0.1 and 0.5 hectares in size is a significant impact. The Applicant response states that 51% is to be retained. Although this number might be just below the 50% threshold requirement stated in the Guidelines, the development clearly represents a substantial reduction to the core habitat area protected by the Australian Government. This measure is provided as a guideline to the Council, suggesting that 50% clearing or more is too great a loss to this now critically endangered species. 49% clearing is considered to be far too close to the 50% or more guideline measure, for the Council to be comfortable to support the development as proposed. Where there are environmental values at stake, there should be a pre-cautionary approach with a proper survey or referral to DCCEEW first undertaken.

3. For the above reasons, the development has little regard for the landscape, environmental and amenity values of this location and therefore should not be supported in its current form.

#### **OFFICER COMMENT**

##### **Dwelling Design**

- While the development is proposed to be two buildings it is considered that overall the development will function as a Single House with the two buildings reliant on shared facilities, including a kitchen and driveway.
- Notwithstanding the above, the development is across two lots which the applicant has proposed to amalgamate into one. Currently, each of the lots have their own dwelling and the owner has a right to develop a dwelling on each of the lots. The applicant is proposing to amalgamate the lots and therefore will remove their development potential for two dwellings.
- If the amalgamation was not proposed, a condition requiring a boundary realignment to ensure the structural elements of each building are contained on a single lot could be proposed. A boundary realignment would still allow for 2 dwelling on the 2 lots (1 dwelling per lot with the potential for an ancillary dwelling).

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development complies with the deemed-to-comply criteria of *State Planning Policy 7.3 Residential Design Codes* (R-codes) in relation to open space of 80%.

#### **State Planning Policy 7.3 Residential Design Codes:**

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<b>Item No.</b> <b>14.1</b>	<b>2024 Council and Committee Dates</b>	<b>Pulled by</b> <b>Cr Macnish</b>	<b>Page</b> <b>71</b>
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#### **ALTERNATIVE RECOMMENDATION**

That the Council adopts the following schedule for Ordinary Meetings of Council and Committees of Council in the 2024 calendar year:

	<b>Ordinary Meeting of Council</b>	<b>Finance Committee*</b>	<b>Airport Advisory Committee*</b>	<b>Audit and Risk Committee*</b>	<b>Policy &amp; Legislation Committee*</b>	<b>CEO Performance Review Committee*</b>	<b>Meetup Regional Park Committee*</b>
<b>Jan</b>	31-Jan-24				24-Jan-24		
<b>Feb</b>	21-Feb-24	07-Feb-24	07-Feb-24				
<b>Mar</b>	20-Mar-24	06-Mar-24		13-Mar-24	20-Mar-24		06-Mar-24
<b>Apr</b>	17-Apr-24	03-Apr-24	03-Apr-24			10-Apr-24	
<b>May</b>	15-May-24	01-May-24		08-May-24	15-May-24		
<b>June</b>	19-Jun-24	05-Jun-24	05-Jun-24				
<b>July</b>	31-Jul-24	24-Jul-24		24-Jul-24	31-Jul-24	31-Jul-24	
<b>Aug</b>	21-Aug-24	07-Aug-24	07-Aug-24				
<b>Sept</b>	18-Sep-24	04-Sep-24			18-Sep-24		
<b>Oct</b>	16-Oct-24	02-Oct-24	02-Oct-24			09-Oct-24	
<b>Nov</b>	20-Nov-24	06-Nov-24		13-Nov-24	20-Nov-24		06-Nov-24
<b>Dec</b>	11-Dec-24	04-Dec-24	04-Dec-24				

\* The meeting dates represent the minimum number to be held as prescribed in the Terms of Reference for each committee. Clause 3.4 of the City of Busselton *Standing Orders Local Law 2018* allows for additional meetings to be convened throughout the year as required.

#### **REASONS FOR ALTERNATIVE**

The Terms of Reference (ToR) for each committee sets out the minimum number of meetings per annum, for instance ToR for the ARC states the committee will meet at least four times per year.

Additional meetings can be called as required and the ability to do this should be noted. For instance, the City's Auditor noted the ARC needed to improve (and had no Audit Plan); and to develop an Audit Plan there will need to be more meetings than have historically been the case.

#### **OFFICER COMMENT**

Officers acknowledge that there could be a need for more meetings of a Committee from time to time and have no issues with the inclusion of a note to that effect.

Note, officers have incorporated an amendment to the dates for July with the previous Finance Committee date of 3 July 2024 being moved to 24 July 2024 to avoid Council recess and P&L Committee being moved to 31 July 2024.

#### **LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT**

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations 1996*, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

<b>Item No.</b> <b>14.1</b>	<b>2024 Council and Committee Dates</b>	<b>Pulled by</b> <b>Cr Ryan</b>	<b>Page</b> <b>71</b>
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#### **ALTERNATIVE RECOMMENDATION**

That the Council adopts the following schedule for Ordinary Meetings of Council and Committees of Council in the 2024 calendar year, with the Ordinary Council meeting dates returning to a fortnightly schedule:

	<b>Ordinary Meeting of Council</b>	<b>Finance Committee</b>	<b>Airport Advisory Committee</b>	<b>Audit and Risk Committee</b>	<b>Policy &amp; Legislation Committee</b>	<b>CEO Performance Review Committee</b>	<b>Meelup Regional Park Committee</b>
<b>Jan</b>	31-Jan-24				24-Jan-24		
<b>Feb</b>	14-Feb-24	07-Feb-24	07-Feb-24				
<b>Feb</b>	28-Feb-24						
<b>Mar</b>	13-Mar-24	06-Mar-24		13-Mar-24			06-Mar-24
<b>Mar</b>	27-Mar-24				20-Mar-24		
<b>Apr</b>	10-Apr-24	03-Apr-24	03-Apr-24			10-Apr-24	
<b>Apr</b>	24-Apr-24						
<b>May</b>	8-May-24	01-May-24		08-May-24			
<b>May</b>	22-May-24				15-May-24		
<b>June</b>	12-Jun-24	05-Jun-24	05-Jun-24				
<b>July</b>	24-Jul-24	17-Jul-24		17-Jul-24	24-Jul-24	24-Jul-24	
<b>Aug</b>	14-Aug-24	07-Aug-24	07-Aug-24				
<b>Aug</b>	28-Aug-24						
<b>Sept</b>	11-Sep-24	04-Sep-24					
<b>Sept</b>	25-Sep-24				18-Sep-24		
<b>Oct</b>	9-Oct-24	02-Oct-24	02-Oct-24			09-Oct-24	
<b>Oct</b>	23-Oct-24						
<b>Nov</b>	13-Nov-24	06-Nov-24		13-Nov-24			06-Nov-24
<b>Nov</b>	27-Nov-24				20-Nov-24		
<b>Dec</b>	11-Dec-24	04-Dec-24	04-Dec-24				

#### **REASONS FOR ALTERNATIVE**

It was my understanding that the monthly meetings were a trial. Since the inception of the monthly meetings, it has become apparent that there more are late items of business and Special Council Meetings that have been scheduled compared to when we had fortnightly meetings.

Councillors are having to deal with a great deal of documentation at the monthly meetings and it is onerous to say the least.

#### **OFFICER COMMENT**

Officers favour a monthly meeting schedule from an efficiency and planning viewpoint, with two meetings per month adding an administrative overhead with respect to the preparation of agendas and minutes and officer (and Councillor) time. One meeting per month is favourable with respect to planning internally for agenda items and allows officers to focus more specifically on

one set of agenda items at a time. Having said this officers recognise that agendas are generally larger with only one meeting.

If this was to be adopted the finance committee meeting scheduled as part of the officer recommendation for 3 July 2024 would fall during Council's recess and has therefore been moved to the 17 July 2024. (Note it has also been amended in an amended officer recommendation as it falls into recess there too). Audit and Risk has also been moved to this date, and Policy and Legislation plus CEO Performance Review Committee meetings have been moved to 24 July 2024 (from the 31 July 2024).

Council mid-year recess would be adjusted to 13 June 2024 – 14 July 2024. PAP and CAS would need to be combined to the 1<sup>st</sup> and 3<sup>rd</sup> weeks (although this is not necessary as part of the recommendation).

**LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT**

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations 1996*, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

<b>Item No.</b> <b>14.1</b>	2024 Council and Committee Dates	<b>Pulled by Officers</b>	<b>Page 71</b>
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#### **AMENDED RECOMMENDATION**

That the Council adopts the following schedule for Ordinary Meetings of Council and Committees of Council in the 2024 calendar year:

	<b>Ordinary Meeting of Council</b>	<b>Finance Committee*</b>	<b>Airport Advisory Committee*</b>	<b>Audit and Risk Committee*</b>	<b>Policy &amp; Legislation Committee*</b>	<b>CEO Performance Review Committee*</b>	<b>Meelup Regional Park Committee*</b>
<b>Jan</b>	31-Jan-24				24-Jan-24		
<b>Feb</b>	21-Feb-24	07-Feb-24	07-Feb-24				
<b>Mar</b>	20-Mar-24	06-Mar-24		13-Mar-24	20-Mar-24		06-Mar-24
<b>Apr</b>	17-Apr-24	03-Apr-24	03-Apr-24			10-Apr-24	
<b>May</b>	15-May-24	01-May-24		08-May-24	15-May-24		
<b>June</b>	19-Jun-24	05-Jun-24	05-Jun-24				
<b>July</b>	31-Jul-24	24-Jul-24		24-Jul-24	31-Jul-24	31-Jul-24	
<b>Aug</b>	21-Aug-24	07-Aug-24	07-Aug-24				
<b>Sept</b>	18-Sep-24	04-Sep-24			18-Sep-24		
<b>Oct</b>	16-Oct-24	02-Oct-24	02-Oct-24			09-Oct-24	
<b>Nov</b>	20-Nov-24	06-Nov-24		13-Nov-24	20-Nov-24		06-Nov-24
<b>Dec</b>	11-Dec-24	04-Dec-24	04-Dec-24				

#### **REASONS FOR ALTERNATIVE**

Officers have realised that the previously proposed 3 July 2024 date for the Finance Committee meeting falls during Council recess and so propose an amendment to the dates for July with the Finance Committee being moved to 24 July 2024 and the Policy and Legislation Committee being moved to 31 July 2024.

#### **OFFICER COMMENT**

As above

#### **LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT**

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations* 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

Item No. 18.1	Saltwater Project Update <b><i>CONFIDENTIAL ITEM</i></b>	Pulled by Officers	Page 3 Supp Agenda
<b><u>ALTERNATIVE RECOMMENDATION</u></b>			
<b>That the Council adopt the Officer Recommendation as outlined in confidential Attachment 1.</b>			
<b><u>REASONS FOR ALTERNATIVE</u></b>  Officers have amended the recommendation in response to commentary and requests for additional information from Councillors during the briefing session on this item.			
<b><u>OFFICER COMMENT</u></b>  As above.			
<b><u>LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT</u></b>  Pursuant to regulation 11(da) of the <i>Local Government (Administration) Regulations</i> 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.			