



ITEMS FOR DEBATE

COUNCIL MEETING 24 NOVEMBER 2021

ADOPTION BY EXCEPTION RESOLUTION

RECOMMENDATION

That the Committee Recommendations for items 12.1 and 12.2 and the Officer Recommendations for items 14.1, 16.1 and 17.1 be adopted en bloc:

- 12.1 Finance Committee - 10/11/2021 - LIST OF PAYMENTS MADE - SEPTEMBER 2021
- 12.2 Finance Committee - 10/11/2021 - FINANCIAL ACTIVITY STATEMENTS - YEAR TO DATE AS AT 30 SEPTEMBER 2021
- 14.1 RFQ 64/21 ASPHALT AND SPRAY SEAL SERVICES
- 16.1 PROPOSED COUNCIL MEETING DATES 2022
- 17.1 COUNCILLORS' INFORMATION BULLETIN

ITEMS TO BE DEALT WITH BY SEPARATE RESOLUTION (WITHOUT DEBATE)

Item No.	Item Title	Reason
20.1	RFT 04/21 ROAD NETWORK UPGRADE PEEL TERRACE/CAUSEWAY ROAD INTERSECTION UPGRADE STAGE	Confidential Item

ITEMS FOR DEBATE

Item No. 13.1	AMENDMENT NO. 40 (MODIFICATIONS TO THE ZONING TABLE) - CONSIDERATION FOR FINAL ADOPTION	Pulled by Cr Love	Page 48
<p><u>ALTERNATIVE RECOMMENDATION</u></p> <p>That the Council:</p> <p>I. In pursuance of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, adopts Amendment No. 40 to the City of Busselton Local Planning Scheme No.21 for final approval, in accordance with the modifications proposed in the ‘Schedule of Modifications’ shown at Attachment A, and subject to the inclusion of a further modification in relation to the use class ‘Service Station’, to replace the symbol ‘D’ with the symbol ‘A’ in the ‘Local Centre’ and ‘Service Commercial’ zones, for the purposes of:</p> <ol style="list-style-type: none"> 1. Amending clause 3.5 “Exceptions to the Zoning Table” by: <ol style="list-style-type: none"> a) Inserting a new sub-clause 3.5.3(e) as follows: <p style="margin-left: 40px;"><i>other than with respect to a Lunch Bar or Service Station, the sale of the following goods or products by retail or wholesale to the public from land in the Service Commercial, Light Industry or General Industry zone:</i></p> <ol style="list-style-type: none"> (i) <i>foodstuffs, liquor or beverages;</i> (ii) <i>items of clothing or apparel;</i> (iii) <i>magazines, newspapers, books or paper products;</i> (iv) <i>medicinal or pharmaceutical products;</i> (v) <i>china, glassware or domestic hardware other than building supplies; or</i> (vi) <i>items of personal adornment;</i> <p style="margin-left: 40px;"><i>unless such goods are manufactured on the lot;</i></p> b) Deleting sub-clause 3.5.4(d); c) Deleting sub-clause 3.5.4(e); and d) Renumbering sub-clause 3.5.4(f) to 3.5.4(d); 2. Amending Table 1 “Zoning Table” by, in relation to the use class ‘Bulky Goods Showroom’, replace the symbol ‘P’ with the symbol ‘D’ in the ‘Regional Centre’, ‘Centre’, ‘Local Centre’ and ‘Service Commercial’ zones; 3. Amending Division 2 of Schedule 1 “Interpretations” by modifying the definition of ‘Bulky Goods Showroom’ to replace “or” between parts (a) and (b) with “and”; 4. Amending Table 1 “Zoning Table” by – <ol style="list-style-type: none"> a) In relation to the use class ‘Aged Persons Home’, replace the symbol ‘A’ with the symbol ‘X’ in the ‘Rural’ zone; b) In relation to the use class ‘Amusement Parlour’, replace the symbol ‘D’ with the symbol ‘X’ in the ‘Service Commercial’, ‘Light Industry’ and ‘General Industry’ zones; c) Modifying the title ‘Ancillary Accommodation’ to read ‘Ancillary Dwelling’ and associated references throughout the Scheme accordingly; 			

- d) Inserting the use class 'Art Gallery' and allocating –
 - (i) the symbol 'D' to the 'Regional Centre', 'Centre', 'Local Centre', 'Tourism', 'Rural' and 'Viticulture and Tourism' zones;
 - (ii) the symbol 'A' to the 'Rural Residential' zone; and
 - (iii) the symbol 'X' to the 'Residential', 'Service Commercial', 'Light Industry', 'General Industry', 'Rural Landscape', 'Conservation' and 'Bushland Protection' zones;
- e) In relation to the use class 'Brewery', replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' zone;
- f) In relation to the use class 'Bus Depot', replace the symbol 'D' with the symbol 'X' in the 'Rural' zone;
- g) In relation to the use class 'Cinema/Theatre', replace the symbol 'D' with the symbol 'X' in the 'Service Commercial' zone;
- h) In relation to the use class 'Convenience Store', replace the symbol 'D' with the symbol 'X' in the 'Service Commercial', 'Light Industry' and 'General Industry' zones;
- i) In relation to the use class 'Corner Shop' –
 - (i) replace the symbol 'P' with the symbol 'X' in the 'Service Commercial' zone; and
 - (ii) replace the symbol 'D' with the symbol 'X' in the 'Light Industry' and 'General Industry' zones;
- j) In relation to the use class 'Exhibition Centre', replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' zone;
- k) In relation to the use class 'Fuel Depot', replace the symbol 'P' with the symbol 'D' in the 'Light Industry' and 'General Industry' zones;
- l) In relation to the use class 'Garden Centre', replace the symbol 'A' with the symbol 'X' in the 'Regional Centre', 'Centre', 'Local Centre' and 'Rural Residential' zones;
- m) In relation to the use class 'Hospital', replace the symbol 'A' with the symbol 'X' in the 'Rural Landscape' zone;
- n) In relation to the use class 'Hotel', replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' zone;
- o) In relation to the use class 'Liquor Store – Large', replace the symbol 'P' with the symbol 'D' in the 'Regional Centre', 'Centre' and 'Local Centre' zones;
- p) In relation to the use class 'Liquor Store – Small', replace the symbol 'P' with the symbol 'D' in the 'Local Centre' zone;
- q) In relation to the use class 'Market' –
 - (i) replace the symbol 'D' with the symbol 'X' in the 'Service Commercial', 'Light Industry', 'General Industry', 'Rural' and 'Viticulture and Tourism' zones; and
 - (ii) replace the symbol 'A' with the symbol 'X' in the 'Rural Residential' zone;

- r) In relation to the use class 'Medical Centre', replace the symbol 'D' with the symbol 'X' in the 'Light Industry' and 'General Industry' zones;
- s) In relation to the use class 'Motel', replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' zone;
- t) In relation to the use class 'Motor Vehicle, Boat or Caravan Sales' –
 - (i) replace the symbol 'D' with the symbol 'X' in the 'Regional Centre', 'Centre' and 'Local Centre' zones; and
 - (ii) replace the symbol 'P' with the symbol 'D' in the 'Service Commercial', 'Light Industry' and 'General Industry' zones;
- u) In relation to the use class 'Motor Vehicle Repair', replace the symbol 'P' with the symbol 'D' in the 'Light Industry' zone;
- v) In relation to the use class 'Reception Centre', replace the symbol 'D' with the symbol 'X' in the 'Service Commercial' zone;
- w) In relation to the use class 'Residential Building', replace the symbol 'X' with the symbol 'D' in the 'Regional Centre' and 'Centre' zones;
- x) In relation to the use class 'Restaurant/Café', replace the symbol 'D' with the symbol 'X' in the 'Service Commercial' zone;
- y) In relation to the use class 'Restricted Premises', replace the symbol 'D' with the symbol 'X' in the 'Service Commercial' zone;
- z) In relation to the use class 'Service Station', replace the symbol 'A' with the symbol 'X' in the 'Rural' zone;
- aa) In relation to the use class 'Small Bar', replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' and 'Light Industry' zones;
- bb) In relation to the use class 'Takeaway Food Outlet', replace the symbol 'A' with the symbol 'D' in the 'Regional Centre' and 'Centre' zones;
- cc) In relation to the use class 'Tavern', replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' and 'Light Industry' zones;
- dd) In relation to the use class 'Trade Supplies' –
 - (i) replace the symbol 'P' with the symbol 'D' in the 'Regional Centre', 'Centre', 'Local Centre' and 'Service Commercial' zones; and
 - (ii) replace the symbol 'X' with the symbol 'D' in the 'General Industry' zone;
- ee) In relation to the use class 'Veterinary Centre', replace the symbol 'P' with the symbol 'D' in the 'Service Commercial' zone;
- ff) In relation to the use class 'Winery' –
 - (i) replace the symbol 'D' with the symbol 'A' in the 'Regional Centre', 'Centre' and 'Local Centre' zones;
 - (ii) replace the symbol 'P' with the symbol 'D' in the 'Light Industry' zone;
 - (iii) replace the symbol 'X' with the symbol 'D' in the 'General Industry' zone; and

- (iv) replace the symbol 'A' with the symbol 'X' in the 'Service Commercial' and 'Rural Landscape' zones;

- 5. Inserting new sub-clause 4.19 as follows, and renumbering subsequent clauses accordingly:

4.19 BREWERIES AND WINERIES

4.19.1*The development of a Brewery or a Winery within the Service Commercial, Light Industry and General Industry zones shall be primarily for the production, storage and/or distribution of the product. The following restrictions shall apply –*

- (a) *consumption of the product at the site shall be limited to tastings only, being incidental to the production of the product on site, with maximum serving sizes of:*
 - (i) *50mls for wine;*
 - (ii) *100mls for beer/cider; and*
 - (iii) *15mls for spirits;*
- (b) *no dining on the premises or the consumption or service of food shall take place;*
- (c) *patronage at the site shall not exceed 30 people at any one time; and*
- (d) *customers visiting the site for the purpose of tasting and/or sales are restricted to Monday to Sunday, including public holidays, between the hours of 12.00pm and 5.00pm."*

- 6. Amending Additional Use No. 74 within Schedule 2 by inserting 'Car Park' within the list of land uses permitted.

II. Advises the Western Australian Planning Commission that Amendment No. 40 is considered a 'standard' amendment pursuant to the *Planning and Development (Local Planning Scheme) Regulations 2015* for the following reasons:

- 1. An amendment relating to a zone or reserve that is consistent with the objectives identified in the Scheme for that zone or reserve;
- 2. An amendment that is consistent with a local planning strategy for the Scheme that has been endorsed by the Commission; and
- 3. An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the Scheme area.

III. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, endorses the Summary of Submissions at Attachment B, which has been prepared in response to the public consultation process undertaken in relation to Amendment No. 40.

IV. Upon preparation of the necessary documentation, refers the adopted Amendment No. 40 to the Western Australian Planning Commission for consideration and determination in accordance with the *Planning and Development Act 2005*.

V. Pursuant to r.56 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, should directions be given that modifications to Amendment No. 40 are required, direct these modifications to be undertaken accordingly, on behalf of the Council, unless they are considered by Officers likely to significantly affect the purpose and intent of the Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.

REASONS FOR AMENDMENT / ALTERNATIVE

I believe that there has been quite a strong expression of community distaste for any further Service Station proposals. I believe that with modifying the symbol 'D' with the symbol 'A' in the 'Local Centre' and 'Service Commercial' zones will help alleviate the public's concerns that they will not be consulted with, in regards to any future Service Station proposals. The 'A' use permissibility means that 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. Essentially this will mean there are set advertising requirements for any Service Station proposals for the 'Local Centre' and 'Service Commercial' zones, which should in turn help to ensure the public feel that their concerns have been taken into consideration on any proposed Service Station developments.

OFFICER COMMENT

Officers are broadly supportive of the change for the 'Local Centre' and 'Service Commercial' zone. Land in those zones can contain some relatively sensitive land-uses, and can also be in close proximity to residential areas.

The three recent development applications for 'Service Station' that have been proposed within these subject zones have been publicly advertised by the City, despite having the 'D' permissibility designation. The applications have been referred directly to nearby landowners and relevant external referral agencies (Department of Water and Environmental Regulation, Department of Mines, Industry Regulation and Safety, Busselton Water and Western Power). Each of these applications have received significant interest from the community.

The Regulations state that modifications can be proposed to address issues raised in the submissions. As there are no submissions directly relevant to this matter, the Western Australian Planning Commission may not accept the proposed modification.

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. 13.1	AMENDMENT NO. 40 (MODIFICATIONS TO THE ZONING TABLE) - CONSIDERATION FOR FINAL ADOPTION	Pulled by Cr Ryan	Page 48
<p><u>ALTERNATIVE RECOMMENDATION</u></p> <p>That Amendment No. 40 to the City of Busselton Local Planning Scheme No.21 is not supported.</p>			
<p><u>REASONS FOR ALTERNATIVE</u></p> <p>With the advent of the internet, the retail landscape has changed dramatically. Anyone can shop with the click of the keyboard and buy anything locally, interstate, or internationally with no consideration to a planning scheme. This impact has been a major factor in the death of CBD's, why would we want to potentially penalise those that have bricks and mortar outlets anywhere in our City?</p> <p>The proposed amendment could unintentionally impact landowners and tenants who have already invested in our Service Commercial, Light Industry, and General Industry zones by restricting complementary uses.</p> <p>This amendment could potentially inhibit business as opposed to streamlining and removing red tape.</p>			
<p><u>OFFICER COMMENT</u></p> <p>For reasons already set out in the Officer Report, it is considered that changes to the Scheme to create the right controls and incentives to support the continued vibrancy of and investment in our town centres is required. As such, the alternative recommendation is not supported by officers.</p> <p>Should the Council be minded to support the aim or intent of the alternative, however, it would require some redrafting, as the Council is required to make a recommendation to the WAPC, and is also required to adopt a Schedule of Submissions. Pre-emptive of this, Officers will formulate a re-drafted alternative recommendation in consultation with Cr Anne Ryan prior to the meeting.</p>			
<p><u>LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT</u></p> <p>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.</p>			

Item No. 14.2	RFT 22/21 CONSTRUCTION OF THE BUSSELTON PERFORMING ARTS AND CONVENTION CENTRE (BPACC)	Pulled by Cr Ryan	Page 209
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ALTERNATIVE RECOMMENDATION

1. That the City decline to accept any tender for the Performing Arts and Convention Centre.
2. Acknowledges the financial support provided by the Commonwealth Government and the advocacy of our Federal Member the Hon. Nola Marino MP and note the disappointing lack of State Government funding for this priority project.
3. Seek Commonwealth Government Department approval to vary the Regional Growth Fund grant and recoup any design and professional fees of approximately \$1.8m incurred to date on the BPACC project.
4. Seek to enlist Commonwealth Government Departmental and Ministerial approval to quarantine and reallocate the balance of funding of the City's Regional Growth Fund grant towards the provision of a new airport terminal or Busselton Jetty AUDC.
5. Further revisit the project as a priority project in 2023, alongside an interim review of the LTFP and SCP, then clearly articulate to the community when a performing arts project will be delivered.

REASONS FOR ALTERNATIVE

A referendum, requested at a General Meeting of Electors in February this year, was rejected by the previous Council. The City then went out to "community consultation" which came back with a resounding response of 53% who said 'No', add 11% who said they would be happy with a lesser option B, equals 64%. The community should be acknowledged and respected and to be manipulating the results to suggest it was evenly split is an insult. This, compared to 34% who said they wanted Option A. The community were also not told that the \$38m was for build only and that the project will end up costing ratepayers approximately \$50m plus substantial annual losses, not to mention rate rises which are crippling many.

The project went from an \$18m project for a community hall to one which is a build at any cost, run at any loss proposition.

The latest tender suggests there would be "minor variations" to bring it to \$38m, these minor variations account to millions and the CEO has deemed that he will not exercise his power under the delegations given to him. Once again, this is still the build only figure.

The Minister for Regional Development recently wrote to the City suggesting that ratepayers should cover the full debt required to complete the build despite every other performing arts project funded by Governments. This would, in effect, mean that ratepayers will be funding in reality closer to \$40m in loans, land sales, reserve funds, and other grant money that has been re-directed to this project.

In these uncertain times there would be no shame in requesting the Federal Government Grant for \$10.35m be directed to the AUDC or the Airport.

OFFICER COMMENT

The alternative largely aligns with the option presented in the report by officers.

However officers are of the opinion that we should continue to pursue funding from the State and Federal Governments to enable the best opportunity for the project to proceed in the future; also noting that there may be additional opportunities presented in the lead up to Federal Government elections.

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. 16.2	DISPOSITION OF PROPERTY LOTS 58 & 59 CHAPMAN HILL ROAD AND LOT 60 QUEEN ELIZABETH ROAD, AMBERGATE, REPORT ON SUBMISSIONS RECEIVED IN RESPONSE TO LOCAL PUBLIC NOTICE UNDER SECTION 3.58 LOCAL GOVERNMENT ACT 1995	Pulled by Cr Ryan	Page 225
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ALTERNATIVE RECOMMENDATION

That the Council discontinues plans for the sale of Lots 58 and 59 Chapman Hill Road and Lot 60 Queen Elizabeth Road, Ambergate.

REASONS FOR ALTERNATIVE

There is no compelling reason to sell this land. It has been an asset owned by the City (ratepayers) for many years. To now want to sell it without justification on what it is going to be spent on is a bad business proposition.

This Council has not been presented with a compelling business case on what the sale proceeds will be diverted to nor any options to consider the merits of borrowing, funding from reserves, or any other scenario, except the sale of this valuable asset which will be deposited into an infrastructure reserve – to what end?

OFFICER COMMENT

The decision before Council is whether, having considered the submissions received in response to the public notice (of disposal), to proceed with the disposal of Lots 58 and 59 Chapman Hill Road and Lot 60 Queen Elizabeth Road, Ambergate (**Land**) on the terms outlined in the report.

Council, in September 2021, resolved to dispose of the Land. This decision furthered a previous Council decision in March where the Land was identified as no longer required to be retained for strategic purposes and approved the advertising of an Expression of Interest for the disposal of the Land.

The Council's current Long Term Financial Plan 2021-2031 (**LTFP**), endorsed by Council in March 2021 identifies the sale of the Land as a funding source in FY22/23 for a future strategic land purchase for colocation of large sports and event activities. As part of the LTFP process Council considers various funding methods to meet the community's needs, including borrowing, sale of assets, grant funding and funding from reserves.

A formal business plan for the sale of the Land is not required under the *Local Government Act 1995* because the disposal does not meet the requirements of a major land transaction.

Factors that support the sale of the Land are outlined in the officer report including that the sale of the Land is consistent with the strategic direction of Council; is consistent with the LTFP; and the proposed sale price for the Land represents an 18% premium to the independent market valuation obtained in July 2021.

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.