



## **ITEMS FOR DEBATE – COUNCIL MEETING 9 MARCH 2022**

### **ADOPTION BY EXCEPTION RESOLUTION**

#### **RECOMMENDATION**

That the Committee Recommendations for items 12.1 and 12.2, and the Officer Recommendations for items 14.1, 16.2 and 17.1 be adopted en bloc:

- 12.1 Airport Advisory Committee - 16/2/2022 - BUSSELTON MARGARET RIVER AIRPORT - AIRPORT OPERATIONS UPDATE
- 12.2 Airport Advisory Committee - 16/2/2022 - BUSSELTON MARGARET RIVER AIRPORT - NOISE MANAGEMENT PLAN REVIEW
- 14.1 BUSSELTON JETTY 50-YEAR MAINTENANCE PLAN REVIEW
- 16.2 YOU CHOOSE COMMUNITY FUNDING PROGRAM - PILOT PARTICIPATORY BUDGETING BASED PROGRAM  
*Supplementary Agenda*
- 17.1 COUNCILLORS' INFORMATION BULLETIN

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

<b>Item No.</b>	<b>Item Title</b>	<b>Reason</b>
16.1	COUNCILLOR MEMBERSHIP OF MEELUP REGIONAL PARK COMMITTEE	Absolute Majority Required

## ITEMS FOR DEBATE

Item No. 13.1	DA21/0548 – PROPOSED CHALET DEVELOPMENT – LOT 100 (NO. 4259) CAVES ROAD, WILYABRUP	Pulled by Cr Carter	Page 56
<p><b><u>ALTERNATIVE RECOMMENDATION</u></b></p> <p>That the Council determines:</p> <p>A. That application DA21/0548 submitted for development of 10 Chalets Lot 100 (No. 4259) Caves Road, Wilyabrup, is considered by the Council to be generally consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located.</p> <p>B. That Development Approval is granted for the proposal referred to in (A) above subject to the following conditions:-</p> <p><b>GENERAL CONDITIONS:</b></p> <p>1. The development hereby approved shall be substantially commenced within two years from the date of this decision letter.</p> <p>2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plans, and except as may be modified by the following conditions.</p> <p><b>PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS</b></p> <p>3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and have been approved in writing –</p> <p>3.1 Notification in the form of a section 70A notification, pursuant to the <i>Transfer of Land Act 1893</i> (as amended) is to be placed on the Certificates of Title of Lot advising that:</p> <p>a) <i>This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner. The approval of the Chalets is conditional upon the details contained within the Bushfire Management Plan (BMP) prepared by Bushfire Prone Planning, Version 1.1 dated 8 December 2021 and the accompanying Bushfire Emergency Evacuation Plan (BEEP).</i></p> <p>b) <i>The Chalets hereby approved are to be made available for temporary accommodation purposes only. A single Chalet shall not be occupied by any one person, family or group of persons (two persons or more) for a period exceeding 3 months (consecutively or intermittently) within any 12 month period.</i></p> <p>A copy of the Certificate of Title with the section 70A notification registered against it, or Landgate lodgement receipt, is to be provided to the City.</p>			

- 3.2 Details of the effluent management system which is required to be a secondary treatment system and achieve a minimum setback of 60m from the edge of Biljidup Brook.
- 3.3 A Drainage Management Plan.
- 3.4 Details of the entry point to the Chalet driveway modified to be off-set from the main entry into the site.
- 3.5 Details of signage to direct visitors to the site to the Tavern parking, Tavern over-flow parking and the Chalets.
- 3.6 Details of the finished treatment of all hard surfaced areas to be used for the driveway and manoeuvring areas as shown on the Approved Development Plans.
- 3.7 A final schedule of the external materials, finishes and colours, which shall be generally consistent with the approved plans. The schedule shall include details of the type of materials proposed to be used, including their colour and texture.
- 3.8 A final Landscaping Plan based on water sensitive urban design principles and designed in reference to soil types across the site. The Landscaping Plan shall include the following:
  - a. the location and species of all trees to be removed;
  - b. the provision of suitable screen planting along the western boundary;
  - c. **the provision of suitable screen planting along the eastern boundary;**
  - d. a plant schedule nominating species, planting distances, numbers, planting sizes, together with the anticipated height of each plant at maturity;
  - e. those areas to be reticulated or irrigated.
- 3.9 Details of the provision of a minimum 50,000 litre static water supply for firefighting purposes – the dedicated water supply will be non-combustible and located such that fire services can readily gain access to appropriate fittings and connect fire fighting vehicles to dedicated water supplies in a safe manner.
- 3.10 Details of upgrades to proposed access routes to achieve the requirements of Table 6 in the Guidelines for Planning in Bushfire Prone Areas.
- 3.11 Satisfactory arrangements shall be made with the City to provide public art works within the development. This entails compliance with the Percent for Art provisions of the City's *Development Contribution Policy* via appropriate works up to a minimum value of 1% of the Estimated Cost of Development ("ECD"). Where the value of on- site works is less than 1% of the ECD, a payment sufficient to bring the total contribution to 1% of the ECD is required.

#### **PRIOR TO OCCUPATION/USE OF THE DEVELOPMENT CONDITIONS**

- 4. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Conditions 2, 3 & 4 have been implemented; and the following conditions have been complied with to the satisfaction of the City –**
  - 4.1. Hard and soft landscaping, as detailed in the approved Landscaping Plan, installed at the full cost of the applicant.**
  - 4.2. All vehicle parking, access ways, footpaths and external lighting shall be constructed to a minimum standard in accordance with the Australian Standard for Parking Facilities - Off-Street Car Parking (AS 2890.1) and shall be developed in the form and layout depicted on the approved plans.**
  - 4.3. Accessible car parking and access shall be provided and designed in accordance with the Australian Standard for Parking Facilities - Off-Street Car Parking for people with disabilities (AS 2890.6).**
  - 4.4. Provision of a Certificate of Compliance, indicating that the works have been undertaken in accordance with the Bushfire Management Plan, including the provision of a dedicated firefighting water supply and any necessary upgrades to the proposed access routes.**

#### **ONGOING CONDITIONS**

- 5. The works and other measures undertaken to satisfy Conditions 2, 3 & 4 shall be subsequently maintained for the life of the development and the following conditions must be complied with, to the satisfaction of the City –**
  - 5.1. The Bushfire Management Plan, Version 1.1 dated 8 December 2021, shall be implemented and maintained in accordance with the approval details and any recommendations therein.**
  - 5.2. Signage shall be provided within each Chalet that advises guests:**

*“This accommodation is located within 100 metres of operating agricultural land uses which have the potential to create odour, noise, spray drift and dust nuisance at times, including during the night. Please be advised that primacy of activity is given to agricultural production within this area.”*
  - 5.3. The landscaping detailed within the Approved Landscaping Plan shall be subsequently maintained for the life of the development.**
  - 5.4. All services and service related hardware, including antennae, satellite dishes and air conditioning units, being suitably located away from public view and/or screened.**

#### **ADVICE TO APPLICANT**

- 1. If the applicant and/or owner are aggrieved by this decision there is a right of review under the provisions of Part 14 of the *Planning and Development Act 2005*. A review must be lodged with the State Administrative Tribunal, and must be lodged within 28 days of the decision.**
- 2. This Decision Notice grants Development Approval to the development the subject of this application. It cannot be construed as granting Development Approval for any other structure shown on the approved plans which was not specifically included in this application.**
- 3. Please note it is the responsibility of the applicant / owner to ensure that, in relation unto Condition 1, this Development Approval remains current and does not lapse. The City of Busselton does not send reminder notices in this regard. The term “substantially commenced” has the meaning given to it in the *Planning and Development (Local Planning Schemes) Regulations 2015* as amended from time to time.**
- 4. In accordance with the provisions of the *Building Act 2011*, and *Building Regulations 2012*, an application for a building permit must be submitted to, and approval granted by the City, prior to the commencement of the development hereby permitted.**
- 5. You are advised that a licence to take water from the existing soak on site, which may be required under the *Rights in Water and Irrigation Act 1914*, has not been issued by the Department of Water and Environment Regulation (DWER) at the time of approval. This development approval has been issued on the basis that the potable water supply for the Chalets will be drawn from the existing dams on the site and does not require the take of any water from the soak.**
- 6. You are advised that any new or modified crossing of Biljidup Brook may require a Permit to Interfere with Beds and Banks, issued by DWER, under the *Rights in Water and Irrigation Act 1914*. Please contact DWER for further information.**
- 7. In respect to effluent management, you are advised that there may be a need to separate the Brewery waste stream from the human waste stream when finalising the design of the system. Should this be required, there will need to be consideration of the location of any separate system in accordance with Condition 3.2.**
- 8. Unless otherwise first agreed in writing, any trees or plants in the approved landscaping plan which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.**
- 9. You are advised that the ‘external materials’ shall comprise of ‘prescribed materials’ as identified by the City of Busselton *Local Planning Scheme No.21* which are defined as follows –**

***‘external surfaces’ means the external walls and cladding (if any), external doors, external door and window frames, columns, roofs, fences and any surface of a building or work visible from the exterior of a building or work; and***

***‘prescribed materials’ means materials with dark tones or dark colouring and of low reflective quality or materials which are painted or similarly treated with dark toned or dark coloured paint or pigment of low reflective quality”***

10. In relation to the provision of public art in accordance with Local Planning Policy 4.4 Percent for Art. The Estimated Cost of Development shall be to the satisfaction of the City and based on demonstrated contract values or estimates provided by a quantity surveyor, with such contract or estimates being no more than 3 months old at the time of calculation of the payment amount, and if such information is more than 3 months old, the Estimated Cost of Development shall be indexed to the general construction industry index for Western Australia.
11. You are advised *Agonis flexuosa* (WA Peppermint Trees) provide key habitat for the “critically endangered” *Pseudocheirus occidentalis* (Western Ringtail Possum). The Western Ringtail Possum are awarded protection under the *Biodiversity Conservation Act 2016* and you may face penalties for taking or disturbing (including intentionally disturbing, trapping/relocating or causing harm/death) a Western Ringtail Possum. A Section 40 Ministerial authorisation to take or disturb threatened fauna under the *Biodiversity Conservation Act 2016* is to be obtained prior to clearing occurring. A fauna handler is required to be onsite prior to and during any clearing operations and is required to hold a Section 40 Ministerial Authorisation. The fauna handler is to provide a post clearing report to [DBCA swlanduseplanning@dbca.wa.gov.au](mailto:swlanduseplanning@dbca.wa.gov.au) that includes the numbers of adult or juvenile western ringtail possums observed, taken or disturbed, any injuries or fatalities, and the location of the fauna after clearing has occurred.

#### **REASONS FOR ALTERNATIVE**

Objections to this proposal that I am wanting to address through this simple amendment relate primarily to the impact on agricultural land (and future land uses), and to a lesser extent the impact on visual amenity to adjoining landowners.

By planting adequate dense screening along the Eastern boundary, we can minimize the visual impact on adjoining land, but also through dense planting can provide reduced impact on the development from noise associated with agricultural land use (tractors, livestock, firearms etc.), and potentially reduce the likelihood of spray drift onto the proposed development.

A condition similar to this was applied by the JDAP to the Carburnup Development Application.

While officers and the proponent have suggested that screening would unlikely survive due to the soil type along the boundary, and proponent mentioning the impact on the ability to install firebreaks, I am confident that through design and plant selection this can be overcome.

**OFFICER COMMENT**

The proposed inclusion of additional screen planting to the eastern boundary is not considered necessary by Officers for the following reasons:

- the property to the east is currently utilised for grazing and/or cropping purposes and there is no development on that lot which creates the need for consideration of sensitive views from that lot to the proposed Chalets;
- on advice from the landowner, and in accordance with commentary in a submission from a number of neighbouring properties (not including the neighbour to the immediate east), the ground at this property boundary can be sodden at times and trees may struggle to establish in this location;
- vegetation does not act as a suitable noise barrier (you generally need solid walls or earthen bunds) and any additional vegetation is not expected to reduce the impact of noise associated with the agricultural use of the adjacent lot/s;
- the grade change across the site is likely to mean that any screen planting on the boundary is less effective than screen planting closer the proposed Chalets.

Noting the above, discussion with the landowner has indicated that they may be able to incorporate some additional vegetation to the eastern side of the proposed Chalets (noting that some indicative vegetation is already shown on the landscape plan provided with the application), subject to species selection and planting densities not adversely affecting the BAL-rating of the proposed Chalets.

**LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT**

Pursuant to regulation 22(7) of the *Local Government (Model Code of Conduct) Regulations 2021*, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

Item No. 17.2	<u>RESPONSE TO MOTIONS CARRIED AT SPECIAL ELECTORS MEETING 21 FEBRUARY 2022</u>	Pulled by Cr Ryan	Page 267
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**ALTERNATIVE RECOMMENDATION**

**~~That the Council~~**

~~1. In response to motions 1, 2, 3, 5 and 6 write to the Premier and relevant State Government Ministers and~~

~~(a) advise that circa 450 business owners and community members within the City of Busselton attended a special electors meeting and collectively~~

~~(i) expressed strong concern about the impacts that the vaccine mandates are having on business, employees, volunteers, and the community; and~~

~~(ii) requested that the City advocate to the State Government for~~

~~• the removal of volunteers from vaccine mandates;~~

~~• clearer information for businesses in relation to the implementation of vaccine mandates and their obligations and liabilities for employees under Work Health and Safety legislation; and~~

~~• a survey be conducted by the State Government to better understand the impacts of vaccine mandates on small business; and~~

~~• the removal of vaccine mandates and associated restrictions; and~~

~~(b) request that the Premier takes the concerns of the those electors into account as he reviews the State Government's position on vaccine mandates;~~

~~2. In response to motion 4, resolves that the City will not conduct its own survey into the impacts of vaccine mandates on ratepayers; and~~

~~Acknowledges that the representations made from the electors present at the special electors meeting may not necessarily represent the diversity of views of the City's electors.~~

That the Council, in response to motions put forward by the Electors, require the CEO to write to the Premier and relevant State Government Ministers and advise that circa 450 business owners and community members within the City of Busselton attended a special electors meeting and collectively expressed strong concern about the impacts that the vaccine mandates are having on business, employees, volunteers, and the wider community and advise the Premier forthwith -

1. that we demand the immediate removal of the vaccine mandates and associated restrictions in WA due to lack of evidence that a pandemic exists; and
2. that forthwith the City of Busselton will be a Pro-Choice community regardless of 1 above.

## **REASONS FOR ALTERNATIVE**

Local Government, under the Local Government Act states:

### 3.18. Performing executive functions

(1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.

(2) In performing its executive functions, a local government may provide services and facilities.

(3) A local government is to satisfy itself that services and facilities that it provides —

(a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body; and

(b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and

(c) are managed efficiently and effectively.

AND

### 2.10 Role of councillor

A councillor —

(a) represents the interests of electors, ratepayers and residents of the district; and

(b) provides leadership and guidance to the community in the district; and

(c) facilitates communication between the community and the council;

It is not our role to be a pseudo health department. Health is the role of the state. For the last 2 years we have been acting under instructions from the Premier under a state of emergency, however little evidence exists to substantiate the mandates. We must resume the role that we were elected for, not kowtow to the Premier with ridiculous rules that make no sense and are crippling our business and private businesses and tearing families apart.

## **OFFICER COMMENT**

The officer recommendation presented to Councillors responds to 6 separate motions carried at the special electors meeting as follows:

1. *Request that the City of Busselton advocate on behalf of local volunteers to the state government to remove the vaccine mandate, allowing all willing community members to participate in volunteer work.*
2. *Request the City of Busselton write to the State Government to initiate a survey regarding impacts of mandates on small businesses.*
3. *Request that the City of Busselton write to the State Government and request that they provide absolute clarity to businesses with regards to any liability of all mandates.*
4. *We request that the City of Busselton develop and conduct a survey on the impact of mandates on ratepayers.*
5. *Request that the City of Busselton to ask the State Government to request clear information that clarifies the mandates for all local businesses regarding overreach.*
6. *That the City of Busselton advocates to all relevant State and Federal Ministers for removal of all mandates and restriction, as these mandates are causing segregation and immense harm.*

The alternative motion proposed responds most directly to motion 1 and 6 of these but does not directly address points 2, 3, 4 and 5. It also introduces a new rationale that was not raised at the electors meeting - that there is a 'lack of evidence that a pandemic exists' - and proposes the Council declare itself a pro-choice community where such a motion was not carried by electors.

The alternative if carried by Council would become the position of Council as it proposes that the Council advise the Premier of their demand for the immediate removal of the vaccine mandates and that the City will be a pro-choice community. This is as opposed to the officer recommendation which proposes that the Council write to the Premier and pass on the concerns and requests of those electors attending the special electors meeting.

**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.

**MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

<b>Item No.</b>	<b>Item Title</b>
18.1	NOTICE OF REVOCATION MOTION - C2111/101 - DISPOSITION OF PROPERTY LOTS 58 & 59 <u>CHAPMAN HILL ROAD AND LOT 60 QUEEN ELIZABETH AVENUE, AMBERGATE</u>