

Please note: These minutes are yet to be confirmed as a true record of proceedings

CITY OF BUSSELTON

MINUTES FOR THE COUNCIL MEETING HELD ON 10 FEBRUARY 2016

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MINUTES

MINUTES OF A MEETING OF THE BUSSELTON CITY COUNCIL HELD IN MEETING ROOM ONE, COMMUNITY RESOURCE CENTRE, 21 CAMMILLERI STREET, BUSSELTON, ON 10 FEBRUARY 2016 AT 5.30PM.

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 5.30pm.

2. ATTENDANCE

Presiding Member:

Cr Grant Henley Mayor

Members:

Cr Coralie Tarbotton
Cr Ross Paine
Cr Terry Best
Cr John McCallum
Cr Rob Bennett
Cr Paul Carter
Cr Gordon Bleechmore
Cr Robert Reekie

Officers:

Mr Mike Archer, Chief Executive Officer
Mr Oliver Darby, Director, Engineering and Works Services
Mr Paul Needham, Director, Planning and Development Services
Mrs Naomi Searle, Director, Community and Commercial Services
Ms Sarah Pierson, Manager Corporate Services
Mr Martyn Glover, Executive Director
Miss Lynley Rich, Manager, Governance Services
Miss Hayley Barge, Administration Officer, Governance

Apologies

Nil

Approved Leave of Absence

Nil

Media:

“Busselton-Dunsborough Times”
“Busselton-Dunsborough Mail”

Public:

39

3. PRAYER

The prayer was delivered by Luke Fulton of Dunsborough Community Church.

4. PUBLIC QUESTION TIME**Response to Previous Questions Taken on Notice**

At the 27 January 2016 Council meeting, Mrs Lisa Chapman asked the following question which was taken on notice:

Mrs Lisa Chapman

Would the Council consider working towards a gas free South West by restricting further applications to strictly include the two existing gas wells?

Response, Director Finance and Corporate Services

The City undertook to provide further information in relation to the question whether the Council would consider working towards a gas free South West by restricting further applications to include just the two existing gas wells. While the exact approvals required would vary depending upon the activity being undertaken, it is most likely that approval for a gas well would be required under the Petroleum and Geothermal Energy Resources Act 1967 and regulations associated with that Act. All approvals under that legislation are dealt with at a State Government level and the City does not have any ability to issue approvals under that legislation or to insist upon a restriction on the number of approvals that are issued. Depending upon the circumstances surrounding the application, there may not even be a requirement for the City to be consulted with before an approval is issued under this legislation. Thus the City does not have the power to restrict further licences that are issued for gas extraction in the South West. At best, the City could advocate with the State Government for such a position to be achieved.

Public Question Time

Nil

5. ANNOUNCEMENTS WITHOUT DISCUSSION**Announcements by the Presiding Member**

Nil

Announcements by other Members at the invitation of the Presiding Member

Nil

6. APPLICATION FOR LEAVE OF ABSENCE

Nil

7. PETITIONS AND PRESENTATIONS

Mr Todd Lloyd addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.3. Mr Lloyd was generally not in agreement with the Officer Recommendation.

Mr Steve Palmer representing Topsouth Holdings addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.5. Mr Palmer was generally not in agreement with the Officer Recommendation.

Mr Larry Guise representing Ron Beacham addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.5. Mr Guise was generally not in agreement with the Officer Recommendation.

Mr Walter Lewis & Mr Andrew Lewis addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.5. Mr Lewis & Mr Lewis were generally in agreement with the Officer Recommendation.

Mr Graham Taylor & Mr Michael Chappell representing Australian Unity Investments addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.3. Mr Taylor & Mr Chappell were generally not in agreement with the Officer Recommendation.

Mr Ross Underwood addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.3. Mr Underwood was generally in agreement with the Officer Recommendation.

Mr Wayne Credaro addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.5. Mr Credaro was generally in agreement with the Officer Recommendation.

Ms Helen Palmer representing the Locke Family addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.5. Ms Palmer was generally not in agreement with the Officer Recommendation.

Mr Stan Lawrence-Brown & Mr Kyle Jackson addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.6. Mr Lawrence-Brown & Mr Jackson were generally in agreement with the Officer Recommendation.

Ms Julie Howes addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.6. Ms Howes was generally not in agreement with the Officer Recommendation.

Mr Richard Parkes representing Mrs Julia Parkes addressed the Council in accordance with Section 6.1 of the Standing Orders as a party with an interest in Item 10.6. Mr Parkes was generally not in agreement with the Officer Recommendation.

8. DISCLOSURE OF INTERESTS

The Mayor noted that a declaration of impartiality interest had been received from:

- Cr Ross Paine in relation to Agenda Item 10.5 Proposed Location for a New Settlement (Hamlet) - Lots 1, 2 & 1490 Wildwood Road and Portion of Lot 115 Bussell Highway, Carburnup River - Consideration Following Public Advertising.

The Mayor advised that in accordance with the Local Government (Rules of Conduct) Regulations 2007 this declaration would be read out immediately before Item 10.5 was discussed.

9. CONFIRMATION AND RECEIPT OF MINUTES

Previous Council Meetings

9.1 Minutes of the Council Meeting held on 27 January 2016

Council Decision

C1602/011

Moved Councillor P Carter, seconded Councillor J McCallum

That the Minutes of the Council Meeting held 27 January 2016 be confirmed as a true and correct record.

CARRIED 9/0

Committee Meetings

Nil

ITEMS BROUGHT FORWARD AND ADOPTION BY EXCEPTION RESOLUTION

At this juncture the Mayor advised the meeting that with the exception of the items identified to be withdrawn for discussion, that the remaining reports, including the Committee and Officer Recommendations, will be adopted en bloc.

Council Decision and Officer Recommendation

C1602/012 Moved Councillor G Bleechmore, seconded Councillor T Best

That the Committee and Officer Recommendations in relation to the following agenda items be carried en bloc:

- 10.2 AMENDMENT 11 TO LOCAL PLANNING SCHEME 21 AND MODIFIED STRUCTURE PLAN LOT 201 BALMORAL DRIVE, QUINDALUP - CONSIDERATION FOR INITIATION FOR PUBLIC CONSULTATION
- 10.4 PROPOSED DISCOUNT DEPARTMENT STORE (K-MART) AND SHOWROOM, LOT 17, WEST STREET, BUSSELTON
- 13.1 GEOGRAPHE BAY FOOTBALL CLUB LEASE AGREEMENT COMPOUND AREA
- 14.1 COUNCILLORS' INFORMATION BULLETIN

CARRIED 9/0

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10. PLANNING AND DEVELOPMENT SERVICES REPORT

10.2 AMENDMENT 11 TO LOCAL PLANNING SCHEME 21 AND MODIFIED STRUCTURE PLAN LOT 201 BALMORAL DRIVE, QUINDALUP - CONSIDERATION FOR INITIATION FOR PUBLIC CONSULTATION

SUBJECT INDEX:	Town Planning Schemes and Amendments
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Strategic Planning and Development
ACTIVITY UNIT:	Strategic Planning and Development
REPORTING OFFICER:	Principal Strategic Planner - Louise Koroveshi
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Location Plan Attachment B Aerial Photograph Attachment C Existing and Proposed Zoning Attachment D Endorsed McLachlan Ridge Development Guide Plan Attachment E Enlargement Proposed Development Guide Plan Attachment F Proposed Development Guide Plan Attachment G Existing and Proposed Locations for a Commonage Community and Fire Facility

PRÉCIS

The Council is requested to consider initiating for public consultation proposed Scheme Amendment 11 to Local Planning Scheme 21 (LPS21) which seeks to: rezone a portion of Lot 201 Balmoral Drive from 'Rural Residential' to 'Reserve for Public Purposes'; amend the boundary of Additional Use Area No. 37 and amend Schedule 2 Additional Uses in relation to the permissible uses listed under Additional Use Area No. 37. Modifications to the endorsed McLachlan Ridge Structure Plan are also proposed that reflect changes to land use sought through the amendment.

Officers are recommending that the proposed scheme amendment and the proposed modified McLachlan Ridge Structure Plan are adopted for referral to the Environmental Protection Authority for environmental assessment and subsequent advertising for public consultation.

BACKGROUND

The proposal comprises a scheme amendment and modifications to the McLachlan Ridge Structure Plan that relate to Lot 201 Balmoral Drive, Quindalup. The subject land is located approximately 4km south west of the Dunsborough Town Centre, within the Commonage rural residential area. Lot 201 is 13.7ha in area and has frontage to Biddle Road, Balmoral Drive and McLachlan Road.

The subject land is part of a 144ha site initially subdivided into 56 strata title lots varying in size from around 1,000m² to 1ha in area, but with the bulk (in excess of 200ha) of the land retained in a number of common property lots. The subdivision was known as 'Rosneath Farm' and was an attempt to develop a relatively self-contained community following 'permaculture' principles. The Rosneath Farm subdivision was not generally a success and consequently Amendment 149 to the City's previous Town Planning Scheme No. 20 (Gazetted September 2010) and the current endorsed McLachlan Ridge Structure Plan facilitated the dissolution of the strata title subdivision, the re-subdivision of the land into 72 freehold title rural residential lots and the introduction of a range of additional uses on certain lots created via the structure plan.

Lot 201 retains elements of the original concept in the form of Additional Uses permitted pursuant to Schedule 2 of LPS21 including Guesthouse, Arts & Crafts Studio, Permaculture Education, Bakery, Gallery, Private Recreation and Chalet Development.

Other than a bakery (Yallingup Woodfired Bread), associated outbuildings and a dam, Lot 201 is undeveloped and consists of cleared areas and remnant vegetation. A Location Plan and Aerial Photograph are provided at Attachments A and B respectively. The surrounding land has been subdivided and developed for rural residential purposes, with some low intensity tourist uses.

Each component of the proposal is outlined below under appropriate subheadings.

Scheme Amendment

The scheme amendment proposes to –

1. Rezone a portion of Lot 201 from ‘Rural Residential’ to ‘Reserve for Public Purposes’. Some of the practicalities associated with this are discussed further under the ‘Officer Comment’ section of the report.
2. Amend the boundary of Additional Use 37.
3. Amend Schedule 2 ‘Additional Uses’ to include ‘Restaurant’ as a permitted land use for Additional Use No. 37.

Existing and proposed zoning maps are provided at Attachment C.

Proposed Modified McLachlan Ridge Structure Plan

The endorsed McLachlan Ridge Structure Plan designates the land for rural residential purposes. Lot 201 is located in the northwest corner of the structure plan area and is identified as Lot 1 (Attachment D).

The proposal would change the planning framework for Lot 201 to facilitate further subdivision and development. For ease of interpretation of proposed changes to the structure plan in relation to Lot 201 an enlargement of the subject land is provided at Attachment E. The proposed modified structure plan in its entirety is provided at Attachment F.

The proposal would allow for the creation of three rural residential lots and a public purpose reserve, described as follows:

- Proposed Lot 1A (7.2ha) includes a 1,000m² indicative building envelope and is subject to a Restrictive Covenant to protect 4.5ha of native vegetation. The building envelope is located outside of the covenant area. Lot 1A has legal road frontage to the section of McLachlan Road that remains a road reserve, but which is only constructed to Public/Emergency Accessway standard. Direct vehicle access (other than for emergency purposes) therefore is prevented by a Restrictive Covenant in favour of the City. Alternative access to Balmoral Drive is proposed via a right of carriageway easement. Officers have confirmed that this arrangement is acceptable to the Department of Planning/WA Planning Commission.
- Proposed Lot 1B (7,339m²) is designated as a ‘Reserve for Public Purposes’ as potentially the most suitable location for the establishment of a community firefighting and training facility (as discussed under section heading ‘Commonage Community and Fire Facility’ later in this report). Arrangements will need to be in place for the transfer of the land to the City prior to final approval of the amendment. This is discussed further under the ‘Officer Comment’ section of this report.

- Proposed Lot 1C (4.7ha) will retain the land use permissibilities established by Additional Use 37 and the Bakery. The lot also accommodates an NBN lease area and telecommunications tower.
- Proposed Lot 1D (9,562m²) - a rural residential lot that incorporates a 20m landscape buffer and 50m development setback from Biddle Road.

A range of environmental and other matters (land capability for onsite effluent disposal, environmental opportunities and constraints, rare flora and fauna, local water management strategy and a Bushfire Management Plan adopted in 2009) were addressed as part of the assessment of Amendment 149 and the McLachlan Ridge DGP (noting that the land was already zoned 'Rural Residential' and previously subdivided for that purpose). As a result, the McLachlan Ridge DGP facilitated subdivision and development that has: protected areas of important remnant vegetation via building exclusion/covenant; revegetation and landscape buffer areas; established building setbacks and a landscape buffer to Biddle Road; and created pedestrian accessways/strategic fire breaks.

It is considered that the proposal does not raise any significant environmental issues beyond that contemplated within Amendment 149 and the preparation of the McLachlan Ridge DGP.

Fire Management Plan

A bushfire management plan (BMP) and a bushfire hazard assessment (BHA) have been prepared in accordance with the WA Planning Commission's *State Planning Policy 3.7 Planning in Bushfire Prone Areas/Guidelines for Planning in Bushfire Prone Areas 2015* and the City's Bushfire Protection Local Planning Policy provisions. The BHA finds that proposed Lots 1A and 1D are suitable for rural residential subdivision and development.

For proposed Lot 1A, the BHA has determined an indicative bushfire attack level (BAL) of 29 based on an achievable 25m Building Protection Zone (BPZ). A 25m BPZ can be implemented outside of the conservation covenant area.

For proposed Lot 1D, the BHA has determined an indicative BAL of 19 based on an achievable 25m BPZ. A 25m BPZ can be implemented outside of the 20m landscape buffer along Biddle Road.

The BMP provides further guidance in terms of vehicle access for all lots via Balmoral Drive. Proposed Lot A has legal road frontage to McLachlan Road, however given the existence of the Restrictive Covenant that prevents vehicle access other than for emergency situations, alternative access to Balmoral Drive is proposed via a right of carriageway easement. This arrangement has been discussed with the Department of Planning/WA Planning Commission and is found to be acceptable.

Commonage Community and Fire Facility

Some years ago the City made an agreement with a number of developers in the Commonage area to allow a higher density of subdivision. This was on the basis of delivering a community benefit and resulted in agreements directly with landowners/developers in the 'South Biddle Road Precinct' for an additional per lot contribution over and above the Commonage Implementation Policy Contribution (noting that the policy has since been superseded by the Developer Contribution Area requirements outlined in Local Planning Scheme 21). The contributions collected through that process were to fund the development of basic community facilities in the Commonage/South Biddle area. The City currently holds \$959,347 in contributions from the South Biddle Road Precinct.

At the time of the agreements it was broadly intended that the community facilities would be developed on Lot 34 Sheoak Drive (identified as a 'Rural Service/Community Centre & Fire Station' on

the Commonage Consolidated Structure Plan – refer to Attachment G). Since that time it has now become apparent that such an extensive community hall would not be appropriate for the community in the Commonage as it would most likely be under-utilised.

The Yallingup Rural Volunteer Bushfire Brigade (VBFB) area includes the Commonage, Injidup and a large portion of the viticulture/tourism area of the City. The location of the VBFB main station is relatively distant from the more populated areas, with some fire appliances housed at a different location. Accessibility to the station/firefighting appliances and response times in some emergency situations has been less than ideal as a result, and it has become apparent that VBFB requires a new station to give better protection to the community, as well as housing firefighting appliances and providing a training centre at a more central location.

The City has been approached by the proponent to accommodate a community and firefighting/training facility on Lot 201 (refer to Attachment G). Officers have undertaken a comparative assessment of the suitability of both sites for that purpose and found Lot 201 Balmoral Drive to be the more practical option. The Sheoak Drive site is relatively isolated from significant roads by windy local roads and would result in slower response times during emergency situations. Site topography is undulating, cleared of vegetation and highly visible, and therefore likely to generate a perceived negative impact on the amenity of the immediate area. The land is currently undeveloped, apart from a dam.

Lot 201 Balmoral Drive has faster accessibility to the broader road network, better site conditions (flat and screened by established non-native vegetation) and less potential impacts on the surrounding community. The site already accommodates commercial activities (Bakery), with the planning framework allowing for the further development of complementary low-key commercial, community and tourist land uses. The location of a community and firefighting/training facility would consolidate this site as a community hub for the Commonage area.

STATUTORY ENVIRONMENT

The key elements of the statutory environment with respect to this proposal are set out in the relevant objectives, policies and provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the *City of Busselton Local Planning Scheme No. 21*. Each is discussed below under appropriate subheadings.

Planning and Development (Local Planning Schemes) Regulations 2015

The Regulations came into operational effect on 19 October 2015 and introduced deemed provisions for the preparation, advertising and approval of structure plans. The 'status' of structure plans has also changed and local governments are to have 'due regard' to endorsed structure plans when making decisions relating to subdivision and development. An endorsed structure plan is to guide subdivision and development, and inconsistency with the Regulations would occur if a structure plan contained any provisions relating to it having the 'force and effect' of a local planning scheme i.e. zones within a scheme.

Local Planning Scheme No. 21

The property is zoned 'Rural Residential' and is located within the 'Landscape Value Area'. The 'Landscape Value Area' requires development to be compatible with the maintenance and enhancement of the existing rural and scenic character of the locality.

The proposal is considered to be consistent with the relevant provisions relating to the subject land in the scheme.

McLachlan Ridge Structure Plan

The McLachlan Ridge Structure Plan was endorsed by the WA Planning Commission on 9 April 2010 and has guided the re-subdivision and development of land for rural residential purposes. Lot 201 is shown as Lot 1 on the structure plan. Key elements of the structure plan that relate to Lot 201 may be summarised as follows –

- 50m building setback and 20m revegetation buffer to Biddle Road;
- Building/clearing exclusion area focused on remnant vegetation and subject to a Restrictive Covenant;
- Provision for the development of 6 chalets; and
- Additional low key land use permissibilities in accordance with the Scheme (Additional Use 37).

RELEVANT PLANS AND POLICIES

The key policies relevant to the proposal are:

1. *State Planning Policy 6.1: Leeuwin-Naturaliste Ridge Policy;*
2. *Local Planning Policy 9B Bush Fire Protection Provisions, State Planning Policy 3.7 Planning in Bushfire Prone Areas and Guidelines for Planning in Bushfire Prone Areas 2015*
3. *City of Busselton Local Rural Planning Strategy;*
4. *Commonage Consolidated Structure Plan.*

Each is addressed below under appropriate subheadings.

State Planning Policy 6.1: Leeuwin-Naturaliste Ridge Policy

State Planning Policy 6.1: Leeuwin-Naturaliste Ridge Policy (LNRSP) outlines the area as 'Rural Residential' and it is referred to as the 'Commonage'. The document acknowledges that the area has environmental features worth preserving as well as acknowledging that the area is zoned and identified for Rural Residential development. Furthermore the LNRSP states that "*subdivision and development design that facilitates land already committed for Rural Residential development will be encouraged*".

The subject land is within an area identified as having 'Rural Landscape Significance'. Biddle Road is identified as a 'Travel Route Corridor within Rural Landscape Significance'.

Policy PS 3.6 states that in areas of Rural Landscape Significance development or change of use should protect the rural character of the land. The proposal is considered to be consistent with the LNRSP.

Local Planning Policy 9B Bush Fire Protection Provisions, State Planning Policy 3.7 Planning in Bushfire Prone Areas and Guidelines for Planning in Bushfire Prone Areas 2015

The property is identified as 'Bush Fire Prone – General' by the City's Local Planning Scheme No. 21 and associated mapping. In accordance with LPP 9B, unless otherwise agreed to by the City, all structure plans in a Bush Fire prone area, and within 100m of a bush fire hazard are to be accompanied by a bush fire hazard assessment to determine if the location for development is suitable in terms of bush fire risk. If the risk cannot be managed or reduced to an acceptable bush fire risk level by the BAL Assessment and structure plan to a stage where it will not require ongoing management, a Fire Management Plan will be required. If the risk can be managed by the measures of the BAL Assessment then a Fire Management Plan will only be required at the subdivision stage.

The City's LPP 9B provides additional guidance to provisions of the WAPC's current Guidelines. The Guidelines are the standard for assessment of planning proposals in bushfire prone areas. The Guidelines outline a need to identify the bush fire risk of an area at structure plan stage to identify if the location is adequate for development. The purpose of the Fire Management plan is to assess the bush fire risk for the property and suggest management measures to reduce bush fire risk and comply with the Guidelines.

The key elements of the Guidelines relevant to the proposal are:

- Element 1: Location of Development; and
- Element 2: Siting of Development.

The intent of Element 1 is to ensure that the subdivision, development or land use is located in areas with the least possible risk from bushfire, to help minimise risk to people, property and infrastructure. Element 2 intends to ensure that the siting of development minimises the level of bushfire impact. The fire management plan provided in support of the proposal suggests that bush fire risk to rural residential development can be managed to an acceptable level.

Local Rural Planning Strategy

The subject land is located within Precinct 6 'Commonage' of the Local Rural Planning Strategy. The strategy describes the precinct as "*comprising the existing Commonage Rural Residential Policy Area south of Dunsborough and north of Wildwood Road*".

The vision of the precinct is to:

- "*consolidate rural residential land use and provide for diversification in small-scale and low-key tourist, rural and home based activities in a manner that sustains the existing natural environment, landscape values and residential amenity of the area with well-developed pedestrian and habitat/biodiversity links;*" and
- "*promote the retention of the rural amenity and appropriate scaled rural land uses where compatible with rural residential amenity*".

Specifically relating to subdivision the strategy states that "*rural residential subdivision is limited to existing Rural Residential Zones and is in accordance with the adopted Structure and Development Guide Plans*". Subdivision is also to be in accordance with the LNRSP.

It is considered that the proposed structure plan complies with the vision for the Precinct and would provide a small scale subdivision that would not result in a detrimental impact on the natural environment nor the residential amenity of the area.

Commonage Consolidated Structure Plan

The Commonage Consolidated Structure Plan provides the basis for subdivision in the Commonage area and specifies the minimum and average lot sizes for each of the precincts of the structure plan area. Lot 201 is located within the 'Cluster Precinct'. The additional details on the structure plan reflect the intent of the land for 'permaculture' strata subdivision at that time. The structure plan contains a number of notations particularly relevant to consideration of the current proposal – which may be summarised as follows –

1. 20m wide landscape buffer and 50m setback to Biddle Road; and
2. Average lot size of 3 hectares within the Cluster Precinct (which was consistent with the then current Rural Strategy). It also provides that the Council may consider an increase in density (to an average 2ha lot size) provided that the proposed plan of subdivision is consistent with

the Statement of Intent, adopts principles of cluster design and development and the applicant to demonstrate a benefit to the community in departing from the provisions of the Rural Strategy.

Additionally there are planning policy statements (PPSs) particularly relevant to consideration of the proposal – which may be summarised as follows –

1. PPS2, which sets out that, *inter alia*; “...subdivision of land...shall include a broad range of lot sizes...and shall recognise areas of open landscape and remnant vegetation appropriately. Lots ranging upwards from 5,000m² may be considered in the ‘Cluster Precinct’ only in subdivision proposal that adopt a cluster approach to design.
2. PPS6, which sets out that, *inter alia*; “Except as otherwise provided for on an endorsed Development Guide Plan...a 50m minimum setback shall apply to Biddle Road...”.

The proposal is considered to be generally consistent with the Commonage Consolidated Structure Plan.

FINANCIAL IMPLICATIONS

There are no direct financial implications arising from the recommendations of this report.

Long-term Financial Plan Implications

Nil.

STRATEGIC COMMUNITY OBJECTIVES

The Officer Recommendation is consistent with community objective 2.2 of the City’s *Strategic Community Plan 2013*, which is – ‘a City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections’.

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City’s risk assessment framework. The assessment identified ‘downside’ risks only, rather than upside risks as well. The implementation of the Officer Recommendation will involve initiating the proposed amendment for referral to the Environmental Protection Authority and adopting the modified DGP for advertising. In this regard, there are no significant risks identified.

CONSULTATION

There is no requirement under the *Planning and Development Act 2005* to advertise a proposed scheme amendment prior to it being initiated by the Council. Accordingly, no advertising has occurred to date.

If the Council resolves to initiate the proposed amendment, the relevant amendment documentation would be referred to the Environmental Protection Authority (EPA) for consideration of the need for formal assessment under Part IV of the *Environmental Protection Act 1986*. Should the EPA resolve that the amendment does not require formal assessment it will be advertised for 42 days in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

OFFICER COMMENT

The proposed scheme amendment and related changes to the McLachlan Ridge Structure Plan would facilitate the creation of a 'Public Purposes' reserve for the future development of a community and firefighting/training facility for the Commonage area on Lot 201 Balmoral Drive, Yallingup. The landowner has approached the City in this regard and an assessment of the current location, as identified on the Commonage Consolidated Structure Plan, in comparison with Lot 201 Balmoral Drive found that the subject land is a better location for a number of important reasons. There are also no potentially suitable sites identified elsewhere on land already in public ownership, or any prospect of a more suitable site on land currently privately owned.

It should be noted, though, that identification of the land as part of the planning process does not mean that either kind of facility would need to be actually developed on the land in the near term, but would allow for the necessary engagement and consultation that would have to precede any decision to actually develop a facility to proceed. Adoption of the proposal for consultation purposes would also allow further, meaningful consultation to occur around whether in fact this site is the most appropriate location. If, through and following the consultation process it is considered it is not the most appropriate location, then the proposal could be modified to remove that element prior to final adoption, but allowing the other aspects (i.e. those that facilitate private development), if they are considered appropriate to proceed. Given that the City is required to assess applications to amend structure plans according to timeframes established by regulations, it would not be appropriate to defer this matter pending further informal consultation with stakeholders.

Notwithstanding the fact that the landowner has initiated the discussions with the City on potentially locating a community and firefighting/training facility on the subject land (and is supportive of the intent of the scheme amendment and proposed changes to the endorse structure plan in terms of reserving a portion of Lot 201 for that purpose), the proposed change in zoning from 'Rural Residential' to 'Reserve for Public Purposes' could, if a transfer was not negotiated prior to finalization of the Amendment process, trigger a claim for injurious affection. It is not the intention that the landowner cedes the reserved land to the City free of cost (as the need for the land is not generated by the proposed development itself, rather it is generated by growth and development within the broader locality), rather the City would need to negotiate purchase of the land (and at a value that reflects its future reservation for 'Public Purposes,' rather than a higher cost that a lot zoned 'Rural Residential' would command and note that creation of an additional 'Rural-Residential' lot would not be supportable). The City would seek an independent valuation of the land as part of negotiations to purchase/transfer the City and the City will require, at the very least, arrangements in place to indemnify the City from any claim, prior to the Council considering the scheme amendment for adoption for final approval.

The proposal also offers the opportunity to rationalise the boundary of Additional Use 37 and consolidate permissible additional uses within a smaller lot that has low conservation values and already accommodates commercial activities (Bakery). The applicant is also seeking the inclusion of 'Restaurant' as a new permissible land use. Although 'Restaurant' is an 'A' use pursuant to LPS21 in the 'Rural Residential' zone, the use is not permitted unless a Development Application is advertised and planning consent granted. This would provide certainty for the landowner and allow a land use that would be complementary to the existing permissible uses and consistent with similar Additional Use areas within the wider Commonage area. Advertising of such a change would happen as part of this amendment process.

The proposed scheme amendment and modified McLachlan Ridge Structure Plan have been assessed against the prevailing planning framework and found to be generally consistent.

CONCLUSION

Officers are recommending that proposed Amendment No. 11 to Local Planning Scheme No. 21 be initiated for referral to the EPA and subsequent advertising for public comment.

OPTIONS

Should the Council not support the Officer Recommendation, the Council could consider the following options –

1. Resolve to decline the request to initiate the proposed amendment and/or modified structure plan in its entirety and provide a reason for such a decision.
2. Resolve to initiate the proposed amendment and/or modified structure plan subject to modification(s).

It should be noted that there is no right of appeal against a Council decision not to initiate an amendment.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The implementation of the Officer Recommendation will involve the provision of advice of the Council resolution to the applicant and this will occur within one month of the resolution.

Council Decision and Officer Recommendation

C1602/013 Moved Councillor G Bleechmore, seconded Councillor T Best

That the Council:

1. In pursuance of Part V of the *Planning and Development Act 2005*, initiates draft Amendment No. 11 to the City of Busselton Local Planning Scheme No.21 for the purposes of:
 - a) Rezoning a portion of Lot 201 Balmoral Drive from 'Rural Residential' to 'Reserve for Public Purposes'.
 - b) Amending the boundary of Additional Use Area No. 37.
 - c) Amending Schedule 2 Additional Uses to include 'Restaurant' as a permissible land use for Additional Use Area No. 37.
 - d) Amending the Scheme Map accordingly.
2. That, as the draft Amendment is in the opinion of the Council consistent with Part V of the Act and Regulations made pursuant to the Act, that upon preparation of the necessary documentation, the draft Amendment be referred to the Environmental Protection Authority (EPA) as required by the Act, and on receipt of a response from the EPA indicating that the draft Amendment is to be subject to formal environmental assessment, be advertised for a period of 42 days, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*. In the event that the EPA determines that the draft Amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the draft Amendment.
3. That draft Amendment 11 to Local Planning Scheme 21 is a *standard* amendment pursuant to the *Planning and Development (Local Planning Schemes) Regulations 2015*.

4. Adopts the draft McLachlan Ridge Development Structure Plan for public consultation pursuant to clause 7.4 of the City of Busselton Local Planning Scheme No.21.

CARRIED 9/0

EN BLOC

10.4 PROPOSED DISCOUNT DEPARTMENT STORE (K-MART) AND SHOWROOM, LOT 17, WEST STREET, BUSSELTON

SUBJECT INDEX:	Statutory Planning Development Assessment
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Development Services and Policy
ACTIVITY UNIT:	Statutory Planning
REPORTING OFFICER:	Manager, Development Services - Anthony Rowe
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Location Plan Attachment B Land Use Concept Plan Attachment C Site Plan Attachment D Site Works Approval Attachment E Elevations

PRÉCIS

The City has received a planning application for a Discount Department Store (intended to accommodate a K-Mart store) and showroom premises at Lot 17 West Street, Busselton.

This application has followed a methodical approach of a Land Use Concept Plan, subdivision and a site works plan. This assessment is dependent upon fulfilment of the site works approval (DA15/0577), but it enables the assessment of this proposal as if on a site ready to development, with access, car parking and drainage matters already resolved. The application has been submitted in parallel with a similar application for a Supermarket on another part of the site, and which is also subject of a report to the Council on this meeting agenda.

The proposal is a contemplated land use in the Additional Use designation relating to the land and it did not require advertising.

The proposal is recommended for approval subject to conditions.

BACKGROUND

The subject land is zoned Restricted Business, which is generally for showrooms, warehousing and bulky goods shopping. Ordinarily, a discount department store business would fall into the 'Shop' land-use designation, and would be a prohibited land-use in the Restricted Business zone. The subject land is, however, also subject of an additional use provision (A64) that makes a Discount Department Store up to 8,000m² an explicitly supported form of development. It should be noted that a small portion of the proposed Discount Department Store is located outside the A64 area, but can still be considered utilizing essentially the same form of discretion that allows the Council to consider approval of a supermarket on another portion of the same site, and which is described in another report to the Council on this meeting agenda.

Special Provisions that relate to the land (SP26) also require that development shall be undertaken in accordance with a Land Use Concept Plan.

In June 2015 the City approved a Land Use Concept Plan. The Land Use Concept Plan illustrated indicative buildings and explicitly it identified a building at the location of this proposal as a Discount Department Store. A copy of the endorsed Land Use Concept Plan is included as **Attachment B**.

Following the approval of the Land Use Concept Plan, a subdivision application consistent with it was approved by the WAPC on 11 December 2015.

A Site Works application, for construction involving the filling of the land, installing services, making roads, carparks and individual building sites, consistent with the Land Use Concept Plan, was lodged concurrently with the subdivision application. It was approved under delegation on 29 January 2016. A copy of the site works approval is included as **Attachment D**.

The proposed development now before the Council consists of:

- A discount department store of 6,133m² GLA/NLA
- Showroom tenancies with NLAs of 333m²
- Loading docks at the rear of the supermarket and showroom tenancy

Future showrooms are proposed to adjoin the Discount Department Store at the western wall, and are shown on the Site Works Plan. These showrooms are not part of this application.

There are two key, existing subdivision/development approvals already in place; namely the subdivision approval and site works approval referred to above. Each of these is described in more detail under appropriate sub-headings below.

Subdivision WAPC 152597

The Subdivision proposed the creation of 11 allotments out of Lot 17 West Street and some adjoining lots in common ownership, and followed the allocation of land use and the indicative internal road layout consistent with the Land Use Concept Plan. A significant feature included ceding land for the foreshore reserve and the space to accommodate the road widening of West Street, including a proposed roundabout to provide the primary means of access to the overall development. The subdivision also provides the arrangement of easements for the shared use of car parking areas, access ways (private internal roads) and services/utilities. No public roads are proposed through the area of Lot 17. All access ways, dual use footpaths, pedestrian footpaths and car parking are to be covered by public easements available to the benefit of the City of Busselton and the public at large.

Site Works Development Application DA15/0577

The site works implement the layout cascading from the Land Use Concept Plan through to the subdivision. The site works application addressed all works/constructions except for the buildings themselves. It is the works associated with the filling of the land, the making the roads, drainage works, car parking areas, service roads, street lighting, landscaping, public paths and the development of the foreshore reserve. It includes the construction of the roundabout at West Street and the construction of the road medians on Bussell Highway.

A particular focus of the officer assessment of the site works application, prior to the granting of an approval under delegated authority, was ensuring that, whilst recognizing the fact that the development is an essentially service commercial precinct, rather than a main street type precinct, the overall site layout and detailed design will provide a high level of amenity, with adequate footpaths to encourage and facilitate pedestrian access, as well as landscaping to soften the overall precinct.

Works are not to commence on site until (technical) engineering drawings, specifications and arrangements (Agreements) for ceded assets and works on public land have first been agreed.

A kangaroo management plan is to be prepared for approval by the Department of Parks and Wildlife prior to commencement. A construction management plan controlling dust, noise, and stormwater

through the period of construction has also been conditioned for the purpose of minimizing disturbance to neighbours and to protect the water quality of the New River wetland

STATUTORY ENVIRONMENT

On the 23 August 2015 the Minister Gazetted the Development (Local Planning Schemes) Regulations 2015. The new regulations introduced at Schedule 2 of the Regulations a set of Deemed Provisions that must be read concurrently with the City's Local Planning Scheme; until such time as the City prepares an amalgamated Local Planning Scheme. In the event of conflict between Schedule 2 and the City Scheme, the provisions of Schedule 2 prevail.

Development (Local Planning Schemes) Regulations 2015 (Schedule 2)

In considering an application for development approval the City is to have **due regard** to the matters to be considered as listed at cl.67. (see Officer Comments)

To the extent they are the most directly applicable to the proposal, regard has been given to the *Matters of Considerations* listed in Schedule 2 and in turn the most applicable policy and guidance found across State Policy, Local Planning Scheme policy, and Local Planning policy.

Matters to be Considered	Applicable Policy/Provision
Orderly and proper planning (Cl 67(a)(b)(c)(d)(e)(f)(g) and (h))	Scheme 21 LPP2,4,6 and 8
Any report of review of the Scheme (Cl. 67(i))	Nil
Land Reserved under the Scheme (Cl.67(j))	Nil
Built Heritage (cl. 67(k))	Nil
Cultural heritage (cl. 67(l))	Nil, addressed in investigations LUCP
Compatibility in its setting (cl. 67(l))	Part 5 Scheme 21
Amenity (cl. 67(n))	Part 5 Scheme 21
Effect on the natural environment (cl. 67(o))	DEC Wetland Mapping, addressed at Land Use Concept Plan
Landscaping (cl. 67(p))	Part 5 Scheme 21

Local Planning Scheme 21

Zoning Table

The zoning table lists a variety of land uses under each zone title in the City's Scheme. It denotes whether a land use is *Permitted*, *Discretionary*, *Discretionary* requiring advertising and *Prohibited*.

Development that does not fall comfortably within a use listed in the Table (having referred to the Definitions provided at Schedule 1 of the Scheme) may be assessed as a *use not listed*.

In addition to the Zoning table, *additional uses* identified in Schedule 2 of the Scheme may apply, and particular conditions that may apply to the development of particular sites can be listed as Special Provisions in Schedule 3 of the Scheme.

Restrictive Business Zone:

The subject land is located in the Restricted Business Zone.

The Restricted Business Zone does not list a Discount Department Store in the Zoning Table. An additional use however is provided at the subject land (in Schedule 2) for a Discount Department Store to be determined as a Discretionary use, not requiring advertising, and also Special Provisions listed in Schedule 3 apply.

Schedule 2 at Additional Use 64 (A64) includes:

- Pt Lot 17 West Street, West Busselton Discount Department Store - 'D' discretionary use *and does not require advertising.*
- *Developed in accordance with a Land Use Concept Plan adopted by the Council.*
- *Development shall comprise of a single Department store with a gross leasable area not less than 5,000m and not more than 8,000m².*

Schedule 3 at Special Provision 26 (SP26)

- *Development in accordance with the Land Use Concept Plan (LUCP)*
- *Development of the land shall make provision for dual use path connections between Prince Regent Drive and Bussell Highway*
- *Development shall make provision for a foreshore and drainage reserve*
- *A Stormwater and Drainage Management Plan shall be provided*
- *Development shall address the interface with adjacent Residential zoned land*
- *Dust and Noise Management Plans are to be prepared*

The Objective of the Restricted Business Zone is:

"To make adequate provision for other commercial needs and opportunities not ideally located in the town centres of Busselton and Dunsborough whilst having regard to the strategic importance and need to maintain the commercial primacy of the town centres."

Land Use Concept Plan

The Additional Use provisions and the Special Provisions both rely on the Land Use Concept Plan.

The Land Use Concept Plan was recently amended by the City following advertising and consultation with state agencies. It was advertised 17 April 2015 to 15 May 2015 and adopted by Council on 24 June 2015. Advertising of the Land Use Concept Plan made explicit reference of its purpose to facilitate the development of Lot 17 for a Discount Department Store and it identified the location of the proposed DDS - notwithstanding it straddles the Additional Use area.

The Land Use Concept Plan also identifies indicative building locations, road arrangement, car parking and the delineation of the foreshore reserve. It also illustrated and notated the widening of West Street and provision of the roundabout, and the access onto Bussell Highway with restrictions to only left-in/left-out movement.

The Land Use Concept Plan includes policy guiding development, requiring development adjacent the residential zoned land, west boundary, to be restricted to single storey, and measures to protect residential amenity and privacy.

RELEVANT PLANS AND POLICIES

Local Planning Policy

LPP 2 Traffic and Transport Policy

A Traffic Impact Assessment was undertaken as part of the Land Use Concept Plan. The assessment was prepared by Jacobs SKM and critically reviewed by City engineers with assistance from ARUP consulting. The impacts upon the network and future demand was analysed, resulting in the approval of the Land Use Concept Plan with the roundabout and precise positioning on West Street, and medians restricting left-in/left-out turns at Bussell Highway. Insufficient road width is available at Bussell Highway to provide a slip lane for right hand turns, which is necessary to avoid congestion on Bussell Highway.

Light sequencing and restrictions on right-hand turns travelling west from Bussell Highway may be of temporary assistance, but the intersection at Bussell Highway and West Street will require a significant upgrade to cater for the natural growth of the City.

LPP 4 Urban Centres Policy

This policy addresses design guidelines for specific commercial centres. Whilst the subject land is outside of the boundary of the Urban Centres Policy it is considered relevant and has been given regard to.

LPP 6 Development Contribution Policy

This policy identifies the requirement for contributions.

A percent for art contribution is at 1% of the development value is applicable to this application.

Drainage and infill contributions are not required as development through the UWMP for the Site Works application is to achieve standards for on - site disposal and therefore not require any augmentation of the City systems.

All roadwork associated with the development including the roundabout and medians will be at the applicant's cost and is addressed by condition of the site works approval.

LPP 8 General Development and Process Standards policy

The CBD parking requirements can be applied to the considerations at this site and key considerations in this regard, from the General Development and Process Standards policy, include:

- Taxi spaces are required in close proximity to entrance at 1 per 1,000m² gross floor area.
- Where reciprocal parking is proposed, the City must be satisfied that parking arrangements are permanent
- All car parking areas are to be sealed, line-marked and drained to the satisfaction of the City
- Car park design and construction shall include adequate provision for landscaping

- The City may require the lodgement of performance guarantees against the satisfactory construction, completion and establishment of car parking areas and associated landscaping
- The rate of carparking spaces for particular land uses is:
 - Shop, Office - 1 space for every 30sqm of net lettable area.
 - Showroom – 1 space for every 50sqm of net lettable area.

FINANCIAL IMPLICATIONS

Nil

Long-term Financial Plan Implications

There are no long term financial implications directly attributable to the determination of this application.

STRATEGIC COMMUNITY OBJECTIVES

Governance systems that deliver responsible, ethical and accountable decision making.

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks. There were no such risks identified.

CONSULTATION

The City determined that the land use and location had been explicitly advertised as part of the Land Use Concept Plan, and whilst a *use not listed*, it was considered permitted (pursuant to clause 4.4.2 (a) Scheme 21). Notwithstanding the aspect of land use had been answered, development standards associated with the proposal required determination. The requirement to advertise, having regard to the Land Use Concept Plan, was waived pursuant clause 64(2)(1c) under Schedule 2 of the *Planning Regulations 2015*.

Agency referral was undertaken. The issues raised by agencies include:

- Development is supported if consistent with the Local Water Management Strategy and Urban Water Management Plan.(DoW, DPAW)
- Supported if satisfactory manoeuvring space is provided for emergency vehicles.(DFES)
- Concern about impact/congestion on the West Street Bussell Highway intersection. (Main Roads)

The comments of Main Roads WA are not specific to the Discount Department Store but the development of Lot 17 overall. These matters were considered at the Land Use Concept Plan investigations and resulted in road treatments at West Street (provision for road widening and provision of a roundabout) and at Bussell Highway (medians restrictions facilitating only left in and left out turns.

It is acknowledged that the West Street/Bussell Highway intersection is under pressure at peak times and is worsening. Work by the City has not been able to proportionate the impact of other recent

commercial developments from that of the general and natural population growth. The City has therefore not been seeking upgrade contributions from recent developments in the town centre for the West Street Bussell Highway intersection. The capacity in the immediate term may be extended by signalling treatments including restricting right hand turns north at peak times, and by improving real time information for drivers (active signage at peak times) about alternate routes to destinations.

OFFICER COMMENT

This proposal follows a methodical approach to the development of Lot 17. Many of the matters that would be considered have been addressed through the development of the Land Use Concept Plan, namely the impact up on the traffic network including intersection designs, the integration of utilities, the relationship to adjoining properties and protection of the wetlands.

The subdivision application that followed the LUCP and the Site Works approval resolved the requirements for, floor levels, stormwater management, internal traffic movement, shared parking, pedestrian movement and landscaping.

The key ***Matters to be Considered*** are the:

- Design and appearance of the building;
- Amenity;
- Carparking; and
- Effect on the natural environment

Design and Appearance of the Building

The City has worked constructively with the applicant to improve the design and appearance of the initial proposal. These considerations included widening the footpaths, increasing the glass/glazing at the ground floor, ensuring a continuous awning for pedestrians, and identifying locations for advertising within the building profile.

The resulting building is a simple design (see **Attachment E**) but the use of vertical feature parapets, the continuous awning, as a linking horizontal element, together with the interchange of colours creates a frontage of interest at the carpark. The other sides of the building feature only an interchange of colour. It however, presents a neat and orderly appearance with more interest than typically expected of a uniform cement tilt up construction.

The face of the building to the wetlands however, is unacceptable as presented. The Land Use Concept Plan at cl.11(b) requires:

“the southern face of any building which faces the wetland is to incorporate design elements that break the expanse of walls by bringing forward and setting back elements and creating features of interest through the use of light and shadow, colours and textures”.

This was an important inclusion in the Land Use Concept Plan because the southern face adjoins the dual use path and is a public presentation.

This aspect can be satisfied without fundamental change to the proposal, the attachment of parapets and height variations, such as has been utilized along the north face, can also be applied to improve the south presentation. This has been made a subject of a recommended condition.

Building height

The predominant building height is 12.3m including the length facing the wetland. Advertising signage is to be retained below the heights of the parapet walls. The City's general building height limit is 10m but is discretionary.

The relationship to the height of adjoining structures as point of reference for scale, and the way a building scales up from its edges are important aspects to the sense of scale and whether a departure from the City's general building height limit is acceptable.

The relationship to the proposed supermarket and show room to the east, and the scaling up from the showrooms anticipated at the west will make the presentation of the building, in terms of its overall height, acceptable. The frontage to the carpark also has a range of vertical and horizontal elements and an interplay of colours that create interest and detract from the sense of scale when viewed from the front.

Percent for Art

The Percent for Art Policy requires a contribution, or works, of one percent of the estimated value of the development is to be provided towards the inclusion of artworks in built form and public spaces (1% of \$9,000,000 = \$90,000). This is applied as a condition.

The applicant has indicated a preference to provide the art of an equivalent value on site, rather than making the cash contribution. The City has indicated that the combined contributions from the Site Works and other development applications should be directed to the area adjoining West Street.

Amenity

A Discount Department Store and showroom are not normally development associated with high external impacts as a fundamental use of the land, such as may be compared to an industry. Possible impacts may be disturbance by service vehicle noise, light spill, odour from service area bins. These may be described as management scale impacts and can be addressed by conditions.

The proposed development will not have an adverse effect upon the residential area located at the western boundary due to the separation distance.

Overall the development does provide a benefit for the residents located to the west, which the City has pursued in response to their concerns; to provide them with an additional route of access to West Street or Bussell Highway.

Carparking

Car parking is provided from a shared carpark. Both the proposal and the proposed supermarket, will share a large block carpark. A formal arrangement for the continued access to the parking area is a condition that must be satisfied for both the lots to be divided and for the site works to commence. The proposal requires 210 car parking spaces, the Discount Department Store 204 calculated at 1:30 NLA and the showroom 6 at 1:50. Across the developments that share the carpark, a total of 700 spaces is required and 815 has been provided. This includes overall, 26 disabled bays, four taxi ranks, and 20 motorcycle spaces.

The City has ensured that the carpark will be provided to practical dimensions ensuring that overhangs maintain the functionality of footpaths and landscape strips and drainage swales. Car parking areas will be sealed and line marked. Taxi bays 2 and disabled bays 4 are indicated convenient to the Discount Department Store entrances

The vehicle movement and parking arrangements pursued by the Site Works approval are designed to facilitate safe, efficient and secure access for users of the development. Through negotiation some initial spaces were removed to provide more space adjacent the internal roundabouts and at the aisle ends. Although some minor modifications will be required at the detailed design stage, associated with the Site Works approval, the key elements of the City's Car Parking Policy have been complied with

Effect on the natural environment

Through the investigation of the Land Use Concept Plan and the Local Water Management Strategy as part of the subdivision and expected of the Urban Water Management Plan a focus was to provide certainty for the adjacent (south) New River wetlands and its protection from entry of adverse quality storm water. These aspects have been addressed through establishing a foreshore reserve to be ceded to the Crown, by the requirements of the sub division approval and in the Site Works approval management plans and works the satisfaction of the Department of Parks and Wildlife.

The proposal before Council will connect to the systems established by the site works and in that sense it will have a neutral affect upon the natural environment.

Another indirect impact, but addressed by site works approval is the provision of a Kangaroo Management Plan to be approved by the Department of Parks and Wildlife.

CONCLUSION

The proposal follows an orderly and proper approach to the development of the Restricted Business Zone.

Other than superficial elements regarding the appearance of the south elevation, which can be addressed by condition, the proposal is considered consistent with the objectives and policies of the Restricted Business Zone.

OPTIONS

That the Council resolve

1. Refuse the proposal setting out reasons for doing so.
2. Approve the application with additional or different conditions.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The proponent will be advised of the Council decision within two weeks of the Council meeting.

Council Decision and Officer Recommendation

C1602/014 Moved Councillor G Bleachmore, seconded Councillor T Best

That the Council resolve

1. That application DA15/0578 submitted for development of a Discount Department Store at Lot 17 West Street Busselton is generally consistent with Local Planning Scheme No. 21 and the objectives and policies of the zone within which it is located.
2. That application DA16/0578 submitted for development of a Discount Department Store at Lot 17 West Street Busselton is approved subject to the following conditions:

General conditions

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, approved details and plan(s) (enclosed).

Prior to Commencement of any work

3. That development hereby approved or any work associated with this approval must not commence until the site works as approved in DA15/0577 have been completed. *These works create the land suitable for development.*
4. 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
 - I. A Dust Management Plan detailing measures to be implemented to minimise the amount of dust pollution.
 - II. Details of signage, including but not limited to the design, materials and levels of illumination.
 - III. Details of type and colour of all external materials to be used.
 - IV. Details of materials colours and articulation treatments that are to be applied to the south elevations to bring forward and setback elements to create features of interest and reduce the appearance of bulk; such as has been provided using parapets and intervening colour panels as used on the north face.
 - V. A detailed plan which shows natural ground levels, finished ground levels and finished floor levels
 - VI. A detailed external lighting plan. Aside from avoiding excessive light spill it should enhance security to the carpark and can it be used to create visual interest on the building's form.
 - VII. Details of bicycle parking facilities including location and design.
 - VIII. A Construction Management Plan, which shall include details of site offices, material compounds, construction parking.
5. Satisfactory arrangements shall be made with the City to provide public art works. 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.

Note: The City may agree to this amount being combined with percent for art contributions arising from other development on the site and the artworks being undertaken at the site. Artworks undertaken at the site in this regard are to be applied to the area adjoining West Street.

Prior to Occupation/Use of the Development Conditions:

6. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Conditions 3 - 5 have been implemented.

Ongoing conditions

7. All signage is to be maintained in good condition with an unbroken or faded surface.
8. Windows facing east and the carpark (north face) should remain open to views and shall

not be covered by more than 20% such as for advertising.

Advice Notes

1. If the applicant and/or owner are aggrieved by this decision, there may also be 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 being made by the Southern Joint Development Assessment Panel.
2. This Decision Notice grants planning consent to the development the subject of this application (DA15/0579). It cannot be construed as granting planning consent 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 to substantial commencement, this Planning Consent remains current and does not lapse. The City of Busselton does not send reminder notices in this regard.
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. Details will be required at building permit for the provision of a static water supply for fire-fighting purposes. Hydrant pressure alone cannot be relied upon. This supply may be in conjunction with the requirements of other development at Lot 17.

**CARRIED 9/0
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13. FINANCE AND CORPORATE SERVICES REPORT

13.1 GEOGRAPHE BAY FOOTBALL CLUB LEASE AGREEMENT COMPOUND AREA

SUBJECT INDEX:	Agreements/Contracts
STRATEGIC OBJECTIVE:	A City where the community has access to quality cultural, recreation, leisure facilities and services.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Property and Compliance Services
REPORTING OFFICER:	Property Coordinator - Ann Strang
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Location of Compound Area to be Leased

PRÉCIS

The Geographe Bay Football Club Inc. ("the GBFC") utilise the soccer playing fields located on Lot 20, Vasse Highway, Bovell also known as Bovell Park. The GBFC submitted an application to the City for funding to construct a small storage compound on the eastern boundary for the purpose of securing their training goals, trailer and other large soccer equipment. The club were successful with their application and have since constructed the compound.

The purpose of this report is to make a recommendation to Council on the future tenure arrangements of the area on which the compound sits.

BACKGROUND

Lot 20, Vasse Highway, Bovell is freehold land owned by the City. The land consists of playing fields for football, cricket, hockey and soccer, with separate clubroom facilities leased by the Busselton Hockey Stadium Club ("the BHSC") and the Busselton Football and Sportsmen's Club. Additionally, there are a number of storage sheds, compound yards and ablution facilities on the land.

In 2010, the GBFC began utilising the soccer playing fields for their home games and training. They entered into an agreement at the time with the BHSC for use of their clubrooms, change rooms and storage shed. This partnership has been in place since. While the arrangement works well it does not provide covered storage space for the GBFC's training goals and equipment trailer, with these items having been stored in the open along the boundary fence adjacent to the playing fields.

To protect their equipment and to alleviate the need to relocate it during the off season the GBFC submitted a community bids application to the City for funding to construct a secure compound large enough to store the equipment. The club were successful with their application and have constructed the compound.

STATUTORY ENVIRONMENT

When disposing of property whether by sale, lease or other means, a Local Government is bound by the requirement of section 3.58 of the Local Government Act. However 3.58 (5) (d) provides exemptions to this process under Regulation 30 (2) (b) (i) (ii) of the Local Government (Functions & General) Regulations.

This section states "disposal of land to incorporated bodies with objects of benevolent, cultural, educational or similar nature and the member of which are not enlisted to receive any pecuniary profit from the body's transactions, are exempt from the advertising and tender requirements of

section 3.58 of the Local Government Act". The constitution of the GBFC is such that this exemption applies.

Lot 20 Vasse Highway, Bovell on Diagram 47439 Volume 1390 Folio 368 is freehold land owned by the City.

RELEVANT PLANS AND POLICIES

The City's Corporate Business Plan proposes that a feasibility study is undertaken to assess the potential for the future development of a regional active open space facility at Rendezvous Road and / or Bovell Park in the 2016/17 financial year. The recommendation to enter into a short term lease with the GBFC is not likely to impact on this study or its outcomes.

FINANCIAL IMPLICATIONS

The rent charged to community and sporting groups for City land and/or building is currently \$205 per annum (inclusive of GST).

If council adopt the officer recommendation, then the GBFC would be liable to maintain the compound. Hence the City would not incur any financial liability.

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The officer recommendation is consistent with the following City of Busselton Strategic Priorities:

- 2.1 A City where the community has access to quality cultural, recreation, leisure facilities and services.

RISK ASSESSMENT

There are no identified risks of a medium or greater level associated with the officer recommendation. The recommendation serves to mitigate the risks associated with there not being a lease in place.

CONSULTATION

The terms and conditions associated with the lease have been discussed with committee members of the GBFC who wish to enter into a lease of the compound area for a term of 5 years.

OFFICER COMMENT

The GBFC is a local soccer club established in 2009, becoming incorporated in 2010. Starting with one men's social team, they now compete in both the men and women's South West league competition, as well as having a master's team and several junior teams. During last season the club had just under 100 registered players.

Bovell Park is their home ground, with both local and South West League competition games played here. The club would like to continue use of Bovell Park as their home ground into the future and the City has acknowledged this by supporting their application to construct a 105m² compound on the eastern boundary fence adjacent to their playing fields (as shown on attachment 1).

In order to formalise and ensure clarity around obligations such as maintenance and upkeep of the compound area it is recommended that the City enter into a standard community and sporting group lease with the GBFC.

While Council has in recent times generally applied terms of 5 years with a further 5 year option to community and sporting group leases, it is recommended that a shorter term of 5 years be offered in this instance, noting the proposal to undertake a feasibility study of Bovell Park as a future regional active open space facility. The GBFC acknowledge this and are happy to accept the recommendation of a 5 year term.

It is also recommended that a provision is included in the lease requiring the removal of the compound should relocation of it be necessary. This is due to the existing boundary fence, which runs parallel to Vasse Highway, forming part of the compound area. While unlikely to occur during the term of the proposed lease, if for whatever reason Main Roads WA required the boundary fence to be realigned then the compound would need to be removed and if possible an alternative location found. The inclusion of a clause facilitating this is therefore considered appropriate.

CONCLUSION

The proposal to enter into a lease with the GFSC for the compound area is compatible with their use of the Bovell Park. It is therefore recommended that Council grant a lease on the terms and conditions outlined in the Officer Recommendation.

OPTIONS

1. Council can resolve not to enter into a lease with the GBFC, noting the City would therefore accept the responsibility of ongoing maintenance and insurance.
2. Council can resolve to enter into a different term of lease with the GBFC.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

It is anticipated that the lease would be forwarded to the GBFC and executed by all parties no later than 1 March 2016.

Council Decision and Officer Recommendation

C1602/015 Moved Councillor G Bleechmore, seconded Councillor T Best

That the Council:

1. Enter into a lease with the Geographe Bay Football Club Inc. for a portion of Lot 20, Diagram 47439, Volume 1390 Folio 368 Vasse Highway, Bovell, as indicated in Attachment 1 on the following terms;
 - a) The lease is to be consistent with the City's standard community and sporting groups lease with the addition of a clause giving the City the right to terminate the lease if any portion of the boundary fence on or adjoining the leased area has to be relocated because of the requirements of Main Roads;
 - b) The term of the lease commencing 1 March 2016 and expiring on the 28 February 2021;
 - c) The annual rent to be \$205.00 inclusive of GST and is to reviewed annually by CPI; and

- d) All costs associated with the preparation of the lease to be met by the Lessee.

CARRIED 9/0

EN BLOC

14. CHIEF EXECUTIVE OFFICER'S REPORT

14.1 COUNCILLORS' INFORMATION BULLETIN

SUBJECT INDEX:	Councillors' Information
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Executive Services
ACTIVITY UNIT:	Executive Services
REPORTING OFFICER:	Reporting Officers - Various
AUTHORISING OFFICER:	Chief Executive Officer - Mike Archer
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Planning Applications Received 1 January - 14 January 2016
	Attachment B Planning Applications Determined 1 January - 14 January 2016
	Attachment C State Administrative Tribunal Appeals as at 28 January 2016
	Attachment D Meelup Regional Park Management Committee Informal Meeting Minutes 24 November 2015
	Attachment E Meelup Regional Park Management Committee Informal Meeting Minutes 22 December 2015
	Attachment F Busselton Volunteer Fire & Rescue - Letter of Appreciation
	Attachment G Libby Mettam MLA - Member for Vasse – Letter of Support
	Attachment H Busselton Water - Growth Strategy Update

PRÉCIS

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each Councillor, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

Any matter that is raised in this report as a result of incoming correspondence is to be dealt with as normal business correspondence, but is presented in this bulletin for the information of the Council and the community.

INFORMATION BULLETIN

14.1.1 Planning and Development Statistics

Attachment A is a report detailing all Planning Applications received by the City between 1 January, 2016 and 14 January, 2016. Thirty one formal applications were received during this period.

Attachment B is a report detailing all Planning Applications determined by the City between 1 January, 2016 and 14 January, 2016. A total of twenty applications were determined by the City during this period with nineteen approved / supported and one refused.

14.1.2 State Administrative Tribunal (SAT) Appeals

Attachment C is a list showing the current status of State Administrative Tribunal Appeals involving the City of Busselton as at 28 January 2016.

14.1.3 Meelup Regional Park Management Committee

The minutes from the informal committee meetings of the Meelup Regional Park Management Committee for the 24 November 2015 is included in Attachment D and the 22 December 2015 is included in Attachment E.

14.1.4 Busselton Volunteer Fire & Rescue

Correspondence has been received from Busselton Volunteer Fire & Rescue and is available to view in Attachment F.

14.1.5 Libby Mettam MLA - Member for Vasse – Letter of Support

Correspondence has been received from Libby Mettam MLA Member for Vasse regarding the Canal Rocks Boating Facility and is available to view in Attachment G.

14.1.6 Busselton Water – Growth Strategy Update

Correspondence has been received from Busselton Water and is available to view in Attachment H.

Council Decision and Officer Recommendation

C1602/016 Moved Councillor G Bleechmore, seconded Councillor T Best

That the items from the Councillors' Information Bulletin be noted:

- 14.1.1 Planning and Development Statistics
- 14.1.2 State Administrative Tribunal (SAT) Appeals
- 14.1.3 Meelup Regional Park Management Committee
- 14.1.4 Busselton Volunteer Fire & Rescue
- 14.1.5 Libby Mettam MLA - Member for Vasse – Letter of Support
- 14.1.6 Busselton Water – Growth Strategy Update

CARRIED 9/0

EN BLOC

ITEMS CONSIDERED BY SEPARATE RESOLUTION

At this juncture, in accordance with Clause 5.6 (3)(a) & (b) of the Standing Orders, those items requiring an Absolute Majority or in which Councillors had declared Financial, Proximity or Impartiality Interests were considered.

10.1 AMENDMENT NO. 1 TO LOCAL PLANNING SCHEME NO. 21 - OMNIBUS AMENDMENT 1 - CONSIDERATION FOR FINAL ADOPTION

SUBJECT INDEX:	Town Planning Schemes and Amendments
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Strategic Planning and Development
ACTIVITY UNIT:	Strategic Planning and Development
REPORTING OFFICER:	Senior Strategic Planner - Helen Foulds Manager, Strategic Planning and Development - Matthew Riordan
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Schedule of Submissions Attachment B Schedule of Modifications

PRÉCIS

The Council is requested to consider adopting for final approval Omnibus Amendment No. 1 to Local Planning Scheme No. 21 (LPS21).

The proposed Amendment was advertised for 42 days, between 4 November 2015 and 16 December 2015, and a total of 67 submissions received (including 2 late submissions).

The majority of these submissions related to issues of support, commentary, concern or objection in relation to specific or general amendment proposals affecting the Dunsborough settlement. No objections were received from government agencies.

A 'Schedule of Modifications' has been prepared to address relevant issues raised. A limited number of modifications to the Amendment have been recommended by officers.

Officers recommend that the Council adopts proposed Omnibus Amendment No. 1 for final approval, subject to those modifications listed in the 'Schedule of Modifications'.

BACKGROUND

At its meeting of 26 August 2015, the Council considered Omnibus Amendment No. 1 to the City of Busselton Local Planning Scheme No. 21 and adopted it for public consultation. The Amendment recommends a significant number of mostly minor changes to LPS21. The various changes proposed are seen as necessary for the more efficient and effective administration of the Scheme, to better reflect the Council's identified and endorsed strategic direction, and to provide positive, rational and effective guidance for land use and development across the City.

The intent, purpose and scope of the changes recommended in the proposed Amendment are to:

- Implement the recommendations of the CapeROC initiative that investigated providing a more liberal and consistent approach to regulation of development in the rural zones of the Augusta-Margaret River and Busselton Schemes, noting that the Shire of Augusta-Margaret River has now already completed a similar exercise;

- Implement a number of the recommendations from the City of Busselton ‘Local Commercial Planning Strategy’, ‘Local Cultural Planning Strategy’ and subsequent Conceptual Plans for the Busselton City Centre and Dunsborough Town Centre (both finally adopted by the Council in January 2014);
- Rationalise and clarify the delineation and mapping of the Scheme Area boundary along the coastline;
- Correct textual anomalies that occurred during the conversion of District Town Planning Scheme No. 20 into ‘Model Scheme Text-compliant’ form as Local Planning Scheme No. 21; and to update/correct other essentially minor Scheme matters generally;
- Relax building height controls across the City;
- Place a prohibition on the development of new ‘drive-through facilities’ within the ‘Business’ zone; and
- Address a number of mapping corrections that have been identified as being needed through the process of adopting the new Local Planning Scheme, along with other minor modifications to the Scheme Maps.

STATUTORY ENVIRONMENT

The *Planning and Development Act 2005* outlines the relevant considerations when preparing and amending local planning schemes. The relevant provisions of the Act have been taken into account in preparing and processing this amendment.

The *Planning and Development (Local Planning Schemes) Regulations 2015*, which came into operational effect on 19 October 2015, identifies three different levels of amendments – basic, standard and complex. As the identification of the amendment type occurs at the time of formal initiation, which in this case occurred prior to the adoption of the Regulations, it is not now necessary to identify the amendment level at this later stage. Notwithstanding this, proposed Omnibus Amendment No. 1 will now be progressed for final adoption as though it were a ‘standard’ amendment under the Regulations.

Proposed Omnibus Amendment No. 1 is considered to be consistent with requirements of the relevant statutory environment.

RELEVANT PLANS AND POLICIES

The key policy implications with respect to the Amendment proposal are set out and discussed below under appropriate sub-headings:

- Local Commercial Planning Strategy;
- Local Cultural Planning Strategy;
- Busselton City and Dunsborough Town Centre Conceptual Plans; and
- Planning in Bushfire Prone Areas.

Local Commercial Planning Strategy and Conceptual Plans

The Local Commercial Planning Strategy (LCPS), adopted by Council on 10 November 2010, provides the long term strategic land use planning and strategic direction for the development of commercial land within the District.

The LCPS considered and made recommendations on urban design improvements in and around the Busselton City Centre and Dunsborough Town Centre, including:

- A wide-reaching Scheme amendment to facilitate mixed uses and more intensive development in the 'Business' zone, particularly in regard to a revision of policy to provide greater support for residential development in the 'Business' zone;
- An amendment to the Scheme to relax building height controls in the Busselton City and Dunsborough Town Centres;
- An increase in the R-coding of selected 'Residential'-zoned land immediately adjacent to the existing, recognised Dunsborough Town Centre; and
- The introduction of mixed-use precincts on the fringes of both centres, reflected in proposed areas of 'Additional Use' zone (A74) I areas adjoining both centres.

The **Busselton City Centre and Dunsborough Town Centre Conceptual Plans** further developed the recommendations of the LCPS and have in turn guided this proposed Omnibus Amendment. These plans were formally adopted by the Council at its meeting of 29 January 2014, following an extensive period of public consultation in 2013.

Local Cultural Planning Strategy

The Local Cultural Planning Strategy ("the Cultural Strategy") was adopted by Council on 24 August 2011 and aims to build on certain recommendations in the City's 'Cultural Plan' (2005) by identifying and recommending strategies to underpin the cultural identity of the City and serve to introduce and embed arts and culture into the City's corporate and planning processes.

Some of the key changes to planning direction for the Busselton City Centre and Dunsborough Town Centre identified in the LCPS were further considered and responded to in the Cultural Strategy, specifically:

- Encouraging the development of mixed-use development and more places for informal social interaction – including via development incentives; and
- The creation of home-based creative industry hubs and enterprises accommodated in single residential housing.

These and other actions have formed the basis for some of the recommendations endorsed in the Busselton City and Dunsborough Town Centre Conceptual Plans.

Bushfire-Related Policy

The *Planning and Development (Local Planning Schemes) Amendment Regulations 2015* were gazetted on 25 August 2015. *State Planning Policy 3.7 - Planning in Bushfire Prone Areas* was gazetted on 7 December 2015 and, together with the accompanying *Guidelines for Planning in Bushfire Prone Areas* (and *Appendices* to same) and Regulations, these planning instruments create a revised planning framework for managing bushfire risk with the overall objective of preserving life and reducing the impacts of bushfire damage to property and infrastructure, while ensuring that conservation values are duly taken into account.

FINANCIAL IMPLICATIONS

There are considered to be no direct financial implications arising from the implementation of the Officer Recommendation.

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The proposed amendment is considered to be consistent with the following community objectives of the City's *Strategic Community Plan 2013* –

- 2.2 *A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections; and*
- 3.1 *A strong, innovative and diverse economy that attracts people to live, work, invest and visit.*

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identified 'downside' risks only, rather than upside risks as well. The implementation of the Officer Recommendation will involve referring the Amendment to the WAPC and Minister for Planning for adoption for final approval, followed by Gazettal of the Amendment. In this regard, there are no significant risks identified.

CONSULTATION

A 'Schedule of Submissions' has been provided at Attachment A. This schedule outlines the submissions received and provides detailed Officer comments and recommendations to the Council in respect to each of them.

A 'Schedule of Modifications' is provided at Attachment B. This schedule addresses pertinent issues raised in the submissions and provides a list of recommended modifications to the Amendment (as advertised) as a result of these. There are a total of eight recommended modifications made to the Council in this Schedule.

The public consultation undertaken fully complied with the *Planning and Development (Local Planning Schemes) Regulations 2015*, which require:

- a) public notice to be provided in a local newspaper;
- b) a copy to be provided in the administration offices of the subject local government;
- c) notice to be provided to relevant Government agencies;
- d) the proposed amendment itself, along with notice of that proposed amendment, to be provided on the subject local government website;
- e) consultation and advertising as directed by the WA Planning Commission, and in any other way the subject local government considers appropriate.

Submissions on the Amendment were invited for 42 days, between 4 November and 16 December 2015. These dates were purposefully chosen and advertised to end before Christmas and the majority commencement of school holidays in order to avoid, as much as possible, that otherwise busy period.

In addition to the above, the advertising undertaken consisted of the following:

- Correspondence was sent directly to close to 1,800 landowners, including:
 - those affected by site-specific rezonings;

- those within the Busselton city centre and Dunsborough town centre and those in residential areas proposed for, or abutting, the A74 and R80 areas recommended in the draft Omnibus Amendment;
- those within 150m of the 'Mean High Water Mark';
- all relevant Government agencies;

This correspondence was tailored to the specific part of the proposed Amendment relating to the particular property concerned (e.g. those situated in the Dunsborough Town Centre were sent a letter tailored to the matters of particular relevance to them), although the letter further advised those landowners in respect to the considerable balance of the proposed Omnibus Amendment (each letter included a 'summary' information sheet).

- Notice was provided to relevant business and community groups, such as the Busselton and Dunsborough chambers of commerce;
- Signage was installed on land affected by more substantial and site-specific rezonings (e.g. Armstrong Reserve in Dunsborough, Dawson Drive in Yallingup, Ford Road in Geographe etc);
- Notice was placed in the Busselton Dunsborough Mail 'Council for the Community' section, on 4 November 2015;
- Hard copies of the proposed Omnibus Amendment were provided at the front counter of the City's Administration office and in both the Busselton and Dunsborough public libraries;
- The complete document, along with the summary information sheet, was placed in digital format on the City's public website, in the 'Public Consultations' section.

The following provides a synopsis of the 67 submissions received:

- Specific or general SUPPORT in relation to matters proposed: 19
- Specific or general OBJECTION in relation to matters proposed: 24
- Specific or general COMMENT made in relation to matters proposed: 15
- Specific or general CONCERN expressed in relation to matters proposed: 7
- Request for inclusion of property in expanded A74 and/or R80 areas: 2

Six submissions were received from government agencies with no substantive issues being raised, other than in relation to the proposed rezoning of Lot 44 Chapman Hill Road, Kalgup from 'Public Purpose' reserve to 'Agriculture' (point 5.53 of resolution 5. 'Scheme Maps'). The Water Corporation has requested that this land retain the original 'Public Purpose' reserve designation because it contains a rural drain (the Department of Lands has confirmed that the Water Corporation is the responsible agency for that landholding).

In light of the submission from the Water Corporation, Officers recommend that the original 'Public Purpose' reserve designation be retained (instead of the land being rezoned to 'Agriculture').

To further assist Councillors, the substance of the submissions can be broadly classified as follows:

1. Busselton City Centre (5 submissions):

- 1 support of proposed Additional Use A74 over residential land;
- 1 request for property (and two adjoining properties) to be included into the Additional Use A74 area;
- 2 objections to the proposed Additional Use A74; and
- 1 objection to the Busselton R-AC3, CBD height increase, plot ratio and the A74 area.

2. Dunsborough Town Centre (35 submissions):

- 4 in support of proposed Additional Use A74 and R80 coding areas over residential land;
- 1 request to be included into proposed Additional Use A74 and R80 coding areas;
- 15 objections to the proposed Additional Use A74 and R80 coding areas over residential land;
- 1 general comment and expressions of concern in respect to related matters;
- 3 in support of the general Dunsborough Town Centre proposals;
- 7 objections to proposed building height increases ;
- 2 in support of the Clark Street industrial area being proposed for rezoning to 'Business'; and
- 2 objections to the Clark Street industrial area being proposed for rezoning (due to concerns regarding mixed uses, privacy implications and building height et al).

3. Miscellaneous (7 submissions):Scheme Text Modifications:

- 1 comment on the proposed mean high water mark delineation;
- 2 support the increase to the general height controls;
- 1 objection to proposed prohibition of 'drive-through facilities' in the 'Business' zone.

Process:

- 1 objection on the basis of a view that public consultation was unsatisfactory and insufficient

Scheme Mapping:

- 2 requests for review of 'coastal management area' boundaries

4. Site specific rezonings (12 submissions):

- 6 support the rezoning of various properties;
- 1 recommended rezoning 3806 Caves Road, Wilyabrup from 'Recreation' Reserve to 'Viticulture and Tourism' as opposed to 'Agriculture';
- 1 objection to Dunsborough Lakes Estate land parcels being included within the Development Contributions Area (DCA1);
- 1 objection to (prospective) building on Lot 600 Naturaliste Terrace/Armstrong Place;
- 2 generally regarding Armstrong Reserve; and
- 1 request for a change in terminology for the Quindalup Youth Hostel site.

5. Government Agencies (6 submissions):

General commentary (no objections) including request from Water Corporation for Lot 44 Chapman Hill Road to retain its original 'Public Purpose' reserve rather than be rezoned to 'Agriculture'. This request is supported.

Officer comments in respect to each of the submissions have been provided within the schedule. Further comment and recommendations for modifications to the Amendment are further discussed in the Officer Comment section below.

OFFICER COMMENT

The most relevant and substantive issues raised during the public consultation process can be addressed under the following headings:

1. 'Additional Use' A74 area and Dunsborough Town Centre R80 coding;
2. Dunsborough Town Centre Height and R-AC3 rezoning in the CBD;
3. Site-specific rezonings;
4. 'Drive-through facilities'; and
5. Other.

**1. 'Additional Use' A74 and Dunsborough R80 coding; and
2. Dunsborough Town Centre Height and R-AC3 Rezoning in the CBD**

The main concerns in relation to the proposed 'Additional Use' A74 area, R80 'upcoding' and relaxation of building height controls in the Dunsborough Town Centre and nearby areas focus on potential for noise and nuisance at night, increased traffic and parking issues, loss of privacy and overshadowing, potential influences on property values and rates and worry about the affects zoning changes might have on the character of the Town Centre and nearby areas.

It is worth considering these, and related concerns and objections, *holistically*. The following background is provided also in the 'Comment' of the 'Schedule of Submissions', in response to Submission 18 (and, by extension, those other submissions raising identical or very similar concerns and objections) in regard to Dunsborough.

Despite the understandable contention or desire of some residents and community members in seeing it this way, Dunsborough is no longer 'a little coastal town'; it has become more vibrant, promising and challenging than that, in line with local and state government strategy and policy (and the majority support of residents, businesses and representative community groups). It is an important and attractive population settlement area that the Dunsborough Town Centre must be capable of continuing to service and support.

The planning changes and adjustments proposed for the town centre in Omnibus Amendment No 1 have essentially been drawn from and underpinned by the recommendations of the 'Local Commercial Planning Strategy' (2010) and the 'Local Cultural Planning Strategy' (2011) – along with those of the 'Dunsborough Town Centre Conceptual Plan', which was endorsed by the Council in January 2014.

The increased density and incremental expansion of core Town Centre/CBD commercial and retail (etc) uses and opportunities into the more historically established residential areas abutting these is considered *essential* to accommodate and support the viable and desirable future growth of Dunsborough per se. In respect to this, the *potential* population for the Dunsborough settlement has been identified in the 'Leeuwin Naturaliste Ridge Statement of Planning Policy 6.1' (LNRSP) as being up to 20,000 people. The current resident population is around 8,000. Whether or not this potential future population is actually achieved, there is a long-standing recognition that such needs to be comprehensively, strategically and appropriately *planned for*.

The City of Busselton Draft 'Local Planning Strategy' (LPS) has identified the importance of the coordinated strategic expansion of the Dunsborough settlement that will be necessary to:

- *accommodate desirable population growth,*
- *further establish and continue to support and maintain a thriving local community,*
- *enable the timely provision of necessary public and community utilities, services, facilities and infrastructure;*
- *develop and promote/generate residential quality of life, local employment, and tourism-related, agricultural/horticultural, 'creative industry' and other business (etc) development opportunities.*

The draft LPS is anticipated to be advertised for public consultation in Feb/March 2016.

The future growth of the Dunsborough settlement will be necessarily limited and constrained by (inter alia) important coastal 'wetland amenity' and other environmental factors, high quality agricultural and horticultural land, diversification of land ownership, and the like. The only feasible growth and expansion area for the Dunsborough population settlement, therefore, has been recognised as being to the south-east of 'Dunsborough Lakes'. Structure planning for this area needs

to commence in the *short term* such that future demands for housing and associated urban development can be assessed and addressed to ensure effectively staged and varietal housing supply, stability in pricing and affordability, and the timely provision of associated supporting infrastructure (roads, footpaths, sports grounds, public open space, parking, health and education facilities, shops, restaurants, offices etc).

The constructive consolidation and well-planned, strategically timed *expansion* of the Dunsborough town centre will be vitally important for the provision of quality goods and services, retail shopping, office and business opportunities, local employment, tourist visitation and accommodation, civic and community facilities etc for the benefit of the local settlement, the municipality and the region. The City has, to date, planned (and is implementing) significant improvements to streetscapes, parking, public open space and other facets of urban development and improvement in the Dunsborough town centre - at all times consulting widely with residents, government agencies, community groups and other relevant parties. Given this (and that preceding) the potential for 'adverse impacts' from the planned future development of the town centre, whilst clearly *possible*, are not considered *likely* to occur. The City is committed to continuing constructive engagement with the local community to ensure 'transitional' improvements to the Dunsborough town centre are well-founded, well-consulted, broadly supported and highly successful.

In specific respect to the proposed areas of R80 and A74, and similar concerns raised in this and other submissions:

- Any potential for 'negative impacts' on adjoining residential properties - given that land use 'densification' and mixed use/business development opportunities in the Dunsborough town centre must be provided (as explained previously) in order to support the growth and development of the residential settlement and to maintain and promote commercial vibrancy, public amenity and community services – will be addressed and managed by the City through standard processes and procedures (e.g. development applications);
- In order to guide and assist such development, the City will be initiating the preparation of 'urban design guidelines' for the Dunsborough Town Centre and nearby areas (including those proposed as 'Additional Use' Area 74). Integrated planning initiatives and incentives will be examined, assessed and developed for mixed use and other built form design and development opportunities throughout;
- Further to the above, 'urban design guidelines' and/or associated 'special provisions' to guide and control desirable development in the town centre will also help manage and address the 'interface' between new R80 and A74 areas and adjoining residential land uses (e.g. privacy, over-looking/over-shadowing, building setbacks from boundaries, on-site car parking, waste disposal and noise management etc.);
- Improved traffic management, car parking, road connectivity and pedestrian permeability through and within the town centre will be developed and implemented in accordance with the endorsed 'Dunsborough Town Centre Conceptual Plan'.

It is noted that the R80 R-Code *does* create the ability for a multiple dwelling development to have a 7 metre high wall (with an average height of 6 metres) on the boundary. This is a significant but desirable increase from the 3.5 metres (average height of 3 metres) that currently applies for the R60 code and lower.

The application of further conditions on the proposed 'Additional Use' 74 areas could provide additional guidance on design requirements to ensure that potential town centre development will more thoroughly address, and assist to alleviate, prevailing concerns.

As advertised, the conditions in regard to A74 areas stated as follows:

- “1. *The Additional Uses specified shall be deemed to be “D” uses for the purposes of the Scheme.*
2. *‘Shop’ land uses may be permitted at ground floor level only and occupy up to 50% of total development floor space.*
3. *A nil setback to the street shall be considered for active frontages.*
4. *The provisions of Clause 5.23 relating to cash in lieu of car parking shall apply.”*

Officers recommend that the following condition also be included:

- ‘5. *Urban design guidelines (and/or Special Provisions) shall be prepared and adopted as a Local Planning Policy to address the following matters in relation to any proposed development:*
 - *Appropriate building setbacks to prevent or suitably mitigate overshadowing or overlooking of neighbouring properties;*
 - *Built form articulation, architectural design, function, bulk, scale, massing, grain, signage and surveillance (in relation to the streetscape, surrounding buildings, adjoining land uses and the overall character and amenity of the subject development area);*
 - *Vehicular access, and the location of crossovers/provision of onsite car parking;*
 - *Roofscapes, skylines and service installation sites to ensure minimal visual intrusion.’*

There were no specific objections received in relation to additional uses such as ‘Office’, ‘Medical Centre’ and ‘Professional Consulting Rooms’ being introduced through proposed A74. However, several submissions *did* object to ‘Restaurant’, ‘Tourist Accommodation’ and ‘Guesthouse’ uses being included.

The *potential* to develop ‘Restaurant’ uses within the A74 area is considered important for the Dunsborough Town Centre (and its recognised role and character as a highly successful tourist destination) with possible key locations along, and close to, Geographe Bay Road being especially appropriate for such uses.

The potential for developing well-planned and -designed ‘Guesthouse’ and ‘Tourist Accommodation’ facilities within an expanded Additional Use area in the town centre is obviously crucial to accommodating and fostering the success of the tourist industry in Dunsborough and the surrounding District. Concerns about noise, nuisance and potential adverse impacts on character and amenity of existing and adjoining residential areas can be addressed through appropriate urban design guidelines (as previous) and operational management and control through the Health Act, Environmental Protection Act (Noise Regulations) and the like.

Options available for Council consideration:

- Modify the allowable uses included within proposed ‘Additional Use’ A74 area;
- Reduce the proposed density coding of R80 to R60: as well as reducing the built form density, this would also reduce the maximum plot ratio (from 1.0 to 0.7) and permissible height of boundary walls.

3. Site Specific Rezoning

a) Caves Road, Wilyabrup

One submission was received (Submission 54) recommending the rezoning of Lot 21 (3806) Caves Road, Wilyabrup from ‘Recreation’ Reserve to ‘Viticulture and Tourism’ as opposed to ‘Agriculture’. The subject landowner correctly advised that the balance of the property was already zoned

'Viticulture and Tourism' and it is logical to extend the existing zoning. This suggestion is supported and has, accordingly, been added to the recommendations contained in the 'Schedule of Modifications'.

b) Quindalup Youth Hostel

One submission was received (Submission 58) requesting a change in terminology for the proposed rezoning of the Quindalup Youth Hostel site. The submitter correctly pointed out that the terminology of 'youth hostel' is somewhat anachronistic given that such premises are often used and enjoyed by travelers and patrons of all ages. Officers recommend that the proposed rezoning be instead "Special Purpose – Hostel" and this has been reflected accordingly in the 'Schedule of Modifications'.

c) Request for Extension of A74 Area (Geographe Bay Road, Dunsborough)

A request (see submission 16 in 'Schedule of Submissions') for inclusion of Lot 81 Geographe Bay Road in the proposed A74 and R80 areas for Dunsborough was received.

This particular property directly abuts the proposed A74 ('Additional Use') and R80 areas proposed in the Amendment. Its situation on Geographe Bay Road, with direct views and proximity to coastal amenity along the Dunsborough foreshore, supports its logical inclusion in the area proposed for, in effect, town centre expansion. The property contains an older style building that could be readily redeveloped, for example, for 'Office' uses (as has been suggested informally already by the landowners).

Support is recommended for the inclusion of Lot 81 in the proposed A74 and R80 areas and this has been reflected in the 'Schedule of Modifications'.

d) Request for Extension of A74 Area (North along West Street, Busselton)

One submission was received (Submission 8) requesting the inclusion of the landowner's property and two adjoining properties on West Street (north of Duchess Street) in the proposed A74 area proposed for Busselton.

It is noted that one of the three properties contained within the requested 'extension' to the A74 area operates as an existing guesthouse, while a second property contains a building previously operated as a guesthouse. The location of the three properties could therefore be seen as a potentially logical extension of the Busselton city centre as defined by the 'Local Commercial Planning Strategy' and the 'Local Cultural Planning Strategy'.

An **objection** to the submission proposal was also received by a neighbouring landowner (Submission 9). Whilst certain concerns have been raised, officers are of the view that the requested inclusion of the three properties, in close proximity to Duchess Street, reflects the historical usage of two of the three lots concerned and should be supported.

Any development proposed on Lots 1, 2 and/or 3 West Street would, like all other development in the proposed 'A74' expansion area, be managed and controlled in accordance with the provisions of the Scheme and in the interest of preserving and enhancing (wherever possible) neighbouring character and amenity.

It is unlikely that any undesirable precedent would be established in the near term in regard to further expansion of the A74 area north along West Street. The properties immediately to the north contain well-established grouped housing development and, beyond that, is the former Busselton Hospital site owned by the State Government (Department of Health).

Support is recommended for the inclusion of subject Lots 1 (28), 2 (30) and 3 (32) West Street in the proposed A74 expansion area in the Busselton city centre. This has been reflected in the 'Schedule of Modifications' accordingly.

NOTE: Should the Council support the recommendations in respect to c) and d) above, it shall nevertheless remain to be seen if the WAPC will accept inclusion *by means of the Schedule of Modifications*, or if specific re-advertising would be required (e.g. as a part of future Omnibus Amendment 2).

e) Dunsborough Lakes Estate – Objection to Land being proposed to be included in DCA1

One submission was received (Submission 58) objecting to land being proposed to be included in the DCA1 developer contribution area, given alleged discrepancies with the current, and previously endorsed, structure plan(s) and 'previously agreed positions by the City and WAPC'.

For the purposes of allocating and ensuring appropriate developer contributions towards community facilities and infrastructure, all relevant land within the overall Scheme Area is subject to either 'Development Contribution Area 1' (DCA1) or by a specifically endorsed Developer Contribution Staging Plan (DCSP); as for Port Geographe, the Vasse Development Area, Yalyalup etc. A large majority of the Dunsborough Lakes Development Area already lies within DCA1 (Lot 9033 is subject to a separately-endorsed DCSP).

The remaining four pockets of the Dunsborough Lakes Development Area (DLDA) recommended for inclusion within DCA1 through Omnibus Amendment 1 are considered appropriate to incorporate because:

- Their continued exclusion from the DCA1 area would not be consistent with the remainder of the City and would represent an ongoing situation that would be both anomalous and anachronistic. These pockets of land have previously been through different ownerships, have been proposed for development that has since been changed or modified, and/or have already been approved for subdivision/development (and therefore not retrospectively liable to pay developer contributions);
- Their inclusion in DCA1 would bring the DLDA into formal alignment with the remainder of the City in terms of identified developer contribution areas;
- The requirements of Planning Policy Statement 22 on endorsed DGPs (now 'Structure Plans') for Dunsborough Lakes refers to contributions being required as a result of (inter alia) any net increase in development potential beyond that depicted on the endorsed DGP as at 14 July 2010. It is evident that there has been, across the DLDA, such a net increase in yield and potential since 2010 (e.g. through relocation of the Primary School site from the north-western pocket to Lot 9033, and adjustments to the Tourist-zoned land in the north-east pocket, etc.);
- Three of the four pockets of land concerned have already been approved for subdivision and/or development. These areas have therefore not been required to provide developer contributions to the City for use in the provision of community facilities (and would not be affected by their inclusion into DCA1 and Scheme Mapping now). The remaining pocket (in the south-west) would, in effect, be the only remaining developable area in the DLDA subject to future developer contribution requirements. This requirement under the DCA1 area would be approx. \$3,037 per lot, considerably less than the \$5,000 per lot recently negotiated with the same landowner and endorsed in the separate DCSP (2015) for Lot 9033. This is considered to be fair and reasonable and will assist the City in providing desirable community facilities that will benefit the DLDA.

4. Drive-through facilities

One submission was received (Submission 67) concerning an objection to the proposed prohibition of drive-through facilities in the 'Business' zone, because:

- a. It will extinguish ability for a particular kind of commercial use to be established within, allegedly, most commercial areas of the City. Commercial protection of certain businesses is not a legitimate planning justification, Policy (b) of the Business zone seeks to allow market forces to influence retail land uses with minimal intervention by the local government.
- b. Undesirable impacts can be mitigated through the provision of built form controls, development standards or design guidelines. City should seek to establish scheme provisions providing design-based solutions rather than ban legitimate commercial use.

Before addressing the key issues in relation to the Business zone, which is the only area to which the proposal relates, it is worth noting that most commercial areas in the City are, in fact, not zoned Business. Most commercial areas in the City, in terms of a majority of the land zoned for principally commercial purposes is, in fact, zoned 'Restricted Business' or 'Industry', and no further control or regulation of drive-through facilities is proposed in relation to that land. Further, land zoned 'Business' in the town planning scheme is not, in fact, exclusively for commercial purposes, rather, the zoning is a mixed-use one to facilitate the development of vibrant, diverse, walkable centres of community life, including social, cultural, recreational and residential uses, in addition to commercial or business uses. Whilst drive-through facilities are potentially appropriate in more exclusively commercial and car-dominated environments, where the land is zoned 'Restricted Business' or 'Industry', they are not considered an appropriate part of the rather different character and form of development in place and emerging in the main centres, where the land is zoned 'Business'.

The strategic purpose and intent of the City in regard to the planning and urban design of the town/city centres of Busselton and Dunsborough has been consistently endorsed by the Council (most recently in the Busselton City Centre Conceptual Plan (2014) and the Dunsborough Town Centre Conceptual Plan (2014); the respective recommendations of which are currently being implemented in approved stages.

Planned initiatives in terms of urban design, built-form and land use development management and control, engineering, environmental sustainability (etc.) are being promoted and undertaken in these centres to constructively address matters such as commercial trading vitality, strategic car parking, safe and attractive pedestrian access and connectivity, traffic legibility and vehicular 'de-congestion', façade improvement incentives, streetscape/laneway activation and beautification et al.

The *introduction* of 'drive-through' facilities into these business centres (*existing* facilities would have 'non-conforming use rights') would run counter to these important initiatives and compromise the fundamental purpose and intent of the City in ensuring these centres become increasingly more vibrant and pedestrian-friendly, and far less vehicle-dependent and 'traffic-cluttered'.

There are many alternative areas in the City in which appropriate, well-designed 'drive-through facilities' may be proposed and approved. They should be strongly discouraged/disallowed in core commercial and business centres (as is being proposed through this Amendment).

5. Other

Following the adoption for initiation (for public consultation) of the proposed Omnibus Amendment, Officers noticed an error in relation to recommendation 1.1 mm of the resolution, which states (as advertised):

“mm. Removing the use classes ‘Poultry Farm’, ‘Recreation Agriculture’, ‘Recreation Area’ and ‘Rural Enterprise’ and associated permissibilities.”

It has been identified since that, in order to avoid potential confusion with redundant land uses, this wording should be amended to add and *“associated references throughout the Scheme.”* This is reflected as a recommendation to the Council in the proposed ‘Schedule of Modifications’.

CONCLUSION

The purpose of Omnibus Amendment 1 is to improve the functionality and currency of Local Planning Scheme 21 by refining, updating and correcting provisions and mapping where these have been found to be deficient. A significant number of essentially minor changes have been introduced that reflect the endorsed recommendations of previous strategic studies and outcomes (e.g. the Local Cultural Planning Strategy (2011), the Local Commercial Planning Strategy (2011) and the City/Town Centre Conceptual Plans for Busselton and Dunsborough).

The Amendment has been further refined and improved following the extensive public consultation process and a small number of adjustments have been recommended in a Schedule of Modifications. The detailed information and explanatory rationales provided within this report (and in the initial report to the Council, on 26 August 2015) will ensure the continuing orderly and proper planning of the City of Busselton. Council is requested to adopt the Amendment for final approval, subject to the recommended modifications, and provide it to the Western Australian Planning Commission/Hon. Minister for Planning with a request for formal endorsement and gazettal.

In summary, the changes as described in the report and reflected in the Schedule of Modifications are as follows:

	Resolution	Advertised as:	To be modified as:
1.	<p>Recommendation 1.1 mm</p> <p>Removing the use classes ‘Poultry Farm’, Recreation Agriculture’, ‘Recreation Area’ and ‘Rural Enterprise’ and associated permissibilities.</p>	<p>1.1 mm Removing the use classes ‘Poultry Farm’, Recreation Agriculture’, ‘Recreation Area’ and ‘Rural Enterprise’ and associated permissibilities.</p>	<p>That recommendation 1.1 mm of the resolution be amended to state:</p> <p><i>“Removing the use classes ‘Poultry Farm’, Recreation Agriculture’, ‘Recreation Area’ and ‘Rural Enterprise’, associated permissibilities and associated references throughout the Scheme.”</i></p>
2.	<p>Recommendation 2.6:</p> <p>Amend Schedule 2 ‘Additional Uses’ by –</p> <p>a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:</p> <p><i>[Please refer to extensive Table in original Recommendation]</i></p>	<p>2.6 Amend Schedule 2 ‘Additional Uses’ by –</p> <p>a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:</p> <p><i>[Please refer to extensive Table in original Recommendation]</i></p>	<p>That recommendation 2.6a of the resolution be amended to include the following additional condition in the ‘Conditions’ column:</p> <p><i>“5. Urban design guidelines (and/or Special Provisions) shall be prepared and adopted as a Local Planning Policy to address the following matters in relation to any proposed development:</i></p> <ul style="list-style-type: none"> - <i>Appropriate building setbacks to prevent or suitably mitigate overshadowing or overlooking of neighbouring properties;</i> - <i>Built form articulation, architectural design, function, bulk, scale, massing, grain, signage and surveillance (in</i>

			<p><i>relation to the streetscape, surrounding buildings, adjoining land uses and the overall character and amenity of the subject development area);</i></p> <ul style="list-style-type: none"> - Vehicular access, and the location of crossovers/provision of onsite car parking; - Roofscapes, skylines and service installation sites to ensure minimal visual intrusion.'
3.	<p>Recommendation 2.6:</p> <p>Amend Schedule 2 'Additional Uses' by –</p> <p>a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:</p> <p><i>[Please refer to extensive Table in original Recommendation]</i></p>	<p>2.6 Amend Schedule 2 'Additional Uses' by –</p> <p>a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:</p> <p><i>[Please refer to extensive Table in original Recommendation]</i></p>	<p>That recommendation 2.6a of the resolution be amended to include Lot 81 (18) Geographe Bay Road, Dunsborough into the Additional Use (No. A74) provision.</p>
4.	<p>Recommendation 2.6:</p> <p>Amend Schedule 2 'Additional Uses' by –</p> <p>a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:</p> <p><i>[Please refer to extensive Table in original Recommendation]</i></p>	<p>2.6 Amend Schedule 2 'Additional Uses' by –</p> <p>a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:</p> <p><i>[Please refer to extensive Table in original Recommendation]</i></p>	<p>That recommendation 2.6a of the resolution be amended to include Lots 1 (28), 2 (30) and 3 (32) West Street, Busselton into the Additional Use (No. A74) provision.</p>
5.	<p>Recommendation 2.8:</p> <p>Amend the Scheme Maps by:</p> <p>f. Modifying the residential density coding to R80 over Lots 51 and 87 to 102 Chieftain Crescent, Lots 86 and 162 Chester Way, Lots 139 to 141 Lorna Street, Lots 1-9 (20) and 115 to 127 Geographe Bay Road, Lots 1-17 (3) Dunn Bay Road, Lots 1 & 2 (4), 5 (2), 17, 18, 41 to 43 Prowse Way, Lots 3 and 4 Greenacre Road and Lot 60 (191) Naturaliste Terrace, Dunsborough.</p>	<p>2.8 Amend the Scheme Maps by:</p> <p>f. Modifying the residential density coding to R80 over Lots 51 and 87 to 102 Chieftain Crescent, Lots 86 and 162 Chester Way, Lots 139 to 141 Lorna Street, Lots 1-9 (20) and 115 to 127 Geographe Bay Road, Lots 1-17 (3) Dunn Bay Road, Lots 1 & 2 (4), 5 (2), 17, 18, 41 to 43 Prowse Way, Lots 3 and 4 Greenacre Road and Lot 60 (191) Naturaliste Terrace, Dunsborough.</p>	<p>That recommendation 2.8f of the resolution be amended to include Lot 81 (18) Geographe Bay Road, Dunsborough for modifying the residential density coding to R80.</p>
6.	<p>Recommendation 5.17</p> <p>Lot 21 (3806) Caves Road, Wilyabrup</p>	<p>5.17 Rezone portion of lot from 'Recreation' Reserve to 'Agriculture'.</p>	<p>That recommendation 5.17 of the resolution be amended to correctly state as follows:</p> <p>"Rezone portion of lot from 'Recreation' Reserve to 'Viticulture and Tourism'."</p>
7.	<p>Recommendation 5.31</p> <p>Lot 42 (201) Geographe Bay</p>	<p>5.31 Rezone from 'Public Purpose'</p>	<p>That recommendation 5.31 of the</p>

	Road, Quindalup	Reserve to 'Special Purpose – Youth Hostel'.	resolution be amended to state as follows: "Rezone from 'Public Purpose' Reserve to ' Special Purpose - Hostel '."
8.	Recommendation 5.53: Lot 44 Chapman Hill Road, Kalgup	5.53 Rezone from 'Public Purpose' Reserve to 'Agriculture'	That recommendation 5.53 of the resolution be deleted and subsequent recommendations be re-numbered accordingly.

OPTIONS

Should the Council not wish to support the Officer Recommendation, it could consider the following options:

1. Resolve to decline the request to adopt proposed Omnibus Amendment No 1 for final approval, and provide necessary reasons and rationales for such a decision.
2. Resolve to adopt the proposed Omnibus Amendment for final approval, subject to revised or additional modification(s) to those recommended in the 'Schedule of Modifications'.

A number of options have been identified within the Officer Comment section of the report with the discussion on the relevant issue to provide the Council with alternative solutions that it may find appropriate.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The implementation of the Officer Recommendation will require provision of relevant documentation concerning the proposed Scheme Amendment to the Western Australian Planning Commission, for review and determination ahead of a report to the Minister. Digital and hard copy transfer of all relevant documentation will be done within 28 days of the date of the Council decision.

OFFICER RECOMMENDATION

That the Council:

- A. Pursuant to s.75 of Part V of the *Planning and Development Act 2005*, resolves to adopt proposed Omnibus Amendment No. 1 to the City of Busselton Local Planning Scheme No. 21 for final approval, in accordance with modifications proposed in the 'Schedule of Modifications' at Attachment B. for the purposes of:
 1. **CapeROC Initiative**
 - 1.1 Amending Table 1 "*Zoning Table*" by –
 - a. Amending the following Use Class titles:
 - i. 'Agriculture' to read 'Agriculture – Extensive';
 - ii. 'Intensive Agriculture' to read 'Agriculture – Intensive';
 - iii. 'Animal Husbandry' to read 'Animal Husbandry – Intensive';

- iv. 'Chalet Development' to read 'Chalet';
- v. 'Residential Enterprise' to read 'Home Business';
- vi. 'Cottage Industry' to read 'Industry – Cottage';
- vii. 'Rural Industry' to read 'Industry – Rural';
- viii. 'Place of Public Worship' to read 'Place of Worship';
- ix. 'Roadside Stall' to read 'Rural Stall';
- x. 'Forestry' to read 'Tree Farm'; and
- xi. 'Veterinary Hospital' to read 'Veterinary Centre';

and associated references throughout the Scheme accordingly.

- b. Inserting the use classes 'Ancillary Accommodation', 'Brewery', 'Exhibition Centre', 'Park Home Park', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm'.
- c. In relation to the 'Residential' zone and in relation to the use class 'Ancillary Accommodation', insert the symbol 'P';
- d. In relation to the 'Residential' zone and in relation to the use class 'Park Home Park', insert the symbol 'A';
- e. In relation to the 'Residential' zone and in relation to the use class 'Brewery', 'Exhibition Centre', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X';
- f. In relation to the 'Business' zone and in relation to the use class 'Ancillary Accommodation', insert the symbol 'D';
- g. In relation to the 'Business' zone and in relation to the use class 'Brewery' and 'Exhibition Centre', insert the symbol 'A';
- h. In relation to the 'Business' zone and in relation to the use class 'Park Home Park', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X';
- i. In relation to the 'Restricted Business' zone and in relation to the use class 'Brewery' and 'Exhibition Centre', insert the symbol 'A';
- j. In relation to the 'Restricted Business' zone and in relation to the use class 'Ancillary Accommodation', 'Park Home Park', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X';
- k. In relation to the 'Tourist' zone and in relation to the use class 'Park Home Park', insert the symbol 'D';
- l. In relation to the 'Tourist' zone and in relation to the use class 'Brewery' and 'Exhibition Centre', insert the symbol 'A';
- m. In relation to the 'Tourist' zone and in relation to the use class 'Ancillary Accommodation', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X';

- n. In relation to the 'Industrial' zone and in relation to the use class 'Brewery', insert the symbol 'D';
- o. In relation to the 'Industrial' zone and in relation to the use class 'Ancillary Accommodation', 'Exhibition Centre', 'Park Home Park', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X';
- p. In relation to the 'Agriculture' zone and in relation to the use class 'Ancillary Accommodation' and 'Rural Pursuit', inserting the symbol 'P';
- q. In relation to the 'Agriculture' zone and in relation to the use class 'Rural Produce Sales', inserting the symbol 'D';
- r. In relation to the 'Agriculture' zone and in relation to the use class 'Brewery', 'Exhibition Centre' and 'Wind Farm', inserting the symbol 'A';
- s. In relation to the 'Agriculture' zone and in relation to the use class 'Park Home Park', inserting the symbol 'X';
- t. In relation to the 'Agriculture' zone and in relation to the use class 'Industry – Cottage' and 'Rural Stall', replacing the symbol 'D' with the symbol 'P';
- u. In relation to the 'Agriculture' zone and in relation to the use class 'Chalet', replacing the symbol 'A' with the symbol 'D';
- v. In relation to the 'Viticulture and Tourism' zone and in relation to the use class 'Ancillary Accommodation' and 'Rural Pursuit', inserting the symbol 'P';
- w. In relation to the 'Viticulture and Tourism' zone and in relation to the use class 'Rural Produce Sales', inserting the symbol 'D';
- x. In relation to the 'Viticulture and Tourism' zone and in relation to the use class 'Brewery', 'Exhibition Centre' and 'Wind Farm', inserting the symbol 'A';
- y. In relation to the 'Viticulture and Tourism' zone and in relation to the use class 'Park Home Park', inserting the symbol 'X';
- z. In relation to the 'Viticulture and Tourism' zone and in relation to the use class 'Agriculture – Intensive', 'Industry – Cottage' and 'Rural Stall', replacing the symbol 'D' with the symbol 'P';
- aa. In relation to the 'Viticulture and Tourism' zone and in relation to the use class 'Animal Husbandry', 'Chalet' and 'Industry – Rural', replacing the symbol 'A' with the symbol 'D';
- bb. In relation to the 'Rural Residential' zone and in relation to the use class 'Ancillary Accommodation', insert the symbol 'P';
- cc. In relation to the 'Rural Residential' zone and in relation to the use class 'Rural Pursuit', insert the symbol 'A';
- dd. In relation to the 'Rural Residential' zone and in relation to the use class 'Brewery', 'Exhibition Centre', 'Park Home Park', 'Rural Produce Sales' and 'Wind Farm', insert the symbol 'X';
- ee. In relation to the 'Rural Landscape' zone and in relation to the use class 'Ancillary

Accommodation', insert the symbol 'D';

- ff. In relation to the 'Rural Landscape' zone and in relation to the use class 'Rural Produce Sales' and 'Rural Pursuit', insert the symbol 'A';
- gg. In relation to the 'Rural Landscape' zone and in relation to the use class 'Brewery', 'Exhibition Centre', 'Park Home Park', and 'Wind Farm', insert the symbol 'X';
- hh. In relation to the 'Conservation' zone and in relation to the use class 'Ancillary Accommodation', insert the symbol 'D';
- ii. In relation to the 'Conservation' zone and in relation to the use class 'Rural Produce Sales', insert the symbol 'A';
- jj. In relation to the 'Conservation' zone and in relation to the use class 'Brewery', 'Exhibition Centre', 'Park Home Park', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X';
- kk. In relation to the 'Bushland Protection' zone and in relation to the use class 'Ancillary Accommodation', insert the symbol 'D';
- ll. In relation to the 'Bushland Protection' zone and in relation to the use class 'Brewery', 'Exhibition Centre', 'Park Home Park', 'Rural Produce Sales', 'Rural Pursuit' and 'Wind Farm', insert the symbol 'X'; and
- mm. Removing the use classes 'Poultry Farm', 'Recreation Agriculture', 'Recreation Area' and 'Rural Enterprise' and associated permissibilities.

- 1.2 Modifying clause 4.5 "Exceptions to the zoning table" by amending clause 4.5.3(a) to read as follows:

"(a) within the Rural Residential zone on any lot less than 4,000 m² in area, any purpose other than a single house (including any incidental development), ancillary accommodation, guesthouse, holiday home (single house), home business, home office, home occupation, bed and breakfast or public utility;"

- 1.3 Amending clause 5.14 "Residential Enterprise" to read as follows:

"5.14 HOME BUSINESS

5.14.1 A home business shall –

- (a) not occupy an area greater than 50m², provided further that the area within which it is conducted is not visible from the street or a public place;*
- (b) be conducted only between the hours of 8.00am and 6.00pm on weekdays, 9.00am and 5.00pm on Saturdays and is not conducted on Sundays and public holidays;*
- (c) not have more than one advertising sign and the sign displayed does not exceed 0.2m² in area; and*
- (d) not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight.*

5.14.2 *Where a local government grants planning approval for a home business, such planning approval –*

- (a) must be personal to the person to whom it was granted;*
- (b) must not be transferred or assigned to any other person;*
- (c) does not run with the land in respect of which it was granted;
and*
- (d) must apply only in respect of the land specified in the planning approval.”*

1.4 Amending clause 5.16 “Cottage Industry” to read as follows:

“5.16 INDUSTRY – COTTAGE

An Industry – Cottage shall –

- (a) not occupy an area in excess of 100m²; and*
- (b) not display a sign exceeding 0.2m² in area.”*

1.5 Amending Schedule 1 “Interpretations” by –

- a. Removing the definitions ‘Poultry Farm’, ‘Recreation Agriculture’, ‘Recreation Area’, and ‘Rural Enterprise’;
- b. Amending the following definitions to read:
 - i. *“‘Abattoir’ means premises used commercially for the slaughtering of animals for the purposes of consumption as food products;”*
 - ii. *“‘Animal Establishment’ means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry — intensive or veterinary centre;”*
 - iii. *“‘Hotel’ means premises the subject of a hotel licence other than a small bar or tavern licence granted under the *Liquor Control Act 1988* including any betting agency on the premises;”*
 - iv. *“‘Market’ means premises used for the display and sale of goods from stalls by independent vendors;”*
 - v. *“‘Plant Nursery’ means premises used for propagation, the growing and either retail or wholesale selling of plants, whether or not ancillary products are sold therein;”*
 - vi. *“‘Reception Centre’ means premises used for hosted functions on formal or ceremonial occasions;”*
 - vii. *“‘Service Station’ means premises other than premises used for a transport depot, panel beating, spray painting, major repairs or wrecking, that are used for –*
 - (a) the retail sale of petroleum products, motor vehicle accessories and*

- goods of an incidental or convenience nature; or
- (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles;”
- viii. *“Tourist Accommodation’* means single occupancy accommodation units, which may be self-contained and may include associated central facilities for the exclusive use of guests, and includes serviced apartments;”
- ix. *“Winery’* means premises used for the production of viticultural produce and associated sale of the produce;”
- c. Amending the following titles and definitions:
- i. ‘Agriculture’ to read:
- “Agriculture - Extensive’* means premises used for the raising of stock or crops but does not include agriculture — intensive or animal husbandry — intensive;”
- ii. ‘Intensive Agriculture’ to read:
- “Agriculture – Intensive’* means premises used for trade or commercial purposes, including outbuildings and earthworks, associated with the following —
- (a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts;
- (b) the establishment and operation of plant or fruit nurseries; or
- (c) the development of land for irrigated fodder production or irrigated pasture (including turf farms);”
- iii. ‘Animal Husbandry’ to read:
- “Animal Husbandry – Intensive’* means premises used for keeping, rearing or fattening of pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production) or other livestock in feedlots, sheds or rotational pens;”
- iv. ‘Chalet Development’ to read:
- “Chalet’* means a dwelling forming part of a tourist facility that is —
- (a) a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and
- (b) designed to accommodate short-term guests with no guest accommodated for periods totalling more than 3 months in any 12 month period;”
- v. ‘Residential Enterprise’ to read:
- “Home Business’* means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling

which –

- (a) does not employ more than 2 people not members of the occupier's household;
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
- (c) does not involve the retail sale, display or hire of goods of any nature except where those goods are manufactured or produced at the residence;
- (d) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and
- (e) does not involve the use of an essential service of greater capacity than normally required in the zone;”

vi. ‘Cottage Industry’ to read:

“*Industry – Cottage*’ means premises, other than premises used for a home occupation, that are used by the occupier of the premises for the purpose of carrying out a trade or light industry producing arts and crafts goods if the carrying out of the trade or light industry –

- (a) will not cause injury to or adversely affect the amenity of the neighbourhood; and
- (b) if the premises is located in a residential zone — does not employ any person other than a member of the occupier's household; and
- (c) is compatible with the principal uses to which land in the zone in which the premises is located may be put;

and may include the wholesale and appointment only sale of products produced on site.”

vii. ‘Rural Industry’ to read:

“*Industry – Rural*’ means premises used —

- (a) to carry out an industry handling, treating, processing or packing rural products grown, reared or produced in the locality; or
- (b) for a workshop servicing plant or equipment used for rural purposes in the locality;”

viii. ‘Place of Public Worship’ to read:

“*Place of Worship*’ means premises used for religious activities such as a chapel, church, mosque, synagogue or temple;”

ix. ‘Roadside Stall’ to read:

“*Rural Stall*’ means a place, temporary structure or moveable structure

used for the retail sale of agricultural produce produced on the property on which it is situated as an activity totally incidental to and dependent upon the principal use of the land for agricultural purposes;”

x. ‘Forestry’ to read:

“‘*Tree Farm*’ means land used commercially for tree production where trees are planted in blocks of more than one hectare, including land in respect of which a carbon right is registered under the *Carbon Rights Act 2003* section 5;”

xi. ‘Veterinary Hospital’ to read:

“‘*Veterinary Centre*’ means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders;”

d. Inserting the following new definitions:

i. “‘*Brewery*’ means premises used for the production and consumption of beer, cider or spirits but does not include any other land use defined elsewhere in this Schedule;”

ii. “‘*Exhibition Centre*’ means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature including a museum;”

iii. “‘*Home Office*’ means a dwelling used by an occupier of the dwelling to carry out a home occupation if the carrying out of the occupation –

(a) is solely within the dwelling; and

(b) does not entail clients or customers travelling to and from the dwelling; and

(c) does not involve the display of a sign on the premises; and

(d) does not require any change to the external appearance of the dwelling;”

iv. “‘*Park Home Park*’ means premises used as a park home park as defined in the *Caravan Parks and Camping Grounds Regulations 1997* Schedule 8;”

v. “‘*Rural Produce Sales*’ means any premises used for the purpose of retail sale of products which are grown, reared or produced on site, including a cellar door operation and retail sales associated with Industry – Cottage or Industry – Rural;”

vi. “‘*Rural Pursuit*’ means any premises, other than premises used for agriculture — extensive or agriculture — intensive, that are used for —

(a) the rearing or agistment of animals; or

(b) the keeping of bees; or

(c) the stabling, agistment or training of horses; or

- (d) the growing of trees, plants, shrubs or flowers for replanting in domestic, commercial or industrial gardens; or
- (e) the sale of produce grown solely on the premises;”
- vii. *“‘Wind Farm’ means premises used to generate electricity by wind force and any associated turbine, building or other structure but does not include anemometers or turbines used primarily to supply electricity for a domestic property or for private rural use;”*

2. Town Centre Strategies

2.1 Modifying clause 4.2.2 ‘Business zone’ Policies by –

a) Amending Policy (c) to read as follows:

“(c) To provide for medium to high density residential development within the Busselton City Centre and Dunsborough Town Centre.”

b) Inserting a new clause (d) as follows, and renumber subsequent clauses accordingly:

“(d) Within neighbourhood and local centres, to allow residential development only where it is a component of commercial development.”

2.2 Introduce a new sub-clause to clause 5.3.1 as follows:

“(i) On land coded R-AC3, Deemed-to-comply provision 6.1.1 C1 (Building Size) of the R-Codes is varied as per the provisions of clause 5.19.”

2.3 Amend clause 5.3.2 to read as follows:

“5.3.2 Building height provisions as specified under Table 3 and Table 4, and Deemed-to-comply provision 5.1.6 C6 and 6.1.2 C2 of the R-Codes do not apply, except for on land coded R-AC3. In all other areas, maximum building height requirements are required to comply with the provisions of clause 5.8 of the Scheme.”

2.4 Insert a new sub-clause under clause 5.8 ‘Height of Buildings’ to read as follows:

“5.8.9 For land in the Business zone where a residential density coding has been designated, the height of any building shall not exceed the height limits identified in the Residential Design Codes. Where a residential density coding has not been designated, the height of any building shall be determined in accordance with clauses 5.8.1 to 5.8.5.”

2.5 Amend clause 5.19 ‘Residential Development in the Business Zone’ to read as follows:

“5.19 DEVELOPMENT IN THE BUSINESS ZONE

Where land is zoned ‘Business’ and is designated a residential density coding of R-AC3 the maximum plot ratio shall be 1.5, except for where the following incentives for mixed use development apply:

- (a) Where residential or short-stay accommodation uses represent more than 25% of the plot ratio area of a proposed mixed use development, the maximum allowable*

plot ratio area may be 2.0; or

- (b) *Where a development incorporates a Restaurant, Tavern or other similar use that will provide for informal social interaction the maximum allowable plot ratio area for the remainder of the development may be 2.0; and*
- (c) *The plot ratio incentives set out in sub-clauses (a) and (b) above may be combined, provided that the total plot ratio area does not exceed 3.0.”*

2.6 Amend Schedule 2 “Additional Uses” by –

- a. Inserting an Additional Use (No. A74) provision as follows, and amend the Scheme maps accordingly:

No.	PARTICULARS OF LAND	LAND USE PERMITTED/SPECIFIED	CONDITIONS
A74	-Lots 202 (1), 201 (3), 2 (5), 3 (7), 26 (8), 4 (9), 25 (10), 5 (11), 24 (12), 21 (13), 37 (14), 4 (15), 38 (16), 3 (17), 2 (19), 15-16 (20), 3 (21), 2 (23), and 12-13 (24) Duchess Street, West Busselton; -Lots 200 (29), 28 (37), 27 (41), 34 (43), 1-2 (45), 1 (47), 1 (55), 2 (57), 73 (59), 74 (61), 1-7 and 10-16 (63), 1-5 (69), 6 (71), and 5 (73) Gale Street, West Busselton; -Lots 2-3 (3), 128 (4), 129 (6), 1-3 (7), 1-2 (9), 1-7 (10), 1-6 (11), 130 (14), 30 (16), 29 (18), 28 (20), 27 (22), 26 (24) and 25 (26) Kent Street, West Busselton; -Lots 1 (34), 14 (40), 1-2 (42), 34 (44), 24 (48), 35 (52), 1-10 (54), 39 (58) and 42 (60) West Street, West Busselton, -Lots 51 and 87 to 102 Chieftain Crescent, Lots 86 and 162 Chester Way, Lots 139 to 141 Lorna Street, Lots 1-9 (20) and 115 to 127 Geographe Bay Road, Lots 1 to 17 (3) Dunn Bay Road, Lots 1 & 2 (4), 5 (2), 17, 18, 41 to 43 Prowse Way, Lots 3 and 4 Greenacre Road and Lot 60 (191) Naturaliste Terrace, Dunsborough	Guesthouse, Medical Centre, Office, Professional Consulting Rooms, Restaurant, Shop, Tourist Accommodation	<ol style="list-style-type: none"> 1. The Additional Uses specified shall be deemed to be “D” uses for the purposes of the Scheme. 2. ‘Shop’ land uses may be permitted at ground floor level only and occupy up to 50% of total development floor space. 3. A nil setback to the street shall be considered for active frontages. 4. The provisions of Clause 5.23 relating to cash in lieu of car parking shall apply.

- b. Deleting Additional Use No. 63 relating to Lot 60 (House 191) Naturaliste Terrace, Dunsborough, and amend the Scheme maps accordingly.
- c. Deleting Additional Use No. 73 relating to Lot 8 (House 226) Naturaliste Terrace, Dunsborough, and amend the Scheme maps accordingly.

2.7 Amend Schedule 3 “Special provision areas” by –

- a. Modifying Special Provision 41 relating to Lots 15, 16, 24 & 38 Duchess Street, West Busselton to remove reference to “Limited Office Use” from within the

“Zone” column.

- b. Deleting Special Provision 20 relating to Lot 1 (House 61) Dunn Bay Road, Dunsborough, and amend the Scheme maps accordingly.
- c. Deleting Special Provision 46 relating to Lots 1-11 (House 15) Dunn Bay Road, Dunsborough, and amend the Scheme maps accordingly.
- d. Deleting Special Provision 49 relating to Lot 202 (House 24) Dunn Bay Road, Dunsborough, and amend the Scheme maps accordingly.

2.8 Amend the Scheme maps by –

- a. Amend the Scheme in relation to land currently zoned ‘Business’ within the Busselton City Centre to include a residential density code of R-AC3, being:

- i. Lots bound by Peel Terrace, Brown Street, West Street and Marine Terrace;
- ii. The portion of Lot 73 Peel Terrace currently zoned ‘Business’; and
- iii. Lots 74 and 75 Peel Terrace;

And subject to the following exclusions:

- i. All lots also contained within the Adelaide Street Special Character Area;
 - ii. The portion of Lot 73 Peel Terrace currently reserved for ‘Community Purposes’.
- b. Amend the Scheme map in relation to land currently zoned ‘Business’ within the Dunsborough Town Centre to include a residential density code of R-AC3, being:
 - i. Lots bound by Caves Road, Cape Naturaliste Road, Dunn Bay Road and Seymour Boulevard;
 - ii. Lots bound by Cape Naturaliste Road, Dunn Bay Road, Naturaliste Terrace and Reserve 42673;
 - iii. Lots bound by Dunn Bay Road, Naturaliste Terrace and Hannay Lane;
 - iv. Lots 1-7 (233) Naturaliste Terrace, Lots 1-17 (31) Dunn Bay Road, and Lot 104 (29) Dunn Bay Road.
 - c. Rezoning land currently zoned ‘Tourist’ and ‘Special Purpose’ with frontage to Dunn Bay Road, Dunsborough to ‘Business’ and applying a residential density code of R-AC3.
 - d. Rezoning land currently zoned ‘Industrial’ and ‘Restricted Business’ within the Dunsborough Town Centre to ‘Business’ and applying a residential density code of R-AC3, being:
 - i. Lots bound by Cape Naturaliste Road, Reserve 42673, Naturaliste Terrace and Reserve 42545.
 - e. Rezoning Lot 106 (House No. 16) Cyrilleen Way, Dunsborough from ‘Recreation’ to ‘Business’ and applying a residential density code of R-AC3.

- f. Modifying the residential density coding to R80 over Lots 51 and 87 to 102 Chieftain Crescent, Lots 86 and 162 Chester Way, Lots 139 to 141 Lorna Street, Lots 1-9 (20) and 115 to 127 Geographe Bay Road, Lots 1-17 (3) Dunn Bay Road, Lots 1 & 2 (4), 5 (2), 17, 18, 41 to 43 Prowse Way, Lots 3 and 4 Greenacre Road and Lot 60 (191) Naturaliste Terrace, Dunsborough.

3. Scheme Area

- 3.1 Amend clause 3.1 'Scheme Area' to read as follows:

"1.3 SCHEME AREA

The Scheme applies to the Scheme area as shown on the Scheme maps, or to the Low Water Mark, if the Scheme map does not extend to or beyond the Low Water Mark."

- 3.2 Amend clause 3.3 'Local Reserves' to read as follows:

"3.3 LOCAL RESERVES

Local Reserves are delineated and depicted on the Scheme map according to the legend on the Scheme map, and in addition land between High Water Mark and Low Water Mark shall, unless identified otherwise in the Scheme map, be considered to be 'Recreation Reserve'."

- 3.3 Amending Schedule 1 "Interpretations" by –

- a. inserting the following new definitions:

- i. *"Low Water Mark", in relation to tidal waters, means lowest water mark at spring tides."*
- ii. *"High Water Mark", in relation to tidal waters, means ordinary high water mark at spring tides."*

- b. Amending the following definition to read:

"Mean High Water Mark' means the demarcation line shown on the Scheme map as provided by Landgate on the day of 22 June 2015, that identifies the interface of the ocean and land, and shall exclude any demarcation of natural inland water systems or man-made harbours/canals."

- 3.4 Amending Schedule 4, clause 5(d) of the 'Eagle Bay Special Character Area' to include the word "mean" in front of the words "high water mark";

- 3.5 Amending the Scheme maps by –

- a. Aligning the Scheme area boundary to the Low Water Mark and including Lot 350 Queen Street, Busselton;
- b. Delineating the Mean High Water Mark as provided by Landgate on the day of 22 June 2015;

4. Miscellaneous Scheme Text Amendments

- 4.1 Modifying clause 4.4.2 by –

- a. Amending clause 4.4.2(a) to read as follows:

“(a) determine that the use is consistent with the objectives and policies of the particular zone and is therefore permitted; or”
- b. Amending clause 4.4.2(c) to read as follows:

“(c) determine that the use is not consistent with the objectives and policies of the particular zone and is therefore not permitted.”
- 4.2 Modifying clause 4.5 “Exceptions to the zoning table” by –
 - a. Deleting clause 4.5.3(d) and renumbering subsequent clauses accordingly.
 - b. Introducing a new sub-clause to clause 4.5.4 to read as follows:

“(h) the use of land within the Rural Residential zone, identified for rural or primary production on an approved Subdivision or Development Guide Plan for the purposes of agriculture – intensive, subject to advertising pursuant to clause 10.4 of the Scheme.”
 - c. Amending clause 4.5.4(a) by removing reference to “multiple dwelling”.
- 4.3 Amending Table 1 “Zoning Table” in relation to the ‘Business’ zone and in relation to the use class ‘Community Centre’, replacing the symbol ‘D’ with the symbol ‘P’.
- 4.4 Deleting sub-clause 5.3.1(g) and renumbering subsequent clauses accordingly.
- 4.5 a. Inserting a new clause 5.5.2 as follows and renumbering subsequent clauses and clause references accordingly:

“5.5.2 Notwithstanding clause 5.5.1 above, the following development is expressly prohibited:

 - a. *Drive-through facilities in the Business zone, as specified by clause 5.20; and*
 - b. *Advertisements that advertise goods and services which are not produced, displayed or offered for sale, or which is otherwise not relevant to, the land upon which the advertisement is located, as specified by clause 5.40.”*
- b. Inserting a new clause 5.20 as follows and renumbering subsequent clauses and clause references accordingly:

“5.20 DRIVE-THROUGH FACILITIES IN THE BUSINESS ZONE

Drive-through facilities shall not be approved in the Business zone.”
- c. Amending Schedule 1 “Interpretations” by inserting the following new definition:

“Drive-through facility’ means a facility incidental to another use, such as shop or takeaway food outlet, whereby a product or service is sold or provided direct to customers or patrons driving or seated in a motor vehicle.”
- 4.6 Amend clause 5.8.1 to read as follows:

“5.8.1 A person must not erect any building that -

- (a) *contains more than two storeys or exceeds a height of 9 metres where land is within 150 metres of the mean high water mark; or*
- (b) *contains more than three storeys or exceeds a height of 12 metres where land is more than 150 metres from the mean high water mark, except where otherwise provided for in the Scheme.”*

- 4.7 Amending clause 5.18 “Permanent/Residential Occupation of Tourist Developments” to read as follows:

“5.18 PERMANENT/RESIDENTIAL OCCUPATION OF TOURIST DEVELOPMENTS

5.18.1 *Outside the residential zone, occupation by any person of the following use classes approved under the Scheme as short stay accommodation is limited to a maximum of 3 months in any 12 month period. This applies to the following use classes:*

- (a) *Guesthouse;*
- (b) *Chalet;*
- (c) *Caravan Park;*
- (d) *Park Home Park;*
- (e) *Tourist Accommodation.*

5.18.2 *Notwithstanding the provisions of clause 5.18.1 and subject to consideration of the need to make available adequate tourist accommodation the local government may grant planning approval for the permanent occupancy of up to:*

- (a) *100% of caravan sites within a Caravan Park or Park Home Park on land in the Residential zone; and*
- (b) *15% of caravan sites within a Caravan Park or Park Home Park on land in the Tourist zone.”*

- 4.8 Deleting clause 5.29 “Fire Management in Rural Areas” and renumbering subsequent clauses and clause references accordingly.

- 4.9 Amending clause 5.35 “Setback Requirements in the Agriculture and Viticulture and Tourism Zones” by –

- a. Amending sub-clause 5.35.2 to read as follows:

“In the Agriculture or Viticulture and Tourism zones, a building must not be constructed within 100 metres of Bussell Highway or Caves Road, or 60 metres of Vasse Highway without planning approval, which must not be granted unless the local government is satisfied that the development is consistent with all relevant provisions of the Scheme. Where the local government receives such application it shall forward the application to Main Roads Western Australia for comment and take such comments into consideration when determining the application.”

- b. Deleting sub-clause 5.35.3 and renumbering subsequent clauses and clause references accordingly.

4.10 Amending Schedule 1 “Interpretations” by removing the definition ‘Health Care Professional’.

4.11 Amending Schedule 14 “Exempted Advertisements” by –

- a. Replacing the term “Information Sign” with “Information Panel” at (A)11.
- b. Inserting a new ‘Note’ after clause (B)1 to read as follows:

“Note: Advertisements that advertise goods and services which are not produced, displayed or offered for sale, or which is otherwise not relevant to, the land upon which the advertisement is located, are prohibited as specified by clause 5.40.”

5. Scheme Maps

Amending the Scheme maps as shown on the Scheme Amendment maps and as follows:

	Address	Details – The proposed modification
5.1	Implement Cadastre Changes to all Scheme maps	Scheme maps to be updated with the most up to date cadastre data
5.2	Lot 306 (1191) Vasse – Yallingup Siding Road, Quindalup	Rezone portion of lot from ‘no zone’ to ‘Agriculture’
5.3	Lot 307 (9122) Quindalup South Road, Quindalup	Rezone portion of lot from ‘no zone’ to ‘Agriculture’
5.4	Lot 308 (1105) Vasse – Yallingup Siding Road, Quindalup	Rezone portion of lot from ‘no zone’ to ‘Agriculture’
5.5	Lot 309 (26) Quindalup South Road, Quindalup	Rezone portion of lot from ‘no zone’ to ‘Agriculture’
5.6	Lot 310 (67) Quindalup South Road, Quindalup	Rezone portion of lot from ‘no zone’ to ‘Agriculture’
5.7	Lot 3733 Coulls Road, Yallingup Siding	Rezone from ‘no zone’ to ‘Agriculture’
5.8	Yallingup Special Character Area	Identify the Yallingup Special Character Area as shown on the Scheme Amendment map
5.9	Lot 1451 (461) Princefield Road, Ruabon	Rezone portion of lot from ‘no zone’ to ‘Agriculture’
5.10	Lot 3124 Princefield Road, Abba River	Rezone from ‘no zone’ to ‘Agriculture’
5.11	Lot 964 Yoganup Place, Yoganup	Rezone portion from ‘Recreation’ Reserve to ‘Bushland Protection’ and ‘Agriculture’.
5.12	Lot 583 (910) Ludlow-Highergreen Road, Abba River	Rezone portion of the lot from ‘Public Purpose’ Reserve to ‘Agriculture’
5.13	Lot 582 (459) Princefield Road, Abba River	Rezone portion of the lot from ‘Public Purpose’ Reserve to ‘Agriculture’
5.14	Lot 687 Princefield Road, Abba River	Rezone portion of the lot from ‘Public Purpose’ Reserve to ‘Agriculture’
5.15	Lot 26 Vasse Highway, Yoongarillup	Rezone portion of the lot from ‘Public Purpose – Drain’ Reserve to ‘Agriculture’
5.16	Lot 1 (71) Boundary Road and Lot 109 (8113) Bussell Highway, Metricup	Rezone portion of lots from ‘Agriculture’ to ‘Special Purpose – Caravan Park’

5.17	Lot 21 (3806) Caves Road, Wilyabrup	Rezone portion of lot from 'Recreation' Reserve to 'Agriculture'
5.18	Lot 2680 (811) Puzey Road, Wilyabrup	Rezone from 'Recreation' Reserve to 'Viticulture and Tourism'
5.19	Lot 1 (1092) Chapman Hill Road, Chapman Hill	Rezone from 'no zone' to 'Agriculture'
5.20	Lot 31 (261) Jindong-Treeton Road, Koorup	Rezone portion of lot from 'Recreation' Reserve to 'Agriculture' and the directly adjacent road reserve from 'Recreation' Reserve to 'no zone'
5.21	Portion of Lot 125 (3763) Caves Road, Wilyabrup	Rezone from 'Recreation' Reserve and 'no zone' to 'Viticulture and Tourism'
5.22	Lot 282 (516) Lindberg Road, Kalgup	Rezone portion from 'Recreation' Reserve to 'Agriculture'
5.23	Lot 3978 (980) Vasse Highway, Yoongarillup	Rezone from 'Recreation' Reserve to 'Special Purpose – Telephone Exchange'
5.24	Lot 100 (3) Caladenia Close, Lot 101 (6) Eagle Crescent and Lot 102 (23) Fern Road, Eagle Bay	Rezone portions of the lots from 'Public Purpose' Reserve to 'Residential R5'
5.25	Eagle Bay Special Character Area	Identify the Eagle Bay Special Character Area as shown on the Scheme Amendment map
5.26	Lot 999 (245) Cape Naturaliste Road, Dunsborough	Rezone from 'Special Purpose – School Site' to 'Special Purpose – Educational Establishment'
5.27	Lot 200 (1) Gifford Road and Lots 91 (3), 92 (3A), 93 (5A) and 94 (5) Hurford Street, Dunsborough	Rezone portions of the lots from 'no zone' to 'Residential R15', and remove the 'Recreation' Reserve designation and 'Landscape Value' Area from the Hurford Street road reserve
5.28	Old Dunsborough Special Character Area	Identify the Old Dunsborough Special Character Area as shown on the Scheme Amendment map
5.29	Dunsborough Landscape Value Area	Realign the 'Landscape Value' Area around the Dunsborough Residential zone, such that it is located between the 'Agriculture' zone and the 'Residential' zone, as shown on the Scheme Amendment map
5.30	Lot 600 (7) Armstrong Place, Dunsborough	Rezone from 'Recreation' Reserve to 'Special Purpose – Aged Person Housing'
5.31	Lot 42 (201) Geographe Bay Road, Quindalup	Rezone from 'Public Purpose' Reserve to 'Special Purpose – Youth Hostel'
5.32	Lot 2761 (29) Commonage Road, Quindalup	Rezone portion of lot from 'Public Purpose' Reserve to 'Agriculture'.
5.33	Quindalup Special Character Area	Identify the Quindalup Special Character Area as shown on the Scheme Amendment map
5.34	Lots 1 (29) and 2 (2/31) Wardanup Crescent, Yallingup	Rezone portion of the lots from 'no zone' to 'Residential R10'
5.35	Lot 5 (20) Elsegood Avenue and Lot 21 (9) Dawson Drive, Yallingup	Rezone from 'Tourist' to 'Residential R10', as shown on the Scheme Amendment map
5.36	Lot 15 Quindalup Siding Road, Quindalup	Rezone portion of lot from 'Recreation' Reserve to 'Agriculture'

5.37	Lots 40 (1721) and 41 (1701) Wildwood Road, Yallingup	Rezone portion of the lots from 'Public Purpose' Reserve to 'Viticulture and Tourism'
5.38	Lot 2000 Edith Cowan Court, Abbey and Lot 5614 Wagon Entrance, Broadwater (Reserve 48280)	Reserving from 'Residential R5', 'R20' and 'R30' to 'Recreation' Reserve
5.39	Lot 6 (2) Grace Court, West Busselton	Rezone from 'Public Purpose' Reserve to 'Special Purpose - Educational Establishment'
5.40	Lot 500 Grace Court, West Busselton	Rezone from 'Special Purpose – Various' to 'Special Purpose – Church Site, Educational Establishment, Child Care & Hall'
5.41	Lot 688 (1) Piano Box Boulevard and Lot 689 (34) Pickmore Circus, West Busselton	Rezone from 'no zone' to 'Residential R20'
5.42	Lot 501 (190) Bussell Highway, West Busselton	Rezone portion of lot from 'no zone' to 'Residential R15'
5.43	Lot 502 Bussell Highway, West Busselton (Reserve 41554)	Rezone portion of lot from 'no zone' to 'Recreation' Reserve
5.44	Lot 4691 (7) Kingfish Road, Broadwater	Rezone from 'Recreation' Reserve to 'Residential R15'
5.45	Lot 200 (165) Marine Terrace, Geographe	Rezone portion of lot from 'no zone' to 'Residential R15'
5.46	Lot 5016 (75) Ford Road, Geographe (Reserve 44384)	Rezone from 'Recreation' Reserve to 'Residential R20'
5.47	Lot 10 (86) Causeway Road and Lot 12 (69) Molloy Street, Busselton	Rezone portions of the lots from 'Special Purpose – Service Station' to 'Residential R20'
5.48	Lot 300 Leeuwin Boulevard, West Busselton	Rezone from 'Recreation' Reserve and 'no zone' to 'Residential R20'
5.49	Lot 2000 Deacon Walk, West Busselton	Reserve lot as 'Recreation' Reserve from 'Residential' zone
5.50	Lot 197 (1) MacKillop Avenue, West Busselton (MacKillop Catholic College)	Rezone from 'Public Purpose' Reserve to 'Special Purpose – Educational Establishment'
5.51	Lot 5320 (2) Kelly Drive, West Busselton (St Joseph's Primary School)	Rezone from 'Public Purpose' Reserve and 'no zone' to 'Special Purpose – Educational Establishment'
5.52	Lot 2002 Pinnacle Avenue, Ambergate (Reserve 50288)	Reserve portions of lot as 'Recreation' Reserve from 'Rural Residential' zone
5.53	Lot 44 Chapman Hill Road, Kalgup	Rezone from 'Public Purpose' Reserve to 'Agriculture'
5.54	Lot 16 Lindberg Road, Bovell	Rezone from 'no zone' to 'Agriculture'
5.55	Lot 25 (580) Vasse Highway, Yoongarillup	Rezone portion of lot from 'Public Purpose' Reserve to 'Agriculture'
5.56	Lot 60 (3908) Bussell Highway, Ruabon	Rezone in part from 'Recreation' Reserve to 'Agriculture'.
5.57	Lots 127 (30), 128 (28), 129 (24), 130 (18) and 135 (31) Old Timber Court, Reinscourt	Rezoning portions of lots from 'Conservation' to 'Rural Residential'

5.58	All lots within Dunsborough Lakes with the exception of Lot 9033 Commonage Road, Dunsborough	Include all areas of Dunsborough Lakes, with the exception of Lot 9033 Commonage Road, Dunsborough, within the 'Dunsborough & Quindalup' Precinct of DCA 1
5.59	Lot 27 (606) Rendezvous Road, Vasse (Heron Lake)	Exclude lot from DCA 1 to be included within the Vasse Development Contributions Plan.
5.60	Map Legend	Insert the following into the Map Legend in alphabetical order under 'Special Purpose': "CECH CHURCH SITE, EDUCATIONAL ESTABLISHMENT, CHILD CARE & HALL" "EE EDUCATIONAL ESTABLISHMENT" "TE TELEPHONE EXCHANGE" "YH YOUTH HOSTEL"

- B. Pursuant to r.53 of the Planning and Development (Local Planning Schemes) Regulations 2015, resolves to endorse the 'Schedule of Submissions' at Attachment A prepared in response to submissions received on the proposed Omnibus Amendment No 1 following public consultation between 4 November 2015 and 16 December 2015.
- C. Pursuant to r.50(3) of the Planning and Development (Local Planning Schemes) Regulations 2015, resolves to support the modifications to proposed Omnibus Amendment No. 1 shown in the 'Schedule of Modifications' at Attachment B, prepared to address issues raised in submissions received following public consultation.
- D. Pursuant to r.53 and r.55 of the Planning and Development (Local Planning Schemes) Regulations 2015, resolves to provide the proposed Omnibus Amendment No. 1 to the Western Australian Planning Commission with a request for the approval of the Hon. Minister for Planning.
- E. Pursuant to r.56 of the Planning and Development (Local Planning Schemes) Regulations 2015, should directions be given that modifications to the proposed Omnibus Amendment No 1 are required, these modifications are to be undertaken accordingly, on behalf of the Council, unless they are considered by Officers to be likely to significantly affect the purpose and intent of the proposed Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.

Note: Cr Henley put forward an alternative motion for Council consideration.

Council Decision

C1602/017

Moved Mayor G Henley, seconded Councillor J McCallum

That the Council defers Item 10.1 for a month until the 9 March, 2016 Council meeting.

CARRIED 9/0

10.3 PROPOSED SUPERMARKET (ALDI) AND SHOWROOM, LOT 17, WEST STREET, BUSSELTON

SUBJECT INDEX:	Statutory Planning Development Assessment
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Development Services and Policy
ACTIVITY UNIT:	Statutory Planning
REPORTING OFFICER:	Manager, Development Services - Anthony Rowe
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Location Plan
	Attachment B Land Use Concept Plan
	Attachment C Site Plan
	Attachment D Site Works Approval
	Attachment E Elevations
	Attachment F Published Under Separate Cover Confidential Legal Advice
	Attachment G Published Under Separate Cover Schedule of Submissions

PRÉCIS

The City has received a planning application for a Discount Department Store (intended to accommodate a K-Mart store) and showroom premises at Lot 17 West Street, Busselton.

This application has followed a methodical approach of a Land Use Concept Plan, subdivision and a site works plan. This assessment is dependent upon fulfilment of the site works approval (DA15/077), but it enables the assessment of this proposal as if on a site ready to development, with access, car parking and drainage matters already resolved. The application has been submitted in parallel with a similar application for a Discount Department Store on another part of the site, and which is also subject of a report to the Council on this meeting agenda.

Key issues to consider with respect to the application are whether there is discretion to approve the primary land-use (i.e. supermarket) and whether and how that discretion should be exercised. The City has obtained legal advice in respect to the first of those issues, and that advice is provided to Councillors as (confidential) **Attachment G**.

Given the nature of some of the issues requiring consideration, it was seen as appropriate to undertake public consultation prior to the Council being asked to formally consider the application.

The proposal is recommended for approval subject to conditions.

BACKGROUND

The subject land is zoned Restricted Business, which is generally for showrooms, warehousing and bulky goods shopping. Ordinarily, a supermarket business would fall into the 'Shop' land-use designation, and would be a prohibited land-use in the Restricted Business zone. The City has, however, received advice which indicates that, in this instance, the supermarket development proposed can be considered a 'use-not-listed' in the City's town planning scheme, and that legal discretion therefore exists to approve the proposed development. The City has obtained legal advice in respect to that key issue, and that advice is provided to Councillors as (confidential) **Attachment G**.

Special Provisions that relate to the land (SP26) also require that development shall be undertaken in accordance with a Land Use Concept Plan.

In June 2015 the City approved a Land Use Concept Plan. The Land Use Concept Plan illustrated indicative buildings and explicitly it identified a building at the location of this proposal as a Discount Department Store. A copy of the endorsed Land Use Concept Plan is included as **Attachment B**.

Following the approval of the Land Use Concept Plan, a subdivision application consistent with it was approved by the WAPC on 11 December 2015.

A Site Works application, for construction involving the filling of the land, installing services, making roads, carparks and individual building sites, consistent with the Land Use Concept Plan, was lodged concurrently with the subdivision application. It was approved under delegation on 29 January 2016. A copy of the site works approval is included as **Attachment D**.

The proposed development now before the Council consists of:

- A supermarket with 1,606m² NLA
- Three showroom tenancies with NLAs of 510m², 145m² and 140m²
- Loading docks at the rear of the supermarket and showroom tenancies

There are two key, existing subdivision/development approvals already in place, namely the subdivision and site works approvals referred to above. Each of these is described in a little more detail under appropriate sub-headings below.

Subdivision WAPC 152597

The Subdivision proposed the creation of 11 allotments out of Lot 17 West Street and some adjoining lots in common ownership, and followed the allocation of land use and the indicative internal road layout consistent with the Land Use Concept Plan. A significant feature included ceding land for the foreshore reserve and the space to accommodate the road widening of West Street, including a proposed roundabout to provide the primary means of access to the overall development. The subdivision also provides the arrangement of easements for the shared use of car parking areas, access ways (private internal roads) and services/utilities. No public roads are proposed through the area of Lot 17. All access ways, dual use footpaths, pedestrian footpaths and car parking are to be covered by public easements available to the benefit of the City of Busselton and the public at large.

Site Works Development Application DA15/0577

The site works implement the layout cascading from the Land Use Concept Plan through to the subdivision. The site works application addressed all works/constructions except for the buildings themselves. It is the works associated with the filling of the land, the making the roads, drainage works, car parking areas, service roads, street lighting, landscaping, public paths and the development of the foreshore reserve. It includes the construction of the roundabout at West Street and the construction of the road medians on Bussell Highway.

A particular focus of the officer assessment of the site works application, prior to the granting of an approval under delegated authority, was ensuring that, whilst recognizing the fact that the development is an essentially service commercial precinct, rather than a main street type precinct, the overall site layout and detailed design will provide a high level of amenity, with adequate footpaths to encourage and facilitate pedestrian access, as well as landscaping to soften the overall precinct.

Works are not to commence on site until (technical) engineering drawings, specifications and arrangements (Agreements) for ceded assets and works on public land have first been agreed.

A kangaroo management plan is to be prepared for approval by the Department of Parks and Wildlife prior to commencement. A construction management plan controlling dust, noise, and stormwater through the period of construction has also been conditioned for the purpose of minimizing disturbance to neighbours and to protect the water quality of the New River wetland

STATUTORY ENVIRONMENT

On the 23 August 2015 the Minister Gazetted the Development (Local Planning Schemes) Regulations 2015. The new regulations introduced at Schedule 2, of the Regulations, a set of Deemed Provisions that must be read concurrently with the City's Local Planning Scheme; until such time as the City prepares an amalgamated Local Planning Scheme. In the event of conflict between Schedule 2 and the City Scheme, the provisions of Schedule 2 prevail.

Development (Local Planning Schemes) Regulations 2015 (Schedule 2)

In considering an application for development approval the City is to have **due regard** to the matters to be considered as listed at cl.67. (see Officer Comments).

To the extent they are the most directly applicable to the proposal, regard has been given to the *Matters of Considerations* listed in Schedule 2 and in turn the most applicable policy and guidance found across State Policy, Local Planning Scheme policy, and Local Planning policy.

Matters to be Considered	Applicable Policy
Orderly and proper planning (Cl 67(a)(b)(c)(d)(e)(f)(g) and (h))	Scheme 21 LPP2,4,6 and 8
Any report of review of the Scheme (Cl. 67(i))	Nil
Land Reserved under the Scheme (Cl.67(j))	Nil
Built Heritage (cl. 67(k))	Nil
Cultural heritage (cl. 67(l))	Nil, addressed in investigations LUCP
Compatibility in its setting (cl. 67(l))	Part 5 Scheme 21
Amenity (cl. 67(n))	Part 5 Scheme 21
Effect on the natural environment (cl. 67(o))	DEC Wetland Mapping, addressed at Land Use Concept Plan
Landscaping (cl. 67(p))	Part 5 Scheme 21

Local Planning Scheme 21

Zoning Table

The zoning table lists a variety of land uses under each zone title in the City's Scheme. It denotes whether a land use is *Permitted*, *Discretionary*, *Discretionary* requiring advertising and *Prohibited*.

Development that does not fall comfortably within a use listed in the Table (having referred to the Definitions provided at Schedule 1 of the Scheme) may be assessed as a *use not listed*.

In addition to the Zoning table, *additional uses* identified in Schedule 2 of the Scheme may apply, and particular conditions that may apply to the development of particular sites can be listed as Special Provisions in Schedule 3 of the Scheme.

Restrictive Business Zone:

The subject land is located in the Restricted Business Zone.

The Restrictive Business Zone does not list a Supermarket in the Zoning Table. An additional use however is provided at the subject land (in Schedule 2) for a Discount Department Store to be determined as a Discretionary use, not requiring advertising, and also Special Provisions listed in Schedule 3 apply.

Schedule 2 at Additional Use 64 (A64) includes:

- Pt Lot 17 West Street, West Busselton Discount Department Store - 'D' discretionary use *and does not require advertising.*
- *Developed in accordance with a Land Use Concept Plan adopted by the Council.*
- *Development shall comprise of a single Department store with a gross leasable area not less than 5,000m and not more than 8,000m².*

Schedule 3 at Special Provision 26 (SP26)

- *Development in accordance with the Land Use Concept Plan (LUCP)*
- *Development of the land shall make provision for dual use path connections between Prince Regent Drive and Bussell Highway*
- *Development shall make provision for a foreshore and drainage reserve*
- *A Stormwater and Drainage Management Plan shall be provided*
- *Development shall address the interface with adjacent Residential zoned land*
- *Dust and Noise Management Plans are to be prepared*

The Objective of the Restricted Business Zone is:

"To make adequate provision for other commercial needs and opportunities not ideally located in the town centres of Busselton and Dunsborough whilst having regard to the strategic importance and need to maintain the commercial primacy of the town centres."

Land Use Concept Plan

The Additional Use provisions and the Special Provisions both rely on the Land Use Concept Plan.

The Land Use Concept Plan was recently amended by the City following advertising and consultation with state agencies. It was advertised 17 April 2015 to 15 May 2015 and adopted by Council on 24 June 2015.

The Land Use Concept Plan provides for the allocation of space within Lot 17.

It identifies indicative building locations, road arrangement, car parking and the delineation of the foreshore reserve. It also illustrated and notated the widening of West Street and provision of the roundabout, and access onto Bussell Highway with restrictions to only left-in/left-out movement.

The Land Use Concept Plan includes policy guiding development, requiring development adjacent the residential zoned land, west boundary, to be restricted to single storey, and measures to protect residential amenity and privacy.

RELEVANT PLANS AND POLICIES

State Planning Policy

Nil

Local Planning Policy

LPP 2 Traffic and Transport Policy

A Traffic Impact Assessment was undertaken as part of the Land Use Concept Plan. The assessment was prepared by Jacobs SKM and critically reviewed by City engineers with assistance from ARUP consulting. The impacts upon the network and future demand was analysed, resulting in the approval of the Land Use Concept Plan with the roundabout and precise positioning on West Street, and medians restricting left-in/left-out turns at Bussell Highway. Insufficient road width is available at Bussell Highway to provide a slip lane for right hand turns, which is necessary to avoid congestion on Bussell Highway.

Light sequencing and restrictions on right-hand turns travelling west from Bussell Highway may be of temporary assistance, but the intersection at Bussell Highway and West Street will require a significant upgrade to cater for the natural growth of the City.

LPP 4 Urban Centres Policy

This policy addresses design guidelines for specific commercial centres. Whilst the subject land is outside of the boundary of the Urban Centres Policy it is considered relevant and has been given regard to.

LPP 6 Development Contribution Policy

This policy identifies the requirement for contributions.

A percent for art contribution is at 1% of the development value is applicable to this application.

Drainage and infill contributions are not required as development through the UWMP for the Site Works application is to achieve standards for on - site disposal and therefore not require any augmentation of the City systems.

All roadwork associated with the development including the roundabout and medians will be at the applicant's cost and is addressed by condition of the site works approval.

LPP 8 General Development and Process Standards policy

The CBD parking requirements can be applied to the considerations at this site and key considerations in this regard, from the General Development and Process Standards policy, include:

- Taxi spaces are required in close proximity to entrance at 1 per 1,000m² gross floor area.
- Where reciprocal parking is proposed, the City must be satisfied that parking arrangements are permanent

- All car parking areas are to be sealed, line-marked and drained to the satisfaction of the City
- Car park design and construction shall include adequate provision for landscaping
- The City may require the lodgement of performance guarantees against the satisfactory construction, completion and establishment of car parking areas and associated landscaping
- The rate of carparking spaces for particular land uses is:
 - Shop, Office - 1 space for every 30sqm of net lettable area.
 - Showroom – 1 space for every 50sqm of net lettable area.

FINANCIAL IMPLICATIONS

Nil

Long-term Financial Plan Implications

There are no long term financial implications directly attributable to the determination of this application.

STRATEGIC COMMUNITY OBJECTIVES

Governance systems that deliver responsible, ethical and accountable decision making.

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks.

One of the submissions received during advertising has questioned the determination of the nature (category) of land use. The submitter has the prerogative to challenge the City's categorisation at the Supreme Court. The City has obtained independent legal advice which has supported its categorisation.

CONSULTATION

The application for a supermarket was advertised between 30 October 2015 and 18 November 2015. Nine public submissions were received. Relevant agencies were also consulted.

A summary of the submissions received is attached (Attachment F).

The public issues raised in the submissions include:

- Concern about disturbance to the adjacent residential area
- Access to the homemaker centre should not be disadvantaged
- Relationship to Lot 16
- Concern the development will detract from the town centre of Busselton
- A supermarket was not identified on the concept plan
- The proposal is a shop and should be assessed as prohibited

- The proposal is contrary to the Ministers reasons for declining Scheme 20 Amendment 181

The issues raised by agencies include:

- Development is supported if consistent with the Local Water Management Strategy and Urban Water Management Plan.(DoW, DPAW)
- Supported if satisfactory manoeuvring space is provided for emergency vehicles.(DFES)
- Concern about impact/congestion on the West Street Bussell Highway intersection. (Main Roads)

Reply to submissions received

The matters raised in the public submissions relate more to the considerations that were given in determining the Land Use Concept Plan. They relate to the overall development of the site and not specifically the supermarket and showrooms in their location on site.

The proposed building is located away from the residential area to the west. It will not directly impact upon the residents located at the western boundary. The Land Use Concept Plan guides the future development. In the area adjacent to the western residents it nominates buildings to be single storey and set back from the boundary (the setback utilised as a service access). It also provides in this area that any future assessment to ensure an appropriate level of amenity and privacy is provided to the adjacent residents. This includes matters of light spill, noise, odour, overlooking.

Overall the development does provide a benefit for the residents located to the west, which the City has pursued in response to their concerns; to provide them with an additional route of access to West Street or Bussell Highway.

The comments of Main Roads WA are not specific to the Supermarket but the development of lot 17 overall. These matters were considered at the land Use Concept Plan investigations and resulted in road treatments at West Street (provision for road widening and provision of a roundabout) and at Bussell Highway (medians restrictions facilitating only left-in and left-out turns).

It is acknowledged that the West Street Bussell Highway intersection is under pressure **at peak** times and is worsening. Work by the City has not been able to proportionate the impact of other recent commercial developments from that of the general and natural population growth. The City has therefore not been seeking upgrade contributions from recent developments in the town centre for the West Street Bussell Highway intersection. The capacity in the immediate term may be extended by signalling treatments including restricting right hand turns north at peak times, and by improving real time information for drivers (active signage at peak times) about alternate routes to destinations.

Storm water disposal, and the interface with the foreshore and wetlands, has now been approved by the Department of Water and the Department Parks and Wildlife, through the subdivision approved by the WAPC.

OFFICER COMMENT

This proposal follows a methodical approach to the development of Lot 17. Many of the matters that would be considered have been addressed through the development of the Land Use Concept Plan, namely the impact up on the traffic network including intersection designs, the integration of utilities, the relationship to adjoining properties and protection of the wetlands.

The subdivision application that followed the Land Use Concept Plan and the Site Works approval resolved the requirements for, floor levels, stormwater management, internal traffic movement, shared parking, pedestrian movement and landscaping.

The key *Matters to be Considered* are the:

- Classification and orderly development
- Design and appearance of the building;
- Amenity;
- Carparking; and
- Effect on the natural environment

Classification and Orderly development

Classification

A number of submissions questioned the appropriateness of the location for a supermarket and also whether it was in fact a *Shop* and therefore a prohibited land use in the Restrict Business Zone. The Land Use Concept Plan identified the building but not the use as a Supermarket.

The applicant had sought to have the application categorised as a *Convenience Store*, which is a land use explicitly contemplated in the Restricted Business Zone.

The City's initial determination was that the proposal constituted a *Supermarket* (as well as showrooms), and that a *Supermarket* was not a use listed within the Zoning table in the Restricted Business zone. Significantly it is identified that Schedule 1, lists a *Supermarket* as a use that is different to a *Shop*.

The City then proceeded to consider Scheme clause 4.2.2 and determined that the Supermarket, and the application, was applicable to sub clause (b); that the use **may be** consistent with the objectives and policies of the Restricted Business zone and that advertising is required. The City proceeded to determine the application on that basis.

The City has sought external legal opinion as to the appropriate classification of the land use/application.

The legal advice obtained by the City supports the adopted the correct approach.

The legal advice also supports that Aldi is a particular form of Supermarket. An Aldi store can be distinguished from other supermarkets by its inclusion of special buys, which include furniture, electrical appliances, hardware, clothing toys and sheets. The advice however found that these distinctions neither make an Aldi store a shop or a showroom, but by proportion, it still satisfies the definition of a *Supermarket*. The legal advice did not support the opinion that the proposal could be considered a *Convenience Store*.

Orderly development

The Statutory requirement is for the determining authority, the Council, to give due regard to the *Matters to be Considered*, as prescribed in the Regulations. Importantly *due regard* requires the determining authority to apply the development controls practically and mindful of their purpose.

The Restricted Business includes an additional use for a Discount Department Store, up to 8000sqm and this was approved by the Minister in June 2007.

The City's Local Commercial Strategy's reflection on the purpose of facilitating the development of a Discount Department Store at Lot 17, which is unique only to this Restricted Business zone, recognised that it was important due to the difficulties in coordinating and consolidating land parcels in the town centre and rather than undermining the town centre it would be beneficial in reducing the escape expenditure to other centres in the region.

The Local Commercial Strategy did however recognise the importance of detailed design to ensure the development did not create fragmentation of the town centre.

Since then the detailed design referred to has been achieved through the Land Use Concept Plan. The recently approved Busselton Central, the main carpark off West Street has also worked to create a strong north-south connection linking Lot 17 to the town centre. The New River foreshore also provides a natural barrier defining the extent of development and perception of the town centre for the public.

The purpose that may be derived of the Zone, in considering the zoning table, the zone objectives and additional use, is that of commercial activity, a clean environment of a high amenity. A land use for *Industry*, as an example, is prohibited. A Discount Department Store up to 8000m² is a discretionary use not requiring advertising, therefore contemplated as appropriate and positively encourage by explicit identification in the Scheme.

The City has received a separate application for a Discount Department Store with a gross lettable area of 6133 m². The proposed supermarket has a net lettable area of 1606 m². Combined the total is 7739 m²; within the 8000 m² Discount Department Store envisaged as desirable by the Scheme.

The Scheme purposefully provides for the impact a 8000 m² discount department store would have materially on the town centre and found advantages to do so despite a conflict with the Zone's objective. It cannot therefore be read at this particular Restricted Business Zone that anything that might be found in the City centre automatically cannot occur in this.

A Discount Department Store up to 8000 m² is contemplated, and its intensity and impact including traffic was anticipated. Anything materially similar and within that quantum of 8000 m² is arguably within the expected impact upon the City centre and road network, and therefore not inconsistent with the provisions of the Zone in this regard.

A Supermarket is materially comparable to a Discount Department Store. They are both car dependent, high turnover, large format, and the movement of people through and around them is very much the same. They are both not associated with any noxious emissions. They have the same car parking requirements and expected turnover of spaces. The only distinguishing feature is the product on sale; and this is not a distinguishing effect on the physical relationship the development may have with its surroundings. When comparing a Supermarket with a Discount Department Store they are externally comparable.

The proposed supermarket is an Aldi and it is a new market entrant. It is not an existing supermarket relocating from the town Centre. Aldi has a particular following and loyalty that may draw people from outside a normally expected catchment. There is no ready location within the town centre to practically accommodate an Aldi (that is not already held by a competitor) or be a site likely to be contemplated by Aldi as suitable, other than to displace an existing supermarket. As a supermarket however, an Aldi could be accommodated at a number of other locations within the District (e.g. the Commercial site at Old Broadwater Farm).

The arrival of Aldi will have an effect upon other supermarkets, but competition is not a direct planning consideration and the competitive effect will be felt whether or not Aldi was to locate at the proposed location or elsewhere in the City's area.

The proposed use, because it is materially comparable with a Discount Department Store and is within the envisaged intensity of development and the impact that would have on the town centre and traffic, is considered consistent with the orderly development of the city.

As an aside, it should be noted that the Council has in the past supported zoning changes for the land, which had they not been rejected by the Minister for Planning, allowed further shop and supermarket floorspace on the land.

Design and Appearance of the Building

The City has worked constructively with the applicant to improve the design and appearance of the initial proposal. These considerations included widening the footpaths, increasing the glazing at the ground floor, ensuring a continuous awning for pedestrians, the locations for advertising identified within the building profile and the relocation of the trolley store area from the West Street frontage to a central position at the northern face (front) of the supermarket.

The resulting building is a simple design (see **Attachment E**) but the use of vertical feature parapets, the continuous awning as a linking horizontal element, the interchange of colours and a high use of proportion of window creates a frontage of interest and interaction at the carpark. The other sides of the building feature only an interchange of colour. It however, does present a neat and orderly appearance with more interest than typically expected of a uniform cement tilt up construction.

West Street Setback

Through the various design iterations and negotiations regarding the Site Works approval, the supermarket/building has been pushed south. The orientation of the building and the angle of West Street has resulted in an inadvertent narrowing of the setback to where the new the West Street boundary will be; once West Street has been widened. The south east corner of the building will have a 2m set back instead of the 6m set back identified in the Land Use Concept Plan. The building should be setback 6m from the widened road alignment in accordance with the Land Use Concept Plan to provide space for landscaping and sense of an appropriate scale to a public area.

The public's perspective is primarily from West Street. The architectural elements facing West Street are simple/bland. Landscaping, if the building is set back 6m, will intervene to assist in creating some variation and interest. The City has also indicated a preference for artwork, from the overall percent for art contribution at the site, to be directed to this area. Ideally the landscaping and the artwork should complement each other to provide a high standard of appearance at this area. The City can pursue this through the fulfillment of the conditions Site Works conditions.

A dual use path is to be located between the proposed building's service area and Lot 16. The Site Works investigations resolved the positioning of buildings, ground levels, and landscaping to ensure a pleasant amenity for the public travelling through the area. This has in turn benefited the relationship between the proposal and the house at lot 16.

The service areas located on the southern side of the proposed building are screened and the screening will present a neat and uncluttered edge to the building. This is consistent with the Scheme requirements for the location and screening of service areas. Precise details of materials, colours and textures should be conditioned, again to work with the considerations of the landscape plan details, conditioned in the Site Works approval, to ensure this area is an attractive public space.

Building height

The predominant building height is 9.53m, with feature parapets on the north face extending up to 10.7m. Advertising signage is to be retained below the heights of the parapet walls. The City's general building height limit is 10m (cl.5.8) but is discretionary. Limited features extending above that height are routinely accepted by the City.

The proposed building is a compatible scale in terms of the Home Hardware building on the opposite side of West Street (east), the proposed Discount Department Store (west) and the buildings (north – Toyota). The building will however be significantly taller than the existing residence at lot 16, which is located immediately south of the proposed building.

Percent for Art

The Percent for Art Policy requires a contribution, or works, of one percent of the estimated value of the development is to be provided towards the inclusion of artworks in built form and public spaces (1% of \$2,000,000 + \$20,000). This is applied as a condition.

The applicant has indicated a preference to provide the art of an equivalent value on site, rather than making the cash contribution. The City has indicated that the combined contributions from the Site Works and other development applications should be directed to the area adjoining West Street.

Amenity

The proposed building and its use as a supermarket and showrooms are not normally associated with high external impacts as fundamental to the land use. Possible impacts may be disturbance by service vehicle noise, light spill, odour from service area bins and potentially cooking doors. These may be described as management scale impacts and can be addressed by conditions. They are also enforceable under environmental health legislation.

Carparking

Car parking is to be provided from a shared carpark. Both the proposal and the adjacent Discount Department Store will share a large block carpark. A formal arrangement for the continued access to the parking area is a condition that must be satisfied for both the lots to be divided and for the site works to commence. The proposal requires 70 car parking spaces; the supermarket calculated at 1:30m² NLA and the showrooms at 1:50m². Across the developments that share the carpark, a total of 700 spaces is required and 815 have been provided. This includes overall, 26 disabled bays, four taxi ranks, and 20 motorcycle spaces (this accords with LPP8 numbers and Cl 5.22 car parking in the Restricted Business Zone).

The City has ensured that the carpark will be provided to practical dimensions ensuring that overhangs maintain the functionality of footpaths and landscape strips and drainage swales. Car parking areas will be sealed and line marked. Taxi bays 2 and disabled bays 4 are indicated convenient to the supermarket entrances

The vehicle movement and parking arrangements pursued by the Site Works approval are designed to facilitate safe, efficient and secure access for users of the development. Through negotiation some initial spaces were removed to provide more space adjacent the internal roundabouts and at the aisle ends. Although some minor modifications will be required at the detailed design stage, associated with the Site Works approval, the key elements of the City's Car Parking Policy have been complied with.

Effect on the natural environment

Through the investigation of the Land Use Concept Plan and the Local Water Management Strategy as part of the subdivision and expected of the Urban Water Management Plan a focus was to provide certainty for the adjacent (south) New River wetlands and its protection from entry of adverse quality storm water. These aspects have been addressed through establishing a foreshore reserve to be ceded to the Crown, by the requirements of the sub division approval and in the Site Works approval management plans and works the satisfaction of the Department of Parks and Wildlife.

The proposal before council will connect to the systems established by the site works and in that sense it will have a neutral affect upon the natural environment.

Another indirect impact, but addressed by site works approval is the provision of a Kangaroo Management Plan to be approved by the Department of Parks and Wildlife.

CONCLUSION

The proposal follows an orderly and proper approach to the development of the Restricted Business Zone. It follows approval of the Additional Use and the development of the Land Use Concept Plan, a sub division and a Site Works plan that provides the land in a ready state of development.

Whilst a supermarket is not a low intensity traffic generator it is materially similar to a Discount Department Store of 8000m². The proposed supermarket and the proposed Discount Department Store are less than 8000m².

The supermarket will have a competitive impact and contribute an increase in local traffic but it is within the impact that has been previously considered acceptable.

Further, the supermarket as an ALDI provides an additional competitor rather than simply providing an opportunity for an existing supermarket to relocate from the town centre. There is no readily available site in the town centre suitable for an Aldi. Declining this application would not strengthen the town centre, but it may deny the community the retail competition or it may see a site further from the town centre developed, which would be more damaging to the primacy, vitality and public perception of the town centre.

OPTIONS

That the Council resolve

1. Refuse the proposal setting out reasons for doing so.
2. Approve the application with additional or different conditions.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The proponent will be advised of the Council decision within two weeks of the Council meeting.

OFFICER RECOMMENDATION

That the Council resolve

1. That application DA15/0579 submitted for development a Supermarket and Showrooms at Lot 17 West Street Busselton is generally consistent with Local Planning Scheme No. 21 and the objectives and policies of the zone within which it is located.

2. That application DA16/0579 submitted for development a Supermarket and Showrooms at Lot 17 West Street Busselton is approved subject to the following conditions:

General conditions

1. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed) except as may be modified by the following conditions.
2. No building is to be located within 6m of the new West Street boundary, established to accommodate a road widening of 5m.
3. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.

Prior to Commencement of any work

4. That development hereby approved or any work associated with this approval must not commence until the site works as approved in DA15/0577 have been completed. *These works create the land suitable for development.*
 - I. 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
 - II. A revised floor plan and elevations reflecting a 6m building setback from the new West Street road boundary, consistent with the site works approval DA15/0577.
 - III. A detailed plan which shows natural ground levels, finished ground levels and finished floor levels.
 - IV. Details of type and colour of all external materials to be used.
 - V. Details of the proposed bin storage and loading dock areas including, but not limited to, the design and the materials to be used in their construction and management plan to minimise odour and pests.
 - VI. A Dust Management Plan detailing measures to be implemented to minimise the amount of dust pollution.
 - VII. Details of signage, including but not limited to the design, materials and levels of illumination.
 - VIII. A detailed external lighting plan that avoids light spill to the residential property located immediately south, and is to be maintained for as long as that property remains as a place of residence. Aside from avoiding light spill to the south light should provide security to the carpark and can be used to create visual interest on the building's form.
 - IX. A Noise Management Plan detailing the control of all noise emanating from the property which is to include loading docks, service bays, waste management/ bin areas, exhaust air outlets and air conditioning plants.
 - X. Details of bicycle parking facilities including location and design.
 - XI. A Construction Management Plan, which shall include details of site offices, material compounds, construction parking.
5. Satisfactory arrangements shall be made with the City to provide public art works. 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.

Note: The City may agree to this amount being combined with percent for art

contributions arising from other development on the site and the artworks being undertaken at the site. Artworks undertaken at the site in this regard are to be applied to the area adjoining West Street.

Prior to Occupation/Use of the Development Conditions:

6. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Conditions 4-5 have been implemented.

Ongoing conditions

7. All signage is to be maintained in good condition with an unbroken or faded surface.
8. Windows facing east and the carpark (north face) should remain open to views and shall not be covered by more than 20% such as for advertising.

Advice Notes

1. If the applicant and/or owner are aggrieved by this decision, there may also be 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 being made by the Southern Joint Development Assessment Panel.
2. This Decision Notice grants planning consent to the development the subject of this application (DA15/0579). It cannot be construed as granting planning consent 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 to substantial commencement, this Planning Consent remains current and does not lapse. The City of Busselton does not send reminder notices in this regard.
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. Details will be required at building permit for the provision of a static water supply for fire-fighting purposes. Hydrant pressure alone cannot be relied upon. This supply may be in conjunction with the requirements of other development at Lot 17.

Note: Cr Paine put forward an alternative motion for Council consideration.

Council Decision

C1602/018

Moved Councillor R Paine, seconded Councillor P Carter

That the Council refuses the development application for a proposed supermarket (ALDI) and showroom, Lot 17, West Street, Busselton.

CARRIED 5/4

Voting:

For the motion: Mayor G Henley, Councillor J McCallum, Councillor C Tarbotton, Councillor P Carter and Councillor R Paine.

Against the motion: Councillor R Bennett, Councillor T Best, Councillor G Bleechmore and Councillor R Reekie.

Note: In accordance with Regulation 11(da) of the Local Government (Administration) Regulations 1996, the minutes of a Council meeting must include written reasons for a decision that is significantly different from the recommendation.

Reasons:

The Council is concerned that approval of the development would fragment the town centre, creating a frequent use supermarket area disconnected from the CBD, an outcome that does not align with the Community Objective 2.2 of the Strategic Community Plan. It would create a new shopping area separate from the existing community that has little to no opportunity for social interaction or community connection, eroding social capital. The proposed location was considered for show rooms that would be less frequently visited than a supermarket, the increase in traffic from would negatively impact on traffic flow and congestion, or require significant financial investment from the City to upgrade Bussell Highway and West Street. In addition, the zoning of the area does not explicitly allow a supermarket in this location.

10.5 PROPOSED LOCATION FOR A NEW SETTLEMENT (HAMLET) - LOTS 1, 2 & 1490 WILDWOOD ROAD AND PORTION OF LOT 115 BUSSELL HIGHWAY, CARBUNUP RIVER - CONSIDERATION FOLLOWING PUBLIC ADVERTISING

SUBJECT INDEX:	Land Use Planning and Development
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Strategic Planning and Development
ACTIVITY UNIT:	Strategic Planning and Development
REPORTING OFFICER:	Principal Strategic Planner - Louise Koroveshi
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Location Plan Attachment B Proposed Hamlet 'Footprint' Attachment C Preliminary Hamlet Concept Attachment D Urban Settlements Study - Leeuwin Naturaliste Ridge Attachment E City of Busselton Draft Local Planning Strategy Attachment F Schedule of Submissions

DISCLOSURE OF INTEREST	
Name/Position	Councillor Ross Paine
Item No./Subject	10.5 – Proposed Location for a New Settlement (Hamlet) – Lots 1, 2 & 1490 Wildwood Road and Portion of Lot 115 Bussell Highway, Caribunup River - Consideration Following Public Advertising
Type of Interest	Impartiality Interest.
Nature of Interest	Family members living near the proposed site.
	With regard to the above Item, I disclose that I have an association with Audrey and Malcolm Paine, of Lewis Road, Caribunup. As a consequence there may be a perception that my impartiality on the matter may be affected. I declare that I will consider the item solely on its merits and vote or act accordingly.

PRÉCIS

At its meeting on 26 August 2015 the Council resolved to advertise the report “*Caribunup Hamlet Phase 1 – Hamlet Location*” in relation to planning for a new settlement on Lots 1, 2 and 1490 Wildwood Road and portion of Lot 115 Bussell Highway, Caribunup River to enable wider consultation with landowners in the Caribunup River locality (i.e. in addition to those whose properties are included in the footprint of the proposed location), government agencies and the community generally, to determine if there are other strategic matters that require further consideration, and more broadly, to elicit public feedback on the merits of the proposal.

Public consultation, including a public information session which attracted attendance by approximately 45 – 50 people, was carried out over a period of 42 days ending 2 December 2015. 61 submissions were received. 37 submissions either supported or had no concerns with the proposal, 23 objected to the proposal and one submission was neutral. The majority of objections described some issues that would necessitate comprehensive investigation and resolution should the proposal proceed to the next stage of planning, being rezoning and the preparation of a structure plan to guide subdivision and development. After careful consideration of all submissions received, there is not considered to be a strong or widespread view or consensus that the local community wants Caribunup River to change or expand, and neither is there seen to be a broader strategic imperative for that to occur either.

The key matters for consideration of this proposal relate to contemporary planning and sustainability principles that do not support or encourage the development of new settlements in more isolated locations; the need for a new settlement to accommodate population growth, and the potential for land use conflict between sensitive residential development and high value agricultural land in the immediate vicinity.

On balance the proposal does not meet certain key tests of the State strategic planning framework and officers therefore recommend that the Council recommend to the Western Australian Planning Commission that it does not support the progression of the Carburnup River settlement expansion proposal to the rezoning and structure planning stage. It is considered, however, that if settlement expansion was to occur, the location identified would be the most appropriate location for that to occur.

BACKGROUND

A potential location to the west of the existing Carburnup River townsite for a new settlement ('hamlet') has been identified in the Western Australian Planning Commission's *State Planning Policy 6.1 Leeuwin Naturaliste Ridge* (LNRSP) that could grow to 500 permanent residents. Planning for settlement expansion is to consider innovative planning approaches to servicing (water supply, wastewater disposal and power) and sustainability.

Strategic planning documents are required by the *Planning and Development (Local Planning Schemes) Regulations 2015* to have 'due regard' to State Planning Policies and as such the *City of Busselton Draft Local Planning Strategy* reflects the LNRSP and identifies Carburnup River as a potential 'Village' of some 500 permanent residents.

The proposal before the Council, if supported, would be the first stage in the planning process necessary to create a new settlement at Carburnup River. Strategic assessment and justification of a location for the new settlement (and endorsement of the proposed location by the City of Busselton and Western Australian Planning Commission) is required as a precursor to more detailed rezoning and structure planning to come.

The report "*Carburnup Hamlet Phase 1 – Hamlet Location*" provides an analysis of the planning policy framework, describes strategic locational criteria and outlines the findings of preliminary site investigations aimed at providing necessary justification for proceeding to the rezoning and structure planning stages.

The proposed settlement expansion area is situated approximately 520m west of the existing Carburnup River townsite and immediately south of Wildwood Road (Attachment A). The site is zoned 'Agriculture' and 'Reserve for Recreation'.

The land within the proposed 'hamlet' location is approximately 98 hectares and comprises the following landholdings (Attachment B) –

- Lot 1 Wildwood Road – 15.4ha
- Lot 2 Wildwood Road – 12ha
- Lot 1490 Wildwood Road – 37ha
- Portion of Lot 115 Bussell Highway – 32ha
- Lennox Road reserve – 2ha
- Crown Reserve 20554 vested in the City for the purpose of gravel quarry.

The report describes eight criteria used to determine the selection of the proposed hamlet location, summarised as follows -

1. Relationship to the Carburnup River Townsite and District Roads

The existing Carburnup townsite is situated immediately west of the bridge where Bussell Highway crosses the Carburnup River. The report suggests that it is desirable that the hamlet be located in proximity to the townsite and situated on the same side of the highway and river to assist with access, legibility and safety. This would also strengthen opportunities to provide vehicle, cycling and pedestrian linkages with the townsite.

2. Strategic Minerals and Basic Raw Materials

The Carburnup River locality is not constrained by the presence of strategic mineral sand resources. There is regionally significant basic raw material for sand in the area. Given the scarcity of sand, the Geological Survey of WA (GSWA) strongly encourages maximum use of this sand resource within the settlement expansion area. There are currently no extractive industry licences in the area but it is important that any proposed 'hamlet' location avoids sterilising available sand resources. It is the intention of the proponent to utilise the sand resources as part of future development.

3. Flora and Vegetation

A flora and vegetation assessment of Lots 1, 2 and 1490 Wildwood Road was undertaken in spring 2014. The areas of Lot 115 included in the proposed hamlet location are cleared and used for grazing and so did not form part of the assessment. The findings of the flora and vegetation assessment may be summarised as follows:

A total of seven discrete native vegetation types (excluding scattered, isolated and planted trees) were recorded. The condition of the vegetation across the assessment area was found to be in a generally degraded state. The eastern portion of the assessment area consists of blue gum plantations, macadamia and olive groves, planted Eucalyptus species and Peppermint trees and garden trees/shrubs around existing dwellings. There are several small pockets of remnant vegetation which have been highly modified by grazing and past clearing.

The western portion of the assessment area contains remnant vegetation associated with several Abba Vegetation Complexes which have been extensively cleared and modified by agricultural activities. The majority of the Abba (AB) and (Aw) vegetation complexes are associated with the Mary Brook and remnant vegetation adjacent to Reserve 20554. This vegetation is in a Degraded to Good condition. The Abba (Aw) vegetation complex in the southeast corner of the assessment area was found to be in a Degraded to Completely Degraded condition. The Abba (Ad) vegetation complex also present in this area was found to be no longer representative of any remnant vegetation as it is highly modified and contains planted trees. The Abba (Af) vegetation complex in the central part of the assessment area contains some patches of remnant scattered and isolated mature native trees.

A Threatened and Priority Flora Database and a Threatened Ecological Communities (TEC) search was undertaken to identify significant flora/vegetation that may occur within the assessment area. Of the ten TEC vegetation communities listed in the DPaw and DoE database within a 10km radius of the assessment area, none were recorded within the site. No Threatened (Declared Rare) species, as listed pursuant to the *Wildlife Conservation Act 1950* or the *Environmental Protection and Biodiversity Conservation Act 1999* were recorded within the assessment area. Additionally, no priority-listed species were recorded during the assessment.

4. Fauna

A fauna assessment was undertaken for Lots 1, 2, 1490 Wildwood Road and Reserve 20554. The areas of Lot 115 included in the proposed hamlet location are cleared and used for grazing and so did

not form part of the assessment. The findings of the fauna assessment may be summarised as follows:

Overall, fauna habitat values and biodiversity have been significantly compromised by the total or partial clearing of native vegetation, historical and ongoing livestock grazing, dieback and weed invasion. Notwithstanding the history of disturbance, the assessment area still provides suitable habitat for a range of species, some of which are of conservation significance. The better quality habitat is found in Reserve 20554 and within the Lennox Road road reserve. These areas contain the densest vegetation with good canopy connectivity.

A total of 51 native fauna species were observed (or positively identified by foraging evidence, scats, tracks, skeletons or calls). Evidence of three listed threatened species was observed (Forest Red-tailed Black Cockatoo, Baudin's Black Cockatoo and Carnaby's White-tailed Black Cockatoo), Western Ringtail Possum (WRP) and Rainbow Bee-eater. The assessment suggests that the WRP favours habitat within the Lennox Road road reserve and Reserve 20554. Within Lots 1 and 2 WRP utilisation appears to be low with individuals relying on small areas of planted WA Peppermint trees.

The study also included a black cockatoo habitat assessment that included identification of all suitable tree species for nesting hollows. Only four trees were assessed as having hollows possibly suitable for nesting.

5. Landform, Soils & Water Management

The area west of Carburnup River has a variety of Abba soils ranging from wet vales and flats to gentle slopes and deep sandy rises. The site is traversed by the Mary Brook and a minor tributary. The moderately drained Jindong flats situated north of Wildwood Road, southwest of Reserve 38582 and west of Lewis Road comprise good quality soils reflected in their use for well-developed horticulture and viticulture operations. It is suggested that the productive Jindong Flats soil unit contributes to defining the boundaries of the proposed hamlet location. It is also suggested that the higher sandy rises and slopes of the Abba soil units have the capacity to support development.

A preliminary geotechnical assessment suggests that the southwest and southcentral areas are suitable for onsite stormwater disposal in soakwells or infiltration basins. Areas with more clayey soils are less suitable for in-situ stormwater infiltration without modification.

6. Preliminary Servicing Assessment

It is suggested that on-site effluent disposal on suitably sized residential lots may be appropriate (based on the findings of the preliminary geotechnical investigation) and more cost-effective than reticulated sewerage. Sandy soils generally present between 0.5m and 1.9m are suitable for conventional effluent disposal systems. They are not recommended for areas of shallow laterite that are generally located towards the southwestern portion of the proposed hamlet location (where alternative effluent disposal systems such as Aerobic Treatment Units could be considered). Provision of a potable water supply has not been addressed at this stage.

7. Bush fire Hazard Assessment

A bush fire hazard assessment has been undertaken that is based on existing site conditions and the vegetation/flora report. The assessment applies the methodology for determining bush fire hazard as set out in the *Planning for Bush Fire Protection Guidelines* (now superseded by *State Planning Policy 3.7 Planning In Bushfire Prone Areas* and *Guidelines for Planning in Bushfire Prone Areas 2015*). The assessment determined the following bush fire hazard ratings across the site –

- Uncleared areas within, and adjoining the site, are classified as having an 'extreme' fire hazard rating
- Cleared areas are classified as having a 'low' hazard rating
- Cleared areas that are within 100m of the areas with an 'extreme' or 'moderate' hazard rating are assigned a 'moderate' hazard rating to reflect the increased level of risk.

The assessment suggests that, as the majority of the subject location has a 'moderate' or 'extreme' bush fire hazard rating, permanent hazard reduction measures will need to be implemented such as: harvesting the existing blue gum plantation; and ensuring that settlement design complies with *Planning for Bush Fire Protection Guidelines* and the City's Local Planning Policy 9B - Bush Fire Protection Provisions.

8. Preliminary Hamlet Concept

A preliminary design has been prepared to demonstrate a possible land use concept and an understanding of the opportunities and constraints (Attachment C). The concept plan depicts residential and rural residential cells, POS/landscape buffers and drainage areas, as well as a 'village centre'.

The plan is conceptual only and, should the proposal be supported to proceed to the rezoning and structure planning stages, there are a range of matters that would need to be comprehensively addressed and resolved. These would include: settlement design (including the determination of the most appropriate location for a village centre), servicing, bushfire risk and management, environmental, health (including appropriate buffers to adjoining intensive horticultural operations), traffic, drainage, water supply and management, employment and sustainability. Additional strategic, planning and environmental issues may also emerge through this process.

STATUTORY ENVIRONMENT

Should the proposed location for a new residential hamlet at Carbunup River be supported, the land would need to be rezoned. The *Planning and Development Act 2005* and related legislation outline the relevant considerations and statutory requirements for preparing and amending local planning schemes.

The orderly planning of urban growth and settlement expansion at Carbunup River would be facilitated by the preparation of a Structure Plan. Clause 7.4 of Local Planning Scheme 21 outlines matters to be considered as part of that process.

RELEVANT PLANS AND POLICIES

The key policy implications for consideration of the proposal are set out in the Western Australian Planning Commission *State Planning Policy 1: State Planning Framework, State Planning Policy 2.5: Rural Land Use Planning, State Planning Policy 3: Urban Growth and Settlement; State Planning Policy 6.1: Leeuwin Naturaliste Ridge, Leeuwin-Naturaliste Ridge Urban Settlement Study, South West Regional Planning and Infrastructure Framework, City of Busselton Draft Local Planning Strategy and Local Environmental Planning Strategy*.

Each is discussed below under appropriate subheadings.

State Planning Policy 1: State Planning Framework

This overarching State policy sets out the key principles relating to environment, community, economy, infrastructure and regional development required to guide the way in which future planning decisions are made. Several principles relevant to the consideration of the current proposal are described below.

In relation to future development, planning should (as far as practicable) promote and encourage sustainable communities by accommodating future population growth and providing housing choice, affordability and diversity, places of employment, open space, education, health, cultural and community services etc.

In relation to infrastructure, planning should ensure that the provision of physical and community infrastructure by both public and private agencies is staged and coordinated in a way that is efficient, equitable, accessible and timely. This means facilitating the efficient use of existing urban infrastructure and human services and *preventing* development in areas which are not well serviced, where services and facilities are difficult to provide economically and where unnecessary demands for infrastructure and human services are created.

In relation to economy, planning should also seek to promote and provide local employment opportunities in order to reduce the time and cost of travel to work, avoid land use conflicts (by separating sensitive and incompatible uses from industry and other economic activities with off-site impacts) and protect agricultural land and resources from inappropriate uses and adverse impacts.

State Planning Policy 2.5: Rural Land Use Planning

This policy sets out the position of the WAPC in relation to consideration of planning proposals for land zoned and/or identified for rural and agricultural purposes in local planning schemes and strategies.

The policy states that the introduction of sensitive or incompatible land uses such as additional housing or accommodation in rural areas can compromise rural land uses and effectively sterilise rural land. There is a need to ensure that, where appropriate, existing rural land uses are protected and landholders are able to exercise their operational needs effectively.

The policy expects that conflicts will be managed such that the introduction of land uses in rural areas that may constrain existing or potential production will generally not be supported.

State Planning Policy 3: Urban Growth and Settlement

This policy sets out the position of the WAPC in relation to planning for urban growth and settlement within the State. Creating sustainable communities is a fundamental measure and the policy sets out a number of key requirements relevant to the consideration of the current proposal –

- sufficient and suitable serviced land in the right locations for housing, employment, commercial, recreational and other purposes, coordinated with the efficient and economic provision of transport, essential infrastructure and human services;
- making the most efficient use of land in existing urban areas through the use of vacant and under-utilised land and buildings, and allowing higher densities where these can be achieved without detriment to neighbourhood character and heritage values; the cost-effective use of urban land and buildings, schools and community services, infrastructure systems and established neighbourhoods; and promoting and encouraging urban development that is consistent with the efficient use of energy;
- directing urban expansion into designated growth areas which are, or will be, well serviced by employment and public transport;
- access for all to employment, health, education, shops, leisure and community facilities by locating new development so as to be accessible by foot, bicycle or public transport rather than having to depend on access by car; and
- proper consideration of the environment, recognising the need to restore and enhance (as well as protect) biodiversity, and to minimise development impacts on land, water, energy,

minerals, basic raw materials, agriculture and other natural resources that help sustain urban economies and society.

The policy suggests that town expansions and new settlements should only be considered where they will have a planned economic and employment base and where they can be efficiently serviced by local and regional infrastructure including roads, public transport, water supply, sewerage, drainage, energy, local parks, schools, shops, recreational facilities and other services.

The policy also notes that outside, regional growth centres, proposals for new settlements whether by large scale additions to existing settlements or new 'free standing' settlements are unlikely to prove to be a sustainable development option given the difficulties in providing a secure employment base, the cost of providing a necessary range of new services and infrastructure, and the potential for diverting population and resources from existing settlements (which could contribute to the decline of those settlements).

New settlements are only likely to prove to be a sustainable development option where they address a significant shortfall of available housing land in the region, have a secure employment base, are large enough to support a range of local services including schools, shops and employment and where there are no more sustainable alternatives.

State Planning Policy 6.1: Leeuwin Naturaliste Ridge (1998)

The LNRSP provides the strategic framework to guide development and conservation within the Policy area. The scope for a potential, expanded settlement at Carburnup River for up to 500 permanent residents is provided by the policy. Figure 3 Land Use Strategy Plan illustrates Carburnup River as a 'Hamlet' within the Principle Agriculture (Horticulture and Grazing) land use category and located at the intersection of two existing Strategic Roads, being Bussell Highway and Wildwood Road.

The LNRSP sets out a number of settlement and servicing parameters for Carburnup River -

- Identified as a 'Hamlet' in *Table 1 Settlement Hierarchy* - with a permanent population of up to 500;
- Commercial and community services provided are to be limited to convenience services with a community focus;
- Infrastructure provision can consider innovative alternatives to conventional reticulated water, sewerage and power;
- The hamlet is recommended to function as a 'rural service centre' and to be a focus for rural living and tourist facilities.

Specific policies and important parameters for Carburnup River set out in the LNRSP include –

"Hamlet

- *LUS 1.11 Hamlet development will provide a rural service centre for the nearby intensive agricultural industry but the form and size of the urban development must remain separate from and not compromise the primacy of the horticultural industry.*
- *LUS 1.12 Ecological communities on Carburnup Reserve 38582 will be preserved."*

Leeuwin Naturaliste Ridge Planning Review - Urban Settlements Study (1996)

The purpose of the study was to examine the existing settlement pattern and growth pressures of the Leeuwin Naturaliste Ridge and to recommend an urban settlement strategy to accommodate projected population growth. The study identified Carburnup River as having the potential for a

consolidated, fully serviced and sensitively planned community which would serve the intensive agricultural and tourist industry, given its central location and accessibility via Bussell Highway and through routes to Caves Road to the west and north via Chain Avenue.

The study identified a location for settlement expansion west of Bussell Highway and south of Wildwood Road that included the existing townsite, part of Reserve 38582, portion of Lot 115 Bussell Highway and Lots 1 and 2 Wildwood Road (Attachment D).

Residential cells, a multiple use corridor (stream zone, wetland protection, vegetation protection and enhancement, potential walking/cycling/bridle trails) and remnant vegetation to be retained within the balance of Reserve 38582 were identified within the general location.

South West Regional Planning and Infrastructure Framework

The Framework is a regional strategy that outlines the WAPC position in relation to broad planning issues such as transport, agriculture, communities and climate change, and the major infrastructure requirements for the region. Local governments are required to have due regard to regional strategies when considering matters related to land use planning. The Framework outlines the WAPC position on a range of matters, the following of which are relevant to consideration of this proposal –

- Maximise the use of existing infrastructure by encouraging new urban development, including infill, to areas within, or adjacent to, existing infrastructure.
- Encourage the development of compact communities to reduce the demand for private motor vehicles and encourage use of public transport.
- Prevent the loss or stagnation of high-value and productive agricultural land through the development of sensitive land uses within close proximity to existing agricultural operations.

Draft Local Planning Strategy

The *Draft Local Planning Strategy* (LPS) sets out the long term (25yrs +) planning direction for the City and provides the overarching, strategic rationale for decisions relating to the planning and development of the District (Attachment E).

Table 1 *Settlement Framework* of the LPS designates Carburnup River as a 'Village' with an approximate maximum population/development potential of around 500.

Table 2 *Urban Growth Framework* identifies Carburnup River as a medium* term growth area. The LPS makes provision for the immediate consideration of the commencement of rezoning and structure planning processes for medium term growth areas marked with an asterisk. The LPS sets out the following key issues to be addressed in consideration of settlement expansion at Carburnup River –

- Exact location of settlement expansion subject of further detailed planning;
- Buffers to environmentally sensitive areas required; and
- Servicing (water and effluent disposal).

Local Environmental Planning Strategy

The Local Environmental Planning Strategy (LEPS) focuses on the key environmental issues relating to development and land use planning and also gives consideration to the environmental constraints to the future growth of the City's settlements.

The LEPS sets out the following objectives to settlement expansion at Carburnup River –

- Protect all areas of remnant vegetation, particularly areas of poorly represented vegetation and Threatened Ecological Communities (TEC) and provide opportunities for revegetation where possible.
- Ensure that any proposed development in the area is subjected to thorough structure planning and development guide plan processes that incorporate relevant environmental assessment and management.
- Protect important landscapes within and around the townsite.”

The LEPS sets out the following recommendations in relation to Carburnup River –

- In considering proposals for the expansion of Carburnup River, Metricup and Jarrahwood, do not support the rezoning of land that would result in the expansion of development into areas identified as having medium or high environmental constraints unless there is a clear strategic case for doing so, and following consideration of the environmental impacts of urban development.
- In Yallingup, Carburnup River and Metricup promote the enhancement and protection of all remnant vegetation and consider introduction of clearing controls in the town planning scheme to support that objective.”

The LEPS identifies the following levels of environmental constraints across the proposed location for settlement expansion –

- High – poorly represented vegetation (<30% remaining)
- Medium – fire hazard, other remnant vegetation
- Low – Priority Agricultural Area (>60% Category 1 & 2), basic raw materials and mineral resources, waterlogging (>60% High & Very High)

FINANCIAL IMPLICATIONS

Nil

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The proposal is considered to be consistent with the following community objective of the City's *Strategic Community Plan 2013 – 'A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.'*

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identified 'downside' risks only, rather than upside risks as well. The implementation of the Officer Recommendation will involve referring the decision/recommendation of the Council to the Western Australian Planning Commission and in this regard there are no significant risks identified.

CONSULTATION

The proposal was advertised for 42 days, between 16 October and 2 December 2015 and 61 submissions were received (ten government agency and 51 public submissions). A Schedule of Submissions is provided at Attachment E. During the advertising period a public information session

was held at the Carburnup River hall on 17 November 2015, which attracted the attendance of approximately 45 - 50 people, in addition to City officers (who chaired the session) and representatives of the proponents.

Of the ten government agency submissions received seven raised no objection and three raised objections/concerns with the proposal (Department of Health, Department of Food and Agriculture and Main Roads WA).

Of the 51 public submissions received, 30 submissions support the proposal (comprising one business/three residents of Carburnup River and 26 non-Carburnup River locality businesses/residents), 20 objected to the proposal (19 from residents within the Carburnup River locality) and one comprised an overview of the proposal.

Reasons provided in the submissions that *support* the proposal may be summarised as follows –

1. Potential creation of employment and opportunities for the local agricultural industry to diversify into new crops to support a new local perfume industry;
2. Provision of larger lifestyle lots;
3. Encourage the construction of green/eco-friendly homes;
4. subdivision/development will incorporate innovative ideas for water supply and wastewater disposal;
5. Asset to the locality – more residents to support local tourism and other businesses and wine industry employees could live close to work; and
6. Identified by *State Planning Policy 6.1 Leeuwin Naturaliste Ridge*.

Reasons provided in the submissions that *object* to the proposal may be summarised as follows –

1. A new settlement is not needed at Carburnup River as the new township of Vasse is only 6km away and this will provide retail, commercial and community services;
2. Land use conflict between ‘lifestyle’ residential development and adjacent/surrounding established intensive and broadacre agricultural activities (biosecurity issues, increased dog attacks on livestock, complaints about noise, dust, spray drift);
3. Public health – spray and fumigant drift from established intensive agricultural operations and potential impacts on ‘right to farm’ (issue of buffer/separation distances not adequately addressed);
4. Adverse effects on the rural character of the locality and the tourist value of Wildwood Road;
5. Traffic conflict and safety – Wildwood Road generally and intersection with Bussell Highway;
6. Environmental impacts – flora, fauna in Lewis & Lennox Road road reserves and Carburnup Reserve;
7. Loss of, or adverse impact on, prime agricultural land;
8. Adverse impact on the quiet rural lifestyle of existing residents; and
9. Hamlet development is predicated on a 20 year old State Planning Policy – outdated approach to settlement planning.

The majority of submissions that raised objections and concerns described some issues that would necessitate comprehensive investigation and resolution should the proposal proceed to the next stage of planning, being rezoning and the preparation of a structure plan to guide subdivision and development.

Notwithstanding these valid concerns, the key matters for consideration of the current proposal relate to contemporary planning and sustainability principles and avoiding the development of new settlements in more isolated locations; the recognised ‘need’ for a new settlement to accommodate population growth in the District and potential land use conflicts. These matters are discussed further under the ‘Officer Comment’ section.

OFFICER COMMENT

The proposal before the Council is the first stage in a subsequent planning process that would be necessary to endorse and create a substantially expanded settlement at Carburnup River. Strategic assessment and justification of a location for settlement expansion (and endorsement of the same by the City of Busselton and Western Australian Planning Commission) is required as a precursor to the initiation of more detailed rezoning and structure

There are a number of reasons put forward by the proponent in support of the proposed hamlet location including:

- located on lesser quality soil complexes that are not best suited for horticulture;
- located on, or near, important tourist roads;
- supports safe pedestrian/cycle links and access generally between the existing townsite and the new hamlet;
- not constrained by the presence of strategic mineral resources; and
- not constrained by significant geotechnical or environmental factors.

There is little doubt that - given the site characteristics and considerations identified in relevant plans and policies (including the LNRSP) as being required to be addressed in order to justify any potential settlement expansion location at Carburnup River - the area delineated in the current proposal is the most appropriate and best-suited.

Should the concept of settlement expansion at Carburnup River be formally approved by the Council and the WAPC, the location currently being proposed would be supported by officers. The issue remains, however, as to the proven *need* for such a settlement expansion to occur at Carburnup River. This has not been substantiated by the proponent to the degree that it could be supported by City officers.

There are a range of matters (many of which reflect the areas of concern and grounds for objection raised in various public and government agency submissions) which would need to be comprehensively addressed and resolved through subsequent rezoning and structure planning processes, *should* the current location proposal be supported for progression to that stage.

Notwithstanding the 'issues for and against', the key matters for consideration of the current proposal relate to:

- contemporary planning and sustainability principles, and *avoiding* the development of new settlements in more isolated locations;
- the proven *need* for a new settlement to accommodate likely future population growth; and
- the likely potential for land use conflicts.

The report '*Carburnup Hamlet Phase 1 – Hamlet Location*' advocates that the hamlet concept (subdivision, design and built form outcome) will put into practice sustainability principles through initiatives such as: focusing development on already cleared land; avoiding prime agricultural land; adopting water sensitive urban design; protecting existing conservation areas; adopting energy efficient built form; encouraging walkability; developing a community focus; pursuing sustainable servicing solutions; and creating local employment opportunities.

The concept of 'sustainability' or 'sustainable development' is commonly defined as: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". The concept of sustainability is usually seen as relating to a 'triple bottom line' with economic, social and environmental factors being considered.

The planning system can support moves towards greater sustainability through: encouraging the development of compact towns and cities, with a greater focus on redeveloping and consolidating existing urban areas rather than development of new urban areas, (especially avoiding development of smaller settlements in more isolated locations); supporting integrated transport especially public transport, walking and cycling; ensuring that jobs, shops, schools and services are highly accessible by public transport, walking and cycling etc.

There is considerable scope for discussion about exactly how sustainability principles should be applied in any given situation and a particular focus of the hamlet concept report is on encouraging future homeowners to make their houses and other buildings more energy efficient by encouraging renewable energy, reducing water use and encouraging water and wastewater recycling.

Notwithstanding these suggested initiatives, development of a relatively small, isolated and 'off-grid' settlement (meaning remote from existing infrastructure such as reticulated sewer and water services, community and commercial services, employment and schools) with very few services and facilities and with almost total reliance on private cars for transport will reduce sustainability, even if the actual buildings and houses are highly water and energy efficient, is not thought appropriate. Overcoming car dependence to access jobs, services, schools and shops is a fundamental principle in achieving desirable and sustainable outcomes. This, again, concerns the 'appropriateness' of settlement expansion at Caribunup River, the proven 'need'.

The LNRSP indicates that hamlet development should provide a 'rural service centre' for the nearby intensive agricultural industry along with convenience services. Convenience services are already provided by the service station/post office/general store at Caribunup River. The LNRSP does not provide guidance on the scale or meaning of 'rural service centre' although it could be interpreted as meaning the provision of goods and services that are not readily available elsewhere. The goods and services needed by the intensive horticultural industry (such as those companies that specialise in selling agricultural products/services and technical advice) are already established in higher order centres such as the Busselton City Centre and Light Industrial Area and Dunsborough, and therefore highly unlikely to relocate to, or replicate in, an isolated, small settlement.

Furthermore, the developing settlement area of Vasse is located 6km from Caribunup River and will provide a range of housing/land opportunities, shopping, services, job opportunities and schools that a permanent population of 500 residents would expect and quite possibly demand, but would not be contemplated as part of settlement expansion at Caribunup River.

The City has a responsibility to manage the pattern of settlement within the District, not only in relation to when, where and how growth occurs, but also ensuring that communities are well planned and allowed to grow into vibrant and active places with a high level of accessibility to public transport, jobs, community services and so forth including the development of population centres that best fit with the local environment (character, community and natural elements), and that do not undermine existing settlements.

The existing settlement at Caribunup River has not changed, in and of itself, for many years. If the City had received an indication that residents wanted the settlement to expand it may have been considered before now. A number of submissions received from local Caribunup River residents in response to advertising feedback received from many of the people that attended the public information session held during the advertising period, strongly suggests that there is not a widespread view or community consensus that existing residents of the locality want Caribunup River to grow.

It is acknowledged that the scope for a new, expanded settlement at Caribunup River for up to 500 permanent residents is provided for by the Leeuwin Naturaliste Ridge State Planning Policy. However, the urban settlement study that informed the LNRSP dates back to 1996 and was broadly

based on a planning model for human settlement established in the eastern states of Australia that promoted clustered, new settlements of different sizes integrated with small-scale economic enterprises.

This model is now well out of step with contemporary planning principles that are embedded in the State planning framework and in particular *State Planning Policy 1 State Planning Framework* and *State Planning Policy 3 Urban Growth and Settlement*. These support a compact urban form with an emphasis on redevelopment and consolidation within, and expansion focused on, *existing* urban areas. This helps to maximise efficient use of land, reduce reliance on private vehicles and support integrated public transport systems, support the efficient use of infrastructure (water supply, wastewater disposal, power etc) and provide more equitable access to employment, community and other services, shops and schools.

The Carburnup River locality generally contains prime agricultural soils and is characterised by established commercial viticultural and horticultural operations. A new settlement would place residents in an area surrounded by, and in close proximity to, intensive agricultural operations and subject to chemical spray and fumigant drift, noise and dust. This would be likely to lead to land use conflict between sensitive residential land uses and high value agricultural activities.

The operational life of the Leeuwin Naturaliste Ridge State Planning Policy is 30 years (2028) and although the policy nominates Carburnup River for settlement expansion, it does not stipulate exactly where, or even when such a settlement should occur. There is certainly no imperative to do so within the current lifetime of the policy. Population growth and land supply projections that underpin the City's *Draft Local Planning Strategy* suggests that there is sufficient zoned and structure planned urban land to accommodate growth for at least the next 15 years (*without* the need for a new settlement at Carburnup River).

The Western Australian Planning Commission recently granted consent to advertise the City's draft *Local Planning Strategy*. In making that decision, the WAPC foreshadowed the preparation of a Leeuwin Naturaliste Sub-Regional Strategy for both the City of Busselton and the Shire of Augusta-Margaret River. The Department of Planning intends to prepare a 'report card' on the LNRSP in approximately 6 months (i.e. by July/August 2016) that will outline matters to be formally addressed and reviewed in the LNRSP. Officers are of the view that the settlement hierarchy set out in the LNRSP should be reviewed, in particular the merits or otherwise of potential settlement expansion at Carburnup River and also at Metricup.

CONCLUSION

Whilst supportive of the proposed potential *location* of a settlement expansion at Carburnup River, should such a concept actually be endorsed by the Council and the WAPC, officers contend that the *need* for such an isolated urban growth area has not been adequately substantiated.

Officers recommend that the Western Australian Planning Commission does *not* support the progression of the Carburnup River settlement expansion proposal to the scheme amendment and structure planning stage for the reasons set out in the 'Officer Comment' and 'Officer Recommendation'.

Officers further recommend that the WAPC be formally requested to include reconsideration and review of settlement expansion at Carburnup River and at Metricup as part of the mooted Leeuwin Naturaliste Ridge Sub-Regional Strategy.

OPTIONS

Should the Council not support the Officer Recommendation, the Council could consider the following options –

1. Resolve to request further information before making a determination on the proposal.
2. Resolve to support the potential location for a new settlement in the area delineated by the current proposal and recommend that the WAPC supports the progression of the Carbinup River settlement expansion proposal to the scheme amendment and structure planning stages.

Should the Council decide in favour of option 2, appropriate wording for such a resolution would be as follows –

1. *Recommends to the WAPC that the proposed ‘hamlet’ location and urban expansion footprint on Lots 1, 2 and 1490 Wildwood Road and portion of Lot 115 Bussell Highway, Carbinup River, as identified in the report “Carbinup Hamlet Phase 1 – Hamlet Location” (dated May 2015) is generally consistent with State Planning Policy 6.1 Leeuwin Naturaliste Ridge.*
2. *Recommends that the WAPC supports the progression of the Carbinup River settlement expansion proposal to the scheme amendment and structure planning stages for the following reasons –*
 - (i) *The area delineated in the current proposal is considered to be the most appropriate and best-suited in terms of site characteristics and other strategic considerations provided as justification for settlement expansion at Carbinup River.*
 - (ii) *The ‘hamlet’ concept may potentially provide opportunities for the local agricultural industry to diversify into new crops to support a local perfume industry and existing local tourism.*
 - (iii) *The ‘hamlet’ concept is proposed to incorporate innovative ideas for water supply and wastewater disposal and will encourage the construction of green/eco-friendly housing.*
3. *Notes the Schedule of Submissions in response to the extensive public consultation process undertaken in relation to the current proposal, but requires amendment of the Schedule of Submissions to reflect the Council decision prior to referral of the proposal to the WAPC.*

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The implementation of the Officer Recommendation will involve advising the Western Australian Planning Commission of the Council recommendation and this will occur within one month of the date of the Council decision.

OFFICER RECOMMENDATION

That the Council:

1. Recommends to the WAPC that the proposed ‘hamlet’ location and urban expansion footprint on Lots 1, 2 and 1490 Wildwood Road and portion of Lot 115 Bussell Highway, Carbinup River, as identified in the report “Carbinup Hamlet Phase 1 – Hamlet Location” (dated May 2015) is generally consistent with State Planning Policy 6.1 Leeuwin Naturaliste Ridge.
2. Recommends that the WAPC does *not* support the progression of the Carbinup River

settlement expansion proposal to the scheme amendment and structure planning stages for the following reasons –

- i) The proposal does not reflect contemporary planning and sustainability principles that support compact urban form with an emphasis on redevelopment and consolidation within, and expansion focused on, *existing* urban areas to best utilise infrastructure, services and community facilities.
 - ii) The proposal is inconsistent with *State Planning Policy 1: State Planning Framework* and *State Planning Policy 3 Urban Growth and Settlements* as it would facilitate the development of a small, isolated and ‘off-grid’ settlement remote from existing infrastructure such as reticulated sewer and water services, community and commercial services, employment and schools, with very few services and facilities and with an almost total reliance on private cars for transport.
 - iii) Population growth and land supply projections that underpin the *City of Busselton Draft Local Planning Strategy* demonstrate that there is sufficient zoned and structure planned urban land to accommodate projected growth for at least the next 15 years (without any substantiated *need* for a new settlement at Caribunup River).
 - iv) Advertising of the proposal did not elicit a strong view or consensus from the local community that settlement expansion at Caribunup River is either warranted or supported.
 - v) Whilst a number of matters raised as grounds of objection/concern would need to be comprehensively addressed and resolved through subsequent rezoning and structure planning phases (*should* the current proposal be supported), a new settlement at the proposed location would place residents in an established agricultural area surrounded by, and in close proximity to, intensive agricultural operations and subject to chemical spray, fumigant drift, noise and dust. There would be a strong potential for land use conflicts. This would be inconsistent with *State Planning Policy 1 State Planning Framework*, *State Planning Policy 2.5 Rural Land Use Planning*, *State Planning Policy 3 Urban Growth and Settlement* and the *South West Planning and Infrastructure Framework*.
3. Notes the ‘Schedule of Submissions’ prepared in response to the extensive public consultation process undertaken in relation to the current proposal.
 4. Recommends to the WAPC that it include reassessment and review of potential settlement expansion areas (as currently set out in Table 5 Settlement Hierarchy of *State Planning Policy 6.1 Leeuwin Naturaliste Ridge*) for Caribunup River and Metricup as an integral part of the mooted Leeuwin Naturaliste Sub-Regional Strategy.

Note: Cr Bleechmore put forward an alternative motion for Council consideration.

MOTION

Moved Councillor G Bleechmore, seconded Councillor C Tarbotton

That the Council:

1. Recommends to the WAPC that the proposed ‘hamlet’ location and urban expansion footprint on Lots 1, 2 and 1490 Wildwood Road and portion of Lot 115 Bussell Highway, Caribunup River, as identified in the report “Caribunup Hamlet Phase 1 – Hamlet Location”

(dated May 2015) is generally consistent with State Planning Policy 6.1 Leeuwin Naturaliste Ridge.

2. Recommends that the WAPC supports the progression of the Carburnup River settlement expansion proposal to the scheme amendment and structure planning stages for the following reasons –
 - (i) The area delineated in the current proposal is considered to be the most appropriate and best-suited in terms of site characteristics and other strategic considerations provided as justification for settlement expansion at Carburnup River.
 - (ii) The ‘hamlet’ concept may potentially provide opportunities for the local agricultural industry to diversify into new crops to support a local perfume industry and existing local tourism.
 - (iii) The ‘hamlet’ concept is proposed to incorporate innovative ideas for water supply and wastewater disposal and will encourage the construction of green/eco-friendly housing.
3. Notes the Schedule of Submissions in response to the extensive public consultation process undertaken in relation to the current proposal, but requires amendment of the Schedule of Submissions to reflect the Council decision prior to referral of the proposal to the WAPC.

FORESHADOWED MOTION

Cr Bennett foreshadowed his intention to move the following motion

That the Council:

Resolve to request further information before making a determination on the proposal.

SUBSTANTIVE MOTION

Moved Councillor G Bleachmore, seconded Councillor C Tarbotton

That the Council:

1. Recommends to the WAPC that the proposed ‘hamlet’ location and urban expansion footprint on Lots 1, 2 and 1490 Wildwood Road and portion of Lot 115 Bussell Highway, Carburnup River, as identified in the report “Carburnup Hamlet Phase 1 – Hamlet Location” (dated May 2015) is generally consistent with State Planning Policy 6.1 Leeuwin Naturaliste Ridge.
2. Recommends that the WAPC supports the progression of the Carburnup River settlement expansion proposal to the scheme amendment and structure planning stages for the following reasons –
 - (iv) The area delineated in the current proposal is considered to be the most appropriate and best-suited in terms of site characteristics and other strategic considerations provided as justification for settlement expansion at Carburnup River.
 - (v) The ‘hamlet’ concept may potentially provide opportunities for the local agricultural industry to diversify into new crops to support a local perfume industry and existing local tourism.
 - (vi) The ‘hamlet’ concept is proposed to incorporate innovative ideas for water supply and wastewater disposal and will encourage the construction of green/eco-friendly housing.

- Notes the Schedule of Submissions in response to the extensive public consultation process undertaken in relation to the current proposal, but requires amendment of the Schedule of Submissions to reflect the Council decision prior to referral of the proposal to the WAPC.

Voting:

For the motion: Councillor G Bleechmore and Councillor C Tarbotton.

Against the motion: Councillor R Bennett, Councillor T Best, Mayor G Henley, Councillor J McCallum, Councillor P Carter, Councillor R Reekie and Councillor R Paine.

MOTION LOST 2/7

Note: As the motion was lost Cr Bennett was able to move the motion that he had previously foreshadowed.

MOTION

Moved Councillor R Bennett, seconded Councillor G Bleechmore

That the Council:

Resolve to request further information before making a determination on the proposal.

Voting:

For the motion: Councillor R Bennett, Councillor G Bleechmore, Councillor C Tarbotton.

Against the motion: Councillor T Best, Mayor G Henley, Councillor J McCallum, Councillor R Reekie, Councillor R Paine and Councillor P Carter.

MOTION LOST 3/6

Note: The motion was declared by the Presiding Member as Lost 4/5 however only three dissenting voters were recorded for a result of Lost 3/6.

Council Decision and Officer Recommendation

C1602/019

Moved Councillor J McCallum, seconded Councillor R Paine

That the Council:

1. Recommends to the WAPC that the proposed 'hamlet' location and urban expansion footprint on Lots 1, 2 and 1490 Wildwood Road and portion of Lot 115 Bussell Highway, Carburnup River, as identified in the report "*Carburnup Hamlet Phase 1 – Hamlet Location*" (dated May 2015) is generally consistent with *State Planning Policy 6.1 Leeuwin Naturaliste Ridge*.
2. Recommends that the WAPC does *not* support the progression of the Carburnup River settlement expansion proposal to the scheme amendment and structure planning stages for the following reasons –
 - i) The proposal does not reflect contemporary planning and sustainability principles that support compact urban form with an emphasis on redevelopment and consolidation within, and expansion focused on, *existing* urban areas to best utilise infrastructure, services and community facilities.

- ii) The proposal is inconsistent with *State Planning Policy 1: State Planning Framework* and *State Planning Policy 3 Urban Growth and Settlements* as it would facilitate the development of a small, isolated and 'off-grid' settlement remote from existing infrastructure such as reticulated sewer and water services, community and commercial services, employment and schools, with very few services and facilities and with an almost total reliance on private cars for transport.
 - iii) Population growth and land supply projections that underpin the *City of Busselton Draft Local Planning Strategy* demonstrate that there is sufficient zoned and structure planned urban land to accommodate projected growth for at least the next 15 years (without any substantiated *need* for a new settlement at Caribunup River).
 - iv) Advertising of the proposal did not elicit a strong view or consensus from the local community that settlement expansion at Caribunup River is either warranted or supported.
 - v) Whilst a number of matters raised as grounds of objection/concern would need to be comprehensively addressed and resolved through subsequent rezoning and structure planning phases (*should* the current proposal be supported), a new settlement at the proposed location would place residents in an established agricultural area surrounded by, and in close proximity to, intensive agricultural operations and subject to chemical spray, fumigant drift, noise and dust. There would be a strong potential for land use conflicts. This would be inconsistent with *State Planning Policy 1 State Planning Framework*, *State Planning Policy 2.5 Rural Land Use Planning*, *State Planning Policy 3 Urban Growth and Settlement* and the *South West Planning and Infrastructure Framework*.
3. Notes the 'Schedule of Submissions' prepared in response to the extensive public consultation process undertaken in relation to the current proposal.
4. Recommends to the WAPC that it include reassessment and review of potential settlement expansion areas (as currently set out in Table 5 Settlement Hierarchy of *State Planning Policy 6.1 Leeuwin Naturaliste Ridge*) for Caribunup River and Metricup as an integral part of the mooted Leeuwin Naturaliste Sub-Regional Strategy.

CARRIED 7/2

Voting:

For the motion: Councillor T Best, Mayor G Henley, Councillor J McCallum, Councillor R Bennett, Councillor P Carter, Councillor R Reekie and Councillor R Paine.

Against the motion: Councillor C Tarbotton and Councillor G Bleechmore.

10.6 DA15/0340 - CHANGE TO A NON-CONFORMING USE (OFFENSIVE OR HAZARDOUS INDUSTRY - CRUSHING AND RECYCLING OF BUILDING MATERIALS)

SUBJECT INDEX:	Planning/Development Applications
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Development Services and Policy
ACTIVITY UNIT:	Statutory Planning
REPORTING OFFICER:	Senior Development Planner - Andrew Watts
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Attachment A - Site Plan Attachment B Attachment B - Development Proposal Attachment C Attachment C - Schedule of Submissions

PRÉCIS

The Council is asked to consider an application seeking approval for a Change to a Non-Conforming Use (Offensive or Hazardous Industry – Crushing and Recycling of Building Materials) at Lot 6 (No.19) Cable Sands Road, Yalyalup (“the site”). The approval is being sought for a temporary term of three years.

The planning proposal has been placed before Council due to the significant volume of public submissions received raising concern with development.

It is considered that the proposal is consistent with the relevant planning framework and is recommended for approval subject to conditions including a temporary approval timeframe of three years.

BACKGROUND

Lot 6 (No.19) Cable Sands Road has street frontage to Cable Sands Road to the west and Bussell Hwy to the north, is bound by Lot 203 Bussell Hwy to the east and Lot 9032 Cable Sands Rd to the south. Lots 203 and 9032 are part of the Satterley Property Group land holdings for the Provence Estate.

Under Local Planning Scheme No. 21 the site is zoned Special Purpose (Yalyalup Deferred Development) and is subject of Special Provision 23. Special Provision 23 requires that:

Development (including subdivision) of the land shall be generally in accordance with the Development Guide Plan and the Detailed Area Plan for the land adopted by Council and endorsed by the Western Australian Planning Commission.

Special Provision 23 also sets out the planning requirements for Development Guide Plans and Detailed Area Plans over the land.

The applicant is seeking to establish for a limited duration, a facility for the recycling of construction and demolition waste. The facility is proposed to recycle concrete, brick and tile material to create road base, drainage material and sand through on-site crushing of the waste materials.

Historically the site has been used as a timber mill and yard, of which some aspects of the use the applicant advises have been continuing and currently, the site is predominantly used as the main operational office and workshop for the applicant’s business. The site is used for storage of vehicles and equipment, materials and their maintenance. There are parking areas for light vehicles, trucks

and trailers and earthmoving/road construction equipment. There is also a large workshop that provides vehicle and machinery maintenance and repairs.

The applicant originally requested approval for a period of up to five years, however in response to submissions received after advertising of the development proposal, BCP reduced the requested approval period to three years.

An application for works approval and licence has been submitted by the proponent to the Department of Environment Regulation (DER). Advice has been received by the City that DER has given the proponent a Draft Works Approval with a range of environmental conditions that the proponent has agreed to accept. DER are prepared to issue a formal Works Approval subject to the City issuing Development Approval and have advised that any licence issued would be for a duration that runs concurrent to any development approval issued by the City.

STATUTORY ENVIRONMENT

The key elements of the statutory environment that relate to the proposal are set out in the Local Planning Scheme.

4.10 NON-CONFORMING USES

Except as otherwise provided in the Scheme, no provision of the Scheme is to be taken to prevent -

- (a) the continued use of any land for the purpose for which it was being lawfully used immediately prior to the Gazettal date of the Scheme or an amendment to the Scheme (as the case may be); or
- (b) the carrying out of any development on that land for which, immediately prior to the Gazettal date of the Scheme or an amendment to the Scheme (as the case may be), an approval or approvals, lawfully required to authorize the development to be carried out, were duly obtained and are current.

Note: "Land" has the same meaning as in the Planning and Development Act and includes houses, buildings and other works and structures.

4.11 EXTENSIONS AND CHANGES TO A NON-CONFORMING USE

4.11.1 Subject to the other provisions of this clause 4.11, a person must not -

- (a) alter or extend a non-conforming use;
- (b) erect, alter or extend a building used in conjunction with or in furtherance of a nonconforming use; or
- (c) change the use of land from a non-conforming use to another non-conforming use, without first having applied for and obtained planning approval under the Scheme.

4.11.2 An application for planning approval under this clause is to be advertised in accordance with clause 10.4.

4.11.3 Where an application is for a change of use from an existing non-conforming use to another non-conforming use, the local government is not to grant its planning approval unless the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is, in the opinion of the local government, closer to the intended purpose of the zone.

11.6 TEMPORARY PLANNING APPROVAL

Where the local government grants planning approval, the local government may impose conditions limiting the period of time for which the approval is granted.

A temporary planning approval is where the local government grants approval for a limited period, for example, where the land may be required for some other purpose in the future, and is different to the term of the planning approval which is the period within which the development must commence.

In this instance the land has been identified for future urban development and the proposal is requesting a time limited approval of 3 years.

RELEVANT PLANS AND POLICIES

There are no Local Planning Policies relevant to this proposal.

FINANCIAL IMPLICATIONS

There are no identifiable significant financial implications to the City arising from this proposal or staff recommendation in this report.

STRATEGIC COMMUNITY OBJECTIVES

The recommendation of this report reflects Community Objectives 2.2 and 3.1 of the Strategic Community Plan 2013, which are:

- 2.2 A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
- 3.1 A strong, innovative and diversified economy that attracts people to live, work, invest and visit.

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks as well. Risks are only identified where the individual risk, once controls are identified, is medium or greater.

Risk	Controls	Consequence	Likelihood	Risk Level
Reputational risk should the development not be managed effectively to minimize impact on the amenity of other nearby land	Appropriate assessment of the issue and recognition of additional control provided by DER works approval and licence requirements	Minor	Possible	Medium

CONSULTATION

The proposal was referred to adjoining landowners of the proposed development site and was also advertised in the local newspaper for a period of 21 days.

A total of twenty-one submissions were received, of which four were from government agencies, two were from property developers who own adjoining land, one was from a local school and 14 submissions were received from members of the general public. The majority of public submissions received were objecting to or raising concerns with the proposal for the following reasons:

- Properties will be devalued due to the destruction by industry of the lifestyle chosen by owners in the area.
- Concerned about operation being proposed 6 days per week from 7am – 5pm. If approved operating on Saturdays, Sundays and public holidays should not be permitted and preferably

shorter hours.

- Time frame of approval should be greatly limited, i.e. to less than the five years requested and preferably only to the time necessary to process waste from the hospital demolition.
- Concerned about proximity of proposal to residential areas and Georgiana Molloy School. Believe proposal should be located preferably in an Industrial or Rural area. Proposal is less than the 1000m from sensitive premises specified by the EPA Guidance Statement No.3. The proposal is approximately half of this distance, this variation is too great.
- Why is the Rendezvous Rd site not being used for this proposal?
- Concerned by dust being blown and that waste accepted will contain asbestos, affecting people's health and contaminating rain water supplies.
- Concerned about water volume needed for dust suppression and that may necessitate excessive abstraction of groundwater with resultant impact on the local aquifer relied upon by other landowners and needed for ecological balance.
- Additional heavy traffic onto Bussell Hwy will increase road safety issues.
- Believes that the proposal represents too significant a change in use from the current activities on the site with too significant impacts.
- Noise impacts from truck movements, reversing beepers, machinery operation, dumping of materials. Constant vibration and noise causes stress.

These concerns raised in the submissions are discussed further below and specific consideration of each of the submissions is given in the Schedule of Submissions at **Attachment C**.

OFFICER COMMENT

Key issues/questions in relation to the application are outlined and discussed below.

Period of approval

Some submissions, including from property developers owning adjoining land raised concern in regard to approval being granted for a period as long as five years, with comments suggesting that if approved a shorter timeframe would be more acceptable to tolerate impacts to amenity and not unduly impact on future development plans.

In response to submissions the applicant has reduced the original approval period requested down to three years. This reduction is considered acceptable to not impact on future development plans of adjoining landowners and combined with environmental conditions that would be imposed through the DER environmental approvals process and other conditions of the City development approval, it is considered that a three year approval would appropriately mitigate impacts on the surrounding residential uses.

Operation times

Multiple submission raised concerns in respect to the proposed operation times that they should be shorter and be restricted to weekdays only to reduce the duration each day of environmental impacts on amenity, such as that from noise and to allow for enjoyment of weekends at home free of any noise.

Recommended conditions include limiting all operations on weekdays to specified hours, reducing the Saturday times and limiting it to delivery of materials only, with no crushing and prohibiting any operations on Sundays and public holidays. This aims to assist in reducing the daily impact on surrounding residents whilst still allowing sustainable business operations. This type of restriction on operating hours is similar to that which are frequently imposed on development approvals for extractive industry.

Environmental Impacts on surrounding land (noise, dust etc)

The majority of the issues raised by members of the public relate to the environmental impact from noise and dust (including potential for asbestos fibres). The application information submitted for development approval is the same as that submitted to DER for environmental approvals and includes a range of environmental management plans and measures to mitigate environmental impacts, including noise, dust and handling of asbestos.

Advice has been received that DER has issued the applicant a Draft Works Approval and is prepared to issue the approval formally provided the City has issued Development Approval and would only approve a licence application for a duration the same as that of any approval by the City.

As the proposed operation cannot occur without environmental approval from DER, there are not any separate environmental conditions recommended to be included on the City Development Approval.

Traffic

The proposal was referred to Main Roads WA comment on traffic management issues with trucks entering onto Bussell Hwy. No concerns were raised by Main Roads in respect to the type or volume of the traffic that would be accessing the site via the Main Roads controlled section of Bussell Hwy.

The applicant states that there will only be an increase of 12 truck movements per day over the current site operations. This level of increase in traffic is considered to be very small and the current road access configuration is adequate to deal with this.

Concerns about noise from vehicle movements on site and reversing beepers is required to comply with noise management requirements set by DER.

The crossover into the site is not sealed. To minimise the drag out of gravel from the site onto Cable Sands Rd, the crossover is to be appropriately sealed.

Why is Rendezvous Rd site not being used by the applicant?

Submission queried why the proposal was intended to be located at Lot 6 Cable Sands Rd when there are similar activities carried out at the City owned Rendezvous Rd waste site. The City needs to assess the application that has been lodged, and the potential or otherwise of alternative sites is not a question that can or should be addressed unless and until it has first been determined that the application site is not appropriate (if this were a strategic planning process, the scope of considerations would be broader and could include the consideration of potential alternatives).

CONCLUSION

It is recommended that the Council approve the development with conditions restricting approval to a period of three years and with restrictions on scale and operating times.

The proposed conditions restricting operation times and total volumes of material put through aim to alleviate the occurrence of unreasonable levels of noise, dust and traffic impacts that have been highlighted as concerns in submissions received.

OPTIONS

The Council could:

1. Refuse the proposal, setting out reasons for doing so.
2. Apply additional or different conditions.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The proponent and those who made a submission will be advised of the Council decision within two weeks of the Council meeting.

OFFICER RECOMMENDATION

That the Council resolve:

1. That application DA15/0340 submitted for development at Lot 6 (No.19) Cable Sands Road, Yalyalup is considered by the Council to be generally consistent with Local Planning Scheme No. 21 and the objectives and policies of the zone within which it is located.
2. That temporary Planning Consent for a period of 3 years be granted for the proposal referred in 1. above, subject to the following conditions:

General Conditions:

1. All development is to be in accordance with the approved Development Plans (attached), including any amendments placed thereon by the City and except as may be modified by the following conditions.
2. Hours of operation of the business (including receipt of deliveries) are restricted to: between 7.00am and 5.00pm on weekdays; 9.00am and 3.00pm Saturdays for delivery of materials only, no crushing; and, at no time on Sundays or public holidays.
3. A maximum of 70,000 tonnes per annum of construction and demolition waste being processed at the site.

Prior to Occupation/Use of the Development Conditions:

4. The development hereby approved shall not be occupied or used until all plans, details of works required by Conditions(s) 1 have been implemented and the following conditions have been complied with:
 - 4.1 The crossover onto Cable Sands Road is to be sealed and drained for a minimum of 20m.

On-going Conditions:

5. The works undertaken to satisfy Condition(s) 1, 2, 3, and 4 shall be subsequently maintained for the life of the development.

Note: Officers put forward a revised Officer Recommendation for Council consideration.

Council Decision and Revised Officer Recommendation

C1602/020 Moved Councillor T Best, seconded Councillor P Carter

That the Council:

Defers consideration of DA15/0340 - Change to a Non-Conforming Use (Offensive or Hazardous Industry - Crushing and Recycling of Building Materials) by Council pending resolution of issues relating to the non-conforming use right.

CARRIED 9/0

11. ENGINEERING AND WORKS SERVICES REPORT

Nil

12. COMMUNITY AND COMMERCIAL SERVICES REPORT

Nil

15. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

16. CONFIDENTIAL REPORTS

The reports listed below are of a confidential nature, in accordance with section 5.23(2) of the Local Government Act 1995. These reports have been provided to Councillors, the Chief Executive Officer and Directors only.

Note: No discussion was required so the meeting was not closed to members of the public.

16.1 UNAUTHORISED DEVELOPMENT RENTED HOLIDAY HOME 16 STOCKYARD LANE, GEOGRAPHE

SUBJECT INDEX:	Development Planning Compliance
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Development Services and Policy
ACTIVITY UNIT:	Statutory Planning/Legal Services
REPORTING OFFICER:	Manager, Development Services - Anthony Rowe
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Nil

This item is confidential in accordance with section 5.23(2) (d) of the Local Government Act 1995, as it contains information relating to legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

Council Decision and Officer Recommendation

C1602/021 Moved Councillor J McCallum, seconded Councillor C Tarbotton

That the Council:

1. Authorise the Chief Executive Officer to commence prosecution of A.R. and W.S. Moore of 25 Ragamuffin Point, Halls Head.
2. Authorises the Chief Executive Officer to withdraw at any stage during the prosecution proceedings prosecution against any one or more of the alleged offenders should in his discretion circumstances warrant such action.

CARRIED 9/0

Note: The Mayor referred members of the public to the availability of the detail of the decision from the confidential report, as now included in the minutes.

17. QUESTIONS FROM MEMBERS

Nil

18. PUBLIC QUESTION TIME

Nil

19. NEXT MEETING DATE

Wednesday, 24 February 2016

20. CLOSURE

The meeting closed at 8.44pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 108 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 24 FEBRUARY 2016.

DATE: _____ PRESIDING MEMBER: _____