



City of Bunbury Council

Minutes

17 October 2017



CITY OF BUNBURY

4 Stephen Street
Bunbury WA 6230
Western Australia

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Vision

Bunbury will continue to be recognised as the capital City of the South West region, with a strong and diverse economy offering a safe, friendly and vibrant lifestyle within an attractive natural and built environment.

Core Values

The City of Bunbury aspires to act in accordance with the following values in all of its decisions and actions:

Leadership: empowering people to take responsibility for what they do and to strive to set an example for others to follow.

Teamwork: communicating and working co-operatively for the mutual benefit of all.

Integrity: establishing trust through openness and honesty.

Accountability: for our actions and performance.

Respect: for others by listening, understanding and responding appropriately.

Innovation: continually improving our services and processes through creative and progressive thinking and action.

Nature of Council's Role in Decision Making

Advocacy: When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

Executive/Strategic: The substantial direction setting and oversight role of the Council, e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Legislative: Includes adopting local laws, town planning schemes and policies.

Review: When Council reviews decisions made by Officers.

Quasi-Judicial: When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.

Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

City of Bunbury Council Minutes

Minutes of the Ordinary Meeting of the City of Bunbury Council held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 17 October 2017 at 5.30pm.

Minutes

17 October 2017

1. Declaration of Opening / Announcements of Visitors

The meeting was declared open by Mayor Gary Brennan at 5.30pm.

2. Disclaimer

The City of Bunbury accepts no responsibility for any act, omission, statement or intimation that occurs during Council Briefings or Council Meetings. The City refuses liability for any loss caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation occurring during Council Briefings or Council Meetings. Any person or legal entity acting or failing to act in reliance upon any statement, act or omission made during a Council Briefing or Council Meeting does so at their own risk.

Please note the recommendations contained in this document are not final and are subject to adoption, amendment (or otherwise) at the meeting.

Any statement or intimation of approval regarding any planning or development application made during a Council Briefing or Council Meeting is not to be taken as notice of approval from the City. The City advises that anyone who has an application lodged with the City must obtain and should only rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attached to the decision made by Council regarding the application.

Copyright

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Recording and Webstreaming of Meetings

- All Ordinary and Special Council Meetings are electronically recorded except when Council resolves to go behind closed doors
- All recordings are retained as part of the City's records in accordance with the General Disposal Authority for Local Government Records produced by the Public Records Office
- The live stream can be accessed at <http://www.bunbury.wa.gov.au/Pages/Live-Stream.aspx>
- Recordings can be accessed at <http://www.bunbury.wa.gov.au/Pages/Council-Meeting-Videos-2017.aspx>
- Images of the public gallery are not included in the streaming, however the voices of people in attendance may be captured and streamed.
- If you have any issues or concerns regarding the live streaming and recording of meetings, please contact the City's Governance Officer on 9792 7273.

3. Announcements from the Presiding Member

Nil.

4. Attendance

Present:

Council Members:	
Presiding Member:	Mayor G Brennan
Deputy Presiding Member:	Deputy Mayor Councillor B Kelly
	Councillor S Morris
	Councillor M Cook
	Councillor M Steck
	Councillor W Giles
	Councillor J Miguel
	Councillor B McCleary
	Councillor J Hayward
	Councillor J McGuinness
	Councillor M Warnock
	Councillor K Steele
Executive Leadership Team (Non-Voting)	
Acting Chief Executive Officer	Mr M Osborne
Director Works and Services	Mr G Harris
Director Corporate and Community Services	Ms S Addison-Brown
Acting Director Planning and Development Services	Mrs F Anderson
City of Bunbury Officers (Non-Voting)	
Manager Finance	Mr D Ransom
Manager Corporate Governance	Mr G Golinski
Acting Manager Major Projects and Property	Mrs K Mildwaters
Manager Planning and Development Services	Mr T Farnworth
Manager Tourism, Events and Promotion	Ms I Evans
Manager Information Communications and Technology	Mr M Roberts
Team Leader Development Assessment and Compliance	Mr M Young
Development Engineer	Mr K Daly
Senior Planning Officer	Ms B Macaulay
IT Support Officer	Mr J Bruhn
Media and Communications Officer	Mr J Tatham
Council Meeting Support Officer	Ms J Earl
Others (Non-Voting)	
Members of the Public	20
Members of the Press	3

4.1 Apologies

Nil.

4.2 Approved Leave of Absence

Cr Jones is on approved leave of absence from all Council-related business from 28 July 2017 to 21 October 2017 inclusive.

5. Declaration of Interest

Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences.

Section 5.60A: *“a person has a **financial interest** in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.”*

Section 5.60B: *“a person has a **proximity interest** in a matter if the matter concerns –*

- (a) a proposed change to a planning scheme affecting land that adjoins the person’s land; or*
- (b) a proposed change to the zoning or use of land that adjoins the person’s land; or*
- (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person’s land.”*

Regulation 34C (Impartiality): *“**interest** means an interest that could, or could reasonably be perceived to, adversely affect the **impartiality** of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.”*

Cr Steck declared a financial interest in item 10.4.1 titled ‘Application for Development Approval for Proposed Showrooms at Lot 1 and Lot 2 (#27) Spencer Street and Lot 23 (#4) Zoe Street, Bunbury’ as her partner owns the property. Cr Steck will leave the chamber for the duration of the discussion and the vote on the matter.

Cr Steck declared a financial interest in item 10.4.3 titled ‘Proposed Surrender of Licence and Replacement of Deed of Licence to Citygate Properties Pty Ltd Over Portion of Blair Street Road Reserve – Additional Car Parking’ as her partner owns the adjoining property. Cr Steck will leave the chamber for the duration of the discussion and the vote on the matter.

Cr Hayward declared a financial interest in item 10.3.1 titled ‘CBD Promotional Strategy Expenditure’ as his business has been asked to quote on part of the work. Cr Hayward will leave the chamber for the duration of the discussion and the vote on the matter.

6. Public Question Time

In accordance with Reg. 7(4)(a) of the Local Government (Administration) Regulations 1996, members of the public in attendance at the meeting may stand, state aloud their name and address, and ask a question in relation to any matter over which the municipality of Bunbury has jurisdiction or involvement.

In accordance with Standing Order 6.7(3)(a) a person wishing to ask a question, must complete a question form which is provided in the trays at the back of the public gallery and on the City's website. The completed form must include your name and address and contain no more than three (3) questions. If your question requires research or cannot be answered at the meeting, it will be taken on notice and you will receive a written response and a summary of your question (and any responses provided) will be printed in the minutes of the meeting.

6.1 Public Question Time

Nil.

6.2 Responses to Public Questions Taken 'On Notice'

Nil.

7. Confirmation of Previous Minutes and other Meetings under Clause 19.1

7.1 Minutes

7.1.1 Minutes – Ordinary Council Meeting

The minutes of the Ordinary meeting of the City of Bunbury Council held 3 October 2017 have been circulated.

Recommendation

The minutes of the Ordinary meeting of the City of Bunbury Council held 3 October 2017 be confirmed as a true and accurate record.

Outcome – Council Meeting 17 October 2017

The recommendation (as printed) was moved Cr Cook, seconded Cr Giles.

The Mayor put the motion to the vote and it was adopted to become the Council's decision on the matter.

Council Decision 367/17

The minutes of the Ordinary meeting of the City of Bunbury Council held 3 October 2017 be confirmed as a true and accurate record.

CARRIED

12 votes "for" / Nil votes "against"

.1.2 Minutes – Council Advisory Committees and Working/Project Groups

Nil.

8. Petitions, Presentations, Deputations and Delegations

8.1 Petitions

Nil.

8.2 Presentations

Nil.

8.3 Deputations

Mr Ross Underwood, Planning Solutions

Mr Ross Underwood requested to address item 10.4.1 titled “*Application for Development Approval for Proposed Showrooms at Lot 1 and Lot 2 (#27) Spencer Street and Lot 23 (#4) Zoe Street, Bunbury*”.

Council Decision 368/17

Pursuant to clause 6.9 (2)(b) of Councils Standing Orders, Council approves Mr Ross Underwood’s deputation request to address item 10.4.1 titled “Application for Development Approval for Proposed Showrooms at Lot 1 and Lot 2 (#27) Spencer Street and Lot 23 (#4) Zoe Street, Bunbury” and allows a period of up to 5 minutes to present to Council.

CARRIED

12 votes “for” / Nil votes “against”

Mr John Barnes, 5 Fern Street Bunbury

Mr John Barnes requested to address item 10.4.2 titled “*Development Application for Proposed Spray Booth at Lot 49 (#3) Rose Street, Bunbury*”.

Council Decision 369/17

Pursuant to clause 6.9 (2)(b) of Councils Standing Orders, Council approves Mr John Barnes’ deputation request to address item 10.4.2 titled “Development Application for Proposed Spray Booth at Lot 49 (#3) Rose Street, Bunbury” and allows a period of up to 5 minutes to present to Council.

CARRIED

12 votes “for” / Nil votes “against”

Mr John Lewis, Line-X Australia

Mr John Lewis requested to address item 10.4.2 titled *“Development Application for Proposed Spray Booth at Lot 49 (#3) Rose Street, Bunbury”*.

Council Decision 370/17

Pursuant to clause 6.9 (2)(b) of Councils Standing Orders, Council approves Mr John Lewis’ deputation request to address item 10.4.2 titled “Development Application for Proposed Spray Booth at Lot 49 (#3) Rose Street, Bunbury” and allows a period of up to 5 minutes to present to Council.

CARRIED

12 votes “for” / Nil votes “against”

8.4 Council Delegates’ Reports

Nil.

8.5 Conference Delegates’ Reports

Nil.

9. Method of Dealing with Agenda Business

All items were dealt with in the order they appeared on the Agenda.

10. Reports

10.1 Review of Local Government Act 1995 (was listed as item 10.2.1 on the Council Agenda)

Applicant/Proponent:	Internal
Responsible Officer:	Mal Osborne, Acting Chief Executive Officer
Responsible Manager:	Mal Osborne, Acting Chief Executive Officer
Executive:	Mal Osborne, Acting Chief Executive Officer
Authority/Discretion	<input checked="" type="checkbox"/> Advocacy <input type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input checked="" type="checkbox"/> Information Purposes
Attachments:	Appendix CEO-1: Submission – Local Government Act Review

Summary

The purpose of this report is for Council to consider its position relating to a review of the *Local Government Act 1995* and Regulations as confirmed by the Minister for Local Government on 20 June 2017.

As a member of the reference group on the review, WALGA are conducting a consultation process with member local governments to inform sector views and priorities.

The final collated feedback will be prepared as a State Council Agenda item for Zone consideration during the November/December 2017 round of Zone meetings. State Council will determine its position at its meeting of 6 December 2017.

It is considered appropriate for Council to have an agreed position on the Local Government Act review.

Executive Recommendation

That Council endorse the attached paper as the City of Bunbury submission to WALGA on the current review of the *Local Government Act 1995*.

Strategic Relevance

Key Priority Area 5: Corporate
Objective 5.2: Maintain a high standard of corporate governance and improve access to information.

Background

The Department of Local Government, Sport and Cultural Industries, has recently advised that it is commencing a review of the *Local Government Act 1995* (the Act). The review will propose changes to modernise the Act and identify ways to reduce red tape.

The Department has advised it will be conducted in two phases. Phase one will focus on three key areas: participation in local government elections, more information available electronically and gift disclosures. The policy work and consultation estimated to be completed in 2017 with a Bill in 2018.

Phase two will ensure local governments are positioned to deliver for the community through increasing community participation in local government decision-making, improving behaviour and relationships, enabling local government enterprises and improving financial management. The policy work and consultation estimated to be completed in 2018 with a Bill in 2019.

There may be some flexibility as to what issues are to be considered in stage 1 or stage 2.

The review will be supported by a reference group with representation from the Western Australian Local Government Association (WALGA), Local Government Professionals Australia (WA), Western Australian Electoral Commission, Western Australian Council of Social Service, Regional Chamber of Commerce and Industry and the WA Rangers Association.

Council Policy Compliance

Not Applicable

Legislative Compliance

The report relates to a review of the *Local Government Act 1995* and regulations.

Officer Comments

As part of the consultation process WALGA has produced a discussion paper on issues that have been identified over the last 8 years including WALGA's advocacy positions resolved by the sector.

Officers have reviewed the discussion paper as well as identifying aspects of the legislation that is known (through experience) to be problematic and have nominated these areas for potential change.

In general terms, the City welcomes the review of the Act, and supports comments made by the Minister for Local Government (the Minister) that the review will focus on modernising local government, as well as improving service delivery to the community.

WALGA will use information provided by local governments to help inform its position before the matter is formally considered by State council on 6 December 2017.

The City's submission into the review is attached at Appendix CEO-1.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications arising from the recommendations within this report.

Community Consultation

Not applicable

Councillor/Officer Consultation

Elected Members were sent the draft submission for comment, prior to being considered by Council. One response has been received from Councillor Cook.

Councillor Cook has proposed the following amendments to the draft submission:

1. Expand the Role of Council (s.2.7)

That in addition to expanding the Role of Council, consideration is given to providing recurrent funding to assist ratepayers support regional facilities such as convention centres, art gallery, and museums etc.

2. Gifts and Contributions to Travel (s.5.82 and 5.83)

That no gifts or financial support be provided to or accepted by Elected Members, thereby eliminating the need for reporting.

Councillor Cook has proposed the following additions to the draft submission:

3. Part 2 – Constitution of local government, Division 6 – Terms of office on the council and vacation of office

That Division 6 is amended to limit the number of consecutive terms served by a Mayor/President to two terms (8 years), and Councillors to three terms (12 years). Candidates would be re-eligible to be elected for mayor/president or councillor following a two year break.

4. Role of mayor or president (s.2.8 (f)) and Functions of CEO (s.5.41(e))

That sections 2.8(f) and 5.41(e) are amended to provide the Chief Executive Officer report directly to the Mayor, to assist with diminishing any grey areas in implementing Council decisions.

Applicant Consultation

Not applicable

Outcome – Council Meeting 17 October 2017

The recommendation (as printed) was moved Cr McCleary, seconded Cr McGuinness.

Cr Cook moved, Cr Giles seconded an amendment as follows:

That Council endorse the attached paper as the City of Bunbury submission to WALGA on the current review of the Local Government Act 1995, with the following additions:

- 1. Expand the Role of Council (s.2.7) That in addition to expanding the Role of Council, consideration is given to providing recurrent funding to assist ratepayers support regional facilities such as convention/entertainment centres, art galleries, museums, libraries and the like.*
- 2. Gifts and Contributions to Travel (s.5.82 and 5.83) That no gifts or financial support be provided to or accepted by Elected Members, thereby eliminating the need for reporting.*

3. *Part 2 – Constitution of local government, Division 6 – Terms of office on the Council and vacation of office. That Division 6 is amended to limit the number of consecutive terms served by a Mayor/President to two terms (8 years), and Councillors to three terms (12 years). Candidates would be re-eligible to be elected for Mayor/President or Councillor following a two year break.*
4. *Role of Mayor or President (s.2.8 (f)) and Functions of CEO (s.5.41(e)) That sections 2.8(f) and 5.41(e) are amended to provide that the Chief Executive Officer (CEO) report directly to the Mayor, to assist with diminishing any grey areas in implementing Council decisions.*

The Mayor put each of the four points to the vote as follows:

That Council endorse the attached paper as the City of Bunbury submission to WALGA on the current review of the Local Government Act 1995, with the following additions:

1. *Expand the Role of Council (s.2.7) That in addition to expanding the Role of Council, consideration is given to providing recurrent funding to assist ratepayers support regional facilities such as convention/entertainment centres, art galleries, museums, libraries and the like.*

CARRIED

9 votes “for” / 3 votes “against”

2. *Gifts and Contributions to Travel (s.5.82 and 5.83) That no gifts or financial support be provided to or accepted by Elected Members, thereby eliminating the need for reporting.*

LOST – by casting vote of Mayor

6 votes “for” / 6 votes “against”

3. *Part 2 – Constitution of local government, Division 6 – Terms of office on the Council and vacation of office. That Division 6 is amended to limit the number of consecutive terms served by a Mayor/President to two terms (8 years), and Councillors to three terms (12 years). Candidates would be re-eligible to be elected for Mayor/President or Councillor following a two year break.*

LOST

5 votes “for” / 7 votes “against”

4. *Role of Mayor or President (s.2.8 (f)) and Functions of CEO (s.5.41(e)) That sections 2.8(f) and 5.41(e) are amended to provide that the Chief Executive Officer (CEO) report directly to the Mayor, to assist with diminishing any grey areas in implementing Council decisions.*

LOST

3 votes “for” / 9 votes “against”

The Mayor put the substantive motion to the vote as and it was adopted to become the Council's decision on the matter.

Council Decision 371/17

That Council endorse the attached paper as the City of Bunbury submission to WALGA on the current review of the Local Government Act 1995, with the following additions:

- 1. Expand the Role of Council (s.2.7) That in addition to expanding the Role of Council, consideration is given to providing recurrent funding to assist ratepayers support regional facilities such as convention/entertainment centres, art galleries, museums, libraries and the like.***

CARRIED

7 votes "for" / 5 votes "against"

10.2 CBD Promotional Strategy Expenditure (was listed as item 10.3.1 on the Council Agenda)

Applicant/Proponent	Internal
Responsible Officer:	Isabell Evans, Manager Tourism, Events and Promotions
Responsible Manager:	Stephanie Addison-Brown, Director Corporate & Community Services
Executive:	Stephanie Addison-Brown, Director Corporate & Community Services
Authority/Discretion	<input type="checkbox"/> Advocacy <input checked="" type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes
Attachments:	Nil.

Summary

The purpose of this report is for Council to consider short to medium term expenditure as part of PR-4314 Implement City Promotional Strategy.

Under PR-4314 \$120,000 is allocated in the City of Bunbury's 2017-18 Annual Budget to implement a city promotional strategy focusing on the CBD. The CBD Activation Advisory Group has devised a set of immediate initiatives to drive the revitalisation of the CBD which is now presented to Council for endorsement.

Executive Recommendation

That Council:

- a) Endorse the following initiatives and associated expenditure within PR-4314 Implement City Promotional Strategy;
 - 1) Implement Marketing Campaigns; \$62,000;
 - 2) Implement Summer Markets; \$15,000;
 - 3) Support Implementation of Mobile-Enabled Bunbury Website; \$10,000;
 - 4) Install Additional Events Advertising Billboards; \$15,000;
 - 5) Implement Bunbury History Initiative; \$8,000;
 - 6) Introduce Grants for CBD Building Upgrades; \$10,000.
- b) Note additional initiatives being driven outside of PR-4314 to revitalise the CBD as described in this report.

Strategic Relevance

Key Priority Area 5 Corporate
Objective 5.6 Improve local, regional, state and national perceptions of Bunbury

Background

At their 27 June meeting Council endorsed amendments to the City of Bunbury's parking arrangements and the development of a CBD marketing plan (Council Decision 250/17). Following this \$120,000 was allocated within the City's 2017-18 Annual Budget to implement a city promotional strategy (PR-4314).

To drive the implementation of this strategy, following Council’s endorsement of the 2017-18 Annual Budget expressions of interest (EOI) were circulated for membership to a new CBD Activation Advisory Group (CAAG). Following the EOI process 11 individuals were selected for the CAAG as follows;

Name	Representing
Sharon Lomax	Bunbury Geographe Chamber of Commerce and Industries
David Kerr	Dolphin Discovery Centre
Sharon Custers	Bunbury Regional Entertainment Centre
Cheryl Kozisek	The Retail Co
Juliana Frisina	Hospitality Industry
Megan Gianfrancesco	Retail Industry
Megan Lawless	Arts & Culture Industry
Geoff Hill	Real Estate Industry
Brian Rettinger	Community
Hayden Garwood	Community
Lisa Broun	Community

Centrepont Shopping Centre were approached in regards to membership on the CAAG however declined to be involved.

Joined by Acting Chief Executive Officer Mal Osborne, Director Corporate & Community Services Stephanie Addison-Brown, Director Works & Services Gavin Harris and Manager Tourism, Events & Wildlife Park Isabell Evans, the CAAG has thus far held two meetings; 20 September and 4 October; where a wide range of immediate and short term initiatives to drive CBD revitalisation and activation have been discussed.

Noting that summer and Bunbury CBD’s traditionally busiest season is fast approaching, the CAAG and staff now present six **immediate-term initiatives** for Council endorsement, explained in more detail as follows;

Initiative	Rationale
Implement Marketing Campaigns \$62,000	Marketing of Bunbury’s CBD is seen as an essential step in revitalisation of the CBD, however it is intended that the dollar amount be spread across multiple promotion initiatives. As abovementioned summer is traditionally Bunbury CBD’s busiest season and is fast approaching. Recent changes to the City’s parking arrangements, the large number of events due to be delivered in Bunbury over the season and the development of the Bunbury Geographe tourism sub-region represent a timely opportunity to implement a TV-based marketing campaign promoting Bunbury, the CBD and what is on offer in the area at this point in time. It is intended that the budget of this first campaign be \$30,000, leaving \$32,000 for additional campaigns. Residents of the Bunbury Geographe region will be the primary target audience for these campaigns.
Implement Summer Markets \$15,000	It is identified that whilst a CBD summer marketing campaign is timely, an extra reason for residents of Bunbury Geographe to come into the Bunbury CBD is also necessary. It is thus proposed that funds be allocated to the external delivery of indoor or outdoor markets which showcase local businesses and stimulate foot traffic and vibrancy into the CBD.

<p>Support Implementation of Mobile-Enabled Bunbury Website</p> <p>\$10,000</p>	<p>Upon their election the Bunbury Geographe Chamber of Commerce and Industries (BGCCI) received \$70,000 from the State Government to similarly activate the Bunbury CBD.</p> <p>The BGCCI have identified that a portion of their funding will be directed towards the implementation of a Bunbury CBD-focused mobile-enabled website or app for residents and visitors of Bunbury Geographe alike.</p> <p>It is felt that a contribution to this project is necessary to ensure a high-quality product that meets its aims and objectives is developed.</p> <p>Implementation of the website or app will be coordinated by the BGCCI.</p>
<p>Implement Additional Events Advertising Billboards</p> <p>\$15,000</p>	<p>The City has recently installed two events billboards on Ocean and Koombana Drives however it is felt that additional structures with the opportunity to advertise events on a smaller scale (and therefore at a lesser cost) are also necessary.</p> <p>The intention is that new billboards would be constructed in the same style as the two existing billboards but offer multiple smaller event advertisement spaces rather than the one larger space available on the current billboards.</p> <p>Decisions around exact locations for this billboards have not yet been made however it is intended that they be installed where current event signage is being erected without Council approval, for example on the perimeter of Hands Oval or further along Koombana Drive.</p>
<p>Implement Bunbury History Initiative</p> <p>\$8,000</p>	<p>Bunbury has a rich history that is often overlooked by its residents, therefore it is proposed that funding be allocated to the implementation of an initiative focused on Bunbury's CBD historic buildings, potentially similar to the Open House Perth project which encourages appreciation of the city's buildings through a second look and a different lens.</p>
<p>Introduce Grants for CBD Building Upgrades</p> <p>\$10,000</p>	<p>A sizeable number of local governments offer façade and shopfront improvement grants on a matched dollar-for-dollar basis in an effort to stimulate improvements to the aesthetics of their CBDs.</p> <p>Noting that the vast majority of buildings in Bunbury's CBD are privately owned it is thus felt that the introduction of a pilot grant program is likely to achieve similar aims locally.</p>

Council Policy Compliance

Not applicable.

Legislative Compliance

Not applicable.

Officer Comments

It is noted that the aim of the relevant budget allocation and the CBD Activation Advisory Group (CAAG) is to drive short to medium term improvements to the Bunbury CBD, noting that an Economic Development Strategy (EDS) is currently being developed internally and other major projects such as the Civic and Cultural Precinct are ongoing. Consultation has taken place to ensure any short term initiatives are in line with the broader longer term aims of the EDS and other major initiatives.

Whilst marketing and promotion will be targeted at the local community, any work undertaken in this area will be done in collaboration with the Bunbury Geographe Tourism Partnership to ensure all branding and messaging is in line with that promoting the region to a wider audience.

Initiatives proposed by the CAAG are focused on four pillars of CBD revitalisation; activation (events, foot traffic), aesthetics (physical appearance), promotion (marketing and communications) and entry statements (encouraging broader visitation).

Whilst the development of a draft set of initiatives under PR-4314 Implement City Promotional Strategy was a collaborative process involving various community, industry and organisational representatives, the set of immediate initiatives presented to Council in this report have been researched and are supported by City staff.

This report recommends endorsement of expenditure under PR-4314 however it is important to note additional work being undertaken to drive revitalisation of the Bunbury CBD that do not require funding under the aforementioned project. These are also presented to Council for noting and include;

Initiative	Rationale
Free Trade Area	Local governments such as the Town of Victoria Park deliver a Free Trade Area whereby CBD businesses are encouraged to activate the space outside of their business by 'moving it outside' whilst not incurring a fee from Council. This has been demonstrated to activate CBDs and is being investigated internally by the Environmental Health Department including considering how accessibility and functionality can be maintained.
Small Business Support Service	Town of Victoria Park also deliver a small business support service to contribute to the efficacy and viability of businesses in their CBD. Relevant staff are currently investigating the possibility of a similar service in Bunbury in collaboration with relevant local organisations as part of the aforementioned Economic Development Strategy currently in development.
Urban Orchard	\$20,000 is currently allocated in the City's 2017-18 budget to 'Investigate the Implementation of an Urban Food Garden' (PR-4332). Sitting within the Corporate & Community Services Directorate, staff are investigating implementation options with the CBD Activation Advisory Group providing design and implementation support.
Entry Statements	\$1,625,000 is currently allocated over a five year period to 'Improve City's Landscaping, Parks, Gardens and Entry Statements' (PR-4015). Driven by the Works & Services Directorate, substantial work is currently being and will continue to be undertaken to improve the aesthetics of Bunbury's various entrances to encourage visitation into Bunbury and the CBD.
Pop-up Events Space	It was raised within the last CAAG meeting that a space where performers can deliver pop-up entertainment without going through the process of applying for a permit could deliver outcomes in terms of activating the CBD. An extension of the permit-free busker spaces throughout Bunbury, a pop-up performance space is being investigated.

Finally, it is noted that following the delivery of immediate term initiatives, should additional project funds remain staff and the CAAG will continue to work together to devise and deliver additional initiatives. Those to date discussed include improvements to CBD lighting, the Pat Usher Foreshore and Luciana Park, pop-up shops and CBD banners.

Analysis of Financial and Budget Implications

\$120,000 is already allocated in the City's 2017-18 budget to Implement City Promotional Strategy under PR-4314. This report recommends Council's endorsement of expenditure within this project. Stage One of expenditure will total \$88,000 (items 2, 3, 4, 5, 6 and summer component of item 1) leaving \$32,000 for additional campaigns.

Community Consultation

The CBD Activation Advisory Group comprises of various community members and developed the draft initiatives presented in this report.

Councillor/Officer Consultation

Acting Chief Executive Officer Mal Osborne, Director Corporate & Community Services Stephanie Addison-Brown, Director Works & Services Gavin Harris and Manager Tourism, Events & Wildlife Park Isabell Evans have all attended both CBD Activation Advisory Group meetings and collaborated internally regarding CBD revitalisation. As the project is multi-faceted additional staff have and will continue to be involved as required, for example Economic Development & Projects Officer Kristina Knight and Manager Landscape and Open Space Kristy Tillett.

Applicant Consultation

Not applicable.

Outcome – Council Meeting 17 October 2017

Cr Hayward declared a financial interest in the item and left the chamber for the duration of the discussion and the vote on the matter at 5.47pm.

The recommendation (as printed) was moved Cr Kelly, seconded Cr McGuinness.

The Mayor put the motion to the vote and it was adopted to become the Council's decision on the matter.

Council Decision 372/17

That Council:

a) Endorse the following initiatives and associated expenditure within PR-4314 Implement City Promotional Strategy;

1) Implement Marketing Campaigns; \$62,000;

2) Implement Summer Markets; \$15,000;

3) Support Implementation of Mobile-Enabled Bunbury Website; \$10,000;

4) Install Additional Events Advertising Billboards; \$15,000;

5) Implement Bunbury History Initiative; \$8,000;

6) Introduce Grants for CBD Building Upgrades; \$10,000.

b) Note additional initiatives being driven outside of PR-4314 to revitalise the CBD as described in this report.

CARRIED

11 votes "for" / Nil votes "against"

Cr Hayward returned to the chamber at 5.49pm.

10.3 Application for Development Approval for Proposed Showrooms at Lot 1 and Lot 2 (#27) Spencer Street and Lot 23 (#4) Zoe Street, Bunbury (was listed as item 10.4.1 on the Council Agenda)

File Ref:	P11294, DA/2017/116/1
Applicant/Proponent:	Planning Solutions (Australia) Pty Ltd
Responsible Officer:	Barbara Macaulay, Senior Planning Officer
Responsible Manager:	Thor Farnworth, Manager Sustainability, Planning and Development
Executive:	Felicity Anderson, Acting Director Planning and Development Services
Authority/Discretion	<input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes
Attachments:	Appendix DPDS-1: Site Plan, Floor Plan and Elevation Drawings Appendix DPDS-2: Location Plan Appendix DPDS-3: Development Site Photographs Appendix DPDS-4: Photographs of Spencer Street Footpath Condition Appendix DPDS-5: Applicant Comments and Proposed Modifications to Initial Draft Conditions Appendix DPDS-6: Applicant Response to Revised Draft Conditions Appendix DPDS-7: Examples of Development and/or Subdivision Approval Truncations

Summary

At its Ordinary Meeting of Council held on 5 September 2017 an application for development approval for proposed showrooms at Lot 1 and Lot 2 (#27) Spencer Street and Lot 23 (#4) Zoe Street was considered by Council.

The application was recommended for conditional approval by City of Bunbury officers. However, the applicant requested that Council review the officer recommendation imposing conditions requiring a truncation and the upgrading of the existing pedestrian footpath on Spencer Street.

Council resolved (Decision: 329/17) to defer the application, in order to allow further consultation between the applicant and City of Bunbury staff, so as to reach a mutually agreeable outcome.

The purpose of this report is to advise Council of the outcomes of negotiations conducted in relation to the matter. In line with Council's resolution, the applicant Planning Solutions provided officers with a list of recommended modifications to the draft conditions. Staff of the City of Bunbury's planning and engineering departments in return reviewed the suggested modifications afresh.

As part of the review process, further internal consultation was undertaken with the staff of the Engineering and Civil Operations department to confirm or otherwise the need for a truncation on Lot 1. Legal advice was also sought on the lawfulness of the local government's ability to impose conditions requiring a truncation and footpath upgrade.

As a result of the review process, a new set of draft conditions was sent to Planning Solutions, with the offering of a concession to contribute 50% towards the upgrading of the Spencer Street footpath. Planning Solutions have respectfully declined the offer and requested that the application for development approval be brought back to Council for its determination.

In light of the above information, a revised set of conditions for development approval is provided below.

Executive Recommendation

That Council:

In accordance with the *Planning and Development Act 2005* (as amended), hereby resolves to grant development approval for 'showroom' use at Lot 1 and Lot 2 (#27) Spencer Street and Lot 23 (#4) Zoe Street, Bunbury, subject to the following conditions:

1. At all times, the development the subject of this development approval must comply with the definition of the 'showroom' land use class as contained in Schedule 1 of the City of Bunbury Local Planning Scheme (as amended).
2. Before the development commences, the subject land parcels must be amalgamated/consolidated into the one certificate of title with the new title issued, and a copy of the new title provided to the satisfaction of the City of Bunbury.

Alternatively, the land owner must enter into a legal agreement with the City of Bunbury to secure the amalgamation / consolidation of the subject land parcels into one certificate of title within a specified time frame. The legal agreement must be at the full cost of the land owner, to the specification of the City's solicitor and to the satisfaction of the City of Bunbury.

3. All development shall be in accordance with the approved development plans (attached) which form part of this development approval.
4. This development approval will expire if the approved development has not substantially commenced within two (2) years from the date of issue of the approval.
5. All works required to satisfy a condition of this development approval are required to be installed / constructed and maintained in accordance with the approved development plans and conditions of approval for the life of the development.
6. Before the development is occupied, all external surfaces of concrete tilt panel must be painted and/or finished to the satisfaction of the City of Bunbury.
7. Before the development commences, a detailed landscaping plan must be submitted for the approval of the City of Bunbury. The landscape plan must address the following:
 - (a) A site plan of existing and proposed development with natural and finished ground levels.
 - (b) The location, species and size of existing vegetation and the vegetation proposed to be removed.

- (c) Exact species, location and quantity of the proposed vegetation to be planted.
 - (d) A key or legend detailing proposed species type grouped under the subheadings of tree, shrub and ground cover.
 - (e) Provision for one shade tree per eight (8) car parking spaces. Details are to be provided on the location and species type of tree as per Local Planning Policy: Landscaping.
 - (f) Mulching or similar treatments of garden beds including edges.
 - (g) Details of reticulation of landscaped areas including the source of the water supply and proposed responsibility for maintenance.
 - (h) Location, dimensions and treatment of paved areas (e.g. pedestrian pathways and parking areas).
 - (i) Fence material, height and treatment.
8. Before the development is occupied, the landscaped area(s) must be planted, established and reticulated in accordance with the endorsed landscape plan. These areas must be maintained as landscaped areas at all times to the satisfaction of the City of Bunbury.
9. Before the development is occupied, a minimum of 39 car parking bays must be provided on the lot / development site, the subject of this development approval, to the specifications and satisfaction of the City of Bunbury as per the Scheme and Local Planning Policy: Access & Parking for Pedestrians, Bicycles and Vehicles.
10. Before the development is occupied, a minimum of one (1) car parking bay must be provided on the lot / development site for the exclusive use of disabled persons in accordance with AS/NZS 2890.6:2009 and to the satisfaction of the City of Bunbury.
11. Goods or materials including waste must not be stored on the lot / development site within the designated access driveways, parking bays, landscaping areas, or setback areas to a public road.
12. In accordance with applicable City of Bunbury local laws, all verge areas abutting the boundaries of the lot / development site must remain clear at all times and must not be used for any other purpose (including car parking, trade display, storage and signage) to the satisfaction of the City of Bunbury.
13. A schedule of exterior materials, colours and finishes must be submitted with the building permit application for the approval of the City of Bunbury. The subject development must be finished and maintained in accordance with any approved schedule of materials.
14. At all times, the loading and unloading of service / delivery vehicles is to take place within the property boundaries of the lot / development site.

15. At all times, provision must be made onsite for the storage and collection of garbage and other solid waste. A waste storage and collection area must be graded, drained and screened from public view, and the garbage collected regularly, to the satisfaction of the City of Bunbury. Details of waste storage and collection are to be submitted with the building permit application.
16. Before the development is commenced, detailed design plans shall be prepared in accordance with relevant Australian Standards, Austroads Guidelines, and City of Bunbury requirements, for all access, car parking and pedestrian movement requirements, to the satisfaction of the City of Bunbury. Once detailed design plans are approved construction is to be in accordance with the approved plans and be completed before the development is occupied.
17. Before the development commences, a crossover permit must be obtained from the City of Bunbury for all crossovers. Construction and maintenance of the crossover is to be in accordance with the crossover permit.
18. Before the development is occupied, all disused or redundant vehicular crossover(s) must be removed and the area reinstated to the satisfaction of the City of Bunbury.
19. Before the development is occupied, any alterations, relocation or damage of existing infrastructure within the road reserve must be completed and reinstated to the specifications and satisfaction of the City of Bunbury.
20. Before the development is occupied, line marking and signage for vehicle parking and unloading/loading bays must be installed in accordance with the approved plans.
21. Before the development is occupied, lighting must be provided on site for the access way(s), parking area(s) and turning area(s) to the specification and satisfaction of the City of Bunbury. Detailed design plans are to be submitted to the City of Bunbury for approval prior to construction commencing.
22. Before the development commences, a damage bond to the value of \$5,000 must be paid to the City of Bunbury in accordance with Local Planning Policy: Bonds.
23. Before the development is occupied, the existing power pole on Zoe Street is to be relocated subject to the requirements of Western Power and to the satisfaction of the City of Bunbury.

Alternatively, detailed plans demonstrating that the crossover to Zoe Street will achieve adequate separation to the existing power pole, in lieu of relocating the power pole, are to be submitted to the specifications and satisfaction of the City of Bunbury for approval prior to construction of the development commencing.
24. Before the development is occupied, the area of land marked in red on the approved development plan for the purpose of road truncation must be ceded free of cost to the City of Bunbury.
25. Before the development commences, the developer shall contribute towards the upgrading of the Spencer Street footpath located adjacent to the boundary of the lot / development site. The development contribution amount shall be not less than fifty percent (50%) of the total cost of the upgrade works, up to the maximum value of \$10,000. Prior to development

commencing, the developer is to notify the City of Bunbury in writing of its intent to arrange the scheduling of construction for the upgrade works, which is to be undertaken at a time mutually agreed upon by both parties in writing.

26. Before the development commences, a traffic management plan is to be prepared in accordance with Main Roads Western Australia's Code of Practice must be submitted for approval by the City of Bunbury.
27. A minimum of 2m³ of storm water storage for each 65m² of impervious area must be provided on site in accordance with the City of Bunbury's Information Guide – Stormwater Disposal from Private, Commercial and Industrial Properties.
28. Detailed design plans for stormwater management must be submitted to the specification and satisfaction of the City of Bunbury for approval prior to the development commencing, and be implemented in accordance with the approved stormwater management plan prior to the development being occupied.
29. The stormwater management system must be designed and constructed in accordance with the City of Bunbury's Information Guide – Stormwater Disposal from Private, Commercial and Industrial Properties; and where able, is to provide an overflow connection to the local government drainage network, to the specifications and satisfaction of the City of Bunbury.
30. Before the development is occupied, sediment traps must be integrated into the stormwater and drainage system to the specifications and satisfaction of the City of Bunbury. All construction activities must be undertaken so as to avoid dust nuisance to occupiers of land in the vicinity to the satisfaction of the City of Bunbury. Design details of the sediment traps are to be included with the stormwater management plan required to be submitted.
31. This property is potentially susceptible to flooding. Any building construction is to have a minimum finished floor level of 2.1m AHD in accordance with Local Planning Policy: Development in Flood Affected Areas.

Advice Notes:

- (a) The City of Bunbury advises that where a development approval contains conditions which are required to be discharged before development commences, to commence development before those conditions are discharged means that the development is not pursuant to the planning permission and is therefore unauthorised development.
- (b) With regards to Condition 7, the applicant is advised that the existing tree adjacent to Cornwall Street is recommended for retention and should be incorporated into the landscaping plan. In addition the applicant is advised that the Zoe Street road reserve is not approved for verge landscaping purposes and the existing pedestrian footpath is to be retained.
- (c) With regards to Condition 14, courier deliveries from on-street car parking bays are permitted where it does not pose any safety issues for pedestrians and vehicular traffic movements.

- (d) With regards to Condition 16, the applicant is advised of the following information to be submitted as part of the detailed design plans:
- (i) Car parking bays are to be a minimum width of 2.5m and 5.4m in length.
 - (ii) Proposed car parking bay number 29 and associated crossover as indicated in red on the approved development plan is to be upgraded to a designated loading bay for Unit 1.
 - (iii) A continuous path of travel is to be provided from the pedestrian path adjacent to Unit 1 and Unit 2 to Cornwall Street as indicated in orange on the approved plan.
- (e) Separate approvals for signage are required from the City of Bunbury if signage exceeds the requirements listed at Schedule 9 – Exempted Advertisements in the City of Bunbury Town Planning Scheme No. 7. It is recommended that a Precinct Signage Plan is prepared for the entire site in order to achieve a unified style and quality of presentation. An advantage of having an approved Precinct Signage Plan in place is that it allows for changes in signage to be made in accordance with the plan without the need for further development approval.
- (f) Before the removal of a structure, a demolition permit must be obtained from the City of Bunbury unless exempted under the *Building Regulations 2012*.
- (g) The development the subject of this development approval is also regulated by the *Building Act 2011*, *Building Regulations 2012* and Building Code of Australia (BCA). A separate building permit must be granted before the development commences, where offences occur statutory penalties apply. The owner is advised to liaise further with the City of Bunbury's Building Certification team on (08) 9792 7000.

Strategic Relevance

Key Priority Area 3: Natural and Built Environment
Objective 3.4: Facilitate urban design, diversity of land uses, and enabling infrastructure.

Key Priority Area 4: Regional Economy
Objective 4.3: Promote Bunbury as a place that supports commercial, residential and social development.

Background

A summary table of details relating to the subject site are as follows:

Property Address:	- Lot 1 and Lot 2 (#27) Spencer Street; and - Lot 23 (#4) Zoe Street.
Existing Scheme Zoning:	- Lot 1 and Lot 2 (#27) Spencer Street 'Mixed Business Zone' and 'R60'. - Lot 23 (#4) Zoe Street 'Mixed Business Zone'.
Draft Scheme Zoning:	- Lot 1 (#27) Spencer Street 'Mixed Use – Commercial Zone' and 'R60/100' and a portion as 'Local Road Reserve'. - Lot 2 (#27) Spencer Street 'Mixed Use –Commercial Zone' and 'R60/100'.

	- Lot 23 (#4) Zoe Street ‘Service Commercial Zone’.
Existing Land Use:	- Lot 1 and Lot 2 (#27) Spencer Street contains an existing Beaurepaires tyre repairs workshop. - Lot 23 (#4) Zoe Street is vacant.
Lot Area:	- Lot 1 (#27) Spencer Street = 1,532.964m ² - Lot 2 (#27) Spencer Street = 1,011.724m ² - Lot 23 (#4) Zoe Street = 1,011.724m ²

The subject site consists of three lots with a total area of approximately 3,556m². Similar zoned properties adjoin the subject site’s eastern and southern boundaries and include the land uses of offices, motor vehicle sales and club premises. The subject site has frontages to Spencer Street, Cornwall Street and Zoe Street.

The subject site is located in close proximity to the central business district (CBD), with the properties on the adjacent side of Cornwall Street being included in the ‘City Centre Zone’. The properties located on the adjacent side of Spencer Street are included in ‘Special Use Zone No. 26’ (i.e. the Aldi development site).

Lot 1 and Lot 2 contain an existing ‘Beaurepaires’ tyre repairs workshop which is proposed to be demolished, while Lot 23 is currently vacant. The proposal is to develop a single-storey tilt panel building across the existing lots to be used for showroom purposes. The proposal consists of two showroom tenancies. The corner Unit 1 is to be approximately 893m² and Unit 2 is to be approximately 1,226m² in area. Unit 2 is to extend between Spencer Street and Zoe Street.

Development plans of the proposed showrooms consisting of a site plan, floor plan and elevation drawings are **attached** at Appendix DPDS-1.

A location plan showing the subject site and its surrounds is **attached** at Appendix DPDS-2.

Photographs of the subject site and its surrounds are **attached** at Appendix DPDS-3.

Photographs of the Spencer Street footpath condition, as compared to recent footpath upgrades in the vicinity (i.e. the Aldi development site), are **attached** at Appendix DPDS-4.

Planning Solutions’ comments and proposed modifications to the initial draft of the proposed conditions of development approval are **attached** at Appendix DPDS-5.

Planning Solutions’ response to the revised draft conditions and decline of the City of Bunbury’s offer to contribute 50% towards the upgrading of the Spencer Street footpath is **attached** at Appendix DPDS-6.

Legislative and Council Policy Compliance

The following statutory planning instruments of the State Planning Framework and Local Planning Framework are applicable to the assessment of this application for development approval:

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- City of Bunbury Town Planning Scheme No. 7 (TPS7)
- Local Planning Policy: Mixed Business Zone – Areas of Commercial Primacy

- Local Planning Policy: Access and Parking for Pedestrians, Bicycles and Vehicles
- Local Planning Policy: Building Heights
- Local Planning Policy: Building Facades of Commercial and Industrial Development
- Local Planning Policy: Landscaping
- Draft City of Bunbury Local Planning Strategy
- Draft City of Bunbury Local Planning Scheme No. 8 (LPS8).

Officer Comments

As a result of the Council resolution, the consulting firm Planning Solutions provided staff with a list of comments and proposed modifications to each of the draft recommended conditions and advice notes. A copy of the comments provided by Planning Solutions is **attached** at Appendix DPDS-5. In particular, Planning Solutions reiterated its position that the requirement to provide a truncation and development contribution for upgrading the adjoining pedestrian footpath should not be imposed. As it is the applicant's opinion that these two conditions fail to meet the Newbury test, in that the imposition of the conditions in the applicant's view do not fairly and reasonably relate to the proposed development.

In light of the recommended changes suggested by Planning Solutions, City of Bunbury officers have in good faith made a number of variations to the wording of the proposed conditions. However, the two main issues regarding the requirement for a road truncation and the upgrading of the pedestrian footpath remain contested.

With regards to the request to delete the condition requiring a truncation of Lot 1, staff of the Engineering and Civil Operations department were engaged to undertake a sightline analysis and design review or modelling exercise in accordance with Institute of Public Works Engineering Australasia (IPWEA) subdivision engineering guidelines. The purpose of the modelling was to reassess the need for a corner truncation or whether the truncation could be reduced or removed altogether.

The modelling confirmed the need for a six by six metre truncation in order to preserve adequate sightlines for drivers approaching and transiting the intersection. Consequently, in light of the proposed development in proximity of the intersection and resulting impacts on road safety and level of service, officers recommend that Condition 24 should be retained.

In relation to the requirement to upgrade the adjoining pedestrian footpath, by way of a compromise, officers have recommended that the City of Bunbury contribute 50% towards the cost of upgrading of the Spencer Street footpath.

Legal advice was sought from McLeods Barristers & Solicitors as part of the review process for drafting the conditions - in respect to the lawfulness of the local government imposing the requirement for a truncation and a development contribution to upgrade the existing footpath. Based on the legal advice received it has been confirmed that the respective conditions are defensible on the basis of nexus/need.

Provided below is an extract from the officer comments section of the original agenda item report presented to Council on 5 September 2017. The extract is provided to reiterate the officer's comments in regards to the need for an upgrade to the pedestrian footpath and a corner truncation to Lot 1.

Requirement for Truncation

Officers consider the requirement for a road truncation at the corner of Lot 1 as being necessary in order to cater for the short, medium and long term road design and traffic management requirements of the Spencer Street and Cornwall Street intersection. In particular, the requirement for a truncation is considered necessary for the following reasons:

- (a) The intersection of Spencer Street and Cornwall Street is proposed to be upgraded in the 2017-2018 financial year to improve sight lines.
- (b) In the medium to long term a more robust road design solution will be required for this intersection in order to safely and efficiently cater for the expected increase in CBD traffic movements (i.e. particularly on Cornwall Street). Provision of an adequate truncation at this corner would allow for a more appropriate free flowing intersection treatment and carriageway geometry. As such, it is possible that a roundabout and/or dedicated left-turn slip lane from Cornwall Street may be installed at some point in time subject to future requirements.
- (c) The truncation would secondarily allow for the upgrading of utilities (primarily underground) into the future. As the cadastral boundary of the subject lot is situated in close proximity to the current road carriageway, it is likely that some services on their standard alignment would be located under the road pavement. The truncation would therefore allow for future services, including those that service the subject development, to be installed in the road verge/footpath area, which is preferred and safer for ongoing maintenance.
- (d) The current lack of a truncation also does not allow for an adequately wide enough pedestrian refuge area at the corner of the intersection. A future truncation would allow for a wider footpath area to access the subject site (i.e. two metre minimum with some additional separation to the carriageway), which allows for safer and more efficient pedestrian circulation as would be typical or expected in an urban or main-street like environment.

In accordance with IPWEA Local Government Guidelines for Subdivisional Development (edition 2.2, 2012), a 10 metre by 10 metre truncation is normally required for commercial developments; however, a reduced truncation of six metres by six metres is being sought as a concession in this instance.

It should be noted that the requirement for a truncation has been consistently applied to other developments in the city, including those in vicinity of the subject site, as a condition of development approval and/or lot boundary reconfiguration. More recent examples include the following:

- Strata Lot 1 (#2) Taunton Street and Strata Lot 3 (#17) Richmond Street, East Bunbury (three lot residential subdivision)
- Lot 32 (#66) Spencer Street, Bunbury (Thrifty Car and Truck Rental)
- Lot 301 (#55) Spencer Street, Bunbury (SKG Radiology)
- Lot 14 (#11) Oakley Street, Bunbury (Bunbury Diocesan Trustees).

The above relevant examples of truncations conditioned as part of an application for development and/or subdivision approval are illustrated in the **attachment** at Appendix DPDS-7.

Requirement for Footpath Upgrade

It is considered that the proposed showrooms will result in an intensification of the subject site due to the significant areas of retail floor space that will be created. Currently one third of the site is vacant with the remaining two thirds occupied by a tyre repair business - with the majority of the patronage travelling to the site is by vehicle due to the nature of the business. When the site is redeveloped it is highly likely that there will be an increase in the volume of pedestrian traffic to and from the site.

In accordance with the Western Australian Planning Commission's (WAPC) Development Control Policy 1.2 – General Principles, the provision of vehicular and non-vehicular access to the proposed development is a relevant planning consideration. Given the close proximity of the proposed development to the CBD and the intensification of development at the site for retailing activities, officers consider the upgrading of the existing footpath on Spencer Street is a reasonable and relevant condition to impose on the development approval, so as to ensure the orderly and proper planning of the site and the integration of the proposed development with surrounding land uses.

Staff of the City of Bunbury's asset management team have rated the Spencer Street footpath at a level '3' condition, with '1' being the best and '5' being the worst possible condition using IPWEA Practice Note 1 (version 2, 2014) for footpaths and cycleways condition assessment. Photographs of the subject footpath are provided in the attached site photos. The current footpath on Spencer Street is 1.5 metres wide, and given Spencer Street's functional role in central Bunbury, it is recommended that the footpath is upgraded to a contemporary standard of a two metre wide concrete pathway.

Furthermore, it is considered the proposed method for requiring the upgrade to the pedestrian footpath is clear, accountable and simple to administer. Requiring the applicant to upgrade the footpath as part of the development represents a transparent outcome, as any costs incurred are a true representation of the cost of the associated works as opposed to estimating a monetary contribution value.

It should also be noted that other developments in vicinity of the subject site have consistently been required to upgrade footpaths (n.b. and in some cases other infrastructure items) as a result of the proposed development. Relevant examples include ALDI, Bunbury Toyota, SKG Radiology and Geographe Ford.

Requirement for Lot Amalgamation

The proposed development spans across the three subject lots. Officers consider that there is good reason to require the interdependent lots to be amalgamated and therefore recommend this as a condition of approval. Whilst it is acknowledged that the subject lots are currently under single ownership, the issue remains that the separate lots are able to be sold, and as such capable of being under separate ownership. This raises a number of issues as follows:

- Proposed Unit 2 is built across the lot boundaries of Lot 2 Spencer Street and Lot 23 Zoe Street. The local government has no information as to how proposed Unit 2 will be serviced in regards to power, drainage, water and sewerage. Other factors such as the building's fire rating, the provision of ablutions and internal facilities, the allocation of storage and access areas, and the design of the rear service access to Zoe Street are currently all integrated as a single tenancy. Therefore, in the event Lot 23 is sold there could be significant issues should

the building be serviced from an adjoining lot. Officers believe the local government is likely to be drawn into any disputes.

- In addition, the application is considered to be for the one integrated development with vehicle access, car parking, stormwater and landscaping requirements shared across the three subject lots. In order for the proposed showrooms to be compliant with the development standards required under the Scheme and associated local planning policies, the subject lots would require amalgamation.
- Vehicle access to proposed Unit 1 is obtained via proposed Unit 2 to Spencer Street. Should Lot 2 be sold, the corner Unit 1 would effectively have no legal vehicle access. Furthermore, the City of Bunbury would not support an additional crossover so close to the street intersection. In this instance, officers recommend the subject lots are required to be amalgamated or an easement is placed on the title granting reciprocal rights of access over the shared vehicle accessway and car parking area. Nevertheless, the proposed Unit 2 should be retained on one lot as it is designed and operates as a single premise.

Local Planning Scheme

Officers consider the application generally complies with the development standards of the existing TPS7 and associated local planning policies. The subject lots are currently included in the 'Mixed Business Zone' under TPS7, and as such, the land use class of 'showroom' is a permitted 'P' use in this zone. A variation is being sought for a reduction in the front setback to Zoe Street; however, this may be considered under clause 5.10.5.3.1 of the existing Scheme as provided below:

'Where a lot is situated at the intersection of two or more streets, the local government may reduce the distance of the building line from any road reserve other than which, in the opinion of the local government, the lot fronts.'

In light of the above, officers have given due regard to draft LPS8 in determining an acceptable reduced setback distance to Zoe Street. Under draft LPS8, the subject lot is proposed to be included in the 'Mixed Use – Commercial Zone', in which a two metre front setback is required. Given that the proposed showroom is consistent with draft LPS8, the proposed 2.5 metre setback to Cornwall Street is recommended for approval by officers.

Analysis of Financial and Budget Implications

This application for development approval relates to private property. Whilst it is recommended the applicant contribute to 50% towards the upgrading of the Spencer Street footpath, the local government will be responsible for undertaking the upgrade works, which will be a monetary cost to Council.

If the applicant is aggrieved by Council's decision they may apply for a reconsideration of development approval under Clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. In addition the applicant may apply for a review of the decision through the State Administrative Tribunal (SAT). If the decision is forwarded to the SAT for appeal, the City of Bunbury may incur legal costs.

It should be noted that the City's solicitors have advised that the value of the subject land (i.e. in terms of a compulsory acquisition under the *Land Administration Act 1997*) may be somewhat less than the expense of progressing the matter to a substantive hearing.

Community Consultation

The application for development approval does not require public advertising under the Scheme, the *Planning and Development Act 2005* or associated *Planning and Development (Local Planning Schemes) Regulations 2015*.

Councillor/Officer Consultation

The proposal has been referred to the City of Bunbury's Development Coordination Unit (DCU) for professional advice and technical assessment prior to the finalisation of this report. In addition, the City of Bunbury Manager of Engineering and Civil Operations and the Team Leader Design Engineering and Civil Operations were consulted in regards to the requirement for a truncation to be provided for the Spencer Street and Cornwall Street intersection.

Applicant Consultation

In line with Council resolution (329-17) Planning Solutions provided the City of Bunbury officers a list of recommended modifications to the draft conditions on 7 September 2017. Officers reviewed the recommended modifications and sought legal advice in regards to the legality of imposing the requirement to provide a truncation and an upgrade to the Spencer Street footpath.

A revised set of draft conditions were provided to Planning Solutions on 15 September 2017 for their perusal, with the major change being an offer from the City of Bunbury to contribute 50% towards the cost of upgrading the Spencer Street footpath. After careful deliberation Planning Solution declined the offer by the City of Bunbury on 19 September 2017 and requested that the report be finalised and proceed with forwarding the application for development approval to Council for its determination.

Outcome – Council Meeting 17 October 2017

Cr Steck declared a financial interest in the item and left the chamber for the duration of the discussion and the vote on the matter at 5.49pm.

Mr Ross Underwood, Planning Solutions addressed Council in relation to this item.

The recommendation (as printed) was moved Cr Kelly, seconded Cr McCleary.

Cr Hayward moved, Cr Warnock seconded an amendment to condition 24 as follows:

24. *Before the development is occupied, ~~the area of land marked in red~~ a 3m truncation on the approved development plan for the purpose of road truncation must be ceded free of cost to the City of Bunbury.*

Cr Giles moved, Cr Kelly seconded a procedural motion that the debate be adjourned until the next Council Meeting (two weeks) to enable staff to discuss the proposed amendment to condition 24.

The Mayor put the procedural motion to the vote and it was adopted to become the Council's decision on the matter.

Council Decision 373/17

That pursuant to Standing Order 11.6, debate be adjourned until the next round of Council Meetings.

CARRIED

8 votes "for" / 3 votes "against"

Cr Steck returned to the chamber at 6.06pm.

10.4 Development Application for Proposed Spray Booth at Lot 49 (#3) Rose Street, Bunbury (was listed as item 10.4.2 on the Council Agenda)

File Ref:	P08334, DA/2017/153/1		
Applicant/Proponent:	Bruce Mackie Pty Ltd		
Responsible Officer:	Barbara Macaulay, Senior Planning Officer		
Responsible Manager:	Thor Farnworth, Manager Sustainability, Planning and Development		
Executive:	Felicity Anderson, Acting Director Planning and Development Services		
Authority/Discretion:	<input type="checkbox"/> Advocacy	<input type="checkbox"/> Review	
	<input type="checkbox"/> Executive/Strategic	<input checked="" type="checkbox"/> Quasi-Judicial	
	<input type="checkbox"/> Legislative	<input type="checkbox"/> Information Purposes	
Attachments:	Appendix DPDS-8: Location Plan Appendix DPDS-9: Site Photos Appendix DPDS-10: Development Plans Appendix DPDS-11: Environmental Health Assessment Report Appendix DPDS-12: Additional Information by Applicant Appendix DPDS-13: Advice from the Department of Water and Environmental Regulation Appendix DPDS-14: Schedule of Submissions		

Summary

The City of Bunbury has received an application for development approval to permit a spray booth at Lot 49 (#3) Rose Street, Bunbury. The proposed business is a LINE-X franchisee which specialises in the application of spray-on polyurethane elastomers (metal coating). The most common application of the LINE-X product is for bedliners on utility vehicles.

The application is referred to Council for determination, as eight submissions were received during the advertising period, of which four of the submissions raised objections to the proposed spray booth. The main issues raised in the submissions related to concerns regarding chemical, noise and odour emissions and the proposed hours of operation.

The Department of Water and Environmental Regulation are the regulatory authority for the control and management of potentially polluting activities (including odours) from the proposed premise. As such, the development is controlled under the *Environmental Protection Act 1986* and associated regulations, and hence, the proposed spray booth is required to obtain a works approval from the department prior to the commencement of operations.

With regards to the potential of nuisance noises and hours of operation, the City of Bunbury officers consider that these issues can be feasibly addressed through the provision of relevant conditions and advice notes on the development approval. The application is therefore recommended for approval subject to conditions.

Executive Recommendation

That Council:

In accordance with the *Planning and Development Act 2005* (as amended), hereby resolves to grant development approval for a spray booth as an 'incidental use' to the predominate use of the

premises for 'showroom' use at Lot 49 (#3) Rose Street, Bunbury, subject to the following conditions:

1. At all times, the development the subject of this development approval must comply with the definition of an 'incidental use' as contained in Schedule 1 of the Local Planning Scheme (as amended); to the extent that the processes carried on, the machinery used, and the goods and commodities carried to and from the premises do not cause any injury to or adversely affect the amenity of the locality, and that the establishment or conduct of the 'incidental use' does not, or will not, impose an undue load on any existing or proposed service for the supply or provision of essential services to the satisfaction of the City of Bunbury.
2. All development shall be in accordance with the approved development plans (attached) which form part of this development approval.
3. This development approval will expire if the approved development has not substantially commenced within two (2) years from the date of issue of the approval.
4. All works required to satisfy a condition of this development approval are required to be installed / constructed and maintained in accordance with the approved plans and conditions of the approval for the life of the development.
5. This development approval is limited to the installation and operation of one (1) spray booth only. The spray booth is to be designed, constructed, installed and operated (including the particulate filtration mechanism or air filtration system) in accordance with the relevant:
 - (a) works approval and registration issued under the *Environmental Protection Act 1986* (as amended); and
 - (b) Australian Standards for an industrial spray painting booth (i.e. AS/NZS 4114.1:2013 Spray Painting Booths, Designated Spray Painting Areas and Paint Mixing Rooms - Design, Construction and Testing; AS/NZS 4114.2:2013 Spray Painting Booths, Designated Spray Painting Areas and Paint Mixing Rooms - Installation and Maintenance; and AS/NZS 2381.1:2005 - Electrical Equipment for Explosive Gas Atmospheres - Selection, Installation and Maintenance General Requirements).
6. The design, construction, installation and operation of the approved spray booth is to comply with the *Environmental Protection (Metal Coating) Regulations 2001* at all times to the specifications of the Department of Water and Environmental Regulation and to the satisfaction of the City of Bunbury.
7. This development approval is limited to the application of LINE-X® Spray-On products only (i.e. the proprietary spray-on corrosion resistant protective coatings), and is restricted to the application of any product only being permitted within the approved spray booth at all times.
8. This development approval does not permit spray painting, sandblasting or motor vehicle repairs at the premises at any time.
9. Except with the prior written consent of the local government, the operation of the approved spray booth is restricted to a maximum of three (3) hours per day, and must only operate between the following hours:

- (a) 8 am and 5 pm Monday to Friday; and
 - (b) 8 am and 12 pm Saturday.
10. All major openings (i.e. doors and windows) to workshop areas must remain closed at all times while the spray booth and associated plant and equipment, including any air compressors or generators, are in operation.
 11. Prior to commencement of operation, the Department of Water and Environmental Regulation must be notified in writing of the intention to commence development, and work onsite must be to the specifications of the Department of Water and Environmental Regulation and to the satisfaction of the City of Bunbury.
 12. Prior to commencement of operation, a copy of the works approval and licence issued under the *Environmental Protection Act 1986* (as amended) must be provided to the City of Bunbury.
 13. No odours or noise emissions associated with the spray booth and associated plant and equipment, including any air compressors or generators, are to be detected beyond the lot boundaries that may potentially impact on the amenity of the locality to the satisfaction of the City of Bunbury.
 14. All storage areas must be covered and maintained so as to avoid odour or dust nuisance to any residential premises or other sensitive land use to the satisfaction of the City of Bunbury.
 15. A waste management plan is to be submitted and approved to the specifications and satisfaction of the City of Bunbury prior to the commencement of operation.
 16. At all times, provision must be made for the onsite storage and collection of waste materials in accordance with the approved development plans. All waste materials must be contained, stored and removed from the premises in accordance with an approved waste management plan to the specifications and satisfaction of the City of Bunbury. All service vehicles removing waste must have fully secured loads contained so that no waste materials are spilled or dust or odour is created to the satisfaction of the City of Bunbury.

Advice Notes:

- (a) The 'predominant use' of the premises (i.e. Lot 49 (#3) Rose Street, Bunbury) is approved as a 'showroom' use, which as defined in Schedule 1 of the Scheme 'means premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light fittings, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools or goods of a bulky nature'. This development approval is for the 'incidental use' of the premises for a spray booth, which as defined in Schedule 1 of the Scheme 'means a use of premises which is ancillary and subordinate to the predominant use'.
- (b) This is a development approval only. The applicant/landowner is advised that it is their responsibility to ensure that the proposed development complies with all other applicable legislation, local laws and/or license requirements that may relate to the development.

- (c) The applicant is advised that an application for an amended development approval is required to be submitted and approved by the local government prior to the operation of the spray booth in the instance the ventilation shafts require relocating in accordance with any works approval and registration issued by the Department of Water and Environmental Regulation.
- (d) Where an approval has so lapsed, no land use or development may be carried out without the further written approval of the local government having first been sought and obtained.
- (e) In accordance with the *Planning and Development Act 2005*, the City of Bunbury advises that where a development approval contains conditions that are required to be discharged before development commences - to commence development before those conditions are discharged means that the development is not pursuant to the planning permission and is therefore unauthorised development.
- (f) In addition to the *Planning and Development Act 2005*, the City of Bunbury advises that the development the subject of this development approval must also comply with the following environmental legislation:
 - (i) the *Environmental Protection Act 1986*;
 - (ii) the *Environmental Protection (Noise) Regulations 1997* in relation to noise emissions; and
 - (iii) the *Environmental Protection (Unauthorised Discharge) Regulations 2004* in relation to discharges into the environment.

Further information can be obtained from the City of Bunbury's Environmental Health Services on (08) 9792 7100 or (08) 9792 7000.

- (g) Reference should be made to the WorkSafe Western Australia Commission publication titled Code of Practice Spray Painting (amended June 2009). A code of practice is defined in the state *Occupational Safety and Health Act 1984* as a document prepared for the purpose of providing practical guidance on acceptable ways of achieving compliance with statutory duties and regulatory requirements under the Act and associated *Occupational Safety and Health Regulations 1996*.

Reference can also be made to the Safe Work Australia publication titled Spray Painting and Powder Coating Code of Practice (March 2015). This is an approved code of practice under section 274 of the federal *Work Health and Safety Act 2011*. The code of practice is a practical guide to achieving the standards of health, safety and welfare required under the federal Act and accompanying *Work Health and Safety Regulations 2011*.

Strategic Relevance

Key Priority Area 3: Natural and Built Environment
Objective 3.4: Facilitate urban design, diversity of land uses, and enabling infrastructure.

Key Priority Area 4: Regional Economy
Objective 4.3: Promote Bunbury as a place that supports commercial, residential and social development.

Background

A summary table of details relating to the subject site are as follows:

Property Address:	Lot 49 (#3) Rose Street, Bunbury
Existing TPS7 Zoning:	'Mixed Business Zone'
Draft LPS8 Zoning:	'Mixed Use - Commercial Zone' and 'Local Road Reserve'
Existing Land Use:	Showroom
Lot Area:	1017.113 sqm

The applicant has submitted two applications for development approval over the subject site for the purposes of establishing the business. The first of which was an application for 'showroom' use with ancillary workshop, which has already received approval under delegation by the City of Bunbury.

The reason for splitting into two separate applications for development approval was due to an oversight by the applicant, in which a lease was signed for the premise without understanding that development approval was required prior to commencement of the business.

When it was realised by the applicant that development approval was indeed required, and that the determination timeframe for the proposed spray booth would likely take longer than the change of use to showroom (i.e. due to statutory requirements to advertise and refer the proposal to the Department of Water and Environmental Regulation), the applicant decided that it was in their best interest to separate the two aspects of the business into separate development approvals.

In this way, the franchisee was able to commence operation of the showroom component of the business, which includes the fitting of motor vehicle accessories, whilst waiting for approval to operate the proposed spray booth. The applicant was advised and made aware of the risk this would involve should the proposed spray booth not receive development approval.

The subject property is located in a mixed use area with motor vehicle sales and repair businesses located to the north and south of the property. Directly abutting the proposed spray booth to the east is the Bunbury City Church.

The Department of Water and Environmental Regulation has advised that the proposed spray booth is a 'prescribed premises' under the *Environmental Protection Act 1986*; and as such, requires a works approval prior to commencement of operation. The City of Bunbury has received a request for comment on the draft works approval for the premise and an acknowledgement from the Department of Water and Environmental Regulation that a works approval will not be issued until development approval has been granted by the City of Bunbury.

During the advertising period it was brought to the attention of officers that ventilation shafts for the proposed spray booth had allegedly been installed. City of Bunbury officers notified the Department of Water and Environmental Regulation that the ventilation shafts had allegedly been installed and queried the location of the shafts due to their proximity to the Bunbury City Church's evaporative air conditioning unit and the outdoor area used as a children's playgroup space.

The Department of Water and Environmental Regulation has advised that the objection and concerns raised by the Bunbury City Church regarding the position of the ventilation shafts will be considered as part of the assessment process for the application for a works approval, so as to ensure an adequate separation distance between the church and the proposed spray booth.

A location plan showing the subject site and its surrounds is **attached** at Appendix DPDS-8.

Site photographs of the proposed spray booth and installed ventilation shafts located on the subject site is **attached** at Appendix DPDS-9.

Development plans (consisting of a site plan and elevation drawings) showing the location of the spray booth development as an 'incidental use' to the predominate 'showroom' use of the premises is **attached** at Appendix DPDS-10.

A copy of the Environmental Health Services' report supporting the assessment of the development proposal is **attached** at Appendix DPDS-11 for information purposes.

Additional information provided by the applicant is also **attached** at Appendix DPDS-12.

Advice received from the Department of Water and Environmental Regulation regarding the proposal for a spray booth at the subject site is **attached** at Appendix DPDS-13.

Legislative and Council Policy Compliance

The following statutory planning instruments of the State Planning Framework and Local Planning Framework are applicable to the assessment of this application for development approval:

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015;*
- *City of Bunbury Town Planning Scheme No. 7 (TPS7);*
- *Draft City of Bunbury Local Planning Strategy; and*
- *Draft City of Bunbury Local Planning Scheme No. 8 (LPS8).*

Officer Comments

Based on the submissions received, the objections to the proposed spray booth mainly concerned perceived public health risks from exposure to:

- hazardous chemical emissions (i.e. liquid or vapour) raising health concerns;
- nuisance noise; and
- odour.

In regards to the above objections, the application was referred to the City of Bunbury's Environmental Health Services and to the Department of Water and Environmental Regulation for advice and comment.

With regards to the potential for hazardous substances, noise nuisance and odour emissions, it should be noted that the Department of Water and Environmental Regulation is the regulatory authority for the control of any pollutants in the environment. Hence, any potential emissions and discharges associated with the construction and operation of the spray booth will be assessed as part of the application for a works approval that has been submitted to the department.

The Department of Water and Environmental Regulation has advised that there are a number of regulations and guidance statements that may be considered relevant to the assessment of the proposed spray booth. Of which the most relevant environmental and public health requirements are contained in the following pieces of legislation:

- *Environmental Protection Act 1986;*
- *Environmental Protection (Metal Coating) Regulations 2001;*
- *Environmental Protection (Unauthorised Discharges) Regulations 2005;* and
- *Environmental Protection (Noise) Regulations 1997.*

The Department of Water and Environmental Regulation has advised that the proposed spray booth is considered a relatively small operation, and in accordance with the Metal Coating Regulations, the spray booth is to be fitted with a filtration and mechanical ventilation and extraction system so that air discharged into the environment does not contain any substance that causes pollution.

In light of the above information, officers recommend that a condition of the development approval include the requirement for the applicant to obtain a works approval and licence from the Department of Water and Environmental Regulation prior to commencement. Furthermore, it is recommend that the approval is conditioned to reflect the information provided by the applicant to the City of Bunbury and the Department of Water and Environmental Regulation in regards to operating hours, the type of product being used and the maximum number of hours the spray booth will be used per day – so as to ensure consistency between the development approval and the works approval. As such, any changes in the scale of the operation would trigger the need for further development approval.

A site inspection was conducted by the City of Bunbury's senior planning officer and environmental health officer on 31 August 2017 in order to identify and assess any impacts that the proposed spray booth may have on surrounding properties. With regards to the potential for noise impacts, all development is required to comply with the *Environmental Protection (Noise) Regulations 1997*.

As such, staff conducted a site visit of the adjoining church (i.e. deemed a sensitive land use) whilst the air compressor for the proposed spray booth was running to ascertain if any noise was evident. No noise was detected from inside the adjoining church building during the operation of the air compressor. Officers also noted that the proposed spray both is to be located within an existing workshop, which will be fully enclosed during the operation of the spray booth, thus further minimising any noise impacts.

The City of Bunbury's Environmental Health Services has advised that it is unlikely that the proposed spray booth will have any significant noise, odour or chemical emissions that would negatively impact on the adjoining church. A full copy of the Environmental Health officer's report is **attached** at Appendix DPDS-11, which can be summarised as follows:

- The LINE-X product does not involve the use of any primers that is normally the source of odours associated with spray painting.

- The LINE-X product consists of two liquid chemicals that are fused together under heat and pressure by means of an air driven spray gun system. The product cures within 15 seconds after application (i.e. it is basically liquid rubber).
- The proposed spray booth is equipped with the same air filtration system as a standard spray painting booth.
- The above mention filter system can be upgraded if necessary; however, this is considered highly unlikely as the LINE-X particles are too heavy to travel over a distance.
- If the air compressor does cause any noise issues it is possible that this can be managed through the use of noise damping insulation or relocation of the air compressor within the building.

It should be noted that the applicant has since clarified that some automotive accessories and non-automotive items may require priming before the application of the final protective coating. The applicant has explained that:

'... whilst 90-95% of the core business is the spray-in bedliner and accounts for the majority of work undertaken at an estimated two Liners per day (est. 2 hours booth operating time). A small part of the business may involve coating various non-automotive items. These can vary, with LINE-X able to be applied to virtually any surface.

With the significant majority of applications, no paints or primers are required, with the liner adhering directly to the vehicle factory paint. Occasionally, a non-bedliner item may require priming with LINE-X brand FCP or XPM high solids, two-component urethane primer.

As an example, if our store applied say, 14-20 ute liners over a fortnight, you might expect a single bull bar or some similar accessory in that same fortnight. The accessory would be sent to a local sandblaster for blasting and we would need to apply a thin coat of our specific brand of primer. This is rare and infrequent and very small scale ...

Additionally, it's worth pointing out that these two products are not suitable for any other use ... so could not be used as an excuse to start painting etc.'

Officers are confident that the recommended conditions of development approval when read together provide a raft of protections that would mitigate any moderate increase in risk arising from such limited use of the business' proprietary brand of surface priming product.

This is because the recommended conditions of development approval have been deliberately applied with robust engineering and solutions being factored in regarding the design, construction, installation and operation of the proposed spray booth - by insisting that it satisfy industrial spray painting standards which accounts for the use of primers.

Existing Town Planning Scheme

In light of the information received from the Department of Water and Environmental Regulation and the advice of the City of Bunbury's Environmental Health Services it is considered that the proposed spray booth may be acceptable at the subject site if the development:

- (a) remains an 'incidental use', which 'means a use of premises which is ancillary and subordinate to the predominant use' under Schedule 1 of the Scheme; and
- (b) accords with the land use definition of 'industry-light' as contained in Schedule 1 of the Scheme, which states that:

'Industry - Light means an industry –

- (a) In which the processes carried on, the machinery used, and the goods and commodities carried to and from the premises do not cause injury to or adversely affect the amenity of the locality;*
- (b) The establishment or conduct of which does not, or will not, impose an undue load on any existing or proposed service for the supply or provision of essential services.'*

Under the existing Town Planning Scheme No. 7 (TPS7) the land use class of 'industry-light' is a discretionary 'D' use in the 'Mixed Business Zone'. This means that these types of land use activities are not permitted unless the local government has exercised its discretion by first granting development approval.

In such cases, approval should only be granted subject to giving due consideration to the specific nature of the proposal and its potential for land use conflict and the level of risks posed to any adjoining sensitive land uses. As such, for an activity to be deemed an 'industry- light' use it must be able to demonstrate that any impacts on the amenity of the area in which the premises is located can be mitigated, avoided or managed.

Due to the presence of sensitive land uses in this locality (e.g. a church), it is not recommended that any 'industry-light' uses be permitted as predominant land uses in this location, as light industrial activities are likely to still have a residual risk or level of impact on the amenity of sensitive land uses (i.e. be perceived of as a nuisance causing complaint) but be below the regulatory thresholds (i.e. not triggering a provable public health risk).

Given the restricted nature of the proposed spray booth operation (i.e. only one booth used to apply a non aerosol product in limited quantity), it is unlikely to adversely impact on the amenity of the surrounding local area. Therefore, on the basis that there is scope to enforce further noise attenuation measures to mitigate any substantiated noise issues should they arise, conditional development approval of the proposed spray booth can be entertained as an 'incidental use' on the grounds of orderly and proper planning practice.

As discussed previously in the report, the applicant is required to obtain a works approval from the Department of Water and Environmental Regulation prior to operation of the proposed spray booth. It should be noted that the department has advised that the ventilation shafts may need to be relocated further away from the adjoining church's evaporative air conditioning unit.

In the instance the ventilation shafts do require relocating, officers consider that this can be dealt with as a minor modification to the development approval under delegation by staff, in accordance with recent changes to the delegation register (Council Decision: 331/17). This is based on the understanding that the matter is not a key element of the proposal, given that a condition of the revised delegated power or duty specifies that 'where a specific development approval on the property has previously been subject to consideration and determination by Council, all subsequent applications involving any key elements of the original proposal shall be presented to Council for determination'.

Draft Local Planning Scheme

It should be noted that under draft Local Planning Scheme No. 8 (LPS8) the land use class of 'industry-light' is a prohibited 'X' use in the 'Mixed Use - Commercial Zone'. This means that light industrial land uses will not be permitted in this location in the future once the new Scheme has been gazetted. Hence, the recommended approval of the proposal as an 'incidental use' with a comprehensive framework of strict conditions (i.e. in association with a predominant use of 'bulky goods showroom') is generally consistent with the zone objectives of the draft Scheme.

Options

In accordance with clause 68 of the deemed provisions under the *Planning and Development (Local Planning Schemes) Regulations 2015*, the local government may determine an application for development approval by:

- (a) granting development approval without conditions; or
- (b) granting development approval with conditions; or
- (c) refusing to grant development approval.

In this instance, the granting of development approval for the proposal with appropriate conditions is recommended.

Analysis of Financial and Budget Implications

This application for development approval relates to private property, and therefore, the effect of the recommendation has no direct budgetary or financial implications for the City of Bunbury.

If the applicant is aggrieved by Council's decision they may apply for a reconsideration of development approval under clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

In addition the applicant may apply for a review of the decision through the State Administrative Tribunal (SAT). If the decision is forwarded to the SAT for appeal, the City of Bunbury may incur legal costs.

Community Consultation

The development application was advertised for public comment from 8 August 2017 to 28 August 2017. The City of Bunbury sent letters to the adjoining landowners and occupiers within the vicinity of the proposed development.

In total, eight submissions were received, of which four submissions objected to the proposed spray booth, three submissions supported the proposal and one submission contained the advice of the Department of Water and Environmental Regulation. The Schedule of Submissions is **attached** at Appendix DPDS-14.

On review of the Schedule of Submissions it was noted by officers that many of the objectors were objecting to spray painting in general. Given that the proposed product to be sprayed is different to paint, officers considered it necessary to provide further clarification on the LINE-X product that was proposed to be sprayed. For this reason, additional information was provided to the submitters objecting to the proposal to clarify that the proposed product to be sprayed is not paint but more akin to a liquid rubber which contains no solvents or volatile organic compounds.

Those objecting to the proposal were invited to provide further comment in light of the additional information provided. In reply to this request, two submitters provided a written response maintaining their objection to the proposed spray booth.

The development application was referred to the Department of Water and Environmental Regulation from 21 July 2017 for a period of 42 days. Due to administrative errors associated with the recent amalgamation of state agencies, there was a delay in receiving a response from the new department, with comments being received on the 22 September 2017.

Councillor/Officer Consultation

The proposal has been referred to the City of Bunbury's Development Coordination Unit (DCU) for professional advice and technical assessment prior to the finalisation of this report. In addition, the City of Bunbury's Environmental Health Services staff were consulted on any potential off-site impacts caused by the application of the LINE-X products associated with the proposed spray booth.

Applicant Consultation

The draft officer's recommendation has been communicated with the applicant, which has expressed their satisfaction with the outcome of the assessment.

Outcome – Council Meeting 17 October 2017

Mr John Barnes and Mr John Lewis each addressed Council in relation to this item.

The recommendation (as printed) was moved Cr McCleary, seconded Cr Steck.

The Mayor put the motion to the vote and it was adopted to become the Council's decision on the matter.

Council Decision 374/17

That Council:

In accordance with the Planning and Development Act 2005 (as amended), hereby resolves to grant development approval for a spray booth as an 'incidental use' to the predominate use of the premises for 'showroom' use at Lot 49 (#3) Rose Street, Bunbury, subject to the following conditions:

- 1. At all times, the development the subject of this development approval must comply with the definition of an 'incidental use' as contained in Schedule 1 of the Local Planning Scheme (as amended); to the extent that the processes carried on, the machinery used, and the goods and commodities carried to and from the premises do not cause any injury to or adversely affect the amenity of the locality, and that the establishment or conduct of the 'incidental use' does not, or will not, impose an undue load on any existing or proposed service for the supply or provision of essential services to the satisfaction of the City of Bunbury.***
- 2. All development shall be in accordance with the approved development plans (attached) which form part of this development approval.***
- 3. This development approval will expire if the approved development has not substantially commenced within two (2) years from the date of issue of the approval.***
- 4. All works required to satisfy a condition of this development approval are required to be installed / constructed and maintained in accordance with the approved plans and conditions of the approval for the life of the development.***
- 5. This development approval is limited to the installation and operation of one (1) spray booth only. The spray booth is to be designed, constructed, installed and operated (including the particulate filtration mechanism or air filtration system) in accordance with the relevant:***
 - (a) works approval and registration issued under the Environmental Protection Act 1986 (as amended); and***
 - (b) Australian Standards for an industrial spray painting booth (i.e. AS/NZS 4114.1:2013 Spray Painting Booths, Designated Spray Painting Areas and Paint Mixing Rooms - Design, Construction and Testing; AS/NZS 4114.2:2013 Spray Painting Booths, Designated Spray Painting Areas and Paint Mixing Rooms - Installation and Maintenance; and AS/NZS 2381.1:2005 - Electrical Equipment for Explosive Gas Atmospheres - Selection, Installation and Maintenance General Requirements).***
- 6. The design, construction, installation and operation of the approved spray booth is to comply with the Environmental Protection (Metal Coating) Regulations 2001 at all times to the specifications of the Department of Water and Environmental Regulation and to the satisfaction of the City of Bunbury.***

7. ***This development approval is limited to the application of LINE-X® Spray-On products only (i.e. the proprietary spray-on corrosion resistant protective coatings), and is restricted to the application of any product only being permitted within the approved spray booth at all times.***
8. ***This development approval does not permit spray painting, sandblasting or motor vehicle repairs at the premises at any time.***
9. ***Except with the prior written consent of the local government, the operation of the approved spray booth is restricted to a maximum of three (3) hours per day, and must only operate between the following hours:***
 - (a) ***8 am and 5 pm Monday to Friday; and***
 - (b) ***8 am and 12 pm Saturday.***
10. ***All major openings (i.e. doors and windows) to workshop areas must remain closed at all times while the spray booth and associated plant and equipment, including any air compressors or generators, are in operation.***
11. ***Prior to commencement of operation, the Department of Water and Environmental Regulation must be notified in writing of the intention to commence development, and work onsite must be to the specifications of the Department of Water and Environmental Regulation and to the satisfaction of the City of Bunbury.***
12. ***Prior to commencement of operation, a copy of the works approval and licence issued under the Environmental Protection Act 1986 (as amended) must be provided to the City of Bunbury.***
13. ***No odours or noise emissions associated with the spray booth and associated plant and equipment, including any air compressors or generators, are to be detected beyond the lot boundaries that may potentially impact on the amenity of the locality to the satisfaction of the City of Bunbury.***
14. ***All storage areas must be covered and maintained so as to avoid odour or dust nuisance to any residential premises or other sensitive land use to the satisfaction of the City of Bunbury.***
15. ***A waste management plan is to be submitted and approved to the specifications and satisfaction of the City of Bunbury prior to the commencement of operation.***
16. ***At all times, provision must be made for the onsite storage and collection of waste materials in accordance with the approved development plans. All waste materials must be contained, stored and removed from the premises in accordance with an approved waste management plan to the specifications and satisfaction of the City of Bunbury. All service vehicles removing waste must have fully secured loads contained so that no waste materials are spilled or dust or odour is created to the satisfaction of the City of Bunbury.***

Advice Notes:

- (a) *The 'predominant use' of the premises (i.e. Lot 49 (#3) Rose Street, Bunbury) is approved as a 'showroom' use, which as defined in Schedule 1 of the Scheme 'means premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light fittings, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools or goods of a bulky nature'. This development approval is for the 'incidental use' of the premises for a spray booth, which as defined in Schedule 1 of the Scheme 'means a use of premises which is ancillary and subordinate to the predominant use'.*
- (b) *This is a development approval only. The applicant/landowner is advised that it is their responsibility to ensure that the proposed development complies with all other applicable legislation, local laws and/or license requirements that may relate to the development.*
- (c) *The applicant is advised that an application for an amended development approval is required to be submitted and approved by the local government prior to the operation of the spray booth in the instance the ventilation shafts require relocating in accordance with any works approval and registration issued by the Department of Water and Environmental Regulation.*
- (d) *Where an approval has so lapsed, no land use or development may be carried out without the further written approval of the local government having first been sought and obtained.*
- (e) *In accordance with the Planning and Development Act 2005, the City of Bunbury advises that where a development approval contains conditions that are required to be discharged before development commences - to commence development before those conditions are discharged means that the development is not pursuant to the planning permission and is therefore unauthorised development.*
- (f) *In addition to the Planning and Development Act 2005, the City of Bunbury advises that the development the subject of this development approval must also comply with the following environmental legislation:*
- (i) the Environmental Protection Act 1986;*
- (ii) the Environmental Protection (Noise) Regulations 1997 in relation to noise emissions; and*
- (iii) the Environmental Protection (Unauthorised Discharge) Regulations 2004 in relation to discharges into the environment.*
- Further information can be obtained from the City of Bunbury's Environmental Health Services on (08) 9792 7100 or (08) 9792 7000.*
- (g) *Reference should be made to the WorkSafe Western Australia Commission publication titled Code of Practice Spray Painting (amended June 2009). A code of practice is defined in the state Occupational Safety and Health Act 1984 as a document prepared for the purpose of providing practical guidance on acceptable ways of achieving compliance with*

statutory duties and regulatory requirements under the Act and associated Occupational Safety and Health Regulations 1996.

Reference can also be made to the Safe Work Australia publication titled *Spray Painting and Powder Coating Code of Practice (March 2015)*. This is an approved code of practice under section 274 of the federal Work Health and Safety Act 2011. The code of practice is a practical guide to achieving the standards of health, safety and welfare required under the federal Act and accompanying Work Health and Safety Regulations 2011.

CARRIED

10 votes “for” / 2 votes “against”

10.5 Proposed Surrender of Licence and Replacement Deed of Licence to Citygate Properties Pty Ltd Over Portion of Blair Street Road Reserve – Additional Car Parking (was listed as item 10.4.3 on the Council Agenda)

File Ref:	F00279
Applicant/Proponent:	Citygate Properties Pty Ltd
Responsible Officer:	Jane Dawson, Senior Property Officer
Responsible Manager:	Kristen Mildwaters, Acting Manager Major Projects & Property
Executive:	Malcolm Osborne, Acting Chief Executive Officer
Authority/Discretion	<input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes
Attachments:	Appendix DPDS-15: Location Plan

Summary

The City has received an application from Citygate Properties Pty Ltd for additional parking bays at the Bunbury Homemaker Centre being an area of 1940m² of Blair Street Road Reserve. The Proposal is referred to Council for consideration. A location plan is **attached** at Appendix DPDS-15.

Executive Recommendation

Council agrees to the Surrender of the existing Licence Agreement over 560m² of Blair Street Road Reserve and agrees to grant a new Licence Agreement being entered into with Citygate Properties Pty Ltd over the increased area being 2500m² on portion of Blair Street Road Reserve subject to the following:

1. The applicant is to enter into a development agreement and obtain development approval (and any necessary building licences) prior to commencing development works.
2. The applicant is to pay the full cost of the development works, document preparation, registration fees, valuation assessments, advertising, legal costs and associated landscaping and maintenance to the satisfaction of the City.
3. The intention to licence the land is to be advertised locally in accordance with the provision of Section 3.58 of the *Local Government Act 1995*.

Strategic Relevance

Key Priority Area 4 Regional Economy
Objective 4.3 Promote Bunbury as a place that supports commercial, residential and social development

Background

The Applicant is investigating the development of additional parking for the Homemaker Centre and wants to ensure they have land tenure prior to commencing detailed designs as these can be costly.

The Licence is subject to a GBRS application being lodged if the works are undertaken outside of the Lot e.g. within the road reserve only. Development approvals are only required if works are not within the road reserve.

The Applicant was granted a Licence Agreement over 560m² of the Blair Street Road Reserve in 2012 Council Decision 190/12:

Part one

Pursuant to procedural motion 15.9.2 of the City of Bunbury Standing Orders, the matter was "raised from the table" in order for further discussion to be undertaken.

Part two

Council agrees to grant Citygate Properties Pty Ltd a 21 year Deed of Licence this is based on a ten (10) year period with an option for a further eleven (11) year term over Portion of Blair Street Road Reserve adjacent to Lot 107 Strickland Street, Bunbury and is subject to the following:

- 1. The agreed rental value is that identified in the Landgate Valuation for Plan A approximately 560m² @ \$7,500 per annum exclusive of GST.*
- 2. The applicant is to enter into a development agreement and obtain development approval (and*
- 3. any necessary building licences) prior to commencing development works.*

The Applicant has agreed to Surrender the existing Licence and enter into a new Licence Agreement over the existing 560m² and the proposed additional 1940m² of the Blair Street Road Reserve. This will be a total of 2500m² as shown on the attached location plan.

Proposed Licence Agreement

Commencement:	At approval of the development applicant and satisfactory results from a traffic management study.
Term:	Twenty one (21) years, based on a 10 year term with an option for a further 11 year term
Expiry:	2027
Further Term:	11 year option expiry date: 2038
Licence Fee:	\$22,275.00 per annum plus GST (based on \$8.91m ²) and outgoings
Rent Review:	CPI annually on each anniversary of the commencing date during the Term and any further term
Outgoings:	Responsibility of the applicant
Permitted Use:	Car Parking
Insurance:	The Licensee to maintain Public Risk and General Insurance Policies over the licensed area with Public Liability to be set at \$20 (M)
Document Preparation & Advertising Costs:	The Licensee is responsible for all costs of document preparation, registration and advertising associated with the application for the licence

Council Policy Compliance

Leasing and Licencing Policy.

Legislative Compliance

Advertising in accordance with Section 3.58 of *the Local Government Act 1995*.

Officer Comments

Following a review by the City's Development Coordination Unit, the proposal was discussed further with the Acting Manager Major Projects & Property, Development Engineer, Senior Planning Officer and Team Leader Development Assessment and Compliance, all from Planning and Development Services, to ensure appropriate licence and development conditions are captured.

The following additional clauses / special conditions are to be included in the Licence Agreement:

1.1 Drains and Wastes

The Licensee shall keep and maintain the drains in the Licensed Premises in a clean, clear and free flowing condition.

Due to the critical nature of the drains within the Licensed Premises playing a role in the City's overall drainage network, should the Licensee fail to keep drains within the Licensed Premises in a clean, clear and free flowing condition the City may rectify and require the Licensee to compensate the City for any reasonable cost incurred to do so.

5.2 Interruption of Services

Notwithstanding any implication or rule of law to the contrary, the Licensor will not in any circumstance be liable to the Licensee for loss or damage suffered by the Licensee from the blockage of any sewer, gutter, downpipe or storm water drain or from any other similar cause whatsoever.

The Licensee acknowledges that such services may be contained within the Licensed Premises and the City will not be liable for any cost to remediate any surface within the Licensed Premises should services need to be repaired, replaced or maintained at any time.

14.7.1 This License is conditional upon the approval of the Licensee's Development Application, including any advice notes contained within the approval and any subsequent and necessary building licenses, permits or any other approvals from the City of Bunbury or any Service Provider;

14.7.2 The Licensee will prepare a traffic management study to the satisfaction of the City of Bunbury;

14.7.3 Access to the Licensed Premises is granted by the Licensee to all its invitees, tenants of the Bunbury Homemaker Centre and their customers, employees, invitees and agents via the adjoining freehold land owned by the Licensee and being Lot 108 on Deposited Plan 400907, 42 Strickland Street, Bunbury; and

14.7.4 The Licensee is not granted permission to commence any works or operation within the Licensed Premises without having first received approval for their Development Application

The use of the licensed area for the purpose of car parking will encourage customers to the business sector in close proximity and assist in meeting the increase in demand by the public/shoppers that frequent the area.

The applicant is required to comply with all acts, statues, ordinances, orders, local laws and regulations associated with the development works and the licence during the term.

Analysis of Financial and Budget Implications

The Applicant is to pay the full cost of the development works, document preparation, registration fees, legal fees, advertising and associated landscaping and maintenance.

The proposal also requires the applicant to meet the annual licence fee as determined by Landgate Valuation Services and any outgoing fees.

The Applicant has agreed to utilise the current value thereby saving on costs for another market rental valuation. The annual licence fee will increase by CPI Annually.

Community Consultation

Advertising in accordance with Section 3.58 of the *Local Government Act 1995*.

Councillor/Officer Consultation

The City's Development Coordination Unit have reviewed the proposal and this resulted in further consultation with appropriate staff to determine appropriate conditions for the licence agreement.

Applicant Consultation

During the initial stages of negotiations the Acting Manger Major Projects & Property and the Senior Property Officer have had discussions and exchanged documentation with the Applicant.

The City has provided the Applicant with preliminary planning advice outlining development requirements which include provision of a licence over the area.

In consultation with the Applicant, the Officers have drafted the relevant licence conditions. The Applicant has reviewed and approved the draft agreement prior to this item being referred to Council for consideration.

Outcome – Council Meeting 17 October 2017

Cr Steck declared a financial interest in the item and left the chamber for the duration of the discussion and the vote on the matter at 6.22pm.

The recommendation (as printed) was moved Cr Hayward, seconded Cr Cook.

The Mayor put the motion to the vote and it was adopted to become the Council's decision on the matter.

Council Decision 375/17

Council agrees to the Surrender of the existing Licence Agreement over 560m² of Blair Street Road Reserve and agrees to grant a new Licence Agreement being entered into with Citygate Properties Pty Ltd over the increased area being 2500m² on portion of Blair Street Road Reserve subject to the following:

- 1. The applicant is to enter into a development agreement and obtain development approval (and any necessary building licences) prior to commencing development works.***
- 2. The applicant is to pay the full cost of the development works, document preparation, registration fees, valuation assessments, advertising, legal costs and associated landscaping and maintenance to the satisfaction of the City.***
- 3. The intention to licence the land is to be advertised locally in accordance with the provision of Section 3.58 of the Local Government Act 1995.***

CARRIED

10 votes "for" / 1 vote "against"

Cr Steck returned to the chamber at 6.23pm.

11. Applications for Leave of Absence

Nil.

12. Motions on Notice

Nil.

13. Questions on Notice

Nil

14. New Business of an Urgent Nature Introduced by Decision of the Meeting

Nil.

15. Meeting Closed to Public

Nil.

16. Closure

Mayor Gary Brennan declared the meeting closed at 6.24pm.