



Bunbury City Council

Notice of Meeting and Agenda 19 August 2014



CITY OF BUNBURY
4 Stephen Street
Bunbury WA 6230
Western Australia
Correspondence to:
Post Office Box 21
Bunbury WA 6231

Table of Contents

Item No	Subject	Page
1.	Declaration of Opening / Announcements of Visitors.....	7
2.	Disclaimer	7
3.	Announcements from the Presiding Member.....	7
4.	Attendance	7
4.1	Apologies	7
4.2	Approved Leave of Absence	7
5.	Declaration of Interest.....	8
6.1	Public Question Time	9
6.2	Responses to Public Questions Taken 'On Notice'	9
7.	Confirmation of Previous Minutes and other Meetings under Clause 19.1.....	10
7.1	Minutes.....	10
7.1.1	MINUTES – ORDINARY COUNCIL MEETING	10
7.1.2	MINUTES – SPECIAL ELECTORS MEETING	10
7.1.3	MINUTES – COUNCIL ADVISORY COMMITTEES AND WORKING/PROJECT GROUPS	10
8.	Petitions, Presentations, Deputations and Delegations.....	11
8.1	Petitions.....	11
8.2	Presentations.....	11
8.3	Deputations	11
8.4	Council Delegates' Reports.....	11
8.5	Conference Delegates' Reports	11
9.	Method of Dealing with Agenda Business.....	11
10.	Reports.....	12
10.1	Recommendations from Advisory Committees.....	12
10.1.1	WALGA PROCUREMENT AUDIT – RECOMMENDATIONS UPDATE	12
10.2	Chief Executive Officer Reports	15
10.2.1	CAPITAL WORKS PROJECTS REPORT FOR THE PERIOD 1 JULY 2013 TO 30 JUNE 2014.....	15
10.3	Director Community Development Reports.....	17
10.3.1	BUNBURY MARKETING COORDINATION GROUP – COUNCILLOR REPRESENTATIVE	17
10.4	Director Corporate Services Reports	18
10.4.1	DEPARTMENT OF SPORT AND RECREATION CSRFF APPLICATION JULY 2014	18
10.4.2	SCHEDULE OF ACCOUNTS PAID FOR THE PERIOD 1 JULY 2014 TO 31 JULY 2014	22
10.4.3	PRELIMINARY FINANCIAL MANAGEMENT REPORT FOR THE PERIOD ENDING 30 JUNE 2014.....	23

Table of Contents

Item No	Subject	Page
10.5	Director Planning and Development Services Reports.....	30
10.5.1	FINAL ADOPTION SCHEME AMENDMENT 73 – REZONING OF LOTS 6-7 AND 57-60 STRICKLAND STREET (INCLUSIVE) FROM “RESIDENTIAL ZONE” R20/40 TO “SPECIAL USE ZONE – COMMERCIAL MIXED USE”	30
10.5.2	PROPOSED TEMPORARY CAR PARK (ADDITIONAL STAFF PARKING AREA FOR BUNBURY FARMERS MARKET) LOT: 33 #49 VITTORIA ROAD, GLEN IRIS	34
10.5.3	SECTION 31 ORDER - STATE ADMINISTRATIVE TRIBUNAL - PROPOSED CHANGE OF USE APPLICATION TENANCY 3D AT THE HOMEMAKER CENTRE - LOT: 107 #42 STRICKLAND STREET SOUTH BUNBURY	42
10.6	Director Works and Services Reports	48
10.6.1	KOOMBANA BAY ABLUTION BLOCK REFURBISHMENT - CARAVAN DUMP POINT	48
10.6.2	LESCHENAULT INLET - MARINE WALL REPLACEMENT.....	50
11.	Applications for Leave of Absence.....	54
12.	Motions on Notice	54
12.1	MOTION ON NOTICE – RATING CONCESSION CAP	54
12.2	MOTION ON NOTICE – BUNBURY WILDLIFE PARK PASS	57
13.	Questions on Notice	59
13.1	Response to Previous Questions from Members taken on Notice.....	59
13.2	Questions from Members.....	59
14.	New Business of an Urgent Nature Introduced by Decision of the Meeting	61
14.1	MOTIONS PASSED AT SPECIAL ELECTORS MEETING HELD 12 AUGUST 2014.....	61
14.	New Business of an Urgent Nature Introduced by Decision of the Meeting	65
14.2	WITHERS ADVISORY COMMITTEE.....	65
14.	New Business of an Urgent Nature Introduced by Decision of the Meeting	69
14.3	REVIEW OF ELECTED MEMBER REPRESENTATION – PROPOSED REDUCTION OF COUNCILLOR NUMBERS	69
15.	Meeting Closed to Public.....	71
15.1	Matters for which the Meeting may be Closed.....	71
15.2	Public Reading of Resolutions that may be made Public	71
16.	Closure	71

GLOSSARY OF ABBREVIATED TERMS

Term	Explanation
1:100	Ratio of 'one in one hundred'
AD	Acceptable Development
ARI	Annual Recurrence Interval
AHD	Australian Height Datum
ANEF	Australian Noise Exposure Forecast
AWARE	All West Australians Reducing Emergencies (grant funding)
BCA	Building Code of Australia
BCCI	Bunbury Chamber of Commerce & Industries
BCRAB	Bunbury Community Recreation Association Board
BEAC	Built Environment Advisory Committee
BESAC	Bunbury Environment and Sustainability Advisory Committee
BHRC	Bunbury Harvey Regional Council
BPA	Bunbury Port Authority
BRAG	Bunbury Regional Art Galleries
BRAMB	Bunbury Regional Arts Management Board
BREC	Bunbury Regional Entertainment Centre
BSSC	Big Swamp Steering Committee
BWEA	Bunbury Wellington Economic Alliance
CALM	Department of Conservation and Land Management
CBD	Central Business District
CCAFF	Community Cultural and Arts Facilities Fund
CERM	Centre of Environmental and Recreation Management
CPI	Consumer Price Index
CSRFF	Community Sport and Recreation Facilities Fund
DADAAWA	Disability in the Arts Disadvantage in the Arts Australia, Western Australia
DAP	Detailed Area Plan (required by WA Planning Commission)
DCU	Development Coordinating Unit
DEC	Department of Environment and Conservation (formerly CALM)
DEWCP	Department for Environment, Water and Catchment Protection
DLI	Department of Land Information
DoE	Department of Environment
DOLA	Department of Land Administration
DoPI	Department of Primary Industry
DoW	Department of Water
DPI	Department for Planning and Infrastructure
DSR	Department of Sport and Recreation
DUP	Dual-use Path
ECT	Enforcement Computer Technology
EDAC	Economic Development Advisory Committee
EDWA	Education Department of Western Australia
EIA	Environmental Impact Assessment
EPA	Environmental Protection Authority
ERMP	Environmental Review and Management Program
ESL	Emergency Services Levy
FESA	Fire and Emergency Services Authority
FFL	Finished Floor Level
GBPG	Greater Bunbury Progress Group
GBRP	Greater Bunbury Resource Plan report
GBRS	Greater Bunbury Region Scheme
GL	Gigalitres
GRV	Gross Rental Value
GST	Goods and Services Tax
HCWA	Heritage Council of Western Australia
ICLEI	International Council for Local Environmental Initiatives
ICT	Information and Communications Technology
IP	Internet Protocol
IT	Information Technology

GLOSSARY OF ABBREVIATED TERMS

Term	Explanation
ITC	In Town Centre
ITLC	Former In-Town Lunch Centre (now the "In Town Centre")
LAP	Local Action Plan
LCC	Leschenault Catchment Council
LEMC	Bunbury Local Emergency Management Committee
LIA	Light Industrial Area
LN (2000)	Liveable Neighbourhoods Policy (2000)
LSNA	Local Significant Natural Area
MHDG	Marlston Hill Design Guidelines
MRWA	Main Roads Western Australia
NDMP	National Disaster Mitigation Program
NEEDAC	Noongar Employment & Enterprise Development Aboriginal Corp.
NRM	Natural Resource Management
NRMO	Natural Resource Management Officer
ODP	Outline Development Plan
PAW	Public Access Way
PHCC	Peel-Harvey Catchment Council
PR	Plot Ratio
R-IC	Residential Inner City (Housing) - special density provisions
RDC	Residential Design Codes
RDG	Residential Design Guidelines
Residential R15	Town Planning Zone – up to 15 residential dwellings per hectare
Residential R20	Town Planning Zone – up to 20 residential dwellings per hectare
Residential R40	Town Planning Zone – up to 40 residential dwellings per hectare
Residential R60	Town Planning Zone – up to 60 residential dwellings per hectare
RFDS	Royal Flying Doctor Service
RMFFL	Recommended Minimum Finished Floor Levels
ROS	Regional Open Space
ROW	Right-of-Way
RSL	Returned Services League
SBCC	South Bunbury Cricket Club Inc.
SCADA	Supervisory Control and Data Acquisition
SGDC	Sportsgrounds Development Committee
SW	South West
SWACC	South Western Area Consultative Committee
SWAMS	South West Aboriginal Medical Service
SWBP	South West Biodiversity Project
SWCC	South West Catchments Council
SWDC	South West Development Commission
SWDRP	South West Dolphin Research Program
SWEL	South West Electronic Library
SWSC	South West Sports Centre
TME	Thompson McRobert Edgeloe
TPS	Town Planning Scheme
USBA	Union Bank of Switzerland Australia
VGO	Valuer General's Office
VOIP	Voice-Over Internet Protocol
WALGA	Western Australian Local Government Association
WAPC	Western Australian Planning Commission
WAPRES	Western Australian Plantation Resources
WAWA	Water Authority of Western Australia
WC	Water Corporation
WML	WML Consultants
WRC	Waters and Rivers Commission

Bunbury City Council Notice of Meeting

TO: Council Members

The next Ordinary Meeting of the Bunbury City Council will be held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, **19 August 2014** at 5.30pm.



Andrew Brien
Chief Executive Officer
(Date of Issue: 14/8/2014)

Agenda 19 August 2014

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

Council Members:

Mayor Gary Brennan
Deputy Mayor Councillor Brendan Kelly
Councillor Murray Cook
Councillor Wendy Giles
Councillor James Hayward
Councillor Judy Jones
Councillor Betty McCleary
Councillor Neville McNeill
Councillor Jaysen Miguel
Councillor Sam Morris
Councillor David Prosser
Councillor Michelle Steck
Councillor Karen Steele

1. Declaration of Opening / Announcements of Visitors

2. Disclaimer

All persons present are advised that the proceedings of this meeting will be recorded for record keeping purposes and to ensure accuracy in the minute taking process, and will also be streamed live via the internet to the public.

3. Announcements from the Presiding Member

4. Attendance

4.1 Apologies

4.2 Approved Leave of Absence

Councillor Prosser is on approved leave of absence from all Council-related business from 4 August 2014 to 31 August 2014 inclusive.

Councillor Giles is on approved leave of absence from all Council-related business from 19 August 2014 to 22 August 2014 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.”*

Mayor Brennan declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he resides at 50 Dunstan Street Bunbury which is owned by his wife, and he is the beneficial trustee of a property at 7 Little Street Bunbury as well as a vacant residential property at 35 Queensbury Street Bunbury. Mayor Brennan will remain in the chamber for the discussion and vote on the matter.

Cr Morris declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he is the owner of a residential property at 7 Portsea Crescent, Bunbury and leases one commercial property at Shop 1/15 Bonnefoi Boulevard Bunbury. Cr Morris will remain in the chamber for the discussion and vote on the matter.

Cr Steck declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as she is the owner of a residential property and her partner has significant property holdings in the district. Cr Steck will remain in the chamber for the discussion and vote on the matter.

Cr McCleary declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as she is the part owner of one industrial property at 3B Mason Street, Bunbury. Cr McCleary will remain in the chamber for the discussion and vote on the matter.

Cr Cook declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he is the owner of a residential property at Unit 3/2 Columba Street Bunbury, and a part owner of a residential property at Unit 7/99 Clarke Street South Bunbury. Cr Cook will remain in the chamber for the discussion and vote on the matter.

Cr McNeill declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he is a leaseholder for SOS Office Equipment. Cr McNeill will remain in the chamber for the discussion and vote on the matter.

Cr Kelly declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he is the owner of a residential property as 2A Alexander St Bunbury. Cr Kelly will remain in the chamber for the discussion and vote on the matter.

Cr Jones declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as she is the owner of a residential property at 27D Gibbs Street, Carey Park. Cr Jones will remain in the chamber for the discussion and vote on the matter.

Cr Steele declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as she is the owner of a residential property at 16 MacQueen Crescent Bunbury. Cr Steele will remain in the chamber for the discussion and vote on the matter.

Cr Miguel declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he is the beneficiary to a trust which owns commercial land at Pelican Point, Bunbury. Cr Miguel will remain in the chamber for the discussion and vote on the matter.

Cr Hayward declared a financial interest in item 12.1 titled *“Motion on Notice – Rating Concession Cap”* as he is the owner of a residential property, and owns a quarter share in two unit blocks, one of which is has a unit under construction. Cr Miguel will remain in the chamber for the discussion and 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

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 Bunbury City Council held 5 August 2014 have been circulated.

Recommendation

The minutes of the Ordinary meeting of the Bunbury City Council held 5 August 2014 be confirmed as a true and accurate record.

7.1.2 Minutes – Special Electors Meeting

The minutes of the Special Electors meeting held 12 August 2014 have been circulated.

Recommendation

The minutes of the Special Electors meeting held 12 August 2014 be confirmed as a true and accurate record.

7.1.3 Minutes – Council Advisory Committees and Working/Project Groups

File Ref:	Various
Applicant/Proponent:	Internal Report
Author:	Various
Executive:	Various
Attachments:	Appendix MTBN-1 – Audit Committee Meeting Minutes 31 July 2014

Summary

The following Advisory Committee Meetings were held and the minutes are presented for noting:

1. Title: Audit Committee Meeting Minutes 31 July 2014
Author: Greg Golinski, Manager Corporate Performance
Appendix: MTBN-1

Council Committee Recommendation

The following Advisory Committee meeting minutes listed in the report be accepted and noted:

1. Audit Committee Meeting Minutes 31 July 2014

8. Petitions, Presentations, Deputations and Delegations

8.1 Petitions

Pursuant to clause 6.10(2) of the City of Bunbury Standing Orders 2012, upon receiving a petition, the Council is to

- a) Receive the petition and refer to the relevant officer for a report to be submitted within the next two (2) rounds of Council meetings; or
- b) Reject the petition

8.2 Presentations

8.3 Deputations

8.4 Council Delegates' Reports

8.5 Conference Delegates' Reports

9. Method of Dealing with Agenda Business

10. Reports

10.1 Recommendations from Advisory Committees

10.1.1 WALGA Procurement Audit – Recommendations Update

Applicant/Proponent:	Audit Committee
Author:	Massimo Andreone, Manager Contracts and Property
Executive:	Wayne Wright, Director Corporate Services
Attachments:	Appendix RAC-1: Audit Recommendations Update

Summary

The purpose of this report is to provide Council with an update regarding the implementation of the recommendations from the Procurement Probity Review that WALGA Procurement Consultancy Service provided in May 2013. This report and attachment provides Council with details as to which recommendations have been implemented, and which recommendations are still outstanding.

Additionally, there is a proposal for three of the findings to be dismissed by the Council.

Advisory Committee Recommendation

That Council:

1. Receives the Audit Recommendations Update as **attached** at Appendix RAC-1.
2. Does not proceed with three (3) of the findings identified in the report, namely FN01-02, FN01-04, and FN01-34.

Background

In April/May 2013 a Procurement Probity Review was undertaken by WALGA which provided 46 recommendations for consideration by the City of Bunbury to implement.

The objective of the review was to determine the City's current level of compliance against relevant purchasing legislation and regulations and to offer a series of recommendations that, once implemented, would ensure full compliance and also facilitate the City moving towards achieving best practice in procurement.

The below extract from the Council Minutes from 27th September 2013 refers (Decision 266/13):

1. *That Council note the outcomes of the Procurement Probity Audit.*
2. *Council endorse the 46 recommendations contained in the report; and*
3. *The CEO to provide a further report to Council outlining how each of the recommendations have been implemented.*

In relation to the above decision, the following summary is provided:

Part 1. Completed
Part 2. Completed

Part 3. The content of this report update in conjunction with the attached Appendix 3 satisfies the Council decision in outlining how each recommendation has been implemented.

Council Policy Compliance

N/A

Legislative Compliance

The recommendations accord with the provisions of the *Local Government (Functions and General) Regulations 1996*

Officer Comments

Of the 46 recommendations, 34 have been completed and 12 remain in progress. Completion of the remaining recommendations is expected by 15 October 2014. There have been 6 recommendations implemented since the last update was provided to the Audit Committee in May 2014.

Of the remaining 12 findings, the majority of these are linked with contract management framework (development and implementation). As outlined within the appendix, Contract and Procurement staff will be attending training in early August 2014, such that this service can be provided to the highest standard.

As foreshadowed in the Summary of this report, it is recommended that the following findings not be proceeded with:

1. FN01-02 – That the City devolves procurement of less than \$100,000 (ex GST) in expenditure to the City's business areas and that the Contracts and Property Branch is charged with providing professional advice and direction to all business areas undertaking procurement functions to ensure full compliance and value adding outcomes are delivered.
2. FN01-04 – That the City reviews the compliance and effectiveness of its purchasing processes and decisions, with a view to devolving all purchasing activity under the value of \$100,000 to its business units.
3. FN01-34 – That the City supports the roll-out of e-quotes to manage and improve the effectiveness of Request for Quotation processes utilised by staff in the procurement of goods and services from WALGA Preferred Supply Panels and to ensure full transparency, probity and good governance over all request processes. The City may also consider the implementation of e-quotes as a tool for managing request for quotation for the purchase of goods and services from suppliers on the City's local panels.

The rationale for this recommendation is based on the following:

1. FN01-02 and FN01-04

- a) Staff may procure goods or services in conflict with existing contract arrangements.
- b) Staff may engage the incorrect method of procurement which could result in less competitive pricing and quality of service.

- c) Non-compliance risk with purchasing thresholds culminating in multiple suppliers rather than consolidating contracts.
- d) Officers do not have the technical expertise to produce documents and mitigate risk in preparing contracts monitoring progress payments. Higher risk procurement is not necessarily linked to higher expenditure amounts.
- e) If this process is not kept centralised then there is a high risk of non-compliance with the applicable legislation.
- f) Decentralises records and the process of capturing insurance compliances on contracts.

2. FN01-34

- a) The appropriateness of WALGA recommending the use of the WALGA preferred suppliers given that they receive a commission on expenditure amounts. This could be perceived as a conflict of interest.
- b) If rolling out the e-quotes system to “Manager” level staff, there is an increased risk due to loss of technical expertise in preparing documents and contract conditions.
- c) Non-compliance risk with purchasing thresholds culminating in multiple suppliers rather than consolidating contracts.
- d) Officers do not have the technical expertise to produce documents and mitigate risk in preparing contracts and monitoring progress payments.

Analysis of Financial and Budget Implications

Implementation of the recommendations where appropriate will aid in reducing operational and capital expenditure by adopting best practice in providing a strategic approach to procurement. Centralising the procurement function will ensure that the best prices and quality of service are provided.

Community Consultation

N/A

Councillor/Officer Consultation

The WALGA procurement audit, recommendations and audit updates have been discussed and endorsed by the Executive Leadership Team.

10.2 Chief Executive Officer Reports

10.2.1 Capital Works Projects Report for the period 1 July 2013 to 30 June 2014

Applicant/Proponent:	Internal
Author:	Andrew Brien, Chief Executive Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-1 Capital Works Project Report

Summary

At the Special Council Meeting held 31 July 2013, Council adopted the 2013/14 Budget which contained 122 Capital Works Projects totalling \$26,010,576.

Officers have prepared a report detailing each of the Council endorsed Capital Works projects for the 2013/14 financial year which is **attached** at Appendix CEO-1.

The report provides an overview of each of the capital works projects for the period 1 July 2013 to 30 June 2014.

Executive Recommendation

That Council receives and notes the Capital Works report for the period 1 July 2013 to 30 June 2014.

Background

During the 2013-14 financial year, staff have worked to complete capital projects contained in the budget and the attached report details the status of each project as at 30 June 2014. Information has been provided on all projects including those projects to be carried forward into the 2014-15 financial year.

Council Policy Compliance

Not applicable.

Legislative Compliance

Not Applicable

Officer Comments

The attached capital works project summary contains details of work undertaken on 2013/14 adopted capital works projects, the percentage completed by 30 June 2014 and budget comments where appropriate.

Analysis of Financial and Budget Implications

As outlined in the attachment

Community Consultation

There is no requirement for community consultation.

Councillor/Officer Consultation

Not Applicable.

10.3 Director Community Development Reports

10.3.1 Bunbury Marketing Coordination Group – Councillor Representative

Applicant/Proponent:	Internal
Author:	Kristina Knight, Manager Tourism and Bunbury Wildlife Park
Executive:	Stephanie Addison-Brown, Director Community Development
Attachments:	Nil

Summary

The purpose of this report is for Council to consider nominating a representative to the Bunbury Marketing Coordination Group as per Council decision 267/14.

Executive Recommendation

That Council nominate Cr _____ as the City's representative on the Bunbury Marketing Coordination Group.

Background

At the suggestion of the City of Bunbury, the Bunbury Chamber of Commerce and Industries (BCCI) established a cross representative committee to develop strategies to improve city marketing and add vibrancy to the CBD. The resulting marketing plan 'City Heart Marketing 2014' was presented to Council on the 3 June 2014. Official endorsement for the formal recognition of a Bunbury Marketing Coordination Group to implement the plan was received on the 22 July 2014 with Council Decision 267/14.

Legislative Compliance

N/A

Officer Comments

The Bunbury Marketing Coordination Group is not a committee of Council constituted under the Local Government Act, but rather an external body with Council representation. The Council endorsed membership for the committee included Councillor representation.

Councillor/Officer Consultation

Nil

Council Policy Compliance

N/A

Analysis of Financial and Budget Implications

Nil

10.4 Director Corporate Services Reports

10.4.1 Department of Sport and Recreation CSRFF Application July 2014

File Ref:	SLAL
Applicant/Proponent:	Internal Report
Author:	Gary Thompson, Sport and Recreation Liaison Officer
Executive:	Wayne Wright, Director Corporate Services
Attachments:	Appendix DCS-1 Bunbury and Districts Little Athletics Club Application Appendix DCS-2 Koombana Bay Sailing Club Application

Summary

Council has received two (2) external CSRFF small grants applications which were submitted in the July 2014 round:

1. Bunbury and Districts Little Athletics Club
This application seeks a financial contribution of \$22,727.27 from Council for the clubs proposed installation of permanent shade structures at the Bunbury Regional Athletics Arena.
2. Koombana Bay Sailing Club
This application seeks a financial contribution of \$42,593.00 from Council for the clubs proposed refurbishment of the male toilets and change rooms.

The Department of Sport and Recreation (DSR) requires the provision of a Council resolution supporting the application for funding before they can be considered. The applications must be submitted to DSR by 29th August 2014.

Executive Recommendation

That Council:

1. Approves the CSRFF application from the Bunbury and Districts Little Athletics Club.
2. Endorses the allocation of \$22,727.27 from the 2014/2015 budget on the condition that the Club is successful in obtaining a grant from the CSRFF.
3. Supports the Koombana Bay Sailing Clubs project but does not endorse the allocation of \$42,593.00 from the 2014/2015 budget.

Background

The Department of Sport and Recreation (“DSR”) administers the CSRFF grant funding program for small, annual and forward planning grants. Applications for the current round are to be submitted to DSR’s South West Regional Office no later than 29th August 2014. Successful applicants are expected to be advised in November 2014.

The CSRFF program operates on a reimbursement system with grants paid to the grantee only. The maximum CSRFF grant approved by the State Government will be no greater than one-third of the total estimated cost of the applicants project and must be matched by the applicants own cash or

in-kind contribution. Furthermore the balance of the final one-third of requisite funds required is to be sourced by the applicant.

It is a requirement that applicants first discuss their proposal with the DSR Regional Manager to be able to receive the formal application CSRFF form. The DSR will also identify any shortcomings and offer assistance to bring an application up to an acceptable standard.

The Department of Sport and Recreation requires the Council to demonstrate support (or otherwise) for each project.

The Bunbury and Districts Little Athletics Club and Koombana Bay Sailing Clubs grant application forms are **attached** at Appendix DCS-1 and Appendix DCS-2.

Council Policy Compliance

There are no Council policies applicable to CSRFF applications

Legislative Compliance

Not applicable

Officer Comments

The reason that the Bunbury and Districts Little Athletics Club is seeking funding to install permanent shade structures at the Bunbury Regional Athletics Arena is because there is currently no shade anywhere on the actual area where the athletes participate or in the areas where they congregate whilst waiting to participate in events. Wait times between events for athletes can vary from 10 minutes to an hour and there is not shade supplied during these wait times. Although there are shade structures for spectators at the athletics arena, this is not suitable for participants at the arena.

The Bunbury and Districts Little Athletics Clubs competition days last from 8.00am to 12.00pm and children are exposed to the open sunshine throughout this time. The club believe that the permanent shade structures will be a major benefit for protecting children who are participating in athletics at the arena. The club also believes that the permanent shade structures will be a major influence over the participation level of athletics and will also be a good investment for the arena's infrastructure and therefore the community generally.

The reason that the Koombana Bay Sailing Club is seeking funding is to refurbish the male toilet and changing rooms within their club. The club recently received CSRFF funding to refurbish their female toilet and change rooms and wish to carry out the same work in the male toilet and change rooms.

The male toilet and change room in the Koombana Bay Sailing Clubrooms were built in the 1960s and are tired, out dated and inadequate for the clubs purposes and also not accessible by disabled people. The toilets and change rooms at the club are used by 506 members from over three (3) clubs. The Rotary Sail into Life Club are one of the clubs who use the toilet and change rooms and they give people with disabilities and special needs the opportunity to enjoy sailing and the current toilets and change rooms are not of a standard that are appropriate for people with disabilities.

The Bunbury and Districts Little Athletic Club and the Koombana Bay Sailing Club have both followed the correct procedures involved with the CSRFF process and have discussed their plans with the Department of Sport and Recreation, the City of Bunbury's Sport and Recreation Liaison Officer and the City of Bunbury's Manager of Sport, Leisure and Active Lifestyle.

The table below identifies the cost (excluding GST) of the proposed project together including detail of the request for funding from Council.

Funding Source	Bunbury and Districts Little Athletics Club	Koombana Bay Sailing Club
Council Contribution	\$22,727.27	\$42,593.00
Applicants Cash	\$22,727.27	\$42,593.00
Voluntary Labour	NIL	NIL
Donated Materials	NIL	NIL
Loans and Sponsorship	NIL	NIL
Other State or Federal Funding	NIL	NIL
CSRFF Grant Requested	\$22,225.45	\$42,593.00
Development Bonus Requested	NIL	NIL
Total Cost of Project	\$67,680.00	\$127,779.00

Analysis of Financial and Budget Implications

The funding request from the Bunbury and Districts Little Athletics Club is scheduled into Councils budget for 2014/2015. This project is listed in Cycle as 'PR-3225' as 'Extend Shade Structures at Bunbury and Districts Little Athletics'. This project is scheduled in Councils budget for 2014/2015 because it was a project that was discussed with the City back in 2013 and was factored in for future budget considerations.

The funding request from the Koombana Bay Sailing Club is not scheduled into Councils budget for 2014/2015. The reason this project is not scheduled into Councils budget for 2014/2015 is because this project was only brought to the City's attention in July 2014.

Councillor/Officer Consultation

Consultation was between the City of Bunbury's Sport, Leisure and Active Lifestyle Manager and the City of Bunbury's Sport and Recreation Liaison Officer.

Life-cycle Maintenance Costs (Capital Works Projects Only)

As part of the CSRFF small grants application process applicants are required to provide evidence of management planning and how they will support ongoing maintenance costs.

The Bunbury and Districts Little Athletics Club and the Koombana Bay Sailing Club have supported their projects with cash, indicating their ability to fund facility maintenance.

Relevant Precedents

The maximum CSRFF grant approved by the State Government will be no greater than one-third of the total estimated cost of the applicants project and must be matched by the applicants own cash or in-kind contribution. Furthermore the balances of one-third funds required to be sourced by the applicant.

Council has previously considered CSRFF grant applications for third parties and internal applications.

10.4.2 Schedule of Accounts Paid for the Period 1 July 2014 to 31 July 2014

Applicant/Proponent:	Internal Report
Author:	David Ransom, Manager Finance
Executive:	Wayne Wright, Director Corporate Services
Attachments:	Appendix DCS-3

The City of Bunbury "*Schedule of Accounts Paid*" covering the period 1 July 2014 to 31 July 2014 is **attached** at Appendix DCS-3. The schedule contains details of the following transactions:

1. Municipal Account – payments totalling \$6,789,798.06
2. Advance Account – payments totalling \$4,175,982.90
3. Trust Account – payments totalling \$24,832.48
4. Visitor Information Centre Trust Account – payments totalling \$2,878.00
5. Bunbury-Harvey Regional Council Municipal Account – payments totalling \$296,633.74
6. Bunbury-Harvey Regional Council Advance Account – payments totalling \$271,054.01

Executive Recommendation

The Schedule of Accounts Paid for the period 1 July 2014 to 31 July 2014 be received.

10.4.3 Preliminary Financial Management Report for the Period Ending 30 June 2014

Applicant/Proponent:	Internal Report
Author:	David Ransom, Manager Finance
Executive:	Wayne Wright, Director Corporate Services
Attachments:	Appendix DCS-4 Statement of Comprehensive Income Appendix DCS-5 Statement of Financial Activity Appendix DCS-6 Statement of Net Current Assets Appendix DCS-7 Balance Sheet Appendix DCS-8 Capital Works Expenditure Summary

Summary

This is a preliminary report to 30 June 2014 and is subject to change as end-of-year figures have not been finalised including transfers to and from reserves and restricted cash, final calculation of depreciation and asset revaluation. Council will receive a final report after the annual audit due to commence 1 September 2014.

The following comments are provided on the key elements of Council’s financial performance.

1. Statement of Comprehensive Income (**attached** at Appendix DCS-4)
 Actual Financial Performance to 30 June 2014
 - Actual operating income of \$48.11M is \$542K less than the year-to-date budgeted income of \$48.65M (refer explanation within the report).
 - Actual operating expenditure of \$55.65M is \$416K less than the year-to-date budgeted expenditure of \$56.07M (refer explanation within the report).
 - Actual operating deficit of \$7.54M is \$125K more than the year-to-date budgeted operating deficit of \$7.41M (refer explanation within the report).

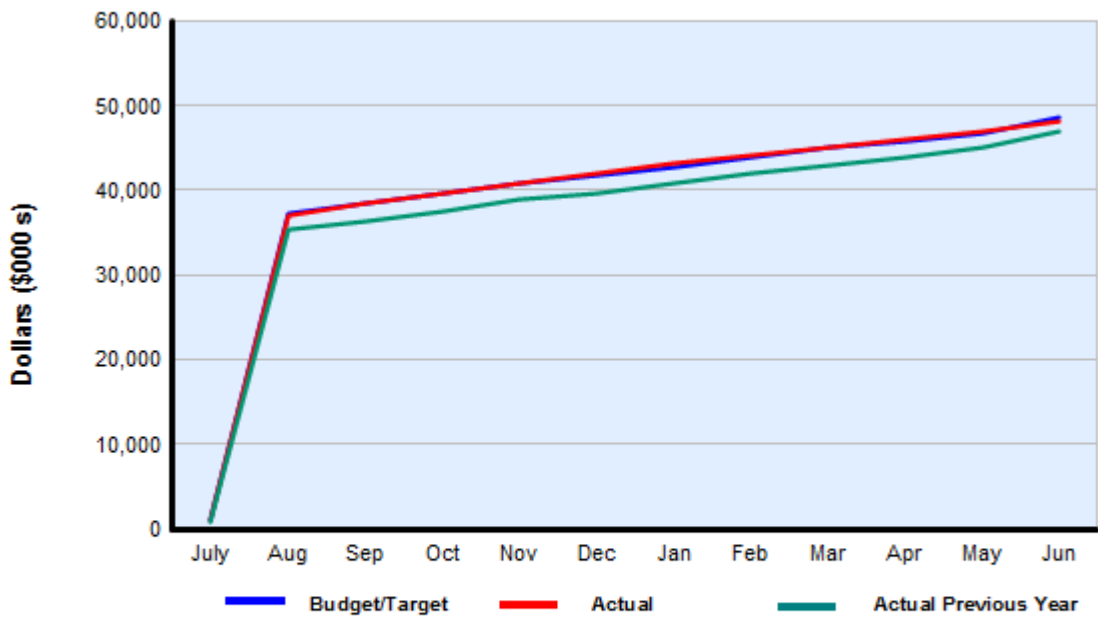
2. Statement of Financial Activity (**attached** at Appendix DCS-5)
 - Closing Funding Surplus to 30 June 2014 is \$3.73M, which is \$3.26M more than the Current Budget Closing Funding Surplus of \$468K. Note that the forecast closing funds of \$3.73M includes \$2.79M of operating and capital projects carried forward to the 2014/15 Budget.

3. Balance Sheet (**attached** at Appendix DCS-7)

Council’s year-to-date and forecast balances are as follows:

	Year-to-date	Forecast
• Current Assets of \$19.5M includes:		
- Cash and Investments	\$17.22M	\$17.21M
- Rates	\$ 0.24M	\$0.24M
- Other Current Assets	\$ 2.04M	\$2.12M
• Current Liabilities of \$9.47M includes:		
- Trade and Other Payables	\$4.27M	\$4.26M
- Annual Leave and LSL Provisions	\$3.36M	\$3.36M
• Working Capital (Current Assets less Current Liabilities)	\$10.04M	\$10.12M

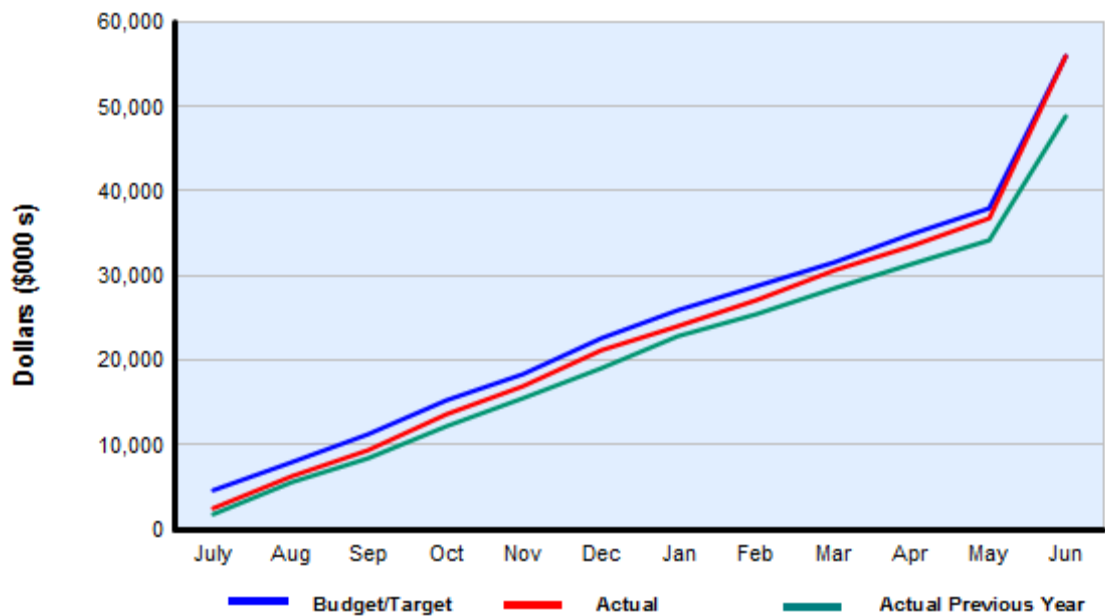
Operating income (\$000's)



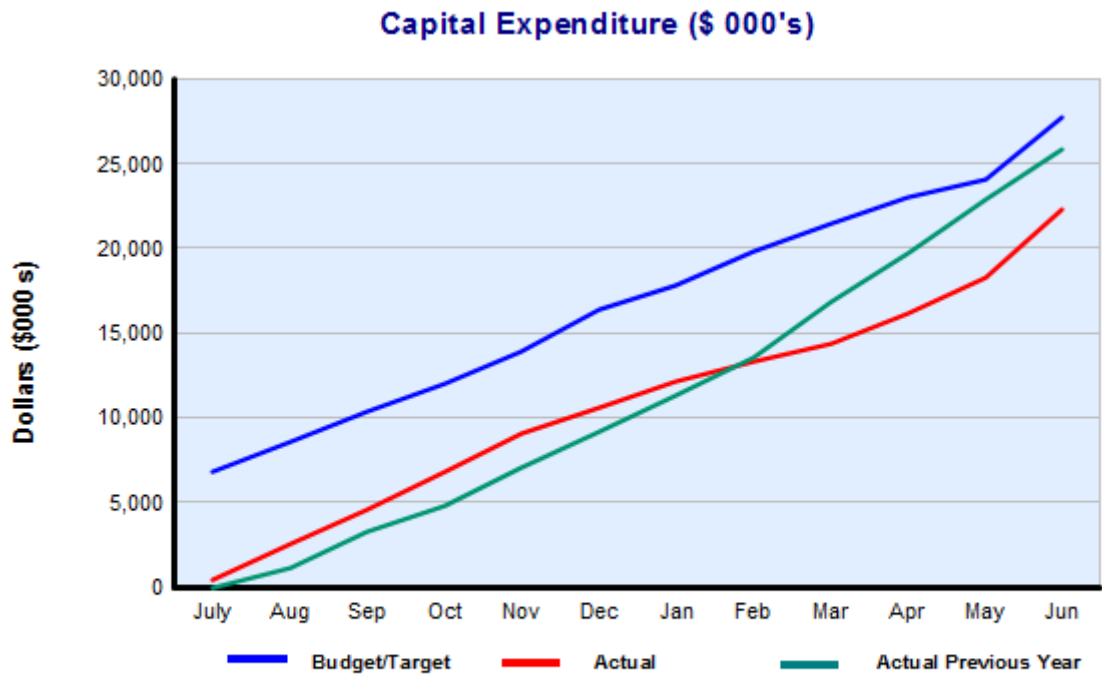
Note: Operating Income includes: rates, fees and charges, operating grants and subsidies, contributions reimbursements and donations, interest and other revenue.

There is a unfavourable actual to budget variance of \$542K to 30 June 2014 due to financial assistance grants of \$848K not received in advance for 2014/15.

Operating expenditure (\$000's)



Note: Actual operating expenditure finished the 2013/14 financial year \$416K under budget.



Note: The capital expenditure variance to the end of June 2014 of \$5.97M is due to the delay in commencement or progress of various projects as reported in the monthly Capital Works Expenditure Summary Report to Council.

The following is an explanation of significant Operating and Capital variances identified in the Statement of Comprehensive Income and Statement of Financial Activity.

Statement of Comprehensive Income	YTD Actual to YTD Budget Variance
Operating Income	
Operating Grants and Subsidies – Federal Financial Assistance Grant of \$848K for 2014/15 was budgeted to be received in advance but was not received. Grant income of \$89K for the Natural Resilience Program not received.	(\$927,377) (41%)
Donation Income – Bunbury Wildlife Park donation income is down \$8.5K on year to date budget. Overall operating income for Bunbury Wildlife Park is on budget.	(\$7,935) (44%)
Operating Expenditure	
Salary Accrual Expense – Increase in annual leave provision to 30 June 2014.	(\$64,605) (15%)
Material and Contracts (Contract Employment Expense) – Contract employment expenses are higher than budget estimates due to staff vacancies, employees on workers compensation, employee leave, and using temporary agency staff in-lieu of contractors. The increase in contract employment expenses has been offset by savings in salaries and wages and contract labour and materials budgets.	(\$80,496) (18%)
Utilities (Sewerage Expense) – There has been an increase in recoupable utilities, which has been matched with a corresponding increase in income.	(\$7,391) (19%)
Depreciation – Preliminary calculation of equipment depreciation slightly higher to budget, but is subject to final calculation of depreciation to 30 June 2014.	(\$114,327) (11%)
Non-Operating Income and Expenditure	
Capital Grant Subsidy and Contribution Income – \$700K contribution income not received in 2013/14 financial year for the purchase of a regional waste site. Budgeted to be received in the 2014/15 financial year. \$200K grant funding for the construction of the animal care facility is also now budgeted to be received in the 2014/15 financial year.	(\$880,718) (13%)

Statement of Financial Activity	YTD Actual to YTD Budget Variance
Operating Revenues	
Grants and Subsidies – Operating - Refer Statement of Comprehensive Income comments.	(\$927,377) (41%)
Interest Received – Favourable variance in interest received on investments and rates debtors. The end of year forecast has been increased to include additional interest received.	\$196,268 21%
Other Revenue – Increase in current year actual income is reflective of the following other revenue being received in excess of the current budget amount: Undertake Private Works (\$65,508) – Favourable variance. Coordinate Rating (\$7,649) – Revenue associated with rate enquiries is greater than budget. Undertake Fundraising Activities for Bunbury Museum (\$30,500) – Donation income has been received for the Bunbury Museum this amount is to be transferred to reserve. Collect hard, hazardous and commercial waste (\$11,242) – Favourable variance. Sale of Scrap metals has increased. Maintenance of street banners (\$2,257) – Favourable variance.	\$118,204 36%
Capital Revenues	
Capital Grants Subsidy and Contribution Income – Refer Statement of Comprehensive Income comments.	(\$880,718) (13%)
Capital Expenses	
Acquisition of Assets – Variance due to delay in commencement or progress of various projects. The Capital Expenditure Report included at Appendix DCS-8 provides details of all projects and the expenditure progress versus year-to-date estimates for the project.	\$5,970,017 21%

Analysis of Financial and Budget Implications

This Financial Management Report on the financial performance of the City is provided for Councillors information and does not have any financial or budget implications.

Community Consultation

There is no requirement for community consultation on this report.

Councillor/Officer Consultation

Council's Executive Leadership Team, Department Managers and Corporate Services staff monitor the City's monthly revenue and expenditure and (as required) refer any variances requiring remedial action to Council.

Approved budget amendments are recorded in the financial statements to reflect Council's current budget and financial position at all times.

10.5 Director Planning and Development Services Reports

10.5.1 Final adoption Scheme Amendment 73 – Rezoning of Lots 6-7 and 57-60 Strickland Street (inclusive) from “Residential Zone” R20/40 to “Special Use Zone – Commercial Mixed Use”

File Ref:	A05931
Applicant/Proponent:	City of Bunbury / Town Planning Management Engineering Pty Ltd (TME) on behalf of landowners of Lots 6, 7, 57 and 58 Strickland Street
Author:	Nicola Tagiston, Senior Strategic Planning and Urban Design Officer
Executive:	Bob Karaszekwych, Director Planning and Development Services
Attachments:	Appendix DPDS-1 Scheme Amendment 73 Report Appendix DPDS-2 Schedule of Submissions Scheme Amendment 73

Summary

At its meeting on 4 March 2014 Council resolved to initiate for public advertising proposed Scheme Amendment 73 – Rezoning of Lots 6-7 and 57-60 Strickland Street (inclusive) from “Residential Zone” R20/40 to “Special Use Zone – Commercial Mixed Use” (Council Decision: 70/14).

Consent to publicly advertise was granted by the Western Australian Planning Commission (WAPC) and confirmed by the Environmental Protection Agency (EPA). The scheme amendment was advertised for 42 days and is now returned to Council for final adoption without modifications, prior to forwarding on to the WAPC for endorsement to gazette.

A copy of the Local Planning Scheme Amendment 73 Report is **attached** at Appendix DPDS-1.

Executive Recommendation

That Council:

1. In accordance with the *Planning and Development Act 2005*, resolves to grant final adoption to Scheme Amendment 73 to the City of Bunbury Town Planning Scheme No. 7 by:
 - (a) Inserting “single bedroom dwelling” as a new land use definition within Schedule 1 – Dictionary of Defined Words and Expressions;
 - (b) Inserting additional text in the table under Schedule 2 – Special Use Zones at No. 58 with associated provisions included in the “Special Use(s)” and “Conditions” columns of the table; and
 - (c) Amending the Scheme Map by rezoning Lots 6, 7, 57, 58, 59 and 60 Strickland Street from “Residential Zone” R20/40 to “Special Use Zone No. 58 – Commercial Mixed Use”.

in accordance with the Local Planning Scheme Amendment Report (under separate cover).

2. Refers the Scheme Amendment 73 documentation to the Western Australian Planning Commission for final approval in accordance with the provisions of the *Town Planning Regulations 1967*.
3. Informs submitters of the Council resolution.

Background

Background to this scheme amendment can be found in the Council Minutes dated 4 March 2014. The resolution was as follows (Council Decision 70/14):

Council Decision 70/14

That Council, in accordance with the Planning and Development Act 2005, resolves to:

1. *Initiate proposed Scheme Amendment 73 to the City of Bunbury Town Planning Scheme by:
 - a) *Inserting “single bedroom dwelling” as a new land use definition within Schedule 1 – Dictionary of Defined Words and Expressions;*
 - b) *Inserting additional text in the table under Schedule 2 – Special Use Zones at No. 58 with associated provisions included in the “Special Use(s)” and “Conditions” columns of the table;*
 - c) *Amending the Scheme Map by rezoning Lots 6, 7, 57, 58, 59 and 60 Strickland Street from “Residential Zone” to “Special Use Zone No. 58 – Commercial Mixed Use”.**

as detailed in the Local Planning Scheme Amendment Report.

2. *Notify the Western Australian Planning Commission (WAPC) of Council’s decision to initiate proposed Scheme Amendment 73, and furnish the Commission with a copy of the scheme amending documentation prior to proceeding to public advertising.*
3. *Refer a copy of the proposed scheme amendment 73 documentation to the Environmental Protection Authority (EPA) and any other relevant public authority, for consideration and comment.*
4. *Subject to formal assessment not being required by the EPA and no objection received from the WAPC, proceed to advertise proposed Scheme Amendment 73 for public comment with a submission period of not less than forty two (42) days.*
5. *Following public advertising, the proposals and any public submissions lodged with the City during the advertising period are to be returned to Council for further consideration.*

CARRIED

8 votes “for” / 5 votes “against”

Council Policy Compliance

The proposed scheme amendment is consistent with Council’s *Local Planning Strategy for Activity Centres & Neighbourhoods* (LPS-ACN), which recommends mixed use outcomes as a transition between commercial and residential zones in and around key activity centres, along designated activity corridors and within existing residential ‘Frame Areas’.

Local Planning Policy: Non-Residential Development within or adjoining Residential Areas identifies the subject lots within a 'Frame Area'. Facilitating certain forms of non-residential land use and development in this location is supported in-principle where potential impacts upon local residential amenity can be appropriately managed.

Legislative Compliance

Proposals to amend a Local Planning Scheme are required to be undertaken in accordance with the *Planning and Development Act 2005* and associated *Town Planning Regulations 1967*. Following the conclusion of public advertising, should Council resolve to adopt Scheme Amendment 73, the documentation together with the schedule of submissions and Council's resolution is to be referred to the WAPC for its endorsement to the Minister for Planning for gazettal.

Officer Comments

In October 2013, Town Planning Management Engineering Pty Ltd (TME) submitted a revised scheme amendment report to rezone Lots 57-60 (inclusive) and 6-7 Strickland Street under TPS7. The Local Planning Scheme Amendment 73 Report was subsequently prepared by the City of Bunbury.

The residential lots that comprise the scheme amendment proposal:

- are located within a current policy 'Frame Area';
- are adjacent to and opposite land included in the "Mixed Business Zone"; and
- fronts on to a busy Local Distributor Road.

Existing 'Frame Areas' that act as an area of transition between commercial zones and residential zones are seen as primary candidates for the consideration of mixed use zoning. Within the confines of the current Scheme, where strong justification exists, designating 'Special Use Zones' can be seen as an interim step to achieving desirable mixed use development outcomes. A commercially oriented mixed use Special Use Zone in this locality is considered appropriate in advance of the formal introduction of a dedicated mixed use zoning within the revised new Local Planning Scheme No. 8 (LPS8).

Development standards proposed in conjunction with the Special Use Zone aim to establish appropriately scaled and compatible activities, encourage a quality streetscape, and protect the amenity of neighbouring residential properties to the rear and east of the site.

A Local Development Plan (LDP) will be required to be adopted by Council for redevelopment of lots in excess of 3,000sqm or the amalgamation of three (3) or more lots. A desired outcome of the LDP will be to encourage lot amalgamation and reciprocal access arrangements. Both the LDP and any application for planning approval is required to include information or detail to the satisfaction of Council on development layout and arrangement of uses, land use compatibility, development setbacks, traffic management, access and car parking, pedestrian movement, waste management and servicing, and passive surveillance.

Analysis of Financial and Budget Implications

Should the propose scheme amendment ultimately receive approval in its current form, an Infrastructure Implementation Plan would be required to be submitted prior to subdivision and/or development. This plan will identify required infrastructure improvements, allocation of responsibility for infrastructure provision and timing for provision of the required works.

Community Consultation

The scheme amendment proposal was advertised in the press and by notices on site in accordance with the *Planning and Development Act 2005* and associated *Town Planning Regulations 1967*. The formal period for submissions to be received closed on 11 June 2014.

Excluding agency responses, there were nine (9) submissions received during the advertising period, broken down as follows:

	Number of Submissions
Referral Agencies	3
Support	2
Against	5
Against (Late submission)	2
Total Submissions Received =	12

Two of the referral agencies raised no objection to the scheme amendment proposal. The Department of Education, in consultation with the Principal of Coinda Primary School, raised concerns about:

- increased traffic;
- incompatibility of commercial activities; and
- requested new footpaths be installed in proximity to the school.

The latter issue is not considered to be a matter that is directly relevant to, or effected by, the scheme amendment proposal.

Submissions of support raised no objections to the redevelopment of these lots for mixed use development.

Submissions against came from adjoining residents on Trott and Strickland Streets, which raised concerns about:

- increased noise and traffic;
- loss of amenity as a consequence of the proximity of non-residential uses; and
- potential crime and loss of land value.

The schedule of submissions and corresponding officer comments for Scheme Amendment 73 is **attached** at Appendix DPDS-2.

Councillor/Officer Consultation

Staff from the Planning and Development Services Directorate collaborated on the preparation of the Scheme Amendment report.

10.5.2 Proposed Temporary Car Park (Additional staff parking area for Bunbury Farmers Market) LOT: 33 #49 Vittoria Road, GLEN IRIS

File Ref:	P10217
Applicant/Proponent:	TME Town Planning Management Engineering Pty Ltd on behalf of Bunbury Farmers Market
Author:	Laura Sabitzer, Planning Officer
Executive:	Bob Karaszekwych, Director Planning and Development Services
Attachments:	DPDS-3 Location Plan and Concept Plans DPDS-4 Applicants Covering Letter DPDS-5 Photographs of Illegal Parking DPDS-6 Schedule of Submissions

Summary

A Development Application has been received for a temporary car park at No. 49 (Lot 33) Vittoria Road, Glen Iris leased by Bunbury Farmers Market.

The purpose is to provide additional parking for Bunbury Farmers Market staff on the basis of a “temporary solution” for staff parking.

The Bunbury Farmers Market owners are aware that an alternate long term solution is required to resolve the car parking issues experienced at the business, notwithstanding that the recently granted Deed of Licence over a portion of Jubilee Road was expressly for that purpose “customers and staff car parking”.

To date, Bunbury Farmers Market has not presented any definitive long term parking solutions to the City despite numerous requests and agreement that they would do so. The City’s administration is concerned that this application would result in a permanent situation.

The Bunbury Farmers Market has instructed its staff to park off-site since late March 2014. Site visits have confirmed that approximately 40 cars at any one time have been parking unlawfully at the subject lot despite requests of both the land owner and the owners of the Bunbury Farmers Market.

This application has been assessed against the provisions of the City of Bunbury Town Planning Scheme No.7 (TPS7); the Glen Iris Structure Plan; and the City of Bunbury Local Planning Policy – Access and Parking for Pedestrians, Bicycles and Vehicles.

Upon analysis, there are inconsistencies between those documents and it is ambiguous if a temporary ‘Car Park’ use is capable of approval. Legal advice has concluded that the proposal is capable of consideration by the Council, however the Council is to consider discretionary matters to establish if the proposal is acceptable. Following assessment of ‘discretionary matters’, it is considered that this Development Application is contrary to the intent of those planning documents.

Accordingly, it is recommended that Council refuse the Development Application and instruct the City to undertake compliance action to require that vehicles no longer park at the site, and that the site is reinstated.

Executive Recommendation

That Council:

1. Refuse a Development Application for a temporary car park at Lot 33 #49 Vittoria Road, Glen Iris (DA/2014/51/1) in accordance with the City of Bunbury Town Planning Scheme No.7, for the following reasons:
 - a. The proposal does not represent orderly and proper planning, in accordance Clause 10.2.1(b) of the City of Bunbury Town Planning Scheme No.7.
 - b. The proposal does not provide for adequate access for staff from the temporary car park to the Bunbury Farmers Market premises, in accordance Clause 10.2.1(t) of the City of Bunbury Town Planning Scheme No.7.
 - c. The proposal does not include detail of landscaping to achieve an attractive development and streetscape, in accordance with Clause 5.9.2.3 and Clause 10.2.1(v) of the City of Bunbury Town Planning Scheme No.7.
 - d. The proposal is contrary to the Glen Iris Structure Plan Clause 2.2.1, as a Detailed Area Plan has not been submitted or endorsed by the Western Australian Planning Commission. The proposed variation to Clause 2.2.1 is not in accordance with the matters listed at Clauses 3.1 and 3.2.
 - e. The proposal is contrary to Local Planning Policy – Access and Parking for Pedestrians, Bicycles and Vehicles Cause 8.12.1, as the car park is more than 250 metres distant from the Bunbury Farmers Market premises. The proposed variation to Clause 8.12.1 is not in accordance with the matters listed in Clause 14.1 and Clause 14.2.
2. Instruct the City to undertake compliance action on the owner of LOT: 33 #49 Vittoria Road, GLEN IRIS and require that within thirty (30) days of the date of Council’s decision that:
 - a. vehicles associated with the Bunbury Farmers Market no longer park on Lot 33 #49 Vittoria Road, Glen Iris, and
 - b. the site be reinstated to the satisfaction of the City of Bunbury.
3. Advise the applicant, landowner and submitters of Council’s decision.

Background

The Bunbury Farmers Market commenced operation at No. 2 – 6 Vittoria Road, Glen Iris in November 2013. Since its opening, due to the business’s operational requirements and unprecedented popularity has experienced parking issues that resulted in traffic congestion on the surrounding road network. The proposed temporary car park is for staff parking so that the parking provided on site at the Bunbury Farmer’s Market is available for customers only.

Bunbury Farmers Market is leasing Lot 33, #49 Vittoria Road, Glen Iris from the land owner for a temporary car park. The purpose of the temporary car park is to provide additional parking for staff of the Bunbury Farmers Market. A location plan and the concept plans provided are **attached** at Appendix DPDS-3.

The applicant's covering letter is **attached** at Appendix DPDS-4.

On-site the Bunbury Farmers Market 149 car bays exist. It is noted that there are an additional 25 car bays above the minimum number of car bays required by the City of Bunbury Town Planning Scheme No. 7 (TPS7).

Further to this, in March 2014 an additional 54 car bays were approved (Deed of Licence) adjacent to the Bunbury Farmers Market site, in a portion of the Jubilee Road reserve.

Bunbury Farmers Market currently has access to 203 car bays. Although the business has 79 more car bays than required in TPS7, it states that this number of bays is required for its customers only to operate at its optimum.

The Bunbury Farmers Market has instructed its staff to park off-site since late March 2014. Site visits have confirmed that approximately 40 cars at one time have been parking illegally at Lot 33. Refer to photographs **attached** at Appendix DPDS-5.

Relevant Previous Council Decisions

18 Mar 2014	Council resolved to approve subject to conditions, additional car parking (namely 54 angled bays) on a portion of the Jubilee Road reserve, adjacent to the Bunbury Farmers Market site. Refer to Council decision 94/14.
10 Dec 2013	Council resolved to permit the use of a portion of the Jubilee Road reserve for parking on a temporary basis. Refer to Council decision 383/13.
05 Mar 2013	Council resolved to recommend approval to the Western Australian Planning Commission for the development application for the Bunbury Farmers Market building and use as a 'Produce Market' and 'Lunch Bar (ancillary)'. Refer to Council decision 59/13.

Council Policy Compliance

Local Planning Policy 3.1 Access and Parking for Pedestrians, Bicycles and Vehicles (LPP 3.1)

The proposal is generally in compliance with this policy with the exception of Clause 8.12 Appropriate Distance Criteria to Off-site Vehicle Parking Areas which states,

"premises utilised for an office or commercial use with no public access...an appropriate off-street parking facility may be located up to a maximum of 250m away from the use/premises".

The proposed car park is located approximately 300m from the Bunbury Farmers Market site. As a variation to Clause 8.12 is proposed, the proposal is considered against clauses 14.1 & 14.2. It is considered that the proposal is contrary to these clauses. This is discussed further in the Officer Comments section in the Assessment of Discretionary Matters.

Legislative Compliance

The proposal is subject to compliance with the following statutory documents:

Greater Bunbury Region Scheme (GBRS)

The subject lot is zoned 'Urban' under the Greater Bunbury Region Scheme (GBRS) and is also located within the GBRS Floodplain Management Plan. In accordance with Schedule 2 of the GBRS,

the application was referred to the Department of Water for comment. The Department of Water had no objections subject to advice notes relating to stormwater management.

City of Bunbury Town Planning Scheme No. 7 (TPS7)

The subject is zoned as 'Development Zone – Residential' under TPS7. In the Zoning Table of TPS7 it states that the use permissibility is, "*Subject to Structure Planning as per the requirements of Clause 6.2*".

TPS7 at Clause 5.10.11.3 states that, "*No Development within the Development zone is to be permitted unless the local government considers that it complies with a Structure Plan that has been adopted by the local government and endorsed by the Commission...*".

Furthermore TPS7 at Clause 6.2.3.2 states that, "*Where a Structure Plan exists, the...development of land is generally to be in accordance with the Structure Plan...*". The Glen Iris Structure Plan is applicable.

Glen Iris Structure Plan

The subject site is identified in the Glen Iris Structure Plan as being within the 'Neighbourhood Centre – Retail Convenience Shopping' zoning. The Structure Plan at Table 1 states that the primary function of this zone is to provide for local convenience shopping needs.

The Glen Iris Structure Plan has been prepared, adopted and endorsed in accordance with TPS7 clause 5.10.11.3. The purpose of the Structure Plan is to guide the future development and subdivision of the Glen Iris area.

The Glen Iris Structure Plan at Clause 2.2.1 ordinarily requires the preparation and submission of a Detailed Area Plan. However Clause 3.1 allows for the approval of a variation to the structure plan based on the merits of the development proposal and site-specific conditions, having regard to provisions of the applicable clause varied. Assessment of this is discussed further in the Officer Comments section.

Officer Comments

There are inconsistencies between the provisions of TPS7 and the Glen Iris Structure Plan.

The Zoning Table of TPS7 under the 'Development Zone – Residential' zone states that the use class permissibility is, "*Subject to Structure Planning...*".

Whilst the applicable structure plan, the Glen Iris Structure Plan, at clause 6.8.8.3(a) states that "*...the permissibility of uses is to be the same as set out in the Zoning Table as if those zones under the Scheme have the same designations*".

The Glen Iris Structure Plan identifies the site as 'Neighbourhood Centre – Retail Convenience Shopping' zoning, which is not listed in the TPS7 Zoning Table, therefore the above clause cannot apply and a conflict exists.

This, coupled with the request for temporary planning approval, has resulted in ambiguity as to whether the application is capable to be approved in accordance with the statutory documents. To clarify this issue legal advice has been sought by the applicant, which has been reviewed by the City's legal counsel.

Summary of Applicant's legal advice

The legal advice concludes that,

“Based upon my assessment of TPS7, and the Structure Plan, there are no legal impediments to the approval of Lot 33 for the purposes of a car park on a temporary basis”.

The basis for this as there is no listed use class permissibility due to the inconsistencies between TPS7 and the Glen Iris Structure Plan, the assessment of the proposal is using basic town planning principles. The legal advice suggests that the matters to be considered are:

- a) What Zone under TPS7 the designation of land as ‘Neighbourhood Centre – Retail Convenience Shopping’ is most closely aligned with. It is considered that the TPS7 ‘Shopping Centre’ Zone would be the most closely aligned zone, where a car park use is listed as a ‘D’ discretionary use.
- b) Whether the use of land for a car park on a temporary basis is consistent with the objectives set out in the Glen Iris Structure Plan.
- c) Whether the form of the development proposed on a temporary basis would be physically inconsistent with the future use of the land. It is stated that there are minimal works associated with the car park.
- d) Standard planning considerations (i.e. amenity, traffic and noise).

Summary of City's legal advice

The City has sought legal advice on whether the proposal is capable of approval, considering the provisions of TPS7 and the Glen Iris Structure Plan. In summary the City's legal advice concludes that the proposal is capable of approval when applying a combination of the provisions of TPS7 and the Glen Iris Structure Plan, dependant on the City assessing and exercising its discretion to the matters listed in Clause 3.1 (a) to (f) of the Glen Iris Structure Plan and Clause 10.2.1 of TPS7.

After considering the discretionary matters, if Council is prepared to grant temporary planning approval for the car park it is recommended that Council requires the preparation and submission of a Detailed Area Plan under Clause 2.2.1 of the Glen Iris Structure Plan prior to Council giving consideration to any extension of the temporary planning approval.

The City's legal advice concurs that it is acceptable to use the TPS7 ‘Shopping Centre’ Zone as this would be the closest corresponding zone to the ‘Neighbourhood Centre – Retail Convenience Shopping’ zoning as designated in the Glen Iris Structure Plan. The Zoning Table in TPS7 lists a car park use as a ‘D’ discretionary use, which is capable of approval.

Assessment of discretionary matters

The proposal is assessed against the matters listed in Clause 3.1 (a) to (f) of the Glen Iris Structure Plan and Clause 10.2.1 of TPS7, to establish the proposal's appropriateness at the subject lot. As demonstrated below, the proposal does not satisfy a number of relevant planning considerations and therefore it is considered that it is not acceptable to approve the proposed temporary car park.

Relevant considerations under Clause 3.1 Glen Iris Structure Plan

Provision	Comment
(a) the streetscape character and amenity of subject site, adjacent properties and surrounding local areas.	Although the lot is currently vacant, the use of the lot as a car park is out of character with the existing and planned character and amenity of the locality. The proposal received does not provide sufficient details of the surface of the car park, screening and/or landscaping which would enhance the streetscape.
(f) safety of road users and pedestrians	There is concern for the safety of pedestrians because: <ul style="list-style-type: none"> • There is no footpath connecting the car park to the Bunbury Farmers Market or dedicated road crossings. • Vittoria Road, is a busy road where vehicles, including trucks, travel at 70 km/h. • There is not sufficient lighting along the path of travel or security lighting proposed in the car park.

Relevant considerations under Clause 10.2.1 of TPS7

Provision	Comment
(a) the aims and provisions of the Scheme	The proposal does not satisfy does not satisfy all of the applicable provisions of TPS7.
(b) the requirements of orderly and proper planning	<p>The Glen Iris Structure Plan requires the preparation and endorsement of a Detailed Area Plan prior to the approval of a development application. The approval of a development application prior to a Detailed Area Plan being in effect is not in line with the planning process. The Detailed Area Plan is the next stage in the planning process prior to the subdivision or approval of development in the precinct. This allows for the consideration of the appropriate standards for the items listed at clause 2.2.4 of the Glen Iris Structure Plan.</p> <p>The City is concerned that this application, although submitted as a temporary proposal, would result in permanent approval by stealth, if a viable solution to the parking issue at Bunbury Farmers Market is not developed. It is not orderly and proper planning for a prominent corner site of a future centre to be wholly used as a car park to provide additional parking for another commercial precinct.</p>
(i) the compatibility of a use or development with its setting	The sole use of the site a 'car park' is not compatible with the existing or intended future setting. The subject lot is currently surrounding by residential dwellings and in the future is intended to be a prominent location in a mixed use Neighbourhood Centre area.
(t) whether adequate provision has been made for access for pedestrians and cyclists	There are no dedicated road crossings or footpath connecting the car park to the Bunbury Farmers Market. Additionally there is not sufficient lighting along the path of travel or security lighting proposed in the car park. There is concern for the safety of pedestrians crossing Vittoria Road with the lack of pedestrian infrastructure.

(v) the adequate provision has been made for the landscaping of the land to which the application relates..	The application does not provide detail of any landscaping. A detailed area plan would set out the requirements for landscaping.
(y) any relevant submissions received on the application/	Refer to the Community Consultation section and the Schedule of Public Submissions attached at Appendix DPDS-6. One comment noted concern for the safety of staff walking a moderate distance from the car park to the Bunbury Farmers Market building; especially when it is dark.

Temporary planning approval

There is the ability to grant temporary planning approval under Clause 10.6 of TPS7.

“10.6 Temporary Planning Approval

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

Generally, this clause is applied for the approval a temporary structure, such as a transportable building, whilst construction occurs. Depending on the circumstances, temporary planning approval is usually issued for a six month to two year timeframe.

The application received does not specify a time period for the temporary car park however states that, *“The Bunbury Farmers Market are aware they need a long term resolution to parking issues onsite...however at this point require off site parking for staff so that the bays on the premises can be utilised for customers”.*

At this stage, Bunbury Farmers Market has not presented any definitive long term parking solutions to the City. The City is concerned that this application would result in permanent approval, by stealth, if a viable solution to the parking issue is not developed.

Compliance action

It is understood that Bunbury Farmers Market has instructed its staff to park off-site since late March 2014. Site visits have confirmed that approximately 40 cars at one time have been parking illegally at Lot 33. Refer to photographs **attached** at Appendix DPDS-5.

If Council resolves to refuse this application, the City will need to enforce this and instruct that Lot 33 is to be no longer used for the parking of vehicles associated with the Bunbury Farmers Market, and that the site is reinstated to the satisfaction of the City.

Failure to comply with enforcement action may result in prosecution. However under the *Planning and Development Act 2005*, the land owner would be liable. This means that Bunbury Farmers Market, who leases the site, would not be liable. Both the land owner and owner of the Bunbury Farmers Market had been advised of this.

Analysis of Financial and Budget Implications

The application is for works to be constructed on a private land, therefore has no direct budget/ financial implications for the City. However, the City has incurred fees in obtaining legal advice on this proposal.

If the applicant is aggrieved by Council's decision that may appeal for a review of the decision through the State Administrative Tribunal (SAT). If the decision is forwarded to SAT for an appeal, the City would incur further legal costs.

Community Consultation

The development application was advertised for public comment from 02 July 2014 to 16 July 2014. Public consultation included the following:

- Letters sent to surrounding landowners
- Development notification signs on-site
- Notice of proposal published in local newspaper (two consecutive editions)
- Notice of proposal on the City's website
- Plans and supporting information made available at the City's Customer Service Centre

In total seven (7) submissions were received during the consultation period. Four (4) submissions from Service Authorities and three (3) submissions of no objections from surrounding landowners, however one commented concern for the safety of staff walking a moderate distance from the car park to the Bunbury Farmers Market building; especially when it is dark.

Refer to the Schedule of Public Submissions **attached** at Appendix DPDS-6.

Councillor/Officer Consultation

Cr Steck submitted questions on notice relating to the proposal. The City's responses to the questions were published in the Council Minutes dated 22 July 2014 and 5 August 2014.

The application has been discussed internally prior to the finalisation of this report.

Strategic Relevance

Inconsistent with TPS7, the Glen Isis Structure Plan and local planning policy.

Economic, Social, Environmental and Heritage Issues

The Bunbury Farmers Market provides economic and employment benefit to the City.

Delegation of Authority

The application is referred to the Council for determination as the City's officers do not have the delegation to refuse development applications. Additionally, the application has been advertised and public submissions have been received on this proposal.

Relevant Precedents

A portion of the Jubilee Road reserve adjacent to the Bunbury Farmers Market was approved for a 54 bay car park at the Ordinary Council meeting on 18 March 2014. Prior to this, in December 2013 the use of this land for car parking purposes for the Bunbury Farmers Market was approved temporarily. To date, the Bunbury Farmers Market are yet to satisfy all conditions relating to the car parking areas on site and within the Jubilee Road reserve (i.e. drainage, resurfacing, landscaping).

10.5.3 Section 31 Order - State Administrative Tribunal - Proposed Change of Use Application Tenancy 3D at the Homemaker Centre - LOT: 107 #42 Strickland Street SOUTH BUNBURY

File Ref:	P09230-24
Applicant/Proponent:	Citygate Properties Pty Ltd
Author:	Laura Sabitzer, Planning Officer
Executive:	Bob Karaszkewych, Director Planning and Development Services
Attachments:	Appendix DPDS-7 Original Application Appendix DPDS-8 Additional Application

Summary

On 18 February 2014, an application for proposed change of use for the relocation of the business ‘Rusticana’ was refused by the Council.

The applicant made an application for a review of the City of Bunbury’s decision at the State Administrative Tribunal (SAT). The SAT review proceeded to mediation with additional information having been submitted by representatives of the applicant.

In accordance with section 31(1) of the *State Administrative Tribunal Act 2004*, the SAT has invited the Council to reconsider its decision in light of the additional information provided. It is for the Council as to whether it wants to take up the invitation or not.

There is onus on the Council to properly administer the City of Bunbury Town Planning No.7 as failure to do so may result in a legal challenge of the decision in the Supreme Court by a Writ of Certiorari by any person or entity.

It is recommended that Council upholds its previous decision to refuse the application.

Executive Recommendation

That the Council resolve:

To uphold its decision (reference: Council decision 56/14) made at the Ordinary Council Meeting on 18 February 2014, to refuse a development application for the proposed Change of Use of Tenancy 3D – Homemaker Centre at Lot 107, #42 Strickland Street, South Bunbury (application reference DA/2013/289/1).

Background

The following is a summary of events relating to the SAT review of the Council’s decision on the Change of Use application:

05 Nov 2013	Change of Use application received by City of Bunbury. A copy of the original application submitted is included at Attachment DPDS-7.
18 Feb 2014	Application was refused at the Ordinary Council meeting for the following reasons (refer to Council decision 56/14): a. <i>The proposal falls within the definition of ‘Shop’ as contained in</i>

	<p>Schedule 1 of the City of Bunbury’s Town Planning Scheme No. 7. The use-class of ‘Shop’ is listed in Table No.1 – Zoning Table of the City of Bunbury’s Town Planning Scheme No. 7, as an ‘X’ (Not Permitted) use in the Mixed Business Zone (refer to Advice Note a).</p> <p>b. The proposed development is contrary to the City of Bunbury Local Planning Strategy for Activity Centres and Neighbourhoods.</p> <p>c. The proposed development is contrary to the objectives Western Australian Planning Commission’s Activity Centres for Greater Bunbury Policy and as such is not in accordance with Clause 10.2.1(e) of the City of Bunbury’s Town Planning Scheme No. 7.</p> <p>d. The proposed development does not represent orderly and proper planning and as such is not in accordance with Clause 10.2.1(b) of the City of Bunbury’s Town Planning Scheme No. 7.</p> <p>Council’s decision was as per the Executive recommendation.</p>
11 Mar 2014	An application for a review of Council’s decision on behalf of the land owner was received by SAT. The basis of the review was that the proposal be classified as a ‘use not listed’ under TPS7 and the application be approved.
26 Mar 2014	A Directions Hearing was held via teleconferencing. The outcome was that the matter would proceed to a further Directions Hearing.
29 April 2014	<p>Council at the Ordinary Council meeting approved a Change of Use application of Tenancy 2 at Lot 119, No. 24 Spencer Street Bunbury (refer to Council decision 148/14).</p> <p>The application received indicated that the purpose of the application was to allow for the relocation of ‘Rusticana’. The proprietor of ‘Rusticana’ has since advised that they do not wish to relocate to this tenancy.</p>
16 May 2014	An additional Directions Hearing was held and it was established that the parties did not agree on the preliminary issue. The matter to proceed to Mediation.
01 July 2014	Mediation session was held in Perth. The outcome of the Mediation session was that the applicant was to submit additional information and Council reconsiders its decision at the Council meeting on 05 August 2014. [Noting of course that this was dependant on receiving formal orders from the Tribunal that were not forthcoming in sufficient time for officers to report on the additional information. The City has requested the SAT to reschedule the next hearing date.]
15 July 2014	<p>The City received additional information from the applicant (refer to attachment DPDS-8:</p> <ul style="list-style-type: none"> • Detailed floor plan of the Rusticana business • Floor plans demonstrating floor area breakdown of other businesses within the Homemaker Centre • Covering letter detailing the activities proposed within the tenancy.
01 Aug 2014	A mediation session was scheduled for this date, but a deferment will be requested of the SAT until the Council has considered this matter on 19 August.

On 1 July 2014, the City’s legal counsel had “observed that the manner of the Applicant’s representatives at the mediation gave the impression” (to the SAT) that they had a shrewd idea that

the Council, on reconsideration, would make a favourable decision. It was the distinct impression that that was the view of the planning consultant advising the Applicant.”

The City has reviewed the additional information provided and considers the application is not capable of approval. This view is affirmed by the City’s legal counsel because the proposal contains substantial elements of retail activity that are representative of a ‘Shop’ use class and an ‘X’ (not permitted) use in the Mixed Business Zone.

Furthermore, the proposal is contrary to strategic State and local policies, and undermines the economic viability and competitiveness of retail activity in the ‘City Centre’, and the ‘Shopping Centre’ zones where a ‘Shop’ use class is permitted.

In order for the application to be capable of approval under TPS7, it needs to be demonstrated that the ‘Shop’ use of the premises is ‘incidental’, meaning ancillary to other predominant allowable use(s) on the premises. On review, despite additional information, the proposal is distinctly a ‘Shop’, which is not permitted.

Council Policy and Legislative Compliance

The change of use application is required to be in compliance with the TPS7 and applicable State and local government policies and strategies. The proposal is not in compliance for the following reasons:

- The proposal is classified as a ‘Shop’ use class, which is not permitted in the Mixed Business Zone, in TPS7.
- The proposal does not meet the objectives of the Western Australian Planning Commission’s Activity Centres for Greater Bunbury policy.
- The proposal is contrary to the City of Bunbury Local Planning Strategy for Activity Centres and Neighbourhoods.

The City’s legal counsel advice is *“I confirm my view that the most appropriate course for the Council to adopt would be to maintain its previous determination”* that is, a refusal.

Should the Council support the additional information it would be at stark variance to the reasons for the existing decision to refuse the application. In those circumstances, the Council is required to give reasons for its change of mind, reasons greater in substance than reasons for refusal that are based on the TPS7 provisions, State and local government strategies and policies, established town planning principles and practice and SAT legal precedent(s). There is no known precedent comparable in WA to base any argument in favour of the application.

Officer Comments

Pursuant to section 31 of the *State Administrative Tribunal Act 2004 (WA)*, Council is invited to reconsider its decision in light of the additional information provided by the applicant.

The additional information referred to above is:

- Covering letter detailing the floor area breakdown and activities proposed
- Floor plan of ‘Rusticana’
- Floor plans of other businesses within the Homemaker Centre

The City has reviewed this information and comments as follows:

Covering letter detailing the floor area breakdown and activities proposed

The covering letter details the different retail elements and activities 'Rusticana' proposes to be undertaken in the premises and provides a floor area breakdown of those.

In order for the application to be capable of approval under TPS7, it needs to be demonstrated that the 'Shop' use at the premises is incidental, meaning that it is ancillary to other predominant use(s) on the premises. For example, in an Industry zone, a 'Warehouse' use often includes an incidental 'Office' use meaning that there is a small area on the premises dedicated to the administration functions of the 'Warehouse'. Alternatively, the predominant use is Showroom with the allowable use "bulky goods" with incidental items in the Mixed Business Zone.

On review, the proposal is distinctly a 'Shop' for the following reasons:

- There is contention in relation to the land use classification of the butcher component. The City classifies this element as being a 'Shop' use. This is based on TPS7 definitions, planning principles, practice and precedent. The historical classification of a butcher, on advice of the City's legal counsel and comments made by the SAT at recent mediation on the common planning legislation classification of a butcher. The applicant has put forward that a butcher is classified as an 'Industry – Light' or 'Industry – Service' use.
- A portion of the warehouse area, as shown (pink) on the proposed floor plan, would be classified as a 'Shop' use. This would be the area of where the small retail items would be stored (i.e. extra stock) prior to them being displayed on the retail floor area. Most shops typically have a storage area, to which the public do not have access to, where the goods to be sold from the shop are stored, quite frequently in bulk, ready to be transferred when required into the display and retail area.
- The floor area breakdown percentage figures are deemed to be incorrect as the common areas, such as the aisles, till area, play centre and office are have been omitted from the floor area calculations and have not been allocated a land use activity.
- It is acknowledged that there are other allowable use(s) proposed on the premises, but the retailing elements collectively comprise a 'Shop' which is the fundamental predominant activity on the premises.

Floor plan of 'Rusticana'

The proposed floor plan provides a coloured legend indicating the areas of various activities proposed to be undertaken on the premises with photographs providing visual example of those activities.

Floor plans of other business in the Homemaker Centre

The applicant has provided the floor plans and photographs and images depicting the goods sold at other existing businesses in the Homemaker Centre; namely The Good Guys, Bunnings Warehouse and JB Hi-fi. The purpose of this, as indicated in the applicant's covering letter, *"is to demonstrate that the sales of retail products incidental to the predominant land use is common practice within the Mixed Business Zone"*.

Referring to the floor plans provided, the applicant has shown (grey) the area of where the small retail items are displayed. Examples of small retail items displayed include hairdryers, electrical tools, gardening accessories and headphones. Whilst it is acknowledged that small retail goods are

sold at those premises, the types of goods are generally permitted in accordance with the definition of the 'Showroom' use. A 'Showroom' use is defined in TPS7 as:

“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.

Referring to the proposed floor plan of 'Rusticana' the equivalent small retail items are loose spices, nuts, grains and confectionary; which differ as they cannot be incorporated in the use class definition of 'Showroom'. Rather the display and sale of those small retail items would be properly classified as a 'Shop' use, which is not permitted in the Mixed Business Zone.

Having considered the additional information presented including examples between the proposed 'Rusticana' floor plan and the floor plan of other businesses in the Homemaker Centre, are not comparable, hence of no assistance to regard the function of "Rusticana" as anything other than a "Shop", a use not permitted.

Options available to Council

The following options are available to Council:

- (a) uphold its original decision to refuse the application;
- (b) vary the original decision; or
- (c) set aside the original decision and substitute with a new decision.

The recommendation is that the Council uphold its decision to refuse the application because the proposal contains retail elements that predominantly represents a 'Shop' and an 'X' (not permitted) use in the Mixed Business Zone.

It is contrary to State and local government strategies and policies and undermines the economic viability and competitiveness of retail activity in the 'City Centre', and 'Shopping Centre' zones, where a 'Shop' use is permitted.

The SAT commented at mediation the proposal being difficult to determine and a precedent for the Mixed Business Zone, hence requires very careful consideration.

The whole premise upon which the draft new Local Planning Strategy and draft new TPS8 for the entire City is based on the primacy of the CBD for retailing Shops complemented by other commercial premises on the periphery and local neighbourhood centres. Hence, any support for allowing a Shop at the Homemaker Centre will compromise all of the previous efforts, research and State planning policies and strategies to strengthen the framework of retail hierarchy in the City of Bunbury and its social and economic sustainability in the immediate and longer-term.

Analysis of Financial and Budget Implications

There are legal costs associated with defending the decision of refusal of the development application. There is onus on the Council to properly administer the City of Bunbury Town Planning No.7 as failure to do so may result in a legal challenge of its decision in the Supreme Court, by a Writ of Certiorari by any person or entity or the WAPC. In those circumstances, the City is would incur significant costs.

Community Consultation

The original planning application was advertised from 22 January to 05 February 2014, where nineteen (19) submissions; six (6) comments of support, three (3) comments of “no comments”... “no objections” and ten (10) comments of objection were received. A petition containing 262 signatures requesting that Council approve the change of use application was also received.

Councillor/Officer Consultation

This application was previously determined by Council at the Ordinary Council meeting on 18 February 2014. Following this decision, the proprietor of ‘Rusticana’ has met with the Mayor and the Director Planning and Development Services on two occasions, and on separate occasion with Planning and Development Services staff to discuss options.

Delegation of Authority

The application is referred to the Council for review in accordance with an Order made pursuant to section 31(1) of the *State Administrative Tribunal Act 2004*.

The Order for a review does not mean that the Council needs to make another decision; it can simply reiterate its existing decision.

Relevant Precedents

- This year the Council has reviewed existing decisions in relation to development applications at Lot 30 (No. 22) Palmer Crescent, Davenport; and Lot 517 (No. 4) Epacris Elbow, Pelican Point, in accordance with Orders made under the *State Administrative Tribunal Act 2004*.
- In 2010, the City received a development application for the proposed establishment of an additional use class not listed, namely ‘Other Retail – Apparel’ (reference number: DA/2010/88/1) at the Homemaker Centre. That application was refused at the Ordinary Council Meeting of Council on 8 June 2010, as the proposal involved a retailing element that represented a “Shop” use-class and was not a permitted use in the Mixed Business Zone. The applicant appealed, however the application, on review, was withdrawn by the applicant, prior to the scheduled hearing.

10.6 Director Works and Services Reports

10.6.1 Koombana Bay Ablution Block Refurbishment - Caravan Dump Point

Applicant/Proponent:	Internal
Author:	Mark Robson, Senior Building and Structures Officer
Executive:	Phil Harris, Director Works & Services
Attachments:	Appendix DWS-1 Koombana Bay Hardstand for Caravan Dump Ezy

Summary

In May 2014 a tender was awarded to Philip Best Plumbing for the Koombana Bay Ablution Block Refurbishment.

Tourism Western Australia has indicated that the agency would contribute towards the establishment of a 'Dump Point' for caravan and motor homes in conjunction with the current refurbishment works of the Koombana Bay Ablution Block.

Executive Recommendation

That Council

1. Endorse the Chief Executive Officer to enter into negotiations with Tourism Western Australia seeking a 50% contribution from the 'Dump Point Subsidy Scheme' for the construction of a dump point at Koombana Bay.
2. Endorse the proposed location as the being on the southern side of the car park opposite the ablution block as **attached** at DWS-1 'Koombana Bay Hardstand for Caravan Dump Ezy'.
3. Note that the City's contribution forms part of the existing sewer works associated with the ablution block upgrade. No additional funding commitment is required.

Background

Council is currently upgrading the Koombana Bay Ablution Block as part of the 2012/2013 Country Local Government Grant Funding (CLGF). The works include connecting the upgraded facilities via the installation of a sewerage pump station to the Water Corporation sewerage reticulation system.

Discussions with an officer from Tourism Western Australia on 24 July 2014 confirmed that the City of Bunbury and in particular Koombana Bay would fit into the priority investment criteria for accessing funding under its 'Dump Point Installation Program'. The proposed site is centrally located on the route that forms part of the Australind – Bunbury Tourist Drive.

The Campervan Motorhome Club of Australia (CMCA) has identified Bunbury in its strategic priority areas for the installation of dump points. In addition, the 2014 Motor Vehicle Census figures provided by the Australian Bureau of Statistics indicate that the number of new Campervans registered between 2009 – 2014 increased by 19.8%.

The modifications to the pump station to facilitate the installation of dump point infrastructure are minimal if undertaken during the initial construction phase.

Council Policy Compliance

Not Applicable

Legislative Compliance

The installation and operation of a 'dump point' is covered by the Health Regulation Act 1974.

Officer Comments

The opportunity to provide improved facilities to attract and retain visitors at no capital outlay for the City is only feasible if the dump point can be installed in conjunction with the upgrade works to the Koombana Bay Ablution Block.

The proposed area for the dump point is clear of existing parking and would be unobtrusive with the only visible signs of any infrastructure being several bollards, a tap outlet and an instruction sign. Directional signage would be provided at strategic access points to the City.

The site would be registered with the Campervan Motorhome Club of Australia and Tourism WA.

PR-3427 – Establish 3 waste Dump Points for Caravans/RV's is identified as a project within Councils LTFP.

Analysis of Financial and Budget Implications

Additional works to establish and official dump point would be funded through a grant.

Community Consultation

While no local consultation has occurred studies by Tourism WA and Tourism Research Australia indicated that 12% of caravan and motor homes visitors to Western Australia sought access to sewerage dump facilities. In 2010 it was estimated that 506,600 people stayed in a caravan park overnight in Western Australia, equating to 4,209,100 visitor nights with an average of 8.3 nights.

Councillor/Officer Consultation

The Executive Leadership Team has discussed the proposal to construct a dump point. The Manager Health has been involved in discussions on the proposal.

Cr Cook and Cr McNeill have been consulted about this proposal as they have both previously requested that the City provide dump points.

10.6.2 Leschenault Inlet - Marine Wall Replacement

File Ref:	A05205
Applicant/Proponent:	Internal Report
Author:	Jason Gick, Manager Engineering, Transport and Traffic Management
Executive:	Phil Harris, Director Works & Services
Attachments:	Appendix DWS-2 Leschenault Inlet Master Plan (Dec 2013): Extracts

Summary

Sections of the Leschenault Inlet marine wall are in need of repair and replacement. This report recommends a preferred material for future wall replacements around the Leschenault Inlet and to replace the existing wall at the Frank Buswell Foreshore.

Executive Recommendation

That the Council:

1. Adopt reconstituted limestone blocks as its preferred building material for the replacement wall along the Frank Buswell Foreshore
2. Not proceed with the curved wall and small beach concept promoted in the Leschenault Inlet Master Plan.

Background

The seawall along the front of Frank Buswell foreshore were originally constructed in the 1950's and 1960's and have deteriorated to the extent that isolated sections are collapsing on a regular basis. The section immediately east of the Stirling Street boat ramp is in very poor condition and identified as a priority for replacement. The remaining length of the wall towards the Quays Precinct is showing signs of failure and can be expected to deteriorate further in the foreseeable future.

Anecdotally, the seawalls along Frank Buswell foreshore were built incrementally, using hand placed Coffee rock, granite and other rock materials. The wall is constructed with a slight lean into the bank and has a finished mortared outer course over laying a rough mortared inner course of rocks. The walls do not display a significant footing structure and exhibit signs of localised sag.

The Leschenault Inlet Master Plan (LIMP) (December 2013) provides an overarching framework and strategic direction to the development of the public space around Leschenault Inlet for the next 20 years. The Frank Buswell Foreshore is recognised in the LIMP as an important recreation space that connects the foreshore between key destinations.

The LIMP shows the introduction of natural edge treatments and several small beaches with jetties and lookouts allowing an alternative to the existing lawn. In the concept plan on Page 62 of the LIMP, the Legend indicates the retention of the existing wall on parts of the alignment whilst introducing new wall sections to create the beach opening.

Any works on the existing wall may require it to be replaced, rather than modified as it does not meet contemporary design standards and is likely to fail when disturbed.

Council Policy Compliance

Not Applicable

Legislative Compliance

Not Applicable

Officer Comments

In a memo to the Council dated 14 July 2014 the various edge treatments for the Leschenault Inlet were discussed and recommendations given for the material selection. The LIMP provides an overview of the development aspirations for the Leschenault Inlet, which is discussed in each precinct area. The Frank Buswell Foreshore is recognised as Precinct 5 in the LIMP.

The LIMP shows the introduction of 13 small beaches along the Frank Buswell foreshore between the Stirling Street boat ramp and the Quays precinct. The plan does not specifically recommend a material for the new sections of wall that will be required to create this type of foreshore setting. Reconstituted limestone would be a suitable material as it is easy to install, is visually acceptable and can be maintained quite easily.

The existing wall is in deteriorating condition and needs to be replaced. The introduction of the 13 beaches as recommended by the LIMP will require further engineering and environmental analysis to determine the suitability of this treatment for this location. Currently, the wall interface works effectively at keeping the tidal waters of the Inlet at bay and provides an interface for stormwater drains to flow into the Inlet.

This section of wall is a highly visible feature of the Leschenault Inlet and the use of reconstituted limestone will enhance the visible interface between the land and the water. It should be noted that the inter-tidal zone is likely to become discoloured over time due to the daily rise and fall of tidal water and the associated biological activity at the wall. This is a natural process that will occur regardless of the material choices. The impact this has had at the Pat Usher Foreshore is minimal.

The LIMP is an aspirational plan that outlines a vision for the future edge treatments of the Leschenault Inlet. This plan needs to be considered in the context of the preservation requirements of the existing wall infrastructure. The City in preparing its preparing an Asset Management Plan for Marine Infrastructure recognises the need to renew / replace sections of the Frank Buswell Foreshore wall. The most urgent section is an 80 to 90 meter section immediately east of the Stirling Street boat ramp, which is in critical condition and is currently failing. The Asset Management Planning process is employing a system of condition ratings and community use criteria to determine the next most urgent section for renewal / replacement.

The early assessment of the draft Asset Management Plan indicates that the incremental replacement of the existing wall along the Frank Buswell Foreshore is the most likely Capital Works schedule for the next 4 to 5 years.

At the Council Briefing Session of 16 July 2014 the question of whether the City should adopt vertical walls or lean them back to accommodate wave energy was raised. The City has consulted with the Coastal Engineer who was part of the LIMP Consulting Team to investigate this question. The advice received indicates that the low level of wave energy does not require the wall to be

leaned back to create a low angle approach. These systems are more suitable to very high wave energy environments and areas that can experience high levels of storm surge. The Leschenault Inlet is a low wave energy area, and has mitigation strategies in place for storm surge (The Plug gates).

The Coastal Engineer also advised that the introduction of the 13 beaches came about from a single public enquiry about providing pedestrian access directly to the inlet water. This prompted the Landscape Architects to develop the beach concept which was subsequently shown in the final plan. It would seem that there is opportunity to revisit this proposal and consider the community needs of this beach proposal at Frank Buswell Foreshore.

There is currently a small beach area near the Stirling Street carpark which is used quite regularly by Mr Sean Scallen who is wheelchair bound. Mr Scallen parks near the beach section and locks his wheel chair to a pole specifically installed by the City and then launches his kayak and paddles in the inlet. As part of the project the City is proposing to increase this beach area from the existing 5 meter opening to a nominal 10 meter, with the beach edged in by the wall returns. Increasing this beach area will provide the community with an increased beach area and will provide the City with some feedback on the communities preference to beaches at the Leschenault Inlet.

Separately, the City has consulted with the Swan River Trust (SRT) to determine its preference for vertical revetment walls or leaned back revetment structures. The SRT's position is not easily defined as it adopts a site specific approach to the issue of revetment, but has used a variety of different treatments around the Swan River including hard walls, revetment treatments, gabion treatments, vegetation planting, beach replenishment, brush stabilisation, rock revetments and geotextile revetments. Given the small water body mass, shallow waters, low storm surge risk and the low wave action and the fact the wall has been effective for several decades the SRT did not indicate an urgent need to deviate away from the existing system.

Analysis of Financial and Budget Implications

There are several projects in the budget and in the 10 Year Financial Plan that have funds assigned to the preservation / replacement of the Leschenault Inlet seawall. These are tabled below:

Project	Description	\$
PR-1331	Rehabilitate foreshore marine walls 2012/13 (Pelican Point and Leschenault Inlet)	\$59,842
PR-2380	Rehabilitate foreshore marine walls 2013/14 - Leschenault Inlet	\$75,140
PR-2381	Rehabilitate foreshore marine walls 2014/15	\$140,000
	Available funds for 2014/15	\$274,982
PR-2383	Rehabilitate foreshore marine walls 2015/16	\$200,000
PR-2385	Rehabilitate foreshore marine walls 2016/17	\$200,000
PR-2386	Rehabilitate foreshore marine walls 2017/18	\$200,000
PR-2387	Rehabilitate foreshore marine walls 2018/19	\$200,000
PR-2389	Rehabilitate foreshore marine walls 2019/20	\$200,000
PR-2390	Rehabilitate foreshore marine walls 2020/21	\$200,000
PR-2391	Rehabilitate foreshore marine walls 2021/22	\$200,000
	Current identified funding for future years	\$1,400,000

The City obtained a price for a properly designed, 1.8 meter reconstituted limestone wall for the section east of the Stirling Street boat ramp. The price was in the vicinity of \$300,000. The City will need to call tenders to test whether the market can accommodate the project within the available funding regime. This equates to a lineal price of \$3,800 per linear meter (ex GST).

The City does not have the resources or expertise to complete this project in house. The \$300,000 price was obtained from a single quote. Opening the project up to market testing may yield better cost savings through a public tender process.

Using the \$3,800 linear meter rate for this type of structure gives some indication of the overall scale of the project for the Frank Buswell Foreshore. The wall from the Stirling Street Boat Ramp to the Quays is approximately 640 meter long. Based on this indicative rate, the whole wall would cost in the order of \$2.4M to \$3.0M.

The Long Term Financial Plan shows a nominal \$200,000 per annum for six years into the future. Assuming no inflation to costs, the budget would allow the delivery of just over 50 meters each year. This suggests that the wall up to the Quays would take 11 years to deliver and would be completed by 2026/27. This situation does not take into account other walls around the inlet that will also need treatments in the future.

The replacement and protection of the Leschenault Inlet revetment walls needs to be considered over a longer term to ensure that the wall remains functional and can be delivered incrementally to suit the community's needs.

Community Consultation

The LIMP was subject to broad public consultation including public advertising and community workshops. The LIMP was adopted by the Council at its Ordinary Meeting on 11 June 2013. Council Decision 165/13 applies.

The Coastal Engineer who was part of the LIMP Consulting Team was consulted during the preparation of this report.

The Swan River Trust was consulted during the preparation of this report.

Councillor/Officer Consultation

The Council received a memo dated 14 July 2014 and were briefed on this subject at the 16 July 2014 Council Briefing Session. Engineering staff were consulted.

11. Applications for Leave of Absence

No requests for Leave of Absence had been received at the time of printing.

12. Motions on Notice

12.1 Motion on Notice – Rating Concession Cap

Applicant/Proponent:	Councillor Murray Cook
Author:	Councillor Murray Cook
Executive:	<i>If adopted by Council refer to: Wayne Wright, Director Corporate Services</i>
Attachments:	Nil

Cr Murray Cook has submitted the following motion for the Council Meeting on 19 August 2014:

That:

- 1. In accordance with the provisions of Section 6.47 of the Local Government Act 1995 and the Council Guidelines detailed in the report, Council apply a rates concession of 15% to mixed business and industrial properties where the concession is greater than \$100.00 for the 2014/15 financial year.*
- 2. The Chief Executive Officer be delegated authority to assess each application for concession and where appropriate grant the concession; and*
- 3. That a report be provided to Council on all concession granted in accordance with this delegation.*

Comments - Cr Cook

This motion seeks to have Council apply a concession rate to mixed business and industrial properties where the total is greater than 15% and the concession is greater than \$100.00.

Council has determined and it is reflected in the 2014/15 budget, to apply a single rate in the dollar for all properties within the Bunbury district – regardless of their particular class. Whether they be Residential, Industrial, Vacant Land – all will attract the same rate in the dollar.

This method of rating passes the common sense and fairness test because any variations in value are captured by the Valuer General in his assessment of Gross Rental Value (GRV). The owner of a \$300K house will pay less in rates than the owner of a \$3M house.

Unfortunately for the 2014/15 rating period, the Valuer General has revalued GRV and that, together with the introduction of a single rate in the dollar rating method, has meant a substantial increase in some rate notices to individual ratepayers.

It is proposed that the concession should only be applied in instances where there has not been any significant development or redevelopment of the site since the last valuation (i.e.: in the last three years). By applying this principle it is considered that a concession cap would help address the levels of increase which have arisen from changes in GRV and the change to a single rate in the dollar for all properties in the district.

Furthermore, the Concession will only be applied following an application to Council for a review. On receipt of an application, Council Officers will review all relevant matters, including changes to the GRV due to improvements made to the property during the preceding 3 year period. Changes in GRV due to property improvements will not be a basis for applying the Concession.

Analysis of Financial and Budget Implications

Change to the previously advertised position in relation to rating options will have an impact on the 2014/15 budget.

The following table provides an overview of anticipated impact of the concession cap:

Category	Number Properties	Concession
Industrial	400	\$467,747
Mixed Business	226	\$347,646
		\$815,393

Executive Comments

Following review of Councillor Cook's motion and discussions with the Mayor, the Finance Team and the Department of Local Government, it was determined that the following process be followed:

- Council proceed with the adoption of the budget minus the concession
- Council hold the Special Electors Meeting and hear the views and allow them to pass the relevant motions should they have any (advising of Cr Cook's proposed motion)
- Council at the next Ordinary Meeting (or at a special meeting) consider the outcomes of the Special Electors Meeting plus the motion on Notice by Cr Cook.

In the event that the motion by Councillor Cook or some other variation in relation to concessions is passed, it can then be applied.

The above provides a number of benefits. Firstly it allows for the budget as developed to be adopted and the process for the preparation of the rates notices etc to commence. Secondly, it provides an opportunity to have all Councillors participate in the budget meeting without having to disclose an interest and finally, it would provide the opportunity for the community to again express their views.

There are of course negative issues with this approach as well and they are mainly in relation to the potential for negative publicity in relation to the approach taken in adopting the decision without having heard from the Special Electors Meeting.

For your information, the proposed draft guidelines are listed below:

Draft Guidelines

The guidelines will be developed around the following principles:

Concessions will only be considered for properties which meet all the following criteria:

1. Commercial, industrial or mixed use
2. Increase in rates is greater than 15% or the amount of concession is greater than \$100.00
3. There has been no development approval on the property in the last three years

4. These are for your consideration and if acceptable, I will add to the report for the Council Meeting of 19 August 2014.

For your further information, section 6.47 of the Local Government Act states –

6.47. Concessions

Subject to the Rates and Charges (Rebates and Deferments) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.*

** Absolute majority required.*

This section of the Act allows the above proposal to proceed, however **all elected members would still need to seek exemption from the Minister/Department to participate in the debate.**

Cr Cook's Motion

That:

1. *In accordance with the provisions of Section 6.47 of the Local Government Act 1995 and the Council Guidelines detailed in the report, Council apply a rates concession of 15% to mixed business and industrial properties where the concession is greater than \$100.00 for the 2014/15 financial year.*
2. *The Chief Executive Officer be delegated authority to assess each application for concession and where appropriate grant the concession; and*
3. *That a report be provided to Council on all concession granted in accordance with this delegation.*

12.2 Motion on Notice – Bunbury Wildlife Park Pass

Applicant/Proponent:	Councillor Michelle Steck
Author:	Councillor Michelle Steck
Executive:	If adopted by Council refer to: Andrew Brien, CEO
Attachments:	Nil

Cr Michelle Steck has submitted the following motion for the Council Meeting on 19 August 2014:

That all rate payers receive one free family entry ticket into the Bird Wildlife Park during the 2014/15 financial year.

Comments – Cr Steck

Council has built a community attraction that is consistently growing in popularity within the community and visitors. By providing entry tickets with rates notices the City of Bunbury is encouraging greater numbers of visitors to the facility and is promoting the venue.

Providing tickets offers an alternative community experience by some who may not have attended the venue as yet. Promoting the venue, having greater participation by the community encourages frequent attendance. Our community members are or best promoters.

There is no real cost to council.

Executive Comments

Whilst Officers agree with Cr Steck's comments regarding the Bunbury Wildlife Park, it is felt that the option of providing a free family pass to all ratepayers would in fact, be undervaluing a venue which already has very low entry costs:

- Adults \$9
- Concession \$7
- Child (3-16 years) \$5
- Mini Group \$25 (2 adults and 2 children)
- Children under 3 and carers are admitted free

If all ratepayers were offered a free family pass (Valued at \$25.00), this would see the Bunbury Wildlife Park resulting in a waived income for these passes. Some examples of this are below:

- If 10% of the free vouchers were utilised, this would result in \$38,750 loss in revenue. (1,550 x \$25.00)
- If 25% of vouchers were utilised, this would result in \$96,875 loss in revenue (3,875 x \$25.00)

As an alternative, it is suggested that a "buy one, next visit free" coupon be offered in the City Focus Column (published in the Bunbury Mail). This would reach each household in the Greater Bunbury area but would require a 'buy in' from the resident that would reinforce that this is now a quality tourism product.

For example:

- If a family pass was purchased, upon presentation of the coupon, a return free family pass would be provided.
- If a single pass was purchased, upon presentation of the coupon, a return free single pass would be provided.

Each of the passes would be valid for a period to expire 30 June 2015 (excluding school and public holidays).

It is felt that by offering the above incentive, the patrons visiting the park would in fact return to the attraction encouraging frequent attendance. It is also noted that this publication reaches a wider audience and may encourage families from surrounding areas to visit the Bunbury Wildlife Park.

Cr Steck's Motion

That all rate payers receive one free family entry ticket into the Bird Wildlife Park during the 2014/15 financial year.

13. Questions on Notice

13.1 Response to Previous Questions from Members taken on Notice

Nil.

13.2 Questions from Members

Cr Steck submitted four (4) questions on the 13 August 2014. A copy of the responses are provided below.

Question 1: Why was council not informed by staff that by deferring the matter of 10.14 Proposed Home Base Business, page 66 of the 22 July council meeting, to the next round of council, would make proceedings for the owner of the property next door obviously more difficult to defend if the matter went to SAT?

Response: Mr Gibbs was notified on the 6 July 2014 of the new application and made a submission on 11 June 2014 and on 17 June made a submission to be heard on this matter which was accepted by the Council. There is no 'third party' appeal right against the Council's decision to approve.

Question 2: Why did staff not inform the council during of the 22 July meeting, 10.14 Home Base Business that the original 6 month planning approval would lapse and a new development application would be presented to council to consider? When staff knew that the original planning approval would lapse?

Response: Agenda Item 10.14 on Page 66 under Summary informs the Council to the initial planning approval granted for six (6) months and the need for reapplication prior to the expiration of the time-limited approval that had ceased on 21 July 2014.

Question 3: Does council except that its actions on the 22 July, during the matter 10.14, Proposed Home Base Business, have disadvantaged Mr Chris Gibbs, 5 Sturt Street, South Bunbury in capacity of defence in the event of a SAT hearing?

Response: The Council had considered all relevant matters as required under the planning legislation and local policy and had made the decision to issue a time-limited conditional Planning Approval to address business operational matters and amenity issues. There is no 'third party' appeal to the SAT against the Council's decision to approve.

Question 4: Does council consider that the council could be seen as deliberately favouring one side of the planning considerations, on the matter of 10.14 Home Base Business, as council staff itself had not completed the recommendation to council for consideration on the evening of the 22 July, which was the original reason for deferring the matter?

Response: The Council had considered all relevant matters as required under legislation. The amended Agenda Item recommendation was circulated in advance to Councillors and was made available on the City website.

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

Following the Special Electors Meeting held Wednesday 12 August 2014, and due to a Motion on Notice regarding rating concessions being included in the agenda, it is requested that this matter be dealt with as urgent business.

Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item entitled *"Motions Passed at the Special Electors Meeting held 12 August 2014"* as a matter of urgent business.

14.1 Motions Passed at Special Electors meeting Held 12 August 2014

Applicant/Proponent:	Internal Report
Author:	Andrew Brien, Chief Executive Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Nil

Summary

On 21 July 2014 Council received a petition requesting a special electors meeting under section 5.28 of the Local Government Act 1995, for the specific purpose of discussing Council's proposed change from a differential rating system to a single rate system for the financial year of 2014/15, effective from and inclusive of July 1 2014.

A Special Electors Meeting was then called to be held on Wednesday 12 August 2014 where one (1) motion was passed being:

"The meeting expresses their grave concern at the inadequate consultation on the council's decision to move from a differential rating system to a single rating system, and call on Council to reverse the decision and revert back to the differential rating system."

In accordance with the Local Government Act, this is now referred to Council for consideration.

Executive Recommendation

Council notes the recommendation from the special electors meeting and:

1. Thanks each elector for attending the Meeting and advises that the rates levied, along with all other operations of the City, was extensively workshopped and reviewed as part of the normal annual Council budget process.
2. Advises that Council will not revert back to the differential rating system and that the adopted rating system applies.

Background

On Monday 21st July 2014 Council received a petition requesting a special electors meeting. A Special Electors Meeting was then called and motions sought to be included in the agenda, however no motions were received prior to the meeting. The meeting was advertised for public information, as follows:

- Bunbury Herald 'Public Notices' 29 July 2014
- Bunbury Mail 'City Focus Column' 30 July and 6 August 2014
- Notices posted on notice boards in the City's Customer Service Centre, libraries and website.
- Media release 23 July 2014.

On the 12 August 2014 a special electors meeting was held at the City of Bunbury with approximately 67 attendees at the meeting. A summary of the attendees is as follows:

- 47 signatories on the official attendance register
- 10 Councillors;
- 10 Executives and other staff;

At the special electors meeting on the 12 August 2014 the following motions were moved:

1. *That council apply a rates cap of 15% to mixed business and industrial properties for the 2014/15 financial year. This should automatically apply to all mixed business and industrial properties unless significant development or redevelopment of the site since the last GRV valuation.*
2. *The meeting expresses their grave concern at the inadequate consultation on the council's decision to move from differential rating system to a single rating system, and call on Council to reverse the decision and revert back to the differential rating system.*

Motion 1 moved by the Bunbury Chamber of Commerce and Industries was lost.

Motion 2 moved by Mr Geoff Pedley was carried.

Council Policy Compliance

There is no council policy applicable.

Legislative Compliance

In accordance with the Act, the motion passed at the Special Electors Meeting has now been referred to Council for consideration.

In relation to Council's basis of rating, there is no legislative requirements as the Local Government Act allows either a General (single) Rate or Differential Rate to be used as the basis of rating.

Officer Comments

In accordance with Section 5.33(2) of the Local Government Act 1995, the following are the reasons for the Council Decision.

The motion passed at the Special Electors Meeting reflected that electors felt there was inadequate consultation on the decision to move to a single rating system.

It is felt that this motion is inaccurate as there has been extensive consultation during consideration on this matter, as detailed below.

The discussion paper 'Review of our Basis of Rating' was endorsed by Council on 4 March 2014 for public consultation. The document outlined the current rating strategy and also various options for potential changes to the current rating model. After advertising the discussion paper and conducting a number of presentations with the Bunbury Chamber of Commerce and Industries, three (3) submissions were received. The City also extended the public submission period at the request of the Bunbury Chamber of Commerce and Industries to allow a longer than advertised consultation period.

At the Council Meeting held 10 June 2014, Council Resolved (Council Decision 201/14)

1. *The three (3) public submissions on the discussion paper: 'Review of our Basis of Rating' are noted and feedback on Councils decision is provided to each respondent.*
2. *That Option 1 (No Differential) be endorsed as the preferred rating model to be used in 2014/15 budget.*
3. *That the total amount of rates raised (excluding Specified Area Rates) of \$32.4M be used as the amount of rates required for the Draft 2014/15 Budget.*
4. *Council approve the advertising of the Rates for 2014/15.*
5. *Council invite public comment in respect to the proposed rates for 2014/15 for a period of 21 days.*
6. *That a minimum rate be established of \$1,000.*

As an outcome of community consultation (point 1 of Council Decision 201/14) a significant number of submissions were received in relation to application of a single rate and the proposed levels of increase, in particular with reference to the mixed business and industrial sectors.

During this community consultation process a meeting was requested by a number of mixed business and industrial ratepayers. A meeting was held in the Council Function Room on 16 July 2014 wherein approximately 105 property and business owners attended and voiced their concerns in relation to the following:

1. The proposed level of increases;
2. The lack of consultation in relation to the changes;
3. The perceived lack of equity in relation to the move away from differential rates;
4. The lack of information in relation to where and how rates are spent.

At the Council Meeting held 22 July 2014, Council resolved (Council Decision 276/14)

Council request that the Chief Executive Officer finalise the preparation of the draft 2014/15 budget based on the following criteria:

1. *A single rate in the dollar to be applied to all properties in the district as the preferred rating model for 2014/15;*
2. *The total amount of rates raised (excluding Interim and Specified Area Rates) be \$32.4m;*
3. *A minimum rate of \$1000.00*

Council then adopted its budget imposing a single rate in the dollar to be applied to all properties in the district as the preferred rating model for 2014/15 at the Special Council Meeting held Wednesday 30 July 2014 with the total amount of rates raised (excluding Interim and Specified Area Rates) be \$32.4m. Two (2) presentations were then provided by the Mayor on the following

day, Thursday 31 July 2014, one held at the Bunbury Chamber of Commerce and one held at the City of Bunbury Function Room.

There was discussion of the consideration of applying a concession to some properties, and as mentioned previously to Council, there is a need to carefully consider the issue of applying this in a blanket manner.

It is noted that whilst there have been varying degrees of increases in Gross Rental Values (GRV) across the City, some of these increases have been due to the intensification or redevelopment of the properties.

Analysis of Financial and Budget Implications

If Council resolved to revert back to differential rating system as per the Special Electors Meeting motion, this would involve the City of Bunbury rating notices to be withdrawn and all rating notices required to be reprinted. This would see all properties imposed with a new rate in the dollar.

The estimated cost to re-issue rating notices is approximately \$21,115 (ex GST). This is comprised of \$11,847 for printing and \$9,268 for postage for 15,466 notices.

Community Consultation

As per the Officer Comments, it is felt that this matter has been subject to community consultation including media releases, call for public submissions, information sessions and a public meeting.

Councillor/Officer Consultation

The discussion paper, 'City of Bunbury - Review of our Basis of Rating' was provided to Councillors at the Council Briefing Session on 28 January 2014 and further discussed at the Council Briefing Sessions on 11 and 25 February 2014, 12 and 29 May 2014, and 3 June 2014. This document was updated to include feedback provided by Councillors prior to advertising.

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

Due to the next Withers Advisory Committee Meeting scheduled for 12 September 2014, it is requested that this matter be dealt with as urgent business to allow for any outcomes to be implemented prior to the meeting.

Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item entitled “*Withers Advisory Committee*” as a matter of urgent business.

14.2 Withers Advisory Committee

Applicant/Proponent:	Internal Report
Author:	Andrew Brien, Chief Executive Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CRUSC-1 Confidential Correspondence

Summary

Following a meeting between the Chief Executive Officer and the Chair of the Withers Advisory Committee a number of concerns have been raised in relation to the governance and internal operations of the Withers Action Group (WAG).

Given the potential governance issues with WAG raised in the meeting and based on the independent advice received, it is recommended that Council take action to ensure appropriate governance arrangements are implemented.

Furthermore, a copy of confidential correspondence regarding this matter was provided to the City. A copy of this correspondence is circulated to Elected Members under Confidential Cover CRUSC-1.

This report outlines two (2) options for consideration in determining the way forward.

Executive Recommendation

1. The Withers Action Group be removed from the Withers Advisory Committee pending demonstration of full compliance with their constitution, good governance practices for an incorporated association and the items detailed in Point 2.
2. That the Bunbury City Council requires the Withers Action Group to immediately bring its group into compliance including, but not limited to the following:
 - a. Provision of an audited statement of accounts, with full explanation of any anomalies identified;
 - b. An outline of how the group intends to maintain and continue their financial record keeping obligations as an incorporated group;
 - c. Provision of details on how it will meet its obligations for the recording of their membership, including those who have voting rights as identified under their constitution;

- d. Bring into line their meeting practice to ensure meetings are run in accordance with good governance principles and practices and in accordance with their constitution;
- e. Ensuring their office bearers are able to run the group without undue interference from non-members and in a manner that seeks to achieve the groups stated objectives of furthering the Withers Community;
- f. Adoption of a Code of Conduct for their members and visitors to ensure appropriate behaviour and respect is maintained at Withers Action Group meetings;
- g. Provide details of the status of any investigations currently being undertaken by any external agency and how the group intends to satisfy their concerns.

Background

Council resolved to establish the Withers Advisory Committee (WAC) comprising the following membership:

- a. Cr Hayward, Cr Miguel, and Cr Steck;
- b. Mr Douglas Fimister and Ms Mary Dunlop as the two (2) Withers Action Group Representatives;
- c. Ms Joanna Hugues-Dit-Ciles and Mr Jayden Prosser as the two (2) community members;
- d. Mr Ken Warnes as the Convenor of the Withers Action Group.

The WAC is the only Committee of Council which has delegated authority under sections 5.16 and 5.17(1)(c)(i) of the Local Government Act 1995 (Council Decision 31/14 of 4 February 2014) which is as follows:

- a. Authority to prioritise all works associated with the Withers Action Plan Priority projects as resolved by Council on 4 February 2014.
- b. Authority to authorise the commencement of all works as prioritised under point (a) above.
- c. Authority to commence/initiate the necessary actions to carry out the works authorised under point (b) above.

Conditions:

1. Any actions which requires an absolute majority of Council cannot be actioned by the Committee.
2. The Committee is restricted to authorising projects that are on Council owned or controlled land and are within the approved budget or Reserve Fund established for the Withers Action Plan.
3. A report is to be provided to Council outlining any decisions made under delegation.
4. A review of delegated persons is to be undertaken as part of the review of Committees following each local government election.
5. Any decision made by the Committee must have the unanimous support of the Elected Members appointed to the committee in attendance at the meeting. If unanimous support of the Elected Members appointed to the Committee is not gained on any decision, then the item should be referred back to the next Bunbury City Council meeting for consideration.

As a Committee of Council, all members of the WAC are required to comply with the provisions of the Local Government Act 1995, Council’s Standing Orders 2012 and the Council’s Code of Conduct.

It is apparent from the information provided that there is a need to consider the issues and for Council to take action to ensure appropriate levels of governance are maintained.

As the WAG has three (3) members on the WAC it is essential that the group that they are representing is operating in accordance with appropriate governance arrangements. This is particularly relevant as the WAC has delegated authority for the expenditure of public funds.

Council Policy Compliance

Not Applicable

Legislative Compliance

Subdivision 2, of Division 2, of Part 5 of the Local Government Act 1995 deals with Committees of Council and any associated decisions will require an absolute majority vote.

In relation to a Council or Committee, disclosure of interest extends to members of a committee. Section 5.59 of the Local Government Act 1995 defines the term “member” as a Council member of a member of the committee.

In accordance with Council Decision 31/14, Section 5.16 of the *Local Government Act 1995* allows delegation to committees and section 5.17 (1)(c)(i) allows delegation to committees comprising of elected members and other persons (Community Members) for the proper management of Local Government property.

Officer Comments

The establishment of the WAC was seen as a positive approach to progress the implementation of the priority areas contained within the Withers Action Plan and has progressed many of these projects over the last year.

WAC has also served to expand the involvement of a broader cross section of the Withers community in the decision making and prioritisation of projects across the suburb.

Councillors were provided with a very brief overview of the issues following the Council Briefing held on 12 August 2014 and the summary of two (2) options for consideration. These two (2) options are outlined below.

Option 1

Amend the membership of the WAC and remove the WAG as representatives on the Committee. Should this option be supported the following alternative recommendation should be considered:

That:

1. *The current composition of the Withers Advisory Committee be amended as follows:*
 - a. *Cr Hayward, Cr Miguel, and Cr Steck;*
 - b. *Mr Douglas Fimister, Ms Mary Dunlop, Ms Joanna Hugues-Dit-Ciles and Mr Jayden Prosser as community members;*

2. *The Committee undertake a review of the terms of reference and present recommendations to Council for consideration by 30 September 2014.*

Given the significance of the work and level of delegation given to the WAC, it may be considered appropriate that the WAG no longer be represented on the Committee and that all members of the Committee simply be considered to be there representing the entire Withers community.

This option would not see the opportunity for the WAG to be involved in the future of the Advisory Committee but would still allow all of the members who have been involved to date (with the exception of the Convenor of the WAG) to maintain their involvement.

Option 2 (Executive Recommendation)

Remove the WAG from the WAC pending demonstration of full compliance with their constitution and good governance practices for an incorporated association.

In the event that the Council wishes to allow time for the Withers Action Group to address the issues of potential non-compliance then the Executive Recommendation should be considered.

Analysis of Financial and Budget Implications

Not Applicable.

Community Consultation

To date no community consultation has taken place in relation to this report; however the current office bearers of the Withers Action Group have been advised that the report is on the agenda for consideration by Council.

Councillor/Officer Consultation

The Chief Executive Officer, Director Works and Services (as the Executive Officer for the Committee) and the Chair of the Withers Advisory Committee have been consulted in the drafting of this report.

Councillors have been provided with an informal briefing on this matter on 12 August 2014.

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

Following receipt of advice from the Department of Local Government, it is requested that this matter be dealt with as urgent business.

Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item entitled “*Review of Elected Member Representation – Proposed Reduction of Councillor Numbers*” as a matter of urgent business.

14.3 Review of Elected Member Representation – Proposed Reduction of Councillor Numbers

Applicant/Proponent:	Internal
Author:	Greg Golinski, Manager Corporate Performance
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix URG1 - Correspondence from the Department of Local Government

Summary

The purpose of this report is for Council to receive and note correspondence from the Local Government Advisory Board regarding Council’s proposal to reduce the number of Elected Members from twelve (12) to eight (8) and make a recommendation going forward.

The Executive Recommendation takes into consideration Council’s previous decision in relation to this matter, and facilitates the first step required to undertake a formal review of Elected Member representation.

Executive Recommendation

That Council:

1. Receive and note the correspondence from the Local Government Advisory Board in relation to Council Decision 198/14.
2. Reaffirms points 1 and 2 of Council Decision 198/14.
3. Pursuant to clauses 5(a) and 7 of Schedule 2.2 of the Local Government Act 1995, requests the Chief Executive Officer initiate a review of representation cognisant of point 2 above

Background

At the Ordinary Council Meeting held 10 June 2014, Council resolved as follows in relation to this matter (refer Council Decision 198/14):

That Council:

1. *Advises the Local Government Advisory Board that pursuant to section 2.18(3) and Clause 5(b) of schedule 2.2 of the Local Government Act 1995, the intention to reduce the number of Elected Members from twelve (12) to eight (8).*

2. *Withdraws two (2) Elected Members positions at each of the 2015 and 2017 ordinary local government elections, bringing the total Elected Member representation down to eight (8) Councillors, plus the Mayor, by 2017.*
3. *Agrees the reduction be progressed as a minor matter, pursuant to Clause 5(b) of Schedule 2.2 of the Local Government Act 1995.*
4. *Authorises the CEO to initiate community consultation and research into the potential establishment of Community Panels or Precinct Committees based on geographic groupings of interest throughout the City*

Officers subsequently wrote to the Local Government Advisory Board (the Board) and as a result, the City recently received correspondence from the Board advising that the City's proposal was considered by the Board at its meeting held on 5 August 2014. It has been duly determined that the proposal cannot be considered as a minor matter, and as such the Council's proposal has been rejected. A copy of the correspondence received is **attached** at Appendix URG-1.

The Board determined that the proposal could not be considered a minor nature as contemplated by Schedule 2.2 of the *Local Government Act 1995* and as such resolved to reject the City's proposal.

As per the Boards instructions, to progress this matter further the City is required to conduct a formal review of its representation.

Council Policy Compliance

There is no Council Policy applicable to this proposal.

Legislative Compliance

The City has been instructed to conduct a formal review of its representation in accordance with Schedule 2.2 of the *Local Government Act 1995*.

Officer Comments

To undertake a formal review in accordance with Act, Council must resolve to undertake a review of its elected member representation.

The Board has in effect only disagreed with point 3 of Council Decision 198/14. In order for Council to progress the other aspects of that decision, consideration must be given to conducting a review of representation pursuant to clauses 5(a) and 7 of Schedule 2.2 of the *Local Government Act 1995*. Should such consideration not be forthcoming, Council Decision 198/14 is effectively defeated.

A formal review in this regard requires Council to undertake a minimum 6 week public consultation period, after which a report will be prepared for Council consideration taking into account any submissions received. If endorsed, the report is then sent to the Board for consideration.

Public consultation has previously been undertaken in this regard prior to Council's earlier decision being made, however that submission period was undertaken independently of the requirements of the *Local Government Act*, and therefore did not meet the statutory requirements of a formal review.

Analysis of Financial and Budget Implications

Pursuant to the requirements of the Local Government Act 1995, the City is required to give notice that a review is to be carried out which would incur only minor advertising expenses and these can be accommodated within the 2014/15 budget.

Community Consultation

To undertake a review under clauses 5(a) and 7 of Schedule 2.2, Council is required to give local public notice to inform the community that a review of representation is being undertaken. The notice must also advertise that submissions may be made to the City of Bunbury six weeks from the date of the first notice (not including the day of the notice).

Public consultation has previously been undertaken in this regard prior to Council's earlier decision being made, however that submission period was undertaken independently of the requirements of the Local Government Act, and therefore did not meet the statutory requirements of a formal review.

Councillor/Officer Consultation

The issue of Elected Member representation was discussed at the Ordinary Council Meetings of 4 March and 10 June 2014.

The matter was also raised with the previous elected Council.

15. Meeting Closed to Public

15.1 Matters for which the Meeting may be Closed

15.2 Public Reading of Resolutions that may be made Public

16. Closure