



Bunbury City Council

Notice of Meeting and Agenda 5 August 2014



CITY OF BUNBURY
4 Stephen Street
Bunbury WA 6230
Western Australia

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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 Committee 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, **5 August 2014** at 5.30pm.



Andrew Brien
Chief Executive Officer
(Date of Issue: 31/8/2014)

Agenda 5 August

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

4.2.1 Councillor McNeill

Councillor McNeill requested leave of absence from all Council-related business from 16 July 2014 to 24 July 2014 inclusive.

Section 2.25 of the *Local Government Act 1995*, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six (6) consecutive ordinary meetings of the Council.

Executive Recommendation

Pursuant to Section 2.25 of the Local Government Act 1995, Councillor McNeill previous request for leave of absence from all Council-related business from 16 July 2014 to 24 July 2014 inclusive be noted.

*Note: This item was included in the Ordinary Council Meeting Agenda for the 22 July 2014, however the item was not addressed at the meeting.

5. Declaration of Interest

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

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

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

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

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

Cr Kelly declared an impartiality interest in item 10.5.3 titled *“Proposed Home Business (Counselling) Lot 79, No. 3 Sturt Street Bunbury”* as he is a long term acquaintance of the proponent. Cr Kelly will remain in the chamber for the discussion and vote on the matter.

Cr Hayward declared a financial interest in item 10.5.3 titled *“Proposed Home Business (Counselling) Lot 79, No. 3 Sturt Street Bunbury”* as the applicant has used his business to hire equipment. Cr Hayward will vacate 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’

At the Council meeting on the 22 July 2014, Mrs Tresslyn Smith of 8 Picton Crescent Bunbury, submitted three questions during Public Question Time. Question 3 was taken on notice, and the following response was provided following the meeting.

Question: The item for Coastal Navigation Solutions for assessment and maintenance schedule \$5,280. I ask what are the qualifications of Coastal Navigation Solutions for public art and is the payment for a maintenance schedule only or does it include actual maintenance work, and if so what was the maintenance and on what public items was it carried out, and if the two amounts have yet to be decided and how would council agree to apply \$50,000 to the Youth Arts Festival without having decided the full allocations for new public art and maintenance is going to be?

Response: The \$5,280 is for the assessment and maintenance schedule only; it does not include the maintenance on the works of art. Coastal Navigation Solutions were recommended by Tony Jones, a well-known artist of public artworks. Coastal Navigation Solutions carried out maintenance on a number of Tony’s works in Perth, and also maintains public art for the City of Perth and City of Swan. Approximate costs of maintenance will be based on the annual maintenance requirements from the schedule; including any additional works of a high priority identified in the schedule and quotes received from either Coastal Navigation Solutions or other businesses through the procurement process.

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 22 July 2014 have been circulated.

Recommendation

The minutes of the Ordinary meeting of the Bunbury City Council held 22 July 2014 be confirmed as a true and accurate record.

7.1.2 Minutes – Special Council Meeting

The minutes of the Special meeting of the Bunbury City Council held 30 July 2014 for the adoption of the 2014/15 budget have been circulated.

Recommendation

The minutes of the Special meeting of the Bunbury City Council held 30 July 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 – Youth Advisory Committee Minutes 9 July 2014 Appendix MTBN-2 – Withers Advisory Committee Minutes 11 July 2014

Summary

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

1. Title: Youth Advisory Committee Minutes 9 July 2014
Author: April Byrne, Community Development Officer
Appendix: MTBN-1
2. Title: Withers Advisory Committee Minutes 11 July 2014
Author: Alison Baker, Executive Assistant Works and Services
Appendix: MTBN-2

Council Committee Recommendation

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

1. Youth Advisory Committee Minutes 9 July 2014
2. Withers Advisory Committee Minutes 11 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*

Nil

10.2 Chief Executive Officer Reports

10.2.1 Major Projects Update 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 Major Projects Update Report

Summary

The Major Projects Committee was formed to provide an opportunity for elected members to have an oversight role in relation to the major projects. It was considered that these matters could more appropriately be dealt with through a formalised reporting arrangement direct to Council.

As an outcome of the Council Decision to disband the Major Projects Committee, the report **attached** at Appendix CEO-1 provides an overview of Councils endorsed major projects for the 2013/14 financial year, being the period 1 July 2013 to 30 June 2014.

Executive Recommendation

That Council receives and notes the circulated Major Projects update report for the period 1 July 2013 to 30 June 2014.

Background

The Major Projects report is a positive tool to help effectively manage and report on current year Major Projects being undertaken by the City of Bunbury, and will be submitted to Council on a six weekly interval and to allow time for works to be actioned.

It would be noted that in list of the projects identified in this report that not every project will have an update due to project delivery and consultation at different stages.

Council Policy Compliance

Not applicable.

Legislative Compliance

Not Applicable

Officer Comments

This report will be circulated to Council for noting and receiving on a 6 weekly basis. It would be noted that if any Elected Member wishes to receive an update on any major project outside of this timeframe, this option is still available.

Major projects which were included in the original list but have no allocated budget will form the basis of a separate report.

Analysis of Financial and Budget Implications

Not applicable.

Community Consultation

There is no requirement for community consultation.

Councillor/Officer Consultation

Not Applicable.

10.3 Director Community Development

Nil

10.4 Director Corporate Services Reports

10.4.1 Audit Regulation 17

Applicant/Proponent:	Internal Report
Author:	Greg Golinski, Manager Corporate Performance
Executive:	Andrew, Brien Chief Executive Officer
Attachments:	Nil

Summary

The purpose of this report is to provide Council with an update as to how compliance will be achieved with Audit Regulation 17.

Executive Recommendation

That Council note the information on how compliance will be achieved with Audit Regulation 17.

Strategic Relevance

- Goal 1 Accountable and Transparent Governance
Objective 1.2 Maintain a high standard of corporate governance and improve access to information.
Strategy 1.2.2 Ensure compliance with corporate legislation and regulations.

Background

On 24 June 2014, Council received a report to consider whether it wished to engage the services of an external resource in 2014/15 to assist the City meet compliance with new Audit Regulation 17.

Council Decision 214/14 requested the Chief Executive Officer to prepare a report to be presented to the Council meeting of 5 August 2014, outlining how compliance will be achieved with Audit Regulation 17 by December 2014.

New Audit Regulation 17 reads as follows:

17. CEO to review certain systems and procedures

- (1) *The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to –
(a) risk management; and
(b) internal control; and
(c) legislative compliance.*
- (2) *The review may relate to any or all of the matters referred to in subregulation (1)(a), (b) and (c), but each of those matters is to be the subject of a review at least once every 2 calendar years.*
- (3) *The CEO is to report to the audit committee the results of that review.*

Council Policy Compliance

There is no Council policy consideration impacting on this report.

Legislative Compliance

This report relates to Regulation 17 of the *Local Government (Audit) Regulations 1996*.

Officer Comments

Audit Regulation 17 requires the CEO to review the appropriateness and effectiveness of the City of Bunbury’s systems and procedures in relation to risk management, internal control and legislative compliance.

It is proposed that each of the three (3) requisite areas will be reviewed and audited in accordance with the following outline:

Risk Management	Internal Control	Legislative Compliance
Review whether the City’s risk management system is effective and that material operating risks are appropriately considered.	Review separation of roles and functions, processing and authorisation controls.	Assess internal monitoring of compliance with legislation and regulations.
Review the City’s business continuity plan (including disaster recovery) ensuring the plan is current, effective and tested from time to time.	Assess control of approval of documents, letters and financial records.	Assess the City’s completion of the annual Compliance Audit Return and reporting the results of that review to the Audit Committee and Council.
Assess internal process for determining and managing material operating risks in accordance with the City’s identified tolerance for risk in the following areas: <ul style="list-style-type: none"> • Potential non-compliance with legislation, regulations and standards and policies; • Important accounting judgements or estimates that prove to be wrong; • Litigation and claims; • Misconduct fraud and theft; • Significant business risks; • recognising responsibility for general or specific risk areas, for example, environmental risk, occupational health and safety, and how they are managed by the City. 	Assess management internal reviews undertaken in respect to comparison of internal data with other or external sources of information.	Assess communications between key management and the Audit Committee to ensure the Audit Committee is informed in respect to the effectiveness of the City’s compliance and recommendations for changes as required.
Regular risk reports which identify: <ul style="list-style-type: none"> • Key risks; • Status and effectiveness of the risk management systems; 	Assess security controls in respect to physical access to assets and records.	Review the City’s procedures in respect to receiving, retaining and handling compliances, including confidential and anonymous

Risk Management	Internal Control	Legislative Compliance
<ul style="list-style-type: none"> Identified risks are monitored; New risks are identified, mitigated and reported. 		employee complaints.
Assess adequacy of the City's processes to manage insurable risks: <ul style="list-style-type: none"> Ensure the adequacy of insurance cover and level of self-insurance. 	Assess security controls in respect to computer applications and information systems (general and application IT controls).	Review key managements internal review processes in respect to the identification of adverse trends and management plans to address these.
Review effectiveness of the City's internal control system with management and the internal and external auditors.	Assess access limits placed on data files and systems (to make changes).	Review management disclosures in financial reports of the effect of significant compliance issues (if any).
Assess whether management has controls in place for unusual types of transactions and/or any potential transactions that might carry more than an acceptable degree of risk.	Assess whether the maintenance and review of financial control accounts and trial balances is regular and appropriate.	Ensure internal and/or external audit contracts include an assessment of compliance and ethics risks in the development of the audit plan and in the conduct of audit projects, and report compliance and ethical issues to the Audit Committee.
Assess the City's procurement framework: <ul style="list-style-type: none"> Probity; Transparency and procedures/processes of policies and if these are being applied. 	Assess key management internal reviews undertaken in respect to comparison and analysis of financial results with budgeted amounts.	Review of Audit Committee's processes and procedures in respect to compliance with legislative and regulatory compliance ensuring no misuse of position through adequate disclosure of conflict of interest.
Assess Audit Committee meeting practices - ensuring periodically meeting with key management, internal and external auditors and compliance staff to understand and discuss any changes in the City's control environment.	Assess key management internal reviews undertaken in respect to the arithmetical accuracy and content of records.	
Ascertain whether fraud and misconduct risks have been identified, analysed and evaluated. Have an appropriate treatment plan which has been implemented communicated, monitored and there is regular reporting and ongoing management of fraud and misconduct risks.	Assess controls in respect to purchasing and payment of accounts.	
	Assess reporting, review and approval of financial payments and reconciliations.	
	Assess physical cash and inventory count records when compared to accounting records.	

The City already conducts internal and external audits throughout the year, previous examples being:

- Annual Compliance Audit Return (Department of Local Government and Communities);
- Annual Financial Management Systems Review (Grant Thornton);
- 2013 Procurement Probity Review (WALGA);
- Internal Audit - Human Resources (AMD Chartered Accountants);
- Internal Audit – ICT (AMD Chartered Accountants).

It is proposed that officers will use a similar methodology as for the above audits to systematically conduct the internal review as required by Regulation 17.

Reports will be prepared for the Audit Committee reporting on the City's current internal control systems, risk management procedures and legislative compliances procedures. The internal audit will identify if current systems and procedures are appropriate and effective, and outline any issues identified with recommendations made accordingly.

Analysis of Financial and Budget Implications

There are no financial and budget considerations impacting on this report.

Community Consultation

There is no community consultation impacting on this report.

Councillor/Officer Consultation

Multiple reports have been tabled with and discussed at regular Audit Committee meetings regarding the internal and external audits and the requirement to comply with Regulation 17.

10.4.2 Quarterly Report – Delegation 1.2 – Power to Accept Tenders

Applicant/Proponent:	Internal
Author:	David Russell, Senior Contracts and Procurement Officer
Executive:	Wayne Wright, Director Corporate Services
Attachments:	Nil

Summary

In accordance with Delegation DAG2 (Power to Accept Tenders) of the City of Bunbury Delegations Register March 2014, the Chief Executive Officer is to provide a quarterly report to Council on all tenders accepted up to \$250,000 excluding GST. This agenda item complies with that Delegation.

Summary of Tenders accepted under Delegation 1.2 for the period 1st April – 30th June 2014.

<i>Date</i>	<i>Tender Details</i>	<i>Contractor</i>	<i>Amount (exc gst)</i>
1/05/14	RFT1314 00018 Natural Resource Management	Natural Area Consulting Pty Ltd	2013.14 \$49, 546.50 2014.15 \$38, 016.50
02/05/14	RFT1314 00014 Koombana Beach Toilet Block Sewer Connection	Geographe Civil Pty Ltd	\$93, 800 Separable Portion A \$31, 200
20/05/14	RFT1314 00016 Horseshoe Lake Drainage Pipe Supply	Iplex Solutions Pty Ltd	\$111, 776.40
21/05/14	RFT1314 00020 Koombana Bay Ablution Refurbishment	Phillip Best Plumbing	\$131, 460
10/06/14	RFT1314 00019 Environmental Auditors Panel	1. ENVIRON Australia Pty Ltd 2. GHD Pty Ltd 3. Golder Associates Pty Ltd 4. Australian Environmental Auditors Pty Ltd	Panel Contract – Quotes obtained project by project
30/06/14	RFT1314 00019 Supply, Install and Commission CCTV Withers and City of Bunbury Admin Building (WALGA Panel Procured)	Intervid International Pty Ltd	Part A \$84, 703 Part B \$294, 960 (Part B price still being negotiated).

Executive Recommendation

That Council endorses this report under the requirements of the City of Bunbury Delegations Register March 2014.

Background

Pursuant to Section 3.57 of the Local Government Act 1995 and Regulations 11 to 24 of the Local Government (Functions and General) Regulations 1996 ('the Regulations'), Council delegates its

authority to the Chief Executive Officer to accept tenders received up to \$250,000 and up to \$500,000 (Council Decision 186/11) where a tender for the supply of products or services is procured through the Western Australian Local Government (WALGA), State of Commonwealth Governments or any of its agencies that provide preferred supplier contracts or agreements.

The Chief Executive Officer also has delegated authority to undertake negotiations pursuant to regulation 20 of the Regulations with the person who in his opinion submitted the most advantageous tender, with the purpose of variation in respect of the required works or goods.

Conditions:

- The Chief Executive Officer is to provide quarterly advice on all tenders accepted over \$250,000.
- Where the goods or services so procured contain options to extend the Contract for a further period(s), the delegated amounts shall be applied per annum to a maximum value not exceeding \$750, 000 excluding GST.
- Each delegated officer's capacity to approve an original tender is set at according to the schedule of purchasing limits.
- Each delegated officer's capacity to approve a variation is set as per delegation DAG4 – Contract Price Variation

Council Policy Compliance

City of Bunbury Delegations Register 2014 requirements.

Legislative Compliance

Section 3.57 Local Government Act 1995

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

Officer Comments

Where the delegation permits, the CEO approves acceptance of Tenders. When the CEO approves Tenders under delegation, internal and external reporting and compliance requirements regarding procurement remain the same as if an agenda item was presented to Council.

Tenders over the delegated threshold are presented to Council for endorsement.

Analysis of Financial and Budget Implications

Any tenders approved under the Power to Accept Tenders Delegation have budget funds approved and secured prior to the procurement process commencing.

Community Consultation

N/A

Councillor/Officer Consultation

N/A

10.4.3 Proposed Amendment of Annual Rental Rate to Bunbury City Kart Club over portion of Reserve 670 South Western Highway, Davenport.

File Ref:	L36
Applicant/Proponent:	Bunbury City Kart Club Inc.
Author:	Jane Porter, Senior Property Officer
Executive:	Wayne Wright, Director Corporate Services
Attachments:	Appendix DCS-1 Location Plan

Summary

The City of Bunbury has been approached by the Bunbury City Kart Club (“the Applicant”) seeking Council’s consent to the reduction of the Annual Rental Rate on the Lease over a portion of Reserve 670, Lot 500 South Western Highway, Davenport which was approved by Council on 18 March 2014, Council Decision 85/14. A location plan is **attached** at Appendix DCS-1.

Executive Recommendation

Council agrees to the reduction of the Annual Rental Rate over the Lease over a portion of Reserve 670, Lot 500 South Western Highway, Davenport from \$9,800.00 + GST per annum to \$5,600.00 + GST per annum.

Subject to the terms and conditions as specified in the report, and the following:

1. The Applicant to pay all costs associated with the document preparation.

Background

The Applicant has been in “Holding Over”, on a month by month basis since the expiry of their Lease in October 2007; this partly due to the clearing of native vegetation by the Applicant, and boundary differentiation and issues arising from this. Negotiations have been ongoing between the City and the Applicant in relation to the Applicant’s responsibilities over the Leased Premises. *Section 8 of the Schedule in the Lease, Vegetation, Firebreaks, Fencing* clearly identifies conditions which must be complied with in regards to these issues in future.

The Applicant, during lease negotiations, and at the Applicant’s expense, have to revegetate the specific areas as instructed by the City during the winter months, with the approximate commencement date being the 31 March 2014. This is still in progress, and the Applicant has also installed fencing, clearly identifying the lease boundaries.

The current market rental valuation from Landgate is for \$14,000.00 + GST per annum. This was originally discounted to \$9,800.00 + GST per annum, in line with the City’s current “Rent Tiers” structure. Previously the building and maintenance costs were not discounted at the higher rate. The City has now taken the following into consideration and the Applicant’s current individual circumstances, which include the following:

- 1) The facility itself measuring 60,000m² approximately;
- 2) Maintenance and life-cycle of the building (30% discount); and
- 3) Building Condition/Ownership (30% discount).

A meeting was held with the Applicant, on site, on the 9th July 2014 to negotiate a possible reduction in the proposed rental rate, with the Applicant having provided the City with the following request in support of its application for a reduction:-

“ I would like to ask for assistance with the amount we are expected to pay in rent for the following reasons:-

In the past the Bunbury City Go Kart Club (Inc.) has never asked the City of Bunbury for any assistance with developments or improvements all projects are 100% funded by our club.

Our club has a member base of around 70 competing members and 50 normal Members our main focus is with junior development teaching children all aspects of road safety and motorsport in a safe and controlled environment.

As we are controlled by the Australian Karting Association (AKA) our track and facilities have to comply with their standards to hold any meetings. We have yearly track inspections then a track licence will be issued once approved by the (AKA).

This year we have invested \$7000.00 on a new fence \$2000.00 re lining the inside our club house \$4000.00 re tiling and fittings for the ladies toilet and \$3000.00 on track upgrades.

The past five years we have erected new pit shelters at a cost of over \$35000.00 built a retaining wall around our club house \$15000.00 installed new reticulation \$2000.00 erected a storage shed \$5000.00 and upgraded our in and out grids \$11000.00.

The club plans to upgrade our track lights at a cost of around \$30000.00 and we are also working towards having our track re surfaced as it has never been done and is in desperate need.

We have two big open meeting per year the first is what we call the Western Cup. This is part of a series and this year we had 240 entries add the pit crews and families this would have brought over 600 people to Bunbury we also hold a big open meeting in June called the Coastal Classic that did attract the same numbers this would have to be good for the local economy.

I hope the council will see what we have done and will continue to do for the community and assist us with the new proposed/reduced rent structure.”

Officer Comments

The Applicant has been paying \$2,276.61 + GST per annum, with only CPI increases annually since 2007. A market rental valuation was requested from Landgate in 2007 by the then Manager Administration and Property Services, this amounted to \$5,720.00 + GST per annum; however was never applied to the Lease.

The Applicant has expressed concern at the discounted \$9,800.00 + GST annual rental rate to be charged with the new Lease. The Applicant has advised it is unable to pay this fee, and has not yet signed the Lease Agreement which was forwarded to the Applicant on the 15 April 2014. The Applicant has advised that it does not generate enough income from its members to cover this cost.

The surrounding Clubs at the Motorsport Precinct are currently paying between \$1,562.00 + GST and \$5,200.00 + GST per annum. It must be taken into consideration the portion of Reserve 670,

that the Applicant currently leases, was valued by Landgate to be worth \$700,000.00, being one of the highest for the Motorsport Precinct and the market rental valuation supplied in 2014 was prepared in line with this valuation.

Analysis of Financial and Budget Implications

A reduction in the annual rental rate from \$9,800.00 + GST to \$5,600.00 + GST per annum.

Community Consultation

Not Applicable.

Councillor/Officer Consultation

Environmental Officer, Team Leader Sustainability, Compliance Officer, Manager Contracts and Property and Sport and Recreation Liaison Officer, Recreation.

10.4.4 Proposed disposal of Lot 66 Ocean Drive, Bunbury

Applicant/Proponent:	Internal Report
Author:	Massimo Andreone, Manager Contracts and Property
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix DCS-2 Landgate Market Valuation 14 June 2013 Appendix CRUSC-1 Confidential Report: Proposed disposal of Lot 66 Ocean Drive Bunbury Appendix CRUSC-2 Confidential Offer Lot 66 Ocean Drive Bunbury

Summary

An Offer to Purchase the property situated at 65 Ocean Drive, being Lot 66 Ocean Drive, Bunbury (“the Property”), subject to conditions, has been submitted to the City of Bunbury (“the City”) for consideration by Council, via Council’s appointed selling and marketing agency, SDEA Nominees Pty Ltd T/a Southern Districts Estate Agency (“the Agency”), by Home Art Building Group Pty Ltd (“the Purchaser”).

At the Council Meeting held on 6 August 2013, under Resolution Number 253/13, Council endorsed the engagement of the Agency to provide a marketing and sales service for the disposal of surplus commercial and residential freehold land owned by the City of Bunbury, including the Property.

Executive Recommendation

1. Council authorises the Chief Executive Officer to negotiate a purchase price, and relevant terms and conditions, with the Purchaser, including the making of appropriate counter-proposals, for the sale of the Property to the Purchaser, via the Agency, and to conduct a due diligence on the Purchaser’s financial standing and business status.
2. The City does not, by virtue of selling the Property subject to Development and General Structure Plan Approval conditions, limit its discretionary powers as the responsible authority for its Town Planning Scheme, or any amendments thereto or thereunder.
3. Disposal of the Property is subject to, and conditional upon, statutory advertising of such disposal and final endorsement thereof by Council, in terms of the provisions of Section 3.58 of the *Local Government Act 1995*.

Background

A Market Valuation (“the Valuation”) for the Property was obtained from Landgate, dated 14 June 2013. The Valuation concludes a value of 2,856/m² @ \$775/m² = \$2,213,400 adopting \$2,200,000 inclusive of GST; however, on the assumption that the Property has development potential in accordance with its zoning, and is not adversely affected by matters such as contamination, extraordinary environmental restrictions, heritage or native title. A copy of the Valuation is **attached** at Appendix DCS-2.

A Confidential Report on the Offer is **attached** at Appendix CRUSC-1 and CRUSC-2.

Council Policy Compliance

There is no Council Policy applicable to this matter.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995* (“the Act”)

Officer Comments

Council has been unable to dispose of the Property for some time, the Property is surplus to the City’s requirements, and endorsement of the Recommendation would enable further negotiations to be conducted with the Purchaser, in order to achieve the best possible financial outcome for the City.

Analysis of Financial and Budget Implications

Though the proposed purchase price falls short the Valuation (which stipulates \$2,000,000 plus GST), the proposed purchase price exceeds the current market value estimate for the Property by the Agency, in sum of \$1,200,000.

The Agency’s selling commission has been set in terms of their mandate at 2% of the actual selling price of the Property, plus GST.

The City’s Legal costs and disbursements for its Convayancers to ensure settlement of the matter would also be payable out of the net proceeds of the sale.

Community Consultation

There has been no community consultation in relation to this matter at this point in time. However, all submissions received pursuant to publication of the disposal in terms of Section 3.58(3) of the Act will be considered by Council prior to final endorsement of the disposal.

Councillor Officer Consultation

The City’s Executive Leadership Team has considered the Offer and accord with the Recommendations detailed in this report.

Strategic Community Plan Objectives

Improve the City's financial performance.

10.5 Director Planning and Development Services Reports

10.5.1 Bunbury Local Emergency Management Arrangements

Applicant/Proponent:	Bunbury Local Emergency Management Committee
Author:	Chris Widmer ESM – Team Leader, Community Safety and Emergency Management
Executive:	Bob Karaszkewych -Director Planning and Development Services
Attachments:	Appendix DPDS-1 ERM Report

Summary

The City is required, in accordance with the *Emergency Management Act 2005* (the Act), to regularly review and update the Bunbury Local Emergency Management Arrangements (LEMA). This was recently completed, with the assistance of an All Western Australians Reducing Emergencies (AWARE) funding grant. The new arrangements are required to be adopted by the Council, prior to being submitted to the State Emergency Management Committee (SEMC).

Executive Recommendation

1. Council adopt the amended Local Emergency Management Arrangements.
2. The amended Emergency Management Arrangements be submitted to the State Emergency Management Committee, in accordance with Section 42 of the *Emergency Management Act 2005*.

Background

Council previously adopted the LEMA at the Council meeting on 6 December 2011, after the arrangements were last reviewed and amended. Council adopted the amended LEMA, at that time.

In 2013, an AWARE grant was received by the City to review the risks associated with emergencies that may impact on Bunbury. This resulted in the development of a new emergency risk register as the catalyst for amendments to the LEMA. The amended LEMA reflects those changes, along with updates for currency that include reference to new State legislation and entity changes. The AWARE grant has been acquitted, and a subsequent report submitted and accepted by the grant funding sponsors.

Council Policy Compliance

There is no Policy that relates to this item.

Legislative Compliance

Section 42 of the Act 2005

State Emergency Management Policy 2.5 supports the revision of LEMA, and subsequent submission to the SEMC, for endorsement.

Officer Comments

The key amendments to the LEMA relate to the revised emergency risk register. In essence, the top six (6) risks have been re-evaluated, principally due to recent risk treatments for bush fire and a heightened awareness within community of the consequences from storm and flood risks. After the evaluation of the community consultation and surveys, the following risks were identified in order of priority:

1. Severe storm
2. Flood
3. Bushfire
4. Power Supply Failure
5. Human Epidemic
6. Potable Water Supply Failure

A copy of the Emergency Risk Management Report – is **attached** at Appendix DPDS-1.

Amendments were also made to reflect the current reference to Government Departments and new SEMC Policies. Formatting changes have also been made to the LEMA to ensure they comply with current requirements and reflect feedback from relevant organisations, such as the Department of Fire and Emergency Services, the District Emergency Management Committee, the SEMC and the LEMC.

Once the LEMA is adopted by the Council and endorsed by the SEMC, they need to be available to the Bunbury community (Section 43 of the Act), as well as, the Local Emergency Management Committee (LEMC).

Analysis of Financial and Budget Implications

There are no financial or budget implications, as the work was undertaken by staff within the City's Community Safety and Emergency Management Department with the funding provided by the AWARE grant.

Community Consultation

Community consultation was a key element of the Emergency Risk Management phase of the risk assessments. This was undertaken via each agency represented on the LEMC, as the peak body for this process, and also through community workshops held as part of the Resilience Communities Project (U-4-72).

The LEMC is made up of various community organisations and local persons from State, local agencies and community organisations, with responsibility for and/ or provide support for emergency management. The proposed amendments to the LEMA were endorsed by the LEMC at its meeting of 21 November 2013.

Councillor/Officer Consultation

Community Law, Safety and Emergency Management staff were involved in the process to amend the arrangements and also facilitated the Emergency Risk Management work and the collaboration with and presentation to the LEMC.

Strategic Relevance

The review of the LEMA has relevance to the Councils Strategic Community Plan, specifically;

- Goal 1: Accountable and Transparent Governance - Planning and delivering on our Vision is a shared responsibility that will be achieved through the development of relationships and partnerships with all stakeholders; Objective 1.1 - Improve community and stakeholder participation in decision-making.
- Goal 3: Sustainable Natural and Built Environment - Sustainable and integrated development will create a desirable and competitive City in which to live, work and visit; Objective 3.6 - Mitigate and adapt to the possible impacts of climate change.
- Goal 4: Social Enhancement - To enhance community well-being and the quality of life for the people who live and work in Bunbury; Objective 4.5 - Improve community health and well-being.

Economic, Social, Environmental and Heritage Issues

There are economic, social and environmental issues associated with this item. However, by ensuring the currency of the LEMA it will assist the LEMC to respond to any foreseeable emergency that may lessen the impact on the community and assist in the recovery phase. This, in turn may reduce the impact that any disaster may have on the community.

Delegation of Authority

There is no delegated authority to enact the recommendation.

Relevant Precedents

Council previously adopted amendments to the LEMA in December 2011.

10.5.2 City of Bunbury Contaminated Site Investigations 2014/15

File Ref:	A06025
Applicant/Proponent:	Internal Report
Author:	Ben Deeley, Team Leader Sustainability
Executive:	Bob Karaszkewych, Director Planning and Development Services
Attachments:	Nil

Summary

It is proposed that funds available under the 2014 /15 Budget and Environmental Reserve be used to progress contaminated site investigations at Jaycee Park; and also having regard to the possibility of a Lotteries House development. As Jaycee Park is yet to be confirmed as Council's preference for locating the proposed development, this matter has been referred to Council for its consideration.

Executive Recommendation

That Council endorse expenditure of \$60,000 from PR-3075 "Develop and Implement Environmental Projects 2014/15" and \$100,000 from the Environmental Reserve, to appointment a 'contaminated sites auditor', and 'a consultant' to update and implement the contaminated site sampling plan prepared for Jaycee Park.

Background

The *WA Contaminated Sites Act 2003* was introduced by the State Government in 2007 in order to provide a risk-based approach to the management of contaminated sites in Western Australia, in doing so, to protect human and environmental health.

The Act places a statutory responsibility on polluters and land holders to report known and suspected contaminated sites to the Department of Environment Regulation. The department is responsible for classifying the sites under the Act according to the required level of investigations and site management and providing guidance on these.

In certain circumstances, the Act requires that 'contaminated sites auditors' be appointed in order to provide independent technical review of contaminated site investigations and management on behalf of the State Government.

In 2007, the City of Bunbury undertook a review of corporate records and interviews with long-serving staff in order to determine the location of known and/or suspected contaminated sites for which it is responsible. Twenty-eight sites were identified through this process, comprising mainly of ex-landfill sites, depots and night soil tips. Those sites were reported to the department as was required under the Act.

Several of the sites subsequently received a classification from the department that places a legal responsibility on the City to undertake site investigations. However, no statutory timeframes have been imposed by the department in relation to any of those required investigations, to date. The department's typical approach is to require proponents to resolve their contaminated site issues when changes in land use and/or development are proposed.

\$60,000 was allocated to PR-3075 “Develop and Implement Environmental Projects 2014/15” under the 2014/15 Budget. It was originally proposed that those funds be used for contaminated site investigations at the following sites:

- Big Swamp ex-land fill site
- Symmons Street historical Council depot
- Lot 200 Robertson Drive historical bitumen storage site.

The Big Swamp site and Lot 200 Robertson Drive were identified as priorities for investigation in view of internal projects, whereas the Symmons Street historical Council depot was identified as a priority as the site has been subdivided and transferred into private ownership (i.e. is no longer under the City’s care and control).

Two other sites have since emerged as competing priorities for the funding under PR-3075, including the Jaycee Park ex-land fill site and Nuytsia Avenue Council depot.

The suspected contaminated site at Jaycee Park is considered to be a priority for resolution in view of the proposed Lotteries House development, whereas the Nuytsia Avenue Council depot is considered to be a priority in view of advice received from the Department of Environment Regulation following the completion of a desk-top contaminated site investigation in 2012 and historical site sampling.

It is proposed that the \$60,000 currently available under PR-3075, along with a further \$100,000 from the Environmental Reserve, be used to progress the resolution of the suspected contaminated site at Jaycee Park.

To date, a desk-top analysis and draft sampling plan have been prepared for the site. The next stage will involve the appointment of a ‘contaminated sites auditor’, as strongly recommended by the Department of Environment Regulation, and a ‘consultant’ to support the review, finalisation and implementation of the sampling plan. Indicatively, those tasks may cost up \$140,000 and require eight months to complete. Further investigations and potentially site works may be required depending upon the results of the coming investigative stage.

An amount of \$65,000 is proposed in 2015/16 under PR-3196 in Council’s Ten Year Financial Plan to fund the next stage of investigations at the Nuytsia Avenue Council depot, however, tasks may also cost up to \$140,000, thereby require the allocation of additional funds. This issue can be addressed through Council’s forward financial planning processes, if necessary.

In view of the likely expense associated with the next stage of contaminated site investigations at Jaycee Park and fact that it is yet to be confirmed as the site of the Lotteries House development, the matter has been referred to Council for consideration.

Should Council not wish to proceed with the contaminated site investigation at Jaycee Park, it is recommended that the funding under PR-3075 and the Environmental Reserve be made available for the investigations at the Nuytsia Avenue Council depot.

Council Policy Compliance

The appointment of the ‘contaminated sites auditor’ and a ‘consultant’ will occur in accordance with Council’s purchasing policy.

Legislative Compliance

The resolution of the suspected contaminated sites at Jaycee Park and the Nuytsia Avenue Council depot is statutorily required under the *WA Contaminated Sites Act 2003*.

The allocation of an additional \$100,000 from the Environmental Reserve to PR-3075 will require an absolute majority decision of the Council.

Officer Comments

The City of Bunbury recently appointed a panel of 'contaminated sites auditors' to support the resolution of its suspected contaminated sites that would be accessed for the investigation.

City staff are in the process of prioritising all of Council's suspected contaminated sites in view of a range of factors, including risk to human and environmental health. It is envisaged that the product from this activity will be important in informing the future allocation of Council's resources.

Analysis of Financial and Budget Implications

The executive recommendation will result in the expenditure of the \$60,000 currently available under PR-3075.

Any funding sourced from the Environmental Reserve that is surplus following the completion of the investigation will be returned to the reserve.

Community Consultation

No public consultation has been conducted on the matter to date.

Councillor/Officer Consultation

Liaison on the matter has occurred with the Executive Leadership Team.

10.5.3 Proposed Home Business (Counselling) – Lot 79, No. 3 Sturt Street South Bunbury DA/2013/257 – reconsideration

Applicant/Proponent:	Patricia Sherwood
Author:	Gary Fitzgerald, Manager Development Assessment and Building Certification
Executive:	Bob Karaszekewych, Director Planning and Development Services
Attachments:	Appendix DPDS-2 – Extract of Minutes 21 January 2014 Appendix DPDS-3 – Location Plan Appendix DPDS-4 – Site plan of outhouse Appendix DPDS-5 – Outbuilding Plan Appendix DPDS-6 – Schedule of Public Submissions

Summary

Council had considered this matter at the Ordinary Council Meeting on 22 July 2014 and resolved to defer consideration of the item to the next briefing and ordinary meeting. This enabled staff to address issues raised at the meeting and to amend the Executive Recommendation to better reflect amenity concerns and clarity surrounding the time-limited approval, for the further consideration of the Council.

It had previously been reported that the Council had considered this matter at its meeting held on 21 January 2014 (**attached** at appendix DPDS-5).

On that occasion, the applicant, Dr Patricia Sherwood had been granted a conditional Development Permit for a period of six (6) months representing a trial period to gauge any adverse impacts on the amenity of the locality. The conditional approval required the applicant to reapply for Planning Approval, prior to the expiration of the time-limited approval that was to cease on 21 July 2014. Dr Sherwood had implemented the permit for some of that six (6) month period.

Dr Sherwood had recently made a Development Application (DA) seeking reconsideration. The DA was advertised to allow for community input into the assessment process.

The proposal (identical to the previous DA) satisfies the requirements of Town Planning Scheme No.7 (TSP7) and criteria outlined in the *Local Planning Policy – Home Based Businesses & Family Day Care* sufficient to issue a time-limited Planning Approval, subject to conditions.

Notwithstanding that there were no significant issues identified during the trial period, the applicant had not complied with two conditions of Council’s prior approval, viz. to notify the City of the date of “commencement”, and the construction of a “new proprietary fence” along the eastern boundary of the subject property.

Executive Recommendation

That Council, pursuant to the Planning and Development Act 2005 (as amended), hereby resolves to grant of a Planning Approval for a Home Business (Counselling) at 3 Sturt Street, Bunbury, subject to the following conditions:

1. This Development Permit shall have no force or effect, until such time as:
 - a) The operator of this approval has constructed a new portion of fence of materials that match the existing timber slatted fence, over that portion of the existing fence that is less

than 1.8m in height (i.e. 240mm additional height for a distance of 12.1 metres) as measured from the natural ground level on the eastern boundary of the adjoining landowner's property.

The new portion of fence is to be constructed, at the cost of the operator, and to the satisfaction of the City.

The applicant is to provide a plan with sufficient detail of the new fence addition and materials to the satisfaction and approval of the City, prior to construction.

- b) The operator of this permit must notify the City of Bunbury of the commencement date, prior to its commencement.
2. In accordance with City of Bunbury "*Local Planning Policy – Home Business & Family Day Care Premises*", this permitted use shall expire on 5 August 2015; it can then be reconsidered for approval on application for annual renewal in accordance with policy.
3. At all times the permitted use must comply with the definition of Home Business as contained in Schedule 1 of the City of Bunbury Town Planning Scheme No.7.
4. Development shall be in accordance with the approved development plans that form part of this Development Permit.
5. No signage is permitted on the site or in the proximity of the site.
6. This Development Permit will expire if the approved development has not substantially commenced within six (6) months from the date of issue or within any extended period granted by the City of Bunbury.
7. The permitted use is to operate in compliance with the Local Planning Policy entitled "Home Based Businesses and Family Day Care".
8. The permissible times of operation are Monday to Friday (9.00am - 5.00pm); and Saturdays, Sundays and public holidays (no trading permitted).
9. The permitted use is to be conducted on a 'prior appointment basis' only, with a maximum of one (1) client on the premises at any one time. The permitted use must comply with the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997*.
10. The development, must comply with the requirements of the *Health Act 1911*.
11. The development must comply with the City of Bunbury Health Local Laws 2001.
12. Adequate provision must be made for on-site toilet facilities for clients, to the satisfaction of the City.
13. All car-parking for the development shall be contained within the subject property, and one additional car park bay is to be provided and marked on the approved development plan and maintained to the satisfaction of the City.

Background

The subject property is zoned Residential R20. A location plan is **attached** at Appendix DPDS-6. The relevant use-class ("Home Business") is an "A" use in the Residential Zone under TPS 7, accordingly, the proposal was advertised (re-advertisement) for fourteen (14) days. A site plan is **attached** at Appendix DPDS-7. It is proposed that the Home Business is operated from an

outbuilding in the rear yard on the subject property (a plan of the outbuilding is **attached** at Appendix DPDS-8.

Council Policy Compliance

The relevant Local Planning Policy (LPP) is “*Home Based Businesses & Family Day Care*”. The proposed development is compliant.

Legislative Compliance

It is considered that all necessary action has been taken in respect of legislative compliance and particularly in respect of the *Planning and Development Act 2005* and the *Town Planning Regulations 1967*.

Officer Comments

The Applicant has advised that the facility is for Dr Patricia Sherwood who will work as a Psychotherapist. Dr Sherwood will see clients referred by GPs, as per the original application.

The applicant proposes to continue to operate the business from an outbuilding in the rear yard of the subject property. The outbuilding measures approximately 37m² in area.

The following criteria are considered relevant in respect to fairly re-considering the matter, and in terms of Council considering whether it will or will not grant planning approval.

- a) Amenity – It is considered that there should be no substantial adverse impact on the established level of amenity of the neighbourhood if the service provided is by appointment only and if the hours of operation are limited to Council’s satisfaction, and on the basis that the activities are contained within the property boundaries. It is noted however, in terms of impact on the adjoining owner, that the applicant has not constructed a “new proprietary fence” as required by Council in its previous determination.
- b) Employment – the only person proposed to be employed is Dr Sherwood, the definition of Home Business allows a maximum of two (2) people not members of the occupier’s household.
- c) Size – the area of the proposed activity does not exceed 50sqm (maximum limit as listed in the definition of Home Business),.
- d) Retail Selling/Hiring – This is controlled by requiring compliance with the definition of Home Business).
- e) Vehicles – all vehicle parking is contained within the property, and should not result in traffic difficulties.
- f) Services – it is considered that there will be no requirement for an essential service of greater capacity than normally required in the zone, therefore the development is compliant.

The relevant Local Planning Policy (LPP) – *Home Based Businesses & Family Day Care*, states:

“If an application is received for a ‘Home Business’ or ‘Cottage Industry’ external to a ‘Frame Area’, the application will be considered on its merits in accordance with the objectives of this policy. The subject lot is external to a ‘frame area’”.

The Policy further states:

“...a Development Impact Statement (with terms of reference determined by the Local Govt.) shall be submitted as part of an application for planning approval (external to ‘Frame Areas’.)”

Each objective of the LPP is dealt with in order as follows:

1. Amenity, noise and odour emissions: because of the professional nature of the business there would be minimal or nil impact from and noise and odour perspective.
2. Streetscape character: It is considered that on balance there would be no adverse impact on the character of the streetscape, and the amenity in the area in that the proposed activity is contained within the curtilage of the subject property.
3. Traffic impact, safety of road users and pedestrians: because of the professional nature of the business there should be no adverse impact.
4. Incidental to residential character: The business is “incidental” to the “residential” use of the land.
5. Economic importance of home based businesses: By its very nature, would “acknowledge evolving work practices and technology” by being a specialised home-based business.

The applicant has previously submitted a Development Impact Statement and this is considered as having adequately addressed the relevant LPP “*Home Based Businesses & Family Day Care*”, hence the development satisfactorily meets the requirements and objectives of the policy.

Public advertising (re-advertising): the City has received three (3) written submissions (refer Schedule of Submissions **attached** at Appendix DPDS-9.

Issues specifically raised are similar to previous submissions and are as follows:

1. Traffic.
2. Safety.
3. Noise.
4. Privacy.
5. Parking concerns.
6. Risk of “unknown” clientele attending.
7. Signage.
8. Safety of children.
9. Impact on amenity of neighbourhood.
10. Applicant’s perceived disregard for conditions of prior approval.

The proposed business is of a professional nature, and there does not appear to be conflict having regard to the established level of amenity in the immediate neighbourhood, except that, and as noted above, the applicant has not complied with a condition of the prior approval by Council to require the construction of a new proprietary fence on the eastern boundary of the subject lot to protect the privacy of the adjoining owner nor advised the City on the commencement date. The applicant had stated to the Council that notification of the date of commencement was made to officers. Officers have no record of such advice. What had occurred is a meeting between the Mayor, the Manager Development Assessment and Building Certification and Patricia Sherwood on the recommended conditions of approval when the proposal was first mooted.

Irrespective whether clients access the counselling room via the front door or the walkway beside the house, it is possible to oversee the adjoining property on the approaches.

There should be no noise emitted from the premises on the basis that the nature of the business would involve “counselling” and the giving of professional advice. Appointments are a requirement (maximum of one client at any one time).

Vehicles would be required to be parked within the boundaries of the premises and not on the verge, from a traffic management perspective no different from visitors or friends arriving at a typical residential premise.

The applicant has requested that the hours of operation not be limited to commence at 10.00am rather as allowable in the policy for all Home Business applications with commencement times being 7.00am until 7.00pm. Council’s previous determination stated 10.00am. The Executive Recommendation recommends 9.00am until 5.00pm to minimise disruption to the amenity of the locality.

It is accepted Council practice to grant approval on an annual basis. Generally, the first year of the operation of the business is used to test the efficacy of the proposal and the actual impact of the home business on the established level of amenity in the residential area. Council has the right to not support any subsequent request for renewal; in effect approval is time-limited and not permanent.

The re-advertisement attracted similar submissions that in essence oppose the application.

The applicant has not complied with Council’s previous decision in that: no notice of commencement was provided; and has not constructed “a new proprietary fence” as required by Council in the original grant of approval. This is a breach of the planning approval. The applicant had not made an appeal to the SAT for decision within the prescribed time; accordingly it is a reasonable expectation on the part of the City that the applicant would comply with the condition. This remains a matter of non-compliance, but given the pending expiry date of the original planning approval and the consideration of a new application, this can be rectified as suggested in Conditions 1 a) and 1 b) and 2 of the Executive Recommendation. Should planning approval issue any condition is appealable. Should the premises continue to operate without having first satisfied the above conditions the City can institute proceedings to ensure compliance.

The applicant advised the Council that the reason for not constructing the fence is that clients do not use the side entry of the house, but go through the main house in order to get to the premises where the business is conducted at the rear. The original intent was for clients to utilise the walkway, no change to the application was made to redirect clients. It would be difficult for the City to ensure clients did not use the walkway for access and egress. Hence, it is reasonable to condition a planning approval to construct a new portion of fence of materials that match the existing timber slatted fence, over that portion of the existing fence that is less than 1.8m in height (i.e. 240mm additional height for a distance of 12.1 metres) as measured from the natural ground level on the eastern boundary of the adjoining landowner’s property.

Compliance with this requirement would reasonably satisfy the provisions of TPS7; the local planning policy; and the dividing fences legislation as being a sufficient fence as defined by the local authority. On that basis it is considered that an approval should be appropriately conditioned.

Analysis of Financial and Budget Implications

The commercial use of property may attract an increase in rates payable to the City.

Community Consultation

The proposal was advertised for (fourteen) 14 days in accordance with Clause 9.4 of TPS7. Three (3) submissions had been received.

Councillor/Officer Consultation

The application has been referred to the Council at a briefing and Ordinary Council meeting. It has undergone assessment by the City's Development Control Unit and has the support of the Executive Leadership Team.

10.5.4 State Administrative Appeals (the SAT) section.31 Review of Planning Conditions DA 2014.54.1 Change of Use to “Tavern” (Homemaker Tavern) LOT: 107 DP: 47979 Unit 6 Block C Homemaker Centre #42 Strickland Street SOUTH BUNBURY

File Ref:	P09230-24
Applicant/Proponent:	Internal
Author:	Bob Karaszekwych, Director Planning and Development Services
Executive:	Bob Karaszekwych, Director Planning and Development Services
Attachments:	Nil

Summary

This matter is required to be determined by the Council because the next Council meeting is on 19 August the day after the next SAT mediation hearing on 18 August 2014.

The SAT has invited the Council to a review its decision to amend Condition ‘f’ to restrict the times of hours of opening; and Condition ‘h’ and Advice Note ‘a’ considered appropriate as it refers to No Smoking being allowed in the alfresco dining area due to its proximity to an LPG tank.

Executive Recommendation

That the Council determines the following two (2) Elected Members:

1. Cr _____
2. Cr _____

to represent the Council’s decision to amend Condition ‘f’ restricting the opening hours of the tavern.

Background

Following the Council decision on 7 July 2014, the applicant made application for a review of the Council’s decision to the SAT. The applicant seeks the following changes to the conditions of planning approval:

- a) The deletion of Condition ‘f’ of the approval:

“The opening hours of the “Tavern” are restricted to the trading hours of when liquor can be served at the premises, in accordance with a Tavern license issued under the Liquor Control Act 1998 (WA)”

Substituted with the following condition:

“The opening hours of the “Tavern” shall be restricted to:
7:00 am and 12:00 midnight Monday to Friday;
7:00 am and 12:00 midnight Saturday; and
7:00 am and 10:00 pm Sunday or public holiday.”

- b) The deletion of Condition ‘h’ and advice note ‘a’ of the approval:

“No smoking is allowed outside in the alfresco dining area on Warehouse Street and in the outdoor seating area on Clive Lane (refer to Advice Note a)”.

In relation to the latter, there is a large LPG gas tank adjacent to the proposed outdoor seating and smoking area on the opposite side of Clive Lane. The Dangerous Goods Safety section of the Department of Mines and Petroleum has advised that Dangerous Goods Regulation at clause 56 states that, *“An operator of a dangerous goods site must ensure that any ignition source in a hazardous area within the site is eliminated or, if this is not reasonably practicable, the risk arising from the ignition source is controlled”*.

Council Policy Compliance

There is no adopted policy dealing with this matter.

Legislative Compliance

State Administrative Appeals Act 2004
Planning and Development Act 2005

Officer Comments

A SAT Directions Hearing was held Friday (25 July 2014) to establish how this matter will be dealt with by the SAT; whether it involves any particular questions of law; whether it is capable of resolution through mediation or if it is to be listed for a hearing. The City’s Manager Development Assessment and Building Certification attend the meeting via teleconference.

The outcome of the above meeting is that a hearing has been set down for 11am Monday 18 August 2014 in the Ocean Room City of Bunbury.

Administration will defend Condition ‘h’ and advice note ‘a’ and officers require advice on which two (2) Elected Members will represent the Council’s decision to advise them on how to defend Condition ‘f’.

The administration recommended Condition ‘(opening hours) was amended by the Council that is the subject of an appeal. The recommended opening hours, opening hours that the applicant requests. Therefore, the City’s officers would be compromised and not able to defend this condition successfully.

In relation to the Homemaker Tavern DA the Mover was Cr Kelly and the Seconder was Cr McCleary.

The Administration has prepared a draft Council policy: Town Planning Appeal Applications for Review Procedures to be presented to the Policy and Development Review Committee on 14 August.

The draft Policy has been endorsed by the Executive Leadership Team. The Policy is regarded as being ‘seriously entertained’ by the administration of the City by virtue of it being referred to Policy Review and Development Committee with the view of having the policy adopted by the Council on 2 September 2014.

This policy sets out the procedure where the decision of Council is contrary to the Executive Recommendation (Administration). In summary, the procedure is:

- Both the Mover and Seconder of the Motion to attend the SAT hearing(s).
- Where the Mover and/or Seconder are unavailable an alternate Elected Member(s) to attend the SAT meeting(s).
- Where this is not possible, the CEO would appoint a planning consultant or advocate acting on the Council's behalf.
- Council officers to supply all necessary information to the nominated Member(s) of the Council, consultant or advocate.

Analysis of Financial and Budget Implications

It is anticipated that the City will incur costs attributed to legal counsel advocacy.

Community Consultation

The application was previously advertised with the receipt of submissions both opposed and in support of the application.

Councillor/Officer Consultation

The ELT has been briefed and supports the recommendation.

Delegation of Authority

Officers have delegated authority to represent the decisions of the administration and the Council.

Relevant Precedents

A similar situation occurred in relation to the refusal of eleven (11) serviced apartments at Lot 517 Epacris Elbow, Pelican Point, where Mayor Gary Brennan and Cr Judy Jones represented Council's decision (refer to Council Decision 97/14).

10.6 Director Works and Services Reports

Nil.

11. Applications for Leave of Absence

11.1.1 Mayor Brennan

Mayor Brennan has requested leave of absence from all Council-related business from 20 August 2014 to 19 September 2014 inclusive.

Section 2.25 of the *Local Government Act 1995*, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six (6) consecutive ordinary meetings of the Council.

Executive Recommendation

Pursuant to Section 2.25 of the Local Government Act 1995, Mayor Brennan be granted leave of absence from all Council-related business from 20 August 2014 to 19 September 2014 inclusive and note that Deputy Mayor Brendan Kelly will assume the role of Acting Mayor during this period.

11.1.2 Councillor Giles

Councillor Giles has requested leave of absence from all Council-related business from 12 August 2014 to 13 August 2014 inclusive, and 19 August 2014 to 22 August 2014 inclusive.

Section 2.25 of the *Local Government Act 1995*, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six (6) consecutive ordinary meetings of the Council.

Executive Recommendation

Pursuant to Section 2.25 of the Local Government Act 1995, Councillor Giles be granted leave of absence from all Council-related business from 12 August 2014 to 13 August 2014 inclusive, and 19 August 2014 to 22 August 2014 inclusive.

11.1.3 Councillor Prosser

Councillor Prosser has requested leave of absence from all Council-related business from 4 August 2014 to 31 August 2014 inclusive.

Section 2.25 of the *Local Government Act 1995*, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six (6) consecutive ordinary meetings of the Council.

Executive Recommendation

Pursuant to Section 2.25 of the Local Government Act 1995, Councillor Prosser be granted leave of absence from all Council-related business from 4 August 2014 to 31 August 2014 inclusive.

12. Motions on Notice

No Motions on Notice had been received at the time of printing.

13. Questions on Notice

13.1 Response to Previous Questions from Members taken on Notice

Nil.

13.2 Questions from Members

Cr Steck submitted the following seven questions on 30 July 2014. Responses are provided below.

Question 1: Have the executive replied to the questions from Mr Chris Gibbs during the meeting of July 22nd item 10.14, if so when and how? If not why not?

Response: Mr Gibbs had not provided a copy of his submission to the Director of Planning and Development Services, however the essence of both his and the submission by Dr Patricia Sherwood have been commented on in the Council Briefing paper on 29 July and appears in Council Agenda on 5 August 2014.

Question 2: Why did council allow the occupation and running of the business as described in item 10.14, 22nd July 2014, without an occupiers or business certificate to operate and trade?

Response: The Planning Approval granted was not subject to any requirement for an “*occupiers or business certificate to operate or trade*” as may be required under other legislation.

Question 3: Why did the dedicated council compliance officer not enforce or be instructed to enforce the original planning conditions as approved on lot 79, No.3 Sturt Street, South Bunbury DA/2013/257?

Response: The new DA dated 29 May, triggered advertising for two weeks and inspection of the premises for compliance was requested. The premises were inspected and a letter dated 27 June 2014, was posted requesting compliance with fencing condition.

Question 4: Why was the operator of the business on lot 79, No.3 Sturt Street, South Bunbury DA/2013/257 not made to comply with the planning conditions set out on the approval for over a six month period?

Response: The applicant was required to notify the Council on commencement, but this did not occur. Anecdotally, the premises did not operate for the entire six (6) month period.

Question 5: Why has the CEO responded to my questions on notice on item 13.2.1 on the 22 July meeting with: (below)

- a) “Cl. 1.3.1 of the Glen Iris Structure Plan supplements the provisions of the scheme. Where a provision of this Structure Plan is inconsistent with the scheme, the scheme prevails.”
- b) “Cl.6.2.8.2 provides; - (a) the provisions of the Structure Plan apply to the land as if its provisions were incorporated into the scheme and it is binding and enforceable in the

same way as corresponding provisions incorporated in the scheme; and (b) provisions in the scheme applicable to land in those classifications under the scheme apply to the Structure Plan area.”

- c) *“Cl.6.2.8.4 of TPS7 in it’s relevant part provides; A Structure Plan, adopted and endorsed in accordance with the scheme, ill be used by the local government...as a guide for the assessment of Applications of Planning Approval under the scheme.”*
- d) as responded : *“On this basis “car Park” is given a “D” permissibility designation in the Shopping Centre Zone in the Zoning Table of TPS7, it would be reasonable for the Council to accept the use class “Car Park” as being permissible (d) In the Neighbourhood Centre Zone under the Structure Plan.”* Along with other responses...

Clearly the Town Planning Scheme Prevails and there is no capacity for approval of a car park as a predominate use, but does allow a incidental use and does not allow for a “temporary car park over a 24 hour period” so why is this council advertising and promoting an approval for a temporary car park, without the time of the “temporary use stipulated and advertised” and is ignoring and going against it’s own town planning scheme which does not allow for a predominate use of car park in the zone?

Response: In relation to d) above, that advice is provided by the City’s legal Counsel and rigorous research the City’s administration concurs with that advice. The applicant’s legal counsel has also provided similar advice.

Question 6: *“The local government shall require the preparation and submission of a Detailed Area Plan for the ...Neighbourhood Centre (lots in Jeffrey Road and Vittoria Road) to be adopted by Council and endorsed by the WAPC prior to any...planning approval being granted. “*

Given the above information was provided by the CEO from previous questions on notice, does this council believe that that just because someone doesn’t own the land (the reason provided in previous questions on notice) that the council should ignore the provisions of the Structure Plan which is already at odds with the Scheme 7 Town Planning Scheme?

Response: This is a matter for the Council to comment on. However, if the question was intended for the City’s administration the response is that as you have alluded to in a) and d) above, the Glen Iris Structure Plan supplements the provisions of the scheme. Where a provision of the Structure Plan is inconsistent with the scheme, the scheme prevails. A “Car Park” is given a “D” permissibility designation in the Shopping Centre Zone in the Zoning Table of TPS7, it would be reasonable for the Council to accept the use class “Car Park” as being permissible In the Neighbourhood Centre Zone under the Structure Plan.

A further two questions were submitted by Cr Steck and these have been referred to the Mayor.

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

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