

Bunbury City Council

Notice of Meeting and Agenda 23 June 2015



CITY OF BUNBURY

4 Stephen Street
Bunbury WA 6230
Western Australia

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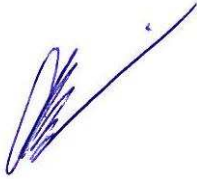
Nature of Council's Role in Decision Making

- Advocacy:** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive/Strategic:** The substantial direction setting and oversight role of the Council, e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative:** Includes adopting local laws, town planning schemes and policies.
- Review:** When Council reviews decisions made by Officers.
- Quasi-Judicial:** When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.

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

Bunbury City Council Notice of Meeting

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, 23 June 2015 at 5.30pm.



Andrew Brien
Chief Executive Officer
(Date of Issue: 19 June 2015)

Agenda 23 June 2015

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*

Nil.

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 Prosser declared a financial interest in the item titled *“10.4.1 Development Application seeking Planning Approval for a Change of Use - Unit 3 Lot 501 #15 Sandridge Road, East Bunbury”*. Cr Prosser will vacate chamber for the discussion and the vote on the matter.

Cr McCleary declared a proximity interest in the item titled *“10.4.2 Application for Planning Approval for a Proposed Community Purpose (Multiple Sclerosis Society of Western Australia) at Lot 223 #1 Mason Street, Davenport”* as she owns the property at 3 Mason Street. Cr McCleary will vacate chamber for the discussion and the vote on the matter.

6. Public Question Time

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

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

6.1 Public Question Time

6.2 Responses to Public Questions Taken ‘On Notice’

At the Council Meeting held 9 June 2015, questions were asked during Public Question Time that could not be answered during the meeting. A copy of the questions and the written response forwarded to the questioner following the meeting is provided below for public information:

Mr David Smith, 8 Picton Crescent, Bunbury

Question 1: I refer to the accounts for April, 2015 endorsed by Council and note the following items:

2/4/2015 invoice 01045 for transfer fees (Lands)
20/4/2015 invoice 6675 8603 transfer fees for \$1,076.60

AND I ASK to what land these transactions relate

Reply: Invoice 01045 - Relates to the settlement of transfer of Lot 497 Ocean Drive and Lot 881 Koombana Drive.

Invoice 6675 8603 - Transfer fees for Lots 732, 7331 743 and 744 Trinity Rise; Lot 761 Winthrop Ave; Lot 938 Somerville Drive

Question 2 - Have the new titles been issued? If so can a copy of these titles be provided?

Reply: No

Question 3: Could Council please advise the total costs of the Street Art (painting on walls) including the amounts paid to the individual artists and businesses associated with them?

Reply: The breakdown of Council funding towards the Re.Discover Street Art Project is as follows:

Re.Discover 2013/2014 Funding
Community Funding - \$2,500.00
CoB In-kind - \$5,000.00
Art Gallery In-kind - \$1,500.00
Councillor Discretionary Funds - \$500.00

Re.Discover 2014/2015 Funding
Community Funding - \$4,218.00
Events Funding - \$8,000.00
In-kind - \$3,807.00
Councillor Discretionary Funds - \$2,480.00

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 9 June 2015 have been circulated.

Recommendation

The minutes of the Ordinary meeting of the Bunbury City Council held 9 June 2015 be confirmed as a true and accurate record.

7.1.2 Minutes – Council Advisory Committees and Working/Project Groups

Applicant/Proponent:	Internal Report
Author:	Various
Executive:	Various
Attachments:	Appendix MTBN-1 – Audit Committee Minutes – 28 May 2015

Summary

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

1. Title: Audit Committee Minutes – 28 May 2015
Author: Greg Golinski, Manager Governance
Appendix: MTBN-1

Council Committee Recommendation

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

1. Audit Committee Minutes – 28 May 2015

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 Land Rationalisation - Lot 70 Winthrop Avenue

Applicant/Proponent:	Internal
Author:	Felicity Anderson, Manager Major Projects
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-1: Aerial– Lot 70 Winthrop Avenue

Summary

The report seeks Council's approval to dispose of Lot 70 Winthrop Avenue with the aim being to facilitate development and economic benefits for the City. An aerial plan is **attached** at Appendix CEO-1.

Executive Recommendation

That Council authorise the Chief Executive Officer to commence the process to dispose of Lot 70 Winthrop Avenue in accordance with the provisions of the *Local Government Act 1995*, the College Grove Joint Venture Agreement (Amended), and the Council Decision 26/15.

Background

At its Meeting held 20 January 2015 Council Decided (26/15):

"Council:

1. *Notes the submissions received and thanks the submitters for their contribution.*
2. *Support the disposal of Lot 70 Winthrop Avenue (by the College Grove Joint Venture) based on the following conditions:*
 - (a) *The current zoning of R15 is to remain with conditional opportunity to increase to R20 based on acceptable development concept plans;*
 - (b) *The preparation of a development concept plan for the site addressing issues of traffic management, environmental impacts and other relevant sub-division conditions including the identification of an overall building envelope;*
 - (c) *Final sale price to be determined once decontamination plan is completed and costs of implementation known;*
 - (d) *Site remediation costs are to be borne by the purchasers;*
3. *In the event that the current purchasers are not supportive of proceeding with the development based on the above conditions, the site be advertised for sale by tender in accordance with the above conditions.*
4. *Note the petition opposing the development of Lot 70 for high density social housing and advise the chief petitioner of the recommendation to dispose of Lot 70 in accordance with current zoning or potential to increase to R20 maximum.*

Further discussions took place at a Council briefing held on 2 June 2015.

Lot 70 Winthrop Avenue is 21,1773m², and is currently zoned 'Residential— R15' under Town Planning Scheme No.7.

The Lot has most recently been valued at \$1.2M and is part of the existing College Grove Joint Venture agreement.

Council Policy Compliance

Council Policy: Land Rationalisation and Acquisitions.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995* (“the Act”) deals this with the matter of disposing of property.

Officer Comments

The proposed sale is anticipated to provide new housing options for individuals and families in Bunbury, returning ongoing revenue to the City through rates received. It is also expected to provide business and employment opportunities through the construction phase of any future development.

Analysis of Financial and Budget Implications

There is no direct cost or implication to the budget at present.

The land is valued at \$1.2M on an unconstrained basis once remediation of the site is completed.

The land has the potential to provide an income to the Joint Venture Partners which will go towards achievement of the Joint Venture objectives and then provide recurring revenue to the City of Bunbury through rates.

Any costs associated with a sale would be offset from the sale of the lot and will be costed against the Joint Venture.

Community Consultation

There has previously been community consultation in relation to the development of the site which resulted in changes to the proposed density and use of the site. In relation to the current recommendation there has not been further consultation however the proposed motion seeks Council’s authority to dispose of the land, part of which will include community consultation in accordance with the requirements of the *Local Government Act 1995*.

Previous submitters have been advised of this item coming before Council.

Councillor/Officer Consultation

Councillors have been involved through previous briefings and public forums.

The Executive Management Team, Manager Sustainability, Planning and Development, Manager Major Projects and the Major Projects Officer have all been involved in investigations relating to this item, along with the Council and Department of Lands representatives from the Joint Venture Management Group.

10.2.2 Land Rationalisation - Lot 298 Winthrop Ave

Applicant/Proponent:	Internal
Author:	Felicity Anderson, Manager Major Projects
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-2: Aerial – Lot 298 Winthrop Avenue

Summary

This report seeks Council’s approval to dispose of Lot 298 Winthrop Avenue with the aim being to facilitate development and economic benefits for the City. An aerial plan is **attached** at Appendix CEO-2

Executive Recommendation

That Council authorise the Chief Executive Officer to commence the process to dispose of Lot 298 Winthrop Avenue in accordance with the provisions of the *Local Government Act 1995*, and the College Grove Joint Venture Agreement (Amended).

Background

Lot 298 Winthrop Avenue is part of the amended College Grove Joint Venture Agreement and comprises a land area of 23,043m² and is zoned under the City of Bunbury TPS No.7 “Special Use”.

This land is valued at \$735,000.00.

Options for development of this site have been considered by the Joint Venture Management Group and recommendation for disposal is in accordance with the recommendations from this group.

Council Policy Compliance

Council Policy: Land Rationalisation and Acquisitions.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995* (“the Act”) deals this with the matter of disposing of property.

Officer Comments

The proposed sale is anticipated to provide new housing consistent with the residential density in the surrounding areas and provides options for individuals and families in Bunbury and will provide ongoing revenue to the City through rates received. It is also expected to provide business and employment opportunities through the construction phase of any future development. The proceeds from the sale of the land will be directed to the repayment of the advanced funds for the construction of the Somerville Drive extension.

Analysis of Financial and Budget Implications

There is no direct cost or implication to the budget at present as all the expenses for the project will be a costed against the Joint Venture.

The land has a value of \$735,000. Through sale, this land has the potential to provide an income to the joint venture and then provide recurring revenue to the City of Bunbury through rates.

Any costs associated with a sale would be offset from the sale of the lot.

Community Consultation

There has been no formal community consultation at this stage specifically targeted to this site, however there have been several discussions following on from the consultation in relation to Lot 70 Winthrop Avenue. This item seeks Council's authority to dispose of the land and community consultation will be undertaken in accordance with the provisions of the *Local Government Act 1995*.

Councillor/Officer Consultation

Councillors have been involved through the site tour and review of land held in freehold. Eight (8) Councillors provided comment and feedback between 3 December 2014 and 13 January 2015.

The Executive Management Team, Manager Sustainability, Planning and Development, Manager Major Projects and Major Projects Officer have all been involved in investigations relating to this item.

10.2.3 Land Rationalisation - Lot 881 Koombana Drive

Applicant/Proponent:	Internal
Author:	Felicity Anderson, Manager Major Projects
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-3: Cadastre Image – Lot 881 Koombana Drive

Summary

This report seeks Council's approval to dispose of Lot 881 Koombana Drive with the aim being to facilitate development, employment and economic benefits for the City. A cadastre image of the site is **attached** at Appendix CEO-3.

Executive Recommendation

That Council:

1. Authorise the Chief Executive Officer to commence the process to dispose of Lot 881 Koombana Drive in accordance with the provisions of the *Local Government Act 1995*;
2. Require the Chief Executive Officer to provide a further report once conditions and final purposes have been identified.

Background

The Chief Executive Officer briefed Councillors on the potential disposal of a number of lots across the City as the first round of land rationalisation at the Council briefing held on 2 June 2015.

Lot 881 Koombana Drive is 14,894m² and currently zoned special use. The Lot has most recently been valued at \$1.8M.

This particular Lot was transferred to the City as compensation through the loss of land to the Ocean to Preston River Park, as part of the College Grove Joint Venture arrangement.

Council Policy Compliance

Council Policy: Land Rationalisation and Acquisitions.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995* ("the Act") deals this with the matter of disposing of property.

Officer Comments

The proposed sale is anticipated to encourage development and economic growth with future employment opportunities for Bunbury created through development and new business. There are several options for the disposal of the site which range from simple advertising for sale through to negotiated disposal for a specific purpose.

Whilst there have been a number of approaches for acquisition of the site, at the present time none of these have progressed due to the proposed development of the Department of Parks and Wildlife Headquarters and the constraints of the shipwrecks on the site.

It is proposed to seek expressions of interest for the development of the site which would complement the work being undertaken by the Department of Parks and Wildlife, the Marine Facilities Alliance, the proposed expansion of the Dolphin Discovery Centre and the overall upgrade of Koombana Drive.

The site is considered to be one of the prime gateway locations coming into the City and its use should be reflective of the significance of the site. With the works currently being proposed for the waterfront along Koombana Beach, development of a combination of long and short stay accommodation, potential for some retail along with other ancillary uses may be suitable but this would be driven by market demand.

By undertaking a disposal by expression of interest rather than a simple sale process, the Council would be in a position to consider the overall benefits of any proposed development rather than just looking at the bottom line sale price. The Council may also wish to consider potential incentives for any purchaser of the site to see development occur in a more timely process as opposed to the disposal for land banking. Any incentives offered would need to be considered and agreed to by Council as part of the disposal process.

Analysis of Financial and Budget Implications

There is no direct cost or implication to the budget at present.

The land is valued at \$1.8M. It has the potential to provide income upon sale and then provide recurring revenue through rates.

Any costs incurred by the sale would be offset by the sale revenue.

Community Consultation

There has been no community consultation at this stage, as this item seeks Council's authority to dispose of the land and community consultation will be undertaken in compliance with the Act.

Councillor/Officer Consultation

This matter was discussed at Council briefing 2 June 2015.

The Executive Management Team, Manager Sustainability, Planning and Development, Manager Major Projects and Major Projects Officer have all been involved in investigations relating to this item.

10.2.4 Land Rationalisation - Lot 3 Blair Street

Applicant/Proponent:	Internal
Author:	Felicity Anderson, Manager Major Projects
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-4: Aerial - 3 Blair Street

Summary

This report seeks Council's approval to disposal of Lot 3 Blair Street with the aim being to facilitate development, employment and economic benefits for the City. An aerial photograph is **attached** at Appendix CEO-4.

Executive Recommendation

That Council:

1. Authorise the Chief Executive Officer to commence the process to dispose of the "portion" Lot 3 Blair Street in accordance with the provisions of *Local Government Act 1995*.
2. Request the Chief Executive Office consider either strata of the existing Lot 3 Blair Street to maximise development opportunity or undertake a subdivision of the site to provide a freehold title.
3. Request the Chief Executive Officer to provide a further report on the development potential of the site once expressions of interest have been called.

Background

On Wednesday 3 December 2014 Councillors undertook a tour of specific lots being land owned in freehold by the City of Bunbury. The purpose of the tour was to review and consider rationalisation of freehold land held by the City.

Councillors were issued with a comprehensive list identifying each of the lots and were asked to provide comment.

Further discussions took place at a Council briefing held on 2 June 2015.

Lot 3 Blair Street, owned in Freehold by the City is 14,589m², with the portion proposed for disposal being 5170m² and currently zoned City Centre. The portion Lot has been most recently valued, on an "As If Complete" basis, at \$5M.

Council Policy Compliance

Council Policy: Land Rationalisation and Acquisitions.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995* (“the Act”) deals this with the matter of disposing of property.

Officer Comments

The proposed sale is anticipated to encourage development and economic growth with future employment opportunities for Bunbury created through development and new business. The site is a prime location within the CBD and the Leschenault Inlet and provides a unique opportunity to develop quality accommodation and mixed use opportunities linked the entertainment centre. This could provide further opportunities for the holding of major conferences and events through the integration of the development potential of the site.

Initial investigations have indicated that it may be beneficial for Council to consider strata development of the site to enable either leasing or sale of the portion without constraining building and development opportunities with the BREC, however this would need to be considered based on potential uses identified through the disposal process.

As with other sites ready for development, the Council may wish to consider the use of incentives to make the development site more attractive to immediate development as opposed to potential sale for land banking purposes. The types of incentives which could be considered would be along the lines of reduced sale price, rate concessions, joint venture options or other options that developers may wish to explore. Each of the incentives would require further investigation and would be undertaken as part of any due-diligence of a sale by both Council and the developer.

Analysis of Financial and Budget Implications

There is no direct cost or implication to budget at present.

The land has the potential to provide an initial capital income upon sale and then provide recurring revenue through rates.

Should the City choose to undertake the strata development of the Lot there would be some costs incurred that would be offset from the sale of the lot.

Community Consultation

There has been no community consultation at this stage, as this item seeks Council’s authority to dispose of the land and community consultation will be undertaken in compliance with the Act.

Councillor/Officer Consultation

Councillors have been involved through the site tour and review of land held in freehold. Eight Councillors provided comment and feedback between 3 December 2014 and 13 January 2015, whereby seven (7) of the Councillors supported leasing or disposal of the site for development with the eighth Councillor indicating they “had no problems” with this site. This matter was also discussed at Council briefing 2 June 2015.

The Executive Management Team, Manager Sustainability, Planning and Development, Manager Major Projects and the Major Projects Officer have all been involved in investigations relating to this item, along with the Council and Department of Lands representatives from the Joint Venture Management Group.

10.2.5 Lot 755 Wittenoom Street, Bunbury - Wheilcliff Pty Ltd – Non-Renewal of Lease

Applicant/Proponent:	Wheilcliff Pty Ltd
Author:	Jane Dawson, Senior Property Officer Neil Dyer, Team Leader Parking
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-5: Aerial – Lot 755 Wittenoom Street

Summary

At its meeting held 31 March 2015, Council authorised the Chief Executive Officer to negotiate a new lease over Reserve 42940, Lot 755 Wittenoom Street with Wheilcliff Pty Ltd on commercial terms to ensure that the City is able to recoup equivalent revenue to that of a Council-managed car park (Decision 115/15).

Wheilcliff Pty Ltd advised the City by email on 28 May 2015 that they would not be entering into a new lease.

A location plan is **attached** at Appendix CEO-5.

Executive Recommendation

That Council retain Lot 755 Wittenoom Street for use as a paid public car park.

Background

Council granted a Deed of Lease to Chestone Holdings Pty Ltd (Lord Forrest Car Park) now Wheilcliff Pty Ltd, over Reserve 42940, Lot 755 Wittenoom Street, Bunbury commencing 1 May 1994 for a term of twenty-one (21) years. The purpose for leasing the land was to allow for the car parking for patrons of the Lord Forrest Hotel and associated nightclubs.

The current Lease expired on 30 April 2015.

Wheilcliff Pty Ltd advised the City by email on 28 May 2015 that it would not be entering into a new lease.

Council Policy Compliance

There are no Council Policies applicable to this proposal.

Legislative Compliance

Not Applicable

Officer Comments

Upon advice from Wheilcliff Pty Ltd that it would not be entering into a new lease a letter was forwarded on 28 May 2015 confirming the Lease termination *Clause 4.(3) Holding Over*, and advising the City now gives the lessee one (1) month's notice that the Lease will terminate on the 29 June 2015, when the City will take over possession of the Leased Premises.

As the land is already sealed and used for the purpose of car parking, the only additional requirements would be the installation of a ticket issuing machine and entrance signage. The provision of all day parking in this area is limited and the control of this land will enable the relocation of existing all day parking permit holders from shorter term parking areas in turn freeing up those areas.

Analysis of Financial and Budget Implications

The estimated return to the City from the lot as an all-day car park at the current fee would be between \$20,000.00 per annum (at a 75% car park occupancy rate) and up to \$31,000.00 per annum if fully occupied. Apart from any financial benefit, as a public all-day car park, the facility could also provide a service for casual users.

To establish the land as a public car park the costs would be approximately \$1,500.00 for the installation/relocation of an existing parking machine and the installation of signage which would be covered under the operational signage budget. The on-going maintenance of the car park would be able to be absorbed into the existing operational budget.

Community Consultation

Not Applicable

Councillor/Officer Consultation

The Manager Community Law Safety and Emergency Management and the Team Leader Parking were consulted and provided the following information:

- * The land area is 829m² and although parking bays are not marked, there is the current capacity to allow for the parking of at least 31 vehicles.
- * The change in management of this car park will not alter the amount of parking within the CBD however it will allow the general public, including patrons of the Lord Forrest access to the car park.

The Acting Team Leader Development Assessment and Compliance have advised the previous car parking calculation for the Lord Forrest required a minimum of 176 car bays, and this is provided on the site. Therefore the 30 bays at Lot 755 Wittenoom Street, Bunbury are not required as a result of Town Planning Scheme minimum car parking requirements, and Planning has no objection to the lease being terminated.

10.2.6 Review of Delegations

Applicant/Proponent:	Internal Report
Author:	Leanne French, Senior Governance and Risk Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-6: Register of Delegations

Summary

The purpose of this report is for Council to undertake its annual review of delegations made under the *Local Government Act 1995*.

Executive Recommendation

That Council:

1. Receives the review of delegations in accordance with section 5.18 of the *Local Government Act 1995*; and
2. Amends its delegations to the Chief Executive Officer in the manner outlined within points 1-81 of this report, and as presented in the amended instruments of delegation **attached** at Appendix CEO-6.

Note: Absolute Majority Required

Background

Under the provisions of the *Local Government Act 1995* (the Act), Council's Delegations of Authority are to be reviewed at least once every financial year. Council last reviewed its delegations on 18 March 2014 (refer Council Decision 88/14), and therefore a subsequent review is now required.

The Delegation Register is a comprehensive document that consists of delegations from Council to the Chief Executive officer (or other employees), Council to committees, as well as those delegations from the Chief Executive Officer to other officers. It also includes delegations made under legislation other than the *Local Government Act 1995*.

Council Policy Compliance

Not applicable

Legislative Compliance

Sections 5.16, 5.17, 5.18, 5.42, 5.43, 5.44, 5.45 and 5.46 of the *Local Government Act 1995*, govern delegation of power.

Officer Comments

A local government the size of the City of Bunbury cannot operate without utilising Council's power under the Act to delegate certain functions to either a committee of Council or the Chief Executive

Officer. Delegations free up Council time to enable Elected Members to focus on representation, strategic planning, and community leadership, thereby enabling the Chief Executive Officer to efficiently implement Council resolutions and policy. The use of delegated authority means a large volume of routine work can be effectively managed and acted on promptly, which in turn facilitates efficient service delivery to the community.

A local government may delegate to its Chief Executive Officer the exercise of any of its powers or the discharge of any of its duties under the Act, other than those specified. Likewise, the Chief Executive Officer is able to be delegated all permissible powers from legislation other than the *Local Government Act*, including regulations and local laws made under those Acts.

The Chief Executive Officer may on-delegate to any employee of the City the exercise of any of the Chief Executive Officer's powers, or the discharge of any of his duties under the provisions of the Act, other than the power of delegation. On-delegated powers and duties are identified in each individual instrument of delegation detailed within the Delegations Register.

Reviews undertaken on delegations have historically focussed on minor adjustments and administrative corrections to the register; however the 2015 review undertaken by Officers has been comprehensive, and has resulted in:

- * a number of delegations being recommended for repeal;
- * a number of new delegations being proposed, resulting from the consolidation of existing delegations; as well as
- * improvements to wording and legislative referencing.

The list below (numbers 1-33) is a summary of proposed amendments to delegations following a review by Officers. List numbers 34-81 are those delegations that are proposed for repeal. Appendix CEO-5 provides an updated Delegation Register incorporating the changes outlined below.

1. DAG2 – Power to Accept Tenders

This delegation is amended to remove the condition which states: *“Each delegated officer’s capacity to approve an original tender and/or variation is set at according to the schedule of purchasing limits”*.

The Chief Executive Officer has indicated that this power will not be on-delegated to other employees, making this condition redundant.

2. DAG3 – Gaming Permits

This delegation is amended by virtue of some minor wording changes and correct referencing of legislation.

3. DAG6 – Tender Variations

This delegation is amended by virtue of some minor wording changes to clarify that the authority is for variations to tender specifications which will alter the price of tender, once the tender advertising period has closed.

4. DAG7 – Power of Entry

This is a new delegation that combines three existing delegations (DASP12, DAO9 and DAB13), all of which authorised the power of entry in accordance with legislation separate to the *Local Government Act 1995*.

5. DAH1 – Discharge of Powers – section 26 of the Health Act 1911

This delegation is amended by virtue of some minor wording changes and correct referencing of legislation.

6. DAH6 – Section 39 and Section 40 Certificates

This delegation is amended by virtue of some minor wording changes and correct referencing of legislation.

7. DAH7 – Section 55 Certificates

This delegation is amended by virtue of some minor wording changes and correct referencing of legislation.

8. DAH10 – Discharge of Powers – Food Act 2008

This delegation is amended by virtue of some minor wording changes.

9. DASP2 – Flood Prone Land

This delegation is amended to include reference to local planning policies.

10. DASP3 – Development Application

This delegation is amended to extend authority to allow decision making in relation to both approving and refusing non-contentious development applications, as well as correct scheme text referencing.

11. DASP4 – Town Planning Scheme No 7 and Local Planning Policy Compliance

This delegation is amended to include the words *local planning policies* in the title and power/duty.

12. DASP14 – Residential Setback Variations

This existing delegation is combined with *DASP7 – Residential Design Codes 2010*, to include determination of applications relating to single houses, multiple dwellings, ancillary dwellings and group dwellings which may include determination of setback variations, pursuant to Town Planning Scheme No 7, Residential Design Codes 2010 and relevant Local Planning Policies.

13. DASP16 – Reserve Administration

This delegation is amended to reflect correct referencing of the City's Town Planning Scheme.

14. DASP17 – Planning and Development Act

This delegation is amended to reflect correct referencing of legislation.

15. DAB1 – Building Act 2011

This is a new delegation that effectively combines nine existing delegations (DAB2, DAB3, DAB5, DAB6, DAB7, DAB8, DAB9, DAB11, and DAB12). The delegation provides authority pursuant to the *Building Act 2011*, to ensure city employees are authorised to deal with building and demolition permit applications, building approval certificates, certificates of building compliance, construction compliance and design compliance.

16. DAB10 – Deposit Material on a Public Place

This delegation is amended to include specific details of the authority to exercise discretion when determining applications for depositing material on any public place. This also included a title change from *Deposit Material on Street(s)* to *Deposit Material on a Public Place* to correctly reflect the intent of the delegation.

17. DAFM2 – Payments from Municipal and Trust Funds

This delegation is a combine of two existing delegations (*DAFM2 – Payments from Municipal and Trust Funds* and *DAFM5 – Payment of Accounts by Electronic Funds Transfer*).

18. DAFM3 – Release of Bank Guarantees

This delegation is amended to remove the word *accept* and replace with *release*.

19. DAFM3 – Investment of Council Funds

This delegation is amended to provide authority to invest Council funds in term deposits in two (2) additional banks; Bankwest and Bendigo.

20. DAFM6 – Write off of Moneys

Two conditions within this delegation are proposed to be amended. The first is a decrease to the limit of individual debt write-off from \$5,000 to \$1,000, and the second is the list of debts written off under this authority are to be presented to council quarterly, instead of annually.

21. DAO1 – Thoroughfare Submissions

This delegation is amended to reflect the wording recommended by the Department of Local Government.

22. DAO5 – Conditions of Property Leases

This delegation is amended to reflect correct references to legislation.

23. DAO7 – Closure of Private Right of Way

This delegation is amended to reflect correct references to legislation.

24. DAO8 – Authority to Serve Notices to Owners or Occupiers of Land

Existing delegations *DAO2 – Apportion Responsibility of Costs From Works in the Street* and *DACL13 – Issuing of Notices to Owner/Occupiers* have been amalgamated into *DAO8 – Authority to Serve Notices to Owners or Occupiers of*

Land.

25. DAO14 – Authority to Sell, Lease or Dispose of Plant, Equipment and Materials

This delegation is amended by virtue of some minor wording changes.

26. DAO16 – Determine Applications and Apply Conditions to Matters Relating to Road Reserves

This delegation has been amended to reflect correct references to legislation.

27. DACL1 – Administer the City’s Local Laws

This delegation has been proposed to provide authority to administer the City’s local laws, and replaces the following existing delegations: *DAH5 – Street Trading/Outdoor Eating Areas*; *DACL3 – Vehicle Parking on Reserves*; *DACL6 – Illegally Parked/Abandoned Vehicles*; and *DACL9 – Residential and Visitor Parking*.

28. DACL2 – Rangers Authorisation

This delegation is amended to reflect correct references to legislation.

29. DACL4 – Closure of Streets for Parties or Events

This delegation is amended to reflect correct references to legislation.

30. DACL5 – Bush Fires Act

This delegation is amended to correctly reference the granting of authority to perform the functions of a local government under the *Bush Fires Act 1954*.

31. DACL7 – Cancellation of Infringement Notices

This delegation has been amended to reflect correct references to legislation.

32. DACL15 – Legal Proceedings

This delegation has been amended to reflect correct references to legislation.

33. DACL16 – Parking Relating Signs

This delegation is amended to include authority to erect, alter or remove parking relating signs and road markings. The title has also been changed to more accurately represent the delegation.

The summary below lists those delegations which are recommended to be repealed.

34. DAG4 – Power to Determine if Inspection of Information Would Divert Substantial or Unreasonable Resources of the Organisation

Section 5.95(1)(b) of the *Local Government Act 1995* specifically provides the capacity for the CEO to limit a person’s right to inspect information referred to in section 5.94 if, in their opinion, it would divert a substantial and unreasonable portion of the local government’s resources away from its other functions. A delegation is not required in this instance.

35. DAG7 – Extended Trading Hours

As the City of Bunbury now has deregulated trading hours, this delegation is no longer required.

36. DAG8 – Employment/Management/Supervision of Staff

Section 5.41(g) of the *Local Government Act 1996* provides the capacity for the CEO to be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees). A delegation is not required in this instance.

37. DAG9 – Use of Coat of Arms

The Standing Orders local law regulates the use of the common seal. A delegation of authority is not required in this instance.

38. DAH5 – Street Trading/Outdoor Eating Areas

This delegation authorises the CEO and Manager Environmental Health to exercise powers and duties under the City's local laws, specifically in relation to street trading and outdoor areas. A new delegation *DACL1 Administer the City's Local Law* has been proposed, which provides the necessary authority to administer the city's local laws and to do all other things that are necessary or convenient to be done for, or in connection with, performing the functions of the City under the City's local laws.

39. DAH8 – Use of Reserve Lands for Mobile Needle and Syringe Exchange Activities

All applications to use reserve land vested in the control of Council for mobile needle and syringe exchange activities will be presented to Council for consideration, therefore delegated authority is not required.

40. DAH9 – Environmental Health Emergency Management Support Plan

Minor changes including the amendment to names, titles and web links to the Bunbury Environmental Health Emergency Management Support Plan may be required for administrative purposes, which is not a decision-making function. A delegation is not required in this instance.

41. DASP1 – Authority to Interpret the Marlston Hill (Stage 3) Design Guidelines

Interpreting the Marlston Hill (Stage 3) Design Guidelines requires officers to exercise professional judgement, not make discretionary decisions. Developments in relation to Marlston Hill are presented to Council for consideration. A delegation of authority is not required in this instance.

42. DASP5 – Approval of Project Plans

Design plans for projects or components of projects are required to comply with Town Planning Scheme No.7 and Local Planning Policies. Delegated authority is provided in *DASP3 – Development Applications* and *DASP4 – Town Planning Scheme No.7 and Local Planning Policy Compliance*. A separate delegation is not required in this instance.

43. DASP6 – Family Care Facilities

Family Care Facilities are required to comply with Town Planning Scheme No.7 and Local Planning Policies. Delegated authority is provided in *DASP3 – Development Applications* and *DASP4 – Town Planning Scheme No 7 and Local Planning Policy Compliance*. A separate delegation is not required in this instance.

44. DASP7 – Residential Design Codes 2010

This delegation is combined with *DASP14 – Residential Setback Variations*. Previously this individual delegation provided the Chief Executive Officer the authority to determine applications relating to single houses, multiple dwellings, ancillary dwellings and group dwellings pursuant to the provisions of City of Bunbury Town Planning Scheme No.7, Residential Design Codes 2010 and relevant Local Planning Policies. The combined delegation, *DASP14 – Residential Setback Variation*, provides authority to the CEO to determine applications pursuant to the same provisions, but with the addition of determining applications which may include setback variations.

45. DASP8 – Home Occupations

Home occupations are required to comply with Town Planning Scheme No.7 and Local Planning Policies. Delegated authority is provided in *DASP3 – Development Applications* and *DASP4 – Town Planning Scheme No.7 and Local Planning Policy Compliance*. A separate delegation is not required in this instance.

46. DASP9 – Town Planning Conditions and Bank Guarantees

The authority to impose specific town planning conditions is covered under delegations *DASP3 – Development Applications* and *DASP4 – Town Planning Scheme No.7 and Local Planning Policy Compliance*. The authority to receive a bank guarantee on behalf of the applicant in cases where developers are required to fulfil such planning conditions is not exercising discretion, simply carrying out a function. A delegation of authority is not required in this instance.

47. DASP10 – Bed and Breakfast Establishments

Bed and breakfast establishments are required to comply with Town Planning Scheme No.7 and Local Planning Policies. Delegated authority is provided in *DASP3 – Development Applications* and *DASP4 – Town Planning Scheme No 7 and Local Planning Policy Compliance*. A separate delegation is not required in this instance.

48. DASP11 – Non-conforming Use of Land

DASP4 – Town Planning Scheme No.7 and Local Planning Policy Compliance provides the authority for the CEO in respect to issues of non-conforming use of land. A separate delegation of authority is not required in this instance.

49. DASP12 – Power of Entry

This delegation of authority is replaced by *DAG7 – Power of Entry*, which provides authority pursuant to the *Local Government Act 1995, Planning and Development Act 2005, Building Act 2011, Dog Act 1976, Cat Act 2011, Health Act 1911* and City

of Bunbury local laws.

50. DASP13 – Creation, Subdivision or Amalgamation of Lots

The function to make recommendations to the Department of Planning and Infrastructure or the Western Australian Planning Commission is one in which planning officers exercise professional judgement, not make a decision. A delegation is not required in this instance.

51. DASP15 – Development Proposals Affecting Council Property

Development proposals affecting Council vested property (freehold or reserved) are required to comply with Town Planning Scheme No.7 and Local Planning Policies. Delegated authority is provided in *DASP3 – Development Applications* and *DASP4 – Town Planning Scheme No.7 and Local Planning Policy Compliance*. A separate delegation is not required in this instance.

52. DASP18 – Strata Title Form No.7

The function to endorse strata titles in accordance with the *Building Act 2011* is covered under delegated authority *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

53. DAB1 – Fees for copying Building Plan(s)

Waiving of fees and charges is already provided for is delegation *FM6 – Write off of Monies*, and therefore this delegation is redundant.

54. DAB2 – Awning Licence

The authority to determine applications for an awning licence is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

55. DAB3 – Veranda Over Street

The authority to determine applications for a veranda over a street is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

56. DAB5 – Building Permits

The authority to approve or refuse to plans and specifications for a building permit is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

57. DAB6 – Demolition Permits

The authority to approve or refuse plans and specifications for a demolition permit is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

58. DAB7 – Grant of Occupancy Permits and Building Approval Certificates

The authority to issue grant of occupancy permits and building approval certificates is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

59. DAB8 – Swimming Pool Enclosure

The authority to determine a swimming pool enclosure is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

60. DAB9 – Extension of Periods of Duration

The authority to grant extensions of periods of duration for occupancy permits and building approval certificates is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

61. DAB11 – Building Orders

The authority to make building orders in relation to building or demolition work is provided in *DAB1 – Building Act 2011*. A separate delegation is not required in this instance.

62. DAB12 – Revocation of Building Orders

The authority to revoke building orders is provided in *DAB1 – Building Act 2011*. An individual delegation is not required in this instance.

63. DAB13 – Right of Entry

This delegation of authority is replaced by *DAG7 – Power of Entry*, which provides right of entry authority pursuant to the *Local Government Act 1995, Planning and Development Act 2005, Building Act 2011, Dog Act 1976, Cat Act 2011, Health Act 1911* and the City of Bunbury local laws.

64. DAFM1 – Commercial Waste Fee Structure

Fees and charges may not be amended without an absolute majority decision, unless the authority to waive has been incorporated in the adopted schedule of fees and charges. This delegation is therefore *ultra vires*.

65. DAFM5 – Payment of Accounts by Electronic Funds Transfer

DAFM2 – Payments from Municipal and Trust Funds and *DAFM5 – Payment of Accounts by Electronic Funds Transfer* have been amalgamated into one delegation (new *DAFM2 - Payments from Municipal and Trust Funds*).

66. DAO2 – Apportion Responsibility of Costs from Works in Street

This delegation has been amalgamated into *DAO8 – Authority to Serve Notices to Owners or Occupiers of Land* (previously titled *Works in Streets*).

67. DAO6 – Street Name Register

Applications for street names are assessed in accordance with Council's Policy and guidelines and referred to Council for consideration, with the final decision made by the Geographic Names Committee (Landgate). A delegation is not required in this instance.

68. DAO9 – Entry to Property

This delegation is replaced by *DAG7 – Power of Entry*, which provides right of entry authority pursuant to the *Local Government Act 1995, Planning and*

Development Act 2005, Building Act 2011, Dog Act 1976, Cat Act 2011, Health Act 1911 and the City of Bunbury local laws.

69. DAO10 – Purchase and Disposal of Minor Plant and Light Vehicles

This delegation has been amalgamated into *DAO14 – Authority to Sell, Lease or Dispose of Plant, Equipment and Materials.*

70. DAO11 – Determine Roadworks Submissions

The function of determining road works submissions may be authorised by the CEO in an “acting through” capacity, and does not require a delegation.

71. DAO12 – Dangerous Trees on Private Property

The authority to form an opinion that trees on private property constitute a danger to persons or property on adjoining land is provided in *DAO8 – Authority to Serve Notices to Owners or Occupiers of Land* (previously titled *Works in Streets*). A separate delegation is not required in this instance.

72. DAO13 – Placing Barriers Across Streets

The function of determining road closures may be authorised by the CEO in an “acting through” capacity, and does not require an individual delegation.

73. DAO17 – Vesting of Public Reserves

The vesting of a public reserve created within the City of Bunbury is referred to Council for consideration, and does not require an individual delegation.

74. DAO18 – Approval and Assignment of Property Leases and Licences

The delegation refers to sections 3.53 and 3.54 of the *Local Government Act 1995*, being the negotiation and authorisation of deeds of lease and licence documents on behalf of Council, over City controlled land and premises.

The Department of Local Government guideline on this matter indicates only section 3.53(3) requires delegated authority. Section 3.54 and the other subsections of 3.53 are undertaken in an “acting through” capacity. Section 3.53(3) of the Act states “*if the facility is partially within each of 2 or more districts, it is to be controlled and managed as the local governments for the districts concerned agree or, if they do not agree, as the Minister directs.*” Should this situation occur, the information would be presented to Council for their consideration and not authorised under delegation, therefore this delegation is not required.

75. DACL3 – Vehicle Parking on Reserves

The authority to determine requests for vehicle parking on reserves associated with functions on reserves, and to make arrangements for the control of vehicles and collection of fees charged, is provided in *DACL1 – Administer the City’s Local Laws*. A separate delegation is not required in this instance.

76. DACL6 – Illegally Parked/Abandoned Vehicles

The authority to remove a vehicle which is illegally parked and causing an

obstruction or deemed to be abandoned is provided in *DACL1 Administer the City's Local Laws*. An individual delegation is not required in this instance.

77. DA CL8 – Institute Legal Proceedings

This delegation has been amalgamated into *DA CL15 – Legal Proceedings*, and is therefore not required.

78. DA CL9 – Residential and Visitor Parking

The authority to determine applications and renewals for residential and visitor parking permits is provided in *DA CL1 – Administer the City's Local Laws*. A separate delegation is not required in this instance.

79. DA CL11 – Signing of Prosecutions

This delegation has been amalgamated into *DA CL15 – Legal Proceedings*, and is therefore not required.

80. DA CL13 – Issuing of Notices to Owner/Occupiers

The authority to issue notices requiring certain things to be done by an owner/occupier of land is provided in *DA O8 – Authority to Serve Notices to Owners or Occupiers of Land* (previously titled as *Works in Streets*). A separate delegation is not required in this instance.

81. DA CL14 – Keeping of More Than Two Dogs

The authority to approve applications to keep more than two dogs for a temporary period is provided in *DA CL1 – Administer City Local Laws* and *DA CL2 – Rangers Authorisation*. A separate delegation is not required in this instance.

Analysis of Financial and Budget Implications

Nil

Community Consultation

Not applicable.

Councillor/Officer Consultation

Consultation with affected Departments and a review of applicable legislation was undertaken in respect to reviewing the instruments of delegation.

10.2.7 Proposed Deed of License – Indian Harley Club Inc. over Site 4, Portion of Lot 200 Robertson Drive, Bunbury

File Ref:	L159
Applicant/Proponent:	Indian Harley Club Inc
Author:	Kristen Anderson, Administration Officer Property and Procurement
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-7: Portion Lot 200 Robertson Drive

Summary

An application has been received from the Indian Harley Club Inc (hereinafter the “Applicant”) seeking Council’s agreement to grant a new Deed of License over Site 4, a portion of Lot 200 Robertson Drive, Bunbury (the “Premises”), for the purpose of storage of equipment and goods only. A location plan is **attached** at Appendix CEO-7.

Executive Recommendation

Council agrees to grant a new Deed of License to the Indian Harley Club Inc over Site 4, Lot 200 Robertson Drive, Bunbury for a term of five (5) years with a further option of five (5) years, for the purpose of storage of equipment and goods only, subject to the terms and conditions contained in this report.

Background

The Indian Harley Club was founded in 1971 by a group of local motorcycle enthusiasts, and since then have promoted the restoration and use of historic motorcycles. Originally the club was formed with the interest of Indian and Harley Davidson machines, but now support the restoration and use of all makes and models.

The Indian Harley Club has since grown significantly boasting over 300 members from Bunbury and the surrounding areas. In 2005 the Indian Harley Club applied to the City for a storage facility on Robertson Drive and were successful in their application and since then have held tenure over the Premises.

It is no longer considered that the proposed S.E.S structure on this parcel of land will have any impact on the existing leased areas and therefore the Officer has sought Council endorsement of a five (5) year term with a further five (5) year option.

Current License Details

Commencement:	1 September 2010
Term:	Five(5) years
Expiry Date:	31 August 2015
Rental:	\$405.00 + GST annually
Rent Review:	CPI annually
Outgoings:	There are no services to the site
Insurance:	The Lessee to maintain contents and public liability insurance policies over the premises with public liability to be set at \$5(M).

Proposed New Deed of License Details

Commencement:	1 September 2015
Term:	Five (5) years with a further option of five (5) years
Expiry Date:	31 August 2020
Rental:	\$364.00 + GST annually
Rent Review:	CPI annually
Outgoings:	Responsibility of the Licensee
Insurance:	The Licensee to maintain Public Risk and General Insurance Policies over the premises with Public liability to be set at \$10(M)
Special Conditions:	<p>Redevelopment</p> <p>In the event that the Licensor requires the whole or part thereof of the licensed area, for rationalisation/redevelopment to alter, extend or redevelop the Land or any part thereof or carry out any works in the Land or any part thereof which will prevent access or safe access to the Licensed Premises, then the Licensor may terminate the License giving the Licensee written notice (“Termination Notice”) herein before granted by Twelve (12) months, of the termination of the License. The Licensee shall grant vacant possession to the Licensor upon the date determined in the Licensor’s written Termination Notice.</p> <p>In the event of redevelopment delays or cancellation of proposed works the Licensor may advise the Licensee of the delays and negotiate any potential extensions until such time as the development or proposed works are to commence.</p>
Document Preparation:	The applicant to pay full cost of document preparation and registration.

Officer Comments

The applicant has held tenure over the Premises for 10 years, with no recorded breach of conditions or late payments of rent.

Consideration has been given to future development of the site and the terms of the License have been mutually agreed to by the parties.

Analysis of Financial and Budget Implications

A valuation of the rental amount was carried out and returned a valuation of \$1820.00 ex GST chargeable per annum. In accordance with the City’s Leases and Licenses Policy, a rent tier matrix was applied, taking in to consideration the facility itself, maintenance and lifecycle of the Premises, Commercial Operation and the benefit to the community where a healthy lifestyle is promoted.

As such, the Applicant has qualified for an 80% reduction in the overall rental amount which was agreed upon by the parties, making the annual rental rate \$364.00 ex GST.

Community Consultation

The Applicant has received and agreed to all terms and conditions contained within this report.

Councillor/Officer Consultation

The proposed Deed of License was tabled with the City's Development Coordination Unit and no objections were received.

10.2.8 Financial Management Report for the Period Ending 31 May 2015

Applicant/Proponent:	Internal Report
Author:	David Ransom, Manager Finance
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-8: Statement of Comprehensive Income Appendix CEO-9: Statement of Financial Activity Appendix CEO-10: Statement of Net Current Assets Appendix CEO-11: Balance Sheet Appendix CEO-12: Capital Works Expenditure Summary Appendix CEO-13: Operating Project Summary

Summary

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

- Statement of Comprehensive Income (**attached** at Appendix CEO-8)
 Actual Financial Performance to 31 May 2015
 - Actual income of \$51.16M is \$1.82M greater than the year-to-date budgeted income of \$49.34M.
 - Actual expenditure of \$37.33M is \$1.96M less than the year-to-date budgeted expenditure of \$39.29M (refer explanation on next page).
 - Actual operating surplus of \$13.83M is \$3.78M greater than the year-to-date budgeted operating surplus of \$10.05M.

- Balance Sheet (**attached** at Appendix CEO-11)

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

	Year-to-date	Forecast
* Current Assets of \$22.34M includes:		
- Cash and Investments	\$20.62M	\$13.65M
- Rates	\$ 0.55M	\$0.22M
- Other Current Assets	\$ 1.17M	\$2.04M
Current Liabilities of \$6.64M includes:		
- Trade and Other Payables	\$1.59M	\$4.30M
- Annual Leave and LSL Provisions	\$3.22M	\$3.70M
* Working Capital (Current Assets less Current Liabilities)	\$15.69M	\$5.90M
* Equity (Total Assets less Total Liabilities)	\$441.09M	\$427.24M

- Statement of Financial Activity (**attached** at Appendix CEO-9)
 - Closing Funding Surplus to 30 June 2015 is forecast at \$1.56M, which is \$1.02M more than the Current Budget Closing Funding Surplus of \$539K. Note that the forecast closing funds of \$1.56M includes \$535K of operating and capital projects carried forward to 2015/16 Budget. Forecast closing funds net of carried forward projects is \$1.03M.

4. Capital Works (**attached** at Appendix CEO-12)
 - Actual capital works of \$10.35M (which excludes \$5.69M of committed expenditure) is \$8.09M less than the year-to-date budgeted capital works of \$18.44M, (refer explanation within report).

5. Operating Project Expenditure (**attached** at Appendix CEO-13)
 - Actual operating project expenditure of \$2.68M (which excludes \$388K of committed expenditure) is \$720K less than the year-to-date budgeted operating project expenditure of \$3.40M, (refer explanation within report).

Executive Recommendation

The Financial Management Report for the period ending 31 May 2015 be received.

Background

A financial management report is provided to Councillors on a monthly basis which includes the following summaries:

- Statement of Comprehensive Income (**attached** at Appendix CEO-8)
- Statement of Financial Activity (**attached** at Appendix CEO-9)
- Statement of Net Current Assets (**attached** at Appendix CEO-10)
- Balance Sheet (**attached** at Appendix CEO-11)
- Capital Works Expenditure Summary (**attached** at Appendix CEO-12)
- Operating Projects Summary (**attached** at Appendix CEO-13)

These summaries include end-of-year forecasts based on a monthly review of year-to-date income and expenditure for all accounts.

Council Policy Compliance

Not applicable.

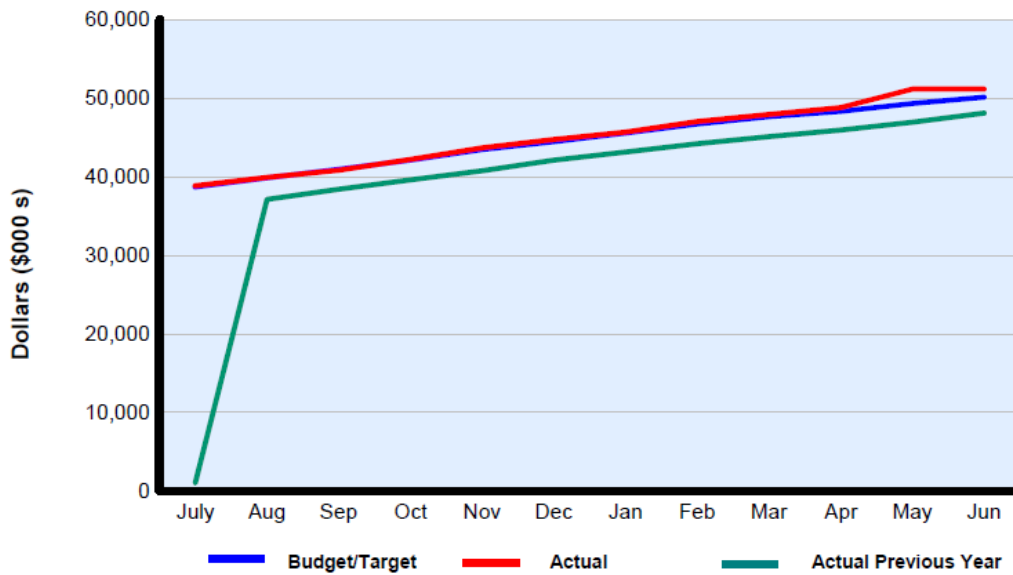
Legislative Compliance

In accordance with the provisions of Section 6.4 of the *Local Government Act 1995* and Regulation 34 (1) of the Local Government (Financial Management) Regulations 1996, a Local Government is to prepare each month a Statement of Financial Activity (**attached** at Appendix 16) reporting on the revenue and expenditure as set out in the annual budget under Regulations 22 (1) (d) for this month.

Officer Comments

The Operating Income, Operating Expenditure and Capital Expenditure graphs provide an overview on how actual income/expenditure is tracking to budget and the previous financial year. Comments are provided on each graph regarding the current financial position

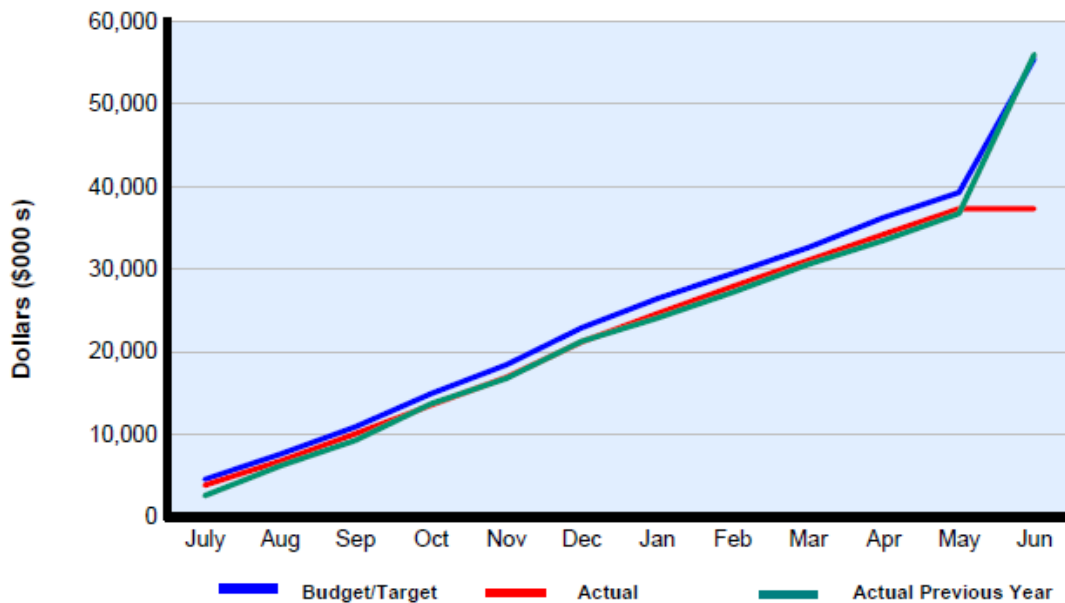
Operating income (\$000's)



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

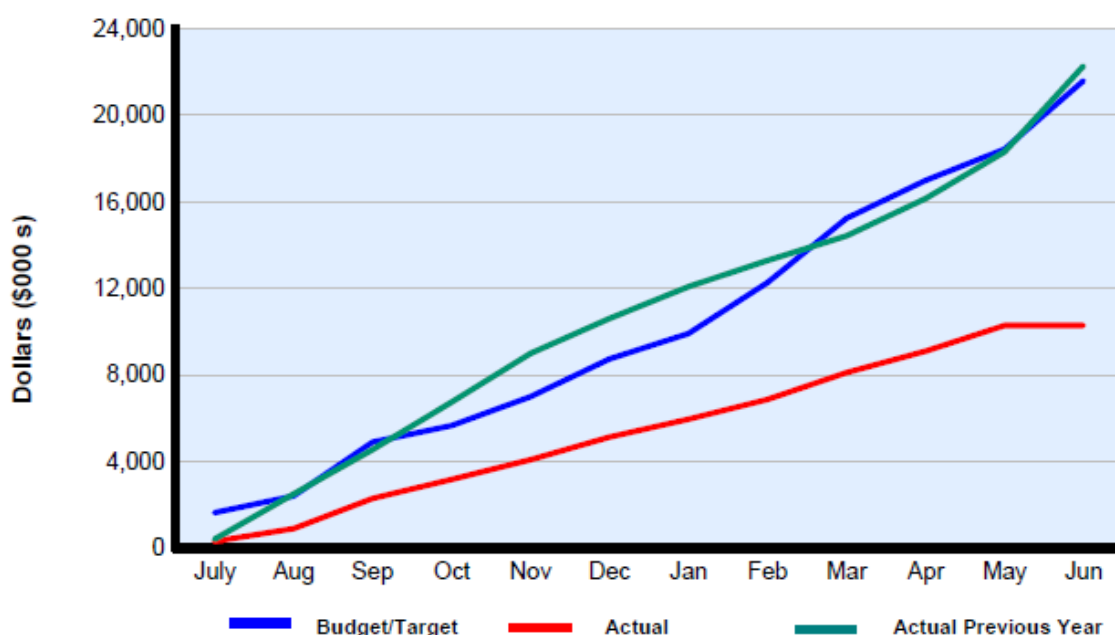
There is a favourable actual to budget variance of \$1,815,661 due to \$28K favourable variance in rating, \$1M favourable variance from operating grants and subsidies (Marine Facilities), \$174K favourable variance from contribuion and reimbursement income, \$392K favourable variance from fees and charges, \$145K favourable variance from interest received and a \$73K favourable variance from other revenue.

Operating expenditure (\$000's)



Note: Actual operating expenditure for both base and operating projects is \$1.96M under the year-to-date budget due to timing of works commencing. This is monitored on a monthly basis. Note that there is operating project committed expenditure of \$388K.

Capital Expenditure (\$ 000's)



Note: The capital expenditure variance to the end of May 2015 of \$8.09M is due to the delay in commencement or progress of various projects as reported in the monthly Capital Works Expenditure Summary Report to Council. Note that there is committed expenditure of \$5.69M.

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 Budget Variance
Operating Income	
Rates <i>Rate Interim Income</i> – Additional interim rate income of \$31,226 received. The end of year forecast has been adjusted accordingly.	\$28,410 0.08%
Operating Grants and Subsidies <i>Operating Grant Income</i> – Additional grant funds received from the South West Development Commission for the Bunbury Marine Facilities management of funds (\$1M). The end of year forecast has been adjusted accordingly.	\$1,002,891 44%
Contributions Reimbursements and Donations <i>Reimbursement Income</i> – Favourable year-to-date variance of \$175,912, due to \$66K additional insurance claims received to date, higher than anticipated legal reimbursements received of \$25K (\$17K associated with parking and \$8K associated with Dog Act), \$19K additional government paid parental leave received, \$18K additional utilities recouped, \$10K reimbursements for the upgrade of parking machines and towing fees, higher than anticipated workers compensation claims of \$15K, \$15K bond retention reimbursement due to damage after music event.	\$174,341 21%

<p>Contributions Reimbursements and Donations (continued) <i>Donation Income</i> – Unfavourable year-to-date variance of \$2,440, due to budgeted donations for the Bunbury Wildlife Park, Bunbury Regional Art Galleries and the Setagaya conference not being received.</p>	
<p>Fees and Charges <i>Fine and Penalty Fee Income</i> – Favourable variance of \$100,477 due to higher than anticipated parking fines received year-to-date of \$67K, (note that any additional income is transferred into reserves), higher than anticipated dog registration fines of \$24K, higher than expected year-to-date bush fire fines of \$2K, higher than expected year-to-date local law fines of \$2K, higher than expected library fines \$3K. The end of year forecasts has been adjusted accordingly.</p>	<p>\$392,090 3%</p>
<p>Interest Received Favourable year-to-date variance of \$144,614 due to additional \$128,659 of term deposit interest received to date and an additional \$15,954 of rates debtor interest received. The end of year forecasts has been adjusted accordingly.</p>	<p>\$144,614 16%</p>
<p>Other Revenue <i>Miscellaneous Income</i> – Favourable year-to-date variance of \$73,316, mainly due to \$20K received in museum donations (note that this income is transferred into reserves), higher than anticipated year-to-date private works income of \$30K received, additional employee reimbursements of \$10K received, higher than anticipated year-to-date visitor centre commissions of \$8K received, additional \$6K of income from the collection of commercial waste. The end of year forecasts has been adjusted accordingly.</p>	<p>\$73,316 26%</p>
<p>Operating Expenditure</p>	
<p>Materials and Contracts <i>Materials Expense</i> – Favourable variance of \$736,969 mainly due to the timing of operating projects. Refer to Operating Expenditure report for project details. This will continue to be monitored on a monthly basis.</p> <p><i>Consultants Expense</i> – Favourable year-to-date variance of \$398,095 mainly due to the timing of operating projects. Refer to Operating Expenditure report for project details. This will continue to be monitored on a monthly basis.</p> <p><i>Contractors Expense</i> – Favourable year-to-date variance of \$797,716 mainly due to timing of operating projects. Refer to Operating Expenditure report for project details. This will continue to be monitored on a monthly basis.</p>	<p>\$1,924,454 15%</p>
<p>Other Expenditure <i>Contributions, Donations and Sponsorship Expense</i> – Favourable year-to-date budget variance of \$202,954. This is mainly due to the events funding allocation (PR-3510) not fully spent; an end of year forecast</p>	<p>\$268,588 12%</p>

<p>Other Expenditure (continued) has been entered to reduce expected expenditure. Refer to Operating Expenditure report for project details. The will continue to be monitored on a monthly basis.</p> <p><i>Miscellaneous Expense</i> – Favourable year-to-date budget variance of \$57,535 due to employee training and conferences that have not yet occurred. The end of year forecasts has been adjusted accordingly.</p>	
<p>Statement of Financial Activity</p>	<p>YTD Actual to Budget Variance</p>
<p>Operating Revenues</p>	
<p>See explanation above included in the Statement of Comprehensive Income variances.</p>	<p>\$1,787,251 10%</p>
<p>Operating Expenses</p>	
<p>See explanation above included in the Statement of Comprehensive Income variances.</p>	<p>\$1,960,600 5%</p>
<p>Capital Expenses</p>	
<p>Acquisition of Assets – Variance due to delay in progress of various projects including:</p> <p>PR-1021 Construct Hay Park Sports Pavilion \$2.87M PR-1324 Replace Ocean Drive Pump Station \$356K PR-2123 Construct replacement animal care facility \$385K PR-2421 Drainage Improvements – Horseshoe Lake \$358K PR-2625 Widen Formation and reconstruct embankment Koombana Drive \$282K PR-1798 Rehabilitate Paisley Centre \$185K PR-1373 Upgrade access road to new Rescue Helicopter Base and Airport Hangers \$173K</p> <p>Note that there is committed expenditure of \$5.69M. Refer to Capital Expenditure report for project details.</p>	<p>\$8,090,330 44%</p>

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 Finance staff monitor the City’s monthly revenue and expenditure and (as required) refers 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.

10.2.9 Surrender of Lease Longshore Investments Pty Ltd As Trustee for the Pollyanna Poole Family Trust “NooVoh Backbeach Restaurant”, over Portion of Lot 757 Ocean Drive, Bunbury

File Ref:	L57
Applicant/Proponent:	Internal
Author:	Jane Dawson, Senior Property Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-14: Location Plan Portion Lot 757 Ocean Drive

Summary

The purpose of this report is to provide Council with information relating to the surrender of a lease for the premises situated on a portion of Lot 757 Ocean Drive Bunbury, and to seek permission from Council to seek expressions of interest with a view to establishing a new lease.

Executive Recommendation

That Council:

1. Note the Surrender of the Lease by Longshore Investments Pty Ltd trading as NooVoh Back Beach Restaurant, effective 4 June 2015.
2. Requests the Chief Executive Officer seek Expressions of Interest from suitable applicants to Lease the premises previously known as NooVoh Restaurant.
3. Appoint a Panel comprising up to three (3) Councillors, the Chief Executive Officer and one (1) external person with the relevant expertise and experience to assess any submissions received in response to the Expression of Interest, for the lease of the premises at Lot 757 Ocean Drive, Bunbury formerly known as NooVoh Restaurant.
4. Request the Panel make a recommendation to Council following the close of the Expression of Interest period.

Background

The City of Bunbury has been advised by Longshore Investments Pty Ltd (the “Lessee”) trading as NooVoh Back Beach Restaurant, of the surrender of their Lease effective 4 June 2015.

The Lease over a portion of Lot 757 Ocean Drive was for a term of twenty one (21) years expiring 30 November 2015, with a further option of twenty one (21) years, expiring 30 November 2036, for the purpose of restaurant and kiosk.

Pursuant to clause 16 of the Lease (Determination of Term), the City and the Lessee have agreed to the Surrender and Termination of the Lease.

A location plan of the Lease area is attached at Appendix CEO-14.

The original Lease was established between the City and Roy and Christine Palmer for an initial term of 21 years, with an option of a further 21 years. On 14 April 1999, the Lease was assigned

solely to Roy Palmer by Christine Palmer, and subsequently by Roy Palmer to Prospero Corporation in 2004, which traded under the name “Extensions”.

Prospero Corporation subsequently assigned the Lease to Crooked Billet Investments Pty Ltd (also trading as “Extensions”) on 4 October 2011 (Council Decision 222/11). As Prospero Corporation was no longer trading, Crooked Billet Investments Pty Ltd applied for a change to a new trading name, Longshore Investments Pty Ltd. This name change was to ensure protection from any legal issues that may have arisen as a result of the “Extensions” name.

A Deed of Variation of Lease for the name change from Crooked Billet Investments Pty Ltd to Longshore Investments Pty Ltd which trades as “NooVoh” dated 17 September 2012 was signed under delegated authority by the Chief Executive Officer for the remaining term of three (3) years, which also included a further option of twenty-one (21) years. The further term is at the sole discretion of the Lessee as to whether they invoke the option or not.

An agenda item was presented to Council in September 2014 requesting Council agree to a new Lease to replace the further term option of twenty-one (21) years. At which Council Decided (361/14):

“Council agrees to grant a new lease to the Applicant under identical terms as the current Lease for a term of twenty-one (21) years to commence on 1 December 2015 over portion of Reserve 43260, being portion of Lot 757 Ocean Drive, Bunbury, subject to the terms and conditions as specified in the report, and the following:

1. *The new Lease to contain identical terms and conditions as under the current Lease, which expires on 30 November 2015, but without any further right of renewal.*
2. *Advertising in accordance with the provisions of Section 3.58 of the Local Government Act 1995.*
3. *The approval of the Minister for Lands.”*

Council Policy Compliance

Council Policy: Commercial Leases will apply to any future lease over this building.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995* deals with disposal of property.

Officer Comments

The City has been in negotiations with Longshore Investments Pty Ltd since September 2014, with a view to exercising the optional term of twenty (21) years with a new Lease in accordance with Council Decision 361/14. The documentation was being prepared by Slee Anderson and Pidgeon on behalf of the City.

The Lessee returned the keys to the leased premises on 2 June 2015 and confirmed by email on 4 June 2015 the Surrender of the Lease.

It is recommended that expressions of interest be advertised for a period of 30 days, seeking submissions from suitable applicants to Lease the premises previously known as NooVoh.

Analysis of Financial and Budget Implications

Under the terms of the surrendered lease, annual rent to the City was \$46,498.32 plus GST per annum, plus Crown Lease Rental of \$30,384.84 plus GST per annum, being a total of \$76,883.16 payable per annum.

A Landgate market valuation was received in January 2015 which increases the Commercial Annual rent to \$50,000.00 plus GST per annum.

Community Consultation

Not Applicable

Councillor/Officer Consultation

The matter has been considered by the Chief Executive Officer and the Senior Property Officer.

10.2.10 Schedule of Accounts Paid for the Period 1 May 2015 to 31 May 2015

Applicant/Proponent:	Internal Report
Author:	David Ransom, Manager Finance
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Under Separate Cover –

The City of Bunbury "*Schedule of Accounts Paid*" covering the period 1 May 2015 to 31 May 2015 has been issued to elected members **under separate cover**. The schedule contains details of the following transactions:

1. Municipal Account – payments totalling \$6,413,385.46
2. Advance Account – payments totalling \$4,758,392.55
3. Trust Account – payments totalling \$30,978.13
4. Visitor Information Centre Trust Account – payments totalling \$36,637.14
5. Bunbury-Harvey Regional - Council Municipal Account – payments totalling \$1,196,469.55
6. Bunbury-Harvey Regional Council Advance Account – payments totalling \$1,163,209.72

Executive Recommendation

The Schedule of Accounts Paid for the period 1 May 2015 to 31 May 2015 be received.

10.2.11 Proposed Deed of Lease, FES Ministerial Body, Department of Fire and Emergency Services, Emergency Rescue Helicopter Base, portion of Bunbury Airport, Lot 507 (DP 74949) South Western Highway, Davenport

File Ref:	A05906
Applicant/Proponent:	Internal Report
Author:	Jane Dawson, Senior Property Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-16: Location Plan

Summary

An application has been received from FES Ministerial Body, the Department of Fire and Emergency Services (“applicant”) seeking council’s consent to a Lease over portion of Bunbury Airport, Lot 507 (DP 74949) South Western Highway, Davenport for a term of Twenty One (21) years. A location plan is **attached** at Appendix CEO-16.

Executive Recommendation

Council agrees to a Lease with FES Ministerial Body, the Department of Fire and Emergency Services over portion of Bunbury Airport, Lot 507 (DP 74949) South Western Highway, Davenport for a term of twenty-one (21) years subject to the terms and conditions as specified in the report, and final approval of the Minister for Lands.

Background

The Department of Fire and Emergency Services (DFES) currently operates a single rescue helicopter from a facility at Jandakot Airport. DFES have received funding to operate a second rescue helicopter and propose to establish a permanent base at Bunbury Airport. Construction of the base is expected to cost \$6M-\$7M and create 15-20 permanent jobs.

The Bunbury Airport is comprised within Reserve 27686, Lot 507 (DP 74949) South Western Highway, Davenport and is held by the City of Bunbury under Management order 3040/1963 Crown Land Record Volume LR3157 Folio 3 for the purpose of “Airport” with the power to lease subject to the consent of the Minister for Lands.

Pursuant to Section 18 of the *Land Administration Act 1997*, the Office of the Minister for Lands will be requested to provide “in principle” approval for the proposal.

Proposed Deed of Lease Details

Commencement:	1 st July 2015
Term:	Twenty One (21) years
Expiry:	30 th June 2036
Area:	7727 square metres initially with further expansion of a further 1873 square metres
Rental:	\$11.50 per square metre (inclusive of GST)
Rent Review:	CPI annually
Area:	7,727m ²
Outgoings:	Responsibility of the applicant

Insurance:	Lessee (FES Ministerial Body) to maintain Public Risk and General Insurance cover over the premises with Public Liability to be set at \$20M.
Special Conditions:	Lessee responsible for maintaining and upkeep of the demised premises.

Council Policy Compliance

Not applicable

Legislative Compliance

Not applicable

Officer Comments

Development of a rescue helicopter facility at Bunbury Airport will provide improved response times to emergency situations throughout the South West.

Bunbury Airport already plays an important role in the provision of emergency services to the population of the South West, receiving approximately 750 visits per annum from the Royal Flying Doctor Service and hosting Department of Parks and Wildlife (DPaW) water bombing aircraft each summer. The rescue helicopter base will become the cornerstone tenant at the airport and confirm Bunbury Airport's position as the emergency services hub for the South West.

Analysis of Financial and Budget Implications

The lease rental calculated is based upon a report provided by the Valuer General following the Valuer General's extensive review of similar airports throughout Western Australia based on \$11.50 per square metre.

Community Consultation

Not Applicable.

Councillor/Officer Consultation

The City's Executive and the applicants have mutually agreed on the proposed term and conditions of the Lease.

10.3 Director Corporate and Community Services

10.3.1 Disability Access and Inclusion Plan Report and Overview

Applicant/Proponent:	Committee report
Author:	Jessica Hackett, Major Projects Officer
Executive:	Stephanie Addison-Brown, Director Corporate and Community Services
Attachments:	Appendix DCCS-1: 2014-15 Financial Year Progress Report Appendix DCCS-2: Qualitative Overview of Activities Appendix DCCS-3: Council Policy: Access and Inclusion Policy Appendix DCCS-4: Resolution 240 Disability Access and Inclusion Report

Summary

At the close of each financial year all Western Australian public authorities are required to report to the Disability Services Commission on progress made on objectives identified in their Disability Access and Inclusion Plans throughout the previous year.

The purpose of this report is for Council to consider endorsing the City's Disability Access and Inclusion Plan 2014-15 Financial Year Progress Report (**attached** at Appendix DCCS-1) as required by the Disability Services Commission as well as a qualitative Overview of activities (**attached** at Appendix DCCS-2).

Advisory Committee Recommendation

That Council endorse the Disability Access and Inclusion Progress Report and Overview 2014/15, to be submitted to the Disability Services Commission by 3 July 2015.

Background

Under the *Disability Services Act 1993* (amended 2004), the Minister for Disability Services is required to table a report in Parliament each year on the progress of Disability Access and Inclusion Plans (DAIPs) in Western Australia.

Western Australian public authorities, including the City of Bunbury, are required to report to the Disability Services Commission on disability access and inclusion initiatives and DAIP progress undertaken in the previous year.

Information provided by public authorities informs the Minister's report which demonstrates how DAIP strategies have been progressed to meet the desired outcomes as required by the Act. This includes services to the public delivered by agents and contractors as specified in the Disability Service Regulations.

The City of Bunbury has in place a DAIP 2012 – 2017 which, along with the Community Access Committee, guides staff on the development of disability access and inclusion projects and initiatives. This development is coordinated by the Community Development Team, however access initiatives are undertaken by all departments as required.

Council Policy Compliance

Council Policy: Access and Inclusion Policy states; “*the City of Bunbury will provide facilities, services and information that is accessible and inclusion for community members of all abilities*” (**attached** at Appendix DCCS-3). This Policy applies to all Elected Members, staff volunteers, and contractors providing services on behalf of the City of Bunbury and was adopted by Council at its meeting held 11 November 2014, Council Decision 412/14 (**attached** at Appendix DCCS-4).

Legislative Compliance

Under the *Disability Services Act 1993* (amended 2004) all Western Australian public authorities are required to report to the Disability Services Commission annually on progress made on objectives contained within their Disability Access and Inclusion Plans.

Officer Comments

The Disability Access and Inclusion Plan Progress Report is a document legislatively required by the Disability Services Commission. The Disability Access and Inclusion Plan Overview has been developed to provide a qualitative, easy-to-read outline of activities undertaken for Council and community.

Analysis of Financial and Budget Implications

\$25,000.00 is allocated each year in the operating budget for the delivery of disability access and inclusion initiatives.

Community Consultation

At their meeting on Friday 5 June 2015, the Community Access Committee endorsed the recommendation to table the Report and Overview at Council.

Councillor/Officer Consultation

Deputy Mayor Brendan Kelly and Councillor Murray Cook are members of the Community Access Committee and were supportive of the recommendation at the Committee meeting on 5 June 2015.

10.4 Director Planning, Development and Regulatory Services Reports

10.4.1 Development Application seeking Planning Approval for a Change of Use - Unit 3 Lot 501 #15 Sandridge Road, East Bunbury

File Ref:	P05437, DA/2015/111/1
Applicant/Proponent:	SPBY Pty Ltd (trading as SportsPower Bunbury) Landowner: Citygate Properties Pty Ltd
Author:	Laura Sabitzer, A/Team Leader Development Assessment and Compliance
Executive:	Bob Karaszekwych, Director Planning, Development and Regulatory Services
Attachments:	Appendix DPDS-1: Location Plan Appendix DPDS-2: Letter and Floor Plan

Summary

The application for planning approval is for the proposed change of use of the subject site, Unit 3 Lot 501 #15 Sandridge Road, East Bunbury to enable the relocation of the SportsPower Bunbury from its current location in the Eaton Fair Shopping Centre.

The subject site currently has planning approval for a 'showroom'/ 'warehouse' use previously tenanted by a hardware store (Mitre 10) in the 'Mixed Business Zone'.

An earlier proposal was subject to a State Administrative Tribunal (SAT) appeal, which the applicant at the time, the landowner, Citygate Properties Pty. Ltd. withdrew the appeal before the matter proceeded to hearing for a decision. The applicant for the new application for planning approval for a change of use is the business owner of the SportsPower Bunbury store, which is part of a nation-wide sporting footwear, apparel and equipment retailing group.

SportsPower stores in Western Australia are typically located in areas where other shops are permitted, such as in shopping centres in metropolitan areas and on the main-street of regional town centres. As such, the format of SportsPower stores are classified as being a 'shop/retail' Planning Land Use Category (PLUC) under the Western Australian Planning Commission's (WAPC) Commercial Land Use Survey (1997).

Consequently, the proposal being predominantly a 'shop' use is deemed by the City of Bunbury Town Planning Scheme No. 7 (the Scheme) is an 'X' prohibited use in the 'Mixed Business Zone'. Accordingly, the Scheme requires that the local government must refuse to approve any 'X' use of land.

For the reasons outlined above, the application is recommended for refusal.

Executive Recommendation

That Council:

1. Refuse the application for planning approval for the proposed change of use of Unit 3, Lot 501 #15 Sandridge Road, East Bunbury, (application reference DA/2015/111/1) in accordance with City of Bunbury Town Planning Scheme No. 7, for the following reasons:

- (a) The proposal falls within the definition of ‘shop’ use class as contained in Schedule 1 of the Scheme. The use class of ‘shop’ is listed in Table No. 1 – Zoning Table of the Scheme, as an ‘X’ (not permitted) use in the ‘Mixed Business Zone’.
- (b) The proposal is contrary to the intent of the City of Bunbury Local Planning Strategy for Activity Centres and Neighbourhoods (December 2010).
- (c) The proposal is contrary to the objectives of the Western Australian Planning Commission’s Activity Centres for the Greater Bunbury Policy (April 2012), and as such, is not in accordance with Clause 10.2.1(e) of the Scheme.
- (d) The proposal does not represent “orderly and proper planning”, and as such is not in accordance with Clause 10.2.1(b) of the Scheme.

2. Advise the applicant and landowner of Council’s decision.

Background

The application for planning approval for the proposed change of use of Unit 3, Lot 501 #15 Sandridge Road, East Bunbury (the subject site), was received on 30 April 2015. A summary table of the details relating to the subject site are as follows:

Property Address:	Lot 501 #U3/15 Sandridge Road, East Bunbury
Zoning:	Mixed Business Zone
Existing Land Use:	Showroom/Warehouse
Lot Area:	3,769m ²
Floor Area (Unit 3):	874m ² approximately

The subject site contains three (3) attached units fronting on to Sandridge Road situated near the traffic light controlled intersection of Sandridge Road, Picton Road and King Road. The previous tenant of Unit 3 was the hardware store Mitre 10. A location plan showing the subject site is **attached** at Appendix DPDS-1.

The application for planning approval is for the change of use of Unit 3, with no proposed changes to the existing building, landscaping or car parking configuration. Additionally, no signage or details on advertising is proposed with the application.

The proposed tenant of Unit 3, SportsPower Bunbury describes the business as “selling sporting footwear, apparel and equipment”. SportsPower stores currently operate in metropolitan and regional locations nationwide, including in the south-west region where they are currently operating in Eaton Fair Shopping Centre, and within the Busselton, Margaret River and Manjimup shopping centres.

The proposed floor plan and supporting letter from the applicant are **attached** at Appendix DPDS-2.

The proposal for a SportsPower store to operate out of Unit 3 was subject to a previous SAT appeal submitted in October 2014 on behalf the landowner Citygate Properties Pty. Ltd. Prior to this, the City of Bunbury had advised the applicant that as the “responsible authority” under the *Planning and Development Act 2005* having responsibility for the enforcement of the Scheme, it could not support the proposal. At that time, it was indicated that the primary reason for this was that the

proposal conformed to the definition of a ‘shop’ land use class, which is an ‘X’ use ‘not permitted’ in the ‘Mixed Business Zone’.

If the proposal was able to be approved in the ‘Mixed Business Zone’, it can be expected that other existing sporting goods retailers within the City would seek to relocate to similar fringe areas where commercial floor space rents are usually cheaper. The proposal does not represent “orderly and proper planning”, and would likely undermine the retail primacy of the city centre and economic viability and competitiveness of other activity centres (where ‘shop’ use is permitted in both the ‘City Centre Zone’ and ‘Shopping Centre Zone’).

Below is a summary table outlining the chronology of events relating to the proposal leading up to the lodgement of the latest application for planning approval for the change of use of the subject site:

Date	Event
15 May 2009	The subject site received planning approval for a ‘showroom’ / ‘warehouse’ use.
07 Aug 2014	A written planning advice application was submitted (by a planning consultancy on behalf of the landowner) seeking written confirmation that ‘SportsPower’ could operate at the subject unit under the planning approval granted in 2009.
19 Aug 2014	The City of Bunbury provide written planning advice, advising that in its opinion the SportsPower proposal would be classified as a ‘shop’ use which is an ‘X’ not permitted use in the ‘Mixed Business Zone’; and therefore, a SportsPower could not operate under the 2009 approval for a ‘showroom’/ ‘warehouse’ use.
02 Sept 2014	A change of use application (lodged by a planning consultancy on behalf of the landowner) for a change of use to ‘showroom’/ ‘warehouse’ use for a SportsPower was submitted.
04 Sept 2014	The City of Bunbury wrote to the applicant advising that the change of use application could not be accepted, as no change of use is proposed, and reiterated the opinion that SportsPower would be classified as a ‘shop’ use which is an ‘X’ use not permitted in the zone.
08 Sept 2014	A change of use application (by a planning consultancy on behalf of the landowner) for a change of use to ‘showroom’/ ‘warehouse’ uses and incidental use of ‘shop’ for a SportsPower was submitted.
10 Sept 2014	The City of Bunbury wrote to the applicant advising that the change of use application with the addition of the incidental use could not be accepted, as no change of use is proposed, and advised that incidental uses do not require planning approval. Additionally, the City of Bunbury reiterated that a SportsPower would be classified as a ‘shop’ use and refuted the assertion that the ‘shop’ use would be incidental.
12 Sept 2014	A change of use application (by a planning consultancy on behalf of the landowner) which did not nominate the proposed use was submitted.
23 Sept 2014	The City of Bunbury wrote to the applicant again advising that a SportsPower is classified as a ‘shop’ use which is an ‘X’ not permitted use in the zone and returned the application.
23 Oct 2014	An application for review of the City of Bunbury’s decision was made on behalf of the landowner to the SAT.

Date	Event
01 Dec 2014	A SAT directions hearing was held, the outcome of which was that the matter would be referred to a hearing for a decision.
15 Jan 2015	Applicant (the landowner) decides to vacate the SAT hearing for a decision and proceed with mediation to resolve matter.
19 Feb 2015	SAT mediation session, with the outcome being that the applicant was to provide within specified timeframe additional information for the City of Bunbury's consideration.
17 Mar 2015	SAT mediation session where the additional information provided was discussed. Resolution between the City of Bunbury and the applicant did not occur. The outcome being that the matter would be referred back to a SAT hearing for a decision.
23 Apr 2015	SAT appeal was withdrawn by the then applicant (the landowner) prior to the matter being referred to hearing for a decision.
30 Apr 2015	A new change of use application was submitted, with the applicant being the proprietors of SportsPower Bunbury.
07 May 2015	The new application for planning approval for a change of use was accepted by the City of Bunbury for assessment, after legal advice from City's solicitor was obtained due to the previous history of the proposal.

Council Policy and Legislative Compliance

An application for planning approval to permit a change of use is required to be in compliance with the Scheme and applicable provisions of both the State and Local Planning Policy Framework.

The proposal is not compliant for the following reasons:

- * In accordance with the Scheme definitions, the proposal is classified as being predominantly a 'shop' use. The use class of 'shop' is listed in Table No. 1 – Zoning Table of the Scheme as an 'X' (not permitted) use in the 'Mixed Business Zone'. The explanatory note to clause 4.3.2 of the Scheme states that the local government must refuse to approve any 'X' use of land.
- * The proposal may not be considered to represent orderly and proper planning, as required under clause 10.2.1(b) of the Scheme, due to the fact that approving development not permitted in a zone undermines the specific objectives of that zone and other affected zones.
- * The proposal does not satisfy the objectives of the WAPC's Activity Centres for Greater Bunbury Policy (April 2012), which is contrary to the Scheme at clause 10.2.(e).
- * The proposal does not accord with the intent of the City of Bunbury Local Planning Strategy for Activity Centres and Neighbourhoods (December 2010).

Officer Comments

The main point of contention concerning this proposal centres on the appropriate land use classification, and subsequently whether or not the proposed use is permitted in the relevant zone.

When considering the appropriateness of the proposed land use classification, reference must be made to the land use definitions provided in Schedule 1 of the Scheme in order to determine which land use class the activity most reasonably falls within. Interpretation of the land use definitions is further guided by established planning law principles and precedents in case law set by previous SAT decisions.

From assessing the provided floor plan and the applicant's supporting letter (**attached** at Appendices DPDS-2) detailing the types of goods to be sold, estimated percentage of floor area for the sale and display of goods and estimated percentage of sales between different types of goods – it is reasonably concluded that the proposal represents a distinct and predominate 'shop' use, hence is a 'not permitted' use in the zone.

The applicant puts forward that the proposal should be classified as being predominantly a 'showroom' use with an incidental 'shop' use. The applicant's justification for the proposal is **attached** at Appendix DPDS-2, which can be summarised as follows:

"The predominate use of the SportsPower premises will be as a 'showroom' comprising of the sale and hire of bulky goods – a use which Council has the ability to approve. The sale of sporting footwear and apparel and sporting accessories, and the repair of bicycles and fitness equipment, is incidental".

By way of context, the Scheme at Schedule 1 defines a 'shop' use as:

"... means a premises used to sell goods by retail, hire goods, or provide services of a personal nature (including a hairdresser or beauty therapist) but does not include a showroom or a fast food outlet".

Whereas, a 'showroom' use is defined under Schedule 1 of the Scheme as:

"... means a premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light facilities, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools or goods of a bulky nature".

Furthermore, an 'incidental use' is defined under Schedule 1 of the Scheme as:

"... means a use of premises which is ancillary and subordinate to the predominate use".

Therefore, as the nature of products sold in SportsPower stores (i.e. the retail sale of "sporting footwear, apparel and equipment") are not explicitly referenced in the Scheme's definition for a 'showroom' use - in order for a premises to be classed as such - it must predominately display and sell 'goods of a bulky nature'.

The expanded definition of 'bulky goods retail or showroom' given in the WAPC's Activity Centres for the Greater Bunbury Policy (April 2012) provides some clarification as to the meaning of the term 'goods of a bulky nature' as that requiring:

"... a large area for handling, display or storage; or direct vehicle access to the site of the premises by the public for the purpose of loading goods into a vehicle after purchase or hire, but does not include Shop/retail."

The subject site is located within the 'Mixed Business Zone', which primarily serves the purpose of catering for large format trading, including bulky goods retailing.

As is clearly articulated in the WAPC's policy, bulky goods are displayed and sold from showrooms that typically comprise extensive display and storage areas with direct vehicle access and car parking. Bulky goods retailing does not include the sale of food, clothing or personal effects goods. Moreover, the Commission's policy states that areas dedicated for bulky goods retailing or showrooming do not reflect pedestrian friendly characteristics, and hence, locating such development in an adhoc manner or as ribbon development along regional roads should be discouraged.

Although 'shop' use, in accordance with the Scheme's zoning table, is listed as an 'X' use 'not permitted' in the 'Mixed Business Zone', the premises may have an incidental 'shop' use element. An incidental use does not need to be considered under the Zoning Table of the Scheme or explicitly referenced in the determination notice.

The determination that a 'shop' use may be incidental and therefore permissibility is based on fact and degree, and there is no prescribed standard for establishing the relative proportion of floorspace area that can be relied upon. Nevertheless, the following factors are to be assessed when considering if a use is in fact incidental to the predominant use of a premises:

- (a) whether the incidental use relies on the predominate use or can operate independently;
- (b) the type and proportionate breakdown of floorspace areas;
- (c) the proportion of sales and/or profit between the uses; and
- (d) the number of bulky goods and non-bulky goods displayed and sold.

For the following reasons, the proposal predominantly falls into the 'shop' land use Class, as opposed to being an incidental use:

- * The 'shop' use could operate independently and does not rely on the 'showroom' use.
- * The floor plan provided by the applicant references 'bulk apparel', 'bulk stack hardware', 'bulk ball and product display' and 'ball bins bulk'. Whilst the word 'bulk' is used frequently, this term can be deceiving, as these items individually are not bulky in nature (i.e. a T-shirt or football) and would therefore be classified as items normally sold in a 'shop/ retail' premises, as defined under the Planning Land Use Category (PLUC) of the WAPC's Commercial Land Use Survey (1997).
- * The applicant states that 25% of the total floor area will be allocated to the display and sale of non-bulky items. From reviewing the provided table of floor area breakdown and percentage figures, it can be determined that approximately 50% of the total floor area would be allocated to 'shop/ retail' activity (i.e. a floorspace area calculation of 40.7% being dedicated to the display and sale of non-bulky items and a proportion of floor area dedicated to the associated storage, administration and service desks). As this figure is approximately half of the total floor area, it cannot reasonably be considered as representing an incidental use of the premises.

- * On face value, It cannot be determined that the “associated accessories” referred to in the application can be classified within the ‘showroom’ use definition. It is assumed that the term “associated accessories” refers to items, such as bicycle helmets, table tennis paddles, boxing gloves, etcetera.
- * Further to the floorspace area calculation, there needs to be consideration given to the number of items displayed for retail sale. For example, there would only be a relatively small number of basketball hoops (a bulky item) displayed in the same amount of area that a relatively large number of T-shirts (a non-bulky item) would be displayed in.
- * In relation to projected sales calculations in dollar amounts for the ‘shop’ use, the applicant states that 23% of total sales will be related to non-bulky items. From reviewing the provided table of projected sales breakdown and percentage figures, it can be determined that approximately 44.2% of the total projected sales will be related to non-bulky items. Again, this is nearly half of the total projected sales and cannot be considered to be akin to an incidental use. Notwithstanding, a consideration of the volume of sales alone is problematic, as bulky items are generally higher in price than non-bulky items.
- * The repair of fitness equipment and bicycles is incidental to the ‘showroom’ use, being an ‘industry-service’ use (1.7% of total floor area and 3.7% in total projected sales). Therefore, this activity has not been included in the City of Bunbury’s assessment calculations for ‘showroom’ use.

Albeit that the applicant has provided an estimated percentage breakdown of floorspace areas and projected sales figures between bulky goods and other shop/ retail items, the ongoing operation of the business as a ‘showroom’ use in accordance to those estimations would be problematic to enforce, due to exposure to unavoidable market forces (i.e. changing customer demands, prices, trends, etc.).

In the circumstance where the grant of planning approval was possible, the ‘responsible authority’ would need to be certain that the proposal demonstrated beyond reasonable doubt:

- * veracity of land use classification as a ‘showroom’; and
- * that the floorspace estimates for predominate and incidental uses were correct and fixed, and not subject to significant variation, over time, as this would potentially invalidate any planning approval.

Also, as outlined above, there are discrepancies between the classification of items and percentage breakdowns. There would need to be consensus between the “responsible authority” granting planning approval and the applicant on what type of goods would be established as being bulky and non-bulky items.

At the time of writing this report, there are number sports and surf equipment/ apparel retailers in the Bunbury city centre. Those retailers are classified under the Scheme as a ‘shop’ use, and are located in the ‘City Centre Zone’ where a ‘shop’ use is permitted. Site visits have established that those retailers normally display and sell a range of bulky and non-bulky products similar to the proposal in question (e.g. basketball hoops, trampolines, gym weight machines, kayaks, surfboards, etc.).

If operated as a 'shop' use in the 'Mixed Business Zone', the proposal would be contrary to the Scheme, as well as, the objectives of the WAPC's Greater Bunbury and City of Bunbury strategic planning documents, particularly as a 'shop' use in the 'Mixed Business Zone' is likely to have a marked adverse economic impact on the future mix of retailers in the city centre and other suburban activity centres. Conversely, the function and affordability of land in the 'Mixed Business Zone' may be compromised as large format traders, such as genuine showrooming and warehousing business, are priced out of this dedicated area due to market forces, if shops were permitted to compete for the same tenancies.

It is recommended that the change of use application should be refused, due to the land use being 'not permitted' in the zone and contrary to the objectives of both Commission and Council adopted planning frameworks.

Analysis of Financial and Budget Implications

The application for planning approval to permit the change of use relates to a private lot, and therefore, the development and or use of the land itself has no direct budgetary or financial implications for the City of Bunbury.

The City of Bunbury has incurred legal costs for advice and representation in relation to a very similar application the subject of a previous SAT appeal withdrawn by the then applicant (the landowner) in April 2015.

Should the current applicant be aggrieved by the Council decision to refuse the application then they may seek an appeal for a review of the decision by the SAT. If the decision is forwarded to SAT for an appeal, the City of Bunbury may incur some legal costs.

Should a third party, for example a business competitor, government agency or a person be aggrieved by the Council decision to approve an application "beyond its powers", they may challenge that decision in the Supreme Court by way of a *Writ of Certiorari*, a form of judicial review to the Supreme Court, whereby a person may seek an order to be issued by the Court against a tribunal, local government, public body or official, requiring it to perform a duty that it has failed to perform (i.e. the Council failing to implement the Scheme correctly). Should judicial review of Council's decision occur then the City of Bunbury would incur significant legal costs.

The City of Bunbury has a statutory duty under the *Planning and Development Act 2005* to properly administer its Local Planning Scheme by making "orderly and proper" planning decisions.

Community Consultation

The recommendation is to refuse the application for planning approval for a change of use of the subject site as proposed. Accordingly, the application has not been advertised for public comment.

Councillor/Officer Consultation

The proposal has been referred to the City of Bunbury's Development Coordination Unit (DCU) for professional advice and technical assessment, prior to the finalisation of this report.

Delegation of Authority

The proposed change of use is referred to the Council for decision, as officers of the City of Bunbury do not have delegation to refuse applications for planning approval.

Relevant Precedents

In 2014, an application for planning approval (reference DA/2013/289/1) was lodged for the proposed change of use of a tenancy to support the relocation of the business Rusticana to the Homemaker Centre, which is located in the 'Mixed Business Zone'. The application was refused at the Ordinary Council Meeting on 18 February 2014, as the proposal:

- * fell within the definition of 'shop' use class, and in accordance with the Scheme's zoning table, was an 'X' a 'not permitted use' in the 'Mixed Business Zone'; and
- * was considered to be contrary to strategic land use policy objectives, and hence, not consistent with "orderly and proper planning".

The decision was appealed at the SAT, resulting in the tribunal directing the Council to reconsider the application with the benefit of additional information supplied by the applicant to the Ordinary Council Meeting on 19 August 2014, where the previous decision of refusal was upheld.

In 2010, an application for planning approval (reference number: DA/2010/88/1) was lodged for the proposed establishment of an additional use class not listed, namely 'other retail – apparel' in the 'Mixed Business Zone'. This application was refused at the Ordinary Council Meeting on 08 June 2010 as the proposal involved a retailing element that fell within the 'shop' use class, and in accordance with the Scheme's zoning table, was deemed to be an 'X' 'not permitted use' in the 'Mixed Business Zone'.

10.4.2 Application for Planning Approval for a Proposed Community Purpose (Multiple Sclerosis Society of Western Australia) at Lot 223 #1 Mason Street, Davenport

File Ref:	P14433, DA/2015/44/1
Applicant/Proponent:	Parry and Whyte Architects
Landowner:	Zemla Pty. Ltd.
Author:	Laura Sabitzer, A/Team Leader Development Assessment and Compliance
Executive:	Bob Karaszewych, Director Planning, Development and Regulatory Services
Attachments:	Appendix DPDS-3: Advice Notes – MS Society Appendix DPDS-4: Location Plan – 1 Mason Street, Davenport Appendix DPDS-5: Preliminary Comments Appendix DPDS-6: Development Plan 14005 A1-01 SITE PLAN Rev3 Appendix DPDS-7: Development Plan 14005 A2-01 FLOOR PLAN Rev3 Appendix DPDS-8: Development Plan 14005 A3-01 ELEVATIONS Appendix DPDS-9: MS Society – activities Appendix DPDS-10: Applicant response to submissions received Appendix DPDS-11: Landscape Plan Appendix DPDS-12: Planning Letter Appendix DPDS-13: Schedule of Public Submissions

Summary

The application for planning approval is for a ‘purpose designed and built’ single storey building to accommodate the Multiple Sclerosis Society of Western Australia at Lot 223 #1 Mason Street, Davenport (the subject site). The building is proposed to operate as a treatment and outreach centre for people with multiple sclerosis and their families. Activities include an outreach/ support group, physiotherapy and other specialist medical services.

In accordance with the City of Bunbury Town Planning Scheme No. 7 (the Scheme) the ‘community purpose’ land use class is listed as an ‘A’ use in the ‘Industry Zone’. This means that Council can exercise its discretion by granting planning approval for the development, at the proposed location, following public consultation on the proposal which has been undertaken. As Council has discretion in relation to this matter, staff have considered the application and based on planning outcomes the recommendation is for refusal. However, as Council has discretion, a complete set of conditions along with a recommendation for approval has been included for consideration by Council. This alternative recommendation is based on the ability of Council to apply discretion in relation to this matter.

Matters required to be considered include the level of amenity and associated infrastructure standards that would reasonably be expected for such activities, and if permitting the proposal would it undermine the objectives of the ‘City Centre Zone’, ‘Shopping Centre Zone’ and ‘Mixed Business Zone’ where ‘community purpose’ uses and allied professional services are collocated.

For those reasons, it is recommended that the application for planning approval is refused, and it is advised that the applicant considers alternative locations for the proposal.

Executive Recommendation

That Council resolves to:

1. Refuse the application for planning approval (reference number DA/2015/44/1) to permit the development of a 'community purpose' building at Lot 223 #1 Mason Street, Davenport, in accordance with City of Bunbury Town Planning Scheme No. 7, given the nature and scale of the proposal for the following reasons:
 - (a) the proposal is located within the 'Industry' Zone and would be inconsistent with the objectives of the zone as outlined at clause 4.2 of the Scheme;
 - (b) the proposal would not represent orderly and proper planning, and as such, is not in accordance with clause 10.2.1(b) of the Scheme; and
 - (c) an insufficient number of car parking bays are provided for the proposal.
2. Advise the applicant that the proposal should instead be situated in the 'City Centre' Zone, 'Mixed Business' Zone or 'Shopping Centre' Zone:
 - (a) which have greater proximity to residential suburbs and accessibility to public transport, pathway infrastructure, community facilities and other complementary medical and social services; and
 - (b) the level of amenity is more appropriate to a 'community purpose' use that provides medical, educational and support services to affected members of the community and their families.
3. Advise the applicant, landowner and submitters of Council's decision.

Alternative Recommendation

Should Council determine that the proposal should be approved and considers that the development and use of the subject site is appropriate in the 'Industry' Zone, and that car parking provision on-site will be sufficient, subject to establishing adequate reciprocal parking arrangements and the making of a development contribution towards the construction of additional on-street car park embayments, then the following resolution is recommended (noting that a list of accompanying Advice Notes is **attached** at Appendix DPDS-3).

That Council resolves to:

1. Approve the application for planning approval (reference number DA/2015/44/1) to permit the development of a 'community purpose' building at Lot 223 #1 Mason Street, Davenport, in accordance with City of Bunbury Town Planning Scheme No. 7, subject to the following conditions:
 - (1) At all times, the development the subject of the planning approval must comply with the definition of a 'community purpose' land use class as contained in Schedule 1 of the City's Local Planning Scheme.
 - (2) All development shall be in accordance with the approved development plans which form part of the planning approval.
 - (3) The planning approval will expire if the approved development has not substantially commenced within two (2) years from the date of issue of the approval, or, within any extended period of time for which the City of Bunbury has granted prior written consent.

- (4) All works required to satisfy a condition of this approval are required to be installed/constructed and maintained in accordance with the approved plans and conditions of approval for the life of the development.
- (5) Before the development is occupied, all external surfaces of concrete tilt panel must be painted and/or finished to the satisfaction of the City of Bunbury.
- (6) At all times, provision must be made onsite for the storage and collection of garbage and other solid waste. A waste storage and collection area must be graded, drained and screened from public view, and the garbage collected regularly, to the satisfaction of the City of Bunbury.
- (7) All verge areas abutting the boundaries of the subject site must remain clear at all times and must not be used for any other purpose including car parking, trade display, storage and signage to the satisfaction of the City of Bunbury.
- (8) Before the development is occupied, the landscaped area(s) must be planted, established and reticulated in accordance with the approved landscape plan. These areas must be maintained as landscaped areas at all times and to the satisfaction of the City of Bunbury.
- (9) Before the development is occupied, street trees (WA peppermint *Agnois flexuosa*) are to be purchased and planted within the verge area.
- (10) Before the development is occupied, the following infrastructure must be upgraded to the specifications and satisfaction of the City of Bunbury; and detailed design plans of the infrastructure upgrade must be submitted to the City of Bunbury for approval prior to construction commencing:
 - (a) on-street public car parking bays (embayed) and associated pedestrian pathway linkages that are constructed in accordance with the standards and requirements set out in Local Planning Policy: Access & Parking for Pedestrians, Bicycles and Vehicles; and
 - (b) prior to the development commencing, the making of a development contribution for the construction of 17 (or the balance of the number of on-street public car parking bays not provided in accordance with (a) above) public car parking bays, in accordance with the Local Planning Policy: Access & Parking for Pedestrians, Bicycles and Vehicles on Lot 216 #74 Halifax Drive on Deposited Plan: P49936 (Reserve Number: 46486), and the making of a fair and reasonable development contribution towards the construction of a pedestrian pathway linkage connecting Lot 223 #1 Mason Street with Lot 216 #74 Halifax Drive, Davenport.
- (11) Before the development is commenced, detailed design plans shall be prepared in accordance with relevant Australian Standards, Ausroad Guidelines, and City of Bunbury requirements, for all access, car parking and pedestrian movement requirements, to the satisfaction of the City of Bunbury. Once plans are approved construction is to be in accordance with the approved plans and be completed before the development is occupied.
- (12) Before the development is occupied, line-marking and parking signage must be installed in accordance with the approved plans.
- (13) Before the development is occupied, lighting must be provided on site for the access way/s, parking area/s and turning area/s to the satisfaction of the City of Bunbury. Plans are to be submitted to the City of Bunbury for approval prior to construction commencing.
- (14) Before the development commences, a damage bond to the value of \$1,000.00 must be paid to the City of Bunbury in accordance with the City of Bunbury's Local Planning Policy: Bonds.
- (15) A minimum of 2m³ of storm water storage for each 65m² of impervious area must

- be provided on site in accordance with the City of Bunbury’s Information Guide – Stormwater Disposal from Private, Commercial and Industrial Properties. Detailed design plans of the proposed stormwater management must be submitted for approval prior to the development commencing, and be implemented in accordance with the approved plan prior to the development being occupied.
- (16) Before the development commences, a crossover permit must be obtained from the City of Bunbury. Construction and maintenance of the crossovers shall be in accordance with the crossover permit.
 - (17) Before the development is occupied, any alterations, relocation or damage of existing infrastructure within the road reserve must be completed and reinstated to the specification and satisfaction of the City of Bunbury.
 - (18) Before the development is occupied, the property must be connected to the Water Corporation reticulated sewerage system.
 - (19) Before the development is occupied, a statement of compliance is to be submitted to the local government detailing that the minimum required building envelope construction specifications have been implemented and achieved in accordance with the endorsed acoustic report titled ‘Assessment of Environmental Noise Intrusion’ dated 14 April 2015, as prepared by Gabriel Environmental Design Pty Ltd. The ‘as constructed’ documentation detailing the implemented and achieved minimum required building envelope construction specifications and associated building works are to be submitted to the satisfaction of the City of Bunbury’s Manager Environmental Health.
 - (20) Before the development is occupied, a statement of compliance is to be submitted to the local government detailing that the minimum required air conditioning and ventilation system specifications have been implemented and achieved in accordance with the endorsed letter titled ‘Mechanical Services’ dated 20 April 2015, as prepared by Stevens McGann Wilcock and Copping Pty Ltd. The ‘as constructed’ documentation detailing the implemented and achieved minimum required air conditioning and ventilation system specifications and associated building works are to be submitted to the satisfaction of the City of Bunbury’s Manager Environmental Health.
 - (21) All windows of the building are to be fixed (i.e. not able to be opened).
 - (22) Prior to the occupation of the development the owner shall execute and provide the City of Bunbury a notification, pursuant to s.70a of the *Transfer of Land Act 1893*, that the following statement is to be registered on the Certificate of Title, at the applicant’s cost, as a warning:
“The premises are located within an Industry Zone and it is advised that environmental emissions (i.e. noise, dust, odour, vibration, gaseous particles) may occur at levels permitted in an Industrial area.”

2. Advise the applicant, landowner and submitters of Council’s decision.

Background

The subject site is located within the Halifax Industrial Park, on the corner of Mason Street and Shanahan Road, Davenport. The subject site is 2,845m² in area and is currently vacant land. A location plan showing the subject site is **attached** at Appendix DPDS-4.

The proposal is for the development of a purpose design and built single storey building for the Multiple Sclerosis Society of Western Australia, with at-grade parking. The building is proposed to operate as an outreach centre for people with multiple sclerosis (MS). Activities include an

outreach/ support group, physiotherapy and other specialist medical services. The proposed floor area of the building is 630m².

The proposed development plans and a statement of business activities from the applicant are **attached** at Appendices DPDS-6, DPDS-7 and DPDS-8.

Prior to this development application being submitted in February 2015, preliminary comments on the proposal were provided by the City of Bunbury in October 2014. A summary of the preliminary comments provided are as follows:

“Notwithstanding that the relevant use is an ‘A’ use [requiring Council to exercise its discretion after advertising the proposal] that may be considered in principle in the Industry Zone, the City draws to your attention that there may be land use conflicts with current and future uses.

The City’s preference would be for the applicant to consider alternative sites closer to the City Centre Zone, Shopping Centre Zone or Mixed Business Zone that would be more compatible with the proposed use and in terms of providing greater accessibility and linkages. The onus will be on the applicant to demonstrate the merits of the proposed site for this use.”

A full copy of the preliminary comments provided is **attached** at Appendix DPDS-5.

The applicant acknowledges that the proposal, being located in the ‘Industry Zone’ requires a higher level of amenity compared to a typical industrial development. A technical report has been prepared on behalf of the applicant which responds to how the impacts of industrial emissions (i.e. noise, dust, odour and vibration) are to be mitigated. Justification supporting the development in the proposed location is also addressed in the report. A full copy of the technical report (including acoustic report) and written justification provided by the applicant is **attached** at Appendix DPDS-12.

Council Policy and Legislative Compliance

The following regulatory and policy documents are applicable to this application for planning approval:

- * *Planning and Development Act 2005*
- * *City of Bunbury Town Planning Scheme No. 7;*
- * *Environmental Protection (Noise) Regulations 1997 (noise regulations);*
- * *Local Planning Policy: Halifax Industrial Park Precinct Design Guidelines (design guidelines);*
- * *Local Planning Policy: Access & Parking for Pedestrians, Bicycles and Vehicles;*
- * *Local Planning Policy: Landscaping; and*
- * *Local Planning Policy: Bonds.*

Officer Comments

Zoning Objectives and Compatibility

The proposal located in the ‘Industry Zone’ requires a higher level of amenity compared to industrial types of development. The impacts of noise, dust, odour and vibration at levels expected in the ‘Industry Zone’ have been considered - with details of the building’s specifications being provided, as part of the application, for planning approval that demonstrate the mitigation of the expected impacts.

Existing Town Planning Scheme No. 7

The proposal falls within the definition of the ‘community purpose’ land use class as contained in Schedule 1 of the Scheme, which is defined as:

“means the use of premises designed or adapted primarily for the provision of educational, social, recreational facilities or services by organisations involved in activities for community benefit”.

The land use class of ‘community purpose’ is listed in Table No. 1 – Zoning Table of the Scheme as an ‘A’ use in the ‘Industry Zone’, which means that the use is not permitted unless the local government has exercised its discretion and has granted planning approval after giving special notice (i.e. public advertising for a minimum of 14 days) in accordance with clause 9.4 of the Scheme. Council in exercising its discretion to grant planning approval is to have due regard to both the:

- (a) objectives of the ‘Industry Zone’ as given by clause 4.2.1.5 of the Scheme, which states:

“To provide for a wide range of general and light industry uses, the storage and distribution of goods and associated uses which, by the nature of their operations, should be separated from residential areas”;

- (b) applicable matters listed at clause 10.2 of the Scheme, which includes the consideration of:
- * the aims and provisions of the Scheme;
 - * the requirements of orderly and proper planning including any relevant proposed new Local Planning Scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;
 - * any approved statement of planning policy of the Commission;
 - * any approved environmental protection policy under the *Environmental Protection Act 1986*;
 - * any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State;
 - * the compatibility of a use or development with its setting;
 - * whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;
 - * whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;
 - * whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;
 - * whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
 - * whether adequate provision has been made for access by disabled persons;
 - * the potential loss of any community service or benefit resulting from the planning approval; and
 - * any relevant submissions received on the application.

Draft Local Planning Scheme No. 8

It should be noted that under the revised new Local Planning Scheme No. 8 (LPS8) it is intended that land within the Davenport industrial area will be rezoned to 'Light Industry Zone', which will retain 'community purpose' as an 'A' use in that zone.

Nevertheless, the function and availability of land in the existing 'Industry Zone' or any future 'Light Industry Zone' may be equally compromised by the growing:

- (a) trend in non-industrial uses (such as large scale offices, showrooms, educational establishments, medical centres and community services) moving to cheaper industry zoned areas and displacing genuine industrial activities;
- (b) incidences of land use conflict caused by non-industrial uses, which are also considered to be 'sensitive land uses';
- (c) lack of land supply and affordability of industry zoned land for purchasing or leasing by typically cost sensitive and larger industrial activities; and
- (d) expectations of the quality and level of infrastructure and utility servicing (including reticulated sewerage) by non-industrial uses desiring a business park standard of character and amenity, which has funding implications for the local government.

Noise

The premise and surrounding premises are required to comply with the Environmental Protection (Noise) Regulations 1997 (noise regulations). The application was referred to the Department of Environment Regulation (DER) who administers the noise regulations for referral comment.

The DER has advised that the proposal would be classified under the noise regulations as 'commercial premises' and that locating commercial premises in the 'Industry Zone' may be prejudicial to the operation of current and/or future industrial premises. This is because the assigned maximum noise levels for commercial premises are 10 dB lower than industrial premises.

Generally, in areas zoned for industry, it is reasonable to expect that surrounding premises would also be classified as industrial premises and that the assigned maximum noise levels for industrial premises could be emitted. In summary, the DER has cautioned against permitting commercial premises in industry zones.

The applicant has provided an acoustic report which has been reviewed by the City of Bunbury's Environmental Health department. The acoustic report details minimum building envelope requirements to achieve an internal noise level of 40dB or less, which is accepted in the noise regulations for commercial premises, and based on the assumption that the noise external to the premises is at the maximum allowable noise level for industrial premises.

The acoustic report outlines the specifications for external glazing, external walls, roof and ceiling construction to ensure that the building design mitigates the impacts of noise and achieves an internal noise level for commercial premises in accordance with the noise regulations. If the application is approved, then a condition is recommended to ensure that the building is constructed as per the provided specifications in order to mitigate the expected impacts of noise from surrounding industrial activities.

Dust, odour, vibration and gaseous emissions

The development is proposed within the 'Industry Zone' and emissions at levels typical of an industrial area have been considered.

The Environmental Protection Authority's (EPA) document titled 'Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses – No.3 June 2005' indicates that the impacts of noise, dust, odour, vibration and gaseous emissions are considered where sensitive land uses (i.e. land uses requiring high levels of amenity or are sensitive to particular emissions) are located near industrial land uses.

The applicant has provided a technical report **attached** at Appendix DPDS-12 demonstrating how the specified impacts have been minimised and/or mitigated. In relation to dust, odour and gaseous emissions, air conditioning and supply fan systems are to be installed to the provided specification, with filters incorporated. If the application is approved, then a condition is recommended to ensure that the air conditioning and ventilation systems are installed as per the provided specifications and windows are fixed (i.e. not able to be opened) in order to mitigate the industrial emission impacts.

Halifax Industrial Park Precinct Design Guidelines

The design guidelines set out specific development standards in the Halifax Industrial Park. The objectives of the design guidelines are to promote a quality of building and landscaping design and visual appearance. As such, it is considered that the proposal complies with the design guidelines with respect to the anticipated standard of building presentation and complementary landscaping.

Car parking

The development plans **attached** at Appendix DPDS-6 show 27 parking bays (including two accessible bays), a drop-off area near the building entrance and an overflow parking area to the east of the building. The overflow parking area has capacity for approximately 16 bays, with cars parked tandem (i.e. a car directly behind another).

In terms of minimum car parking requirements for the proposal, the Scheme at Table 2 states the car parking requirement for a 'community purpose' is discretionary; however, consideration is to be given to the following:

- * provisions of applicable Local Planning Policy: Access & Parking for Pedestrians, Bicycles and Vehicles;
- * mix of the most applicable or equivalent land use classes; and
- * maximum capacity of all facilities when used simultaneously.

The assessed adequacy of the proposed car parking provision, taking into account the above listed considerations, is summarised as follows:

- * Local Planning Policy: Access & Parking for Pedestrians, Bicycles and Vehicles does not contain a specific car parking ratio applicable to the proposal; however, the policy provides guidance in relation to the design and configuration of car parking bays, which the proposal satisfies.
- * The most equivalent land use class to 'community purpose' with respect to this specific proposal is that of a 'medical centre' use. In terms of the car parking requirement for a

‘medical centre’, the Scheme requires a minimum of 4 bays per health consultant/consulting room or 1 bay per 20m² of net lettable area (nla), whichever is greater. Based on the net leasable area, it is calculated that the proposal would require a minimum of 30 car bays. However a ‘medical centre’ use is generally located in areas with convenient access to public transport options.

- * The applicant has provided a statement of business activities and a table of the maximum proposed staff and client numbers (refer **attached** at Appendix DPDS-9). The applicant advises that a total of 15 employees and approximately 45 clients would be attending the premises at any one time. It is also advised that an educational forum/support group of up to 70 people (inclusive of clients, their families and employees) would be held on an occasional basis. Therefore, the maximum number of people at the premises would be on average 60 people, increasing to 70 people when an occasional educational forum/support group is held.

On balance, it is considered that the car parking provided (including the overflow car parking) is insufficient to meet the predicted demand of the premises. With car parking, the principle is that all of the car parking generated by the premises will be contained on-site. From reviewing the estimated numbers, as provided by the applicant, it is apparent that normal operation of the centre will result in 60 persons on-site, and up to 70 persons when an occasional educational forum/support group is held.

Due to the nature of the centre with clients requiring vehicle transport and the location not being accessible by public transport, it is expected that all of the employees and clients will be dependent upon private vehicles, and hence, the development is expected to generate the maximum expected demand for car parking at the premises. Even with the overflow parking area, it is considered that there will be a shortfall of 17 bays on-site. For this reason, the proposed car parking provision is not supported, unless there is provision made for reciprocal parking arrangements to be established on another lot and a development contribution is made towards the construction of additional on-street car parking embayments to the specifications and satisfaction of the City of Bunbury.

Landscaping

A landscaping plan was submitted with the development application. The City of Bunbury’s Landscape and Open Space department have reviewed and approved the landscaping plan. If the application is approved, then a condition requiring the planting, reticulation and ongoing maintenance of landscaped areas in accordance with the landscaping plan is recommended.

Analysis of Financial and Budget Implications

The application relates to a private lot, and therefore has no direct budgetary or financial implications for the City of Bunbury.

If the applicant is aggrieved by Council’s decision it may appeal within 60 days for a review of the decision through the State Administrative Tribunal (SAT). If the decision is forwarded to SAT for an appeal, the City of Bunbury would incur legal costs.

Nonetheless, it is noted that the City of Bunbury is obliged under *the Planning and Development Act 2005* to properly administer its Local Planning Scheme in making orderly and proper planning decisions, in accordance with both the State Planning Framework and Local Planning Policy Framework.

Community Consultation

The proposal was publicly advertised from 29 April 2015 to 13 May 2015. Public consultation measures included:

- * letters sent to surrounding landowners;
- * notification signs on-site;
- * notice of proposal published in local newspaper (two consecutive editions);
- * notice of proposal on the City of Bunbury's website; and
- * copies of plans and supporting information made available at the City of Bunbury's Customer Service Centre.

Public consultation resulted in four (4) submissions in support and one (1) submission of objection. Issues raised related to adequacy of car parking, incompatibility of the proposal within an industrial area, whether there were suitable infrastructure/ services to support the development at that location, and whether approval of such a proposal would establish a bad precedent in the 'Industry Zone'.

Refer to the Schedule of Public Submissions **attached** at Appendix DPDS-13. The applicant's response to the comments received during the submission period is **attached** at Appendix DPDS-10.

Councillor/Officer Consultation

The proposal has been referred to the City of Bunbury's Development Coordination Unit (DCU) for professional advice and technical assessment prior to the finalisation of this report.

Delegation of Authority

This application for planning approval is referred to Council for determination as a submission objecting to the proposal was received during the public consultation process.

10.5 Director Works and Services Reports

Nil.

11. Applications for Leave of Absence

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

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

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