



MISSION AND VALUES OF COUNCIL

"A Sustainable Community that is inclusive, attractive, healthy and pleasant to live in, that uses our land so as to preserve our history and environment, respects the rights and equality of our citizens and manages our future growth wisely."

UNCONFIRMED MINUTES

OF THE

ORDINARY MEETING OF COUNCIL

26 MAY 2016

OUR VISION

"A thriving and friendly community that recognises our history and embraces cultural diversity and economic opportunity, whilst nurturing our unique natural and built environment."

OUR MISSION

"To deliver affordable and quality Local Government services."

CORE VALUES OF THE SHIRE

The core values that underpin the achievement of the mission will be based on a strong customer service focus and a positive attitude:

Communication

Integrity

Respect

Innovation

Transparency

Courtesy

DISCLAIMER

The purpose of Council Meetings is to discuss, and where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting.

Persons should be aware that the provisions of the Local Government Act 1995 (Section 5.25 (e)) establish procedures for revocation or rescission of a Council decision. No person should rely on the decisions made by Council until formal advice of the Council decision is received by that person. The Shire of Broome expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of Council, or any advice or information provided by a Member or Officer, or the content of any discussion occurring, during the course of the Council meeting.

Councillor		Cr R Johnston	Cr H Tracey	Cr M Croft	Cr W Fryer	Cr E Foy	Cr D Male	Cr P Matsumoto	Cr C Mithcell	Cr B Rudeforth
2015	26 November							LOA		
2015	17 December									
2016	25 February					A				
2016	31 March					LOA				
2016	28 April		LOA	A	LOA	LOA				
2016	26 May 2016			A				LOA		

- **LOA (Leave of Absence)**
- **NA (Non Attendance)**
- **A (Apologies)**

2.25. Disqualification for failure to attend meetings

- (1) A council may, by resolution, grant leave of absence, to a member.
- (2) Leave is not to be granted to a member in respect of more than 6 consecutive ordinary meetings of the council without the approval of the Minister, unless all of the meetings are within a period of 3 months.
- (3A) Leave is not to be granted in respect of —
 - (a) a meeting that has concluded; or
 - (b) the part of a meeting before the granting of leave.
- (3) The granting of the leave, or refusal to grant the leave and reasons for that refusal, is to be recorded in the minutes of the meeting.
- (4) A member who is absent, without obtaining leave of the council, throughout 3 consecutive ordinary meetings of the council is disqualified from continuing his or her membership of the council, unless all of the meetings are within a 2 month period.
- (5A) If a council holds 3 or more ordinary meetings within a 2 month period, and a member is absent without leave throughout each of those meetings, the member is disqualified if he or she is absent without leave throughout the ordinary meeting of the council immediately following the end of that period.
- (5) The non-attendance of a member at the time and place appointed for an ordinary meeting of the council does not constitute absence from an ordinary meeting of the council —
 - (a) if no meeting of the council at which a quorum is present is actually held on that day; or
 - (b) if the non-attendance occurs —
 - (i) while the member has ceased to act as a member after written notice has been given to the member under section 2.27(3) and before written notice has been given to the member under section 2.27(5); or

- (ii) *while proceedings in connection with the disqualification of the member have been commenced and are pending; or*
 - (iiia) *while the member is suspended under section 5.117(1)(a)(iv); or*
 - (iii) *while the election of the member is disputed and proceedings relating to the disputed election have been commenced and are pending.*
- (6) *A member who before the commencement of the Local Government Amendment Act 2009 section 5¹ was granted leave during an ordinary meeting of the council from which the member was absent is to be taken to have first obtained leave for the remainder of that meeting.*

[Section 2.25 amended by No. 49 of 2004 s. 19(1); No. 17 of 2009 s. 5.]

SHIRE OF BROOME
ORDINARY MEETING OF COUNCIL
THURSDAY 26 MAY 2016
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NOTICE OF MEETING

Dear Council Member,

The next Ordinary Meeting of the Shire of Broome will be held on Thursday, 26 May 2016 in the Council Chambers, Corner Weld and Haas Streets, Broome, commencing at 5.00pm.

Regards

A handwritten signature in black ink, appearing to read 'K R Donohoe', with a horizontal line underneath.

K R DONOHOE
Chief Executive Officer

19/05/2016

**MINUTES OF THE ORDINARY MEETING OF COUNCIL OF THE SHIRE OF BROOME,
HELD IN THE COUNCIL CHAMBERS, CORNER WELD AND HAAS STREETS, BROOME,
ON THURSDAY 26 MAY 2016, COMMENCING AT 5.00PM.**

1. OFFICIAL OPENING

The Chairman welcomed Councillors, Officers and members of the public and declared the meeting open at 5.00pm.

2. ATTENDANCE AND APOLOGIES

Attendance:	Cr R Johnston	Shire President
	Cr H Tracey	Deputy Shire President
	Cr W Fryer	
	Cr E Foy	
	Cr C Mitchell	
	Cr D Male	
	Cr B Rudeforth	

Leave of Absence:

Cr P Matsumoto submitted a written request seek Leave of Absence for this meeting.

COUNCIL RESOLUTION

Moved: Cr C Mitchell

Seconded: Cr D Male

That a Leave of Absence be granted for Cr P Matsumoto for the Ordinary Meeting of Council to be held 26 May 2016.

CARRIED UNANIMOUSLY 7/0

Apologies: Cr M Croft

Officers:	Mr K Donohoe	Chief Executive Officer
	Ms S Haslehurst	Acting Director Community & Economic Development
	Mr S Mastrolembo	Director Corporate Services
	Ms A Nugent	Director Development Services
	Mr M Dale	Director Infrastructure
	Ms R Piggan	Manager Governance
	Ms T Bengtson	Manager Financial Services
	Mr S Penn	Media and Promotions Officer

Public Gallery:	Denis Ryan	
	Andrew Borrett	DLGC
	Amy Halliday	DLGC
	Emily Burgess	DLGC
	Danielle Dwyer	Shire of Broome
	Dave Dureau	
	Dave Marshall	
	Brendon Barwick	WA Police
	Simon Clark	Shire of Broome

Peter McBride	Shire of Brome
Nicola Kalmar	Broome Advertiser
Kevin Smith	Broome Community Stallholders Association
Kirsten Wood	Shire of Broome
Hilary Wilkins	Landcorp
David Carpenter	Housing Authority
Bruce Rudeforth	
Tanya Jackson	Broome SUP
Kim Male	Streeter & Male

3. DECLARATIONS OF FINANCIAL INTEREST / IMPARTIALITY

FINANCIAL INTEREST			
Councillor	Item No	Item	Nature of Interest
Cr R Johnston	9.2.1	Application for Development Approval – Bed and Breakfast Accommodation – 15 Demco Drive	Financial – Business Partner Real Estate Kununurra

IMPARTIALITY			
Councillor	Item No	Item	Nature of Interest
Cr B Rudeforth	9.2.1	APPLICATION FOR DEVELOPMENT APPROVAL – BED AND BREAKFAST ACCOMMODATION – 15 DEMCO DRIVE	Impartiality – My parents live at 17 Demco and my Aunt at 4 Demco.
Cr E Foy	9.2.4	BROOME ABORIGINAL SHORT STAY ACCOMMODATION FACILITY	Impartiality – Yawuru being a member.
Cr B Rudeforth	9.2.4	BROOME ABORIGINAL SHORT STAY ACCOMMODATION FACILITY	Impartiality – Yawuru Member
Cr E Foy	9.2.7	REQUEST FOR IN-PRINCIPLE SUPPORT – PROPOSED SERVICE COMMERCIAL DEVELOPMENT – LOT 3082 (102) CABLE BEACH ROAD EAST	Impartiality – Member of Yawuru
Cr D Male	9.2.7	REQUEST FOR IN-PRINCIPLE SUPPORT – PROPOSED SERVICE COMMERCIAL DEVELOPMENT – LOT 3082 (102) CABLE BEACH ROAD EAST	Impartiality – Family business that operates service commercial business.
Cr B Rudeforth	9.2.7	REQUEST FOR IN-PRINCIPLE SUPPORT – PROPOSED SERVICE COMMERCIAL	Impartiality – Member of Yawuru

		DEVELOPMENT – LOT 3082 (102) CABLE BEACH ROAD EAST	
Cr E Foy	9.2.9	REQUEST FOR SUPPORT OF YAWURU INDIGENOUS PROTECTED AREA	Impartiality – Yawuru Member
Cr B Rudeforth	9.2.9	REQUEST FOR SUPPORT OF YAWURU INDIGENOUS PROTECTED AREA	Impartiality – Member of Yawuru
Cr E Foy	9.4.8	STATE ADMINISTRATIVE TRIBUNAL MATTER - NYAMBA BURU YAWURU LTD V SHIRE OF BROOME	Impartiality – Yawuru Member
Cr B Rudeforth	9.4.8	STATE ADMINISTRATIVE TRIBUNAL MATTER - NYAMBA BURU YAWURU LTD V SHIRE OF BROOME	Impartiality – Yawuru as a <i>Native Title Member</i>

The following disclosure of interest was provided during the course of the meeting, however prior to consideration of the relevant Agenda Item. For ease of reference, it has also been recorded under Part 3 of the Minutes.

FINANCIAL INTEREST			
Councillor	Item No	Item	Nature of Interest
Cr R Johnston	9.2.7	REQUEST FOR IN-PRINCIPLE SUPPORT – PROPOSED SERVICE COMMERCIAL DEVELOPMENT – LOT 3082 (102) CABLE BEACH ROAD EAST	Financial – <i>Have property interests with A/Port Owners.</i>

4. PUBLIC QUESTION TIME

It is noted that a public question had been received prior to the meeting from Kim Harris, however as he was not in attendance the Chairman advised his question would be dealt with administratively.

The following questions were asked at the meeting by Dave Dureau:

Question One:

Will the Shire release for public scrutiny the names of the board who administer the Shire Heritage Inventory, how they are selected and the terms and conditions which they must comply with during their service?

Answer provided by the Chairman:

Elected Shire Councillors. The public can put forward their suggestions at any time.

Mr Dureau requested copies of minutes when the Board had reviewed the Municipal Heritage Listing.

Answer provided by the Chairman:

The Chairman clarified that the Arts, Culture and Heritage Committee had reviewed the Municipal Heritage Listing, and the request would be taken on notice.

Question Two:

When was the pearling lugger known as Sam Male vested in the Shire? Which entity was responsible for that request and what conditions of shire responsibility for its future maintenance have been agreed to? On display site Carnarvon St?

Answer provided by the Chairman:

This question will be taken on notice.

Question Three:

Kindly make public the document signed on behalf of the Shire and the Arrow Pearling display on Dampier Terrace to transfer Sam Male from Carnarvon Street to being displayed and maintained on Arrows site especially the Company's obligations? Kindly include all progress reports on "Sam Male" and "DMcD" condition of luggers and recommendations and costs.

Answer provided by the Chairman:

This question will be taken on notice, however noted the DMcD is privately owned.

Question Four:

All the land between Dampier Terrace and Dampier Creek from Short St north past Grey St is registered as in Chinatown precinct to have pearling heritage value. The proposed Shire Jetty to Jetty tourist walk embraces this concept.

Answer provided by the Chairman:

This question will be taken on notice. You may be referring to Aboriginal Heritage Site.

Question Five:

The land much now vacant is occupied by "Streeters Jetty" on the south end and the "Boat Shed" complex on the north end.

- what records will the Shire release to the public on this heritage site? And what correspondence do you have regarding this site and the owners?

Answer provided by the Chairman:

This question will be taken on notice.

Question Six

Others in last 25years?

Has there been any requests for work to be done on the boat shed site as the building appears to be in poor and dangerous condition? Is the Shire aware of any report of the structural condition of the building? If the answer is no, will they carry out such report.

The boat shed and support building are iconic to the Australia's historic pearling industry, probably the last of their kind in Australia.

Answer provided by the Chairman:

This will be taken on notice and included with Question 5.

Question Seven:

Would the Shire encourage the rebuilding as a historic tribute to our world famous tourist industry on this site:

1. The shell sorting and packing shed

2. Malay indented labour dormitory quarters and ablution block
3. Malay cook house and mess area
4. Boat shed slipway for 2 luggers and machinery floor support stores for paint, go downs, calking, timber storage
5. Shed for engine maintenance
6. Radio shack for 2 twice daily sked with 1st Australian pearl culture farm at Kuri Bay Camden harbour

Answer provided by the Chairman:

This will be taken on notice. The Shire of Broome are working with the State Government for a \$10m grant for a Chinatown Revitalisation Programme.

The following questions were asked at the meeting by Dave Marshall.

Question One:

How can it be that when my missing dog, reported by me to the Ranger number, was in the custody of the Shire, I was not contacted. The dog is registered in Geraldton and microchipped.

Question Two:

The Shire wrote off the dog. SAFE got possession of the dog and phoned me to ask if I wanted the dog back, however I must pay adoption fees. Will the Shire reimburse these fees?

Response provided by the Chairman:

Why was the dog not registered in Broome? This question will be taken on notice and a response will be provided administratively.

5. CONFIRMATION OF MINUTES

<p><u>COUNCIL RESOLUTION:</u></p>
--

Moved: Cr D Male

Seconded: Cr C Mitchell

That the Minutes of the Ordinary Meeting of Council held on 28 April 2016 be confirmed as a true and accurate record of that meeting.

CARRIED UNANIMOUSLY 7/0

<p><u>COUNCIL RESOLUTION:</u></p>
--

Moved: Cr H Tracey

Seconded: Cr C Mitchell

That the Minutes of the Special Meeting of Council held on 12 May 2016 be confirmed as a true and accurate record of that meeting.

CARRIED UNANIMOUSLY 7/0

6. ANNOUNCEMENTS BY PRESIDENT WITHOUT DISCUSSION

The Shire President advised that Council were delighted to have Cr Foy back.

He also advised that today was National Sorry Day, and on behalf of Council he had attended the celebrations at the Stolen Generation Building.

Further, he mentioned David Carpenter from the Department of Housing and Andrew Borrett, Amy Halliday and Emily Burgess from the Department of Local Government and Communities were also in attendance.

7. PETITIONS

Nil

8. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

The Chief Executive Officer advises that there are matters for discussion on the agenda for which the meeting may be closed, in accordance with section 5.23(2) of the Local Government Act 1995.

COUNCIL RESOLUTION:

Moved: Cr D Male

Seconded: Cr H Tracey

That the following Agenda items be considered under 14. Matters Behind Closed Doors, in accordance with section 5.23(2) of the Local Government Act 1995, as specified:

9.1.1 APPLICATION FOR A BEACH POLO EVENT IN 2018 AND 2019

Item 9.1.1 and any attachments are confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)(d) as it contains "legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting".

9.2.13 MID DAMPIER PENINSULAR NATIVE TITLE CLAIMS

Item 9.2.13 and any attachments are confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)(d) as it contains "legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting".

9.4.8 STATE ADMINISTRATIVE TRIBUNAL MATTER - NYAMBA BURU YAWURU LTD V SHIRE OF BROOME

Item 9.4.8 and any attachments are confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)(d) as it contains "legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting".

CARRIED UNANIMOUSLY 7/0

9.

**REPORTS
OF
OFFICERS**

9.1

OUR PEOPLE



PRIORITY STATEMENT

Embracing our cultural diversity and the relationship between our unique heritage and people, we aim to work in partnership with the community to provide relevant, quality services and infrastructure that meet the needs and aspirations of our community and those visiting and doing business in our region.

Supporting and contributing to the well-being and safety of our community is paramount, as is our focus on community engagement and participation.

Council aims to build safe, strong and resilient communities with access to services, infrastructure and opportunities that will result in an increase in active civic participation, a reduction in anti-social behaviour and improved social cohesion.

9.1.1 APPLICATION FOR A BEACH POLO EVENT IN 2018 AND 2019

This item was considered under Section 14, Matters Behind Closed Doors.

OUR PLACE



PRIORITY STATEMENT

The Shire of Broome has an abundance of unique natural features, coastal attractions, significant streetscapes, historic precincts and a mix of old and new urban developments.

Our aim is for all communities and settled areas, including the Broom Township, to be a place where the natural environment, on which life depends, is maintained, whilst at the same time the built environment contributes to the economy and a quality lifestyle for all.

Preserving the Shire's natural environment is a critical community outcome. Council will put into place strategies that nurture and improve the Shire's unique environment and biodiversity.

The Shire will work in partnership with the community and other agencies to ensure responsible and accountable management of both the natural and build environments is achieved in the short term and for future generations.

With regard to Item 9.2.1 Cr B Rudeforth disclosed that “I have an association with my parents live at 17 Demco and my aunt at 15 Demco Drive. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

With regard to Item 9.2.1 Cr R Johnston declared a Financial Interest as “Business partner real estate Kununurra” and departed the Chambers at 5.23pm.

Cr Tracey assumed the Chair.

9.2.1 APPLICATION FOR DEVELOPMENT APPROVAL - BED AND BREAKFAST ACCOMMODATION - 15 DEMCO DRIVE

LOCATION/ADDRESS:	Lot 9 No.15 Demco Drive
APPLICANT:	Colin Wilkinson
FILE:	DEM2/15
AUTHOR:	Planning Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil.
DATE OF REPORT:	7 April 2016

SUMMARY: An application for Development Approval has been received for a 'Bed & Breakfast Accommodation' land-use to be undertaken at No.15 Demco Drive. In accordance with the Shire's Local Planning Policy 8.23 *Public Consultation - Planning Matters* (LPP 8.23), the proposal was advertised to landowners within proximity to the site. A number of written objections were received.

The application satisfies all relevant requirements under the Shire's Local Planning Scheme No.6 (LPS 6) and Local Planning Policy 8.27 – *Bed & Breakfast Accommodation* (LPP 8.27); however, as objections were received, the proposal is presented to Council for consideration.

This report recommends that the application be approved, subject to conditions.

BACKGROUND

Previous Considerations

Nil.

Site Context

The subject property is located on the southern side of Demco Drive and is zoned 'Residential – R15'. Existing development on the property consists of a two-storey, single dwelling. Adjoining land-use and development consists of single dwellings to the east, west and north. Reserve land comprising native vegetation abuts the site to the south.

The Proposal

The applicant proposes to undertake a 'Bed & Breakfast Accommodation' (B&B) activity from the existing dwelling, involving the use of two (2) ground-floor bedrooms for the B&B use (refer to **Attachment 2 - Floor Plan**). The upper-floor of the dwelling will be occupied

by the owner(s)/permanent resident(s) of the property. Two (2) car parking bays are available on-site for use by the resident(s) of the dwelling, with an additional two (2) car parking bays available on-site for the B&B activity.

The applicant has detailed that the B&B will be managed by 'Air BnB' who will provide booking services for guests of the B&B. 'Air BnB' will also make arrangements for key collection for guests and cleaning services following each booking. No signage is proposed, with advertising to be on-line via 'Air BnB'. It is not proposed that any meals will be provided.

COMMENT

A B&B is a 'D' or 'Discretionary' land-use within the 'Residential' zone, which means that the use is not permitted unless the Local Government has exercised its discretion by issuing Development Approval. LPS 6 defines a 'B&B' and Council has adopted LPP 8.27 Bed and Breakfast Accommodation to provide guidelines for the establishment of B&B's within the Shire (outlined below).

The application is consistent with the definition of a B&B land-use as contained in Schedule 1 of LPS 6. Under LPS 6, B&B means:

"A dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short term commercial basis and includes the provision of breakfast."

Although the current application seeks to utilise the booking management services of Air BnB, the proposed B&B is consistent with the above definitions as the activity will be used by a resident of the dwelling to provide short-term accommodation.

However, to ensure that the activity complies with the definition it is recommended that the following condition be included in Development Approval:

- *A minimum of one (1) bedroom must be for permanent residential use at all times. The permanent resident(s) must be present on-site when the property is being used for the 'Bed and Breakfast Accommodation' activity.*

With consideration for the parking requirements of Schedule 16 of LPS 6, the applicant has demonstrated the availability of 4 parking bays on-site to service both the 'B&B' and the residential dwelling as per requirements of the Residential Design Codes of WA (2013) (refer to **Attachment 1 – Site Plan**).

Local Planning Policy 8.27 – Bed & Breakfast Accommodation

LPP 8.27 sets out the development requirements applicable to a B&B under LPS 6, and states that no more than four (4) persons may be accommodated on-site in a maximum of two (2) bedrooms in association with the B&B. LPP 8.27 also provides additional guidance as to how a B&B may operate. On-site signage for the B&B is limited to 0.2sqm, and any built form additions or development must be consistent with a residential dwelling and the residential streetscape character. The current application does not propose any advertising on-site or alterations to the existing dwelling and therefore does not seek any variations to the requirements of LPP 8.27.

To ensure that the B&B complies with the above requirements, it is recommended that conditions of approval be included to:

- (a) limit the maximum number of persons to be accommodated in association with the B&B to 4 persons; and
- (b) that no more than 2 bedrooms may be used as guest bedrooms in association with the B&B.

Consultation with Adjoining Land-Owners

The application was advertised to land-owners within proximity of the property, being within 100m, for a period of 14 days as required under LPP 8.23. Four submissions were received during the consultation period, in which concerns relating to the potential for detrimental amenity impacts were raised (refer **Attachment 3 – Schedule of Submissions**). As set out in the 'Officer Comment' section of **Attachment 3**, with reference to *Matters to be Considered* under Clause 67 of the Deemed Provisions and on the basis that the proposal complies with the requirements of all relevant legislation and policy, the objections do not present valid planning reasons that would indicate a likelihood of adverse amenity impacts or which provide grounds for refusal. Furthermore, as provided for under LPS 6, it is considered that the Development Approval can be conditioned to provide adequate mitigation of any potential amenity impacts.

Summary

As the application satisfies the requirements of LPP 8.27 and meets all site and development requirements applicable under LPS 6, it is recommended that the application be approved subject to conditions.

CONSULTATION

As per LPP 8.23 the application was advertised to adjoining land-owners within proximity of the property (being within 100m), inviting any comments on the proposal to be provided within 14 days. A summary of concerns raised in four (4) submissions received by the Shire is contained in **Attachment 3**.

STATUTORY ENVIRONMENT

Planning and Development Act (2005)

Planning and Development (Local Planning Schemes) Regulations (2015)

Local Planning Scheme No.6

POLICY IMPLICATIONS

Local Planning Policy 8.27 – Bed and Breakfast Accommodation

FINANCIAL IMPLICATIONS

Nil.

RISK

There is a risk that compliance issues could arise should the B&B activity be undertaken in variation to the conditions of Development Approval.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Participation in recreational and leisure activity

A healthy and safe environment

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

A built environment that reflects arid tropical climate design principles and historical built form

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Affordable land for residential, industrial, commercial and community use

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr D Male

That Council approves the application for Development Approval 2016/24 for 'Bed and Breakfast Accommodation' at Lot 9 No.15 Demco Drive, Broome, submitted by Colin Wilkinson, subject to the following conditions:

- i. Development must be carried out in compliance with the plans and documentation listed below and endorsed with the Council's stamp, except where amended by other conditions of this approval:***
 - Plans and Specifications; and***
 - P1 (Site & Floor Plan) as received by the Shire 3 March 2016.***
- ii. A minimum of one (1) bedroom must be for permanent residential use at all times. The permanent resident(s) must be present on-site when the property is being used for the 'Bed and Breakfast Accommodation' activity.***
- iii. A maximum of two (2) rooms may be used for 'Bed and Breakfast Accommodation' at any one time.***
- iv. A maximum of four (4) persons may occupy the dwelling at any one time in association with the approved 'Bed & Breakfast Accommodation'.***
- v. A minimum of two (2) car parking bays are to be made available on-site at all times for the approved 'Bed and Breakfast Accommodation'.***
- vi. A minimum of two (2) car parking bays are to be made available on-site at all times for the residential dwelling.***

CARRIED UNANIMOUSLY 6/0

Cr R Johnston returned to the Chambers at 5:25 PM and assumed the Chair. Cr Tracey advised that the Report Recommendation was carried.

Attachments

1. Schedule of Submissions
2. Site Plan
3. Floor Plan

9.2.2 LEASE DISPOSAL OF RESERVE 36426 TO BROOME PISTOL CLUB.

LOCATION/ADDRESS:	RESERVE 36426, 251 PORT DRIVE MINYIRR, 6725
APPLICANT:	BROOME PISTOL CLUB
FILE:	LSS107
AUTHOR:	Senior Property and Leasing Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Infrastructure
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	7 April 2016

SUMMARY: A request has been received from the Broome Pistol Club to renew the existing lease which ended in December 2015. This report recommends approval of a new lease to The Broome Pistol Club for a period of 21 years under similar terms to the existing peppercorn arrangement with special conditions altering the designated use to include 'Temporary Overflow Caravan Park'.

BACKGROUNDPrevious Considerations

OM 15 December 1998	Item 12.2
OM 16 March 1999	Item 4.5

The original ten (10) year lease related for Reserve 36426 to BPC was approved by the Shire on 16 March 1999. The lease was subsequently executed on 01 January 2001 for a period of ten (10) years with an option to extend for a further five (5) years at an annual rent of \$1.00 per annum. The lease expired on the 31st December 2015 and is now due for renewal.

At the OMC held 16 March 1999 Council resolved:

1. *That a new lease be granted to The Pistol Club conditional on:-*

- (i) *The rear bund walls be raised to a suitable height.*
- (ii) *The dune area being excluded from The Pistol Club lease and included in the proposed Coastal Park.*
- (iii) *The Pistol Club increasing public awareness of the range using increased safety signage.*
- (iv) *If Council at some future time determines the land use of the lease area to be inappropriate or The Pistol Club not require the land that the area be included in the proposed Coastal Park.*
- (iv) *The lease being for a ten year term*

2. *The Coastal Park Management Committee conduct an inspection of the lease to determine the eastern boundary and the impact on the dune prior to any lease being finalised, taking into account the minimum buffer zone required for safe operation of The Pistol Club.*

The Pistol Club complied with the resolution dated 16 March 1999 and have continued to improve the facility to date.

COMMENT**BROOME PISTOL CLUB**

Reserve 36426 is approximately 4,000sqm in size and located to the east of Port Drive. The Broome Pistol Club Facility comprises of 2 x 50 metre ranges, 2 x 10 bay 25 metre ranges, a 6 bay 10 metre air pistol range and a steel plate range. It has a police approved armoury, a corporate license for club guns and a warehouse license for firearms storage. The Broome Pistol Club (BPC) recently wrote to Council requesting a new 21 year lease agreement with similar terms and conditions to the existing lease.

Attachment 1: Request from Pistol Club for new lease

The Broome Pistol Club recently received grants from the Department of Sport and Recreation (in addition to its own funding) to upgrade its ranges to meet the new safety guidelines of the WAPOL Firearms Ranges Standards. Following the upgrade to the ranges the facility is now used for training purposes by the WA Police, Customs Officers, armed security services, the Police Tactical Response Group, Navy Cadets and junior sport development which includes the Broome Scout Movement.

BROOME FIELD AND GAME CLUB

As part of the consultation for this report, officers held meetings with the Broome Field and Game Club who informally ran their organisation within The Pistol Club Grounds from 2004 to 2013 (approx). On 6 May 2016 the President of the Club expressed interest in formally sub-leasing part of the site from the BPC, subject to compliance and Council approval.

Attachment 2: Request from Broome Field and Game Club

Based on WAPOL Firearms Ranges Standards and the Australian Clay Target Association (A.C.T.A) standards, the buffer zone for shotgun shooting is 195 metres from the point of firing. The width of the existing site at its widest point is 125 metres and the width of the desired point of firing is only 113 metres. Therefore the site does not comply nor have the provisions required (as per A.C.T.A and WAPOL guidelines) for a shotgun range or clay target shooting. Officers recommend that the site is not used for shot gun or clay target shooting.

Officers have advised the Broome Field and Game Club that the Pistol Club site is not suitable for shotgun clay and target shooting and the proposed lease not include a sub lease for this activity.

Attachment 3: Site Map Reflecting Fallout Zone**TEMPORARY OVERFLOW CARAVAN PARK**

In addition to offering pistol shooting, the Pistol Club facilitate a temporary caravan park overflow facility for visitors when existing caravan parks are fully occupied. In addition, the site provides services to caravan and camping visitors who own pets which are not permitted on other caravan park sites. The current capacity of The Pistol Club Facility is 65 caravan spaces for up to a seven day stay. This is operated & managed under Council Policy 4.2.14 'Operation of Temporary Overflow Caravan Parks and Camping Facilities'. The outcome of The Pistol Club providing this service has resulted in increased revenue for the club which has been used to improve site facilities, as well as enabling the Club to support other community sporting groups. A \$2,500 donation last year to the Broome

Junior Basketball Association, \$3000 budgeted in 2016/17 and free membership to Pistol Club Juniors, Scouts and Navy Cadets.

The current designated use of the Reserve 36426 is 'Pistol Club'; however the Department of Lands have broadened the use on application over the last several years to include 'temporary over flow caravan park'. The Pistol Club have requested the new Lease include delegated use of: 'Pistol Club' and 'Temporary Caravan Park'. Officers recommend that the Department of Lands be requested to include a Temporary Caravan Park on the management order.

The Pistol Club has held a stable President and Committee since its inception and in its present form is a long term self supporting club within the town. Their future growth includes a program to hold state qualifying and invitational competitions to their shooting calendar which in turn will add to Broome's sporting culture and bring more visitors to the town.

Officers recommend that a new 21 year lease be granted to the Broome Pistol Club with similar terms and conditions as the previous lease.

CONSULTATION

- Broome Pistol Club
- Broome Field and Game Club
- WAPOL
- Australian Clay Target Association

STATUTORY ENVIRONMENT

Local Government Act 1995

3.58. Disposing of property

(1) In this section —

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;

property includes the whole or any part of the interest of a local government in property, but does not include money.

(2) Except as stated in this section, a local government can only dispose of property to —

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

(i) describing the property concerned; and

(ii) giving details of the proposed disposition; and

(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and

(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the

reasons for it are recorded in the minutes of the meeting at which the decision was made.

- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include
- (a) the names of all other parties concerned; and
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition —
 - (i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or
 - (ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.
- (5) This section does not apply to —
- (a) a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or
 - (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or
 - (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
 - (d) any other disposition that is excluded by regulations from the application of this section.

[Section 3.58 amended by No. 49 of 2004 s. 27; No. 17 of 2009 s. 10.]

Local Government (Functions and General) Regulations 1996

Dispositions of property excluded from Act s. 3.58

- (1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.
- (2) A disposition of land is an exempt disposition if —
- (a) the land is disposed of to an owner of adjoining land (in this paragraph called the **transferee**) and —
 - (i) its market value is less than \$5 000; and
 - (ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee; or
 - (b) the land is disposed of to a body, whether incorporated or not —
 - (i) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
 - (ii) the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions; or
 - (c) the land is disposed of to —
 - (i) the Crown in right of the State or the Commonwealth; or
 - (ii) a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth; or
 - (iii) another local government or a regional local government; or

- (d) *it is the leasing of land to an employee of the local government for use as the employee's residence; or*
- (e) *it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land; or*
- (f) *it is the leasing of land to a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession to be used for carrying on his or her medical practice; or*

POLICY IMPLICATIONS

4.2.14– Operation of Temporary Overflow Caravan Parks and Camping Facilities

FINANCIAL IMPLICATIONS

	INCOME	EXPENSE
RENT	\$21 OVER 21 YEARS	NIL
INSURANCE	\$3500PA	\$3500 PA (RE-COUPED)
LEGAL	\$2500	\$2500 (RE-COUPED)
NET OUTCOME	\$21	

RISK

If the lease is not approved there is a high risk that it will damage the public perception of the Council due to the large contribution that the Pistol Club makes to the community and various organisations.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

Accessible and safe community spaces

Participation in recreational and leisure activity

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Realistic and sustainable land use strategies for the Shire within state and national frameworks and in consultation with the community

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Affordable land for residential, industrial, commercial and community use

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Sustainable and integrated strategic and operational plans

VOTING REQUIREMENTS

Absolute Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr B Rudeforth

That Council:

- 1. In accordance with the Local Government (Functions and General) Regulations 1996, Regulation 30(2)(b) agrees to a new lease on Reserve 36426 to the Broome Pistol Club for the purpose of recreation - 'Pistol Club' and 'Temporary Overflow Caravan Park'.**
- 2. Delegates authority to the Chief Executive Officer to negotiate terms and conditions of the lease agreement similar to the current lease in line with the following:**
 - (a) Consent of the Minister for Lands being obtained**
 - (b) The lease term not to exceed twenty one (21) years**
 - (c) The annual rental for the duration of the lease be at a 'peppercorn' rental of \$1.00 per year**
 - (d) The lessee reimbursing the Shire for legal costs associated in preparing a new lease**
 - (e) Any improvements made upon the leased area be at the lessee's expense and only made with the prior written approval of the Shire of Broome.**
 - (f) The lessee ensuring that all relevant legislation, local laws and regulations (Federal, State or Local Government) are complied with.**
 - (g) Cleaning and all maintenance (including capital maintenance) of the leased area to be the sole responsibility of the lessee.**
 - (h) The lessee be responsible for all utility and consumption costs, planned maintenance schedule and any additional outgoings which may arise during the term of the lease including but not limited to:**
 - (i) Council rates or equivalent, including the fire service levy**
 - (ii) Water rates and consumption**
 - (iii) Emergency, safety and fire equipment service.**
 - (iv) Telstra lines and associated telecommunications outgoings**
 - (v) Pest control**
 - (vi) Land and soil management**
 - (vii) Painting**
 - (viii) Security**
 - (ix) Insurance for buildings and ranges (recouped from the tenant)**
 - (x) Manage the land in an environmentally suitable manner complying with all relevant environmental legislation relating to shooting ranges**
- 3. Authorises the Shire President and Chief Executive Officer to engross the final lease documentation.**

CARRIED UNANIMOUSLY BY ABSOLUTE MAJORITY 7/0

Attachments

1. Attachment 1 - Letter from Broome Pistol Club
2. Attachment 2: Broome Field and Game Request
3. Attachment 3: Site map Reflecting Shotgun Fallout Zone

9.2.3 SUBMISSION ON THE LAND ADMINISTRATION AMENDMENT BILL 2016 AND RANGELANDS TENURE REFORM REVIEW

LOCATION/ADDRESS:	Nil
APPLICANT:	Department of Lands
FILE:	NAT01
AUTHOR:	Statutory Planning Coordinator
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	26 April 2016

SUMMARY: The Department of Lands is undertaking a review of the *Land Administration Act 1997* in response to the Rangelands Tenure Reform review. The Department has released the Land Administration Amendment Bill 2016 and a Consultation Paper, and sought public comment. The period for making comment on the Bill and Consultation Paper closed on 5 May 2016.

Shire Officers sought an extension to the submission period to enable the matter to be considered by Council. Unfortunately, the Department of Lands could not grant an extension to the comment period due to Departmental and parliamentary timeframes. As a result, Officers had to make an officer level submission on the Bill and Consultation Paper.

This report recommends that Council endorses the submission made by Shire Officers.

BACKGROUND

Previous Considerations

Nil

COMMENT

Background

The Western Australian Rangelands occupy 87 per cent of the State's landmass (approximately 2,325,000 square kilometres) and the majority of the Shire of Broome's land area is Rangelands. 'Rangelands' is a general term and includes those environments where natural ecological processes predominate and where values and benefits are based primarily on natural resources. They are areas which have not been intensively developed for primary production and equate broadly with what is considered the 'Outback'.

The majority of Rangelands in WA is Crown land and the tenure of this land is controlled by the provisions of the *Land Administration Act 1997* (**LAA**).

Over time there have been several reviews conducted by the State into the operation of the pastoral industry and use of the Rangelands in WA. As early as 1979 the report titled *Present and Future Pastoral Industry in Western Australia* identified that the sustainability and capacity of the pastoral industry in the Rangelands area was under increasing threat. This Report also identified that there is potential to increase investment in the Rangelands

through enabling improved access to diversification operation and improved security of land tenure.

In 2009 two reviews were undertaken including the *Review of the Economic and Ecological Sustainability of Pastoralism in the Southern Rangelands of Western Australia* (SRPAG Review) and *Review of the Process to Permit Diversification on Pastoral Leasehold Land in Western Australia*. Following this in 2010, the State launched the Kimberley Science and Conservation Strategy which found that pastoral lessees need to have increased capacity to diversify their operation and requested that drafting instructions to amend the LAA be undertaken to allow this to occur. The identified shortcomings in the LAA particularly relate to Part 7, which limits the activities that can be undertaken on pastoral leases to pastoral purposes (the grazing of authorised stock such as cattle and sheep) with limited diversification options allowed through permits.

The Rangelands Reform Program commenced in December 2010. This included the release of the *Rangelands Tenure Options Discussion Paper* (April 2011) and *Summary of Response to the Rangelands Tenure Options Response Paper* (September 2011).

In April 2016, the Department of Lands (the Department) released the following:

- Land Administration Amendment Bill 2016 (available from: http://www.lands.wa.gov.au/Publications/Documents/Land_Administration_Amendment_Bill_2016.pdf);
- Land Administration Amendment Bill 2016 – **Consultation Paper** (available from: http://www.lands.wa.gov.au/Publications/Documents/Consultation_Paper.pdf); and
- Land Administration Amendment Bill 2016 – **Key Proposals** (available from: http://www.lands.wa.gov.au/Publications/Documents/Rangelands_Key_Proposals.pdf).

The Consultation Paper has been prepared to outline the rationale for the State Government's proposed amendments to the LAA which aims to establish modern land tenure arrangements in the Rangelands. The Consultation Paper also contains 17 Discussion Points that the Department sought feedback on as a part of the consultation. The public comment period closed on 5 May 2016.

Given that the majority of the Shire is covered by Rangelands and that agriculture is one of the growth industries for the Shire (and the Kimberley Region), the proposed reforms are critical to the Shire's future development potential. As such, it was considered that the Shire of Broome should make a submission on the proposed reforms. Unfortunately, the Department of Lands was not in a position to give an extension to the public comment period due to the deadline to present the Bill to Parliament. As such, a submission has been made at an officer level and this submission is now presented to Council for endorsement.

Attachment No 1 contains a copy of the officer level submission that was made on 5 May 2016. The comments contained within the submission are from a local government perspective and have not addressed all the discussion points in the Consultation Paper. This is because some of the discussion points relate to operational aspects of pastoral leases, which the Shire is not in a position to comment on.

Discussion

The Department has advised that the objectives of the amendments to the LAA are to:

- Promote the sustainable economic development in the Rangelands;
- Facilitate diversified activities in the Rangelands by both current occupants and new entrants;
- Improve the management and condition of Rangelands vegetation and landscapes;
- Improve security of tenure and provide avenues for economic diversification for existing pastoralists; and
- Modernise governance arrangements for the Rangelands.

If these objectives are delivered it would be consistent with the vision and strategic goals of people, place and prosperity contained within the Shire of Broome's Corporate Business Plan and the draft Kimberley Regional Investment Blueprint. Therefore these objectives are supported. Further, the objectives support Strategy 3.2.4 in the Shire's Strategic Community Plan 2015-2025 which is to promote the development of agricultural industries in the Shire.

To deliver on these objectives, the main changes proposed to the LAA are summarised below:

1. Rangeland lease: The introduction of a new form of tenure which will allow for multiple and varied uses of the Rangelands, provided that use is broad scale and consistent with the preservation and ongoing management of the Rangelands as a resource. The current provisions of the LAA are limited and allow for pastoral leases only (with limited diversification) which must include the "commercial grazing of authorised stock".
2. Statutory right of renewal for complaint pastoral leases: The Minister must renew a pastoral lease for the same term if there is no outstanding breach of the lease, the LAA or rangeland condition monitoring requirements. Further, the State will not be able to excise land from the lease at any time without paying compensation to the lessee.
3. Ability to increase the term of a pastoral lease: Allows pastoral lessees to increase the term of their lease up to a maximum of 50 years. At present, pastoral leases can only be renewed for the same term and some lessees are operating on leases with terms as short as 18 years, while other run for 50 years.
4. Transfer of diversification permits: Pastoral lessees will be able to transfer any diversification permits to the incoming lessee when they sell their lease. As it stands under the LAA, if a lease is sold then the new lessee must apply for the diversification permit, it does not automatically transfer with the sale of the lease.
5. Rangeland condition monitoring: Changes resulting in the implementation of a modern rangelands monitoring system, combining remote sensing with on-ground site monitoring by lessees. As a part of this system, pastoral and rangelands lessees will be required to provide photographs of designated monitoring sites once per year with their annual return.
6. Governance: Changes to modernise the governance of rangelands administration include:

- The Pastoral Lands Board (**PLB**) will be dissolved and its powers vested in the Minister of Lands;
- A new Pastoral and Rangelands Advisory Board will be established to provide the Minister with strategic advice; and
- Pastoral lessees will have a right of appeal to the State Administrative Tribunal (**SAT**) if the Minister decides not to renew their lease, or to renew on conditions, due to non-compliance.

In relation to the above points, the proposed amendments contained within the Bill are generally supported and are considered positive.

While the proposed introduction of Rangeland Leases is supported and viewed as being a step forward in unlocking the potential of the Rangelands, it is submitted that the tenure reforms should have gone further in allowing the freeholding of land. Further, concern is raised that the reforms proposed may not allow for the delivery of the true development potential of the Rangelands due to native title considerations. One of the more contentious amendments proposed that has been raised by the pastoral industry is the abolishment of the PBL. Each of these matters is discussed further below.

The other changes mentioned in points 2 to 4 above are supported as they will provide security to leaseholders and should improve the administrative processes associated with compliance and condition monitoring. The changes proposed under point 5 are considered to be more operational in nature and as such, the Shire's submission did not provide a comment on this aspect.

Rangeland Leases and Native Title

From the discussions at the Stakeholder Forum held in Broome on 6 April 2016 and reports in the media, the affected stakeholders generally welcome the proposed introduction of Rangelands Leases. The introduction of Rangeland Leases will give applicants the ability to apply for leases that allow for a broader range of land uses to that currently provided under the LAA, which limits activities to pastoral uses. To be eligible for the granting of a Rangeland Lease, there would need to be at least one broad scale use that is consistent with the preservation and ongoing management of the rangelands as a natural resource. Some examples could include:

- Multiple uses – e.g. grazing livestock, horticulture, agriculture, tourism.
- Aboriginal economic development and land management;
- Managing land for environmental offsets or rehabilitation obligations imposed in relation to a mining activity;
- Conservation purposes;
- Taking advantages of future opportunities that do not currently exist.

While Rangelands Leases are considered a positive tenure option and could facilitate increased development opportunities, officers believe the reforms should have gone further. While the conversion of leasehold land to freehold land is provided for under the current LAA provisions, it is a current State policy position that this is not supported. Allowing tenure change to freehold provides a bankable interest and would provide greater certainty on investment. This is a matter that has recently been identified as requiring investigation by the Kimberley Regional Collaborative Group. Therefore, the submission reflects that the State should review its current policy position to allow for the freeholding of land within the Rangelands and establish a suitable mechanism for this to happen.

Further, concerns have been raised over the capacity of the pastoral industry and other potential Rangeland users to deal with the native title future act process under the *Native Title Act 1993 (Cth)* (**NTA**). Any pastoral lessee wishing to establish a Rangelands Lease over the land they hold, or anyone seeking a lease over a new area of land, would need to settle the future act process through the negotiation of an Indigenous Land Use Agreement (**ILUA**) between the lessee and the native title holders or claimant groups. The Consultation Paper outlines that the State Government is in the process of establishing guidelines for negotiating an ILUA and a template ILUA that would assist the parties to reach agreement (such as standardised terms and conditions). However, the requirement to complete the native title future act process under the NTA would need to be proponent driven and the State will not be party to these negotiations.

While the preparation of guidelines and templates for ILUAs is seen as useful, this measure alone is not considered to go far enough in addressing the issue. Resolution of native title processes is viewed by potential investors as a barrier and limits the capacity of proponents to take up the opportunities that could exist under a Rangelands Lease. This is due to the following factors:

- The negotiation of an ILUA can be an expensive (minimum costs are estimated to be \$30,000).
- There are no minimum timeframes within which the negotiation process must be completed, nor is there any compulsion on a native title party to enter into negotiation discussions.
- There are no set or capped amounts for compensation payable in accordance with an ILUA.

If the native title future acts process cannot be negotiated then the State cannot issue a Rangelands Lease, essentially preventing the realisation of the opportunity to develop/improve the particular portion of land.

The State has outlined in the Consultation Paper that other options in relation to tenure reform were considered as a part of the Rangelands Reform (including perpetual leases and changes to the definition of pastoral activity within the LAA). However these options were discounted as they would give rise to the need for a State-wide ILUA, which would be a complex process, could only be achieved at considerable cost and would probably take a decade or more to resolve.

While it is acknowledged that the State may not have the resources to negotiate a State-wide ILUA, if further assistance is not provided to current or future leaseholders to negotiate an ILUA, the opportunities to unlock potential uses in the Rangelands may not be realised. If real opportunities are to be realised, the State needs to invest more into the negotiation of ILUAs, beyond the preparation of guidelines and a template. The State should commit resources as the 'landowner' and be responsible for managing the process for negotiating ILUAs. Officers also submit that consideration should be given to setting predetermined compensation values for compensation payments made under ILUAs for leases issued in the Rangelands.

The submission recommends that a Select Committee of the Upper House be established with bi-partisan support to investigate the barriers native title presents to investment into the Rangelands and Western Australia in general. The terms of reference for this Select Committee should be broad and include the investigation of the following matters:

- State facilitation of the ILUA process applicable to the development or change in tenure of Crown land;
- the development of a clear pathway to the freeholding of Crown land;
- the resolution of tenure issues presenting a barrier to development (especially agricultural development) across the State; and

- the establishment of a specialised agency sitting outside the Department of Lands to manage native title and tenure issues and facilitate outcomes.

Removal of Pastoral Lands Board (PLB)

Some members of the pastoral industry have expressed concern in relation to the proposed governance changes, and in particular the removal of the PLB.

The PLB is a statutory authority established under the LAA which consists of seven members:

- three which are pastoral interest members;
- an expert in the field of flora, fauna or land conservation management;
- an aboriginal person with experience in pastoral leases;
- the Department of Agriculture and Food Western Australia (**DAFWA**) Executive Director; and
- the Director General of the Department of Lands.

The functions of the PLB include advising the Minister on policy relating to the pastoral industry, to administer pastoral leases, ensure that pastoral leases are managed on an ecologically sustainable basis and other advisory functions. The PBL is one of the decision making authorities with regard to pastoral leases.

The State's position is that the current arrangements in the LAA with regard to the PLB are not consistent with modern system of governance, where the Board possesses powers exclusive of the Minister. In addition, the representative nature of the composition of the PLB gives rise to actual, potential and perceived conflicts of interests particularly for pastoral interest members on the PLB.

As a result, the amendments to the LAA propose that the PLB be dissolved and the responsibility for all tenure and land condition management related decision in the Rangelands is transferred to the Minister. The Consultation Paper sets out that this will bring the provisions for decision making on tenure and the administration of leases in the Rangelands in line with the rest of the LAA and result in more efficient and effective Crown land administration (currently there are three administrative bodies for pastoral leases, being the PLB, the Department of Lands and DAFWA).

The Bill also proposes that a skills-based Pastoral and Rangelands Advisory Board be established, constituted in a similar manner to the Biosecurity Council. This new Board will not replace the function of the PLB and will act purely in an advisory capacity, with no decision making powers.

The removal of the PLB is not supported by the industry because of the concern that there will no longer be an advocacy body acting on behalf of the interests of pastoral operators. Further, concerns are raised that the amendments will give too much power to the Minister, which would not be in the interests of pastoralists if a MP who was not a supporter of pastoral activities held the position of Minister.

While the concerns of the pastoral industry are noted, the potential conflict of interest that could exist with the PLB (particularly as the membership does include pastoralists) is considered to be inconsistent with other administrative and decision making processes in Government. The nature of activities that may be subject to a Rangelands Lease has been broadened from merely pastoral activities, which makes the current composition of the PLB less representative in any event. Furthermore, the introduction of appeal rights to the State Administrative Tribunal in the event a lessee is aggrieved by a decision of the Minister is considered to be a more accountable and equitable system to that which

currently exists (currently there is no right of appeal of a decision from the PLB). As such, it is recommended that the Shire of Broome supports the governance changes proposed.

Summary

The submission prepared focuses on the broader changes proposed, as opposed to addressing the discussion points contained within the Consultation Paper. Overall, the submission outlines support for the proposed changes, but requests that the State give further consideration to providing assistance to future proponents with regards to the native title future acts process and pathways to freeholding of land. This will ensure that the real potential of the Rangelands can be realised.

It is recommended that Council endorse the submission made by Officers.

CONSULTATION

Nil.

STATUTORY ENVIRONMENT

Land Administration Act 1997

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil.

RISK

Nil.

STRATEGIC IMPLICATIONS

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Realistic and sustainable land use strategies for the Shire within state and national frameworks and in consultation with the community

A built environment that reflects arid tropical climate design principles and historical built form

A unique natural environment for the benefit and enjoyment of current and future generations

A preserved, unique and significant historical and cultural heritage of Broome

Retention and expansion of Broome's iconic tourism assets and reputation

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Affordable land for residential, industrial, commercial and community use

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr D Male

Seconded: Cr B Rudeforth

That Council endorses the submission on the Land Administration Amendment Bill 2016 made by Shire of Broome Officers as set out in Attachment No 1 of this report.

CARRIED UNANIMOUSLY 7/0

Attachments

1. Attachment No 1 - Shire's Submission on Land Administration Amendment Bill 2016

With regard to Item 9.2.4 Cr E Foy disclosed that “I have an association with Yawuru being a member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

With regard to Item 9.2.4 Cr B Rudeforth disclosed that “I have an association with Yawuru Member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

9.2.4 BROOME ABORIGINAL SHORT STAY ACCOMMODATION FACILITY

LOCATION/ADDRESS:	20 Dickson Drive, Broome
APPLICANT:	JCY Architects on behalf of Department of Housing
FILE:	DIC-1/20
AUTHOR:	Planning Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil.
DATE OF REPORT:	2 May 2016

SUMMARY: The Shire has received a Public Works referral from JC Architects acting on behalf of the Department of Housing (DoH) in relation to the proposed Broome Aboriginal Short-Stay Accommodation (BASSA) facility.

The proposal is a significant development for the Broome community and is therefore presented to Council for its consideration and comment.

This report recommends that the Shire support the development of the BASSA facility.

BACKGROUND

Previous Considerations

Nil.

Site and Surrounds

The BASSA facility is proposed to be constructed on a 1.66 hectare portion of Lot 3143 (No.20) Dickson Drive zoned 'Development' under Local Planning Scheme No.6 (LPS 6). Lot 3143 is owned by Yawuru Rubibi, with the 1.63 hectare portion of land the subject of a lease agreement between Yawuru and DoH. Lot 3143 is bound by Dickson Drive to the north, Pembroke Road to the west, Dora Street to the east, and Lot 3144 (zoned 'Development') to the south. Adjacent land to the west of the site across Pembroke Road is zoned for 'Light and Service Industry' land-use, while 'Residential' land comprising low to medium density development is located to the north of Dickson Drive. The 'Southern Cross Care Facility' is located on the eastern portion of Lot 3143 Dickson Drive. Connection to water, power and reticulated sewer services is available to the currently uncleared site.

Background

The Department of Regional Development (DRD) and DoH have estimated that up to 10% of Aboriginal people in regional centres such as Broome are temporary residents, with research indicating that there may be more than 100 persons sleeping rough in Broome on any given night. It is understood that a significant proportion of temporary visitors from remote communities visit for family reasons and to access services that may not be available in their respective communities. The proposed BASSA facility seeks to provide affordable, secure and culturally appropriate short-stay accommodation for Aboriginal people, building on the success of similar facilities in Derby and Kalgoorlie as best practice models. The design of the current proposal has been informed by consultation with relevant Shire officers and government service providers within Broome and the wider Kimberley.

Planning Provisions

The subject portion of land is part of 'Future Development Area No.5' (FDA5) under the Local Planning Strategy and is identified as being suitable for future residential development. As the BASSA facility will provide for residential accommodation on a short-stay basis, the current proposal represents a land-use that is consistent with the strategic direction of the Strategy.

The site is zoned 'Development' under LPS 6 which allows for a mix of land-uses consistent with the objectives of the Strategy and subdivision in accordance with an adopted Structure Plan. Clause 4.41.1 (b) gives the ability to relax the requirement for a Structure Plan where the land use proposed represents a minor extension to an existing land-use or minor additional land-use. Further to the provisions of Part 4, Clause 27 (2) of the Planning and Development (Local Planning Schemes) Regulations 2015, a local government may dispense with the need for a Structure Plan to be prepared if the preparation of a local development plan was not considered necessary to ensure that development occurs in line with orderly and proper planning and would not prejudice the overall development potential of the area. In the case of the currently referred Public Works, the preparation of a Structure Plan was not required to guide development as the proposal:

- does not represent a form of land-use inconsistent with the objectives for the 'Development' zone;
- does not give rise to the potential for adverse implications with reference to *Matters to be Considered* under Clause 67 of the Deemed Provisions and is not considered a form of development incompatible with adjoining land.
- satisfies the provisions of Clause 4.41.1 (b) of the LPS as the development will occupy approximately 31% of Lot 3143, or 12% of the overall area of Lots 3143 and Lot 3144 identified as FDA5, and does not propose subdivision of land within FDA5. Additionally, the BASSA facility is a land-use that complements the existing 'Southern Cross Aged Care Facility' land-use activity also located on Lot 3143.

In view of the above, the preparation of a local development plan was not considered necessary to ensure that development occurs in line with orderly and proper planning.

The Proposal

The BASSA facility will comprise the following development on-site:

- 22 Accommodation Units (Total capacity to accommodate 108 persons);
- Caretaker's (Manager's) Residence (221sqm);
- Ablutions Building (198sqm);
- Dining Hall/Kitchen Building (176sqm);

- Reception/Administration Building (386sqm);
- Maintenance/Laundry Building (166sqm);
- 3 Gazebo Structures;
- 2 Hard-sealed car-parking areas comprising 57 car bays and 2 Bus bays;
- Screened bin-storage area;
- Basketball Court;
- Children's Playground;
- 2.1m high palisade fencing along Dickson Drive and Pembroke Road;
- 2.2m high colorbond fence along southern and eastern boundaries; and
- An illuminated sign (Approx. 5m in length and 2.1m in height will be installed within the lot, presenting to the intersection of Pembroke Road and Dickson Drive.

Significant landscaping will be installed on-site and within the Pembroke Road and Dickson Drive verges, with a number of existing trees to be retained. Landscaping plans indicate that plant types endemic to Broome and the Kimberley will be used.

The development proposes the construction of a total 3231sqm internal floor-area, representing an overall built form site coverage of 19% (excluding roofed walkways and gazebo structures). Based on the operating practice of similar facilities, DoH expects that approximately eight (8) staff will be employed on-site at any one time.

COMMENT

As a DoH project, the BASSA facility falls within the definition of 'Public Works' and is therefore exempt from the need to obtain development approval. However, while the provisions of the *Planning and Development Act 2005* (P&D Act) exempt Public Works from the need to obtain Development Approval, the P&D Act requires that local government be consulted prior to the undertaking of Public Works to ensure that adequate regard is given to the purpose and intent of the local planning scheme, orderly and proper planning and preservation of amenity for the locality. To ensure that these matters are adequately addressed, the following is presented for consideration.

Land-Use and Amenity Considerations

Following from pre-lodgement discussions with DoH, Shire Officers visited the DoH short term Aboriginal accommodation facility in Derby (DASSA) and met contracted management operators to better understand how such a facility operates. The currently proposed facility has been designed to reflect best practice based on the operational experiences of similar facilities in Derby and Kalgoorlie. DoH has advised that advertising of a management tender for the facility is expected to commence in December 2016.

The DASSA provides an example of the holistic way in which design and management can be integrated towards delivering a secure environment for staff and guests, reducing the potential for anti-social behaviour and amenity impacts for the locality. Based on the operational experience of DASSA, design and management practices aim to reflect the respective cultural requirements and considerations of Aboriginal people and in particular, the social considerations of remote communities within proximity.

Various types of accommodation options, with appurtenant private areas, are available to suit the varying individual, cultural, and family needs of guests. Underlying these practical design aspects, effective management of the facility is based upon an initial assessment process whereby prospective guests are greeted and assessed with consideration for their needs. During this process the management practices with which all guests must comply are made clear. Some of requirements include a total ban on

alcohol and drugs on-site, curfews in place for access and a lights-out policy for accommodation.

The layout of the facility is inclusive of open areas featuring a high standard of landscaping and low-scale climate responsive built-form that maximises shading and breeze-flow. According to the management operators in Derby, the integration of design and management practices as described fosters an environment within the facility whereby the potential for anti-social behaviour and conflict arising between guests, and between guests and non-guests, is mitigated.

Submitted plans (see **Attachments 1 and 2**) detail that visually permeable palisade fencing to a height of 2.1m will be installed fronting Dickson Drive and Pembroke Road. 'See-through' artistic screening will also be incorporated into portions of the fence. The Shire's Fences Local Planning Policy (LPP 8.12) provides that standards of fencing within the 'Development' zone is to be at the discretion of the local government with consideration for adjoining land, and the objectives and needs of the development. LPP 8.12 limits the height of primary street fencing in residential areas to 1.8m; however, with consideration for residential land adjacent to the site and the security needs of the BASSA facility, a palisade style 2.1m high fence along the primary street is supportable on the basis that the fence will comprise a predominantly 'open' structure allowing for visual interaction between the development and the street. It is also noted that the Guidelines for Designing out Crime provide for a minimum 2m high fence where security is required. The fencing as proposed will allow for presentation of proportionately wide primary and secondary street setback areas largely free of built structures, well lit by non-intrusive smart lighting technology and predominated by a high standard of landscaping. These design aspects are consistent with principles of design geared towards preventing anti-social behaviour and crime and should contribute positively to the streetscape.

Parking Provision, Vehicle Access and Pedestrian Connection

Submitted plans show the provision of 57 car bays and 2 bus parking spaces on-site to service the development. DoH has made clear that the management tender will include a requirement for the operator to provide a shuttle bus transport service for guests between the site and local centres such as Chinatown. Based on the operations of the DASSA facility, DoH expects there will be a low level of private vehicle use for guests. However, in allowing for a 'peak parking demand' scenario, given there are 22 accommodation units proposed, it is reasonable to anticipate that an average of 1 vehicle per unit may visit the facility in addition to use of taxi services and shuttle bus transport services. With reference to parking provision ratios applicable to a 'Tourist Development' under LPS 6; a ratio of 1 bay per two accommodation units plus 1 visitor bay per 5 accommodation units would apply. On this basis, a minimum of 16 parking bays would be required. With a maximum of 8 staff expected to be on-site at any one time, it is considered that the number of parking bays shown will be sufficient to meet the needs of the facility.

Parking areas will be constructed to a hard-sealed standard with bays to be line marked as per Shire requirements. All parking areas will be provided with pole mounted lighting directed internally and designed to minimise light spill to adjoining land. Further to Shire requests, landscaping inclusive of shade trees will be incorporated into the design of parking areas. Two dual access cross-overs (5.4m in width) will be constructed, providing for vehicular access and egress onto Pembroke Road and Dickson Street. Landscaping, inclusive of shade trees, will be installed appurtenant to parking areas. Plans detail the construction of footpaths within the Dickson and Pembroke road verges to connect with existing pedestrian connections. Line marked pedestrian connections have also been

shown providing safe connection from the street through the car park areas to the administration building.

Conclusion

Shire Infrastructure Services have advised that further detail will need to be provided in relation to swale design for management of drainage at the south-western corner of the site. Additionally, plans detailing proposed footpath connections and landscaping within the road verge will also need to be provided.

As set out above, the BASSA facility as proposed is consistent with the relevant site and development standards of LPS 6. The development does not present the potential for adverse implications with reference to *Matters to be Considered* under Clause 67 of the Deemed Provisions and is not considered a form of development incompatible with adjoining land. Accordingly, it is recommended that the referred Public Works proposal be supported on the grounds that it is consistent with orderly and proper planning and is a development that has the potential to deliver positive social outcomes for the Broome community.

CONSULTATION

DoH has undertaken considerable consultation with the community and stakeholders in the design of the proposed BASSA facility.

With reference to the provisions of *Local Planning Policy 8.23 – Public Consultation Planning Matters*, it was not considered necessary to undertake advertising on the basis that the proposed development does not present a level of land-use intensity, or built form scale likely to impact adversely upon adjoining properties or the locality.

STATUTORY ENVIRONMENT

Planning & Development Act 2005

Local Planning Scheme No.6

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

RISK

With consideration for the underlying objectives of the BASSA facility, should the facility not be developed it is recognised that there is a risk of a continuation of problems in Broome relating to people sleeping rough including anti-social behaviour associated with a lack of affordable and culturally appropriate accommodation.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

Accessible and safe community spaces

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION: **(REPORT RECOMMENDATION)**

Moved: Cr H Tracey

Seconded: Cr C Mitchell

That Council advises the Department of Housing that it supports the development of the Broome Aboriginal Short Stay Accommodation Facility at Lot 3143 (No.20) Dickson Drive, subject to the following matters being addressed to the Director of Infrastructure Service's satisfaction:

- a) Plans being submitted detailing the construction of proposed footpath connections within the Dickson Drive and Pembroke Road reserves;***
- b) A Landscaping Plan being submitted detailing planting and works within the Pembroke Road and Dickson Drive road verges in accordance with the Shire of Broome's Verge Maintenance Policy 3.1.16 and Verge Treatment Information Sheet;***
- c) A notification being prepared and registered on title under Section 70A of the Transfer of Land Act, in a form acceptable to the Shire, giving notice of the Department of Housing's responsibility for maintenance of landscaping works within the adjacent Dickson Drive and Pembroke Road reserves at own expense;***
- d) Engineering plans being submitted detailing swale design for management of drainage at the south-western corner of the site. Plans must demonstrate how effective management of scouring of adjacent verge areas will be achieved; and***
- e) The illuminated portion of any sign shall not exceed a maximum luminance of 300 cd/sqm or have a light of such intensity as to cause annoyance to the public or to be a traffic hazard, and shall not emit flashing light.***

CARRIED UNANIMOUSLY 7/0

Attachments

1. Attachment 1 - BASSA Architectural Plans
2. Attachment 2 - Landscaping Plans
3. Attachment 3 - Perspectives

The Chief Executive Officer advised this item has been withdrawn.

9.2.5 DAMPIER TERRACE AL FRESCO DINING TRIAL

LOCATION/ADDRESS:	Nil
APPLICANT:	Shire of Broome
FILE:	REP005
AUTHOR:	Events Coordinator
CONTRIBUTOR/S:	Acting Manager Community Development Statutory Planning Coordinator
RESPONSIBLE OFFICER:	Acting Director Community & Economic Development
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	3 May 2016

SUMMARY: This report seeks Council's consideration of a proposal to undertake a three week trial between 1 August and 19 August 2016 for an event in Dampier Terrace in Chinatown. This would involve road closures in Dampier Terrace between the hours of 10.00am and 5.00pm Monday to Friday to allow existing Chinatown businesses located on and within the vicinity of Dampier Terrace to expand their trading and dining activities onto the street. In considering the proposal, Council is asked to have particular consideration for the following:

1. Council's Events Policy 5.1.11 requires events occurring for longer than 5 days to be approved by Council;
2. The trial requires closure of a Public Road to vehicles;
3. Approval for the event to operate without development approval under provisions of Policy 8.30 Minor Development.

It is recommended that Council support the project as a trial.

BACKGROUND

Previous Considerations

OMC 27 August 2015 Item 9.3.1

At the 27 August OMC, Council resolved to establish the Chinatown Stakeholder and Community Reference Group (Reference Group) for the purpose of providing input and feedback to the Project Control Group and Council with regard to the revitalisation of Chinatown.

At the Reference Group meeting on the 5 April 2016, a proposal was made to close Dampier Terrace between Napier Terrace and Short Street on a temporary basis to create an al fresco dining area.

The concept is to close Dampier Terrace for a trial period between 1 August and 19 August 2016, between the hours of 10.00am and 5.00pm Monday to Friday, to allow existing Chinatown businesses located on and within the vicinity of Dampier Terrace to expand their trading to the Dampier Terrace al fresco area.

COMMENT

The al fresco dining trial aims to create activity and atmosphere on Dampier Terrace to increase patronage during the busy tourist season. Tables, chairs and umbrellas will be placed in the street adjacent to the dining venues to create an atmospheric street dining experience. There is opportunity to further activate the space with buskers, street performers and a retail 'sidewalk sale'.

Al fresco dining on Dampier Terrace will create a vibrant retail and entertainment experience for both tourists and local residents and will bring activity into this central business district with potential to stimulate the economy, in particular for local businesses located in Chinatown. Broome has the perfect weather for outdoor dining in August and this is the period of highest tourist visitation to the region, making August the perfect time to undertake a trial of this project.

Road Closure

The al fresco dining area is to be located on Dampier Terrace between Short Street and Napier Terrace on the road reserve and it is proposed that a road closure will be in place between 1 August and 19 August 2016 Monday to Friday daily from 10.00am to 5.00pm in accordance with section 3.50 of the *Local Government Act 1995*. Existing bollards on Dampier Terrace will be refurbished and used to close the area to traffic and a Traffic Management Plan will be developed to manage risks associated with the road closure. In developing the Traffic Management Plan the following will be taken into consideration:

- Identification of alternative parking areas for patrons and staff visiting and working in Dampier Terrace.
- Access to staff parking at the rear of businesses located on Dampier Terrace before 10.00am and after 5.00pm daily.
- Maintaining use of the road for parking, taxis and thoroughfare for patrons accessing venues between the hours of 5.00pm and 10.00am.
- Advertisement of the road closure to the public.
- Modification to traffic flows and bus routes within the precinct and alternative temporary bus stops for the duration of the trial.

It is anticipated that staff resources will be required to erect and remove barriers on a daily basis, but for the duration of the day, static road closures, that is unmanned, will be in place. Cost estimates are based on a static traffic management model.

Approvals and Regulatory Requirements

Event coordination and risk management will be administered in accordance with the Shire's events approvals process and will be assessed against Event Policy 5.1.11 to ensure that all compliance requirements are met and a risk assessment is undertaken.

Any business wishing to undertake alcohol sales will be required to ensure they comply with liquor licensing requirements set out by the Department of Racing, Gaming and Liquor.

In accordance with Local Planning Policy 8.30 Minor Development, this event is deemed to be a temporary use and is not an exclusive use, therefore is deemed exempt from development approval provided all permit requirements are met in accordance with Event Policy 5.1.11.

Project Coordination

It is proposed that the al fresco dining trial is managed by the Shire of Broome. This will require commitment of resources for project coordination, event management, traffic management and waste services.

At the conclusion of the trial an evaluation will be conducted to determine the success of the project and identify areas for improvement. Based on the outcome of the trial, a recommendation may be made to continue to close Dampier Terrace for the purpose of an al fresco dining area on a temporary, regular or permanent basis. Should the recommendation be for regular closure of Dampier Terrace for the purpose of an al fresco dining area, it is envisaged that a community body, either existing or new, would manage the coordination of this project going forward.

CONSULTATION

The following have been consulted for the development of this proposal:

- Chinatown Community and Stakeholder Reference Group Members
- Chinatown Businesses

Should Council choose to proceed with the initiative on a longer term basis, further consultation will be required with key stakeholders, including but not limited to:

- Chinatown businesses
- Bus services provider to manage any disruption to services for the duration of the trail

STATUTORY ENVIRONMENT

Trading, Outdoor Dining And Street Entertainment Local Law 2003

2.2 Application for licence

2.2.1 Where a person is required to obtain or hold a licence under this local law, that person shall

apply for the licence in accordance with subclause 2.2.2 and:

- (a) clause 3.4 in the case of an application for an outdoor dining licence;*
- (b) clause 4.3 in the case of an application for a market licence;*
- (c) clause 5.5 in the case of an application for a trading licence; and*
- (d) clause 6.3 in the case of an application for a street entertainment licence.*

2.2.2 An application for a licence under this local law shall:

- (a) be in the form determined by the local government;*
- (b) be signed by the applicant;*
- (c) provide the information required by the form or by any other clause of this local law; and*
- (d) be forwarded to the local government together with the application fee.*

2.2.3 The local government may refuse to consider or determine an application for a licence which is not in accordance with subclause 2.2.2 or any other clause relating to the requirements to be complied with when making an application for a licence.

2.2.3 The local government may refuse to consider or determine an application for a licence which is not in accordance with subclause 2.2.2 or any other clause relating to the requirements to be complied with when making an application for a licence.

Shire of Broome Local Government Property and Public Places Local Law 2012

Definitions and Interpretations

1.6 (1) *In this local law, unless the context otherwise requires: “function” means an event or activity characterised by any or all of the following:*

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) it is organised by or on behalf of a club;
- (d) payment of a fee is required for attendance; and
- (e) there is systematic recurrence in relation to the day, time and place;

- 3.1 (1) Where a person is required to obtain an approval from the local government under this local law, that person shall:
- (a) not do the thing for which the approval is required without first obtaining the approval; and
 - (b) apply for the approval in accordance with subclause (2).
- (2) An applicant shall make an application for an approval by completing the form provided for the purpose by the local government, paying the application fee to the local government and forwarding the application to the local government.
- (3) The signature of the applicant on the form under subclause (2) shall be deemed to be proof that the applicant has:
- (a) read and understood any conditions printed on the application form; and
 - (b) accepted and agreed to comply with any conditions printed on the application form.

Determination of application

- 3.2 (1) The local government may, in respect of an application for an approval: (a) refuse the application; or (b) approve the application on such terms and conditions, if any, as it considers fit.
- (2) Without limiting the generality of subclause (1)(b), the local government may impose conditions requiring the payment of a fee for the issue of the form of approval referred to in subclause (3) and for the renewal of the approval, including the payment of a renewal fee.
- (3) If the local government approves an application under subclause (1)(b), then it is to issue to the applicant an approval in the form determined by the local government.

Conditions of approval

- 3.3 (1) Where an application for an approval has been approved subject to conditions, the approval holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of an approval and the approval holder shall comply with those conditions as varied.

Division 2 – Matters relating to approvals

Term and validity of approval

- 3.4 An approval remains valid until:
- (a) the expiration date and time stated in the approval is reached;

- (b) the activity or function for which the approval was issued is changed to the extent that it is no longer consistent with the original purpose or intent for which the approval was given;
- (c) the approval is cancelled by the local government under clause 3.5; or
- (d) the public liability or indemnity insurance required as a condition of an approval lapses, is cancelled or is no longer current.

3.5 (1) The local government may cancel an approval if:

- (a) anything purporting to be done in accordance with the approval is not done in conformity with the conditions of the approval;
- (b) the approval holder is convicted of an offence against this local law; or
- (c) the approval holder fails to comply with a notice given under clause 12.1 in relation to a breach of the approval or a condition of the approval.

(2) Notwithstanding subclause (1), where an approval relates to the hiring of local government property, the local government may cancel the approval at any time. (3) Where the local government cancels an approval for the hire of local government property under subclause (2), then the local government shall not be liable to the approval holder for any loss or damage sustained by the approval holder arising from the cancellation

Part 4 – Activities Which Are Restricted Or Prohibited On Local Government Property and Public Places

Division 1 – Activities only permitted under an approval or by a sign

Activities requiring an approval 4.1 (1) A person shall not on any local government property or public place within the Broome town site area, without first having obtained an approval from the local government to do so:

- (a) consume any liquor;
- (b) erect a structure for public amusement or for any performance for personal gain or otherwise;
- (c) conduct any function;
- (d) light or set off any fireworks or conduct a fireworks display;
- (e) light any fire except in a facility provided for that purpose;
- (f) erect any tent, camp, hut, building or other structure, other than a beach umbrella or other portable item used for protection from the elements between sunrise and sunset on any day;
- (g) coach, teach, instruct or train any person for a fee;
- (h) charge a person for entry to local government property;
- (i) operate any broadcasting or public address system or apparatus, other than those used by a life saving club in the performance of its functions;
- (j) erect any sign;
- (k) walk, lead, ride, herd or drive any large animal;
- (l) play or use any musical instrument or any other similar device;
- (m) pursue a use on local government property set aside for that purpose under clause 5.1

Local Government Act 1995

3.50. Closing certain thoroughfares to vehicles

- (1) A local government may close any thoroughfare that it manages to the passage of vehicles, wholly or partially, for a period not exceeding 4 weeks.

- (1a) A local government may, by local public notice, order that a thoroughfare that it manages is wholly or partially closed to the passage of vehicles for a period exceeding 4 weeks.
- (2) The order may limit the closure to vehicles of any class, to particular times, or to such other case or class of case as may be specified in the order and may contain exceptions.

POLICY IMPLICATIONS

- 3.1.20 Traffic Management for Events
 4.2.12 Trading in Public Places
 5.1.11 Events
 8.30 Minor Development

FINANCIAL IMPLICATIONS

Below is a cost estimate for the Shire of Broome to deliver the Dampier Terrace al fresco dining trial.

Funding Type	Details	Cost \$	GL Account
Operational – allocation exists in 2016/17 budget	Waste Services	\$5,500	
	Traffic Management Plan Preparation	\$600	
	Landscaping/cracker dust for Streeters Jetty area	\$3,200	
	Landscaping/plants	\$1,200	
	Hire of power Leads	\$400	
	Public Advertisement road closure	\$660	82613
	Event Coordination	\$3,150	82600
SUB TOTAL		\$14,710	
Additional funds identified in 3 rd Quarter FACR	Traffic Management Implementation	\$9,200	
	Repairs to traffic bollards	\$1,250	
	Power supply	\$14,500	
	Street Banners	\$20,000	116184
SUB TOTAL		\$44,950	
TOTAL		\$59,660	

RISK

Item	Risk	Type	Rank	Mitigation
Elect not to support the trial	Perception that community raised initiatives are not supported by the Shire of Broome.	Reputation	High	Clear communication to Chinatown Community and Stakeholder Reference Group Members on reason for not proceeding.
Closure of Dampier Terrace	Reduced parking available during the trial.	Operational	Medium	Clear communication of alternative parking areas available will need to be undertaken with business

				in Chinatown and for tourists, this could be done through the BVC, social media, radio and public notices in the Broome Advertiser to reach tourist and through a direct mail out to business owners in the affected area.
Closure of Dampier Terrace	Modifications to bus routes and stops, causing confusion and frustration.	Reputation	Medium	Clear communication of changes to bus routes will need to be undertaken with business in Chinatown and for tourist, this could be done through the BVC, social media, radio and public notices in the Broome Advertiser to reach tourists and through a direct mail out to business owners in the effected area.
Events Coordination	Internal resources unable to maintain additional work load.	Operational	Medium	Additional resources be engaged where required.
Events Resources	Increased cost to provide additional resources.	Financial	Medium	Make allocation in 2016/17 Budget for this contingency.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Participation in recreational and leisure activity

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Retention and expansion of Broome's iconic tourism assets and reputation

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

VOTING REQUIREMENTS

*Simple Majority***REPORT RECOMMENDATION:**

That Council:

1. *Supports an al fresco dining event in Dampier Terrace Chinatown between Napier Terrace and Short Street from 1 - 19 August 2016, between the hours of 10.00am and 5.00pm Monday to Friday, subject to the following conditions;*
 - a) *Compliance with all local laws, State and Federal Acts and Regulations related to the event activity.*
 - b) *All risk control measures, outlined within the Risk Management Plan being adhered to, to the satisfaction of the Chief Executive Officer.*
 - c) *Traders wishing to undertake sale of alcohol have obtained the required permit and meet the liquor licensing requirements set out by the Department of Racing, Gaming and Liquor.*
2. *In accordance with clause 8.2 of Local Planning Scheme No. 6, agrees that the proposal is temporary in nature and therefore does not require planning approval.*

Attachments

Nil

9.2.6 BROOME STALL HOLDERS ASSOCIATION MEMORANDUM OF UNDERSTANDING

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	REP005
AUTHOR:	Events Coordinator
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Acting Director Community & Economic Development
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	4 May 2016

SUMMARY: This report proposes a formal agreement between the Shire of Broome and the Broome Community Stall Holders Association to continue support for the delivery of Staircase to the Moon and Thursday Night Markets at Town Beach Reserve. Officers recommend the development of a Memorandum of Understanding between the Shire of Broome and the Broome Community Stallholders Association to provide both in-kind and cash sponsorship support to the value of \$36,000 for the Staircase and Thursday Night Markets.

BACKGROUNDPrevious Considerations

OMC 26 October 2006	Item 9.4.4
OMC 23 October 2014	Item 9.1.2

Broome Community Stall Holders Association oversees the coordination of stall holders to deliver the Staircase to The Moon and Thursday Night Markets at Town Beach Reserve between April and October on an annual basis.

The Broome Community Stallholders Association is a voluntary committee comprised of regular stallholders and is not for profit. Stall fees are charged to contribute to the cost of running the markets and surplus funds raised are donated back into the local community. SAFE Broome, St John Ambulance, schools, local youth and Kimberley Performing Arts Council are just some of the community groups who have been assisted with funds from the Broome Community Stallholders Association.

The Shire of Broome has been providing in-kind support to the Broome Community Stall Holders Association to deliver Staircase markets since 2010. At the 23 October 2014 OMC Council resolved the following:

That Council:

1. *Continues to support the Broome Community Stallholders Association's Staircase Markets for the 2014 and 2015 tourist seasons through the provision of;*
 - (a) *A 50% discount on the hire of the Town Beach Reserve for this purpose funded from GL Exp Account 132060 – Tourism and Area Promotion; and*
 - (b) *Traffic management, waste services and electricity for the Staircase Markets.*
2. *Requests the Chief Executive Officer to;*
 - (a) *Advise the Broome Community Stallholders Association accordingly;*

- (b) Acknowledge the proposal from the Broome Community Stallholders Association; and
 - (c) Advise that Council seeks a coordinated approach to the activation of Chinatown to deliver maximum economic and social benefits for Broome and that its proposal for Chinatown night markets will be considered in this context.
- 3. Requests the Chief Executive Officer work with key stakeholders including Broome Chamber of Commerce and Industry, Chinatown Traders and Broome Community Stallholders Association to investigate the development and costing of a coordinated calendar of events to activate Chinatown that could include but may not be limited to;
 - (a) Weekly night markets
 - (b) Cruise ship hosting
 - (c) Street entertainment
 - (d) Late night trading opportunities and report back to Council regarding the resource implications for the Shire.
- 4. Requests the Chief Executive Officer to investigate the provision of traffic management training for local not for profit organisations to increase community capacity and provide opportunities for financial returns to these groups.

CARRIED UNANIMOUSLY 5/0

COMMENT

The Staircase to the Moon markets provide added value for both visitors and local residents by providing a complete experience for this breathtaking natural phenomenon, by providing a venue to enjoy the event and an opportunity to sample local fare, purchase crafts and delight in talented local entertainers.

Officers have been in discussion with the Broome Community Stall Holders Association regarding how the Shire of Broome can continue to support the successful delivery of the Staircase to the Moon and Thursday Night Markets, and provide a level of security to the committee that the support will be in place in future years to allow them the ability to forward plan.

By establishing a formal MOU with the Broome Community Stall Holders Association, the level and value of the support that the Shire of Broome provides will be clearly outlined which will also assist with effective forward management of the Shire of Broome budgeting processes.

Officers are proposing a 3 year agreement period to provide both in-kind support and a cash component to allow the Broome Community Stall Holders Association Committee access to Shire services including Traffic Management Plan development and review, waste services and placement of road closure public notices, while still allowing flexibility in the provision of services that the committee is responsible for including traffic controllers for the implementation of the Traffic Management Plan, hire of the Town Beach Reserve venue, event application fees and marketing.

Under the agreement, it is proposed that the Shire would take responsibility to:

- (a) Provide in-kind support for the provision of waste service, annual review of the Traffic Management Plan to ensure it meets regulatory requirements, continue

to provide the venue at a 50 % discounted hire rate and placing the public notices of road and ramp closures in the Broome Advertiser;

- (b) promote the Staircase to the Moon and Night Markets in the Shire's newsletter;
- (c) provide a link on the Shire's website to The Broome Community Stallholders Association website; and

- (d) provide a distinguished guest speaker for a welcoming/opening ceremony.

It is proposed that the Broome Community Stall Holders Association would take responsibility to;

- (a) recognise the Shire as a sponsor of the Staircase to the Moon and Night Markets
 - i. in all advertising and promotional material , including on any program, newsletter and other printed communications
 - ii. on the Staircase BCSA website and including a link to the Shire's website;
- (b) verbally acknowledge the Shire as a sponsor during formal speeches;
- (c) promote the Shire in radio, printed or television advertisements/communications at all opportunities;
- (d) invite the Shire President, Councillors and Chief Executive Officer to any welcoming/opening events;
- (e) submit to the Shire on an annual basis a report on the Staircase to the Moon and Night Markets event which includes the financial details, a copy of any publicity and recordings of events/activities and evaluation of the program, within three months of it concluding in each year of this Agreement;
- (f) include reference to the Shire in media releases sent to media outlets within Australia, where appropriate.

Broome Community Stallholders Association has provided a copy of audited financial statements for 2014/15 which includes the Staircase Night Markets as well as Broome Courthouse market activities. In the 2014/15 financial period, donations of \$17,350 were made to community organisations. The audited financial statements are included as a confidential attachment to this report, for Council's information.

It is proposed under the MOU that a total of \$36,000 is provided annually to BCSA for the purpose of delivering the Staircase to the Moon and Thursday Night Markets. The total sponsorship includes \$11,950 cash sponsorship and in-kind support of \$24,050. Annual sponsorship is on delivery of 30 markets.

The proposed structure of the financial support to be provided is outlined in the table below:

SHIRE OF BROOME provides:	COST
Cash Sponsorship Funding - to be used for Traffic Management Plan implementation and marketing	\$11,950.00
In-Kind - Waste services	\$13,955.00
In-Kind - Traffic Management Plan review – annual 2 hours	\$ 360.00
In-Kind - 50% Discount on venue hire discount annual	\$ 9,405.00
In-Kind - Road / Ramp Public Notice advertisement	\$ 330.00
Total Shire Contribution	\$36,000.00
The BROOME COMMUNITY STALLHOLDERS ASSOCIATION provides:	

Sponsorship acknowledgement in all media and official speeches	\$ 500.00
Shire of Broome Events Application Fee – annual	\$ 112.00
Shire of Broome venue hire – annual @ 50%	\$ 9,405.00
Operating cost including – coordinator, administration, lighting and musicians	\$20,255.00
<i>NOTE: Shire of Broome Fees and charges may be adjusted on an annual basis and above fees would be amended to reflect.</i>	
Total BCSA Contribution	\$30,272.00
Total Project Cost	\$66,272.00
Project Income: Stallholder Fees - offset operating cost for BCSA	\$31,900.00

Any request for additional services from the Shire will be treated and charged to the Broome Stallholders Association by the Shire as private works.

CONSULTATION

Broome Community Stall Holders Association Committee

STATUTORY ENVIRONMENT

Local Government Act 1995

6.12. power to defer, grant discounts, waive or write off debts

- (1) subject to subsection (2) and any other written law, a local government may —
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or
 - (b) waive or grant concessions in relation to any amount of money; or
 - (c) write off any amount of money, which is owed to the local government.
 - (2) subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.
 - (3) the grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.
 - (4) regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.
- [section 6.12 amended by no. 64 of 1998 s. 39.]

Local Law - Broome Trading, Outdoor Dining and Street Entertainment 2003 (With 2012 Amendments)

POLICY IMPLICATIONS

- 5.1.11 Events
- 4.2.3 Street Entertainment Busking
- 4.2.12 Trading in Public Places
- 4.2.13 Food Act 2008 Compliance and Enforcement
- 8.3 Outdoor Dining

FINANCIAL IMPLICATIONS

An allocation of \$26,800 has been included in the draft 2016/17 budget for cash and in-kind support of the Staircase to the Moon markets. It is proposed this amount is budgeted annually for the term of the proposed agreement.

Funding Type	Details	Annual 2016-2019		
		Cost \$	GL Account	Job Number
Cash	Annual sponsorship	\$11,950	116184	116196
In-Kind	Venue Hire (50% discount)	\$9,405	N/A	N/A
	Waste Services	\$13,955	116184	116196
	Traffic Management Plan review	\$360	116184	116196
	Public Advertisement	\$330	116184	116196
TOTAL		\$36,000		

RISK

A medium level of risk exists for the Staircase Markets should Council choose not to enter into an MOU with the Broome Community Stall Holders Association. Without the support of the Shire of Broome the Staircase and Thursday night Markets may no longer be viable and the BCSA would need to draw on income from other activities to support the Staircase and Thursday Night Markets or they may cease to operate in Broome. This would have an impact on tourism with an event that adds value to the tourist experience no longer being available. This could also affect the viability of some small stall holders to operate as the opportunities to participate in markets events would be reduced.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

Participation in recreational and leisure activity

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

A preserved, unique and significant historical and cultural heritage of Broome

Retention and expansion of Broome's iconic tourism assets and reputation

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Responsible resource allocation

Effective community engagement

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr H Tracey

That Council:

1. Approves the development of a three year Memorandum of Understanding (MOU) between the Shire of Broome and the Broome Community Stallholders Association to provide both in-kind and cash sponsorship to the value of \$36,000 for the Staircase and Thursday Night Markets to cover the cost of;
 - (a) waste management services;
 - (b) annual review of the Traffic Management Plan and implementation;
 - (c) placement of the road and ramp closure public notices; and
 - (d) 50% discount to the venue hire fees for Town Beach Reserve.
2. Requires the Broome Community Stallholders Association to comply with the following conditions of funding;
 - a) The Shire of Broome will be recognised as a major sponsor of all of the Staircase to the Moon and Night Market events.
 - b) A report is submitted to the Shire on an annual basis on the Staircase to the Moon and Night Markets event which includes the financial details, a copy of any publicity and recordings of events/activities and evaluation of the program, within three months of it concluding in each year of this Agreement.
 - c) A full acquittal will be required from the applicant including evidence of expenditure.

CARRIED UNANIMOUSLY 7/0

Attachments

1. BCSA Financial Statements 2014/15 (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(iii)) as it contains "a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government".

With regard to Item 9.2.7 Cr E Foy disclosed that “I have an association with Member of Yawuru. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

With regard to Item 9.2.7 Cr D Male disclosed that “I have an association with family business that operates service commercial business. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

With regard to Item 9.2.7 Cr B Rudeforth disclosed that “I have an association with Member of Yawuru. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

With regard to Item 9.2.7 Cr R Johnston declared a Financial Interest as “have property interests with a/port owners,” and departed the Chambers at 5.38pm.

Cr Tracey assumed the Chair.

9.2.7 REQUEST FOR IN-PRINCIPLE SUPPORT - PROPOSED SERVICE COMMERCIAL DEVELOPMENT - LOT 3082 (102) CABLE BEACH ROAD EAST

LOCATION/ADDRESS:	Lot 3082 (102) Cable Beach Road East
APPLICANT:	Nyamba Buru Yawuru Ltd
FILE:	CAB-1/102
AUTHOR:	Statutory Planning Coordinator
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	5 May 2016

SUMMARY: Correspondence has been received from Nyamba Buru Yawuru Ltd (NBY) seeking the Shire's in-principle support for the development of a Homemakers Centre (service commercial development) on part of Lot 3082 (102) Cable Beach Road East.

The request for in-principle support is presented to Council for consideration.

The report recommends that Council advise NBY that it supports NBY's aspirations to develop land granted to the Yawuru Native Title Holders Aboriginal Corporation RNTBC under the ILUA and the development of land for service commercial purposes in Broome. However, it is recommended that Council advise NBY that the proposal submitted for consideration is inconsistent with the Shire's planning framework and the principles of orderly and proper planning, and therefore the Shire of Broome is not in a position to support the proposal.

BACKGROUND

Previous Considerations

Nil.

Site and Surrounds

Lot 3082 adjoins Cable Beach Road to the south, Gubinge Road to the west, Djiagween Road to the north, and the Djiagween Community and Broome International Airport to the east. The site has a total area of 33.04ha and is irregular in shape, as the lot wraps around the eastern extent of the airport runway (see the location plan in **Attachment No 1** of this report).

The site is vacant and was granted to the Yawuru Native Title Holders Aboriginal Corporation RNTBC through the Indigenous Land Use Agreement (**ILUA**).

Proposal

NBY is seeking the Shire's in-principle support and advice on the 'approval pathway' for the development of a Homemakers Centre on the subject site. NBY have provided a letter setting out details and justification for the proposal and concept plans for the future Homemakers Centre (**Attachment No 2**).

Based on the concept plans, approximately 5.4ha of Lot 3082 (**the site**) fronting Cable Beach East Road is sought to be developed for service commercial purposes. Future development on this site could include a hardware store (Bunnings), fast food outlet, showrooms, car wash, service station and other bulky goods retailers.

COMMENT

Council considering a development concept and deciding whether to grant in-principle support is not common practice. However, this proposal is presented to Council to obtain a preliminary indication as to whether Council would support the proposal in the event it proceeded to a planning application for the following reasons:

- the 'Development' zoning of the site gives discretion to the Shire to consider a range of land uses; and
- the level of investment required from the proponent to further progress the development concept.

In considering this request, the following matters must be taken into account:

- the strategic direction provided under the Shire's Local Planning Strategy;
- the direction provided in the Shire's Local Commercial Strategy and recent retail floor space analysis;
- the site's zoning under Local Planning Scheme No 6; and
- the appropriateness of the site as a location for service commercial development.

Each of the above points will be explored under the headings below.

NBY have submitted a number of reasons for why Council should give its in-principle support to the proposed 'Home Makers Centre'. NBY have also requested clarification on the pathways for approval. These matters will also be explored under the headings 'NBY justification' and 'Pathways for Approval' below.

Local Planning Strategy (LPS)

Under the LPS the subject site is positioned within Future Development Area 3 and also falls within Precinct 9. Section 3.3.1.9 of the LPS states the following in relation to Precinct 9 (Bilgungurr):

Precinct 9 comprises of the western half of the current Broome Airport, the recreational, educational and commercial uses to the south along Cable Beach Road East and Service Commercial lots north of Frederick Street as depicted on LPS Map 3.

Objective:

- a) Establish Precinct 9 as an **education / health precinct** providing for student accommodation, sporting facilities and residential development and potential relocation of the hospital.*

Guidelines:

- A development strategy should address the integration of the Broome Boulevard Shopping centre with future development to the north-west once the airport has relocated.*
- Zone Future Development Areas 2 – 4 appropriately under the Local Planning Scheme once the airport has relocated to facilitate future development of student and tourist accommodation, sporting facilities and residential development.*

Further, section 7.2.7 of the LPS provides direction on the Future Development Areas (**FDA**) and with regard to FDA3, the following direction is provided:

FDA 3 – Yawuru Airport West

FDA3 provides for a total of around 33 hectares which could provide an additional 330 houses. This site may also provide for some tourism opportunities in proximity to Cable Beach. It could also provide student accommodation as a part of an Education/Health Precinct.

The LPS provides strategic direction on future land uses that could be supported within the site, which are as follows:

- residential development;*
- establish an education/health precinct; and*
- possible tourist uses.*

Therefore, the development of a service commercial precinct would be inconsistent with the objectives of the Precinct or the FDA in which the subject site falls.

Further, section 2.4.7 of the LPS establishes the strategies and actions for retail and commercial development in Broome which is shown in Figure 9 (included as **Attachment No 3**). The rationale for the selection of retail and commercial areas was based on the population growth scenarios calculated in 2012 Community Profile prepared by AEC Group and the Economic Profile also prepared by AEC Group. From the projected population growth figures, the demand for retail/commercial space required to support population growth were forecasted. The LPS then identifies the areas for expansion spatially and sites for retail and commercial expansion were selected to promote a logical and consolidated hierarchy of retail and commercial development within Broome. With regard to service commercial development, Strategy 4 and Action 3 and 9 within the LPS state the following:

- 4. Promote and encourage development along the north side of Frederick Street as showrooms and bulky goods retail.*

Action 3 Set out a Service Commercial zone within the local planning scheme that allows for showrooms and bulky goods including car sales, furniture and white

goods, which does not compete or detract from the retail primacy of the Town Centre zone in Chinatown.

Action 9 Zone lots north of Frederick Street from Coghlan Street to the Broome Boulevard Shopping Centre as Service Commercial.

Overall the LPS plans for two areas within the Broome townsite for service commercial development. The smaller of the two is the land on the corner of Cable Beach Road and Fredrick Street (the site of the Kimberley Camping Store, Broome Vet Practice, etc) which essentially reflects existing land uses occurring within this area, with some capacity for future development on the vacant and underdeveloped lots. The second area identified for service commercial development is to the north of Fredrick Street extending from the Boulevard Shopping Centre site through to Herbert Street (the western extent of the Town Centre zone). While this designation does cover some of the current operational areas of the airport, the land to the immediate west of the Boulevard Shopping Centre, extending along Fredrick Street, is already zoned 'Service Commercial' under LPS6 and has a conditional subdivision approval allowing it to be developed for this purpose (the footprint of this area is approximately 6ha, which is slightly larger than the area NBY is seeking to be developed for the same purpose).

Therefore, the proposal is considered to be inconsistent with the established strategic planning direction provided in the LPS for the following reasons:

- The proposal is inconsistent with the objectives of Precinct 9 and Future Development Area 3 in which the subject site falls.
- The proposal is inconsistent with the strategic direction provided in section 2.4.7 of the LPS with regard to retail, commercial and activity centres.
- If this proposal was to proceed, it would lead to fragmentation of the retail/commercial hierarchy established within the LPS and would lead to an over provisions of land for service commercial development.

Local Commercial Strategy and Retail Floor Space Analysis

The Shire's Local Commercial Strategy (**LCS**) was adopted in June 2007 and was prepared following a review of the Shire retail floor space needs undertaken in 2006. The review of the retail floor space needs was undertaken in two parts:

- Part one involved the examination of commercial activity in the town and the identification of sustainable floor space levels.
- Part two identified commercial requirements in the context of strategically distributing that floor space across the town.

The projections in the LCS extend to 2021 and are considered to remain valid, despite the LCS being adopted in 2007.

Based on a retail analysis undertaken as part of the preparation of the LCS, it was concluded that Broome has a demand for an additional 4,000sqm of floor space for large format retailing to 2021. Further, the LCS found that in the absence of an appropriate zone, these type of uses gravitate to the light and service industry areas. The LCS recognised that the industrial areas are not a desirable location and concludes that the most logical location for this activity is Fredrick Street between Chinatown and the Boulevard. The LCS recognised at the time that the retention of the airport may limit development of this area in the short to medium term.

Since the adoption of the LCS, the following actions have occurred which has confirmed that the opportunity for service commercial development is available in the preferred location on Frederick Street:

- The Airport Development Plan was adopted by the Shire in November 2009, which showed that there was adequate area along Frederick Street, surplus to the operation of the airport, to accommodate service commercial development.
- In June 2012, Council adopted Local Development Plan No 8 (previously called Detailed Area Plan) which establishes a structure and layout for the development of this service commercial area and development controls with regard to location of car parking, building orientation, etc.
- In 2015 the Local Planning Strategy was endorsed by the Western Australian Planning Commission (**WAPC**) which shows this area on Fredrick Street, in addition to a wider portion of the airport site, being the preferred location for service commercial development.
- Local Planning Scheme No 6 (**LPS6**) was gazetted in 2015, which zones the site Service Commercial.

The above actions have demonstrated that the preferred location for service commercial development identified in the LCS is available for this use. The adoption of the LPS has further clarified that the land along Fredrick Street is the most logical and preferred location for service commercial development in Broome.

More recently, as a part of the preparation of the Old Broome Development Strategy and Cable Beach Development Strategy, a retail floor space analysis has been undertaken. This retail floor space analysis is based on the projected growth rates in the 2012 AEC Group Community Profile and Economic Profiles.

The retail analysis of the currently available floor space showed that based on population growth rates and the Economic Profile, there is currently an oversupply of retail floor space. There is anecdotal evidence of this oversupply with a number of vacant retail floor spaces.

With regard to service commercial floor space specifically, the retail needs analysis concluded that if the existing zoned Service Commercial land was developed in accordance with the plot ratios in LPS6, this area would have the capacity to accommodate all the service commercial retail currently located in the Light and Service Industry zone (estimated to be 14,300sqm), as well as approximately 8,000sqm of new large format development. Therefore the existing zoned land would be more than sufficient to cater for the project growth anticipated in the LCS for the 2021 timeframe (would exceed the projection by 80%).

Based on the more recent population growth projections and findings in the AEC profiles, conservative estimates of future development based on 'shovel ready' service commercial land confirms a sufficient supply of this type of retail floor space to meet the needs of the Broome community until 2031 under the medium growth scenarios contained in the Economic Profiles. Beyond this timeframe, the LPS provides for the long-term service commercial floor space needs through the identification of the land on the operational portion of the airport site.

From a review of the LCS and the retail floor space analysis, it is concluded that the proposal would:

- Be inconsistent with the Shire's Local Commercial Strategy;

- Be inconsistent with the adopted statutory and strategic planning framework, which has progressed since the adoption of the LCS in 2007. This framework reinforces that the most suitable location for service commercial development within the Broome townsite is to the north of Fredrick Street.
- Result in a surplus of service commercial land, given there is sufficient land already zoned and 'shovel ready' to cater for future service commercial floor space needs until 2031. Beyond this timeframe, the LPS has identified additional land area for service commercial development and therefore long-term needs for this retail activity is also catered for.
- Result in an over-allocation of land for service commercial purposes, which would lead to an ad-hoc distribution of commercial floor space and undermine the established strategic and statutory planning framework.

Local Planning Scheme No 6

Under the provisions of LPS6, the subject site is zoned 'Development'. Clause 4.16 of LPS6 sets out the purpose and objectives of the Development zone and states the following:

4.16.1 The purpose of the Development Zone is:

- (a) to identify areas requiring comprehensive planning prior to subdivision and development*
- (b) to coordinate subdivision, land use and development in areas requiring comprehensive planning.*

4.16.2 The objectives of the Development Zone are to:

- (a) provide for a range of mixed land uses and subdivision in accordance with an adopted structure plan;*
- (b) enable the preservation and management of areas of cultural and environmental significance;*
- (c) provide for the coordinated provision of infrastructure, facilities and developable land through relevant structure plans and associated development contribution plans.*

The site and development requirements for land zoned 'Development' is established under Clause 4.44.1 of the LPS6 which states development approval or subdivision will not be supported unless a structure plan has been adopted. The Scheme provisions do give discretion to the Shire to waive the need for a structure plan, where the land use proposed is a minor extension to an existing use, a minor additional use or a minor land use change.

Therefore within the areas zoned 'Development' the layout, development controls and permissible land uses will be determined under the adopted structure plan. Once the structure plan has been prepared and proceeds to a subdivision application, ordinarily the zoning of the land is then 'normalised' through a scheme amendment so the land is zoned in accordance with the provisions of the structure plan. An example of this is the area covered by Local Development Plan No 1 in Broome North. The area forming part of this structure plan has now been normalised in LPS6 with Residential, Local Centre and Reserves zoned in accordance with the adopted Structure Plan.

Therefore, to support this proposal, a Structure Plan should be prepared to show the subject portion of land being developed for 'Service Commercial' purposes. This is further discussed under the heading 'Planning Pathway' below.

Under LPS6, the subject site falls within Special Control Area (SCA) 'Existing Broome International Airport'. The objective of this SCA is to control development within close

proximity to the airport to ensure the ongoing safe operation of the airport. For any new development within the area, the Shire must have due regard to the Australian Noise Exposure Forecast (ANEF) Contours and the Broome Airport Obstacle Limitation Surface Plan.

With respect to the noise limitations, the site falls between the 30 and 25 ANEF contours. The 'Building Site Acceptability Based on ANEF Contours' table contained within Schedule 17 of LPS6 establishes that the types of development that could be supported in this area are public buildings, commercial buildings, light industrial and other industrial uses. With regards to the obstacle limitations, this varies across the site, from 20m in the north to 40m along the portion of the site which fronts Cable Beach Road East.

Appropriateness of site location for service commercial land use

The subject site adjoins Cable Beach Road East and due to limitations on accessing Gubinge Road, future development on this area of land will front Cable Beach Road East. The area of land to the south of Cable Beach Road East is zoned and developed for residential purposes. The establishment of a Service Commercial area, adjacent to an existing Residential area is not considered desirable for the following reasons:

- Service commercial areas generate a large volume of retail and service vehicle traffic and often usage is higher on weekends when residents in the adjoining residential properties are more likely to be home. Therefore it is undesirable to have this type of land use within proximity to residential areas due to potential conflicts with noise and traffic.
- The hours of operation of the types of service commercial land uses (such as hardware stores, fast-food outlets, service stations) are usually longer than other types of retail and commercial land uses, thus they have the capacity to create a greater level of conflict with residential uses.
- Fast food outlets are a typical land use within service commercial zones and have the potential to generate odours which can be nuisance if developed within close proximity to residential properties.

This location is also not considered appropriate as it does not provide a logical nor preferred location for this type of land use. Figure 9 of the LPS (**Attachment No 3**), demonstrates a rational pattern of commercial development throughout the townsite of Broome. The identification of the service commercial area on Frederick Street acts as a natural extension of commercial activity which transition from the primary and traditional town centre being Chinatown, to the existing commercial uses along Fredrick Street, through to the Boulevard and concluding at the intersection of Cable Beach Road East and Fredrick Street.

The service commercial area identified along Fredrick Street is also preferable location for this type of land use, as it is located immediately adjacent to Broome Senior High School and the Boulevard Shopping Centre, both of which generate a high number of vehicle movements and are car dominant land uses. Service commercial areas similarly generate high number of vehicle movements and are very car dominant, as such it is appropriate that these type of activities are consolidated into one central location. This hierarchy proposed under the LPS will see commercial/retail development consolidated in one location and support the primacy of Chinatown as the principle town centre area.

If the NBY site was developed as a service commercial area, it would create a fragmented pattern of retail/commercial development. Furthermore, the pattern of development proposed under the LPS allows for a clear transition of commercial activity from Chinatown, along Frederick Street.

To the South East of the site along Cable Beach Road East are a number of community uses such as the Broome Recreation and Aquatic Centre, St John Ambulance and the Kimberley Training Institute. Therefore, the area of the NBY site subject to this proposal is considered a more logical location for the extension of the recreation/education uses that exist on Cable Beach Road East and tourism uses, as the area transitions into Cable Beach tourism precinct.

Overall, for the reasons mentioned above, the subject site is not considered to be a suitable location for the development of a service commercial precinct.

NBY justification

In the cover letter provided, NBY expresses the view that the proposal can be considered under the current planning framework. The main justification for this is summarised in the following paragraph:

Despite the portion of Lot 3082 not being identified for service commercial development, there is nothing in the statutory or strategic planning framework to prevent Council from approving an application for this use on the subject site. Indeed the rationale for the selection of the sites identified in the LPS and LCS may equally be applied to the subject site, as follows:

- (a) The site's location on Cable Beach Road East is essentially an extension of service commercial activity on Frederick St and Cable Beach Road East consistent with the general spatial direction provided in the LPS and LCS;*
- (b) The position adjacent to Gubinge Road provides for excellent access to delivery vehicles, without having to enter the Town centre or the balance of Cable Beach Road East.*
- (c) The LPS states that service commercial does not need to be situated in major shopping precincts, given its key transactional characteristics are high exposure locations providing easy access for customers for low frequency, destination travel;*
- (d) The LCS acknowledges that the amenity created by this form of extensive and car-oriented land use is quite different from that expected for successful office and tourism areas;*
- (e) The suitability of the location from a market perspective is attested by discussions with existing retailers; and*
- (f) The LCS states that the current location of LFR [Large Format Retail] and showroom uses in Broome's light industrial areas is not preferred but notes that there is 'no real alternative location available to accommodate these activities'. Development of the subject site for Service Commercial resolves this issue.*

As set out in the comments provided above, the proposal is considered inconsistent with the direction provided in the strategic planning framework and also inconsistent with the Shire's adopted statutory planning framework. The site is not deemed to be an extension of service commercial activity on Cable Beach Road East and instead will result in a fragmented pocket of retail development, remote of the existing commercial activity within the town. The justification provided that such land uses do not need to be provided in major shopping precincts as high exposure locations are more of a criteria of success, is not adequate rational to support a departure from the commercial hierarchy established in the LPS.

Similarly, it is noted that the site's proximity to Gubinge Road would provide good access to delivery vehicles without having to enter the balance of Cable Beach East Road.

However, this also is not sufficient justification to support the proposed development as a departure from the established planning framework.

It is noted that the LCS concludes that the current location of LFR in the Light and Service Industry area is not preferred, however, since the LCS was adopted in 2007 it has been demonstrated that there is an alternative location to accommodate these uses. The Shire's planning framework now reflects this and the retail analysis undertaken has confirmed that the existing areas zoned and 'shovel ready' to cater for the growth expected for this type of retail activity exists to cater for both short to medium term needs. Beyond this planning horizon, the LPS identifies additional land area for service commercial development, to cater for the expected growth of Broome into the long term. To allow another area to be developed for service commercial would therefore result in an ad-hoc distribution of commercial/retail development within Broome which is undesirable and would be inconsistent with the principles of orderly and proper planning.

The suitability of the location from a market perspective, while it is a consideration when undertaking land use planning, is not a determinative factor. Strategic planning is undertaken to ensure that sufficient areas are set aside to accommodate future growth and also to ensure that the most suitable locations are identified for different land use activities. This is undertaken to deliver positive development outcomes for the whole community. It is not sound planning practice to vary from the established strategic direction because a retailer would prefer to be located at the intersection of roads with high vehicle movements. Therefore this rational is not supported.

NBY suggest in their letter that the Shire could issue a temporary development approval and therefore the proposal would not jeopardise the long term strategic intention for the land. This suggestion is not supported as it is considered impracticable and unreasonable. The scale of investment required to support a use of this nature (including services, road/intersection upgrades, building costs, etc) is unlikely to support such a use being temporary. Further, once commercial patterns are established, it is not unlikely to change nor would it be likely in ten years time the Shire would determine that the use must cease once that level of investment is made.

It is noted that, as stated by NBY, the residential and tourism land uses identified for the site under the LPS cannot occur while the airport remains operational. It is acknowledged that this limits NBY's options for developing the land at this time. While officers sympathise with NBY in relation to this issue, it is not a suitable justification to support a departure from the established planning framework, which dates back to 2007 when the LCS was adopted.

NBY's assertion that the proposal is consistent with the strategic direction of the LPS and LCS by relocating fragmented bulky goods retail from the Clemenston Street light industrial area (**LIA**) is also not supported. If the site was developed for service commercial land uses, there would be no compulsion on the established service commercial uses within the LIA to move. Further, as previously stated, there is already an area zoned and shovel ready for service commercial development on Frederick Street and if the Shire were to support another service commercial area being developed it would result in fragmentation of retail developments within the town.

Planning Pathway

In the event the proposal was supported, NBY have requested advice on the planning pathway that the Shire would expect to be followed. NBY have asserted in their letter that Council has the discretion to consider a development application over the site, without the need to prepare a Structure Plan.

While discretion does exist within the LPS6 for the Shire to consider development applications without a Structure Plan, this is when 'minor development' is proposed. This proposal is not considered minor development given its size and its inconsistency with the established planning framework. Therefore officers are of the view that a structure plan is required and the Shire would not be in a position to approve a development application for this proposal, if submitted at this time.

Further, a structure plan once submitted would need to be advertised for public comment and adopted by the WAPC. Given that the proposal is considered inconsistent with the planning framework, an application of this scale should be required to undergo public consultation and should also be considered by the WAPC.

As such, in the event Council wished to support the proposal, it is recommended that NBY be advised that a Structure Plan is required to be prepared and submitted for consideration.

Summary

While the Shire supports NBY's aspirations to develop land granted to the Yawuru Native Title Holders Aboriginal Corporation RNTBC under the ILUA and the development of land for service commercial purposes in Broome, the Shire also has a responsibility as a planning decision making authority. The Shire in performing its planning functions must ensure that when developments are considered they are consistent with the planning framework and the principles of orderly and proper planning, to deliver the best outcomes to the community of Broome.

The proposal is inconsistent with the LPS as it is inconsistent with the direction provided for the precinct and the FDA in which the site falls. Further, the proposal does not comply with the LPS with regard to the recommended distribution and pattern of retail, commercial and activity centres. This direction established in the LPS is consistent with the recommendations of the LCS which was adopted in 2007. The recommended distribution of retail and commercial activity contained in the strategic framework, which is now reflected under LPS6, is based on sound planning principles and the reasons presented in the NBY submission do not provide justification to support a departure from this long established direction.

Recent retail floor space reviews have confirmed that there is enough land zoned and shovel ready to support the forecasted growth for service commercial development. For the Shire then to support this proposal would create a fragmented and ad-hoc development. Overall, the site is not deemed an appropriate location for service commercial development.

As such, it is recommended that Council advise NBY that it is not in a position to support the proposal.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Planning and Development Act 2005

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

RISK

The Shire's LPS was adopted in 2015 and is based on sound planning principles. The purpose of the LPS is to provide medium term direction to the community and Shire on planning decisions. To support a proposal that is inconsistent with the LPS gives rise to the risk that this important document would be undermined. This would create an undesirable precedent, giving rise to the perception that the Shire's LPS and LPS6 are documents to be given little weight.

If a decision was made that is contrary to the adopted planning framework, this could lead to uncertainty in future investment decisions. Further, this would place the Shire in a position where it would have to review the recently adopted land use documents and update them to reflect the new commercial pattern. This would include a review of all informing documents, including the Local Commercial Strategy, District Traffic Management Study (for which the modelling has already been undertaken) and so on. This would be a lengthy and expensive exercise.

STRATEGIC IMPLICATIONS**Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:**

Realistic and sustainable land use strategies for the Shire within state and national frameworks and in consultation with the community

A unique natural environment for the benefit and enjoyment of current and future generations

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Affordable land for residential, industrial, commercial and community use

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION:

That Council advise Nyamba Buru Yawuru Ltd that:

- 1. The Shire supports Nyamba Buru Yawuru Ltd's aspirations to develop land granted to the Yawuru Native Title Holders Aboriginal Corporation RNTBC under the ILUA and the*

development of land for service commercial purposes in Broome.

2. However, the Shire cannot support the proposal to develop a portion of Lot 3082 Cable Beach Road East for service commercial purposes, for the following reasons:
 - a) The proposal is inconsistent with the planning framework, which has progressed since the adoption of the Local Commercial Strategy in 2007.
 - b) The proposal is inconsistent with the objectives and guidelines for Precinct 9 and the recommendations for Future Development Area 3 contained within the Local Planning Strategy.
 - c) The proposal is inconsistent with the objectives, strategies and actions for retail, commercial and activity centres contained within the Local Planning Strategy.
 - d) The proposal would result in an over-allocation of land for service commercial purposes, which would lead to an ad-hoc and fragmented distribution of retail and commercial floor space.
 - e) The site is not considered an appropriate or desirable location for the development of a service commercial precinct.
- 3) Notwithstanding the above, in the event Nyamba Buru Yawuru Ltd wishes to proceed with the lodgement of a formal application, the Shire advises that a Structure Plan would need to be prepared and submitted in accordance with Clause 4.44.1 of Local Planning Scheme No 6 and Clause 15 (a) (ii) of the Planning and Development (Local Planning Schemes) Regulations 2015.

Cr W Fryer moved the following motion:

That Council advise Nyamba Buru Yawuru Ltd that:

1. The Shire supports Nyamba Buru Yawuru Ltd's aspirations to develop land granted to the Yawuru Native Title Holders Aboriginal Corporation RNTBC under the ILUA and the development of land for service commercial purposes in Broome.
2. In the event Nyamba Buru Yawuru Ltd wishes to proceed with the lodgement of a formal application, the Shire advises that a Structure Plan would need to be prepared and submitted in accordance with Clause 4.44.1 of Local Planning Scheme No 6 and Clause 15 (a) (ii) of the Planning and Development (Local Planning Schemes) Regulations 2015.

Cr D Male foreshadowed she would speak against should this motion be seconded.

Cr B Rudeforth seconded the motion.

COUNCIL RESOLUTION:

Moved: Cr W Fryer

Seconded: Cr B Rudeforth

COUNCIL MOTION

That Council advise Nyamba Buru Yawuru Ltd that:

1. **The Shire supports Nyamba Buru Yawuru Ltd's aspirations to develop land granted to the Yawuru Native Title Holders Aboriginal Corporation RNTBC under the ILUA and the development of land for service commercial purposes in Broome.**
2. **In the event Nyamba Buru Yawuru Ltd wishes to proceed with the lodgement of a formal application, the Shire advises that a Structure Plan would need to be prepared and submitted in accordance with Clause 4.44.1 of Local Planning Scheme No 6 and**

Clause 15 (a) (ii) of the Planning and Development (Local Planning Schemes) Regulations 2015.

**FOR: 4
AGAINST: 2
MOTION CARRIED**

Reason – to support the application rather than negate the application.

Cr C Mitchell and Cr D Male wished for their vote to be recorded against the Motion.

Cr R Johnston returned to the Chambers at 6.06pm and assumed the Chair. Cr Tracey advised of the resolution passed.

Attachments

1. Attachment No 1 - Location Plan
2. Attachment No 2 - NBY Letter and Concept Plans
3. Attachment No 3 - Existing and Future Retail Areas LPS

The Chairperson read aloud the Purpose and Effect of the proposed Shire of Broome Local Government Property and Public Places Local Law 2016.

9.2.8 LOCAL GOVERNMENT PROPERTY AND PUBLIC PLACES LOCAL LAW

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	BYL11
AUTHOR:	Manager Emergency, Health and Ranger Services
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	5 May 2016

SUMMARY: The purpose of this report is to allow the Presiding Person to give notice to the meeting of the purpose and effect of the proposed Shire of Broome Local Government Property and Public Places Local Law 2016, and to allow for the advertising of the proposed local law for public comment.

BACKGROUND

Previous Considerations

OMC 9 August 2012	Item 9.4.3
OMC 25 September 2014	Item 12.2

At the August 2012 Ordinary Meeting of Council (**OMC**) a resolution to make the *Local Government Property and Public Places Local Law 2012 (existing Local Law)* was passed. The 2012 law replaced the *Local Government Property and Public Places Local Law 2003*. The existing Local Law came into effect on 5 November 2012, and was amended in 2013 with the changes coming into effect on 5 October 2013.

Further amendments to the existing Local Law were passed by Council at the September 2014 OMC. However the process to implement the changes was not fully completed and subsequently the provisions did not come into effect. The 2014 changes related solely to amending conditions for commercial camel operators on Cable Beach. The changes had been agreed to during negotiations with all three operators in State Administrative Tribunal negotiations.

Under the *Local Government Act 1995* all local laws are required to be reviewed every 8 years. Whilst the existing Local Law is not due for review until 2020, feedback from Councillors, community members and Shire Officers have indicated a need for a comprehensive review now.

Proposed changes have been collated into a draft local law with tracked changes (see Attachment 1). Due to the scope of the changes, it is recommended that a new local law be adopted incorporating the recommended changes, rather than the existing Local Law being amended to include the changes.

COMMENT

The Local Law governs many Shire functions and contains many of the powers exercised by the Shire in relation to Shire property and public places. As a result of feedback and a policy and local law review undertaken by the Development Services Directorate, a number of areas within the existing Local Law have been identified as needing to be modified, streamlined, modernised or removed. The proposed amendments to the existing Local Law are substantial, and therefore it is recommended that Council resolve to make a new local law rather than amend the existing Local Law.

Attachment 1 contains the existing Local Law with all the proposed changes shown as tracked changed. Attachment 2 contains a draft version of the proposed local law without tracked changes.

Nature of the proposed changes

Changes have been implemented to the text to modernise and simplify the language and clarify the meaning of certain provisions. Similarly, minor amendments have been made to reformat parts or clauses to assist in ease of interpretation. For succinctness, these changes have not been included below.

The major changes from the current Local Law to the proposed new *Local Government Property and Public Places Local Law 2016* (**new Local Law**) are:

Part 1

- cl 1.5 - amendments to, or addition of the following definitions:
 - 'carriageway';
 - 'events' (replacing 'function' and consistent with new events policy;
 - 'intersection'
 - 'local government property';
 - 'nuisance';
 - 'planning approval';
 - 'private land';
 - 'public place' (changed substantially to include local government property and thoroughfares, but not private land);
 - 'thoroughfare';
 - 'verge';
 - 'vehicle'; and
 - 'weed'.

Part 2

- cl 2.7(1)(d) - removal of last part of sentence.

Part 3

- cl 3.1 delete "local government property" and replace with 'a public place' to broaden scope of provision;
- cl 3.1 add sub clause (2) to exempt activities with a licence under the Trading, Outdoor Dining and Street Entertainment Local Law 2003 from the need for permit;
- Move 'Activities needing a permit', 'Permit required to camp outside a facility' and 'permit required for possession and consumption of liquor from 3.14, 3.15 and 3.16 to 3.2, 3.3 and 3.4 to assist in the interpretation of the Part;
- cl 3.2:
 - changes to terminology from 'local government property' to 'public place';

- clarify that a permit is not required to sow seeds in a verge in accordance with clause 8.3 of the new Local Law;
- removing the need for a permit for an event on private property where all required approvals under the *Planning and Development Act 2005* and *Health Act 1911* are in place;
- deletion of sub clause (i); and
- include requirement for a permit for setting off fireworks;
- cl 3.3 - insertion of the definition for 'camping' and associated amendments to make enforcement of clause 3.3(3) easier (no longer a requirement for a person to be sleeping);
- cl 3.4 - amendment to allow Council discretion to refuse an application for possession or consumption of alcohol on Council land despite Liquor Control Act approval or authorisation;
- Renumber 'application for permit' to cl 3.5;
- cl 3.5 - deletion of last part of cl 3.5(2)(d) as it is not required to be stated in the new Local Law;
- cl 3.7 – reworded and inclusion of sub clause (a) to allow any relevant policy to be considered, incorporating part of former cl 3.6;
- cl 3.8 - substantial changes to merge sub clauses (1) and (2) and part of former cl 3.6;
- deletion of former cl 3.6;
- cl 3.13 – deletion of need for endorsement of permit by CEO, as approval for transfer is not likely to be granted in this way; and
- Cl 3.16 – replacement of 'local government property' with 'public place' consistent with other amendments made in Part 3.

Part 4

- deleting the words "local government property" to refer just to a public place to broaden the scope of the clauses;
- cl 4.1 - reworded to add clarity; and
- cl 4.7 - reworded to add clarity.

Part 5

- alteration to cl 5.3(j) to retain discretion with Council to allow or disallow the sale and supply of alcohol on its property;
- cl 5.3(l) - amended to give Council discretion to allow or disallow gaming on its property; and
- cl 5.4(g) - added to ensure hirer rectifies damage done to local government property.

Part 6

- cl 6.6 - rewording to simplify clause;
- cl 6.9 - rewording to simplify clause; and
- cl 6.9 - replace (a) to provide clarity and ensures innocent or consensual recording is not prohibited.

Part 8

- cl 8.3 - changes made to simplify and also consistent with initiatives within the Shire's Parks section;
- cl 8.4(e) - inserted to be consistent with initiatives within the Shire's Parks section;
- cl 8.5 - amended to be consistent with initiatives within the Shire's Parks section;
- cl 8.7 - deleted as it merely restates what is a legislative requirement;
- cl 8.8 - renumbered to 8.7 and amended to reflect requirements for vehicle crossings;
- cl 8.9(3) - amended to ensure any damage to a footpath is reinstated to the satisfaction of the local government.

Part 9

- cl 9.1 - 'portable sign' definition amended;
- cl 9.2 - added to place the burden of proof on to the entity advertised to disprove that they were responsible for placing the advertising sign in the place;
- cl 9.3(2)(a) - amended to include signage in a public place generally, and not just on a thoroughfare. Currently this is regulated as a trading activity under the Trading, Outdoor Dining and Street Entertainment Local Law 2003. Amendments will be required to the Trading, Outdoor Dining and Street Entertainment Local Law 2003 as a result;
- cl 9.3(3) - amended in accordance with current standards from the Infrastructure Directorate; and
- cl 9.5 - reworded for clarity.

Part 10

- cl 10.2 - deleted as it is not required and does not assist the purpose or function of the law; and
- cl 10.2 (2) - inserted to assist in interpretation.

Part 11

- cl 11.2 - amended to assist in enforcement; and
- cl 11.3 - amended to assist in enforcement and shorten the timeframe within which a trolley has to be removed from a public place.

Part 12

- cl 12.1 - amended to assist in application of the clause.

Part 14

- cl 14.1 - amended to modernise and provide clarify.

Part 15

- cl 15.1(1) – inclusion of 'without reasonable excuse' to ensure the offence is not a 'strict liability' offence;
- cl 15.3(2) – included to allow for a fine to be issued for a continuing offence; and
- cl 15.4 - deleted as this is captured in other legislation.

Schedule 1

- All fines increased by \$50. Fines have not been increased since 2012.

Schedule 2

- A number of amendments are proposed to the determination applying to camels on Cable Beach. These are intended to remove unnecessary restrictions and facilitate the maintenance of community safety and amenity. These changes differ to changes agreed to with the commercial camel operators during negotiations with all three operators in State Administrative Tribunal negotiations, and therefore targeted consultation with the camel operators in relation to these proposed changes will be required.

Purpose and effect of the new Local Law

The purpose and effect of the Shire of Broome Local Government Property and Public Places Local Law 2016 are:

Purpose:

- To ensure that local government property and public places are regulated and managed to the benefit of all users;

- To ensure that events on private land are managed to minimise impacts on surrounding land and safeguard the safety of attendees.

Effect:

To control the use of local government property and activities in public places. Some activities are permitted only with an approval or a permit issued under the local law or in accordance with a determination. Some activities are restricted or prohibited.

CONSULTATION

The new Local Law must advertise in accordance with section 3.12(3) of the *Local Government Act 1995* for public comment for a period of 42 days. A copy of the new Local Law will be provided to the Department of Local Government for comment.

Any submission received must be considered by Council before making the new Local Law.

STATUTORY ENVIRONMENT

The *Local Government Act 1995* provides the head of power for local governments to make local laws.

The process for the making of local laws is prescribed in section 3.12 of the *Local Government Act 1995*. This section states:

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *The local government is to —*
 - (a) *give Statewide public notice stating that —*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;**and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*

- (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
 - (3a) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
 - (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*
 - (6) *After the local law has been published in the Gazette the local government is to give local public notice —*
 - (a) *stating the title of the local law; and*
 - (b) *summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
 - (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
 - (8) *In this section —*
making *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

After the last day for submissions, the local government is to consider any submissions made, and may make the local law as proposed or make a local law that is not significantly different from what was proposed.

The local law is then published in the Government Gazette and a copy sent to the relevant Minister and the State Parliament Joint Standing Committee on Delegated Legislation.

The local law comes into effect 14 days after publication in the Government Gazette.

POLICY IMPLICATIONS

If the proposed local law is implemented then the following policies will require a review and possible amendment:

- 3.1.16 Verge Maintenance
- 4.2.4 Commercial Activities on Cable Beach
- 4.2.5 Alcohol Management
- 4.2.12 Trading in Public Places
- 4.5.1 Commercial Camel Activities on Cable Beach
- 4.5.2 Horses on Cable Beach

5.1.11 Events

It is noted that policy 5.1.11 Events is currently under review. A review of policies 4.2.4 Commercial Activities on Cable Beach, 4.2.12 Trading in Public Places and 4.5.1 Commercial Camel Activities on Cable Beach is scheduled in the upcoming months.

FINANCIAL IMPLICATIONS

The proposed local law needs to be advertised in a newspaper circulating throughout the State and once made by Council is required to be advertised in the Government Gazette.

RISK

If the local law is not amended, Shire Officers will continue to be at risk of not being able to adequately enforce the provisions of this law. Modernisation and clarity needs to be added to ensure the legislation remains relevant and serves to achieve its purpose and effect.

The risk of the incorrect drafting of this local law will be mitigated through submission of the approved draft to the Department of Local Government and subsequent review by the Joint Standing committee on Delegated Legislation.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Effective communication

Accessible and safe community spaces

Participation in recreational and leisure activity

A healthy and safe environment

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Retention and expansion of Broome's iconic tourism assets and reputation

Core asset management to optimise Shire's infrastructure whilst minimising life cycle costs.

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

An organisational culture that strives for service excellence

Effective community engagement

Improved systems, processes and compliance

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION: **(REPORT RECOMMENDATION)**

Moved: Cr H Tracey

Seconded: Cr C Mitchell

That Council:

- (1) Proposes to make the Shire of Broome Local Government Property and Public Places Local Law 2016 as attached to this report;**
- (2) Advertises in accordance with section 3.12(3)(a) of the Local Government Act 1995 the proposed Shire of Broome Local Government Property and Public Places Local Law 2016 for a period of 42 days; and**
- (3) In accordance with section 3.12(3)(b) of the Local Government Act 1995 forwards a copy of the advertisement and the proposed Shire of Broome Local Government Property and Public Places Local Law 2016 to the Minister for Local Government.**

CARRIED UNANIMOUSLY 7/0

Attachments

1. Reviewed Local Government Property and Public Places Local Law with tracked changes
2. Proposed Local Government Property and Public Places Local Law

With regard to Item 9.2.9 Cr E Foy disclosed that “I have an association with Yawuru Member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

With regard to Item 9.2.9 Cr B Rudeforth disclosed that “I have an association with Yawuru Member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly”.

9.2.9 REQUEST FOR SUPPORT OF YAWURU INDIGENOUS PROTECTED AREA

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	GRV023
AUTHOR:	Director Development Services
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	3 May 2016

SUMMARY: The Yawuru Native Title Holders Aboriginal Corporation RNTBC through Nyamba Buru Yawuru Ltd (**Yawuru**) are seeking to have an Indigenous Protected Area (**IPA**) dedicated over most of the land transferred into its ownership or control through the Indigenous Land Use Agreements. This includes land jointly vested in Yawuru and the Shire, and jointly vested in Yawuru, the Shire and the Conservation Commission of Western Australia. Yawuru have asked the Shire to provide its support for the dedication of the IPA, and the purpose of this report is to determine whether the Council is in a position to provide that support.

BACKGROUND

Previous Considerations

Nil

COMMENT

The Yawuru Native Title Holders Aboriginal Corporation RNTBC through Nyamba Buru Yawuru Ltd (**Yawuru**) are seeking to have an Indigenous Protected Area (**IPA**) dedicated over most of the land transferred into its ownership or control through the Indigenous Land Use Agreements (**ILUAs**).

What is an IPA?

IPAs are voluntarily dedicated by Indigenous groups for Indigenous owned or managed land or sea country. The dedication of an IPA occurs through the Federal Department of the Prime Minister and Cabinet, upon the endorsement of a management plan for the IPA by the Federal Government.

Once dedicated, an IPA is recognised by the Federal Government as part of the National Reserve System (**NRS**). The NRS is Australia's network of protected areas, dedicated to conserving and protecting the nation's biodiversity. The dedication of areas forming the NRS occurs in accordance with international guidelines established by the International Union for the Conservation of Nature (**IUCN**). IPA management plans describe how the land will be managed by Indigenous groups using a combination of traditional Indigenous knowledge and contemporary land management practices, consistent with the nominated IUCN management category, to ensure their management is in accordance with international standards.

There are the following IUCN categories:

Category Ia – Strict Nature Reserve: areas set aside to protect biodiversity where human visitation and impacts are strictly controlled.

Category Ib – Wilderness Area: areas that are largely unmodified, retaining their natural character and influence without permanent or significant human habitation.

Category II – National Park: large natural or near natural areas set aside to protect large scale ecological processes which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.

Category III – Natural Monument or Feature: areas set aside to protect a specific natural monument, which are generally quite small areas and have high visitor value.

Category IV – Habitat/Species Management Area: areas which aim to protect particular species or habitats and management reflects this priority.

Category V – Protected Landscape/Seascape: An area where the interaction of people and nature over time has produced a distinct character with significant ecological, biological, cultural and scenic value.

Category VI – Protected Area with Sustainable Use of Natural Resources: areas which conserve ecosystems and habitats together with associated cultural values and traditional natural resource management systems.

Benefits of IPAs

IPAs benefit the Federal Government by providing for the inclusion of land in the NRS at a relatively low cost, allowing the Federal Government to meet its obligations under the International Convention on Biodiversity Conservation.

IPAs benefit Indigenous groups as they provide additional opportunities for these groups to access Federal funding and support for the management of their land. IPAs also have symbolic value for Indigenous groups, being an additional way of showing a group's commitment to conserve an area's natural and cultural values and connection to the land.

Further, IPAs have been shown to provide positive benefits in terms of health, education, employment and social cohesion outcomes for Indigenous people. The ability to fund Indigenous Ranger programs is enhanced if an IPA is in place.

Other IPAs

As of January 2016 there were 72 IPAs applying to a total area of 65,045,341 hectares across Australia.

We understand that there is only one other IPA that involves land under the ownership or control of a local government body, and this is the Giangurra Reserve in the Cairns Regional Council Local Government Area. While there are a number of other co-managed IPAs, the partners are usually State and Federal bodies.

Local governments are recognised as stakeholders to a number of IPAs, but are not usually partners. However, there is nothing to prevent a local government from being a partner to a co-managed IPA.

We understand that there are no IPAs currently that apply over or within a town area.

Yawuru IPA

Yawuru are seeking to have an IPA declared over 210,879 hectares of land under its ownership and control, including land jointly vested in Yawuru and the Shire, and jointly vested in Yawuru, the Shire and the Conservation Commission of Western Australia (managed by the Department of Parks and Wildlife). The Federal Government provided Yawuru with funding to prepare the PoM and undertake the work it has to establish the IPA.

Yawuru have asked the Shire to provide its support for the dedication of the IPA.

The Shire has been provided with a draft Plan of Management (**PoM**) for the proposed IPA, see **Attachment 1** to this report. Please note that the PoM document is draft until such time that the IPA is dedicated by the Federal Government.

The PoM explains how Yawuru want to manage the Yawuru IPA.

The PoM identifies the following land as being within the IPA:

1. In town conservation park (**in town reserves**) – jointly managed by Yawuru and the Shire;
2. Northern Intertidal Area (**intertidal area**) – jointly managed by Yawuru, the Shire and the Department of Parks and Wildlife (**DPaW**);
3. Roebuck Bay Marine Park – jointly managed by Yawuru and DPaW;
4. Out of town conservation park - jointly managed by Yawuru and DPaW;
5. Kennedy Hill Reserve;
6. Kunin Reserve;
7. Yardungarra Reserve;
8. Yardungarra – Miriny Yawuru Block;
9. Yawuru block near No 11 bore;
10. Yawuru block near Mararra;
11. Sheep camp lease area; and
12. Various areas within Roebuck Plains station – leased by Yawuru to a subsidiary of the Indigenous Land Corporation;

A map showing the areas subject to the proposed IPA is included as **Attachment 2** to this report.

In accordance with the PoM, all of the land within the IPA will be included in the IUCN Category IV (habitat/species management area), except for most of the land within

Roebuck Plains station, which will be included in IUCN Category VI (protected area with sustainable use of natural resources).

The PoM contains a large amount of detail in relation to how the Roebuck Plains station areas will be managed, balancing the ongoing use of that land for economic activities with its biodiversity and cultural values. This level of detail has not been provided in the management objectives and strategies for the other land subject to the IPA, including the in town reserves and the intertidal area.

The PoM is intended to apply to the IPA area for 10 years.

Potential implications of the IPA

IPAs do not have legislative effect, and therefore there is no direct legal impact on the Shire should the IPA be declared. However, the IPA and PoM may be taken into account by State and Federal government decision makers when making a decision relevant to the land subject to the IPA. The IPA may be considered to be a relevant consideration and provide an opportunity for the challenge of a decision made without taking the IPA into account.

As discussed, the benefit of an IPA is that it provides additional opportunities for Yawuru to obtain funding. Any funding provided on that basis is likely to be subject to the management of the land being in accordance with the PoM. Therefore, any activities occurring on the land that are inconsistent with the PoM may put Yawuru in breach of their funding agreement. This may have the effect of requiring the Federal government's approval (through consent to modify the PoM) before particular activities can proceed.

While non-statutory, the existence of the IPA would give rise to an expectation that the land comprising the IPA will be managed in accordance with the PoM. Therefore, in participating on the Park Council and managing the in town reserves and intertidal area, the Shire would be expected to make decisions and undertake activities in accordance with the PoM.

It should be noted that the PoM does not clearly set out the way the IPA and PoM will interact with the operations of the Park Council from a governance perspective, and it is recommended that this be clarified in the PoM should the Shire support the dedication of the IPA.

Overall, in relation to the in town reserves and the intertidal area, the ILUAs require that these areas be managed in accordance with a management plan to be developed in accordance with the ILUAs for that purpose. This is a legal requirement upon the Shire arising as a result of it being party to the ILUAs. The IPA PoM seeks to be consistent with the management plans, however they are still draft documents that have not yet been finalised.

Discussion

As stated above, Yawuru have requested that the Shire give its support for the declaration of the IPA.

Officers support the concept of an IPA and see benefit in Yawuru pursuing the declaration of the IPA. However, officers have some concerns in relation to the IPA and the PoM as currently drafted, as it applies to the in town reserves and the intertidal area. Officers concerns are as follows:

- The PoM does not address or accommodate the recreational values of the in town reserves and intertidal area;
- The PoM needs to be consistent with the management plans for the in town reserves and intertidal area (**JMPs**), and it cannot do so at this time as the JMPs have not been finalised;
- The PoM does not establish or reflect a suitable governance structure to accommodate the IPA and its management in accordance with the governance arrangements for the Yawuru Park Council established by the ILUAs.

Overall, officers believe that the JMPs should be the primary document setting out how the in town reserves and intertidal areas will be managed. The PoM should be a high level document setting out Yawuru's aspirations and management intentions for the reserve, and be consistent with the JMPs.

Officers have dedicated resources to the timely finalisation of the JMPs and are actively working with officers from Yawuru and the Department of Parks and Wildlife with a view to having the drafts of these documents finalised over the coming months.

Therefore, it is recommended that Council give in-principle support for the IPA, subject to the in town reserves and intertidal areas being excluded from the IPA at this time. Council can commit to supporting the extension of the IPA to include the in town reserves and intertidal areas once the JMPs have been finalised and subject to the negotiation of a PoM which is consistent with the JMPs and is acceptable to the Shire.

CONSULTATION

Shire officers and Councillors have received presentations from Yawuru regarding the proposed IPA. Shire officers have discussed the proposed IPA with Yawuru representatives.

Yawuru have expressed their strong desire to have the IPA dedicated as soon as possible. Officers have made a commitment to Yawuru representatives that they will dedicate resources to the finalisation of the JMPs as a priority.

In preparing the PoM, Yawuru consulted over a six year period with Yawuru individuals, family groups, Yawuru Rangers, Yawuru Country Managers and the Indigenous Land Corporation.

STATUTORY ENVIRONMENT

As stated above, IPAs are non-statutory instruments and therefore they are not currently subject to or given effect by any State or Federal legislation.

The Shire's legal obligations in relation to this matter are governed by the ILUAs. It should be noted that clause 5.1 of the Joint Management Agreement given effect by the ILUAs requires the Shire to work co-operatively with Yawuru to source further funding for day-to-day joint management activities.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

RISK

The risks to the Shire in supporting the IPA are low and largely relate to matters of relationship and resourcing. The management of the in town reserves and intertidal area is currently complicated by the JMPs not being finalised. Officers feel that agreeing to an IPA over the in town reserves and intertidal area now will complicate discussions around the finalisation of the JMPs. Also, should the JMPs ultimately differ from the PoM, this will create greater confusion, requiring the dedication of further resources to resolve issues caused by these inconsistencies as they arise and putting strain on the relationship between the Shire and Yawuru.

Should the Shire support the IPA subject to the PoM as currently written, there is a risk that this may delay or complicate the implementation of management actions in the in town reserves and intertidal area that promote the recreational values of those areas.

The risks to the Shire in not supporting the IPA is that this may have a negative impact on the Shire's relationship with Yawuru, and be seen as frustrating their attempts to secure funding or further express their management aspirations for the in town reserves and intertidal area.

To manage these risks, officers have committed to making the finalisation of the JMPs a priority. This should assist in managing expectations and streamlining the governance arrangements for the management of the in town reserves and intertidal area. Further, finalising the JMPs will allow the Shire and Yawuru to move forward in relation to the management of this area and focus on other initiatives to the overall benefit of their management, such as the IPA.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Accessible and safe community spaces

Participation in recreational and leisure activity

A healthy and safe environment

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

A unique natural environment for the benefit and enjoyment of current and future generations

A preserved, unique and significant historical and cultural heritage of Broome

Retention and expansion of Broome's iconic tourism assets and reputation

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Improved systems, processes and compliance

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION:

That Council requests the Chief Executive Officer to write to Nyamba Buru Yawuru Ltd advising that Council:

- (a) supports the concept of a Yawuru Indigenous Protected Area and sees benefit in Yawuru pursuing the declaration of the Indigenous Protected Area;*
- (b) gives its in-principle support for the proposed Yawuru Indigenous Protected Area, subject to the in town reserves and intertidal area jointly managed by Yawuru and the Shire being excluded from the Indigenous Protected Area; and*
- (c) will consider supporting the extension of the Indigenous Protected Area to include the in town reserves and the intertidal area:*
 - (i) once the joint management plans for these areas have been finalised; and*
 - (ii) subject to the plan of management for the Indigenous Protected Area being revised so it is consistent with the Joint Management Plans and acceptable to Council.*

COUNCIL RESOLUTION:

Moved: Cr B Rudeforth

Seconded: Cr D Male

That Council requests the Chief Executive Officer to write to Nyamba Buru Yawuru Ltd advising that Council:

- (a) supports the concept of a Yawuru Indigenous Protected Area and sees benefit in Yawuru pursuing the declaration of the Indigenous Protected Area;***
- (b) gives its in principle support for the proposed Yawuru Indigenous Protected area, subject to the following:***
 - (i) the in town reserves and intertidal area jointly managed by Yawuru and the Shire being excluded from the Indigenous Protected area; and***
 - (ii) that the IPA will not create any burdens or obligations to holders of existing or future interests in the area the subject of the IPA.***
- (c) will consider supporting the extension of the Indigenous Protected Area to include the in town reserves and the intertidal area:***
 - (i) once the joint management plans for these areas have been finalised; and***
 - (ii) subject to the plan of management for the Indigenous Protected Area being revised so it is consistent with the Joint Management Plans and acceptable to Council.***

CARRIED UNANIMOUSLY 7/0

Reason: To protect the rights of current and future interest holders.

Attachments

1. Draft Plan of Management for the Yawuru Indigenous Protected Area (draft until such time that the Indigenous Protected Area is dedicated by the Federal Government)
2. Land subject to the proposed Yawuru Indigenous Protected Area

9.2.10 APPLICATION FOR PARKING WITHIN THE ROAD RESERVE IN ASSOCIATION WITH PROPOSED HOME BUSINESS

LOCATION/ADDRESS:	Lot 349 No.42 Kapang Drive, Broome
APPLICANT:	Nathan Dyson
FILE:	KAP-1/42
AUTHOR:	Planning Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil.
DATE OF REPORT:	10 May 2016

SUMMARY: An application for Development Approval for a 'Home Business - Hairdressing' has been received by the Shire. The application proposes to utilise an existing hard-sealed driveway, located within the road reserve, for parking space to service the proposed home business.

Clause 1.5 of Local Planning Policy 8.16 – Provision of Parking (LPP 8.16) requires that any application proposing parking in a road verge must be determined by Council. The application is therefore presented to Council for its consideration.

This report recommends that the application be approved, subject to conditions.

BACKGROUND

Previous Considerations

Nil.

Site Context

The subject site is located on the south-eastern side of Kapang Drive within a low to medium density residential area. Adjoining and adjacent development to the north, east and west consists of single houses with a density of R12.5. 'Reserve' land designated for 'Parks, Recreation and Drainage' purposes abuts the lot to the south. Existing development on-site consists of a single house, swimming pool and carport.

Vehicular access to the lot is obtained via an existing hard-sealed cross-over and driveway located within the road reserve. An existing 2.0m wide footpath providing pedestrian connection along the southern side of Kapang Drive intersects the hard-sealed driveway.

The Proposal

The proposed home business activity will involve a hairdressing salon to be operated from an existing 18sqm room within the dwelling. The activity will employ one person who is a resident of the dwelling and will operate between the hours of 8am to 7pm Monday to Saturday by appointment. No more than two (2) clients are expected to visit the property at any one time.

Two (2) parking bays required for the dwelling are provided for within the existing carport on-site, which is positioned with a nil setback from the primary street boundary of the lot.

The application therefore seeks approval for the use of available space on the driveway outside of the property boundary to allow for two cars to be parked in tandem with cars in the carport. The two parking bays within the verge as proposed will occupy 5.4m (length) x 5.4m (width) of the driveway. Measurements indicate that there is 10.8m available within the carport and on the driveway to allow for two vehicles to be parked in tandem, with the 2.0m wide footpath to remain obstruction free.

COMMENT

Local Planning Policy 8.16 – Provision of Parking

LPP 8.16 makes provision for consideration of parking off-site and sets out under clause 2.4 that the following must be addressed:

- a) The location of the off-site parking is conveniently located to the subject development;
- b) A safe and well lit pedestrian access can be provided between the off-site parking and the development;
- c) The customers and patrons of the development can be reasonably expected to use the off-site parking.

The principles in clause 2.4 set out above relate primarily to situations where approval is sought for the construction of parking bays (and parking areas) off-site, which is not proposed in the case of the current application. However, the emphasis within clause 2.4 upon adequacy and safety of access to off-site parking bays is a relevant consideration in the assessment of the current application. Safe pedestrian connection is available between the proposed bays and the dwelling and it is expected that these bays will be utilised in association with the home business, given the absence of alternative parking available.

Part 2.6 of LPP 8.16 states that parking within the road verge will only be supported where the parking is provided in the verge adjoining the lot and only within the frontage area of the lot. In considering the current proposal; the parking spaces on the existing driveway directly abut the lot and are located within the frontage of the lot.

Local Planning Scheme No.6 – Clause 67 Matters to be Considered

Parts (i) and (u) of Clause 67 require consideration to be given to the compatibility of a proposed use with its setting, and whether adequate provision has been made for pedestrians. The proposed 'Home Business - Hairdressing' activity is a land-use that is compatible with its residential setting on the basis that the proposal complies with the land-use criteria of LPS6. Additionally, it has been demonstrated that there will be sufficient space available to allow for a tandem parking arrangement that will not impact upon pedestrian use of the adjoining footpath. It is recommended that the application be approved, inclusive of a condition requiring the applicant to ensure that parking on the driveway does not at any time obstruct the adjoining footpath.

CONSULTATION

Further to the provisions of *Local Planning Policy 8.23 – Consultation Planning Matters*, the application for a 'Home Business – Hairdressing', was advertised via letter to land-owners within proximity, (being within 100 metres), inviting comment/registration of objection to be provided to the Shire within 14 days. No submissions were received by the Shire during the consultation period 20 April 2016 – 5 May 2016.

STATUTORY ENVIRONMENT

Local Planning Scheme No.6

POLICY IMPLICATIONS

Local Planning Policy 8.16 –Provision of Parking

FINANCIAL IMPLICATIONS

Nil.

RISK

Nil.

STRATEGIC IMPLICATIONS

Nil.

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr H Tracey

Seconded: Cr C Mitchell

That Council grants Development Approval for a 'Home Business – Hairdressing' at Lot 349 No.42 Kapang Drive, Cable Beach, subject to the following conditions:

- 1. Development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:**
Plans and Specifications
P1 (Site Plan) & P2 (Floor Plan) received by the Shire 1 April 2016.
- 2. This approval permits a maximum of two (2) vehicles to be parked on the existing driveway within the adjacent road verge in association with the approved 'Home Business – Hairdressing' activity. The applicant is to ensure that parking of vehicles within the road verge at no times obstructs the adjoining pedestrian footpath.**
- 3. The 'Home Business – Hairdressing' the subject of this approval is approved to operate between the hours of 8am to 7pm Monday to Saturday only.**
- 4. A maximum of two (2) clients may visit the property at any one time in association with the approved 'Home Business – Hairdressing' activity.**
- 5. No person(s) other than the occupant(s) of the dwelling may be employed on-site in association with the 'Home Business – Hairdressing' activity.**

CARRIED 6/1

Attachments

1. Attachment 1 - Site & Floor Plans

The Chairperson advised that a revised report recommendation had been circulated prior to the meeting.

9.2.11 APPLICATION FOR LICENCE TO TRADE IN A PUBLIC PLACE - BROOME STAND UP PADDLE BOARD SCHOOL

LOCATION/ADDRESS:	Cable Beach
APPLICANT:	Broome Stand Up Paddleboard School
FILE:	COS11
AUTHOR:	Ranger Coordinator
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	9 May 2016

SUMMARY: The Shire has received an application for a trading licence under the *Trading, Outdoor Dining and Street Entertainment Local Law 2003* to conduct a stand up paddleboard school at Cable Beach. This report recommends that the application be approved subject to the conditions.

BACKGROUND

Previous Considerations

Nil.

COMMENT

Application Details

An application for a trading licence was received on 16 March 2016 from the Broome Stand Up Paddleboard (**SUP**) School to conduct the hire and teaching of stand up paddle boarding from April 1st – 30th October annually from Cable Beach to the south of the Surf Club.

The applicant proposes to run daily stand up paddleboard lessons in conjunction with board and personal floatation vest hire. Additional activities proposed include school holiday programs, group paddle fitness classes and the sale of merchandise including sun protection.

The applicant requires sufficient space to erect a stall comprising a 3m x 6m pop up marquee, an advertising sign of approved design and a vehicle/trailer combination for transport. Land use will be non exclusive and as such an adequately sized trading area will be assigned.

The applicant is seeking to operate annually, from sunrise until sunset and 7 days a week during the period 1st April – 30th October.

The paddleboards are proposed to be transported to the site on a trailer and removed at the close of operations each day. The trailer will be stored on a private property when not in use. A minimum of two and a maximum of four employees will be on-site whilst the trading activity is operating.

A completed risk management checklist, forming part of the Shire's trading licence application requirements, was included with the application. Prior to the issuing of a licence and the commencement of trading, the applicant will be required to provide the Shire with a certificate of currency, showing that they have obtained public liability insurance in the amount of \$10 million. This insurance will need to be held at all times during the operation of the activity.

Attachment 1 Shows the area within which trading licences can be issued on Cable Beach in accordance with *Policy 4.5.3 – Commercial Activities on Cable Beach*.

Attachment 2 Shows the area within which it is proposed that the SUP School will operate.

Attachment 3 Shows the distance of the proposed activity from the Surf Club beach access ramp.

Attachment 4 Shows the existing adjacent trading area, which is allocated to the Beach Hut.

Planning considerations

Town Planning Scheme No. 6

Clause 8.2.1 – Permitted development of Town Planning Scheme No. 6 states:

Except as otherwise provided in the Scheme, for the purposes of the Scheme, the following development does not require the planning approval of local government:

- (g) any use or works which are temporary and in existence for less than 48 hours or such longer time as the Council agrees.

Whilst the proposed activity will be taking place over several months, the applicant has confirmed that all structures will be transported to and from site on days of operation and will not remain on-site beyond designated operating hours. As operations will not last for 48 or more consecutive hours, it is considered that the provisions of Clause 8.2.1 apply and therefore the activity is exempted from the need to obtain planning approval.

As the activity does not involve the exclusive use of land, it is not considered to constitute a land use change which will require planning approval.

Legal and Policy Considerations

The application has been assessed against the Shire's *Trading, Outdoor Dining and Street Entertainment Local Law 2003* (**Local Law**) and *Policy 4.5.3 – Commercial Activities on Cable Beach* (**Policy**).

Local Law

Clause 5.5 of the Local Law contains a list of application requirements. The applicant has provided the necessary information, as described above.

Policy

The objectives of the Policy are to:

1. *Provide additional information that is not defined in the Local Law for the administration of the Local Law that applies specifically to commercial activities on Cable Beach.*
2. *Set out the criteria and conditions for the approval of Trading Licences that specifically applies to commercial activities (other than commercial camel activities) on Cable Beach.*

In accordance with the Policy, the Shire may grant licences for the six identified commercial activities on Cable Beach, namely:

- (i) Parasailing
- (ii) Catamaran Hire
- (iii) Jet Ski Hire
- (iv) Beach Gear Hire
- (v) Teaching Surf Board Riding
- (vi) Dinghy Hire

The SUP School is considered to fall within category (v) within the Policy, as a paddleboard is considered to be an analogous form of watercraft to a surf board.

There is currently one other trading licence issued for the Cable Beach environs located on the beach itself, issued in accordance with the Policy. This permit is held for the activity known as the Beach Hut. The licensees for the Beach Hut have raised concern about the impact upon their business from the proposed SUP School, as they presently hire paddleboards to the general public.

A review of the trading licence issued to the Beach Hut shows that the licence allows the "Hire of Beach Equipment, and is restricted to the hire of umbrellas, chairs, surfboards, boogie boards, and portable shades". Therefore, the hire of stand up paddle boards is not allowable in accordance with the trading licence issued to the Beach Hut.

Therefore, there is no restriction on the Shire issuing a trading licence for the SUP School, as there is no like activity subject to a trading licence on the beach.

There are certain requirements in relation to the safe conduct of an activity such as the SUP School, and the conditions on any trading licence will need to reflect these requirements.

The intended trading area lies within the off-road vehicle prohibited area of Cable Beach. As such, a permit for access will be required to allow vehicular access to the trading area. This permit may be authorised by the Shire of Broome Chief Executive Officer under delegated authority from the Minister of Local Government.

In terms of community impact, the proposed trading area is already well used by members of the public, as it is in proximity to the existing patrolled swimming area as well as the ablution facilities. It is considered that locating the activity in this space will provide an additional recreational opportunity for people without detracting from the reasonable enjoyment of the remainder of the beach by other visitors.

Local Government Act 1995

A licence agreement via a formal disposal process in accordance with section 3.58 of the *Local Government Act 1995* is not required in this particular instance due to the temporary nature of the activity and the fact that use of the area will not be exclusive.

Other legislative requirements

Whilst recreational canoes, kayaks, surf skis, inflatables or similar paddle craft that are propelled by a person using a paddle who is on or in the craft must comply with WA marine laws, these laws do not apply to surfboards and stand up paddle boards. Therefore, the activity does not require licencing under other marine legislation.

Conclusion

It is recommended that a trading licence be issued for a period of five (5) years in accordance with the Policy subject to relevant conditions. Under Council's adopted fees and charges, this includes payment of a licence fee, which is can be paid on an annual, monthly, or weekly basis.

CONSULTATION

The Licensee's for the Beach Hut trading licence were consulted as part of the assessment of this trading licence application.

STATUTORY ENVIRONMENT

Local Government Act 1995

3.58. Disposing of property

(1) In this section —

“dispose” includes to sell, lease, or otherwise dispose of, whether absolutely or not; “property” includes the whole or any part of the interest of a local government in property, but does not include money.

(2) Except as stated in this section, a local government can only dispose of property to —

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

(i) describing the property concerned; and

(ii) giving details of the proposed disposition; and

- (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and
- (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

Town Planning Scheme No. 6

Clause 8.2.1 – Permitted development

Except as otherwise provided in the Scheme, for the purposes of the Scheme, the following development does not require the planning approval of local government:

- (g) any use or works which are temporary and in existence for less than 48 hours or such longer time as the Council agrees.

Control of Vehicles (Off-Road Areas) Act 1978

6. Driving and using off-road vehicles

- (1) A person shall not drive or use an off-road vehicle in any area to which this section applies otherwise than —
 - (a) on private land by consent; or
 - (b) on land comprised within a permitted area, unless permitted to do so pursuant to section 8(4) or deemed to have been permitted to do so pursuant to subsection (5) of that section.

Penalty: \$500.

- (2) A person shall not drive or use any vehicle to which, or in the circumstances to which, a declaration made and published under section 16 applies on land comprised within a prohibited area to which the declaration relates unless permitted to do so pursuant to section 8(4).

Penalty: \$1 000.

8. Permits

- (5) The Minister may, by notice published in the Government Gazette, declare that the provisions of section 6(1) do not apply to or in relation to the persons or classes of persons or kinds of vehicle specified therein, and thereupon the driving or use of a vehicle by such a person or the driving and use of such a vehicle in circumstances that would otherwise have been contrary to the provisions of that subsection shall be deemed to have been permitted pursuant to this subsection either generally or subject to such restrictions, limitations or conditions as are specified in that notice, and the Minister may by a subsequent notice vary or cancel any such notice.

Trading, Outdoor Dining and Street Entertainment Local Law 2003

- 5.5 An applicant for a trading licence shall comply with subclause 2.2.2 and shall forward the application to the local government together with:

- (a) details of the number of assistants to be employed in the trading at any one time;

- (b) a plan of the proposed location or, where the applicant proposes to go from place to place, a description of the route or area along or in which the applicant proposes to trade;
- (c) details of the days and hours of operation;
- (d) details of the proposed goods or services to be traded under the trading licence;
- (e) if any stall is to be used for trading, a detailed and accurate plan and description, including dimensions, of the stall; and
- (f) name and address of the person responsible for complying with any terms and conditions of the licence, where the applicant is a corporation.

Trading licence

5.6 A trading licence shall:

- (a) include a licence number;
- (b) include the location, days and hours of operation and approved trading area;
- (c) detail the goods or services which can be traded under the trading licence;
- (d) limit the number of persons that may carry on trading at any time under the trading licence; and
- (e) detail any other terms and conditions imposed on the licence.

Term and validity of licence

5.7.1 A trading licence remains valid until:

- (a) the expiry date stated in the licence is reached;
- (b) variations are made to an existing licence, including an increase, reduction or change in the approved trading area;
- (c) the public liability insurance policy, where required as a condition of the licence, lapses, is cancelled or is no longer in operation; or
- (d) the licence is cancelled by the local government.

5.7.2 If any of the events specified in subclause 5.7.1 occur, then an application must be made and a new trading licence issued before any trading can be carried out.

Responsibilities of licensee

5.8.1 The licensee shall:

(a) where a stall is being used for trading:

- (i) display a sign, with letters and numerals not less than 5 centimetres in height in a conspicuous place in the approved trading area, indicating the name of the licensee and the licence number;
- (ii) ensure that the approved trading area is attended either by the licensee or an assistant, at all times when trading is being undertaken;
- (iii) keep the stall in a clean, safe condition and in good repair;
- (iv) keep the approved trading area free from refuse and rubbish;
- (v) remove any stall, goods, equipment and signs from the approved trading area and leave that location clean and vacant;

- (A) at the conclusion of the permitted hours of operation specified in the trading licence; and
- (B) whenever trading is not taking place on the approved trading area; and (b) have the trading licence available at all times trading is being undertaken and produce the trading licence to any authorised person or any police officer when requested.

5.8.2 The licensee shall not:

- (a) engage in or permit any trading in any goods or services other than those specified in the trading licence;
- (b) cause, permit or suffer any nuisance to exist, arise or continue on or from the approved trading area;
- (c) deposit, place or store any goods on any public place, other than on the location to which the licence applies;
- (d) obstruct the free passage of pedestrians on any footpath or pedestrian access way;
- (e) use or display or permit to be used or displayed any advertisement, placard, poster, streamer, sign or signboard on or about the approved trading area other than price tickets or labels on that area not exceeding a total area of 0.5 square metres;
- (f) erect and maintain any signs in accordance with paragraph (e) so as to obscure any other signage on or adjacent to the approved trading area;
- (g) cry out or shout about or permit any other person to cry out or shout about any goods or services in any public place or in the approved trading area; to the detriment or nuisance to nearby traders/ stallholders.
- (h) use or permit to be used any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound, on or from the approved trading area, unless approved by the local government;
- (i) use or permit to be used any record, tape, radio, bell, musical instrument or other instrument or device capable of being heard beyond the boundaries of the approved trading area unless approved by the local government;
- (j) use or permit to be used any flashing or intermittent lighting apparatus or device on or from the approved trading area; or
- (k) use or permit to be used an apparatus or device including a flap or shelf whereby the dimensions of the stall are increased beyond the dimensions specified in the trading licence.

POLICY IMPLICATIONS

Policy 4.5.3 – Commercial Activities on Cable Beach

Objective:

The Objectives of the Policy are to:

1. Provide additional information that is not defined in the Local Law for the administration of the Local Law that applies specifically to commercial activities on Cable Beach.

2. Set out the criteria and conditions for the approval of Trading Licences that specifically applies to commercial activities (other than commercial camel activities) on Cable Beach.

Policy:

General

1. The Shire will grant licences for the six (6) identified commercial activities on Cable Beach, these being:
 - (i) Parasailing
 - (ii) Catamaran Hire
 - (iii) Jet Ski Hire
 - (iv) Beach Gear Hire
 - (v) Teaching Surf Board Riding
 - (vi) Dinghy Hire
2. No individual or business shall hold more than one (1) trading licence at any time and will operate independently at all times.
3. Trading Licences for commercial activities on Cable Beach will be approved for a period of five (5) years.
5. The Shire will assess applications for Trading Licences for commercial activities with reference to the Local Law and the criteria set out in the Policy.

Conditions to be noted on the trading licence to conduct commercial activities on Cable Beach

1. All commercial activities, including the placing of signs are to occur within the area approved for the specific activity to be conducted as detailed on a plan of the area.
2. A licence must immediately comply with any lawful direction given at any time by the Chief Executive Officer of the Shire of Broome or his or her delegate, or an Authorised Officer, including the Shire of Broome Rangers and Lifeguards.
3. A licence may place only one portable sign within the set down/pick up area of activity carried out by the licence. That sign must comply with the following:
 - (a) not exceed 750 mm in height;
 - (b) not exceed 0.9 square metres double sided area (eg: 750mm x 600mm each face);
 - (c) not indicate or display any matter other than the name of the owner or occupier of the premises to which it relates and the nature of the business carried on therein;
 - (d) be placed so as not to cause interference or be hazardous to vehicular traffic or cause any interference or hazard or impede pedestrians;
 - (e) be of sound construction, maintained in good condition, neatly sign written and fixed in position to the satisfaction of the Surveyor;
 - (f) be removed from the land in the event of a cyclone threat;
 - (g) be removed at the end of each trading session.

4. A licence must, at the conclusion of business each day, remove all and any refuse and litter associated with the operation of their activity and ensure the site is left in a clean and safe condition.
5. The Shire of Broome reserves the right to close Cable Beach to all activities, including commercial activities at any time.
6. A licence must have a valid permit issued by the Department for Local Government & Regional Development approved by the Minister for Local Government in accordance with Section 8 of the *Control of Vehicles (Off Road Areas) Act 1960*. A licence must at all times comply with the requirements of that Act.
7. The only trading activities permitted on the area of application are:
 - (i) The approved identified commercial activity
8. The licence must maintain and adhere to, during the period of the licence, all procedures, policies, licences and accreditation (as amended) outlined in its licence application and allow the Shire officers, at any time, to inspect and verify that the use and currency of those procedures, policies, licences and accreditation are current and in place.

FINANCIAL IMPLICATIONS

Nil.

RISK

Any risks associated with the operation of the SUP School will be mitigated through the conditions imposed on the licence.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Accessible and safe community spaces

Participation in recreational and leisure activity

A healthy and safe environment

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

A built environment that reflects arid tropical climate design principles and historical built form

A unique natural environment for the benefit and enjoyment of current and future generations

Retention and expansion of Broome's iconic tourism assets and reputation

Core asset management to optimise Shire's infrastructure whilst minimising life cycle costs.

VOTING REQUIREMENTS

*Simple Majority***REPORT RECOMMENDATION:**

That Council:

1. *Issues a trading licence to Tanya Jackson & Peter Hudson of Broome Stand Up Paddleboard School for a stand up paddleboard school on Cable Beach to be operated in the hours between sunrise and sunset during the period 1st April until 30th October annually, subject to the following conditions:*
 - (a) *Licensee must comply with all relevant legislation and Shire laws;*
 - (b) *Prior to the commencement of trading, the Licensee must submit proof of public liability insurance cover to the value of \$10 million, and this insurance policy must be maintained at all times while the trading activity continues;*
 - (c) *The only trading activities permitted on the area of application are the approved indentified commercial activity;*
 - (d) *Shire of Broome reserves the right to vary licence conditions as required, or to revoke this licence at any stage in accordance with the Trading, Outdoor Dining and Street Entertainment Local Law 2003;*
 - (e) *Two staff, including at least one qualified instructor, are to be present at all times while the trading is conducted;*
 - (f) *The licensee must at all times comply with the requirements and recommendations of their Academy of Surfing Instructors accreditation as amended from time to time;*
 - (g) *Use of the trading area allocated is non exclusive.*

COUNCIL RESOLUTION:
(REVISED REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr H Tracey

That Council:

1. ***Issues a trading licence to Tanya Jackson of Broome Stand Up Paddleboard School for a stand up paddleboard school on Cable Beach to be operated in the hours between sunrise and sunset during the period 1st April until 30th October annually, subject to the following conditions:***
 - (a) ***Licensee must comply with all relevant legislation and Shire laws;***
 - (b) ***Prior to the commencement of trading, the Licensee must submit proof of public liability insurance cover to the value of \$10 million, and this insurance policy must be maintained at all times while the trading activity continues;***
 - (c) ***The only trading activities permitted on the area of application are the approved indentified commercial activity;***
 - (d) ***Shire of Broome reserves the right to vary licence conditions as required, or to revoke this licence at any stage in accordance with the Trading, Outdoor Dining and Street Entertainment Local Law 2003;***
 - (e) ***Two staff, including at least one qualified instructor, are to be present at all times while the trading is conducted;***
 - (f) ***The licensee must at all times comply with the requirements and***

recommendations of their Academy of Surfing Instructors accreditation as amended from time to time;

(g) Use of the trading area allocated is non exclusive.

CARRIED UNANIMOUSLY 7/0

Attachments

1. Attachment 1 - 2016 SUP Overview Map
2. Attachment 2 - 2016 SUP Trading Area Map
3. Attachment 3 - 2016 SUP Distance From Surf Club Access Ramp Map
4. Attachment 4 - Beach Hut Trading Area Map

The Chairperson advised that a revised report recommendation had been circulated prior to the meeting.

Supplementary information was also circulated prior to the meeting, and it was advised this would be included as an additional attachment for the purpose of the Minutes.

9.2.12 LEASING OF BROOME VISITORS CENTRE

LOCATION/ADDRESS:	18 Broome Road, Broome
APPLICANT:	The Courthouse Collection Pty Ltd and Broome Tourist Bureau
FILE:	RES38458
AUTHOR:	Asset & Building Coordinator
CONTRIBUTOR/S:	Senior Property and Leasing Officer
RESPONSIBLE OFFICER:	Director Infrastructure
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	10 May 2016

SUMMARY: Council is requested to consider lease options for the building known as the "Broome Visitor Centre Complex" located at 18 Broome Road (Reserve 38458), Broome, which is currently leased in part to the Broome Tourist Bureau Inc and in part to The Courthouse Collection Pty Ltd.

BACKGROUND

Previous Considerations

Broome Visitor Centre

OMC 22 November 2007	Item 9.5.1
OMC 14 February 2008	Item 9.5.3
OMC 18 February 2010	Item 9.4.3
OMC 21 February 2013	Item 9.2.10
OMC 19 December 2013	Item 9.2.1
OMC 17 December 2015	Item 9.3.1

Courthouse Collections

OMC 18 December 2007	Item 9.4.9
OMC 14 February 2008	Item 11.1
OMC 19 December 2013	Item 9.2.1
OMC 17 December 2015	Item 9.3.1

The "Broome Visitor Centre Complex" comprises the building on Reserve 38458 which is located at 18 Broome Road, Broome. There are currently 4 lettable areas as follows:-

- Tenancy 1 – Visitor Centre Main Lease (*Broome Tourist Bureau*)
- Tenancy 2 – Conference Room (*Broome Tourist Bureau*)
- Tenancy 3 - Commercial Tenancy (*Courthouse Collections*)
- Tenancy 4 – Kiosk (*Broome Tourist Bureau*)

An overall Lease Plan of the facility showing the general layout and gross lettable areas is attached.

Attachment 1 – Lease Plan

Courthouse Collection Pty Ltd have an existing lease with the Shire for a 107m² portion of the building (Tenancy 3). This lease commenced on 15 January 2007 for a 5 year term inclusive of two options for two year extensions expiring on 14 January 2016. The Shire currently receives approximately \$38,000 p.a. in rental income from this lease agreement which is currently continuing under the 'holding over' provisions. Additional details on this lease are provided for Council in Attachment 1a.

Attachment 1a – Courthouse Collections Lease Information.

Broome Tourist Bureau Inc holds two separate leases with the Shire at this facility; for a 32m² Conference Room (Tenancy 2) and for the 471m² balance of the building area (Tenancy 1). Both leases commenced on 5 December 2006 and were for an initial term of 5 years with an option for a further 5 year term, expiring on 4 December 2016. The Shire receives approximately \$12,000 p.a. for the conference room and has entered into a 'Peppercorn' lease arrangement for the main building area. In addition, Broome Tourist Bureau Inc also utilises the 10m² of Tenancy 4 as a kiosk and this area has not as yet been formally incorporated into the lease.

At the OMC on 19 December 2013 Council resolved the following:-

That Council,

1. *Delegates authority for the Chief Executive Officer to negotiate a Grant of Lease and Variation to the Broome Visitor Centre Lease subject to the following terms and conditions (with any minor amendments):*
 - (a) *The resolution passed on the 21st February 2013;*
 - (b) *A site plan of the kiosk area, prepared at the cost of the tenant;*
 - (c) *The BVC:*
 - (i) *removing the existing chair from the common area of the Complex at their cost; and*
 - (ii) *placing tables and chairs in the common area during operational hours provided that:*
 - A *the tables and chairs are placed inside the Premises in non business hours; and*
 - B *that any damage to the common area caused by the use table and chairs, which is not fair wear and tear shall be repaired personally at the cost of the BVC and shall not form part of the Complex outgoings; and*
 - C *that the BVC shall not place the tables and chairs in an area that restricts entry to the Tenancy 3 of the Complex currently leased by The Courthouse Collection Pty Ltd.*
 - (d) *The amendments to the Description of the Leased Area and the address of the Premises in the Schedule to the lease due to the issuing of the new Crown Land Title for the premises.*
 - (e) *Clarification of the definition of the "Immediate Surrounds" taking into account the agreed boundaries.*

- (f) Amendment to Painting obligations of the Tenant at clause 10(3) of the lease taking into account the amortised painting contract.
2. Delegates authority for the Chief Executive Officer to negotiate a Variation of Lease for the Broome Visitor Centre Conference Facility subject to the following terms and conditions (with any minor amendments):
- (a) The amendments to the Description of the Leased Area and the address of the Premises in the Schedule to the lease due to the issuing of the new Crown Land Title for the premises.
- (b) Clarification of the definition of the "Immediate Surrounds" taking into account the agreed boundaries.
- (c) Amendment to Painting obligations of the Tenant at clause 10(3) of the lease taking into account the amortised painting contract.
3. Delegates authority for the Chief Executive Officer to negotiate an Extension of Lease (incorporating the exercised Further Term) and Variation of Lease for the Courthouse Collection Pty Ltd subject to the following terms and conditions (with any minor amendments):
- (a) The amendments to the Description of the Leased Area and the address of the Premises in the Schedule to the lease due to the issuing of the new Crown Land Title for the premises.
- (b) Clarification of the definition of the "Immediate Surrounds" taking into account the agreed boundaries.
- (c) Amendment to Painting obligations of the Tenant at clause 10(3) of the lease taking into account the amortised painting contract.
4. Notes that the costs of the preparation and negotiation of the documentation will be assumed as follows:

Document	Costs
Lease 1 BVC Grant of Lease and Variation	BVC responsible for costs pursuant to Resolution 21 February 2013 and clause 7(1) of the lease
Lease 2 BVC Deed of Variation	Costs not articulated in the lease. Proposed that Officers the Shire of Broome and BVC share the costs of this document. As variation benefits and is required by both parties.
Lease 3 Courthouse Collection Deed of Extension of Lease and Variation	Courthouse Collections responsible for costs pursuant to clause 7(1) of the Lease

5. Delegates authority for the Chief Executive Officer to if required, seek ministerial approval for lease documentation listed above.
6. Authorises the Chief Executive Officer and Shire President to engross the Lease documentation listed above.

At the OMC on 17 December 2015 Council resolved the following:-

"That Council:

1. Notes the attached Confidential Independent Report, "Review of the Shire of Broome's Dealings with Broome Visitor Centre - December 2015";
2. Notes the current lease between the Shire of Broome and The Courthouse Collection Pty Ltd will continue as a monthly tenancy from 15 January 2016 under the Holding Over Provisions;
3. Requests the Chief Executive Officer to commence new lease negotiations with The Courthouse Collection Pty Ltd and Broome Tourism Bureau Inc. utilising the attached report and Council's resolution of 12 December 2013 on this matter, as a basis point for negotiations; and
4. Requests the Chief Executive Officer to present a report to the March 2016 Ordinary Meeting of Council providing recommendations on future lease arrangements at the Broome Visitor Centre Complex."

COMMENT

Since December 2015 an independent rental valuation has been carried out by Opteon and officers have undertaken consultation with Broome Tourist Bureau and Courthouse Collection. Details of this consultation are provided in the table below:-

Attachment 2 - Opteon Valuation Report

Date	Shire Officers	Tenant Representative
Courthouse Collection		
17/12/2015	Asset and Building Coordinator, Senior Property and Leasing Officer	Chief Executive Officer
15/01/2016	Asset and Building Coordinator, Senior Property and Leasing Officer	Chief Executive Officer
17/02/2016	Asset and Building Coordinator, Senior Property and Leasing Officer, Director Corporate Services	Chief Executive Officer
21/04/2016	Asset and Building Coordinator, Senior Property and Leasing Officer, Director Corporate Services	Chief Executive Officer
Broome Tourist Bureau Inc		
03/02/2016	Asset and Building Coordinator, Senior Property and Leasing Officer, Director Corporate Services, Director Infrastructure	General Manager, Chairperson
03/03/2016	Asset and Building Coordinator, Senior Property and Leasing Officer, Director Corporate Services, Director Infrastructure	General Manager
20/04/2016	Chief Executive Officer, Asset and Building Coordinator	General Manager
28/04/2016	Senior Property and Leasing Officer	General Manager, Chairperson

Following the consultation, both the Broome Tourist Bureau and Courthouse Collection have proposed lease terms for their tenancies. A summary of the main proposed lease terms is as follows:-

on the basis of the following main terms:-

- (a) Only with the Shire of Broome as Landlord i.e. they would not enter into a lease with Broome Tourist Bureau as landlord*
- (b) A three year initial period, with two further separate three year options.*
- (c) Lease dependant on the Visitors Centre remaining at the building,*
- (d) Other tenancies should not be able to sell pearl merchandise.*

Attachment 3 - Courthouse Collections Lease Proposal

Broome Tourist Bureau

Broome Tourist Bureau has indicated a willingness to renew their tenancy with the following main terms being suggested:-

- (a) Either as per the existing arrangement or as "Head Tenant" with the ability to sub-lease,*
- (b) A peppercorn rent for Tenancy 1*
- (c) A peppercorn rent for Tenancy 2 and 4*
- (d) A five year lease with a five year option, but noted that they are currently restructuring and looking to create a new Strategic Plan within a two year period.*
- (e) The ability to sell pearl merchandise.*

Attachment 4 - Broome Tourist Bureau Lease Proposal

Lease Structure

While the independent report suggested an alternative option to the current lease structure, many of the leasing issues experienced at BVC have been due to deficiencies in the lease documentation rather than deficiencies with the lease structure. Officers recommend that the existing lease structure of separate tenancies for the Commercial tenancy and the Visitors Centre is maintained. This results in the Shire maintaining control of the commercial tenancy and its income stream, and allows the Broome Tourist Bureau to concentrate on their core function of servicing visitors to Broome rather than acting as a Commercial Landlord.

At present Broome Tourist Bureau do not pay rent for Tenancy 1 and 4, but do pay rent of approximately \$12,000 for Tenancy 2. Their proposal of peppercorn rent for Tenancies 1, 2 and 4 is essentially seeking an overall reduction in rent. As a 'peppercorn' lease arrangement has the result of masking the true value of the contribution that the Shire makes to Broome Tourist Bureau, it is recommended that any tenancies at BVC are entered into at commercial rates as per the valuation report.

It is also recommended that a single lease be developed for Tenancies 1, 2 and 4 to Broome Tourist Bureau at commercial rates as per the valuation report. The continued ability to hire out the Conference room and to sublease the Kiosk will allow Broome Tourist Bureau to develop alternative income streams. The Kiosk can become an integral part of the BVC experience with greater use being made of the currently under utilised deck area for cafe seating. Clearly delineating an appropriate area for external seating will minimise potential conflict between tenancies. The potential use of the decking area was not

reflected in the Valuation Report but it considerably increases the revenue generating potential of the kiosk.

Lease Term

A 'five plus five' lease would provide Broome Tourist Bureau with sufficient longevity to develop and implement their plans for long term financial sustainability and to secure alternative funding sources. Alternatively, a 'two plus three plus five' lease could provide for greater flexibility as Broome Tourist Bureau develop their strategic plan and funding sources.

Sale of Pearls

Under the current lease Broome Tourist Bureau are specifically prohibited from selling pearl jewellery while Courthouse Collections are a BVC tenant. It is recommended that this provision remains to encourage the retention of Courthouse Collections as a tenant.

Funding

Broome Tourist Bureau is currently the recipient of \$110,000 p.a. funding from the Shire under the Shire's Tourism Administration Policy 2.1.6. A recommendation regarding proposed allocations under this policy for consideration as part of the 2016/17 Budget process will be presented to the Economic Development Advisory Committee (EDAC) on 19 May 2016. Given the recommended changes in leasing structure from the current 'peppercorn' arrangements to commercial rates, Broome Tourist Bureau may wish to make further submissions to the Shire for additional funding to support additional leasing costs.

Gardens

The current landscaping at the BVC needs to be reviewed as excessive plant growth has resulted in a reduction in visual permeability to the building and the creation of shaded areas which has led to an increase in antisocial behaviour in the immediate surrounds of the building. It is recommended that Crime Prevention Through Environmental Design (CPTED) principles be implemented at the BVC to improve visual permeability and allow for greater passive surveillance.

The garden bed at the Western ramp is shaded by mature plants and with the landscaping rocks being used as impromptu seating, there has been an increase in littering in this area. To the rear of the building tree growth now obscures the Broome Visitor Centre signage as visitors approach on Old Broome Road. The garden bed at the Eastern ramp has increased significantly in size since originally being installed. With the creation of the gardens within Reconciliation Park, visibility from Short Street has been reduced. Plant growth in this area will need to be monitored to ensure shaded areas are not created to the rear of the building.

Photos of the landscaping in 2007/2008 together with photos from May 2016 are contained in the attachment. These photos demonstrate the significant growth in vegetation.

Attachment 5 – Photos of Gardens at BVC

It is recommended that landscaping plans be developed which provide for alternative option for landscaping around the building and are consistent with Crime Prevention Through Environmental Design (CPTED) principles. The plans could include removing

excess vegetation, replanting, removal/relocation of rock features, a water feature, alternative seating for bus passengers located adjacent to the bus shelter and the strategic use of small sections of fencing. This will create an area that is more in line with Broome Tourist Bureau's aspirations for the complex and surrounds that provides an impressive entry statement which is the first port of call to many of Broome's visitors. Consideration will also be given to minimising the ongoing costs of gardens maintenance through the use of water wise plants and a reduction in grassed areas.

Officers recommend that a budget of \$50,000 be allocated to undertake the design and modifications to the gardens.

At present the responsibility for maintenance of the garden beds immediately adjacent to the building lies with Broome Tourist Bureau. It is recommended that this situation remains although boundaries and responsibilities for maintenance need to be clearly identified in future lease documentation.

CONSULTATION

Broome Tourist Bureau Inc
Courthouse Collection Pty Ltd

STATUTORY ENVIRONMENT

Section 3.58 Local Government Act 1995

3.58. Disposing of property

(1) *In this section —*

“dispose” includes to sell, lease, or otherwise dispose of, whether absolutely or not;

“property” includes the whole or any part of the interest of a local government in property, but does not include money.

(2) *Except as stated in this section, a local government can only dispose of property to —*

(a) *the highest bidder at public auction; or*

(b) *the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

(3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*

(a) *it gives local public notice of the proposed disposition —*

(i) *describing the property concerned;*

(ii) *giving details of the proposed disposition; and*

(iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*

and

(b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —
- (a) the names of all other parties concerned;
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.
- (5) This section does not apply to —
- (a) a disposition of land under section 29 or 29B of the Public Works Act 1902;
 - (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59;
 - (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
 - (d) any other disposition that is excluded by regulations from the application of this section.

[Section 3.58 amended by No. 49 of 2004 s. 27.]

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Asset:

Broome Visitors Centre	\$	FY	Remarks
Capital Expense			
Landscaping improvements	\$50,000	16/17	Landscape design based on CPTED principles and rework of existing beds, remove trees and vegetation and additional seating for bus passengers
Upgrade to lighting in Courthouse Collections	\$4,000	16/17	Tenant request to install targeted higher lux lighting with opportunity to reduce energy consumption
Projected Income			
Lease rental (Broome Tourist Bureau)	(\$158,178)	16/17	Annual income
Lease rental (Courthouse Collections)	(\$36,881)	16/17	Annual income

RISK

Option	Risk	Type	Rank	Mitigation
Do nothing – continue with Broome Tourist Bureau Lease and maintain	Continued issues around interpretation of existing lease, minor disputes	Financial	Medium	Maintain communication with tenants and discuss any outgoings issues

Courthouse Collections in holding over	around outgoings, commercial tenant may seek another tenancy			
Enter into new leases with Broome Tourist Bureau Inc (T/A Broome Visitors Centre) and Courthouse Collections	Lease structure or terms not suitable for tenancies	Financial Operational	Low	Detailed consultation with tenants prior to agreeing lease terms
Maintain existing layout of garden beds	Continued antisocial behaviour. Negative feedback from public and tenants	Reputational Operational	Medium	Continue to monitor situation and liaise with police if evidence of increasing issues. Targeted use of security resources.
Modify garden beds	Negative public feedback. Continued antisocial behaviour.	Reputational Operational	Low	Careful choice of plants and garden layout will increase passive surveillance from carpark and roads. Reduced shade will discourage loitering.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

Accessible and safe community spaces

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Retention and expansion of Broome's iconic tourism assets and reputation

Core asset management to optimise Shire's infrastructure whilst minimising life cycle costs.

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Sustainable and integrated strategic and operational plans

Responsible resource allocation

Effective community engagement

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION:

That Council:

1. *Notes the attached Confidential Opteon Valuation Report.*
2. *Notes the current lease between the Shire of Broome and The Courthouse Collection Pty Ltd will continue as a monthly tenancy from 15 January 2016.*
3. *Requests the Chief Executive Officer to advertise the Courthouse Collection Pty Ltd lease in accordance with Section 3.58 of the Local Government Act 1995.*
4. *Authorises the Chief Executive Officer to continue lease negotiations with Broome Tourism Bureau Inc. utilising market valuations as per the attached Valuation report.*
5. *Considers the allocation of \$50,000 to garden and landscaping improvements in FY16/17.*
6. *Considers the inclusion of \$4,000 to lighting improvements to Courthouse Collections in the FY16/17 draft budget.*

COUNCIL RESOLUTION:**(REVISED REPORT RECOMMENDATION)**

Moved: Cr H Tracey

Seconded: Cr C Mitchell

That Council:

1. ***Notes the attached Confidential Opteon Valuation Report.***
2. ***Notes the current lease between the Shire of Broome and The Courthouse Collection Pty Ltd is continuing as a monthly tenancy and requests the Chief Executive Officer to advertise this lease in accordance with Section 3.58 of the Local Government Act 1995.***
3. ***Endorse the leasing of Tenancy 1, 2 and 4 as a combined tenancy at commercial rates and authorises the Chief Executive Officer to conclude lease negotiations with Broome Tourist Bureau Inc. in accordance with the Local Government Act 1995.***
4. ***Notes that a funding request may be received from Broome Tourist Bureau Inc for the increased cost of the commercial lease for the Broome Visitors Centre facility (Tenancy 1, 2 and 4) and Council consider this as part of the 2016/17 budget deliberations.***
5. ***Considers an allocation within the draft 2016/17 annual budget of:***
 - a. ***\$50,000 for garden and landscaping improvements***
 - b. ***\$4,000 for lighting improvements in Courthouse Collections (Tenancy 3).***

CARRIED UNANIMOUSLY 7/0

Attachments

1. Attachment 1 Lease Plan
2. Attachment 1a - Courthouse Collections Council Information (*Confidential to*

Councillors and Directors Only)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(iii)) as it contains “a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government”.

3. Attachment 2 - Opteon Valuation Report (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(ii)) as it contains “a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government”.

4. Attachment 3 Courthouse Collections Lease Proposal (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(iii)) as it contains “a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government”.

5. Attachment 4 - Broome Tourist Bureau Lease Proposal (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(ii)) as it contains “a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government”.

6. Attachment 5 - Photos of Gardens at BVC

9.2.13 MID DAMPIER PENINSULAR NATIVE TITLE CLAIMS

This item was considered under Section 14, Matters Behind Closed Doors.

9.3

OUR PROSPERITY



PRIORITY STATEMENT

Our region has grown significantly over the past years in terms of population, economy and industry – this will continue! Balancing ecological sustainability with economic growth and retaining the 'look and feel' of Broome and its environs are an ongoing challenge for the region. Encouraging appropriate investment and business development opportunities to ensure a strong, diverse economic base is essential for community prosperity and the success of our future generations.

Focusing on developing clear pathways linking education with employment for our youth and the community at large is essential as we aim to retain our local people and continue to build a skilled and highly motivated workforce.

Business and Industry partnerships must be fostered to ensure sustainable economic growth is achieved, along with the provision of affordable and equitable services and infrastructure. Ensuring development meets community needs and legislative requirements whilst creating close community relationships and enhancing our understanding of local heritage and cultural issues will continue to be a major focus. The built environment must contribute to the economy, long term viability of the region and provide a quality lifestyle for all.

There are no reports in this section.

OUR ORGANISATION



PRIORITY STATEMENT

Council will strive to create an environment where local governance is delivered in an open and accountable manner; where we provide leadership to the region in such areas as planning and financial management; where the community has the opportunity to contribute to the Council's decision making thereby fostering ownership of strategies and initiatives.

In delivering open, accountable and inclusive governance, we will be ever mindful that we operate within a highly regulated environment that requires a high level of compliance.

Council will strive to be the conduit between the other spheres of government and the community, translating State and Federal law, policy and practice into customer focussed, on ground service delivery that support's Broome's unique lifestyle.

The Region is experiencing significant change with Council dedicated to sound governance, effective leadership and innovation, and high quality services. Building organisational capacity is a priority with a commitment to delivering services to the community in a sustainable, effective and accountable way.

9.4.1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY REPORT APRIL 2016

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	FRE02
AUTHOR:	Senior Finance Officer
CONTRIBUTOR/S:	Manager Financial Services
RESPONSIBLE OFFICER:	Director Corporate Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	9 May 2016

SUMMARY: Council is required by legislation to consider and adopt the Monthly Statement of Financial Activity Report for the period ended 30 April 2016, as required by Regulation 34(1) of the *Local Government (Financial Management) Regulations 1996* (FMR).

Council is further provided with a General Fund Summary of Financial Activity (Schedules 2 to 14) which provides comprehensive information on Council's Operations by Function and Activity.

BACKGROUND*Previous Considerations*

Council is provided with the Monthly Financial Activity Report which has been developed in line with statutory reporting standards and provides Council with a holistic overview of the operations of the Shire of Broome.

It should be noted that the Shire of Broome recently undertook an interim audit from which it was recommended to establish a new format of monthly report. This report has been developed in line with that recommendation.

Supplementary information has been provided in the form of Notes to the Monthly Report and a General Fund Summary of Financial Activity, which discloses Council's Revenue and Expenditure in summary form, by Programme (Function and Activity).

Disclosure and supply of appropriate explanations for variances presented in the Statement of Financial Activity, is mandatory under FMR 34(2)(b) as stated in Policy 2.1.1 Materiality in Financial Reporting.

FMR 34(5) requires a local government to adopt a percentage or value, calculated in accordance with the Australian Accounting Standards (AAS) and Council's adopted risk management matrix thresholds, to be used in statements of financial activity for reporting material variances.

COMMENT

The 2015/2016 Annual Budget was adopted at the Special Meeting of Council on 13 August 2015.

The following are key indicators supporting the year to-date budget position with respect to the Annual Forecast Budget:

Budget Year elapsed	83%
Total Rates Raised Revenue	100% (of which 94.5% has been paid)
Total Other Operating Revenue	84%
Total Operating Expenditure	88%
Total Capital Revenue	24%
Total Capital Expenditure	14%
Total Sale of Assets Revenue	26%

More detailed explanations of variances are contained in Note 2 of the monthly statement of financial activity. The commentary identifies significant variations between the expected year-to-date budget position and the position at the reporting date.

Based on the 2015/2016 Annual Budget presented at the Special Meeting of Council on 13 August 2015, Council adopted an end of year deficit position of \$58,452 at 30 June 2016. Budget amendments that have occurred since the adoption of the budget, including the first and second Finance and Costing Reviews have resulted in a forecast end-of-year deficit of \$38,178.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Local Government (Financial Management) Regulations 1996

34. Financial activity statement report — s. 6.4

1A) In this regulation —

“committed assets” means revenue unspent but set aside under the annual budget for a specific purpose.

1) A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —

- a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);*
- b) budget estimates to the end of the month to which the statement relates;*
- c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
- d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
- e) the net current assets at the end of the month to which the statement relates*

2) Each statement of financial activity is to be accompanied by documents containing —

- a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*

- b) an explanation of each of the material variances referred to in subregulation (1)(d); and
 - c) such other supporting information as is considered relevant by the local government.
- 3) The information in a statement of financial activity may be shown —
 - a) according to nature and type classification;
 - b) by program; or
 - c) by business unit.
- 4) A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be —
 - a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and
 - b) recorded in the minutes of the meeting at which it is presented.
- 5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.

Local Government Act 1995

6.8. Expenditure from municipal fund not included in annual budget

- 1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —
 - a) is incurred in a financial year before the adoption of the annual budget by the local government;
 - b) is authorised in advance by resolution*; or
 - c) is authorised in advance by the mayor or president in an emergency.
- (1a In subsection (1) —
 “additional purpose” means a purpose for which no expenditure estimate is included in the local government's annual budget.
- 2) Where expenditure has been incurred by a local government —
 - c) pursuant to subsection (1)(a), it is to be included in the annual budget for that financial year; and
 - d) pursuant to subsection (1)(c), it is to be reported to the next ordinary meeting of the council.

* Absolute majority required.

POLICY IMPLICATIONS

2.1.1 Materiality in Financial Reporting

FINANCIAL IMPLICATIONS

The adoption of the Monthly Financial Report is retrospective. Accordingly, the financial implications associated with adopting the Monthly Report are Nil.

RISK

The Financial Activity report is presented monthly and provides a retrospective picture of the activities at the Shire. Contained within the report is information pertaining to the financial cost and delivery of strategic initiatives and key projects.

In order to mitigate the risk of budget over-runs or non-delivery of projects, the Chief Executive Officer has implemented internal control measures such as regular Council and management reporting and the Quarterly Finance and Costing Review to monitor financial performance against budget estimates. Materiality reporting thresholds have been established at half the adopted Council levels, which equate to \$5,000 for operating budget line items and \$10,000 for capital items, to alert management prior to there being irreversible impacts.

It should also be noted that there is an inherent level of risk of misrepresentation of the financials through either human error or potential fraud. The establishment of control measures through a series of efficient systems, policies and procedures, which fall under the responsibility of the CEO as laid out in the *Local Government Financial Management Regulation 1996* regulation 5, seek to mitigate the possibility of this occurring. These controls are set in place to provide daily, weekly and monthly checks to ensure that the integrity of the data provided is reasonably assured.

STRATEGIC IMPLICATIONS

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Affordable land for residential, industrial, commercial and community use

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

An organisational culture that strives for service excellence

Sustainable and integrated strategic and operational plans

Responsible resource allocation

Effective community engagement

Improved systems, processes and compliance

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION: (REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr D Male

That Council:

- 1. Adopts the Monthly Financial Activity Report for the period ended 30 April 2016 and;**
- 2. Receives the General Fund Summary of Financial Activity (Schedules 2-14) for the**

period ended 30 April 2016.

CARRIED UNANIMOUSLY 7/0

Attachments

1. Monthly Financial Activity Report - April 2016
2. Schedule 2 : Summary
3. Schedule 3 - 14 : Detailed

9.4.2 MOTORSPORTS RELOCATION DEED OF AGREEMENT

LOCATION/ADDRESS:	436 Broome Road
APPLICANT:	Nil
FILE:	RES /SPEED
AUTHOR:	Special Projects Coordinator
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Acting Director Community & Economic Development
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	15 March 2016

SUMMARY: This report outlines the progress of the relocation of Motorsports in Broome and the terms of a proposed Deed of Agreement between the Shire of Broome, Landcorp and Broome Motocross Club for Council's consideration and endorsement.

BACKGROUNDPrevious Considerations

OMC 20 June 2013	Item 9.2.7
OMC 21 November 2013	Item 9.2.2
OMC 24 April 2014	Item 9.2.2
OMC 30 April 2015	Item 9.2.5

The Shire has completed a desktop site selection and master planning study to determine the future site for a motorsports precinct in Broome. LandCorp, in conjunction with the Shire, has undertaken further site investigations to finalise this site from two preferred sites.

As a party to the relocation activities for the Motorsports Relocation Project and more specifically the relocation of the Motocross Club, LandCorp in consultation with the Club and Shire has developed a Deed of Agreement to outline each organisation's obligations and give certainty to the relocation when the appropriate time arrives. This Deed of Agreement will be the framework and outline the relevant trigger for the relocation of the Motocross Club in Broome. The Club currently resides on Reserve 32823, Broome Road, as a sublessee to the Speedway Club. The Deed of Agreement outlines the conditions that once met would result in the relocation of the Motocross Club from this site to one of the two preferred sites on Cape Leveque Road. The final site will form the location for future motorsports in Broome with a detailed Business Case, attached to this item, containing relevant information on this.

The Shire needs to resolve the Lease of the Speedway Club at the existing site on Reserve 32823, Broome Road. As part of the new lease, the Shire will require the Speedway Club to develop a Noise Management Plan which will be approved by the Shire to form part of the new lease. LandCorp taking the role as lead agency has been progressing the Site Selection Technical Investigation across both Site 1, Cnr of Cape Leveque Rd and McGuigan Rd and Site 2, Cnr Broome Rd and Cape Leveque Rd. The Due Diligence Report (attached) has now been received and recommends the site at Lot 591 Broome Road (corner Broome Rd and Cape Leveque Rd).

Subsequently, LandCorp has developed, in consultation with the Shire and Motocross Club, a Deed of Agreement which outlines obligations of all parties moving forward through to project completion. This report seeks Council's endorsement of the proposed terms of the agreement.

COMMENT

LandCorp, in securing Stage 2 of Broome North, is looking to finalise the relocation and management plans for the Speedway and Motocross Clubs currently operating at Reserve 32823 on Broome Road. To comply with the Shire's developer contributions plan LandCorp and the Shire require;

- the identification of a new motorsports precinct;
- a signed Deed of Agreement for the relocation of the Motocross Club; and
- an approved Noise Management Plan for the Speedway Club to continue operations at the existing site.

The Shire of Broome has previously engaged a consultant to undertake a desktop site selection process and accompanying Masterplan and Business Case for the Motorsports Relocation Project. The scope of this project was to determine an appropriate location for motorsports activities for Broome which provided a greater buffer from actual and future sensitive receptors. The Masterplan and Business Case have been developed with a single site in mind, Site 1, which was identified as the preferred site during the desktop site selection process. As this scope of works did not include any on-ground surveys, LandCorp and the Shire of Broome decided that inclusion of the top two preferred sites would reduce the risks associated with potential discovery of fatal flaws during subsequent investigations. The Business Case is attached for Council's information and consideration.

The next stage of the Motorsports Relocation Project, undertaken in partnership with LandCorp, is to secure the legal agreement associated with the actual relocation of the Motocross Club from the current site, Reserve 32823 on Broome Road, to Lot 591 Broome Road as determined by the site selection report and further Due Diligence Report prepared by LandCorp. It is proposed that the Shire seeks approval from the Department of Lands for the 30 hectare site to be excised as a reserve vested with the Shire of Broome for the purpose of recreational motorsports.

The obligations within the Agreement that Council is being asked to commit the Shire to are as follows:

4. *Shire's Obligations*

Subject to Clause 11, the Shire agrees during the term:

- (a) To use reasonable endeavours to facilitate the Management Order being granted prior to the commencement of the New Lease;*
- (b) To provide support and assistance to, and do all things reasonably required by, LandCorp in order for LandCorp to obtain all approvals necessary for the construction of the new facility;*
- (c) subject to:*
 - (i) surrender of the Sublease by the Club;*
 - (ii) the Management Order to the Shire having been granted;*
 - (iii) the terms of any revised Specifications being agreed in accordance with clause 8(a); and*
 - (iv) all relevant approvals having been obtained in accordance with clause 3.(a),*

the Shire shall grant the new lease to the Club on terms acceptable to the Club and the Shire (both acting reasonably) and being on usual commercial terms having regard to the nature of the permitted use under the new lease. The Shire shall be notified when the provisions of c (i) to (iv) have been completed.

Officers also highlight the following relevant clauses for noting by Council.

3. (a) *LandCorp agrees to apply for, at its cost and use its reasonable endeavours to, facilitate applications for all planning and other approvals necessary for the construction and operation of the new facility.*
8. (a) *if LandCorp determines that the actual costs to construct the new facility exceeds, or is likely to exceed, the Budget (once confirmed by Tender), then LandCorp will negotiate with the Club and the Shire (both acting reasonably) to vary the specifications for the new facility to the value of the Budget.*
10. *The parties acknowledge and agree that nothing in this Deed limits or restricts any statutory requirements or obligations of the Shire.*

To allow for ongoing negotiations between the Shire, LandCorp and the Motocross Club, Council is requested to authorise the Chief Executive Officer to finalise and agree on the final Deed terms, generally in accordance with those above, for engrossing and application of the Common Seal by the Shire President and Chief Executive Officer.

The Shire will also need to rationalise the Speedway Club's existing use of the current site on Reserve 32823, Broome Road. The Speedway Club is in the process of developing a Noise Management Plan (NMP) which will be submitted to the Shire for approval. This NMP will form part of the ongoing site management to mitigate potential noise emissions during speedway activities. Once the NMP has been approved, the Shire will be able to negotiate a new lease with the Speedway Club. Although a new site for the Motocross relocation has been identified, there is no defined timeline or funding for the relocation of the Speedway Club.

CONSULTATION

Motocross Club

STATUTORY ENVIRONMENT

Environmental Protection (Noise) Regulation 1997

Part 2

Division 3

S16AA

- (1) *The occupier of a motor sport venue may apply to the CEO for approval of —*
 - (a) *a noise management plan for the venue; or*
 - (b) *an amendment of an approved noise management plan for the venue.*
- (3) *The CEO may, in writing —*
 - (a) *if the application is for the approval of a noise management plan — approve, or refuse to approve, the noise management plan for the motor sport venue;*
- (4) *Before making a decision under subregulation (3) the CEO —*
 - (a) *must give the following a reasonable opportunity to make a submission on whether or not the plan or amendment should be approved —*
 - (i) *the occupier of any noise sensitive premises within 1 km of the motor sport venue;*

- (ii) the local government of each district in which noise emissions received from the venue are likely to fail to comply with the standard prescribed under regulation 7; and
- (b) may give any other person the CEO considers appropriate in the circumstances a reasonable opportunity to make a submission on whether or not the plan or amendment should be approved.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil capital cost. The only requirement on Shire resources will be in-kind to facilitate the requisite obligations under the Deed of Agreement.

However, in accordance with the Infrastructure Contribution Agreement between LandCorp and the Shire, the budget for the Motorsport Complex relocation is \$1.8M. If the cost of the relocation exceeds this amount, this will reduce the amount available under the Infrastructure Contribution Agreement for the Tanami Road Upgrade (Old Blue Haze) and Gubinge Road Shared Pathway (Magabala Road to Jigal Drive) projects.

RISK

Issue	Risk	Mitigation Measures	Residual Risk
Club refuses to sign deed and or subsequent lease.	High	Negotiations at this stage will allow a level of comfort for all parties and avoids an aggrieved party not signing. The signing of the Deed of Agreement will obligate subsequent lease negotiations.	Medium
Relocation costs more than anticipated.	High	Clause 7(a) of the Deed of Agreement allows LandCorp to reduce the specification should costs exceed estimates.	Low
Fatal flaw is discovered at the preferred project site during end of wet season flora & fauna surveys.	Extreme	The technical investigations are looking at two (2) potential sites to reduce the risk of project failure should a fatal flaw be discovered at one (1) of them.	High

Further to the above table, there is a potential future risk to the organisation in that the relocation of the Speedway is unfunded at this point in time. The identification of a new site and staged Masterplan will be in place, but there is no current mechanism for the relocation of the Speedway Club. The likely trigger will occur once occupation of residences in Broome North Stage 2 commences and the Shire begins to receive noise complaints regarding the use. In order to mitigate this risk, Broome Speedway Club has been requested to provide a Noise Management Plan as a condition of a new lease.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

Accessible and safe community spaces

Participation in recreational and leisure activity

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Realistic and sustainable land use strategies for the Shire within state and national frameworks and in consultation with the community

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable land for residential, industrial, commercial and community use

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Effective community engagement

VOTING REQUIREMENTS

Absolute Majority

COUNCIL RESOLUTION: **(REPORT RECOMMENDATION)**

Moved: Cr C Mitchell

Seconded: Cr W Fryer

That Council in relation to:

1. The Motorsports Relocation Project:

- (a) notes the technical investigations undertaken by LandCorp to refine the site selection to a preferred site are complete.**
- (b) notes the attached Due Diligence Report and endorses the selection of a 30 hectare site at Lot 591 Broome Road (corner Cape Leveque Rd) as the preferred site.**
- (c) requests the Chief Executive Officer to seek a Management Order from the Minister for Lands as a reserve vested with the Shire of Broome for Lot 591 Broome Road for the purpose of recreational motor sports.**

2. The relocation of the Motocross Club to a new site:

- (a) Delegates authority to the Chief Executive Officer to negotiate the Deed of Agreement with LandCorp and the Motocross Club in accordance with the following terms:**
 - (i) To use reasonable endeavours to facilitate the Management Order being granted prior to the commencement of the New Lease;**
 - (ii) To provide support and assistance to, and do all things reasonably required by, LandCorp in order for LandCorp to obtain all approvals necessary for the construction of the new facility;**
 - (iii) Subject to:**
 - (1) surrender of the Sublease by the Club;**

(2) the Management Order to the Shire having been granted;

(3) the terms of any revised Specifications being agreed in accordance with clause 8(a); and

(4) all relevant approvals having been obtained in accordance with clause 3(a),

the Shire shall grant the new lease to the Club on terms acceptable to the Club and the Shire (both acting reasonably) and being on usual commercial terms having regard to the nature of the permitted use under the new lease. The Shire shall be notified when the provisions of c (i) to (iv) have been completed.

(b) Authorises the Chief Executive Officer and the Shire President to engross the Deed of Agreement and affix the Shire of Broome's Common Seal.

3. The Speedway Club's continued operation at the current site on Broome Road:

(a) Notes that a Noise Management Plan defining Speedway operations is being prepared and will need to be publicly advertised for comment prior to being approved by the Shire.

(b) Notes that although the new motorsports site will be selected, the eventual relocation of the Speedway Club is currently unfunded.

(c) Requests the Chief Executive Officer to commence negotiations for a new lease with the Speedway Club on the existing site, subject to the approval of the Noise Management Plan) and report back to Council for consideration.

CARRIED BY ABSOLUTE MAJORITY 6/1

Attachments

1. Motorsports Business Case
2. Due Dilligence Report
3. Due Dilligence Plan

9.4.3 REQUEST TO WRITE OFF PENALTY INTEREST

LOCATION/ADDRESS:	Assessments A305430, A305429, and A304548
APPLICANT:	Applicant
FILE:	ARA06
AUTHOR:	Finance Officer - Rates
CONTRIBUTOR/S:	Manager Financial Services
RESPONSIBLE OFFICER:	Director Corporate Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	12 May 2016

SUMMARY: The applicant has submitted an email requesting Council to waive penalty interest accrued on outstanding Rates applied to Assessments A304548 and A305539.

This report provides a recommendation to Council to support the request for waiver of partial interest.

BACKGROUNDPrevious Considerations

Nil

The applicant has been in correspondence with the Shire of Broome and recently met with officers on 6 April 2016 to clarify concerns regarding the valuation and rating of the properties subject to this report. The outcome from this meeting resulted in a written email submission by the applicant (Attachment 1), in summary requesting:

- De-amalgamation of group-rated properties
- Setting aside all rates, penalty interest and fees and charges from financial year 2012/2013, asserting that one of the lots has been incorrectly classified as 'tourism use'
- Reclassification of one of the properties by Landgate to 'residential use'
- Recalculation of rates based on the reclassification to residential use
- Separate reconciliations of the rates levied on each of the individual properties

The applicant's concerns are in summary:

- 1) Landgate's valuation of two separate land parcels as one group rated property
- 2) The Shire of Broome's categorisation of one of the two properties as "GRV-Tourism" as opposed to "GRV-Residential"
- 3) The resulting penalty interest accruing on outstanding balances.

As means of background, prior to 2009, the applicant owned three adjoining properties (see Attachment 2 - map 1) which were individually rated, each having their own Rates Assessment Number. As part of the triennial Valuer General GRV revaluation undertaken in 2009, these three Rates Assessments were amalgamated into one Rates Assessment Number. Essentially, this meant that one rates assessment notice was then issued annually for all of the three properties rather than the applicant receiving three individual rates notices. i.e. The applicant still held individual certificates of titles for each lot, however for

the purposes of rating, they were amalgamated as one Rates Assessment (see Attachment 2 – map 2).

The applicant paid rates on this new amalgamated Rates Assessment in 2009, 2010 and 2011. The issues of concern for the applicant arose from the point at which one of the properties was sold from 2012 and Rates Assessment (A304548) required amendment. At this point, the three properties were each given a new individual Rates Assessment Number (see Attachment 2 – map 3). The two remaining lots held in ownership by the applicant were subsequently amalgamated into one new Rates Assessment (A305539) (see Attachment 2 – map 4).

At the time of property transfer to the new owner on 12 October 2012 it is noted that there were outstanding rates owing on Rates Assessment A304548. The portion of rates owing up until 12 October 2012 have remained outstanding and have also accrued interest over the past 4 years, totalling \$3,408.95. It is noted that the ratepayer has made partial adhoc payments over this time. At the time of writing this report the outstanding balance on this rates Assessment is \$5,793.87.

The rates owing from 1 November 2012 to 30 June 2013 were interim rated under the new Assessment number, A305539 and have been paid in addition to the rates 2013/14. There are however outstanding rates owing and interest accruing for 2014/15 and for 2015/16 total \$33,212.38

A summary of the Rates Billing, payment made and penalty interest accrued for each respective rate Assessments follows;

A304548		A305539	
Billing 2009/10	\$ 21,151.26	Interim Billing 2012/13	\$5,601.01
Admin Instalment Fees	\$ 322.19	Correction to Schedule G2012/25	\$5,392.25
Penalty Interest	\$ 46.92	Payments Received	-\$3,000.00
Payment Received 1 July 2009 - 30 June 2010	-\$ 21,499.34	Penalty Interest	\$534.59
Balance Outstanding at 30 June 2010	\$ 21.03	Admin Instalment Fees	\$ -
Billing 2010/11	\$ 22,810.51	Outstanding Balance at 30 June 2013	\$8,527.85
Penalty Interest	\$ 147.87	Billing 2013/14	\$17,904.26
Admin Instalment Fees	\$ 345.81	Payments Received	-\$20,904.75
Payments Received	-\$ 23,321.74	Penalty Interest	\$731.53
Outstanding Balance at 30 June 2011	\$ 3.48	Admin Instalment Fees	\$263.42
Billing 2011/12	\$ 22,589.84	Outstanding Balance at 30 June 2014	\$6,522.31
Payments Received	-\$ 22,924.93	Billing 2014/15	\$18,846.75
Penalty Interest	\$ 5.16	Payments Received	-\$16,117.34
Admin Instalment Fees	\$ 331.61	Penalty Interest	\$1,019.01
Outstanding Balance at 30 June 2012	\$ 5.16	Admin Instalment Fees	\$219.88
Billing 2012/13	\$ 23,755.00	Outstanding Balance at 30 June 2013	\$10,490.61
Payments Received	\$ -	Billing 2015/16	\$20,383.91
Penalty Interest	\$ 1,255.21	Payments Received	\$ -
Admin Instalment Fees	\$ -	Penalty Interest	\$2,337.86
Revaluation G2012/25	-\$ 13,558.60	Admin Instalment Fees	\$ -
Correction to Schedule G2012/25	-\$ 1,694.00	Outstanding Balance at 12 May 2015	\$33,212.38
Outstanding Balance at 30 June 2013	\$ 9,762.77		
Penalty Interest	\$ 1,109.27	TOTAL	
Payments Received	-\$ 2,704.13	Rates Levied	\$68,128.18
Outstanding Balance at 30 June 2014	\$ 8,167.91	Penalty Interest	\$4,622.99
Penalty Interest	\$ 644.93	Instalment Admin Fees	\$483.30
Payments Received	-\$ 3,521.30	Payments Received	-\$40,022.09
Outstanding Balance at 30 June 2015	\$ 5,291.54	Outstanding Balance	\$33,212.38
Penalty Interest	\$ 502.33		
Outstanding Balance at 12 May 2015	\$ 5,793.87		
TOTAL			
Rates Levied	\$75,054.01		
Penalty Interest	\$3,711.69		
Instalment Admin Fees	\$999.61		
Payments Received	-\$73,971.44		
Outstanding Balance	\$5,793.87		

The following is a summary timeline of the history of amalgamations and subdivisions of the three properties: Please refer to Attachment 2 for a diagram.

Date	Details
1/7/2009	<p>A304548:</p> <p>Group Valuation and Group Rating was provided through Landgate Valuer from 2009 revaluation for 3 contiguous properties.</p> <p>A105440 A106501 A112560</p> <p>Landgate provided GRV at \$192,400 effective 1 July 2009. Group rated property categorised as GRV Tourism.</p>

12/10/2012	A305428 Lot 192 was sold, triggering a subdivision process.
31/10/2012	Subdivision of A304548 was effective. Properties created : A305428 (Sold 12/10/2012) A305429 ,and A305430 Parent group Assessment A304548 rendered non current in the process.
1/11/2012	Amalgamation of two remaining assessments A305429 and A305430 to create new group rated Assessment A305539 effective 1 November 2012 as per Schedule G2012/25. GRV was \$130,000 and rated as 'GRV Tourism'.
28/2/2013	- A304548 (non current) Rates remaining of \$11,103.21 on non current property, post subdivision and sale of one property, were adjusted via a Valuer General valuation roll from Landgate. Interim Notice produced and sent. - A305539 (new amalgamated property) Interim notice for period 1/11/2012 – 30/06/2013 was issued with rates to be paid of \$5,591.89
6/5/2013	Landgate issued a further VG valuation roll requiring further adjustments to both properties: A304548 new interim notice issued with balance of \$9,676.54 A305539 new interim notice issued with balance of \$11,038.75

The applicant has been in contact with the Shire of Broome since 2013 seeking clarification of the level of rates levied and an understanding of the rating process of the individual properties.

Attachment 3 provides the history of correspondence between the Shire of Broome and the applicant.

Under Section 6.51(1) of the *Local Government Act 1995 (LGA)*, Council is able to charge interest on unpaid rates. The maximum interest rate for unpaid rates is prescribed by Regulation 70 of the *Local Government (Financial Management) Regulations 1996* and is set at 11%. As part of the 2015/2016 Annual Budget adoption process Council has set this interest rate at the maximum of 11%.

Section 6.12 of the LGA provides for the power to defer, grant discount, waive or write off debts. Delegation LGA39 permits the Chief Executive Officer (CEO) to waive or write off debts up to \$1,000. As the amount of penalty interest is above this threshold, this request is presented to Council for consideration.

COMMENT

Prior to 2009 the individually properties were rated as follows;

- A105440 – GRV Residential
- A106501 – GRV Tourism
- A112560 – GRV Residential

Following the 2009 GRV revaluation, Landgate Valuation Services provided an interim Rates Schedule in which A304548 was established, essentially amalgamating all of the above three rates assessments into one, and rated these collectively as 'GRV – Tourism'. Shire officers have queried Landgate for the reasons for this amalgamation, but Landgate could not produce any records or justification.

Under the provisions of section 6.76(1)(B) of LGA the ratepayer has the opportunity to make an objection to the Rate Record, however this objection must be in accordance with section 6.76 (2) of LGA, therefore, within 42 Day of the service of Rates Notice. It is noted that no objection was received for the differential rating classification of A304548.

Post amalgamation, the Ratepayer continued to pay rates on A304548 for the financial year ending June 2010, June 2011 and June 2012. Following the sale of one of the lots during October 2012, the subdivision of this Assessment was triggered and three new Assessments were created. Amalgamation of the two remaining Assessments A305429 and A305430, in the applicants ownership resulted in creation of a new Assessment A305539, rated as 'GRV- Tourism'. It is noted that the Landgate valuation for the adjustment to A304548 and interim rates for A305539 was received during February 2013, 5 months after the sale of lot.

It is also noted that further correction to the valuations provided in the above Landgate Schedule were received on 6 May 2013. An amended Rate notice was subsequently issued to the applicant for A305539 and A304548. However, although the applicant made a partial payment on new assessment A305539, it is noted that no payment or objection was received for A304548.

After receipt of the 2013/14 Initial Rates Notice in September 2013, the applicant emailed the Shire of Broome seeking information regarding the valuations for A304548. The applicant also claimed that A305539 was in credit as a result of overpayments and requested a financial summary review be undertaken.

In November 2013, Officers informed the applicant regarding the calculation of Rates and advised of current outstanding balances.

During December 2013 the applicant again contacted the Shire, and queried the valuation and interest charges on both properties. The applicant also disputed the differential rating category applied to A305539. Since this time, the review is still currently in progress. It is recommended that any interest levied after this date is to be written off due to the significant delay taken to action the review and the applicant's requests. Officers responded to the applicant on 3 January 2014 by letter, explaining the process of amalgamations and subdivisions that the properties have undergone. The process required to object to the valuation was also explained, and the applicant was advised to liaise with Landgate Valuation Service to discuss Valuations. This letter provided the applicant with the required information to deal with the issue related to A304548 and therefore any interest subsequent to this letter is recommended to remain payable, and interest prior to the issue of this letter to be written off.

The Applicant had requested a review of the differential rating category on A305539 in December 2013. This review is currently in progress and it is expected that a separate

valuation will be provided by Landgate on the two parcels with in A305539, effective 1 July 2016.

As an outcome of the meeting held with the applicant on 6 April 2016, Officers requested in writing from the applicant a request to waive penalty interest in order to present this request to Council. In this correspondence as attached, the applicant is seeking a full write off of penalty interest to the value of \$8,334.68.

Additionally, in reviewing the level of customer service provided in responding to the applicant's inquiries and requests, while there has been numerous correspondence between the two parties, it is acknowledged there have been service delivery delays caused by resourcing constraints in the Rates Department. These resourcing constraints have been compounded by the complexity of the matter, requiring a review at an experienced and technical level in order to determine the issues and adequately respond to the applicant's inquiries. This has been taken into account in the recommendation that follows.

Recommendations

A304548

Recommendation for the penalty interest accrued after the Letter dated 4th January 2014 to remain due and payable, interest accrued before this date is recommended to be written off totalling **\$1,927.37** on the basis of the delay in response times up until the date of the letter, after which the applicant had the opportunity to pursue and objection with Landgate.

A305539

Recommendation for write off of the penalty interest accrued after request for Review of Differential Rating category submitted on 16 December 2013, totalling **\$ 3,656.65** on the basis of the significant length of time taken to progress this review.

In summary, the basis for recommending the above amounts of penalty interest is that these amounts would not have accrued to begin with had, a) Landgate valuers not revalued the individual properties as one group-rated property, based on what officers have assumed, a drive-by assessment; and b) there been the ability at the time of receipt of the applicant's initial inquiries, to refer the applicant to Landgate to object to the group valuation of the properties and assumed land usage as 'tourism'. In regards to the applicant's request in their email to 'set aside' all rates and fees and charges for one of the properties, it is recommended that a reconciliation be conducted once the results of Landgate's revaluation of the individual lots are received. Additionally, all rates and service charges are due and payable at the time of issuing the rates notice and no objections were received during the statutory timeframes.

CONSULTATION

Applicant
Landgate

STATUTORY ENVIRONMENT

Local Government Act 1995

6.12. *Power to defer, grant discounts, waive or write off debts*

(1) *Subject to subsection (2) and any other written law, a local government may —*

- (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or
- (b) waive or grant concessions in relation to any amount of money; or
- (c) write off any amount of money,
which is owed to the local government.

* Absolute majority required.

- (2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.
- (3) The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.
- (4) Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.

6.51. Accrual of interest on overdue rates or service charges

- (1) A local government may at the time of imposing a rate or service charge resolve* to impose interest (at the rate set in its annual budget) on —
 - (a) a rate or service charge (or any instalment of a rate or service charge); and
 - (b) any costs of proceedings to recover any such charge,
that remains unpaid after becoming due and payable.
- * Absolute majority required.
- (2) The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.
- (3) Accrued interest is, for the purpose of its recovery, taken to be a rate or service charge, as the case requires, that is due and payable.
- (4) If a person is entitled under the Rates and Charges (Rebates and Deferrals) Act 1992 or under this Act (if the local government in a particular case so resolves) to a rebate or deferment in respect of a rate or service charge —
 - (a) no interest is to accrue in respect of that rate or service charge payable by that person; and
 - (b) no additional charge is to be imposed under section 6.45(3) on that person.
- (5) Regulations may provide for the method of calculation of interest.

6.76. Grounds of objection

- (1) A person may, in accordance with this section, object to the rate record of a local government on the ground —
 - (a) that there is an error in the rate record —
 - (i) with respect to the identity of the owner or occupier of any land; or
 - (ii) on the basis that the land or part of the land is not rateable land;
 - or
 - (b) if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.
- (2) An objection under subsection (1) is to —
 - (a) be made to the local government in writing within 42 days of the service of a rate notice under section 6.41; and
 - (b) identify the relevant land; and
 - (c) set out fully and in detail the grounds of objection.
- (3) An objection under subsection (1) may be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.
- (4) The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.
- (5) The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.

- (6) After making a decision on the objection the local government is to promptly serve upon the person by whom the objection was made written notice of its decision on the objection and a statement of its reason for that decision.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The financial impact of waiving penalty interest accrued on the properties as per the recommendation is **\$ 5,584.02**

Property	Penalty Interest Levied	Penalty Interest recommended for write off	Net Penalty Interest Payable
A305539	\$4,622.99	\$3,656.65	\$966.34
A304548	\$3,711.69	\$1,927.37	\$1,784.32
Total	\$8,334.68	\$5,584.02	\$2,750.66

RISK

Should Council refuse the request, the risk level of high impact to public reputation which is set at an occurrence likelihood of 'almost certain' is extreme as a result of the repeated follow up from the applicant and frustration experienced in not receiving a timely response to their inquiries. To mitigate the risk, Council is requested to approve the request to maintain positive stakeholder relations and goodwill in order for officers to proceed with further changes to the applicant's properties.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Effective communication

Affordable services and initiatives to satisfy community need

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

A preserved, unique and significant historical and cultural heritage of Broome

Retention and expansion of Broome's iconic tourism assets and reputation

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

An organisational culture that strives for service excellence

Effective community engagement

Improved systems, processes and compliance

VOTING REQUIREMENTS

Absolute Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr H Tracey

That Council:

- 1) Delegates authority to the Chief Executive Officer to write off penalty interest accrued totalling \$5,584.02 for Assessments:**
 - a) A304548 totalling \$1,927.37, and**
 - b) A305539 totalling \$3,656.65;**
- 2) Requests the Chief Executive Officer to:**
 - a) advise the applicant that Landgate have been formally requested to reassess the individual valuations and classifications of the properties to de-amalgamate the joint rate Assessments;**
 - b) provide the applicant with a reconciliation of the rates levied on the affected properties once Landgate's valuations have been received, noting however, that Landgate are unable to post-date valuations to previous years; and**
 - c) advise the applicant that the balance of \$2,750.66 in penalty interest will not be written off as this was accrued as a result of delays for which the Shire was not responsible for and that all other rates and service charges were due and payable, however, a reconciliation of the rates will be conducted as per above and any difference determined will be refunded.**

CARRIED UNANIMOUSLY BY ABSOLUTE MAJORITY 7/0

Attachments

1. EMAIL CORRESPONDENCE (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(iii)) as it contains "a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government".

2. PROPERTY MAP DETAILS (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(iii)) as it contains "a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government".

3. CORRESPONDENCE TIMELINE (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(iii)) as it contains "a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government".

9.4.4 JUNIOR SPORTS - VENUE HIRE FEES

LOCATION/ADDRESS:	Various
APPLICANT:	Nil
FILE:	REP008
AUTHOR:	Club Development Officer
CONTRIBUTOR/S:	Sport and Recreation Facilities Coordinator
RESPONSIBLE OFFICER:	Acting Director Community & Economic Development
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	4 May 2016

SUMMARY: Following a request from Council, Shire of Broome officers have investigated the implications of making junior sport more financially accessible for community sporting clubs by waiving fees for structured sporting programs at venues managed by the Shire. This report seeks Council's consideration of the key financial implications, provides information regarding the current status of junior sport in Broome and outlines options for Council's consideration.

BACKGROUNDPrevious Considerations

SMC 27 June 2014	Item 9.4.2
SMC 15 August 2015	Item 6.4.1

The Shire of Broome's current fee structure for junior sport facility usage is defined by four categories to accommodate the differing requirements of individual sports. The proposed fees to be charged for the 2016/2017 financial year for these categories are outlined in the table below and represent less than 50% of the fees charged for senior sports activities. It should be noted that these fees are charged for competition only and clubs are not charged for junior sport training sessions.

More than 15 participants per team per game.	\$22 per hour
Up to 10 participants per team per game.	\$8.50 per hour
Between 10 and 15 participants per team per game.	\$13.50 per hour
Junior Sport Development Programs per week. (Programs aimed at up to 12 years, including Auskick, small sided soccer, In2Cricket, Aussie Hoops programs.)	\$60 one off fee per week.

Junior Sport is considered age group specific structured sport, while development programs are defined as those that assist in progressing basic skills through weekly coaching sessions rather than providing a structured competition or league.

Following a recent request from Council, investigation has been undertaken to determine the financial implications of having a 'no – charge' policy for facility use to undertake junior sport.

COMMENT

During the 2014/15 financial year, nineteen different junior sporting programs used Shire of Broome facilities generating \$84,516 in revenue which represents approximately 37% of the total revenue generated.

Participation in junior sport in the Shire of Broome has continued to increase since 2009. In 2013, age 12 and under junior participation increased by 13% and youth sport (18 and under) increased by 42%. The BRAC venue operates close to capacity, particularly during the peak dry season period.

To ensure that junior sport remains affordable for the Broome community, fees and charges for junior sport at Shire facilities are not proposed to increase in the 2016/17 financial year, and have not markedly increased since 2014/2015.

FEE TYPE	2014/2015	2016/17 (proposed)	Variation
More than 15 participants per team per game.	\$21 per hour	\$22 per hour	5%
Up to 10 participants per team per game.	\$8 per hour	\$8.50 per hour	6%
Between 10 and 15 participants per team per game.	\$13 per hour	\$13.50 per hour	4%
Junior Sport Development Programs per week. (Programs aimed at up to 12 years, including Auskick, small sided soccer, In2Cricket, Aussie Hoops programs.)	\$58 one off fee per week.	\$60 one off fee per week.	3%

Since 2013, key participation sports including West Kimberley Junior Football League, Broome Netball Association and Broome Basketball Association have all increased their junior membership fees. However it should be noted in most instances, the majority of local membership fees are absorbed by State Sporting Association (SSA) affiliation costs. The majority of junior programs operating out of Shire facilities are affiliated with SSA's. This allows access to insurance, coaching and officiating programs, and pathway and state representative programs. Junior club registration fees since 2014 are as shown below:

Club/Association	2014	2015	2016
West Kimberley Junior Football League	\$70	\$70	\$100
Broome Basketball Association	\$70 - Juniors	\$65 - Aussie Hoops new \$45 - Aussie hoops returning \$100 - Juniors	\$65 - Aussie Hoops new \$45 - Aussie hoops returning \$100 - Juniors
Broome Soccer Association	\$50 - 12 and under \$70 - Youth	\$50 - 12 and under \$70 - Youth	\$50 - 12 and under \$70 - Youth
Broome Netball Association	\$80 – 10 and under \$100 - 17 and under	\$100 - 10 and Under \$120 - 17 and under	\$90 - 10 and Under \$120 - 17 and under
Broome Junior Cricket	\$85 - Juniors	\$90 - In2Cricket \$99 - T20 Blast \$90 - Junior cricket	TBC
Broome Auskick	\$70	\$70	\$70

Since 2013 clubs operating in the Shire of Broome have had access to the WA Department of Sport and Recreation's (DSR) KidSport program, which provides financial assistance of up to \$200 per child between the ages of 5 and 18 toward membership fees for junior sport. Eligible applicants are required to have a Health Care Card or Pensioner Concession Card, or be recommended by an approved referral agent.

Since its inception, junior clubs in Broome have received \$82,200 in funding through Kidsport to support families with financial constraints, allowing their children to participate. A total of \$40,000 has already been expended this financial year and officers have proposed an increase in 2016/17 to DSR to cater for demand.

DSR has a number of funding options aside from KidSport that can assist in developing local junior sport. The Shire of Broome's Club Development Officer is also employed to assist sporting clubs to develop. Funding programs offered by DSR include:

- Active Regional Communities provides up to \$5,000 to increase opportunities for country people to participate in sport and recreational activities.
- Community Participation Funding provides between \$1,000 and \$5,000 toward increasing sports participation in low participation groups.
- Club Assistance Equipment subsidy provides a one off payment of \$500 towards purchasing equipment for sporting programs.

Other clubs that provide junior sporting activities in Broome include those occupying or utilising;

- Shire-owned facilities on a peppercorn lease basis such as Broome Surf Lifesaving Club, Broome Bowling Club, Broome Motocross. These clubs are required to contribute to maintenance and outgoings for the premises and often seek funding and contribute club resources to capital upgrades;
- Commercial or semi-commercial premises such as Pearl Coast Gymnastics Club which rents the gymnasium at Broome SHS on a semi-commercial basis.

Should Council choose to waive fees for those clubs utilising BRAC facilities (including Haynes Oval), further requests for support are likely to be received from clubs using or occupying other facilities.

Options for Consideration

Officers propose the following options for Council's consideration;

1. Waive venue hire fees for junior sporting activities commencing in the 2016/17 financial year. This is not considered an equitable option without considering subsidy for those sporting clubs not utilising BRAC venues and could create a precedent for future support requests. In addition, this option will increase the operating deficit to the Shire for these facilities.
2. Reduce junior sporting venue hire fees to reflect the current economic climate. Fees could be reduced to levels charged in the 2014/15 financial year. Again, arguably this provides a benefit for only a selection of clubs providing junior sporting activities in Broome and (marginally) affects the Shire's financial position.
3. Maintain the current level of venue hire for junior sporting activities proposed in the Draft 2016/17 Fees and Charges Schedule which includes no increase compared to 2015/16.

Officers propose Option 2 as the preferred option.

CONSULTATION

Consultation with other local governments indicates most junior sports are charged venue hire at either a reduced or free rate to encourage participation. All those contacted charge a fee for usage of lights.

Of those LGA's contacted the following provide free hire to junior sporting programs:

Shire of Plantagenet	City of Kalgoorlie Boulder
Shire of Exmouth	Shire of East Pilbara
City of South Perth	City of Armadale
Town of Port Hedland	

Of those LGA's contacted the following do not provide a free hire, but do have a reduced rate:

Shire of Wyndham East Kimberley	Shire of Derby West Kimberley
City of Karratha	City of Wanneroo
City of Kwinana	City of Canning
Shire of Esperance	

STATUTORY ENVIRONMENT

6.16. Imposition of fees and charges

- (1) *A local government may impose* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*

** Absolute majority required.*

- (2) *A fee or charge may be imposed for the following —*

- (a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;*
- (b) supplying a service or carrying out work at the request of a person;*
- (c) subject to section 5.94, providing information from local government records;*
- (d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;*
- (e) supplying goods;*
- (f) such other service as may be prescribed.*

- (3) *Fees and charges are to be imposed when adopting the annual budget but may be —*

- (a) imposed* during a financial year; and*
- (b) amended* from time to time during a financial year.*

** Absolute majority required.*

6.17. Setting level of fees and charges

- (1) *In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —*

- (a) the cost to the local government of providing the service or goods; and*
- (b) the importance of the service or goods to the community; and*

- (c) *the price at which the service or goods could be provided by an alternative provider.*
- (2) *A higher fee or charge or additional fee or charge may be imposed for an expedited service or supply of goods if it is requested that the service or goods be provided urgently.*
- (3) *The basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —*
 - (a) *under section 5.96; or*
 - (b) *under section 6.16(2)(d); or*
 - (c) *prescribed under section 6.16(2)(f), where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.*
- (4) *Regulations may —*
 - (a) *prohibit the imposition of a fee or charge in prescribed circumstances; or*
 - (b) *limit the amount of a fee or charge in prescribed circumstances.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

BRAC will be financially impacted during the upgrade of the BRAC Aquatic area. Closure of the pool between June and December 2016 will equate to a loss of approximately 50% of usual budgeted revenue during the construction phase. If it is decided that junior sporting fees will be waived, this lost income will contribute to a larger operating deficit for BRAC and the Shire of Broome as a whole.

Income

Calculations by Shire officers have determined that in the 2014/15 financial year the Shire of Broome received \$84,516 in venue hire fees associated with junior sport. It should be noted too, that this late in the budget development process, waiving fees will likely result in a budget deficit for 2016/17.

Maintenance Costs

General 2014/15 maintenance costs for sporting facilities associated with junior sport on Shire grounds can be seen below:

Acct	Description	Total Cost	Junior sport proportion (37%)
117211	BRAC fields maintenance	\$259,969	\$96,188
113033	Haynes Oval field maintenance (50% cost offset by BHS contribution)	\$166,092	\$61,454
117082	BRAC dry reactive (maintenance on courts/stadium etc)	\$31,190	\$11,540
Total		\$457,251	\$169,182

Capital Upgrades

Capital projects undertaken at sporting facilities associated with junior sport over the last three years are as follows:

Year	Description	Cost
2014	BRAC Tennis court resurfacing (117318)	\$106,806
2015	Haynes Oval sport field lighting (113620)	\$574,909
2016	BRAC Hard court light globe replacement (117059)	\$28,000

Upcoming capital projects to facilities include:

Year	Description	Cost
2016	BRAC aquatic upgrade (117132)	\$3,200,000
2016	BRAC multi sport court resurfacing (117316)	\$270,000

RISK

The risks that Council will need to consider should junior sport fees be waived include the following:

Option	Risk	Risk Rating
1 Waive junior fees for venue hire commencing in the 2016/17 financial year.	BRAC will not receive approx \$84,515 in income during a financial year when another major source of revenue is closed (aquatic).	Extreme
	Reduced income will mean larger operational deficit, possibly contributing to a rise in Shire rates.	High
	Clubs not utilising Shire facilities may face difficulties in remaining competitive when attracting participants due to the need to continue to charge higher participation fees to cover external venue hire costs (eg. Pearl Coast Gymnastics).	Medium
2 Reduce junior sporting venue hire fees to levels charged in the 2014/15 financial year	Reduced income will mean larger operational deficit, possibly contributing to a rise in Shire rates.	Low
	Clubs not utilising Shire facilities may face difficulties in remaining competitive when attracting participants due to the need to continue to charge higher participation fees to cover external venue hire costs (eg. Pearl Coast Gymnastics).	Medium
3 Maintain the current level of venue hire for junior sport as per the proposed 2016/17 fees and charges schedule.	Venue charges may make it difficult for new sports/clubs to develop and become viable as they start with low participant numbers at little income.	Low

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

Participation in recreational and leisure activity

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Responsible resource allocation

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION:

That Council:

1. *Recognises the social and economic benefits of junior sport in Broome.*
2. *Requests the Chief Executive Officer to adjust the proposed 2016/17 Fees and Charges Schedule to reflect 2014/15 levels for venue hire for junior sporting activities.*
3. *Requests the Chief Executive Officer to encourage junior sport clubs to liaise with the Shire's Club Development Officer to access funding options through the WA Department of Sport and Recreation and other funding sources for participation and development.*

COUNCIL RESOLUTION:

Moved: Cr H Tracey

Seconded: Cr R Johnston

COUNCIL MOTION

That Council:

1. ***In recognition of the social and economic benefits of junior sport in Broome, agrees to waive venue hire fees for junior sporting activities;***
2. ***Notes that this will result in a reduction of approximately \$85,000 per annum in venue hire fees;***
3. ***Requests the Chief Executive Officer to;***
 - (a) Adjust the proposed 2016/17 Fees and Charges Schedule accordingly; and***
 - (b) Reflect this change in the Draft 2016/17 Budget for Council's consideration.***

▪ **CARRIED 5/2**

Reason: To promote and facilitate the participation of young people in sporting activities in Broome.

Attachments

Nil

The Chairperson advised that a revised report recommendation had been circulated prior to the meeting.

9.4.5 TENDER 16/05 MULCHING OF GREEN WASTE

LOCATION/ADDRESS:	N/A
APPLICANT:	N/A
FILE:	16/05
AUTHOR:	Waste Coordinator
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Infrastructure
DISCLOSURE OF INTEREST:	NIL
DATE OF REPORT:	11 May 2016

SUMMARY: This report considers Tenders received for the Mulching of Green Waste at the Buckleys Road Waste Management Facility for the Shire of Broome, and seeks adoption of the recommendation contained in the confidential tender evaluation report.

BACKGROUND

Previous Considerations

OMC 21 March 2007	Item 9.4.4
OMC 16 February 2012	Item 9.4.7
OMC 26 March 2015	Item 9.4.6

The Shire of Broome accepts separated raw green waste at the Buckleys Road Waste Management Facility. The raw green waste is transferred to the Reuse and Recycling Facility at Lot 400 Buckleys Road where it is stored in windrows ready to be mulched. The mulched green waste is provided to customers free of charge for reuse.

The Shire of Broome contracts out the mulching of raw green waste at the Waste Management Facility to a specialist mulching contractor. The Shire currently has a mulching contract with Timberden Pty Ltd. The current Contract requires the Contractor to mulch all raw green waste at a frequency of less than every three months. This ensures the stockpiles of raw green waste are mulched prior to the storage area being fully utilised and prior to any non compliance with the Department of Environment Regulation (DER) licence conditions.

COMMENT

The Tender was advertised in the Saturday West Australian on 09 April 2016. The closing date for Tender submissions was 2:00pm, Thursday 28 April 2016.

The proposed Contract is a schedule of rates contract for the mulching of raw green waste and is for a 24 month period from 1 July 2016 to 30 June 2018. There are no options within the Contract to extend the Contract beyond 30 June 2018.

All payment under the Contract is calculated on the measured volume of the mulched green waste rounded up to the nearest whole cubic metre. Measurement is made by a surveyor within seven days of the completion of mulching.

One Tender for the Mulching of Green Waste was received. The Tender was evaluated in accordance with the Request For Tender's compliance and qualitative criteria. A Tender recommendation is provided in the confidential Tender Assessment Report.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Local Government Act 1995

Section 1.8 Statewide public notice

Where under this Act Statewide public notice of a matter is required to be given, section 1.7 applies except that the newspaper referred to in section 1.7(1)(a) is required to circulate generally throughout the State.

Section 3.57 Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply good or services.*
- (2) Regulations may make provision about tenders*

Local Government (Functions and General) Regulations 1996

Section 5 R14 Requirements for publicly inviting tenders

- (1) When regulation 11(1), 12 or 13 requires tenders to be publicly invited, Statewide public notice of the invitation is to be given.*
- (2) If the CEO has, under regulation 23(4), prepared a list of acceptable tenderers, instead of giving Statewide public notice the CEO is required to give notice of the invitation to each acceptable tenderer listed.*
- (2a) If a local government —*
 - (a) is required to invite a tender; or*
 - (b) not being required to invite a tender, decides to invite a tender, the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.*
- (3) The notice, whether under subregulation (1) or (2), is required to include —*
 - (a) a brief description of the goods or services required;*
 - (b) particulars identifying a person from whom more detailed information as to may be obtained;*
 - (c) information as to where and how tenders may be submitted; and*
 - (d) the date and time after which tenders cannot be submitted.*
- (4) In subregulation (3)(b) a reference to detailed information includes a reference to —*
 - (a) such information as the local government decides should be disclosed to those interested in submitting a tender;*
 - (b) detailed specifications of the goods or services required;*
 - (c) the criteria for deciding which tender should be accepted;*
 - (d) whether or not the local government has decided to submit a tender; and*

- (e) *whether or not the CEO has decided to allow tenders to be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.*
- (5) *After a notice has been given under subregulation (1) or (2), a local government may vary the information referred to in subregulation (3) by taking reasonable steps to give each person who has sought copies of the tender documents or each acceptable tenderer, as the case may be, notice of the variation.*

[Regulation 14 amended in Gazette 29 Jun 2001 p. 3130.]

Section 5 R15 Minimum time to be allowed for submitting tenders

- (1) *If the notice is published in the newspaper as part of giving Statewide public notice, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is first published in the newspaper as part of giving Statewide public notice.*
- (2) *If the notice is given to a person listed as an acceptable tenderer, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is given.*

POLICY IMPLICATIONS

The Tender process was managed in accordance with Policy 2.3.7 Purchasing as the value of the Tender is above \$150,000.

FINANCIAL IMPLICATIONS

The proposed budget for operating expenditure in relation to the handling of raw green waste and mulching for 2016/2017 is \$327,000.

Should the recommendation contained within the confidential Tender Assessment Report be adopted the proposed 2016/2017 budget would be sufficient.

RISK

The Buckleys Road Waste Management Facility is nearing the end of its operational life. To maximise the operational life of this facility whilst the Shire gain approvals for the Regional Resource Recovery Park (RRRP) it is imperative that the Shire maximise the diversion of waste from landfill.

It is 'unlikely' that the Shire will fully utilise the Buckleys Road Waste Management Facility's landfill prior to the RRRP becoming operational however the consequences should this occur are 'catastrophic'. This is an 'Extreme' risk to the Shire which requires immediate mitigation. To mitigate the risk the Shire should continue to divert waste from landfill. The mulching of green waste is one of the considerations that contribute to this mitigation strategy.

The Buckleys Road Waste Management Facility and the Reuse and Recycling Facility both operate under DER site licences. Within the site licences there are compliance criteria for the way the raw green waste and mulched green waste is stored. To achieve compliance with the licence criteria the Shire of Broome need to ensure it has a planned and sustainable approach for handling raw green waste and mulched green waste. By establishing a Contract for the mulching of green waste the Shire can ensure the green waste is processed in a timely manner to achieve compliance.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Affordable services and initiatives to satisfy community need

A healthy and safe environment

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

A unique natural environment for the benefit and enjoyment of current and future generations

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Sustainable and integrated strategic and operational plans

Responsible resource allocation

Improved systems, processes and compliance

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION:

That Council:

1. *Endorses the recommendations as contained in the confidential tender assessment report for Contract 16/05 Mulching of Green Waste for the period 1 July 2016 to 30 June 2018;*

COUNCIL RESOLUTION: (REVISED REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr D Male

That Council:

1. ***Endorses the recommendations as contained in the confidential tender assessment report for Contract 16/05 Mulching of Green Waste for the period 1 July 2016 to 30 June 2018;***
2. ***Notes details of the successful tender will be available for public information in the Tender Register in accordance with regulation 17 of the Local Government (Functions and General) Regulations 1996; and***

- | |
|--|
| <p>3. Authorises the Shire President and Chief Executive Officer to execute contract documents.</p> |
|--|

CARRIED UNANIMOUSLY 7/0

Attachments

1. 16/05 Tender Assessment Report (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)(c) as it contains "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting".

9.4.6 MONTHLY PAYMENT LISTING - APRIL 2016

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	FRE02
AUTHOR:	Finance Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Corporate Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	12 May 2016

SUMMARY: This report recommends that Council adopts the list of payments made under delegated authority, as per the attachment to this report for the month of April 2016.

BACKGROUND*Previous Considerations*

Nil

COMMENT

The Chief Executive Officer (CEO) has delegated authority to make payments from the Municipal and Trust funds in accordance with budget allocations.

The Shire provides payments to suppliers by either Electronic Funds Transfer (EFT), cheque, credit card or direct debit.

Attached is a list of all payments processed under delegated authority during the month of April 2016.

CONSULTATION

Nil

STATUTORY ENVIRONMENT***Local Government (Financial Management) Regulations 1996*****13.** Lists of accounts

- (1) *If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared —*
- (a) *the payee's name;*
 - (b) *the amount of the payment;*
 - (c) *the date of the payment; and*
 - (d) *sufficient information to identify the transaction.*
- (3) *A list prepared under sub regulation (1) is to be —*

- (a) presented to the council at the next ordinary meeting of the council after the list is prepared; and
- (b) recorded in the minutes of that meeting.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

List of payments made in accordance with budget and delegated authority.

RISK

The risk of Council not adopting this report is extreme as this will result in non-compliance with Regulation 13 of the *Local Government (Financial Management) Regulations 1996*. The likelihood of this ever occurring is rare due to the CEO's implementation of procedures to ensure payment details are disclosed to Council in a timely manner, as well as Procurement & Purchasing policies which ensure these payments are made in accordance with budget and delegated authority and comply with *Local Government (Financial Management) Regulations 1996*.

STRATEGIC IMPLICATIONS

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

An organisational culture that strives for service excellence

Responsible resource allocation

Effective community engagement

Improved systems, processes and compliance

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION: **(REPORT RECOMMENDATION)**

Moved: Cr H Tracey

Seconded: Cr D Male

That Council records the accounts as paid under delegated authority for April 2016, totalling \$2,765,598.03 as attached, covering:

- **EFT Vouchers 35005 – 35421 totalling \$2,336,668.94;**
- **Municipal Cheque Vouchers 57398– 57403 totalling \$3,810.60;**
- **Trust Cheque Voucher 3413- 3414 totalling \$251,558.60; and**
- **Municipal Direct Debits DD20057.1– DD20128.24 totalling \$173,559.89.**

CARRIED UNANIMOUSLY 7/0

Attachments

1. PAYMENT LISTING APRIL 2016

The Chairperson advised that a revised report recommendation had been circulated prior to the meeting.

9.4.7 SHIRE OF BROOME DIRECTORY TENDER 2017 AND 2018

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	14/09
AUTHOR:	Media and Promotions Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	12 May 2016

SUMMARY: The Shire of Broome Directory is distributed free of charge each year to residents and businesses, and is available online. It contains residential, business and community contact listings, information on Council and Shire of Broome services, emergency information, tide charts, bus timetables and more.

In November 2015 Council authorised the WA Local Government Association (WALGA) Procurement Consultancy Service to manage the tender process for the production, printing and distribution of the 2017 Shire of Broome Directory with an option for 2018, including independently evaluating tenders and recommending a successful tender for Council's consideration.

A copy of the confidential tender evaluation report with a recommended tenderer is attached for Council's consideration.

BACKGROUND

Previous Considerations

OMC 14 February 2008 – item 9.1.4
 SMC 19 June 2008 – item 9.1.2
 OMC 3 July 2008 – item 12.1
 OMC 26 August 2008 – item 12.2
 OMC 16 April 2009 – item 9.1.1
 OMC 14 May 2009 – item 9.1.2
 OMC 4 August 2009 – item 9.1.2
 OMC 15 April 2010 – item 9.1.1
 OMC 2 August 2010 – item 9.1.1
 OMC 14 April 2011 – item 9.1.1
 OMC 29 September 2011 – item 9.1.1
 OMC 19 April 2012 – item 9.4.7
 OMC 16 May 2013 – item 9.4.5
 OMC 24 April 2014 – item 9.4.5
 OMC 30 April 2015 – item 9.4.4
 OMC 26 November 2015 – item 9.4.8

In 2008 Council first endorsed the WALGA Procurement Consultancy Service (formerly known as the WALGA Tender Bureau Service) to independently write, advertise and evaluate the tender for the Shire of Broome Directory, and required that Community Benefit be included as a criteria.

The decision to put the contract for production of the Directory out to tender, and to have this process managed independently by WALGA, was made to ensure that local operators were provided an opportunity to compete for the contract through a process that was fair, independent and transparent.

This arrangement has continued and the Shire of Broome Directory has subsequently been put out to tender in 2008, 2010, 2012 and 2014 and on each of these occasions Market Creations Pty Ltd has been the successful tenderer. The 2016 Shire of Broome Directory is now in circulation under the final year of the current contract.

In November 2015 Council authorised the WALGA Procurement Consultancy Service to manage the tender process for the production, printing and distribution of the 2017 Shire of Broome Directory with an option for 2018, including independently evaluating tenders and recommending a successful tender for Council's consideration.

The tender was advertised in The West Australian newspaper and on the WALGA TenderLink e-Tendering Portal on 9 March 2016, and in the Broome Advertiser on 17 March 2016.

COMMENT

The WALGA Procurement Consultancy Service has evaluated tenders received and recommended a successful tenderer for the 2017 Shire of Broome Directory with an option for 2018, as per the confidential attachment.

CONSULTATION

WALGA Procurement Consultancy Service.

STATUTORY ENVIRONMENT

Local Government Act 1995

1.8 Statewide public notice

Where under this Act Statewide public notice of a matter is required to be given, section 1.7 applies except that the newspaper referred to in section 1.7(1(a)) is required to circulate generally throughout the State.

3.57 Tenders for providing goods or services

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply good or services.*
- (2) *Regulations may make provision about tenders*

Local Government (Functions and General) Regulations 1996

5 R14 and R15

14. Requirements for publicly inviting tenders

- (1) When regulation 11(1), 12 or 13 requires tenders to be publicly invited, Statewide public notice of the invitation is to be given.
- (2) If the CEO has, under regulation 23(4), prepared a list of acceptable tenderers, instead of giving Statewide public notice the CEO is required to give notice of the invitation to each acceptable tenderer listed.
- (2a) If a local government —
 - (a) is required to invite a tender; or
 - (b) not being required to invite a tender, decides to invite a tender, the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.
- (3) The notice, whether under subregulation (1) or (2), is required to include —
 - (a) a brief description of the goods or services required;
 - (b) particulars identifying a person from whom more detailed information as to tendering may be obtained;
 - (c) information as to where and how tenders may be submitted; and
 - (d) the date and time after which tenders cannot be submitted.
- (4) In subregulation (3)(b) a reference to detailed information includes a reference to —
 - (a) such information as the local government decides should be disclosed to those interested in submitting a tender;
 - (b) detailed specifications of the goods or services required;
 - (c) the criteria for deciding which tender should be accepted;
 - (d) whether or not the local government has decided to submit a tender; and
 - (e) whether or not the CEO has decided to allow tenders to be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.
- (5) After a notice has been given under subregulation (1) or (2), a local government may vary the information referred to in subregulation (3) by taking reasonable steps to give each person who has sought copies of the tender documents or each acceptable tenderer, as the case may be, notice of the variation.

[Regulation 14 amended in Gazette 29 Jun 2001 p. 3130.]

15. Minimum time to be allowed for submitting tenders

- (1) If the notice is published in the newspaper as part of giving Statewide public notice, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is first published in the newspaper as part of giving Statewide public notice.
- (2) If the notice is given to a person listed as an acceptable tenderer, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is given.

POLICY IMPLICATIONS

Local Price Preference Policy 1.2.9

FINANCIAL IMPLICATIONS

The Shire of Broome has historically been paid a Production Fee by the successful tenderer, and all costs associated with the production, printing and distribution of the Directory will be met by the tenderer.

The fee charged by the WALGA Procurement Consultancy Service to manage the tender process was \$6783.75.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Effective communication

Affordable services and initiatives to satisfy community need

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Effective community engagement

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION:

That Council:

Adopts the WA Local Government Association Procurement Consultancy Service recommendation in awarding the tender for production of the 2017 Shire of Broome Directory with an option for 2018.

COUNCIL RESOLUTION: **(REVISED REPORT RECOMMENDATION)**

Moved: Cr C Mitchell

Seconded: Cr W Fryer

That Council:

- 1. Adopts the WA Local Government Association Procurement Consultancy Service recommendation in awarding the tender for production of the 2017 Shire of Broome Directory with an option for 2018.**
- 2. Notes details of the successful tenderer will be available for public information in the Tender Register in accordance with Regulation 17 of the Local Government (Functions and General) Regulations 1996.**
- 3. Authorises the Shire President and Chief Executive Officer to engross the Contract Documents.**

CARRIED UNANIMOUSLY 7/0

Attachments

1. Production of the Shire of Broome Directory Recommendation Report (*Confidential to Councillors and Directors Only*)

This attachment is confidential in accordance with Section 5.23(2) of the Local Government Act 1995 section 5.23(2)((e)(ii)) as it contains "a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government", and section 5.23(2)(c) as it contains "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting".

9.4.8 STATE ADMINISTRATIVE TRIBUNAL MATTER – NYAMBA BURU YAWURU LTD V SHIRE OF BROOME

This item was considered under Section 14, Matters Behind Closed Doors.

10.

**REPORTS
OF
COMMITTEES**

10.1 MINUTES OF THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE 18 FEBRUARY 2016

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	EDP002
AUTHOR:	Administration Officer - Community and Economic Development
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Acting Director Community & Economic Development
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	9 May 2016

SUMMARY: This report presents the minutes and associated recommendations of the Economic Development Advisory Committee meeting held 18 February 2016 for Council's consideration.

BACKGROUNDPrevious Considerations

As outlined in the attached minutes.

COMMENT

The minutes of the EDAC meeting held 18 February 2016 are attached. At the meeting, the EDAC considered the following items;

Item 5.1 Broome as a Regional Growth Centre – Update, Community/Stakeholder Engagement and economic cluster analysis

This paper presented the EDAC with an overview of the development of the Broome Growth Plan, including the approval of the project plan and the regional economic cluster analysis that Pracsys has been commissioned by the Department of Regional Development to undertake.

A workshop was facilitated by Pracsys, out of standing orders, which focused on the economic development clusters for Broome and the region as part of the Growth Plan. The EDAC provided input into where members saw economic growth opportunities and constraints within Broome (table showing EDAC contribution notes attached).

CONSULTATION

As outlined in the Minutes attached.

STATUTORY ENVIRONMENT

As outlined in the Minutes attached.

POLICY IMPLICATIONS

As outlined in the Minutes attached.

FINANCIAL IMPLICATIONS

As outlined in the Minutes attached.

RISK

Nil

STRATEGIC IMPLICATIONS**Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:**

Effective communication

Affordable services and initiatives to satisfy community need

Accessible and safe community spaces

Participation in recreational and leisure activity

A healthy and safe environment

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Realistic and sustainable land use strategies for the Shire within state and national frameworks and in consultation with the community

A preserved, unique and significant historical and cultural heritage of Broome

Retention and expansion of Broome's iconic tourism assets and reputation

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Affordable land for residential, industrial, commercial and community use

Key economic development strategies for the Shire which are aligned to regional outcomes working through recognised planning and development groups/committees

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

Sustainable and integrated strategic and operational plans

Effective community engagement

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr B Rudeforth

Seconded: Cr C Mitchell

That Council receives the minutes of the Economic Development Advisory Committee held on the 18 February 2016 and endorses the recommendation put forward by the Economic Development Advisory Committee (as contained in the minutes attached).

CARRIED UNANIMOUSLY 7/0

Attachments

1. Minutes of the EDAC Meeting, 18 February 2016
2. Final Project Plan
3. Approval of Growth Plan Correspondence
4. Regional Cluster Analysis Scope
5. Pracsys Workshop Notes - EDAC Contribution

10.2 ACCESS AND INCLUSION ADVISORY COMMITTEE MEETING MINUTES 3 MAY 2016

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	COS09
AUTHOR:	Acting Manager Community Development
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Acting Director Community & Economic Development
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	10 May 2016

SUMMARY: This report presents the Minutes of the Access and Inclusion Advisory Committee Meeting held 3 May 2016 for Council's consideration.

BACKGROUND

The Access and Inclusion Advisory Committee (AIAC) meets quarterly to advise Council on matters of access and inclusion and to oversee the development, implementation and review of the Shire's Disability Access and Inclusion Plan.

Previous Considerations

As outlined in the attached minutes.

COMMENT

The AIAC discussed one item at the meeting held 3 May 2016:

5.1 Disability Access and Inclusion Plan Progress Report 2015-16

Under the *Western Australian Disability Services Act 1993 (as amended in 2004)*, Local Governments are required to develop and implement a Disability Access and Inclusion Plan (DAIP) that identifies barriers to access and proposes solutions to ensure that people with disabilities have equality of access to services and facilities. The Shire of Broome DAIP is reviewed annually as required under the *Western Australian Disability Services Act 1993 (as amended in 2004)*. This report presented the 2015/16 DAIP Progress Report to the Committee for its consideration.

The Committee recommends that Council endorses the DAIP Progress Report for submission to Disability Services Commission.

In addition, the Committee recommends that Council requests the Chief Executive Officer to develop information regarding access and inclusion facilities available for public hire and/or access for inclusion on the Shire website. This was identified through the DAIP progress report as an area requiring action.

CONSULTATION

Access and inclusion Advisory Committee

STATUTORY ENVIRONMENT

Local Government Act 1995

WA Disability Services Act 1993 (as amended 2004)

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The implementation of the Disability Access and Inclusion Plan is integrated into the Shire's programs and services as part of normal operating procedures and budgets.

RISK

Nil

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Accessible and safe community spaces.

Participation in recreational activity.

A healthy and safe environment.

Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:

Best practice asset management to optimise the Shire's infrastructure whilst minimising life cycle costs.

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure.

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

An organisational culture that strives for service excellence.

Sustainable and integrated strategic and operational plans.

Responsible resource allocation.

Effective community engagement.

Improved systems, processes and compliance.

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION:
(REPORT RECOMMENDATION)

Moved: Cr C Mitchell

Seconded: Cr W Fryer

That Council receives the Minutes of the Access and Inclusion Advisory Committee (AIAC) meeting held on 3 May 2016 and endorses the recommendations of the Committee (as contained in the Minutes attached) enbloc.

CARRIED UNANIMOUSLY 7/0

Attachments

1. AIAC Minutes 3 May 2016

The Chairperson advised that an amended Attachment 2 was circulated to Councillors prior to the meeting. This has been corrected for the purpose of the Minutes.

10.3 MINUTES OF THE AUDIT COMMITTEE MEETING HELD 10 MAY 2016

LOCATION/ADDRESS:	Nil
APPLICANT:	Nil
FILE:	FRE02, ADM03
AUTHOR:	Manager Financial Services
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Corporate Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	11 May 2016

SUMMARY: This report presents to Council the outcomes of the Audit Committee's meeting held 10 May 2016, and seeks consideration of adoption of the recommendations pertaining to the Quarter 3 Finance and Costing Review (FACR), Audit Regulation 17 Improvement Plan Biannual Progress Report, and the 4 yearly Financial Management Review Report.

BACKGROUND

Previous Considerations

OMC	24 May 2005	Item 9.4.5
OMC	25 September 2008	Item 9.4.3
OMC	4 October 2012	Item 10.1
OMC	28 August 2014	Item 10.2
SMC	27 June 2014	Item 9.4.6
OMC	27 November 2014	Item 10.3
AMC	12 May 2015	Item 5.2
OMC	2 June 2015	Item 10.1
AMC	1 December 2015	Item 5.2

Quarter 3 Finance and Costing Review

Between 1 January and 31 March, a local government is to carry out a review of its annual budget for that year and this is to be submitted to the Council within 30 days of completion. The terms of reference of the Audit Committee include a review of the half yearly financial results compared to budget from 1 July 2015 to 31 December 2015. This process was completed as part of the Quarter 2 Finance and Costing Review (FACR) and presented to the Audit Committee for consideration on 15 February 2016. Subsequently, a number of recommendations from the Audit Committee were presented to Council for consideration at the Ordinary Meeting of Council on 25 February 2016.

The Quarter 3 FACR process commenced on 19 April 2016 and Council's Executive Management Group considered the results on 5 May 2016. The results of the FACR were presented for the consideration of the Audit Committee on 10 May 2016 and the recommendations of the Committee are now presented for Council consideration.

Audit Regulation 17 Improvement Plan Progress Report

The functions of local government Audit Committees have been expanded under amendments gazetted in 2013 to the *Local Government (Audit) Regulations 1996* (the Regulations) to include reviewing the appropriateness and effectiveness of a local government's systems and procedures in regard to risk management, internal control and legislative compliance.

Specifically, Audit Regulation 17 (Audit Reg 17) of the Regulations requires the Chief Executive Officer (CEO) to conduct a review and report the results to the Audit Committee on the effectiveness of the systems and procedures regarding risk management, internal control and legislative compliance. The Department's *Audit in Local Government Guideline No. 9* advises that the review can be undertaken either on an internal or external audit basis.

At the Ordinary Meeting of Council (OMC) held 28 August 2014, Council adopted the Audit Committee's recommendation to engage an external auditor to comply with the requirements of the Regulations. UHY Haines Norton (UHYHN) was appointed as the audit firm to conduct the review.

The inaugural CEO's report on the biennial Regulation 17 Review was presented to Council at the Ordinary Meeting of Council held 27 November 2014. The requirement to report biannually to the Audit Committee on the progress of the improvement plan is one of the actions listed within the plan.

The Shire of Broome appointed an external auditor to conduct a third party review of organisational practices in accordance with updated legislation contained within Regulation 17 of the Regulations.

The 'Regulation 17 Review' audit produced a comprehensive "Improvement Plan" sanctioned into three main compliance areas;

- Risk Management (RM)
- Legislative Compliance (LC)
- Internal Controls (IC)

A cumulative total of fifty-eight framework components and action items were identified to increase procedural and system effectiveness in accordance with legislative requirements.

The "Improvement Plan" provides the organisation with a comprehensive overview of business practices and continuous improvement methodologies that work towards increasing best practice standards across all Shire Directorates.

Following the "Regulation 17 Review" the Shire established an internal Technical Advisory Group (TAG). The TAG performs a vital role in the Shire's ability to fulfil its governance and responsibilities in relation to reporting, internal control and structure, risk management systems, legislative requirements and ethics.

The TAG consists of key Shire personnel to appropriately oversee strategic and operational business requirements contained within the "Regulation 17 Review". The intent for this group is to effectively communicate and implement objectives throughout the organisation.

The TAG meets monthly to review and update specific actions contained in the Improvement Plan. Membership of the TAG is comprised of the following positions:

Director Corporate Services (Chair)
 Manager Governance
 Manager Financial Services
 Manager Human Resources
 Manager Health Emergency & Rangers
 Manager Information Services
 Manager Community Development
 Manager Operations Engineering
 Waste Coordinator

The TAG intends to retain a decentralised risk structure in order to ensure that should turnover arise within any one role the organisation's compliance function and reporting is not adversely affected and instead drives business continuity.

As stated in the Terms of Reference, the primary goal of the TAG is to implement and maintain the appropriateness and effectiveness of the Shire of Broome's systems and procedures in relation to risk management, legislative compliance and internal controls. The TAG will:

- Progress the implementation of risk management across the organisation and to monitor risk management practices.
- Maintain internal controls across the organisation and monitor adherence to internal controls practices.
- Progress the implementation of the legislative compliance framework.

"Improvement Plan" action items contained within the "Regulation 17 Review" are allocated to members within the TAG committee and prioritised in accordance with organisational need and capacity.

There are a number of actions that are completed or in progress with full details contained in the attachment.

The following action items have been finalised and reported to Council in accordance with the "Regulation 17 Review".

No	Framework Component Improvements
RM1.1	Agenda template for Council agenda
RM1.2	Adopted policy work safety health
RM 201	Risk matrix amended in accordance with ISO 31000 (international best practice standards)
RM 3.1	Risk management working group (Audit Reg 17 TAG) has been established and monthly meetings initiated
RM3.2	Risk agenda topic included on weekly EMG agenda
RM3.3	Records of inductions maintained on personnel files
RM 3.3	Completed organisational training and development in risk management principles
RM3.4	OSH committee risk based assessment business operating procedure
RM3.6	Adopted local emergency management plan
RM3.7	Adopted local recovery plan
RM3.8	Completed records disaster management plan
RM 3.9	Hazard and accident reporting business operating procedure

	updated
RM3.14	Events risk assessment undertaken in risk management plan for large scale events
RM 3.16	Workforce plan version 2.0 redeveloped to include Risk Management
LC1.2	Completed Council policy for records management
LC 2.4	Legislative compliance working group (Audit Reg 17 TAG) has been established and monthly meetings initiated
IC 1.1	Adopted policy internal control
LC1.6	Council policy materiality in financial reporting adopted
LC1.7	Council policy for Investment of surplus funds adopted
IC2.2	Internal controls working group (Audit Reg 17 TAG) has been established and monthly meetings initiated
IC 6.1	BRAC receipting procedures documented
IC6.2	Civic centre receipting included in staff manual for stock take
IC6.3	Waste Facility banking procedures
IC6.5	Waste Facility debtor invoice captured in system
IC6.7	Separation of duties of debtors and creditors

4 Yearly Financial Management Review Report

The *Local Government (Financial Management) Regulations 1996* prescribe the requirement for an extensive review of a local government's financial management systems and processes. It requires the Chief Executive Officer (CEO) to undertake reviews of the appropriateness and effectiveness of the financial management systems and procedures of the local government regularly (and not less than once in every 4 financial years) and report to the local government the results of those reviews. In this regard the CEO has engaged auditor David Tomasi of Moore Stephens, to conduct a comprehensive review.

The objective of the engagement was to test the financial management system of the Shire of Broome and receive a report on the appropriateness and effectiveness of the control environment within, as required by regulation 5(2)(c).

This report summarises the factual findings and observations of the audit examination and includes recommendations from the auditors that are considered appropriate for the Shire to improve any weaknesses in systems and controls.

COMMENT

Quarter 3 Finance and Costing Review

Council endorsed the results of the 1st Quarter FACR and adopted a \$102,967 surplus position, after offsetting an original budgeted deficit of \$58,453.

Following an extensive mid-year review process of income and expenditure for the 2nd Quarter FACR, an estimated deficit of \$133,295 was disclosed for the quarter. Combined with a proposed transfer to reserve of \$7,850 from identified organisational savings and all previous budget amendments, the result of the Quarter 2 FACR predicted a year end deficit position of \$38,178.

Following the conclusion of the Quarter 3 FACR, \$797,613 of organisational savings were identified through careful analysis, while following a consistent approach, and it is proposed that the majority of these funds be transferred to Reserve to assist in offsetting some of the cost of the Shire's key initiatives identified in the Long Term Financial Plan.

With this in mind, it is proposed that \$704,459 be transferred to reserve, while \$93,154 of organisational savings remain in the budget to offset the predicted deficit. If the proposed Organisational Savings are accepted and transferred to reserve as per officer recommendation, the final result of the Quarter 3 FACR will be a balanced budget

A comprehensive list of accounts has been included for perusal by the committee and summarised by Directorate, with comparison to FACR Q3 as follows:

	2015/16 Adopted Budget Deficit (Income)/Expense	Year-to-Date Adopted Budget Amendments (Income)/Expense	FACR Q3 (Income)/Expense	YTD Impact (Income)/Expense Excluding Organisational Savings
Executive - Total	0	50,000	(40,000)	10,000
Business Enterprise and Community Development - Total	0	18,640	95,500	114,140
Corporate Services - Total	0	(2,754)	1,600	(1,154)
Development Services - Total	0	(25,000)	5,800	(19,200)
Engineering Services - Total	0	100,259	(3,124)	97,135
Council approved budget amendments and net impact of Organisation savings/Expenditure	58,453	(161,420)	(797,613)	(102,967)
	58,453*	(20,275)†	(742,637)	93,154

Audit Regulation 17 Improvement Plan Progress Report

The following items have been completed or under progress in accordance with the "Regulation 17 Review" from December 2015 to April 2016;

No.	Framework Components
RM 2.1	Draft risk management strategy and framework being re-developed
RM 3.9	Business Operating Procedure – Hazard, Accident and Incident Reporting completed
RM 3.10	Draft contractor management & contractor induction Business Operating Procedure, draft contractor management Toolkit, Draft Corporate Induction PowerPoint. Budget process includes organisational induction project brief.
RM 3.12	Developing Civic Centre Emergency Response and Evacuation Plan
RM 3.12	BRAC Emergency Response and Evacuation Plan - completed
RM 3.14	Events Toolkit being reviewed by Local Government Insurance Services and developing online applications
RM 3.17	Project Brief Risk Assessment Matrix included within 16/17 Budget Launch - completed
LC 1.1	Completed legislative compliance policy
IC 3.7	Links Training for BRAC and Civic Centre
IC 6.2	Draft Cash Handling Business Operating Procedure

This report recommends the review of the attached updated "Improvement Plan" as attached, prepared by the established Audit Regulation 17 Technical Advisory Group on the progress of the plan with amended timeframes and responsible officers, then report to

Council on the result of the Audit Committee's review, inclusive of any items or amendments for the CEO to action.

The Draft Legislative Compliance Policy and Audit Reg 17 Improvement Action Plan are attached to this report for review and notation by the Audit Committee.

4 Yearly Financial Management Review Report

The audit examination covered the period 1 July 2015 to 31 January 2016 and considered the following financial systems and procedures of Council:

- Bank Reconciliations
- Trust Funds
- Receipts and Receivables
- Rates
- Fees and Charges
- Purchases, Payments and Payables (Including Purchase Orders)
- Payroll
- Credit Card Procedures
- Fixed Assets (Including acquisition and disposal of property)
- Costs and Administration Overhead Allocations
- Minutes and Meetings
- Budget
- Financial Reports
- Registers (Including Annual & Primary Return)
- Delegations
- Audit Committee
- Insurance
- Storage of Documents/Record Keeping
- Plan for the Future
- Other Matters and General Compliance issues

The auditors did not necessarily examine compliance with provisions of the Local Government Act 1995 (the Act) or Local Government (Financial Management) Regulations 1996 (the Regulations), which were not financial in nature. That is, Parts 2, 4, 8 and 9 of the Act, some provisions of Parts 3 and 5 as well as most regulations (apart from the Financial Management Regulations), which did not impact on the areas examined above.

It should be noted that this examination was not an assurance engagement, audit or review in accordance with the Framework for Assurance Engagements, Australian Auditing Standards (ASAs), Auditing Standards on Review Engagements (ASREs) or Standards on Assurance Engagements (ASAEs).

The role of expressing assurance on balances rests with the external audit function and those procedures will be carried out separately from this examination with a view to forming an opinion on the financial report (consistent with the requirements of Australian Auditing Standards and the Act) subsequent to the conclusion of the current financial year (30 June 2016). The final external audit is scheduled to take place in September 2016.

The objective was to examine the appropriateness and effectiveness of the financial management systems and procedures of the Shire on behalf of the CEO, with the report intended solely to assist the CEO prepare their review for presentation to Council as required by r5 (2)(c). It is not intended to express or imply any assurance.

It has taken the form of an agreed upon procedures engagement in accordance with Australian Auditing Standards and is in addition to Moore Stephen's role as the Shire's external auditors.

The audit examination and this report should be considered on this basis.

In reporting the results of the review to the local government, section 3.0 of the report summarises exceptions and provides auditor recommendations to address the issues raised.

Officers have noted responses and actions against each recommendation in order to address the specific issues:

Area	Reference	Finding
Rates	4.4	
		<p>The rate notice or accompanying information did not include the information as follows:</p> <ul style="list-style-type: none"> Interim rates become payable after nine days of issue date instead of a minimum of thirty five days as required by Section 6.50 (2) of the Act. <p>Comment: To help ensure compliance with statutory provisions and to prevent unnecessary challenges, care should be taken to ensure the correct notice period is adhered to in the future.</p> <p>Management Response</p> <p>An investigation has confirmed that past standard practice within in the Synergy system was to manually input an interim notice due date of 35 days from the date of issue. Officers have determined that this was a one-off error where a date less than 35 days was entered. The system has since been upgraded where the due date is automatically generated at 35 days from the current day when the interim is processed. This will eliminate the possibility of a future reoccurrence.</p>
Purchases/Creditors	4.6	
		<p>Notwithstanding this, the following matter is brought to your attention:</p> <ul style="list-style-type: none"> Creditor reconciliations have not been performed since July 2015. <p>Comment: To help ensure the completeness and accuracy of subsidiary ledger, the general ledger should be reconciled to the subsidiary ledger as a matter of urgency. The reconciliation should then be performed on a regular basis (at least monthly). This reconciliation should be signed and dated by the preparer and should be independently reviewed with this review evidenced.</p> <p>Management Response</p> <p>The monthly creditors subsidiary ledger reconciliations were in a state of work in progress at the time of the audit review for the outstanding periods. The</p>

	<p>responsible officer had produced each monthly schedule and was in the process of investigating an imbalance, and was not able forward the monthly schedules for sign off in a reconciled state.</p> <p>As of the end of March 2016, the ledger has been reconciled and reconciliations are up to date. Officers identified a Synergy back end system error as the primary reconciling item which, once corrected by IT Vision, permitted the identification of other minor reconciling items that were also rectified.</p>
Salaries and Wages	4.7
	<p>Finding</p> <p>During our review of controls and procedures over payroll, the following matters were noted and raised for your consideration:</p> <ul style="list-style-type: none"> • In relation to the for fifty eight administration employees, the payroll software accrues a total of eighty hours per week plus an additional four hours of Rostered Days Off (RDOs). The Shires' working week is only seventy six hours. In order for the accumulation of RDOs to be correct, the Senior Payroll Officer manually adjusts the payroll. In noting this matter, we extended our review to Annual Leave and Long Service Leave accruals. We are satisfied the anomaly is limited to the accrual of RDOs only. <p>Comment: To help ensure the correct payments are made to employees without the need for management override/ adjustment, the software discrepancy should be fixed as a matter of priority.</p> <p>In raising this comment we acknowledge we have been advised by management that the IT department will be working towards correcting this discrepancy.</p> <ul style="list-style-type: none"> • There is inconsistency between some individual employment contracts and the latest Enterprise Bargaining Agreement (EBA). The inconsistency relates to circumstances where an employee receives RDOs irrespective of whether the employee works for the particular week in question. From our review and discussions, it appears all staff are paid in accordance with the respective agreements and it does not result in overpayment. <p>Comment: Notwithstanding this, to help ensure employment conditions and payments are consistently applied, the inconsistency should be investigated and, where possible, resolved.</p> <p>Management Response</p> <ul style="list-style-type: none"> • The manual adjustment to RDO accruals is reliant on the software development schedule of IT Vision, but

		<p>will be rectified once the system is upgraded.</p> <ul style="list-style-type: none"> • Management will review the requirement to summarise and duplicate employment conditions disclosed in EBAs within the employment letter/contract documentation provided to employees on commencement of employment.
Credit Card	4.8	<p>Finding</p> <p>A review of credit card transaction together with Council's credit card policy revealed:</p> <ul style="list-style-type: none"> • Credit card payments from August 2015 to December 2015 were not authorised or posted into the general ledger until January 2016. <p>Comment: To help ensure credit card transactions are bone fide and usage is in line with the Credit Card Policy, Credit Card expenditure should be regularly posted and reviewed (at least monthly). The documentation should be signed and dated by the preparer and should be independently reviewed. The review should also be evidenced.</p> <p>Management Response</p> <p>As at audit review date, the credit card process was up to date, however it is noted this had fallen behind due to staff turnover. The newly appointed Responsible Officer has since implemented and enforced the Business Operating Procedure to ensure the timely reconciliation of the monthly credit card statement. Improved processes have also been established between Finance and the Responsible Officer.</p>
FIXED ASSETS	4.9	<p>Finding</p> <p>However, the following matters were noted:</p> <ul style="list-style-type: none"> • The fixed asset register was not reconciled to the general ledger between July 2015 and January 2016 (inclusive). <p>Comment: To help ensure the completeness and accuracy of subsidiary ledgers, the general ledger should be reconciled to the respective subsidiary ledgers on a regular basis (at least quarterly). These reconciliations should be signed and dated by the preparer and should be independently reviewed with this review evidenced.</p> <ul style="list-style-type: none"> • From review of the Road Infrastructure asset register, it appears the determination of Remaining Useful Life (RUL) does not consider the condition assessments of each road in question. <p>The condition assessment of each road, particularly immediately following a revaluation, is critical in helping to determine the RUL and thus, the depreciation rate/charge.</p>

		<p>Comment: To help ensure depreciation is correctly calculated and road asset valuations are correctly represented, the RUL of all roads should be reassessed as a matter of urgency.</p> <p>Management Response</p> <ul style="list-style-type: none"> As part of a business process review conducted in late 2013, the fixed asset register reconciliation transitioned from a monthly acquisition/reconciliation basis to an annual basis. This was due to the number of Work in Progress projects that occur during the course of the 12 months and that capital expenditure should not be capitalised and commence depreciation until the asset has been fully commissioned. However, management has now implemented a monthly review of capital expenditure to ensure any mobile plant or other whole assets acquired are captured in the asset register for depreciation purposes. Officers are in the process of reviewing the RUL of specific areas of road network to reflect accuracy in conjunction with the update of the transport asset management plan.
Overhead Allocations	4.10	<p>Finding</p> <p>During our review of the allocation of overhead costs, we noted the Engineering component of Public Works Overhead (PWOH) Costs were under allocated by an amount of \$748,473.</p> <p>Whilst this has no effect on the net operating result, it may distort the true cost of individual jobs at a given point in time as the monthly Statement of Financial Activity would not reflect the correct allocations.</p> <p>Comments: To help ensure allocations are correctly allocated and controlled, the Shire's overhead allocations should be performed more regularly and charge out rates should be kept current. Whilst this has no effect on the net operating result, it may distort the true cost of individual jobs and specific expenditures at a given point in time.</p> <p>It also has the potential to distort expenditure in relation to grant funded projects. Given these projects form such a large part of the Shire's operations, it is important expenditure in relation to these is correctly reflected.</p> <p>Management Response</p> <p>Officers are now reviewing the level of overhead allocations monthly to ensure any over or under allocations are allocated in a timely manner to ensure accuracy in grant acquittal projects.</p>

CONSULTATION

Moore Stephens (WA) Pty Ltd
 Chamber of Commerce and Industry
 Stanton's International
 Local Government Insurance Services

STATUTORY ENVIRONMENT

Local Government (Financial Management) Regulation 1996

6.8. Expenditure from municipal fund not included in annual budget

- 1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —
 - a) is incurred in a financial year before the adoption of the annual budget by the local government;
 - b) is authorised in advance by resolution*; or
 - c) is authorised in advance by the mayor or president in an emergency.
- (1a in subsection (1) –
 "additional purpose means a purpose for which no expenditure estimate is included in the local government's annual budget.")

Local Government (Audit) Regulations 1996

16. Audit committee, functions of

An audit committee —

- (a) is to provide guidance and assistance to the local government —
 - (i) as to the carrying out of its functions in relation to audits carried out under Part 7 of the Act; and
 - (ii) as to the development of a process to be used to select and appoint a person to be an auditor;
 and
- (b) may provide guidance and assistance to the local government as to —
 - (i) matters to be audited; and
 - (ii) the scope of audits; and
 - (iii) its functions under Part 6 of the Act; and
 - (iv) the carrying out of its functions relating to other audits and other matters related to financial management; and
- (c) is to review a report given to it by the CEO under regulation 17(3) (the CEO's report) and is to —
 - (i) report to the council the results of that review; and
 - (ii) give a copy of the CEO's report to the council.

17. CEO to review certain systems and procedures

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

Local Government Act 1995**Section 6.5 Accounts and records**

The CEO has a duty —

- (a) to ensure that there are kept, in accordance with regulations, proper accounts and records of the transactions and affairs of the local government; and
- (b) to keep the accounts and records up to date and ready for inspection at any time by persons authorised to do so under this Act or another written law.

Local Government (Financial Management) Regulations 1996**Regulation 5. Financial management duties of the CEO**

- (1) Efficient systems and procedures are to be established by the CEO of a local government —
 - (a) for the proper collection of all money owing to the local government;
 - (b) for the safe custody and security of all money collected or held by the local government;
 - (c) for the proper maintenance and security of the financial records of the local government (whether maintained in written form or by electronic or other means or process);
 - (d) to ensure proper accounting for municipal or trust —
 - (i) revenue received or receivable;
 - (ii) expenses paid or payable; and
 - (iii) assets and liabilities;
 - (e) to ensure proper authorisation for the incurring of liabilities and the making of payments;
 - (f) for the maintenance of payroll, stock control and costing records; and
 - (g) to assist in the preparation of budgets, budget reviews, accounts and reports required by the Act or these regulations.
- (2) The CEO is to —
 - (a) ensure that the resources of the local government are effectively and efficiently managed;
 - (b) assist the council to undertake reviews of fees and charges regularly (and not less than once in every financial year); and
 - (c) undertake reviews of the appropriateness and effectiveness of the financial management systems and procedures of the local government regularly (and not less than once in every 4 financial years) and report to the local government the results of those reviews.

POLICY IMPLICATIONS

Materiality in Financial Reporting Policy 2.1.1

Investment of Surplus Funds Policy 2.1.2

FINANCIAL IMPLICATIONSQuarter 3 Finance and Costing Review

The net result of the Quarter 3 Finance and Costing Review estimates is a **balanced budget** if the proposed use of the organisational savings is accepted.

Proposed Reserve Transfers

Reserve	Amount	GL Account
Plant Reserve	\$200,000	142988
Road Reserve	\$200,000	121950
Building Reserve	\$200,000	147950
Public Open Space Reserve	\$104,459	111989

TOTAL \$704,459

Audit Regulation 17 Improvement Plan Progress Report

Investigation into costs associated with Contractor Management Induction has been input into the budget process for Council review and approval.

The Shire has received membership funds from self insurer Local Government Insurance Scheme which has been allocated as a genuine rollover to fund organisational Risk Initiatives.

4 Yearly Financial Management Review Report

The conduct of the four yearly financial management review, is a separate and additional cost to Council's audit which is conducted by the appointed auditors.

RISK

Quarter 3 Finance and Costing Review

The Finance and Costings Review (FACR) is performed quarterly to provide a rolling forecast of the final end-of-year position to 30 June. Of these reviews, the 2nd quarter is a statutory review requiring report to the Department of Local Government and Communities highlighting the Shire's forecast position against original budget. Contained within the report is information pertaining to the financial cost and delivery of strategic initiatives and key projects.

In order to mitigate the risk of budget over-runs or non-delivery of projects, the Chief Executive Officer has implemented internal control measures of which the FACR meetings form a part, along with regular Council and management reporting so as to monitor financial performance against budget estimates.

Materiality reporting thresholds have been established at half the adopted Council levels, which equate to \$5,000 for operating budget line items and \$10,000 for capital items, to highlight and alert management of instances in budget requiring attention prior to there being irreversible impacts.

It should also be noted that there is an inherent level of risk of potential material misstatement or fraudulent financial activity. The establishment of control measures through a series of efficient systems, policies and procedures, which fall under the responsibility of the CEO as laid out in the *Local Government Financial Management Regulation 1996* regulation 5, seek to mitigate the possibility of this occurring. These controls are set in place to provide daily, weekly and monthly checks to ensure that the integrity of the data provided is reasonably assured.

Audit Regulation 17 Improvement Plan Progress Report

The Shire's Risk profile has significantly improved with the above actions either complete or working towards completion, mitigating against internal and external risk factors inherent

to the operation of a local government. The ongoing dedication to Risk Management practices is essential in order to meet financial sustainability and governance of the Local Government Act.

The elimination of organisational risk is impossible however the purpose of Risk Management is to identify, analyse, treat and control risk factors to acceptable tolerance levels.

In accordance with the Local Government Associations 'Financial Sustainability' Information Paper No 22: *Understand Risk Management*, the benefits of a coordinated, systematic approach to risk management include;

- a) The Council and its Chief Executive Officer and senior management having a clear understanding of the key risks facing the Council;
- b) Meeting a Council's strategic objectives;
- c) Encouraging proactive management of strategies to identify and manage risks;
- d) promoting a positive risk management culture integrated across the Council structure;
- e) Ensuring a continuous improvement regime across the Council;
- f) Establishing an effective method for decision making and planning;
- g) Cost savings that are achieved for Council through the presence of an efficient controls environment; and
- h) The community having increased confidence in the Council's operations

Current organisational risk includes' the Technical Advisory Group being in the early stages of development when measured against the business lifecycle. The TAG is committed to overcoming this risk through continuous improvement strategies, including but not limited to;

- a) Appropriately documenting organisational knowledge through standard Shire protocols, such as policy, procedure and practices, and;
- b) The involvement and training of key stakeholders including Council, executives, management and staff; and
- c) Managing priorities within the existing organisational structure so far as practicable

4 Yearly Financial Management Review Report

The four year Financial Management Review is a risk mitigation process in itself and identifies areas for improvement. A management response has been provided for each issue raised and action will continue to address outstanding matters as a priority.

STRATEGIC IMPLICATIONS

Our People Goal – Foster a community environment that is accessible, affordable, inclusive, healthy and safe:

Effective communication

Affordable services and initiatives to satisfy community need

Our Prosperity Goal – Create the means to enable local jobs creation and lifestyle affordability for the current and future population:

Affordable and equitable services and infrastructure

Our Organisation Goal – Continually enhance the Shire's organisational capacity to service the needs of a growing community:

An organisational culture that strives for service excellence

Sustainable and integrated strategic and operational plans

Responsible resource allocation

VOTING REQUIREMENTS

Absolute Majority

(COMMITTEE RECOMMENDATION 1)

That Council:

1. *Receives the Quarter 3 Budget Review Report for the period ended 31 March 2016 as attached;*
2. *Adopts the operating and capital budget amendment recommendations for the period ended 30 June 2016 as attached;*
3. *Transfers \$200,000 of the organisational savings to the Plant reserve;*
4. *Transfers \$200,000 of the organisational savings to the Road reserve;*
5. *Transfers \$200,000 of the organisational savings to the Building reserve;*
6. *Transfers \$104,459 of the organisational savings to the Public Open Space reserve;*
7. *Notes a forecast balanced budget to 30 June 2016.*

(ABSOLUTE MAJORITY REQUIRED)

(COMMITTEE RECOMMENDATION 2)

That Council:

1. *Receives the Audit Regulation 17 progress report and attached updated Improvement Action Plan.*
2. *Adopts the proposed Policy as attached:*
 - a) *Draft Legislative Compliance Policy*
3. *Adopts the reviewed actions, timelines and responsible officers as detailed in the Improvement Action Plan.*

(COMMITTEE RECOMMENDATION 3)

That Council:

1. *Receives the Financial Management Review Report - April 2016 as attached; and*
2. *Notes the Management Responses and requests the Chief Executive to continue to progress finalisation of any outstanding matters.*

COUNCIL RESOLUTION:

Moved: Cr D Male

Seconded: Cr H Tracey

That Council adopts all three (3) Report Recommendations as outlined in this report En Bloc.

CARRIED UNANIMOUSLY BY ABSOLUTE MAJORITY 7/0

Attachments

1. UNCONFIRMED MINUTES OF AUDIT COMMITTEE MEETING HELD 10 MAY 2016
2. ATTACHMENTS TO UNCONFIRMED MINUTES OF AUDIT COMMITTEE MEETING HELD 10 MAY 2016

11. NOTICES OF MOTION

Nil

12. BUSINESS OF AN URGENT NATURE

Nil

13. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

14. MATTERS BEHIND CLOSED DOORS**COUNCIL RESOLUTION:****Moved: Cr C Mitchell****Seconded: Cr H Tracey*****That the meeting be closed to the public at 6.45pm*****CARRIED UNANIMOUSLY 7/0****Members of the Public departed the Chambers at 6.47pm.**

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

9.1.1 APPLICATION FOR A BEACH POLO EVENT IN 2018 AND 2019

LOCATION/ADDRESS:	Cable Beach			
APPLICANT:	Cable Beach Polo Pty Ltd			
FILE:	REE26, LEG307			
AUTHOR:	Acting Director	Community	&	Economic Development
CONTRIBUTOR/S:	Nil			
RESPONSIBLE OFFICER:	Acting Director	Community	&	Economic Development
DISCLOSURE OF INTEREST:	Nil			
DATE OF REPORT:	11 May 2016			

SUMMARY: This report informs Council of the cancellation of the 2016 Cable Beach Polo event and provides and update on the 2017 event. Officers also seek Council's consideration of an application from Cable Beach Polo Pty Ltd to hold a beach polo event in 2018 and 2019 respectively.

REPORT RECOMMENDATION:***That Council:***

- Authorises the Chief Executive Officer to issue a permit to Cable Beach Polo Pty Ltd (CBP) under the Local Government Property and Places Local Law 2012 for the staging of its 2018 and 2019 beach polo event at Cable Beach subject to:*

- a) Satisfactory completion of the submitted event application covering all regulatory compliances;
 - b) Compliance with all local laws, State and Federal Acts and Regulations related to the event activity.
 - c) Compliance with conditions set out within the Occasional Liquor Licence issued by the Department of Racing, Gaming and Liquor.
 - d) Approval from the Broome Port Authority and compliance with any conditions specified on the Broome Port Authority approval.
 - e) Appropriate advice and liaison being undertaken with neighbours of the proposed areas including Zanders, Broome Surf Lifesaving Club, Cable Beach Club Resort and Spa, Broome Turf Club, Yawuru Park Council, Department of Parks and Wildlife, Broome Police and Emergency Services.
 - f) All risk control measures, outlined within the Risk Management Plan submitted with the event application, are adhered to.
 - g) The applicant is to prepare a management strategy addressing noise, odour, prevention of crowding, prevention of unsightly infrastructure, waste, traffic conditions and environmental management, for approval by the Chief Executive Officer. The applicant is responsible to ensure that the approved management strategy is implemented in the staging of the event.
 - h) In preparing both its management strategy and its Risk Management Plan for the 2018 and 2019 events, the applicant is to undertake a written review of each measure contained in the preceding year's management strategy and Risk Management Plan, as well as any Shire comments concerning the same, with a view to adjusting management measures to achieve continuous improvement.
2. Authorises the Chief Executive Officer to approve vehicle access in respect of each year's event to the prohibitive area of Cable Beach for site mobilisation and deconstruction of the event.
 3. Delegates authority to the Chief Executive Officer to approve a Trading License in respect of each year's event for Cable Beach Polo to sell:
 - (a) alcoholic and non alcoholic beverages;
 - (b) food; and
 - (c) merchandise;
 On Cable Beach during the event.
 4. Authorises the Chief Executive Officer to approve the specific dates for each event annually.

(ABSOLUTE MAJORITY REQUIRED)

COUNCIL RESOLUTION:

Moved: Cr C Mitchell

Seconded: Cr D Male

COUNCIL MOTION

That Council:

1. Defers consideration of the 2018 and 2019 events until a Council workshop can be held.
2. Requests the Chief Executive Officer to:
 - (a) Arrange a workshop to determine Council's direction relating to this event; and

(b) Inform the applicant accordingly.

CARRIED UNANIMOUSLY 7/0

Reason: Council wishes to workshop opportunities and risks associated with the event.

Attachments

1. Cover Letter Application
2. Application 2018, 2019
3. Legal advice - McLeods
4. Legal advice - Kott Gunning

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

9.2.13 MID DAMPIER PENINSULAR NATIVE TITLE CLAIMS

LOCATION/ADDRESS:	Mid Dampier Peninsular
APPLICANT:	Nil
FILE:	NAT11; NAT67; NAT68; NAT72
AUTHOR:	Director Infrastructure
CONTRIBUTOR/S:	Director Development Services Coastal Park Governance Officer
RESPONSIBLE OFFICER:	Director Infrastructure
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	28 April 2015

SUMMARY: There are currently three Native Title Claims over large areas of the Mid Dampier Peninsular. To protect the Shire's interests in the Claim Areas, the Shire applied to the Court and was granted approval to join the Claims in February 2016.

The purpose of this report is to inform Council of the Native Title Claims and the work being undertaken to protect the Shire's interests.

COUNCIL RESOLUTION: **(REPORT RECOMMENDATION)**

Moved: Cr C Mitchell

Seconded: Cr H Tracey

That Council notes that;

- 1. there are currently 3 Native Title Claims over large areas of the Mid Dampier Peninsular;***
- 2. the Shire was granted approval to join the Native Title Claims in February 2016; and***
- 3. there will be ongoing costs associated with the Shire's participation in the Native Title Claims and a budget has been proposed in the draft 2016/17 Annual Budget.***

CARRIED UNANIMOUSLY 7/0

Attachments

1. Location of Claim Area for Bindunbur
2. Location of Claim Area for Jabirr-Jabirr
3. Location of Claim Area for Goolarabooloo
4. Location of Shire's Interests in Claim Areas

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

With regard to Item 9.4.8 Cr E Foy disclosed that "I have an association with Yawuru Member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly".

With regard to Item 9.4.8 Cr B Rudeforth disclosed that "I have an association with Yawuru as a Native Title Member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly".

9.4.8 STATE ADMINISTRATIVE TRIBUNAL MATTER - NYAMBA BURU YAWURU LTD V SHIRE OF BROOME

LOCATION/ADDRESS:	Various properties as detailed in report
APPLICANT:	Nyamba Buru Yawuru Ltd
FILE:	DEA21
AUTHOR:	Director Corporate Services
CONTRIBUTOR/S:	Manager Financial Services
RESPONSIBLE OFFICER:	Director Corporate Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	17 May 2016

SUMMARY: On 10 July 2015 and subsequently on 15 July 2015, Nyamba Buru Yawuru Ltd (NBY) lodged applications with the State Administrative Tribunal (SAT) seeking review of decisions made by the Shire of Broome in regards to rating matters relevant to the 2011/12, 2012/13, 2013/14 and 2014/15 Financial Years. These two applications have progressed to a stage of mediation with the most recent mediation session held in Broome on 30-31 March 2016.

Council is requested to consider additional information that has since been provided by the applicant in regards to this matter.

COUNCIL RESOLUTION:

Moved: Cr D Male

Seconded: Cr H Tracey

That Standing Orders be suspended at 6.54pm.

CARRIED UNANIMOUSLY 7/0

COUNCIL RESOLUTION:

Moved: Cr D Male

Seconded: Cr H Tracey

That Standing Orders be reinstated at 7.13pm.

CARRIED UNANIMOUSLY 7/0

REPORT RECOMMENDATION:

*That Council delegates authority to the Chief Executive Officer to pursue either Option 1 or 3 as detailed within **Attachment 12** of this report, during mediation in the State Administrative Tribunal matter of Nyamba Buru Yawuru Ltd V Shire of Broome (DR 231/2015 and DR 240/2015).*

(ABSOLUTE MAJORITY REQUIRED)

COUNCIL RESOLUTION:

Moved: Cr C Mitchell

Seconded: Cr D Male

That Council delegates authority to the Chief Executive Officer to pursue Option 2 as detailed within Attachment 12 of this report, during mediation in the State Administrative Tribunal matter of Nyamba Buru Yawuru Ltd V Shire of Broome (DR 231/2015 and DR 240/2015).

CARRIED UNANIMOUSLY BY ABSOLUTE MAJORITY 7/0

Reason: Option 2 was deemed the preferred proposal.

Attachments

1. OMC 26 Feb 2015 Minutes Extract
2. DCS Email outline SAT Mediation
3. SAT Orders 30 November 2015
4. NBY Rates Exemption Application 2015-16
5. NBY Rates Exemption Application 2015-16 Annexure
6. NBY Proposal for Mediation
7. Shire Response to NBY Proposal 11 March 2016
8. Mediation Position Without Prejudice
9. NBY Proposed MOU 13 April 2016
10. NBY Additional Information 9 May 2016
11. Correspondence 12 May 2016
12. Mediation Options

COUNCIL RESOLUTION:

Moved: Cr C Mitchell

Seconded: Cr D Male

That the Meeting again be open to the public at 7.15pm.

CARRIED UNANIMOUSLY 7/0

The Council chambers were opened and it was noted that no members of the public returned to the Chambers.

15. MEETING CLOSURE

There being no further business the Chairman declared the meeting closed at 7.17pm.