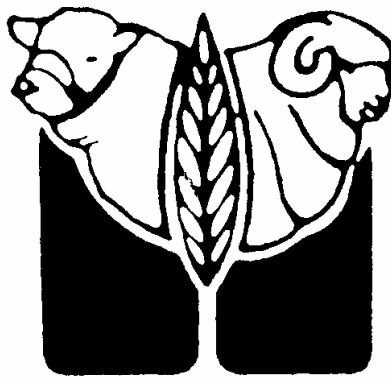


AGENDA



ORDINARY MEETING

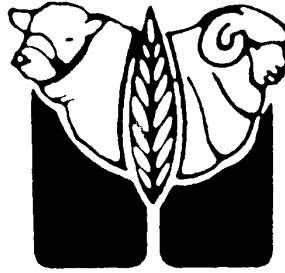
TO BE HELD

THURSDAY, 16 JULY 2009

COMMENCING AT 3.30PM

AT

SHIRE OF BOYUP BROOK CHAMBERS
ABEL STREET – BOYUP BROOK



SHIRE OF BOYUP BROOK

NOTICE OF ORDINARY COUNCIL MEETING

To:-

Cr R Downing – Shire President
Cr P Marshall – Deputy Shire President
Cr S Broadhurst
Cr M Giles
Cr T Ginnane
Cr K Lamshed
Cr E Muncey
Cr B O’Hare
Cr A Piper

The next Ordinary Council Meeting of the Shire of Boyup Brook will be held on Thursday 16 July 2009 in the Council Chambers, Shire of Boyup Brook, Abel Street, Boyup Brook – commencing at 3.30pm.

Mr Alan Lamb
Chief Executive Officer

Date: 10 July 2009

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1 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED

1.1 Attendance

Cr R Downing – Shire President
Cr P Marshall – Deputy Shire President
Cr S Broadhurst
Cr T Ginnane
Cr E Muncey
Cr A Piper

STAFF: Mr Alan Lamb (Chief Executive Officer)
Mr Keith Jones (Manager of Finance)
Mr John Eddy (Manager of Works and Services)
Mrs Maria Lane (Executive Assistant)

PUBLIC: Cr Carol Pinkerton (Nannup Shire)

1.2 Apologies

Cr Lamshed
Cr O'Hare

1.3 Leave of Absence

Nil

2 PUBLIC QUESTION TIME

Nil

2.1 Response to Previous Public Questions Taken on Notice

Nil

2.2 Public Question Time

3 APPLICATIONS FOR LEAVE OF ABSENCE

4 PETITIONS/DEPUTATIONS/PRESENTATIONS/REPORTS

Cr Carol Pinkerton from the Nannup Shire will be arriving at 3.30pm to give a presentation regarding a trails project.

5 CONFIRMATION OF MINUTES

5.1 Ordinary meeting of Council 18 June 2009.

OFFICER RECOMMENDATION – ITEM 5.1

That the minutes of the Ordinary Meeting of Council held on Thursday 18 June 2009, be confirmed as an accurate record.

6 PRESIDENTIAL COMMUNICATIONS

7 REPORTS OF OFFICERS

7.1 **MANAGER WORKS & SERVICES**

Nil

7.2 **MANAGER – FINANCE**

7.2.1 Accounts for Payment

Location:	<i>Not applicable</i>
Applicant:	<i>Not applicable</i>
File:	<i>FM/1/002</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10th July 2009</i>
Author:	<i>Keith Jones – Manager of Finance</i>
Authorizing Officer:	<i>Not applicable</i>
Attachments:	<i>Yes – List of Accounts Paid</i>

SUMMARY

Report recommends the acceptance and approval of the Schedule of Accounts for Payment.

BACKGROUND

Invoices have been received during the month of June 2009.

COMMENT

Accounts are presented for consideration (see appendix 7.2.1) or where paid by direct debit pursuant to the Council's "Authorisation to Make Payments" policy.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations Act 1009, Regulation 12; and Regulations 13(3) (a) (b); 13(1); and 13(4).

POLICY IMPLICATIONS

Accounts are presented for consideration or where paid by direct debit pursuant to the Council's "Authorization to Make Payments" policy.

BUDGET/FINANCIAL IMPLICATIONS

Account payments are in accordance with the adopted budget for 2008/09 or authorized by separate resolution.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 7.2.1

That the payment of accounts for June 2009 as presented totalling \$529181.67 and as represented by cheque voucher numbers 17522 – 17571 totalling \$96,464.51, and accounts paid by direct electronic payments through the Municipal Account totalling \$427,717.16 be endorsed.

7.2.2 June 2009 Monthly Statements of Financial Activity

Location:	<i>Not applicable</i>
Applicant:	<i>Not applicable</i>
File:	<i>FM/10/003</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10 July 2009</i>
Author:	<i>Keith Jones – Manager of Finance</i>
Authorizing Officer:	<i>Not applicable</i>
Attachments:	<i>Yes – Financial Reports</i>

SUMMARY

Report recommends Council receive the Balance Sheet and Operating Statement for the month ended 30 June 2009 and Investment Schedule for the month ended 31 July 2009.

BACKGROUND

Section 6.4 of the Local Government Act 1995 places financial reporting obligations on local government operations.

Regulation 34 (1)–(4) of the Local Government (Financial Management) Regulations 1996 requires the local government to prepare a ‘Monthly Statement of Financial Activity’.

The regulations also prescribe the content of the report.

The reports are attached – see appendix 7.2.2

COMMENT

Nil

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations 1996, s34 (1) (a)
Local Government (Financial Management) Regulations 1996, s19 (1) (2) (a) (b)
Local Government (Financial Management) Regulations 1996, s34 (2) (a) (b)

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 7.2.2

That the June 2009 Monthly Statements of Financial Activity as presented, be received.

7.3 CHIEF EXECUTIVE OFFICER

7.3.1 Heated Lap Pool

Location:	<i>Boyup Brook district</i>
Applicant:	<i>Boyup Brook Heated Multi Purpose Therapeutic Pool Committee</i>
File:	<i>RE/45/002</i>
Disclosure of Officer Interest:	<i>Nil</i>
Date:	<i>9 July 2009</i>
Author:	<i>Mr Alan Lamb – Chief Executive Officer</i>
Authorizing Officer:	<i>Not Applicable</i>
Attachments:	<i>Yes – Letter from applicant and applicant’s consultant’s report</i>

SUMMARY

The Boyup Brook Heated Multi Purpose Therapeutic Pool Committee (BBHMPTPC) has put forward a firm proposal and formal, as requested by Council, and it is recommended that Council supports the proposal provided it is not required to provide any funds toward the cost of the new facility.

BACKGROUND

The idea of a heated pool has been around for some time and that matter has been before Council on a number of occasions. Council dealt with a notice of motion at its May 2009 meeting and passed the following resolution;

That a draft list of questions be circulated to all Councillors for comment before being put to the Lap Pool Committee and that the Committee be asked for a final and fully costed proposal for the proposed heated lap pool.

It was noted at the Council Briefing session held just prior to the June Council meeting that it had been suggested that the Committee be asked for a final and fully costed proposal and that no other questions or requests have been put forward.

The president of the BBHMPTPC provided the attached letter setting out the Committee’s proposal.

COMMENT

It will be noted that the Committee has put forward that;

- the facility would be built without any monetary contribution from Council
- Council would be responsible for all ongoing costs

The Committee does not detail how it will fund the project. It notes that “it is envisaged that sufficient funds will be forthcoming to cover the estimated cost, so Council will not be expected to make a monetary contribution”. First observation is that this is insufficient for

Council to assure itself that it will not be left with an unexpected cost from an under funded project. However it is noted that the Committee has indicated that it was confident of local donations and the like but needed to have Council approval for the project to confirm much of this source of funds. The Committee is also hopeful of gaining substantial grant funds and it is noted that as part of funding application processes it will have to detail how the project will be funded. It is expected that the Committee would be in a better position to provide Council and funding bodies with the level of detail required once they get the "green light:" from Council for the project.

It is noted that the Committee is basing its cost estimates on cost estimates provided by its consultant (\$540,000) and so the consultant's recommended construction, buildings and equipment is what the Committee puts forward as what is to be provided. Whilst this appears to be at odds with the suggestion that a committee be formed with Council and Committee representatives to oversee the design phase, it is suggested that this would allow amendments to be made to the consultant's recommendations as seen to be needed by both parties and so should be workable.

The Committee further suggested that Council seek grant funding for the project and that Council manage the construction (capital works). It may be better for the Committee to make grant applications and for Council to assist with this however this is suggested to be a minor point. It is however suggested that it is important that Council manage the construction phase as it will end up having to maintain the assets, and so it is recommended that this is an important point.

The Committee has made recommendations on opening times for the heated facility. That the "winter" season be from the end of the "summer season" (mid April) to the start of the next "summer" season (November), and that the pool be closed for the month of July for maintenance. That the heated facility be open as much as practicable during normal pool hours in the "summer" and the opening hours for winter be 9am to 12.30pm and 1.30pm to 5.00 pm each Monday, Wednesday, Friday and Saturday. It is suggested that the opening hours appear to be well considered and a good basis for initial operation, operating cost estimates etc.

Similarly, the Committee has recommended that the entry fee for winter be in the order of \$5.00 per adult and \$4.00 per child. It is suggested that the facility could not operate on a full cost recovery basis because the level of fees required would be prohibitive but the Committee's recommended fees could be viewed as a "fair" price as it has come from the considered views of a community group.

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

There will be no impact in terms of cash but there will be Administration costs associated with this project and the level of this will depend on the level of Council involvement. It is expected there may be a reasonably high level of involvement in the design phase, grant application processes, and construction phase, but it is difficult to assess the level of involvement, and so cost, at this time.

The ongoing operating costs are expected to be as follows:

Area	Details	Annual cost
Employee costs	Based on a half of a full time equivalent	35,800
Depreciation	Based on consultant's report \$10,800 (is based on a 50 year life for all on the new assets) modified for assets with a shorter life (ie pumps etc) NOTE, depreciation will depend on actual costs and so this is an estimate only.	14,956
Other	Electricity, chemicals, general maintenance from the consultants report \$16,000 plus water (1,500), insurance (400), additional telephone (500), first aid supplies (100) and cleaning (900).	19,400
Total		70,156

It is expected that income will increase due to increased patronage but there could be some debate over the level of this additional patronage. The consultant estimated that the "summer" patronage could increase, as the result of the new facility, by 18% and so yield an additional \$4,700 in income. He suggested that the out of season, or "winter", patronage could be in the order of 300 people per week for 26 weeks. Based on \$3 per visit he suggested additional income of \$23,000. This was based on the pool being open for 7 days per week for 26 weeks of the "winter" period. It is suggested that 300 attendances per week in winter might be optimistic, it is noted that the "winter" season proposed by the Committee is less than 26 weeks and that the recommended fee is higher.

Taking a conservative approach to estimating the additional income it is suggested that the additional yield for "summer" might be achievable (\$4,700). Also that the "winter" patronage might be in the order of 20 people per day (that is an average of 10 people for the morning session and 10 for the afternoon session each day) for the 4 days per week the pool would be open. Based on a "winter season of five and a half months (22 weeks) and an average admittance fee of \$4.50 the income could be \$7,920 which would result in a total additional income of \$12,620.

Taking the consultants "winter" season estimate and modifying it for the reduced number of days of operation and increased fee, it is noted that an average of 75 fee paying attendances per day would be required and if achievable this would yield \$29,700.

The draft budget for 2009/10 indicates that the current pool facility will cost \$180,794 to run and attract income of \$26,500 resulting in a pool service net cost of \$154,294 per year. Based on the foregoing it is expected that the net cost would increase by between \$57,536 and \$40,456 per year and so be in the order of \$200,000 per year.

It should perhaps be noted that municipal swimming pools generally are run at as a service to the community (that is they do not break even) and that this was recognised by the State Government years ago when it introduced the pool subsidy of \$3,000 per year. Unfortunately the subsidy has not been increased and so has greatly diminished in real terms.

Swimming pool facilities might best seen in the light of other services such as parks and gardens, playing fields and the like where the emphasis is on the level of service and not necessarily the net cost. For example, the 2009/10 draft budget indicates expenditure in the area of "Other Recreation and Sport" will be \$317,122 and income in this area will be \$33,300, a net service cost of \$283,822.

STRATEGIC IMPLICATIONS

The Strategic Plan includes the following:

B L	PART B = Long Term – 2009 + PRIORITY = Low					
6 0 1	<i>Action:</i> <i>Reason:</i> <i>Expected Outcome:</i>	Installation of a 3-lane heated lap pool at the swimming complex Ref 202	To be estimated	Oct 2010	\$500,000	CEO Council

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known environmental issues at this stage.
- **Economic**
The new facility would increase the cost to Council for providing a swimming pool facility but may make the town more attractive to potential residents.
- **Social**
It is expected that the heated pool facility would meet some of the needs of some members of the community.

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 7.3.1

That Council supports the Boyup Brook Heated Multi Purpose Therapeutic Pool Committee’s proposed heated pool proposal provided it is not required to provide any funds toward the cost of the new facility.

7.3.2 Boyup Brook Club - Rates

Location:	<i>Boyup Brook district</i>
Applicant:	<i>Boyup Brook Club</i>
File:	<i>AS242</i>
Disclosure of Officer Interest:	<i>The author makes a declaration of impartiality and notes that he is an ordinary member of the Boyup Brook Club.</i>
Date:	<i>9 June 2009</i>
Author:	<i>Alan Lamb – Chief Executive Officer</i>
Authorizing Officer:	<i>Not Applicable</i>
Attachments:	<i>Yes – Letter from Boyup Brook Club</i>

SUMMARY

This item is brought to Council with a recommendation that Council waive the rate charge for the Boyup Brook Club

BACKGROUND

The Club seeks relief from the need to pay rates. Under the previous Local Government Act sporting bodies were included in the section that listed organisations that were exempt from rates but the 1995 act omitted these entities. It is the author's experience that many Local Governments do not charge sporting bodies with rates.

COMMENT

It is noted that the annual rate charge for the Club is a significant expenditure (\$4,158.00 in 2008/09). The Club has made a part payment toward last years rates and a portion remains outstanding.

The Club paid \$123.00 in 2008/09 for the ESL and \$315 for rubbish removal but is not seeking relief from these.

It is noted that the Act provides Council with the power to waive or offer a concession for rates but that this relates to the annual raising of rates and so it could not give a permanent exemption. Council could however deal with the matter now with respect to the 2008/09 rates and either offer a concession of a portion or all of the outstanding amount. Or, alternatively decide to waive the rate and refund the portion paid. As part of the budget process Council could resolve to waive, or provide a concession, the Club's 2009/10 rate account.

It is recommended that Council offer a concession to the Boyup Brook Club with respect to the unpaid rates for 2008/09 and waive the 2009/10 rate charge.

STATUTORY OBLIGATIONS

The following sections of the local Government Act apply:

6.26. Rateable land

- (1) Except as provided in this section all land within a district is rateable land.
- (2) The following land is not rateable land —
 - (a) land which is the property of the Crown and —
 - (i) is being used or held for a public purpose; or
 - (ii) is unoccupied, except —
 - (I) where any person is, under paragraph (e) of the definition of “owner” in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the *Mining Act 1978* in respect of land the area of which does not exceed 10 hectares or a miscellaneous licence held under that Act; or
 - (II) where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of “owner” in section 1.4 occupies or makes use of the land;
 - (b) land in the district of a local government while it is owned by the local government and is used for the purposes of that local government other than for purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the local government;
 - (c) land in a district while it is owned by a regional local government and is used for the purposes of that regional local government other than for the purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the regional local government;
 - (d) land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood;
 - (e) land used exclusively by a religious body as a school for the religious instruction of children;
 - (f) land used exclusively as a non-government school within the meaning of the *School Education Act 1999*;
 - (g) land used exclusively for charitable purposes;
 - (h) land vested in trustees for agricultural or horticultural show purposes;
 - (i) land owned by Co-operative Bulk Handling Limited or leased from the Crown or a statutory authority (within the meaning of that term in the *Financial Management Act 2006*) by that company and used solely for the storage of grain where that company has agreed in writing to make a contribution to the local government;
 - (j) land which is exempt from rates under any other written law; and
 - (k) land which is declared by the Minister to be exempt from rates.
- (3) If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that company or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.

- (4) The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.
- (5) Notice of any declaration made under subsection (4) is to be published in the *Gazette*.
- (6) Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.

[Section 6.26 amended by No. 36 of 1999 s. 247; No. 77 of 2006 s. 17.]

6.47. Concessions

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

* Absolute majority required.

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

If Council chooses to waive the rates or offer a concession the budget impact will be equal to the value of the rates waived or the concession given.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental:**
There are no known environmental issues at this stage.
- **Economic:**
Reducing the rate burden for the Club would ease its position but would increase the burden for other ratepayers.
- **Social:**
There are no known social issues at this stage.

VOTING REQUIREMENTS

Absolute Majority

OFFICER RECOMMENDATION – ITEM 7.3.2

That Council offer a concession to the Boyup Brook Club with respect to the unpaid rates for 2008/09 and waive the 2009/10 rate charge.

7.3.3 Boyup Brook Pistol Club – building up grades and lease

Location:	<i>Boyup Brook district</i>
Applicant:	<i>Boyup Brook Pistol Club</i>
File:	<i>CR/31/015</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10 July 2009</i>
Author:	<i>Alan Lamb – Chief Executive Officer</i>
Authorizing Officer:	<i>N/A</i>
Attachments:	<i>Yes – Letter from Club</i>

SUMMARY

The purpose of this report is to bring the matters raised by the Pistol Club to Council with the recommendations that Council approve the proposed building improvements and agree to commence the process to enter into a lease with the club.

BACKGROUND

With regard to the lease, the Pistol Club occupies a portion of Boyup Brook Town Lot 336 which is owned by Council. As Council will be aware, where Reserves are concerned Council is restricted by the purpose of the reserve, the extension or not of the power to lease, limits on the term of the lease and the Minister for Lands must approve the lease. In this case the land is freehold (or at least is shown as such on Landgate) and so none of these restrictions exist.

The Pistol Club has made improvements to the facilities in the past and the Club is active. The Club seeks to upgrade the kitchen, toilets and showers, and improve the shooting range. The Club will have to obtain a building licence for these improvements and so Council could be assured that the works will be to an acceptable standard.

COMMENT

It is recommended that Council raise no objections as the owner of the property to the improvements proposed by the Club.

It is also recommended that Council agree to commence the process to lease a portion of Lot 336 to the Club. It should be noted that Council is not compelled to go through a tendering process to lease the land to the Club (Local Government Functions and General) Regulation 30(2)(b)(i)).

STATUTORY OBLIGATIONS

The following Regulation applies:

30. Dispositions of property to which section 3.58 of Act does not apply

- (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;
 - (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;
 - (c) the land is disposed of to —
 - (i) the Crown in right of the State or the Commonwealth;
 - (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;
 - (d) it is the leasing of land to an employee of the local government for use as the employee's residence;
 - (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;
 - (f) it is the leasing of land to a "medical practitioner" (as defined in section 3 of the *Medical Act 1894*) to be used for carrying on his or her medical practice; or
 - (g) it is the leasing of residential property to a person.
- (2a) A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been —
- (a) put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government;
 - (b) the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or
 - (c) the subject of Statewide public notice under section 3.59(4), and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —
 - (i) the names of all other parties concerned;
 - (ii) the consideration to be received by the local government for the disposition; and
 - (iii) the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.
- (2b) Details (*see section 3.58(4) of the Act*) of a disposition of property under subregulation (2a) must be made available for public inspection for at least 12 months from the initial auction or tender, as the case requires.
- (3) A disposition of property other than land is an exempt disposition if —
- (a) its market value is less than \$20 000; or

- (b) it is disposed of as part of the consideration for other property that the local government is acquiring for a consideration the total value of which is not more, or worth more, than \$50 000.

[Regulation 30 amended in Gazette 25 Feb 2000 p. 974-5; 28 Apr 2000 p. 2041; 31 Mar 2005 p. 1055-6.]

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

It is expected that lease drafting costs would be less than \$2,000.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known environmental issues at this stage.
- **Economic**
A lease would provide the Pistol Club with security.
- **Social**
A lease would provide both entities with a clear understanding of arrangements and the more long term and formal arrangement may help to improve participation and increase membership.

VOTING REQUIREMENTS

Absolute Majority

OFFICER RECOMMENDATION – ITEM 7.3.3

That Council:

- 1. in its capacity as the property owner, agree to the Boyup Brook Pistol Club’s proposed improvements to the Club kitchen, toilets and showers, and shooting range.**
- 2. agree to commence the process to lease a portion of Lot 336 to the Boyup Brook Pistol Club.**

7.3.4 Tennis Club Lease

Location: Boyup Brook district
Applicant: Boyup Brook Tennis Club
File: CR/31/016
Disclosure of Officer Interest: None
Date: 9 July 2009
Author: Alan Lamb – Chief Executive Officer
Authorizing Officer: N/A
Attachments: Yes – Copy of draft lease document

SUMMARY

The purpose of this item is to bring before Council the Tennis Club draft lease, note to Council changes sought by the Club and recommend that Council accept the lease agreement as amended and authorise the Shire President and CEO to affix the common seal to it.

BACKGROUND

Representatives of the Boyup Brook Tennis Club attended a Council meeting and discussed their desire to have a lease over the portion of reserve land the Club occupies. Council agreed to have a lease drawn up and the draft lease is now before Council.

The Club also sought assistance from Council in the areas of grounds maintenance and the like and it was understood that this would be included in the lease.

COMMENT

Attached is the draft lease as prepared for Council by its lawyers. It includes some of the things that the Club sought and at a recent meeting with a Club representative the following amendments were sought:

<u>Clause</u>	<u>Amendment</u>	<u>Comment</u>
3 (b)	Lessor to pay for lease preparation fees	In commercial leases the lessee pays to have the lease drawn up but Council's generally absorb this cost where sporting and community groups are involved
6	Indemnity clause to be deleted	Here the indemnity sought is for any insurance claim shortfall. It is suggested that Council would ensure against all of its potential liability and for the full value of the building and so there should be no shortfall other than an excess Council may elect to take.
7.1(e)	No Signs the word "permanent" to be	The Club wants to be able to put up

	included between the words "any" and "signs".	temporary signs without the need to seek approval each time.
8	Maintenance and Cleaning – the Club seeks for Council to maintain the premises and for the Club to be responsible for cleaning the premises.	The grounds maintenance is as set out in the document plus the Club wishes to include mowing of the courts. The Club also wishes for Council to maintain the structures and for the Club to keep the premises clean. The Manager of Works has estimated that the additional works for Council would amount to between \$9,000 and \$10,000 per year.
9.1(b)	Restrictions – delete the Club wants to be able to do busy bees around the grounds without the restriction of having to gain approval each time to trim bushes etc	It is noted that on occasions busy bees are undertaken on an informal basis often without prior arrangement and so the need to seek approval each time would constitute a significant restriction
Schedule Item 5	Use – add occasional uses – hirings to various entities and camping	The Club occasionally hires the facilities out to other organisations as a venue centre and the like. The Club also hires camping sites out during the Country Music Festival

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

The lease is expected to cost less than \$2,000 to have drawn up and the increased annual cost to Council for additional responsibilities is expected to be between \$9,000 and \$10,000 per year.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known environmental issues at this stage.
- **Economic**
The lease will give the Tennis Club more security and provide both parties with a clear division of agreed responsibilities.
- **Social**
Council's increased maintenance role will take the load off volunteers and should result in more participation and increased membership.

VOTING REQUIREMENTS

Absolute Majority

OFFICER RECOMMENDATION – ITEM 7.3.4

That Council lease a portion of Reserve 1454 to the Boyup Brook Tennis Club and that the Shire President and Chief Executive Officer be empowered to affix the common seal to a draft lease that is the same as the draft lease attached to the agenda amended as follows:

<u>Clause</u>	<u>Amendment</u>
3 (b)	Lessor to pay for lease preparation fees
6	Indemnity clause to be deleted
7.1(e)	No Signs the word “permanent” to be included between the words “any” and “signs”.
8	Maintenance and Cleaning –Council to maintain the premises and the Club to be responsible for cleaning the premises.
9.1(b)	Restrictions – delete
Schedule Item 5	Use – add occasional uses – hirings to various entities and camping

7.3.5 Subdivision Application (WAPC Ref 140117) Kojonup Road

Location:	<i>Lots 595 & 2768 Boyup Brook Kojonup Road</i>
Applicant:	<i>Harley Survey Group</i>
File:	<i>AS7065</i>
Disclosure of Officer Interest:	<i>Nil</i>
Date:	<i>8 July 2009</i>
Author:	<i>Geoffrey Lush (Council Consultant)</i>
Authorizing Officer:	<i>Alan Lamb – Chief Executive Officer</i>
Attachments:	<i>1 Location Plan</i>
	<i>2 Existing Boundaries</i>
	<i>3 Proposed Subdivision</i>

SUMMARY

This report is to consider a referral of a subdivision application from the Western Australian Planning Commission. The subject land comprises of Lots 595 & 2768 Boyup Brook – Kojonup Road (as shown in Attachment 1).

It is proposed to realign the boundaries of the subject land so that Lot 2768 no longer crosses Boyup brook – Kojonup Road. The subdivision concept is shown in Attachment 3. For clarity this is a prepared diagram and not the actual plan included with the application.

The subject land is owned by Leyburn Farm Stays Pty Ltd, KM Sanders and TL Kilner.

BACKGROUND

The subject land is located approximately 43 kms east of Boyup Brook and is situated on the Boyup Brook – Kojonup Road (as shown in Attachment 1).

The subject land has a total area It has an area of 83.2 hectares comprising of:-

Lot 959 Plan 102970 – 40.54 hectares; and
Lot 2768 Plan 129962 – 42.66 hectares.

The current configuration of the lots is shown in Attachment 2.

The registered proprietor Lot 959 is Leyburn Farm Stays Pty Ltd. The registered proprietors of Lot 2768 are Kim Montague Sanders and Tracey Lee Kilner.

The boundary realignment will create new lot sizes of 46.6ha and 36.5ha.

The land is currently vacant of all buildings.

The subject land slopes down to the north, from a high point of 295m AHD to 255m AHD. A central drainage line bisects the property in a north south direction. The site is largely cleared with some minor areas of remnant vegetation in scattered locations.

Access to the subject land is currently from Boyup Brook – Kojonup Road via informal farm crossovers. The proposed boundary realignment will not change the access situation to the land.

COMMENT

The purpose of the application is to realign the boundary between the two existing lots.

It is acknowledged that Boyup Brook – Kojonup Road forms a significant physical division of the land. It is logical from a farm management perspective to realign the boundaries along the road.

The main issue will most likely be the interpretation of the boundary realignment provisions of the Warren Blackwood Rural Strategy by the Planning Commission and the implications for the Rural Strategy. This is documented further in the following sections.

In relation to rural property boundary realignments, the Commission is agreeing with a proposed 40ha minimum size where the land is located more than 10km from the townsite. However it is also applying the subdivision requirements that are applicable to greenfields subdivision where additional lots are being created. Specially, in addition to a 40 hectare minimum lot size the Commission also requires that the lots to contain a minimum of 30 hectares of Class 1 or 2 land for agriculture.

This has been a key difference of opinion between Council and the Planning Commission. It has been Council's contention that the above provision should not apply to the current proposal as a boundary realignment is not creating "additional" allotments.

The key criteria which Council promoted in the original draft Rural Strategy and associated Farm Restructure Policy was that the boundary realignment/resubdivision is "subject to maintaining or reducing the original number of lots."

While there had been reluctant acceptance of the 40 hectare lot size, this did not include the requirement for a minimum of 30 hectares of Class 1 or 2 land for agriculture. This was because where a boundary realignment is proposed it is normally the 'poorer' land which is included in the smaller lot so that there is more 'good' (Class 1 or 2) land left in the larger farming lot.

As a simple boundary re-alignment no specific conditions are required.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Town Planning Scheme

The subject land is zoned 'Rural' in Town Planning Scheme No.2. The surrounding area is generally zoned 'Rural'.

Clause 5.1 of the Scheme states that in considering applications for subdivision, rezoning and planning consent in the Rural zone, Council shall have regard to:

- i) the need to protect the agricultural practices of the Rural zone in light of its importance to the District's economy;
- ii) the need to protect the area from uses which will reduce the amount of land available for agriculture;
- iii) the need to preserve the rural character and rural appearance of the area; and
- iv) where rural land is being subdivided for closer development, the proposal should be supported with evidence outlining the land's suitability and capability for further development.

The application is considered to be consistent with these objectives.

Draft Local Rural Strategy

Within the draft Local Rural Strategy the subject land is situated in the BBR2 Western Policy Area.

In relation to boundary realignments the draft Rural Strategy recommendations include:-

- 8 Council's objective is to encourage the redesign of existing (multiple lot) farms into a more appropriate configuration of lot boundaries relative to land management and land capability factors, subject to maintenance or reduction of the original number of lots.
- 9 The smaller lots have sufficient size to allow for the construction of a dwelling and other small farm infrastructure and buildings with sufficient setback from adjoining properties so as not to restrict potential agricultural productivity on those properties.
- 10 The smaller lots are located to have minimal adverse impact on the viability and sustainability of the main farming property.
- 11 The total number of resulting lots is not greater than the original number of lots.
- 12 In the case of lifestyle lots, the land is located within 10kms of a major townsite.
- 13 That for the purpose of the above provision a "lifestyle" lot is defined as having a minimum area of 20 hectares (being within 10kms of the townsite).
- 14 That areas more than 10kms distance from the townsite the smaller lot shall have a minimum size of 40 hectares.

The application is considered to be consistent with these recommendations excepting that in relation to Recommendation 14 one of the lots is less than 40 hectares in area. However the proposal maintains a 40 hectare average lot size.

POLICY IMPLICATIONS

Council Policy P.03 relates to Subdivisions and Amalgamations. It addresses the general matters contained within Clause 5.2 of the Scheme, the WAPC Policies, Warren Blackwood Rural Strategy and draft Local Rural Strategy

It states that boundary realignments can be considered where no additional allotments are created.

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Western Australian Planning Commission

There are several WAPC Policies affecting boundary realignments for rural land including:-

DC 3.4 – Subdivision of Rural Land; and
Warren Blackwood Regional Rural Strategy.

The Warren Blackwood Regional Rural Strategy recommends in relation to farm rationalization that the principal issue will be improving the sustainability and long-term agricultural viability of the farming operation and observing the primary principle of protecting and enhancing the productive capacity of agricultural land.

The proposal is consistent with these provisions.

However in the case of broad acre subdivisions creating “new or additional lots”, the Warren Blackwood Regional Rural Strategy recommends new lots of less than 80ha will not be supported, except where the lot is a minimum of 40ha and all of the following criteria are met:

- An agronomist’s report or similar demonstrates that each new lot will contain a minimum of 30ha of land with a high-capability rating (class 1 or 2) for annual or perennial horticultural production.
- A hydrologist’s report or similar demonstrates that each new lot has long-term, secure access to a supply of water of a sufficient quantity and quality as applicable to the potential agricultural production on that land, and the Department of Environment is prepared to agree that the capture of that water is within the limits of an endorsed water allocation management plan or is within the sustainable yield for that sub-catchment.
- The total lot area incorporates **the minimum area of 30ha of high capability land**, plus the water capture and/or storage area (as necessary), plus an area for farm infrastructure and buildings with sufficient setback from adjoining properties so as not to restrict potential agricultural productivity on those properties, setbacks from watercourses and wetlands, plus the retention of any remnant vegetation that should be protected from clearing.

The application does not meet the above provisions, however it is accepted that these should not be applied to the current application as it is not creating additional allotments.

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
There are no known significant economic issues.
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 7.3.5

That Council advises the Western Australian Planning Commission that it supports the proposed boundary re-alignment of Lots 595 & 2768 Boyup Brook - Kojonup Road.

7.3.6 Planning and Development Regulations 2009

Location:	<i>Not applicable</i>
Applicant:	<i>Not applicable</i>
File:	<i>DE/29/001</i>
Disclosure of Officer Interest:	<i>Nil</i>
Date:	<i>8 July 2009</i>
Author:	<i>Geoffrey Lush (Council's Consultant Planner)</i>
Authorizing Officer:	<i>Alan Lamb – Chief Executive Officer</i>
Attachments:	<i>Yes – Amendments & Structure Plans</i>

SUMMARY

The Planning and Development Regulations 2009 commenced operation on the 1st July 2009. At the same time Division 3 of Part 13 of the Planning and Development Act 2005 dealing with Infringement Notices also commenced operations.

BACKGROUND

The Planning and Development Act 2005 (PD Act) and related legislation commenced operation on 9 April 2006. The PD Act consolidated and repealed the Town Planning and Development Act 1928, the Metropolitan Region Scheme Act 1959 and the Western Australian Planning Commission Act 1985.

The Planning and Development Regulations 2009 consolidate the following:

The Planning and Development Act 2005 (PD Act) and related legislation commenced operation on 9 April 2006. The PD Act consolidated and repealed the Town Planning and Development Act 1928, the Metropolitan Region Scheme Act 1959 and the Western Australian Planning Commission Act 1985.

The Planning and Development Regulations 2009 consolidate the following:

- the Metropolitan Region (Valuation Board) Regulations 1967;
- the Metropolitan Region Planning Authority (Reserved Land) Regulations;
- the Planning and Development (Local Government Planning Fees) Regulations 2000;
- the Town Planning and Development (Easement) Regulations 1983;

- the Town Planning and Development (Ministerial Determinations) Regulations 2003; and
- the Town Planning and Development (Subdivisions) Regulations 2000.

The Planning and Development Regulations 2009 do not replace the existing Town Planning Regulations 1967 which operated under the previous Act and are still being reviewed.

The main features of the new Regulations relate to:

Subdivision

The Regulations set out the processes to be followed by applicants lodging either an application for subdivision. It also sets out what actions the Western Australian Planning Commission (WAPC) is required to take following determination of the application.

Leases

The Regulations set out the process to be followed by an applicant lodging an application for approval of a lease or a class of lease under the Planning and Development Act 2005

Road Access (new provision)

The Regulations set out how a road access condition imposed by the WAPC in accordance are to be depicted on a plan of subdivision. This only relates to the restriction of access from an adjoining parcel of land. It also states that it is an offence to contravene a road access condition, which may attract a penalty of up to \$50,000 depending on the seriousness of the contravention).

Infringement Notices (new provision)

These provisions allow designated person appointed by the responsible authority under to issue an infringement notice to a person (the 'alleged offender') where the designated person has reason to believe that the person has committed a prescribed offence.

The following offences are prescribed under regulation 42 as offences for which an infringement notice can be issued by a designated person:

- failing to comply with a direction given by a responsible authority regarding unauthorised development;
- contravening a planning scheme;
- commencing, continuing or carrying out development in a planning control area without obtaining prior approval;
- contravening an interim development order;
- undertaking a prohibited activity on State land; and
- contravening a road access condition.

Local Government Planning Charges

The provisions of the previous Planning and Development (Local Government Planning Fees) Regulations 2000 have been included in the new Regulations.

COMMENT

The two most significant issues for Council are:-

- The introduction of Infringement Notices; and
- The updating of the planning application fees.

Infringement Notices

It is intended that infringement notices would be used in straightforward matters where it is clear that an offence has been committed. This would normally relate to a minor offence and does not inhibit the other forms of enforcement or prosecution that Council has available under the Act.

It is intended that infringement notices might be issued include:-

- unauthorised erection of signs;
- unauthorised storage and wrecking of motor vehicles (for example, derelict vehicles in front yard of dwelling);
- unauthorised parking of motor vehicles (for example parking of commercial trucks in residential areas);
- operating a business or conducting an activity outside of the approved operating hours of such business or activity;
- exceeding the approved capacity limit of land or premises used for business or activity;
- failure to provide adequate car parking facilities;
- failure to provide appropriate access;
- failure to undertake and maintain landscaping (where this a condition of approval);
- unauthorised or non-conforming garden walls and/or retaining walls;
- unauthorised dumping of waste;
- unauthorised storage of materials;
- unauthorised clearing of vegetation;
- unauthorised use of land or buildings (for example, use of residential premises for commercial purposes);
- unauthorised change in the type of land use (for example, change from warehouse to showroom; or residential to consulting rooms); and
- unauthorised minor works.

The evidentiary burden that applies for a prosecution must be satisfied before an infringement notice is given to an alleged offender. From a practical perspective, if the alleged offender elects to go to court rather than pay the modified penalty, the responsible authority must have the evidence necessary to prosecute the alleged offender. As such, the responsible authority/ designated person should investigate the offence as if it was intended to prosecute the alleged offender for committing the offence.

The penalties for infringements are typically \$500.

Section 234 of the Act provides that the Chief Executive Officer of a responsible authority may, in writing, appoint person/s to be designated persons for the purposes of issuing infringement notices.

Planning Fees

The imposition of planning fees provides a method for Council to recover costs associated with the administration of the Local Planning Scheme.

The statutory application fees are applicable to:

- (a) determination of a development application (see Attachment 1);
- (b) provision of a subdivision clearance;
- (c) determination of an application for a home occupation approval;
- (d) determination of an application for a change of use or for a change or continuation of a non conforming use;
- (e) provision of a zoning certificate;
- (f) replying to a property settlement questionnaire;
- (g) providing written planning advice;
- (h) planning scheme amendments; and
- (i) preparation of structure plans (see Attachment 1)

A Council can also recover the following costs and expenses:

- (a) costs and expenses of advertising the application and advertising matters related to the application;
- (b) costs and expenses of any specific assessment that is required in relation to the application, for example, environmental assessment;
- (c) costs and expenses of consultation procedures required in relation to the application;
- (d) costs and expenses of technical resources and equipment such as computer modelling;
- (e) costs and expenses of specialist advice required in relation to the application, for example, advice in relation to heritage matters.

A local government may waive or refund, in whole or in part, payment of a fee for a planning service.

CONSULTATION

None

STATUTORY OBLIGATIONS

Planning and Development Regulations 2009

POLICY IMPLICATIONS

None

BUDGET/FINANCIAL IMPLICATIONS

The revised application fee will assist in making Council's services more sustainable.

STRATEGIC IMPLICATIONS

None

SUSTAINABILITY IMPLICATIONS

- **Environmental:**
There are no known environmental issues at this stage.
- **Economic:**
There are no known economic issues at this stage.
- **Social:**
There are no known social issues at this stage.

VOTING REQUIREMENTS

Absolute Majority

OFFICER RECOMMENDATION – ITEM 7.3.6

1. That pursuant to Section 234 of the Act Council appoint the Chief Executive Officer as a “designated person” for the purposes of issuing infringement notices.
2. That Council acknowledge the fees prescribed in the Planning and Development Regulations 2009 in its Annual Budget.

7.3.7 Subdivision Application (WAPC Ref 138709) Jayes Road

Location:	<i>Lots 7918 and 11253 Jayes Road</i>
Applicant:	<i>Harley Survey Group</i>
File:	<i>AS13600</i>
Disclosure of Officer Interest:	<i>none</i>
Date:	<i>8 July 2009</i>
Author:	<i>Geoffrey Lush – Council’s Consultant Planner</i>
Authorizing Officer:	<i>Alan Lamb – Chief Executive Officer</i>
Attachments:	<i>1 Subdivision Plan</i>

SUMMARY

This report is to consider a ‘reconsideration’ request against the Planning Commission’s refusal of a subdivision application in relation to Lots 9718 and 11253 Jayes Road Benjinup.

The subject land is owned by DJ & RJ Gibbs.

BACKGROUND

The application was to ‘re-align’ the boundary of the two allotments to create lots with areas of 74 and 62 hectares. The subdivision concept is shown in Attachment 1.

The Planning Commission refused this application on the 28th January 2009. The applicants have lodged a reconsideration request with the Commission which is now seeking Council’s comments.

This matter was originally presented to Council at its Meeting of the 20th November 2008 at which time the Officer Recommendation was:

That Council advise the Western Australian Planning Commission that it does not support the proposed re-subdivision of Lots 7918 and 11253 Jayes Road because Lot 11253 is a previous road reserve; and

- It could not reasonably be developed for a dwelling; nor
- Could it be used for rural purposes in its own right.

The Item was withdrawn by the CEO and was resubmitted to the December Ordinary Meeting of Council. At this Meeting Council resolved:

That Council advise the Western Australian Planning Commission that it supports the proposed resubdivision of Lots 7918 and 11253 Jayes Road with the following condition:

The owner pay Council a Town Planning Scheme the usual amendment fee of \$3,500 toward an amendment that Council will make in the future to clear up a few issues with the current Scheme.

The subject land is located approximately 11 kms south west of Boyup Brook on the corner of Jayes Road and Flax Road. It has an area of 136 hectares and is used for general farming.

Lot 11253 appears to be an unmade road reserve that has been converted into a freehold lot. Pt Location 7918 is severed by this unmade road reserve. This land is not required for access to the subject land or the surrounding lots. The purpose of the boundary realignment is to rationalise the lot boundaries of the subject land to reflect the natural environmental features and improve management of the land.

In response to the Commission's refusal, the applicant has now submitted an Agronomy and Hydrology Assessment to the Commission. The applicants submission states that:-

The report has been prepared by Slade AG TECH in accordance with the requirements of the Warren-Blackwood Rural Strategy. A copy of the report is attached for the Commission's perusal.

The main findings of the assessment shows that the subject land has high capability for intensive agriculture and has the potential for increased water storage to accommodate intensive agricultural pursuits.

Up to 79% of the total lot area has been assessed as having Class 1 or 2 soils suitable for intensive perennial or annual horticulture. Proposed Lot A has a total of 49.2ha (66%) of Class 1 / 2 soils. Proposed Lot B has 50.lha (80%) of similar soils. Arability for both proposed lots therefore exceeds the 30ha minimum required by section 5.7 of the Warren-Blackwood Rural Strategy.

The existing and potential water supplies will be created by surface catchment. A thorough analysis of the catchment flows and required dam sites and designs is included in the Agronomy and Hydrology Assessment. The assessment shows that there is sufficient runoff and seepage to provide the required amount of water to cater for 30ha of grapes and 7ha of vegetable crops on each of the two proposed lots. Adding to this is the ability to expand or construct new dams that provide the total amount of water required plus 25% to cater for evaporation loss.

COMMENT

The following issues are relevant to the application.

Status of Lot 11253

The applicant has submitted evidence that in 1974 that Lot 11253 existed as a separate freehold allotment on the certificate of title. It therefore predates the introduction of Town Planning Scheme No 2 in 1997.

The 'no zone' classification in the Scheme has been used to designate road reserves and it is noted that Lot 11253 is only 20 meters wide. Even if this land was zoned Rural, then Clause 5.2.5 effectively prohibits a dwelling from being developed as it must be setback a minimum of 10 meters from each boundary.

If there is no clear ability to develop a dwelling on Lot 11253, then a new development right should not be created by boundary realignment. This underpins the policies relating to boundary realignments not creating additional allotments.

Criteria for Boundary Realignments

Since December the provisions of the Rural Strategy have been finalized with the Planning Commission.

In relation to boundary realignments, the Commission is accepting a 40ha minimum lot size where the land is located more than 10km from the townsite. However it is also applying the subdivision requirements that are applicable to greenfields subdivision where additional lots are being created. Specially, in addition to a 40 hectare minimum lot size the Commission also requires that the lots to contain a minimum of 30 hectares of Class 1 or 2 land for agriculture.

The applicant has now submitted an Agronomy and Hydrology Assessment to demonstrate compliance with this.

Rural Subdivision

As Lot 7918 has an area of 134 hectares then it can be considered for subdivision in its own right. As any subdivision of the site would mean that the lots are less than 80 hectares the applicant would have to comply with the previously stated requirements relating having a minimum of 30ha of Class1 or 2 agricultural land.

This is independent of any boundary realignment.

The applicant has now submitted an Agronomy and Hydrology Assessment to demonstrate compliance with this.

Summary

Based upon the revised information which has been submitted, the application can be considered as a rural subdivision rather than just as a boundary realignment.

On this basis the issues associated with the zoning and development of a dwelling on Lot 11253 have less significance. As the use of Lot 11253 (for rural purposes) will not alter due to the application there is no immediate requirement to rezone the land. The zoning 'correction' can be done in conjunction with the future Scheme review.

If Lot 11253 did not exist, then Lot 7918 is still large enough and contains suitable Class 1 and 2 agricultural to substantiate its subdivision.

CONSULTATION

None

STATUTORY OBLIGATIONS

Town Planning Scheme

Lot 7918 is zoned 'Rural' and Lot 11253 is classified as 'No Zone' in Town Planning Scheme No.2. The surrounding area is generally zoned 'Rural'.

Clause 5.2.5 of the Scheme states that no building development shall be located within 10 meters of any boundary of a lot in the Rural zone.

Clause 5.1 of the Scheme states that in considering applications for subdivision, rezoning and planning consent in the Rural zone, Council shall have regard to:

- i) the need to protect the agricultural practices of the Rural zone in light of its importance to the District's economy;
- ii) the need to protect the area from uses which will reduce the amount of land available for agriculture;
- iii) the need to preserve the rural character and rural appearance of the area; and
- iv) where rural land is being subdivided for closer development, the proposal should be supported with evidence outlining the land's suitability and capability for further development.

Draft Local Rural Strategy

The Rural Strategy recommendations for both rural subdivision and also boundary realignments are applicable to the proposal.

Recommendation No 2 (Rural Subdivision) states that:-

New lots of less than 80ha will not be supported, except where the lot is a minimum of 40ha and all of the following criteria are met:

An agronomist's report or similar demonstrates that each new lot will contain a minimum of 30ha of land with a high-capability rating (class 1 or 2) for annual or perennial horticultural production.

- a) An hydrologist's report or similar demonstrates that each new lot has long term secure access to a supply of water of a sufficient quantity and quality as applicable to the potential agricultural production on that land, and the State water management agency is prepared to agree that the capture of that water is within the limits of an endorsed Water Allocation Management Plan or is within the sustainable yield for that sub-catchment.
- b) The total lot area incorporates the minimum area of 30ha of high-capability land, plus the water capture and/or storage area (as necessary), plus an area for farm infrastructure and buildings with sufficient setback from adjoining properties so as not to restrict potential agricultural productivity on those properties, setbacks from water courses and wetlands, plus the retention of any remnant vegetation that should be protected from clearing.

The Strategy recommendations for boundary realignments are:-

- 8 Council's objective is to encourage the redesign of existing (multiple lot) farms into a more appropriate configuration of lot boundaries relative to land management and land capability factors, subject to maintenance or reduction of the original number of lots.
- 9 The smaller lots have sufficient size to allow for the construction of a dwelling and other small farm infrastructure and buildings with sufficient setback from adjoining properties so as not to restrict potential agricultural productivity on those properties.

- 10 The smaller lots are located to have minimal adverse impact on the viability and sustainability of the main farming property.
- 11 The total number of resulting lots is not greater than the original number of lots.
- 12 In the case of lifestyle lots, the land is located within 10kms of a major townsite.
- 13 That for the purpose of the above provision a “lifestyle” lot is defined as having a minimum area of 20 hectares (being within 10kms of the townsite).
- 14 That areas more than 10kms distance from the townsite the smaller lot shall have a minimum size of 40 hectares.

POLICY IMPLICATIONS

Council Policy P.03 relates to Subdivisions and Amalgamations. It addresses the general matters contained within Clause 5.2 of the Scheme, the WAPC Policies, Warren Blackwood Rural Strategy and draft Local Rural Strategy.

BUDGET/FINANCIAL IMPLICATIONS

None

STRATEGIC IMPLICATIONS

Western Australian Planning Commission

There are several WAPC Policies affecting boundary realignments for rural land including:-

- DC 3.4 – Subdivision of Rural Land; and
- Warren Blackwood Regional Rural Strategy.

SUSTAINABILITY IMPLICATIONS

- **Environmental:**
There are no known environmental issues at this stage
- Economic:**
There are no known economic issues at this stage.
- **Social:**
There are no known social issues at this stage.

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 7.3.7

That the Western Australian Planning Commission and applicant be advised that:-

- 1 It supports the proposed re-subdivision of Lots 7918 and 11253 Jayes Road as the application (as evidenced by the Agronomy and Hydrology Assessment) meets the

pre-requisites for subdivision as contained in the Warren Blackwood Rural Strategy and Council's draft Rural Strategy.

- 2 That the present zoning of lot 11253 does not prevent its continued use for rural purposes and this will be updated / corrected in the review of the Town Planning Scheme.

8 COMMITTEE REPORTS

8.1.1 Youth Advisory Committee Minutes

Location:	N/A
Applicant:	N/A
File:	IM/37/004
Disclosure of Officer Interest:	Nil
Date:	9 th July 2009
Author:	Alan Lamb – Chief Executive Officer
Authorizing Officer:	Not Applicable
Attachments:	Yes - Minutes

BACKGROUND:

A meeting of the Youth Advisory Committee was held on 16th, 23rd and 30th June 2009.

Minutes of the meeting are laid on the table and circulated (*refer to appendix 8.1.1*)

OFFICER RECOMMENDATION – ITEM 8.1.1

That the minutes of the Youth Advisory Committee held on 16th, 23rd and 30th June 2009 be received.

9 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

10 URGENT BUSINESS – BY APPROVAL OF THE PRESIDENT OR A MAJORITY OF COUNCILLORS PRESENT

11 CONFIDENTIAL MATTERS

11.1 Employment Contract Dr Mel

<i>Location:</i>	<i>Boyup Brook district</i>
<i>Applicant:</i>	<i>N/A</i>
<i>File:</i>	<i>N/A</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>9th July 2009</i>
<i>Author:</i>	<i>Alan Lamb</i>
<i>Authorizing Officer:</i>	<i>Not Applicable</i>
<i>Attachments:</i>	

SUMMARY

The purpose of this item is to put before Council the matter of a renewal of the Contract of employment for Dr Mel.

BACKGROUND

Dr Mel's contract of employment is due to end 30 June 2009. Clause 2.2 of the agreement provides that whilst there is no compulsion on either party to agree to an extension, the employer is to invite the employee in writing not later than 6 months prior to the expiry of the term of the agreement to discuss the possibility of a new agreement for a further term.

Dr Mel's position has been determined by Council to be a Senior Position in accordance with the Local Government Act. Whilst Council does not appoint any employee other than the Chief Executive Officer that Act provides that before appointments to Senior Positions are made, Council is to be given the opportunity to reject the proposed appointee.

COMMENT

Council may wish to deal with this matter behind closed doors. Section 5.232(a) provides that Council may close a part of the meeting where it is to deal with a matter affecting an employee.

It is proposed that a new agreement be entered into with Doctor Mel for 5 years commencing 1 July 2009.

STATUTORY OBLIGATIONS

The following sections of the Local Government Act have relevance, especially Section 5.37(2):

5.37. Senior employees

- (1) A local government may designate employees or persons belonging to a class of employee to be senior employees.

- (2) The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.
- (3) If the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.
- (4) For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.

[Section 5.37 amended by No. 49 of 2004 s. 45 and 46(4).]

5.38. Annual review of certain employees' performances

The performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.

5.39. Contracts for CEO's and senior employees

- (1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.
 - (1a) Despite subsection (1) —
 - (a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and
 - (b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.
- (2) A contract under this section —
 - (a) in the case of an acting or temporary position, cannot be for a term exceeding one year;
 - (b) in every other case, cannot be for a term exceeding 5 years.
- (3) A contract under this section is of no effect unless —
 - (a) the expiry date is specified in the contract;
 - (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and
 - (c) any other matter that has been prescribed as a matter to be included in the contract has been included.
- (4) A contract under this section is to be renewable and subject to subsection (5), may be varied.
- (5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.

- (6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b) from being terminated within that period on the happening of an event specified in the contract.
- (7) A report made by the Salaries and Allowances Tribunal, under section 7A of the *Salaries and Allowances Act 1975*, containing recommendations as to the remuneration to be paid or provided to a CEO is to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.

The following section of the Act relates to meetings being open to the public:

5.23. Meetings generally open to the public

- (1) Subject to subsection (2), the following are to be open to members of the public-
 - (a) all council meetings; and
 - (b) all meetings of any committee to which a local government power or duty has been delegated.
- (2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —
 - (a) a matter affecting an employee or employees;
 - (b) the personal affairs of any person;
 - (c) 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;
 - (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
 - (e) a matter that if disclosed, would reveal —
 - (i) a trade secret;
 - (ii) information that has a commercial value to a person; or
 - (iii) information about the business, professional, commercial or financial affairs of a person,
where the trade secret or information is held by, or is about, a person other than the local government;
 - (f) a matter that if disclosed, could be reasonably expected to —
 - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
 - (ii) endanger the security of the local government's property; or
 - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety;
 - (g) information which is the subject of a direction given under section 23(1a) of the *Parliamentary Commissioner Act 1971*; and

- (h) such other matters as may be prescribed.
- (3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

All costs associated with the contract of employment will be covered by provisions in the 2009/10 budget.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental:**
There are no known environmental issues at this stage.
- **Economic:**
Keeping a Doctor in town and operating an efficient Medical Centre should encourage general growth.
- **Social:**
Keeping a Doctor in town and operating an efficient Medical Centre should encourage people to come and stay in Boyup Brook.

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 11.1

That Council endorse the Chef Executive Officer's move to enter into a new five year contract of employment with Doctor Mel.

12 CLOSURE OF MEETING

There being no further business the Shire President, Cr Roger Downing, thanked Councillors and Staff for their attendance and declared the meeting closed at