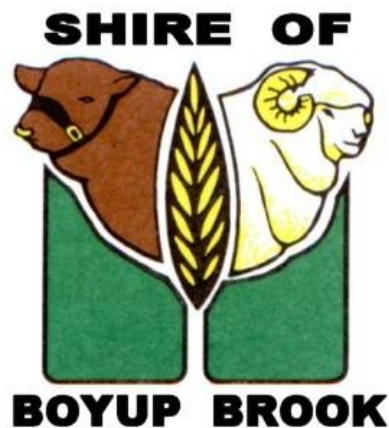


Minutes



ORDINARY MEETING

held

THURSDAY 20 October 2016

Commenced AT 5.02PM

AT

**SHIRE OF BOYUP BROOK
CHAMBERS**

ABEL STREET – BOYUP BROOK

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

1.1 Attendance

Cr M Giles - Shire President
Cr G Aird – Deputy Shire President
Cr N Blackburn
Cr J Imrie
Cr P Kaltenrieder
Cr K Moir
Cr E Muncey
Cr T Oversby
Cr E Rear

STAFF: Mr Alan Lamb (Chief Executive Officer)
Mr Stephen Carstairs (Director Corporate Services)
Mr Rob Staniforth-Smith (Director of Works & Services)
Mrs Maria Lane (Executive Assistant)

PUBLIC: Mr Doug Corker

1.2 Apologies

Ms Kerry Fisher

1.3 Leave of Absence

2 PUBLIC QUESTION TIME

2.1 Response to Previous Public Questions Taken on Notice

3 APPLICATIONS FOR LEAVE OF ABSENCE

Cr Oversby advised that he will be absent for the November 2016 ordinary meeting of Council.

4 PETITIONS/DEPUTATIONS/PRESENTATIONS/REPORTS

Cr Kaltenrieder attended the Community Resource Centre AGM Committee meeting.

Cr Oversby advised Council that the Dinninup Show will be held on 1st November 2016.

5 CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council - Thursday 15 September 2016

COUNCIL DECISION & OFFICER RECOMMENDATION - Item 5.1

MOVED: Cr Kaltenrieder

SECONDED: Cr Rear

That the minutes of the Ordinary Meeting of Council held on Thursday 15 September 2016 be confirmed as an accurate record.

CARRIED 9/0

Res 117/16

6 PRESIDENTIAL COMMUNICATIONS

Nil

7 COUNCILLORS QUESTIONS ON NOTICE

Nil

8 REPORTS OF OFFICERS

8.1 MANAGER WORKS & SERVICES

8.1.1 Revision to Policy P08 – “Naming New Roads” – addition of “AFFLECK”
--

Location:	<i>Boyup Brook Shire</i>
Applicant:	<i>Ian Affleck</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10th of October, 2016</i>
Author:	<i>Rob Staniforth-Smith</i>
Authorizing Officer:	<i>Alan Lamb</i>
Attachments:	<i>Policy P08-Naming New Roads Letter from Ian Affleck</i>

SUMMARY

The applicant, Ian Affleck, has requested that the surname ‘AFFLECK’ be considered by the Council as a future road/street name within the Shire of Boyup Brook and be added to the schedule of suggested names in policy P08.

BACKGROUND

The applicant has forwarded a brief summary of the AFFLECK family history and involvement in the WILGA community: - see attachment 8.1.1.

COMMENT

The AFFLECK name satisfies all of the criteria in the Shire of Boyup Brook’s Naming New Roads Policy and is considered suitable to be added to the schedule of suggested road names included in the policy.

(see agenda attachment 8.1.1- Policy P.08 Naming New Roads)

CONSULTATION

CEO, Alan Lamb

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Compliance with Shire of Boyup Brook Policy P.08

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

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

COUNCIL DECISION & OFFICER RECOMMENDATION - ITEM 8.1.1

MOVED: Cr Aird

SECONDED: Cr Blackburn

That the Council approve the inclusion of the Surname 'AFFLECK' to the schedule of suggested names in the Shire of Boyup Brook's Naming New Roads Policy – P08.

CARRIED 9/0

Res 118/16

8.1.2 Banks Road - reseal

Location:	<i>N/A</i>
Applicant:	<i>N/A</i>
Disclosure of Interest:	<i>Nil</i>
Date:	<i>12th of October, 2016</i>
Author:	<i>R Staniforth-Smith, Manager of Works and Services</i>
Authorizing Officer:	<i>Alan Lamb – Chief Executive Officer</i>
Appendices:	<i>No</i>

SUMMARY

It is proposed to reseal Banks Road in the 2016-2017 calendar year

BACKGROUND

A 1.0km section of Banks Road was re-constructed and sealed under a joint Council/private developer (A Doust) project.

A typical pavement system comprises a 2 coat bitumen seal, the primer seal which is placed once the formation has been done and a 2nd coat seal (reseal) which we generally leave for as long as possible without causing detriment to the paved surface.

Banks Road was scheduled to be 2nd coat sealed in the 2017-2018 financial year under the Roads to Recovery programme, however due to stripping (stones coming off bitumen binder) of the prime coat, it needs resealing this summer, before the binder fails causing potholing.

It is proposed to bring the Roads to Recovery funded reseal forward from 2017-2018 to the 2016-2017 financial year.

COMMENT

Bitumen road seals are a fine art and not an exact science. Roads typically strip due to low traffic rates, excessive shade, excessively cold weather for the mix design, lower than required bitumen spray rates.

All bitumen roads need a 2nd coat seal, it is just a matter of how the prime coat is wearing as to when the 2nd coat seal is required. When it gets to a point that pavement failure is going to occur, the road must be resealed.

There will be no net cost to Council as the funding for this reseal is from the 2014 to 2019 Roads to Recovery programme.

CONSULTATION

Alan Lamb, CEO

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil. Bringing Roads to Recovery project forward one financial year..

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.1.2

MOVED: Cr Oversby

SECONDED: Cr Muncey

That Council approves including Banks Road reseal (2nd coat bitumen seal) in the 2016-2017 budget and that the \$33,000 funds will come from the Roads to Recovery Programme.

CARRIED 9/0

Res 119/16

COUNCIL DECISION

MOVED: Cr Moir

SECONDED: Cr Kaltenrieder

That the Council adopts enbloc 8.2.1, 8.2.2, 8.2.3 and 8.2.4.

CARRIED 9/0

Res 120/16

8.2 FINANCE

8.2.1 List of Accounts Paid in September 2016
--

Location:	<i>Not applicable</i>
Applicant:	<i>Not applicable</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10 October 2016</i>
Author:	<i>Stephen Carstairs – Director Corporate Services</i>
Authorizing Officer:	<i>Alan Lamb – CEO</i>
Attachments:	<i>Yes – List of Accounts Paid in September 2016</i>

SUMMARY

In accordance with the *Local Government (Financial Management) Regulations 1996* the list of accounts paid in September 2016 are presented to Council.

BACKGROUND

This report presents vouchers (e.g. accounts and invoices) received for the supply of goods and services, salaries and wages, and the like which were paid during the period 01 to 30 September 2016.

COMMENT

The attached listing represents vouchers (e.g. accounts and invoices) the shire paid by cheque or electronic means during the period 01 to 30 September 2016.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations 1996, Regulations 12 and 13 apply and are as follows:

12. *Payments from municipal fund or trust fund*

- (1) *A payment may only be made from the municipal fund or the trust fund —*
 - (a) *if the local government has delegated to the CEO the exercise of its power to make payments from those funds — by the CEO; or*
 - (b) *otherwise, if the payment is authorised in advance by a resolution of the council.*
- (2) *The council must not authorise a payment from those funds until a list prepared under regulation 13(2) containing details of the accounts to be paid has been presented to the council.*

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.*
- (2) *A list of accounts for approval to be paid is to be prepared each month showing —*
 - (a) *for each account which requires council authorisation in that month —*
 - (i) *the payee's name;*
 - (ii) *the amount of the payment; and*
 - (iii) *sufficient information to identify the transaction;*
 - and*
 - (b) *the date of the meeting of the council to which the list is to be presented.*
- (3) *A list prepared under sub regulation (1) or (2) 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

Council's Authority to Make Payments Policy has application.

BUDGET/FINANCIAL IMPLICATIONS

Account payments accorded with the 2016-17 Annual Budget

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.1

That at its October 2016 ordinary meeting Council receive as presented the list of accounts paid in September 2016, totalling \$586,413.43 and as represented by:

Municipal Cheques	19998-20003	\$100,470.30
Municipal Electronic Payments	4479-4602	\$286,784.97
Municipal Direct Payments		\$199,158.26
Trust Fund Cheques	2074	\$200.00

CARRIED BY ENBLOC

Res 121/16

8.2.2 31 August 2016 Statement of Financial Activity

Location:	Not applicable
Applicant:	Not applicable
Disclosure of Officer Interest:	None
Date:	10 October 2016
Author:	Stephen Carstairs – Director Corporate Services
Authorizing Officer:	Alan Lamb – CEO
Attachments:	Yes – August 2016 Financial Reports

SUMMARY

This report recommends that Council receive the Statement of Financial Activity and Net Current Assets for the month ended 31 August 2016.

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 *Statement of Financial Activity*.

The regulations also prescribe the content of the reports, and that details of items of Material Variances shall also listed.

COMMENT

It is a statutory requirement that the statement of financial activity be prepared each month (Regulation 34.(1A)), and that it be presented at an ordinary meeting of the Council within 2 months after the end of the month to which the statement relates (Regulation 34.(4)(a)).

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations 1996, Regulation 34.(1A)

Local Government (Financial Management) Regulations 1996, Regulation 34.(4)(a)

POLICY IMPLICATIONS

Council's F.07 *Material Variance in Financial Activity Statement Reporting* policy has application.

BUDGET/FINANCIAL IMPLICATIONS

As presented in the attached reports.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.2

That having regard for any material variances, Council receive the 31 August 2016 Statement of Financial Activity and Statement of Net Current Assets, as presented.

CARRIED BY ENBLOC

Res 122/16

8.2.3 30 September 2016 Statement of Financial Activity
--

Location:	Not applicable
Applicant:	Not applicable
Disclosure of Officer Interest:	None
Date:	10 October 2016
Author:	Stephen Carstairs – Director Corporate Services
Authorizing Officer:	Alan Lamb – CEO
Attachments:	No

SUMMARY

This report recommends that Council defer to the November 2016 ordinary meeting of Council the receiving of the Statement of Financial Activities and the Net Current Assets for the month ended 30 September 2016.

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 *Statement of Financial Activity*.

The regulations also prescribe the content of the reports. Details of items of Material Variances are also listed.

COMMENT

It is a statutory requirement that the statement of financial activity be prepared each month (Regulation 34.(1A)), and that it be presented at an ordinary meeting of the Council within 2 months after the end of the month to which the statement relates (Regulation 34.(4)(a)).

Because of staffing shortfalls during October 2016, it is proposed that the 30 September 2016 Statement of Financial Activity be deferred to the November 2016 ordinary meeting.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations 1996, Regulation 33(A)

Local Government (Financial Management) Regulations 1996, Regulation 34.(1A)

Local Government (Financial Management) Regulations 1996, Regulation 34.(4)(a)

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.3

That receipt by Council of the shire's 30 September 2016 Statement of Financial Activity and Statement of Net Current Assets be deferred to Council's November 2016 ordinary meeting.

CARRIED BY ENBLOC

Res 123/16

8.2.4 New Finance Policy - Asset Management
--

Location:	Shire Boyup Brook
Applicant:	N/A
Disclosure of Officer Interest:	None
Date:	14 October 2016
Author:	Stephen Carstairs – Director Corporate Services
Authorizing Officer:	Alan Lamb – CEO
Attachments:	Yes: Proposed Asset Management Policy (F.8)

SUMMARY

Council is requested to consider and adopt a newly drafted asset management policy which aims to ensure the local government is kept informed of its capability to deliver the services and assets required by the community.

BACKGROUND

Regulation 19DA (3)(c) of the *Local Government (Administration) Regulations 1996* requires local governments to prepare and implement corporate business plans which develop and integrate matters relating to resources, and include:

- asset management;
- workforce planning; and
- long term financial planning.

COMMENT

Policy *F.08 Asset Management* has been drafted so as to accord with Regulation 19DA (3)(c) of the *Local Government (Administration) Regulations 1996*.

CONSULTATION

Nil.

STATUTORY OBLIGATIONS

Section 19DA of the *Local Government (Administration) Regulations 1996* have application to this report.

19DA. Corporate business plans, requirements for (Act s. 5.56)

*(3) A corporate business plan for a district is to —
(c) develop and integrate matters relating to resources, including asset
management, workforce planning and long-term financial planning.*

POLICY IMPLICATIONS

This item impacts no other policies.

BUDGET/FINANCIAL IMPLICATIONS

There are no financial implications relating to this item.

STRATEGIC IMPLICATIONS

The new and reviewed policies presented here seek to provide officers with guidance on asset management.

SUSTAINABILITY IMPLICATIONS

- **Environmental** – Nil
- **Economic** – Nil
- **Social** – Nil

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION - ITEM 8.2.4

That Council adopts newly drafted finance policy *F.08 Asset Management*, as presented.

CARRIED BY ENBLOC

Res 124/16

8.3 CHIEF EXECUTIVE OFFICER

8.3.1 Subdivision Application (WAPC Ref 154246) - Lot No 29, 3531, 8109 Winnejup Road, Mayanup

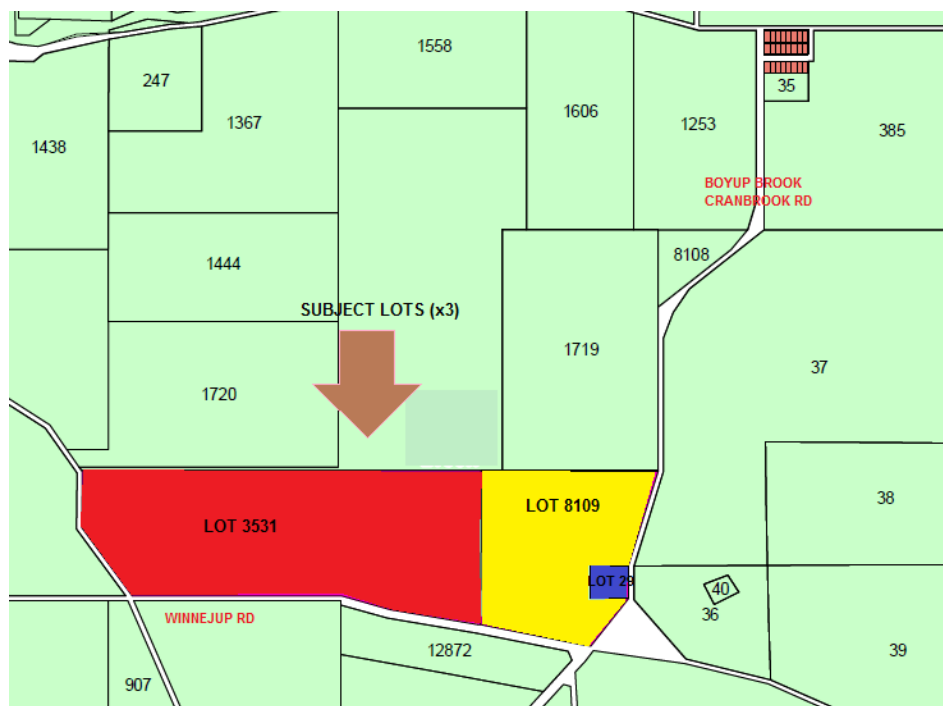
Location:	Lot No 29, 3531, 8109 Winnejup Road, Mayanup
Applicant:	Able Planning & Project Management
Owner:	Ian Clark
Disclosure of Officer Interest:	Nil
Date:	October 2016
Author:	A. Nicoll, Town Planner
Authorizing Officer:	Alan Lamb, Chief Executive Officer
Attachments:	Nil

SUMMARY

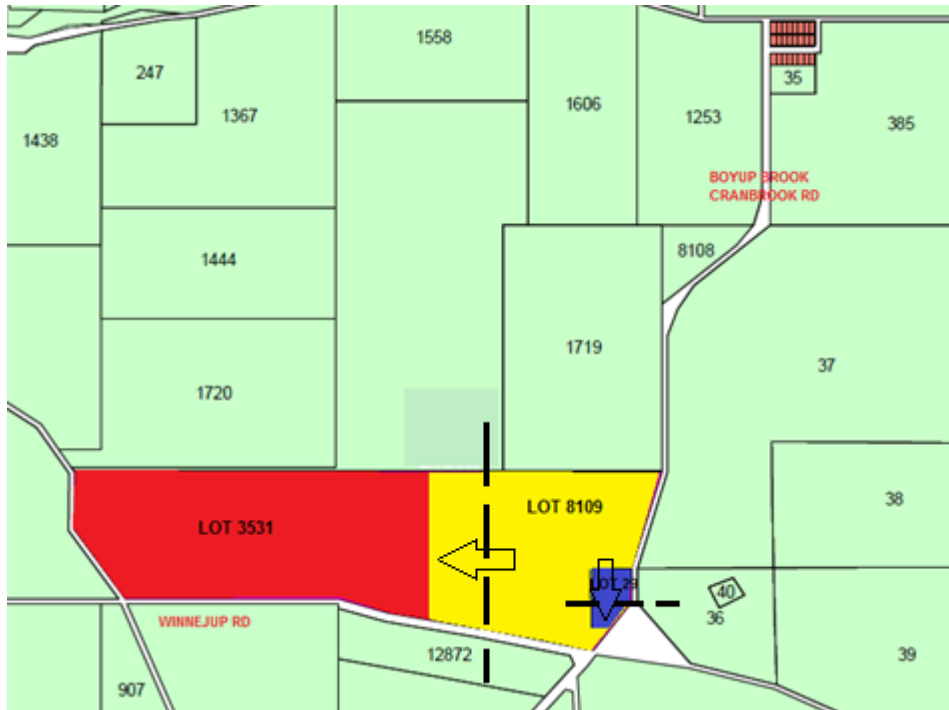
Council is requested to agree to advise the WAPC to support the proposed 'Rural' subdivision, for Lot No 29, 3531, 8109 Winnejup Road, Mayanup.

The application proposes to adjust the boundaries of two broad-acre rural lots (3531 and 8109) and one smaller homestead lot (29).

The following map indicates the current location and configuration of the subject lots.



The subdivision proposes to retain the number of lots (3 lots) in a different configuration as shown in the following plan. The boundary of Lot 8109 shifts to the west and the boundary of Lot 29 shifts to the south.



BACKGROUND

The Western Australian Planning Commission received an application requesting approval to subdivide Lot No 29, 3531, 8109 Winnejup Road, Mayanup.

The Western Australian Planning Commission forwarded the application to the Shire of Boyup Brook requesting information, comment or recommended conditions pertinent to the application by the 3 November 2016.

COMMENT

The subdivision is proposing to adjust lot boundaries whilst maintaining the same number of lots (3 lots).

The lots are described as follows:

- Lot 3531 contains an existing single house, water tank, grain silos, several soak dams and fencing. It is accessed via a gravel crossover and driveway onto Winnejup Road and is used for rotational cropping and grazing.
- Lot 8109 is mostly cleared except for several isolated stands of remnant trees. Lot 8109 contains open-sided machinery and storage sheds, several soak dams and paddock fencing. It is currently accessed via the internal access tracks from Lots 29 and 3531. A new crossover to Lot 8109 from either the Boyup Brook-Cranbrook Road or the Winnejup Road will need to be developed if and when a new single house is proposed at the Lot 8109.

- Lot 29 is the traditional homestead lot and is mostly cleared. Lot 29 contains an existing single house, machinery sheds, water tanks, grain silos and perimeter fencing. It is accessed via a gravel crossover and driveway onto Boyup Brook-Cranbrook Road, and is used for rural living.

The purpose of the boundary adjustment is to:

- Contain electrical connections for the dwelling at Lot 29, wholly inside Lot 29 (Currently the mains for Lot 29 is partly within Lot 8109 to the south); and
- Make the size of Lot 8109 more viable in its own right.

The existing and proposed lot sizes are as follows:

Existing Lots and size	Proposed Lot sizes
Lot 3531 – 81.757ha	66.761ha
Lot 8109 – 38.909ha	52.817ha
Lot 29 – 2.0291ha	3.1171ha

STATUTORY OBLIGATIONS

Shire Local Planning Scheme 2

The subject properties are zoned 'Rural' in accordance with the Shire of Boyup Brook *Local Planning Scheme 2*.

The proposal to realign the property boundaries has regard to:

- The need to protect the agricultural practices of the Rural zone in light of its importance to the District's economy (Scheme clause 5.2.1i);
- The need to protect the area from uses which will reduce the amount of land available for agriculture (Scheme clause 5.2.1ii); and
- The need to preserve the rural character and rural appearance of the area (Scheme clause 5.2.1iii).

POLICY IMPLICATIONS

There are no policy implications relating to this item. The proposal complies with the Western Australian Planning Commission's Development Control Policy 3.4 as follows:

- Subdivision to realign lot boundaries with no increase in the number of lots and where the resultant lots will not adversely affect rural land uses (DC Policy 3.4 – Provision 6a).

CONSULTATION

N/A

BUDGET/FINANCIAL IMPLICATIONS

There are no Budget or Financial implications relating to this item.

STRATEGIC IMPLICATIONS

There are no strategic implications relating to this item.

CONCLUSION

The proposed subdivision of Lot No 29, 3531, 8109 Winnejump Road, Mayanup, complies with the Shires *Local Planning Scheme 2* and the Commissions Development Control Policy 3.4, (provision – 6a) on the following grounds:

- Subdivision to realign lot boundaries with no increase in the number of lots and where the resultant lots will not adversely affect rural land uses.

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.1

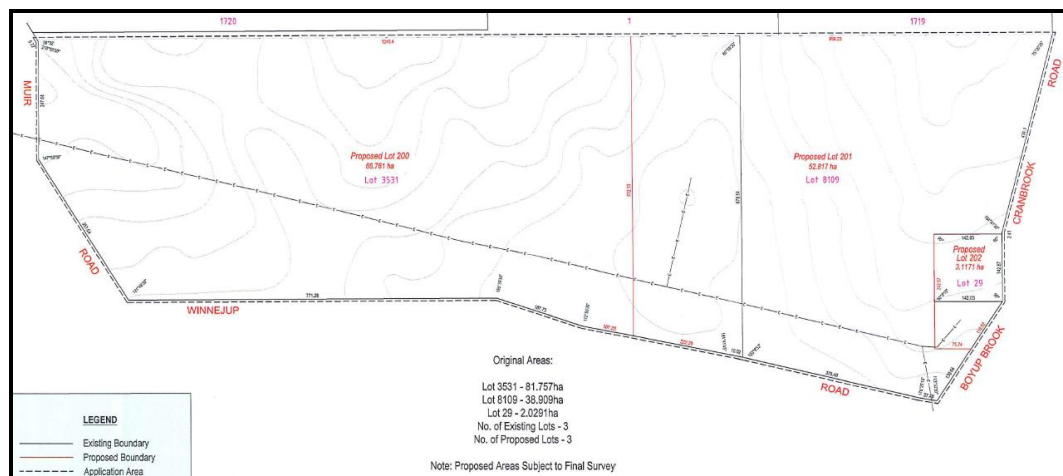
MOVED: Cr Blackburn

SECONDED: Cr Oversby

That Council

Agree to advise the Western Australian Planning Commission to support the proposed 'Rural' subdivision/boundary realignment, with no conditions.

Proposed Subdivision



CARRIED 9/0

Res 125/16

WITHDRAWN

Item 8.3.2 was withdrawn by the CEO.

The CEO will provide further information and report back to Council.

8.3.2 Resolution to SUPPORT Minister for Planning Modifications to Scheme Amendment 16 – Lot 1 Forrest Street, Boyup Brook and portion of Railway Parade

Location:	Lot 1 Forrest Street and portion of Railway Parade
Applicant:	Shire of Boyup Brook
Disclosure of Officer Interest:	None
Date:	October 2016
Author:	A. Nicoll, Town Planner
Authorizing Officer:	Alan Lamb, Chief Executive Officer
Attachments:	Amendment 16 with Ministers modifications

SUMMARY

The Minister for Planning has decided to support the Amendment 16, subject to some minor modifications.

The purpose of this report is to put before Council the request to resolve to:

1. Support the Ministers modifications; and
2. Agree to forward Amendment 16, with Ministers modifications, to the Department of Planning.

BACKGROUND

In June 2016, the Shire of Boyup Brook Council resolved to support the *Town Planning Scheme No.2* Amendment 16, which included:

1. *Rezoning Lot 1 Forrest Street, Boyup Brook from Parks and Recreation Reserve to Residential R15/R30 and amending the Scheme maps accordingly;*
2. *Rezoning portion of the Railway Parade road reserve, Boyup Brook from Parks and Recreation Reserve to No Zone and amending the Scheme maps accordingly;*
3. *Inserting a new sub clause to 5.1.2 Residential Planning Codes: Variations and Exclusions as follows:*
5.1.2.2 Where a lot has a dual coding of R15/30, the local government may approve residential development at a higher code where development is connected to a Septic Tank Effluent Disposal (STED) scheme and where a Local Development Plan demonstrating appropriate design standards has been approved in accordance with Part 6 of the Deemed Provisions; and
4. *Re-numbering subsequent sub-clauses accordingly.*

Following the above Council resolution, the Amendment 16 was referred to the Western Australian Planning Commission seeking endorsement.

The Western Australian Planning Commission forwarded the proposed amendment to the Minister for Planning where it was resolved, to request the Shire of Boyup Brook Council, to modify the amendment document in accordance with the following schedule of modifications, before final endorsement is given.

SCHEDULE OF MODIFICATIONS	
SHIRE OF BOYUP BROOK	
TOWN PLANNING SCHEME No.2 AMENDMENT NO 16	
NO.	PROPOSED MODIFICATION
1	Moving pages 5 & 7 and the 'Adoption' page to the rear of the Amendment document and deleting page 6.
2	On page 5, modifying the wording of proposed clause 5.1.2.2 to state: <i>"5.1.2.2 Where a lot has a dual density coding of R15/30, the local government may approve residential development at a higher code where development is connected to a Septic Tank Effluent Disposal (STED) community scheme."</i>
3	Modifying Page 5 as follows: <ul style="list-style-type: none">• Deleting <i>"Minister for Planning"</i> and <i>"Proposal to Amend a District Planning Scheme"</i> and replacing with <i>"Planning and Development Act 2005"</i>• Changing 'Description of District Planning Scheme' from "District Planning Scheme 2" to "Town Planning Scheme No.2"• Deleting "Proposal" and replacing with "The Shire of Boyup Brook under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005, hereby amends the above Town Planning Scheme by:"• Changing points 1 and 2 to refer to 'Zoning' and not 'Rezoning'.• Deleting the last paragraph and points a) and b) from the page.
4	Remove reference to the requirement for a Local Development Plan throughout the amendment document.
5	Modifying District Planning Scheme to Town Planning Scheme throughout the Amendment document.

COMMENT

The Ministers modifications have been recommended for the following reasons:

- Improve legibility and consistency of the Amendment;
- The word "density" was added to proposed clause 5.1.2.2 to ensure consistency with the remainder of the Scheme;

- The word "community" was added to proposed clause 5.1.2.2, such that it was clear what type of system was prerequisite in permitting development at the higher density code. Although the previous wording did state "scheme", interpretation of the wording had the potential to be confused;
- The need for a Local Development Plan was removed from the proposed clause 5.1.2.2, as this will be subject to the discretion of the Commission and will not apply over all dual density coded lots. In the circumstance of the current property, it is anticipated that suitable development controls of the R30 density code can be enforced through the development approval process.

The Ministers modifications are minor in nature and do not impact on the overall intent, which is to enable the opportunity for a developer to develop housing for aged persons - small lots (300m²) and small units (2 bedrooms).

Pursuant to the Ministers decision, staff have modified the amendment document, which is attached for Council review.

If the Council agree to the Ministers modifications, the correspondence, including two sets of amending documents, is to be sent directly to the Department of Planning, Bunbury Office to alleviate any delays in the processing of the amendment.

STATUTORY OBLIGATIONS

In accordance with section 56 of the Planning and Development Regulations 2015, the Minister has not directed the Council to advertise the modifications to the amendment.

POLICY IMPLICATIONS

There are no policy implications relating to this item.

CONSULTATION

N/A

BUDGET/FINANCIAL IMPLICATIONS

There are no financial implications relating to this item.

STRATEGIC IMPLICATIONS

There are no strategic implications relating to this item.

SUSTAINABILITY IMPLICATIONS

There are no policy implications relating to this item.

VOTING REQUIREMENTS

Simple majority

CONCLUSION

The proposed amendment involves transferring the reservation of:

- Lot 1 Forrest Street from 'Parks and Recreation' to the 'Residential' zone;
and
- Portion of Railway Parade from 'Parks and Recreation' to the 'No Zone'.

The Minister is prepared to support the proposed Amendment 16 subject to Council supporting minor modifications. The Ministers modifications do not impact on the overall intent of the Amendment 16.

OFFICER RECOMMENDATION - ITEM 8.3.2

That Council

1. Resolves to SUPPORT the Ministers modifications to Amendment 16, as follows:

SCHEDULE OF MODIFICATIONS SHIRE OF BOYUP BROOK TOWN PLANNING SCHEME No.2 AMENDMENT NO 16	
NO.	PROPOSED MODIFICATION
1	Moving pages 5 & 7 and the 'Adoption' page to the rear of the Amendment document and deleting page 6.
2	On page 5, modifying the wording of proposed clause 5.1.2.2 to state: <i>"5.1.2.2 Where a lot has a dual density coding of R15/30, the local government may approve residential development at a higher code where development is connected to a Septic Tank Effluent Disposal (STED) community scheme."</i>
3	Modifying Page 5 as follows: <ul style="list-style-type: none">• Deleting <i>"Minister for Planning"</i> and <i>"Proposal to Amend a District Planning Scheme"</i> and replacing with <i>"Planning and Development Act 2005"</i>• Changing description of 'District Planning Scheme' from "District Planning Scheme 2" to "Town Planning Scheme No.2"• Deleting "Proposal" and replacing with "The Shire of Boyup Brook under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005, hereby amends the above Town Planning Scheme by:"• Changing points 1 and 2 to refer to 'Zoning' and not 'Rezoning'.• Deleting the last paragraph and points a) and b) from the page.
4	Remove reference to the requirement for a Local Development Plan throughout the amendment document.
5	Modifying District Planning Scheme to Town Planning Scheme throughout the Amendment document.

2. Agrees to forward Amendment 16, with Ministers modifications, to the Department of Planning.

**8.3.3 General Industrial Development (Storage Shed and Workshop) –
Lot 5 Abel Street, Boyup Brook**

Location: Lot 5 Abel Street, Boyup Brook.
Applicant: M & S Mead
Disclosure of Officer Interest: None
Date: October 2016
Author: A. Nicoll, Town Planner
Authorizing Officer: Alan Lamb, Chief Executive Officer
Attachments: Nil

SUMMARY

The purpose of this report is to put before Council the request to develop a storage shed and a workshop as extensions to an existing building at Lot 5 Abel Street.



The subject property is zoned 'Residential' and is currently being used to run a 'General Industrial' type business involving the storage and maintenance of earthmoving machinery.

Council discretion is required due to an indiscretion with the *Town Planning Scheme No.2, Table 1*, which defines a 'General Industrial' activity as being a use that is not permitted in the 'Residential' zone.

Notwithstanding the indiscretion, it is recommended that the Council support the proposed development for the following reasons:

- The subject property has been used for various industrial type activities, including service station, waste recycling (bottles) and wool store since the year dot;
- Clause 4.1.1 of the scheme states: *No provision of the Scheme shall prevent...the continued use of premises or land for the purpose(s) for which they were being lawfully used at the Gazettal Date of the Scheme.*

BACKGROUND

The subject property is currently used for the storage and maintenance of earthmoving machinery.

The Shire received an application to develop a storage shed and a workshop as extensions to an existing building.

The storage shed is proposed to be used to store materials currently left in the open. The workshop is proposed to be used to maintain (under-cover) earthmoving machinery.

COMMENT

Subject Property

The subject property is approximately 2,693m² in area and is surrounded:

- On two sides by gazetted roads;
- On one side by land that's reserved with a creek running through it; and
- At the rear by a lot with a single house.

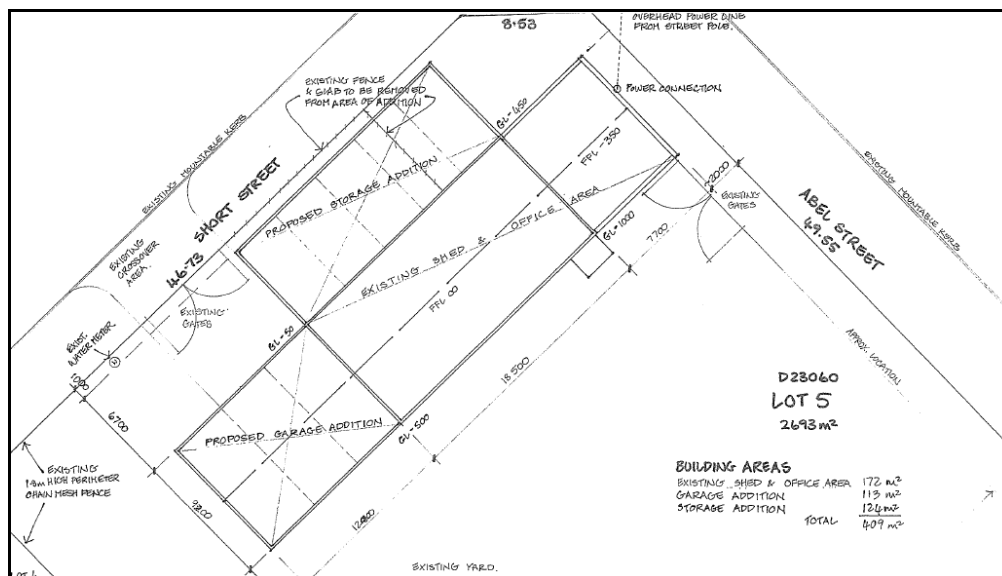
An abundance of various machinery and materials are scattered about the property. The development of additional covered storage and workshop space may improve the amenity of the property by enabling the storage of existing materials under cover and out of public view.

Access to the property is via a gravel crossover off Short Street. It is recommended that the crossover be upgraded to comply with the Shire Policy No.W.08, which states:

- *All crossovers shall be constructed in accordance with the Shire of Boyup Brook specifications and guidelines...C-Sealed Road – No Kerbing 2 Coat Seal or Asphalt.*

Proposed Development

The storage shed is proposed to be developed as a lean-to on the north western side of the existing shed and setback 1m from the property boundary facing Short Street. The workshop is proposed to be developed as a gable extension to the south western end of the existing shed. Refer to the following plans for illustrated information:



The storage shed is 6.7m X 18.5m (124m²), with a wall height of 3.1m. The workshop is 9.1m X 12.4m (113m²), with a wall height of 5m. Both structures are

proposed to be developed using custom orb external cladding to match the existing building.

STATUTORY OBLIGATIONS

Shire's Town Planning Scheme No.2 – Land Use Permissibility

The subject Lot 5, Abel Street is zoned 'Residential' in accordance with the Shire's *Town Planning Scheme No. 2*. In accordance with *Table 1* of the *Scheme*, a business (General Industry) involving the storage and maintenance of earthmoving machinery, is a use that is not permitted in the 'Residential' zone.

Notwithstanding the above, the subject property has been used for industrial type activities for decades and clause 4.1.1 of the scheme supports the continued use of land for the purpose(s) for which it was being lawfully used.

Shire's Town Planning Scheme No.2 – Setbacks

The *Scheme* requires a front boundary setback to buildings of 11m, a side boundary setback to buildings of 10m and a rear boundary setback to buildings of 5m. The lean-to is proposed to be setback 1m from the side boundary facing Short Street and therefore is not in-keeping with the *Scheme* standard for setbacks.

Considering the following, it is recommended that the Council supports a variation to the *Scheme* set back standard:

- Clause 3.6.1 of the Scheme gives the Council the power to approve an application that varies from a standard prescribed by the Scheme with respect to minimum lot sizes, building height, set backs, site coverage, car parking, landscaping and related matters. The power conferred by this clause may only be exercised if the Council is satisfied that:
 - approval of the proposed development would be consistent with the orderly and proper planning of the district and the preservation of the amenity of the district;
 - the non-compliance will not have any adverse effect upon the occupiers or users of the development or the general population of the district; and
 - the spirit and purpose of the standard or requirement will not be unreasonably departed from.

The proposed lean-to is not expected to depart unreasonably from the existing built form. The lean-to is relatively low in height (3m) and is proposed to be developed using materials matching the existing development. As illustrated in the following diagram, previous built form included the development of a shed up-to the property boundary facing Short Street.



Shire's Town Planning Scheme No.2 – Car Parking

Table 3 1 of the *Scheme* requires the development of 1 car parking bay for every 100m² of workshop and warehouse floor space. The total floor area of the existing and proposed developments amount to 409m².

In accordance with the above standard, 4 car parking bays should be provided on-site.

Shire's Town Planning Scheme No.2 – Landscaping

Clause 5.13 of the Scheme states:

Landscaping shall be undertaken and maintained to Council's satisfaction for all development unless, in the opinion of the Council, such landscaping is considered unnecessary. Such landscaping shall generally be located in such positions on a site or sites so as to enhance the appearance of any development or screen from view any parking area, open storage area, drying areas and any other space which, by virtue of its use, is likely to detract from the visual amenity of the surrounding area.

It is recommended that some trees are planted intermittently fronting Abel and Short Streets to enhance the appearance of the developments and use of the land.

POLICY IMPLICATIONS

The *Scheme Policy 3.2.2.2 Boyup Brook Townsite - West* applies to the subject lot and states:

Whereas this area has been partly settled as a residential area and whereas industrial uses have established here and whereas Abel Street and Jayes Road will remain as important local roads, the following planning policy shall apply:

(i) Residential development shall be the predominant use in the area.

(ii) Light industrial uses shall be secondary to the predominant use and shall comply with standards consistent with the amenity of the nearby residential area.

CONSULTATION

N/A

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

To make the current land use at Lots 4 & 5 (Short Street) permissible with the zoning, the *Scheme* should be amended. The zoning of Lots 4 & 5 should be transferred from 'Residential' to 'General Industry'.

SUSTAINABILITY IMPLICATIONS

- **Environmental**
The land falls towards Abel Street and an adjoining creek. It is recommended that the Shire and the land owner ascertain if any erosion issues relating to stormwater run-off exist and discuss methods for on-going stormwater management.
- **Economic**
There are no known significant economic issues.
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple majority

SUMMARY

The proposed developments at Lot 5 Abel Street seek to vary from *Scheme* requirements and standards, however do not depart unreasonably from the current land use, and built form.

OFFICER RECOMMENDATION – ITEM 8.3.3

MOVED: Cr Oversby

SECONDED: Cr Blackburn

That Council

Grants development approval for Lot 5 Abel Street, for the purpose of 'General Industry' (storage shed and workshop), subject to the following notice:

Planning and Development Act 2005

Shire of Boyup Brook

NOTICE OF DETERMINATION ON APPLICATION FOR DEVELOPMENT APPROVAL

Location: Lot 5 Abel Street, Boyup Brook

Description of proposed development:

General Industry (Storage Shed and Workshop)

The application for development is approved subject to the following conditions.

Conditions:

1. Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the Shire of Boyup Brook, all development shall occur in accordance with the approved plans.
2. The crossover to Short Street being constructed to the satisfaction of the Shire of Boyup Brook.
3. Four car-parking spaces being developed to the satisfaction of the Shire of Boyup Brook.
4. Intermittent trees and/or bushes (10m apart) being developed along the frontages to Abel and Short Streets.
5. All stormwater is to be managed, to the satisfaction of the Shire of Boyup Brook.
6. No processes being conducted on the property that may cause a detriment to the amenity of that area by reason of contamination, noise, vibration, smell, fumes, dust or grit.

Date of determination: 20 October 2016

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

Signed:

Dated:

for and on behalf of the Shire of Boyup Brook.

AMENDMENT

MOVED: Cr Giles

SECONDED: Cr Blackburn

That Council

Grants development approval for Lot 5 Abel Street, for the purpose of 'General Industry' (storage shed and workshop), subject to the following notice:

Planning and Development Act 2005

Shire of Boyup Brook

NOTICE OF DETERMINATION ON APPLICATION FOR DEVELOPMENT APPROVAL

Location: Lot 5 Abel Street, Boyup Brook

Description of proposed development:

General Industry (Storage Shed and Workshop)

The application for development is approved subject to the following conditions.

Conditions:

1. Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the Shire of Boyup Brook, all development shall occur in accordance with the approved plans.
2. The crossover to Short Street being constructed to the satisfaction of the Shire of Boyup Brook.
3. Four car-parking spaces being developed to the satisfaction of the Shire of Boyup Brook.
4. All stormwater is to be managed, to the satisfaction of the Shire of Boyup Brook.
5. No processes being conducted on the property that may cause a detriment to the amenity of that area by reason of contamination, noise, vibration, smell, fumes, dust or grit.

Date of determination: 20 October 2016

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

Signed:

Dated:

for and on behalf of the Shire of Boyup Brook.

CARRIED 7/2

Res 126/16

MOTION

That Council

Grants development approval for Lot 5 Abel Street, for the purpose of 'General Industry' (storage shed and workshop), subject to the following notice:

Planning and Development Act 2005
Shire of Boyup Brook

NOTICE OF DETERMINATION ON APPLICATION FOR DEVELOPMENT APPROVAL

Location: Lot 5 Abel Street, Boyup Brook

Description of proposed development:

General Industry (Storage Shed and Workshop)

The application for development is approved subject to the following conditions.

Conditions:

1. Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the Shire of Boyup Brook, all development shall occur in accordance with the approved plans.
2. The crossover to Short Street being constructed to the satisfaction of the Shire of Boyup Brook.
3. Four car-parking spaces being developed to the satisfaction of the Shire of Boyup Brook.
4. All stormwater is to be managed, to the satisfaction of the Shire of Boyup Brook.
5. No processes being conducted on the property that may cause a detriment to the amenity of that area by reason of contamination, noise, vibration, smell, fumes, dust or grit.

Date of determination: 20 October 2016

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

Signed:

Dated:

for and on behalf of the Shire of Boyup Brook.

CARRIED 8/1

Res 127/16

Proximity Interest

Cr Blackburn declared a proximity Interest in item 8.3.4 as he resides opposite the property.

Cr Blackburn left the Chambers at 5.30pm.

8.3.4 Development (Single House) – Lot 29 Banks Road, Boyup Brook

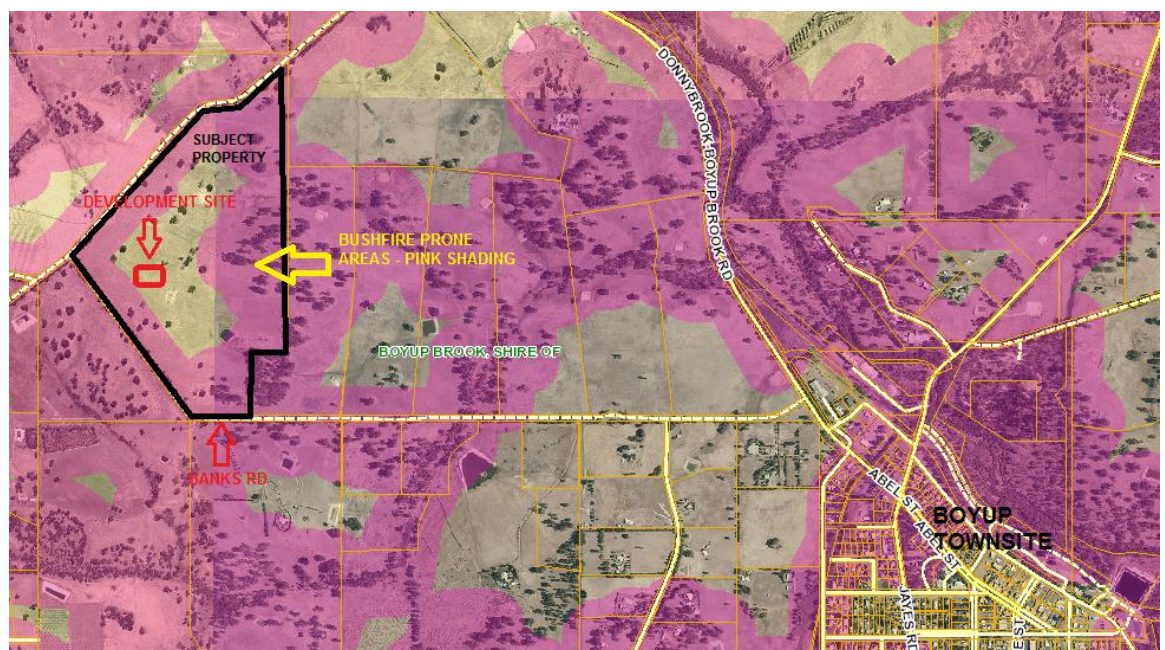
Location:	Lot 29 Banks Road, Boyup Brook.
Applicant:	D & L Bleechmore.
Disclosure of Officer Interest:	None
Date:	October 2016
Author:	A. Nicoll, Town Planner
Authorizing Officer:	Alan Lamb, Chief Executive Officer
Attachments:	Nil

SUMMARY

The purpose of this report is to put before Council the request to develop a Single House at Lot 29 Banks Road, Boyup Brook.

Lot 29 Banks Road is zoned 'Rural' in accordance with the Shire's *Town Planning Scheme No.2*.

Council discretion is required due to the application proposing to locate the 'Single House' on a property that is located in a bushfire prone area.



BACKGROUND

The Shire received an application to develop a 'Single House':

- At a site that is not in a bush fire prone area; but
- On a property that is located in a bushfire prone area.

If the property and proposed building site were located in a bushfire prone area, then a 'Bushfire Attack Level (BAL) Assessment Report' would need to be completed by an accredited fire assessor to determine the construction standard of the house in accordance with the *Australian Standards 3959 – 'Construction of Buildings in Bushfire Prone Areas'*.

Because the proposed building site is not within a bushfire prone area, but the property is, the developer (not an accredited assessor) can complete a 'Bushfire Attack Level (BAL) Assessment **(Basic)** Report'.

A basic report has been submitted to certify that the proposed building site has a LOW bushfire risk status, meaning no additional construction standards to protect the house from ember attack are required.

PLANNING IN BUSHFIRE PRONE AREAS

BAL ASSESSMENT (BASIC) REPORT

A BAL REPORT FOR A PROPOSED BUILDING ON A SITE THAT IS NOT WITHIN 100 METRES OF BUSHFIRE PRONE VEGETATION

Please read the **BAL Assessment (Basic) fact sheet** before completing this report.

<p>1. Fire Danger Index (FDI) Determine the FDI for your site. The FDI for all of Western Australia is 80.</p> <p>2. Bushfire prone vegetation Determine if there is bushfire prone vegetation within 100 metres of the proposed building. Insert NIL where there is no bushfire prone vegetation within 100 metres of the proposed building.</p> <p>3. Distance between the proposed building and bushfire prone vegetation Determine the horizontal distance between the proposed building and the nearest bushfire prone vegetation in the area surrounding the proposed building. Insert YES where the horizontal distance is greater than 100 metres on flat land and 110 metres on sloping land.</p>	<p>4. Slope of the land under bushfire prone vegetation Determine the horizontal distance between the proposed building and the nearest bushfire prone vegetation. Insert N/A where the horizontal distance is greater than 100 metres on flat land and 110 metres on sloping land.</p> <p>Step 5: Bushfire Attack Level (BAL) Determine the BAL for the proposed building or development. Insert the BAL.</p> <p>If the BAL is BAL-LOW, then this report may be used to support a relevant application for the proposed building or development. If the BAL is not BAL-LOW, this report should not be used.</p> <p>Attach any supporting information (i.e. site plans, photos, aerial photography and other design documents and specifications) as evidence that your site is not within 100 metres of bushfire prone vegetation.</p>
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I certify that the inputs into this BAL assessment (basic) report are a true and accurate representation of the conditions of the proposed building and site on the date of this assessment for the site located at:

LOT 29 BANKS ROAD BOYUP BROOK

And being the whole of the land described in Certificate of Title: N318769

The BAL rating is: LOW Date of assessment: 10/10/16

Signed: Brad Whittome

Postal address: SUITE 40/23-25 CASUARINA DVE BUNBURY

Phone: 97211500 Email: BradWhittome@radlinksouthwest.com.au

COMMENT

Subject Property

The subject property is approximately 51 hectares in area, with frontage to Banks Road and Abels Road. Remnant vegetation is scattered throughout the perimeters of the property.

Proposed 'Single House'

The house is proposed to be located towards the centre of the property outside of the bushfire risk areas. The house is constructed with a face brick finish and colourbond roof. The house is single storey, four bedroom and two bathroom.

Bushfire Attack Level

The bushfire attack level (BAL) rating at the proposed building site has been classified as LOW. The *Australian Standards 3959 – ‘Construction of Buildings in Bushfire Prone Areas’* states the following for a BAL LOW rating:

‘There is insufficient risk to warrant any specific construction requirements but there is still some risk’.

STATUTORY OBLIGATIONS

Shire’s Town Planning Scheme No. 2

The house is proposed to be setback in accordance with the Shires *Town Planning Scheme No.2*, which requires development in the Rural’ zone to be located no closer than 10m from any boundary.

Planning and Development (Local Planning Schemes) Amendment Regulations 2015

The *Planning and Development (Local Planning Schemes) Amendment Regulations 2015* state the following at section 78C:

...a development site is subject, or likely to be subject, to bushfires and is referred to as being in a bushfire prone area if the development site is on land designated by an order made under the Fire and Emergency Services Act 1998 section 18P as a bush fire prone area.

The *Fire and Emergency Services Act 1998* refers to the property being bushfire prone if any section of the property is shaded pink.

In accordance with the State Planning Policy 3.7 *‘Planning in Bushfire Prone Areas’* and the Western Australian Planning Commission *‘Guidelines for Planning In Bushfire Prone Areas’*, the option to use a 'basic' assessment is used where the property and not the building site, is within an area shaded pink on the Map of bushfire prone areas.

POLICY IMPLICATIONS

There are no policy implications relating to this item.

CONSULTATION

N/A

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

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

SUMMARY

In accordance with *Town Planning Scheme No.2*, a 'Single House' is a use that may be considered within a 'Rural' zone.

As determined by a 'Bushfire Attack Level (BAL) Assessment (Basic) Report', the proposed building site is classified as having a LOW exposure to ember attack. This means that construction measures to protect the proposed house from ember attack, are not required in accordance with the *Australian Standards 3959 – 'Construction of Buildings in Bushfire Prone Areas'*.

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.4

MOVED: Cr Muncey

SECONDED: Cr Rear

That Council

Grants development approval for Lot 29 Banks Road, for the purpose of 'Single House', subject to the following notice:

Planning and Development Act 2005

Shire of Boyup Brook

NOTICE OF DETERMINATION ON APPLICATION FOR DEVELOPMENT APPROVAL

Location: Lot 29 Banks Road, Boyup Brook

Description of proposed development:

Single House

The application for development is approved subject to the following conditions.

Conditions:

1. Prior to occupancy of use, unless varied by a condition of approval or a minor

amendment to the satisfaction of the Shire of Boyup Brook, all development shall occur in accordance with the approved plans.

2. All stormwater is to be managed and contained on-site, to the satisfaction of the Shire of Boyup Brook.

3. A crossover to the subject lot being developed to the satisfaction of the Shire of Boyup Brook.

4. No processes being conducted on the property that may cause a detriment to the amenity of that area by reason of contamination, noise, vibration, smell, fumes, dust or grit.

Date of determination: 20 October 2016

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

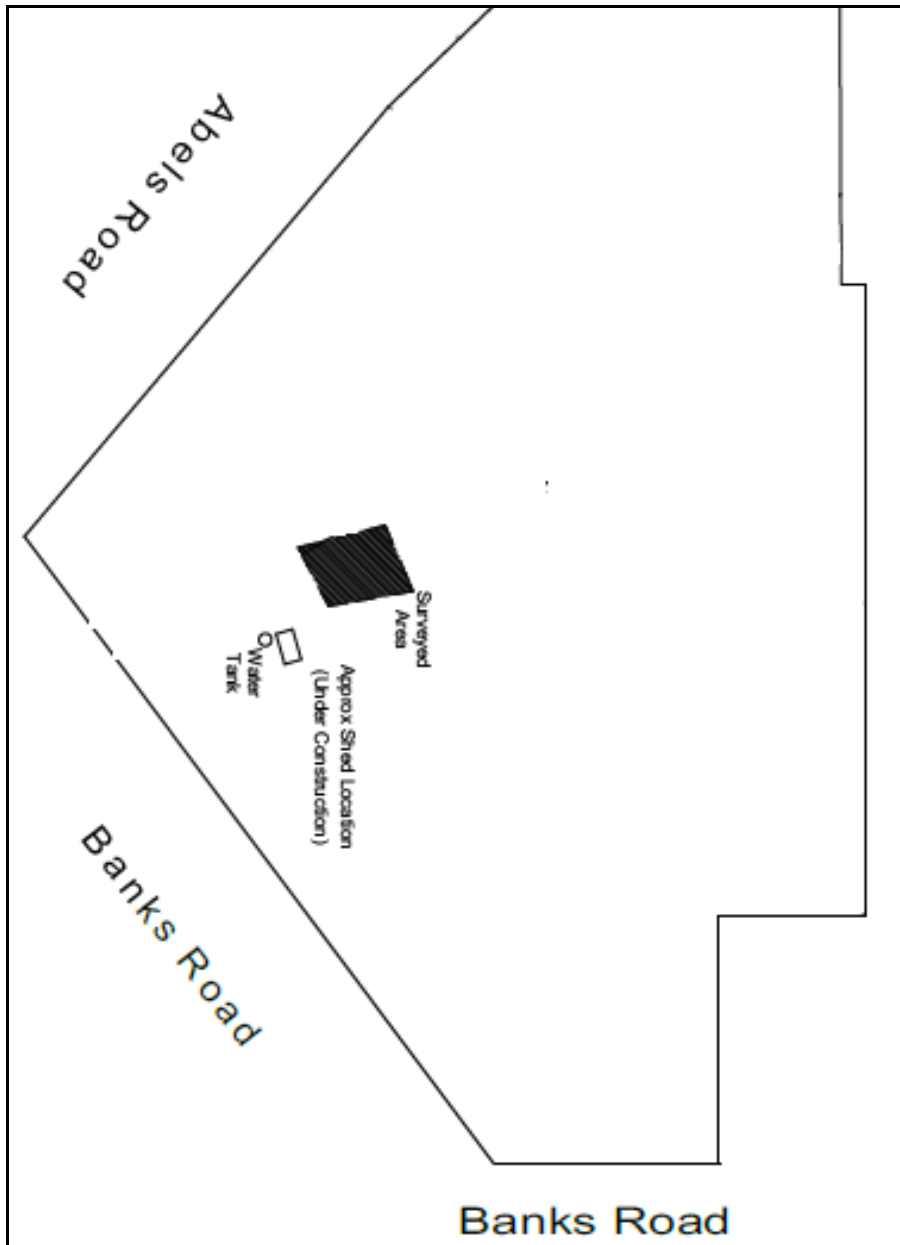
Signed:

Dated:

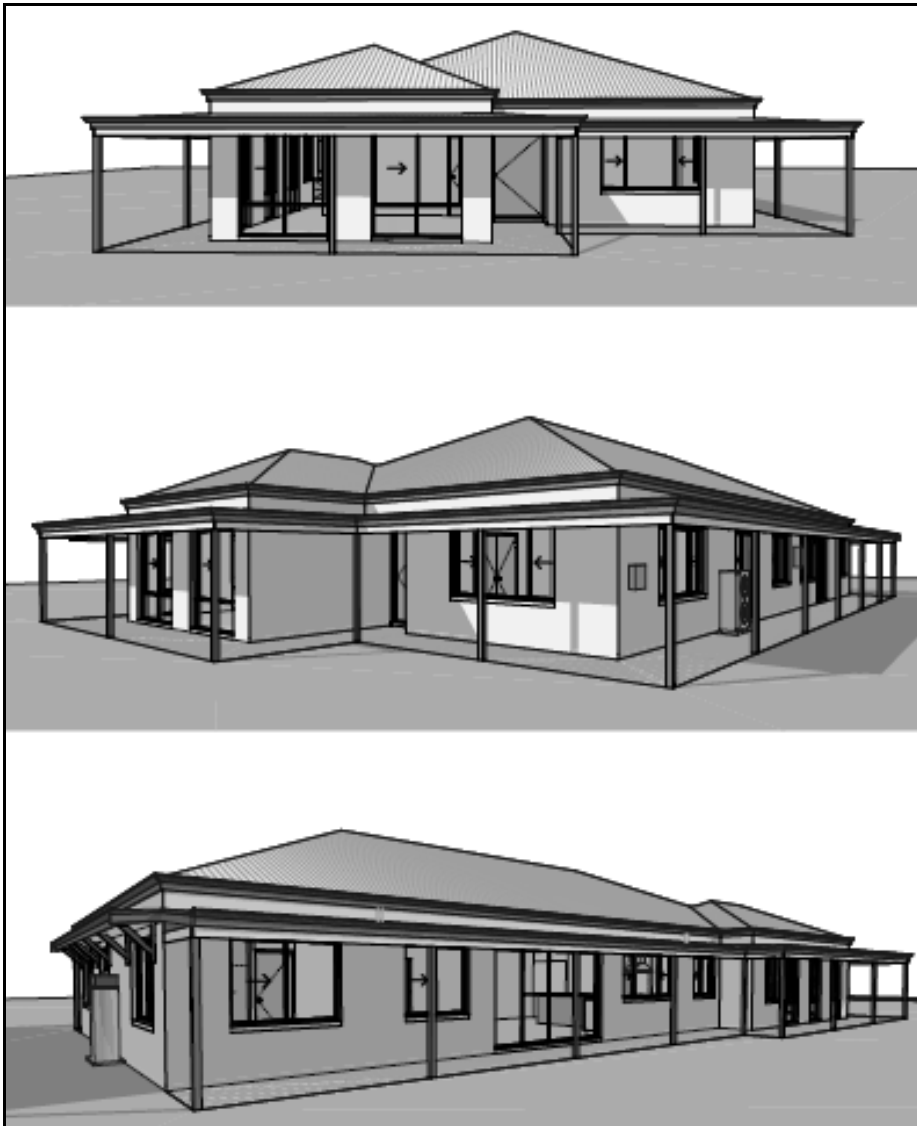
for and on behalf of the Shire of Boyup Brook.

Approved Plans

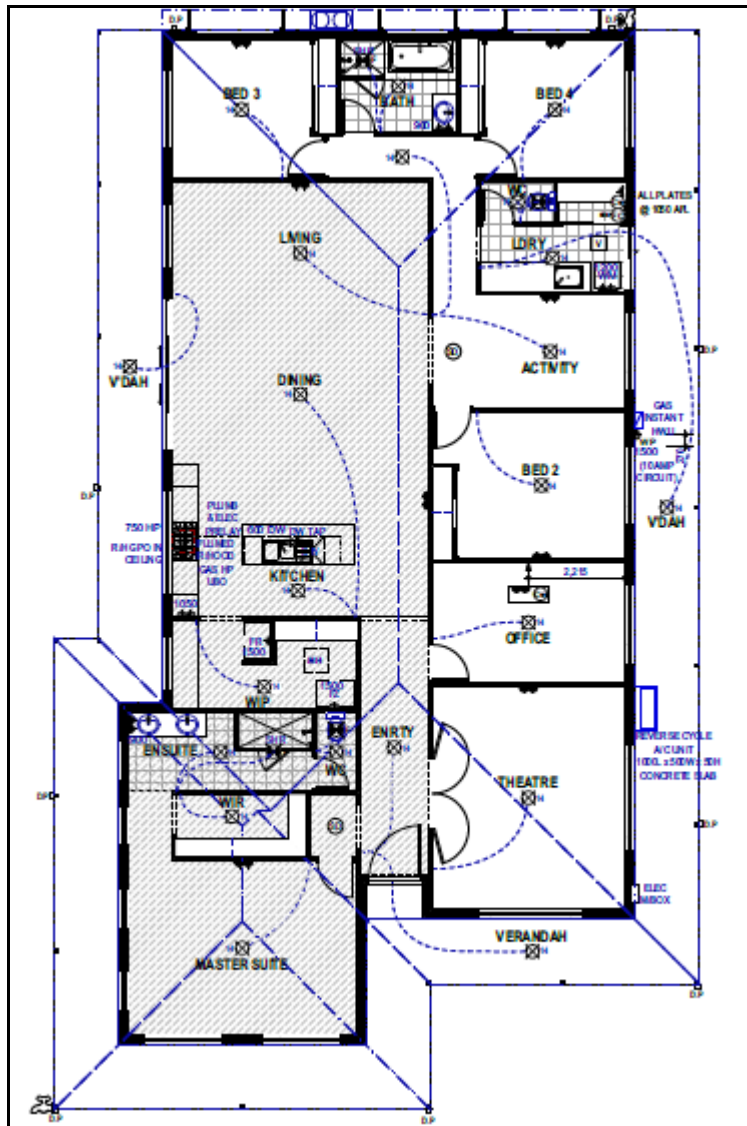
Site Plan



Elevation Plan



Floor Plan



CARRIED 8/0

Res 128/16

Cr Blackburn returned to the Chambers at 5.31pm.

8.3.5 BWGC - Southwest Waste Site Project
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Location:	<i>N/A</i>
Applicant:	<i>N/A</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>13th October 2016</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Chief Executive Officer</i>
Attachments:	<i>Nil</i>

SUMMARY

The purpose of this report is to update Council on the position with the regional portion of the Country Local Government Fund grant, provided by the State Government to the Bunbury Wellington Group of Council's, for the acquisition of a site for waste disposal. also to update Council on the work being done by the Southwest Regional Waste Group.

BACKGROUND

The BWGC has been working for many years on a joint waste disposal site and successfully applied for the last years round of CLGF regional grants to be applied to the study of, purchase of and relevant site works for a regional waste facility.

The City of Bunbury holds the grant funding (\$4,151,312) on behalf of the BWGC and it has been accruing interest.

The door was opened to other South West Local Governments to contribute and to set up a Southwest Regional Waste Group (SRWG).

The SRWG has met a number of times and, using a consultant looked at a range of opportunities for waste disposal and a range of sites that may be suitable. Working with the consultant the group discounted current waste to energy options because it was clear that the quantities of waste material were not sufficient to warrant the relatively high expenditure required for current technology waste to energy options. Further regardless of advances in technology relating to reuse of waste, there will be a need to bury some materials.

So the site selected had to be suitable for landfill, be on a significant route, or not far from it, for transport. Be located such that the distance travelled by each Council was equitable, and it had to be off the Swan Coastal Plane, close enough to suitable power distribution facilities to provide for future waste to energy initiatives etc.

At its meeting held 2 September 2016 the group selected a site is located at Goodwood Road Capel, for further study, as it considered it to be the best fit for all of the criteria.

The BWGC met 21 September 2016 to, among other things, discuss the next phase of the regional waste study and in particular its funding. It resolved as follows:

That the Bunbury Wellington Group of Councils:-

1. The Bunbury Wellington Group of Councils note the recommendation in relation to funding arrangements for the next stage of the South West Waste Project as outlined in the Minutes of the last meeting.

2. The Chief Executive Officer of the City of Bunbury be authorised to formally request the amendment of the funding agreement to allow for the funding of the detailed site studies as agreed at the South West Waste Group meeting.

3. Each of the Bunbury Wellington members refer the matter to their respective Councils for information.

The request was sent to the Department for Regional Development and it advised that up to 15% of the grant funding may be used for the detailed site assessment study.

COMMENT

It is recommended that Council receive this report.

CONSULTATION

The matter has been before Council a number of times and has been the subject of regional discussions for some years

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

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

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.5

MOVED: Cr Moir

SECONDED: Cr Imrie

That Council Receive the report.

CARRIED 9/0

Res 129/16

8.3.6 BWGC - Bunbury Wellington and Boyup Brook Regional Tourism Development Strategy - MOU
--

Location:	<i>N/A</i>
Applicant:	<i>BWGC</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>13th October 2016</i>
Author:	<i>Alan lamb</i>
Authorizing Officer:	<i>Chief Executive Officer</i>
Attachments:	<i>MOU</i>

SUMMARY

The purpose of this report is to bring Council up to date with this matter, to note the decision of the Bunbury Wellington Group of Council's to enter into a Memorandum of Understanding regarding the strategy, to commit to participating in the strategy, and to contribute \$2,000 per year for the three years , 2016-2019, of the MOU.

BACKGROUND

This matter has been before Council a number of times and at its June 2016 meeting Council resolved as follows:

That Council:

- 1. Receives and endorses the updated Bunbury Wellington and Boyup Brook Regional Tourism Development Strategy 2015 - 2019**
- 2. Supports the Southwest Development Commission being requested to accept coordination and the lead role for implementation of the Bunbury Wellington and Boyup Brook Regional Tourism Development Strategy, as this is featured highly in the SW Blueprint and Regional Growth Plan.**
- 3. Agrees to support joint submissions and applications for funding through Royalties for Regions and other programs to fund workshops, marketing and implement projects as determined beneficial to the Shire of Boyup Brook and /or the region.**
- 4. List for consideration for funding in its 2016/17draft budget an allocation of \$2,000 towards the implementation of the regional tourism strategy.**

- 5. In the event that the other participating Councils do not wish to contribute towards the implementation of the Regional Tourism Strategy or contribute at a lower level, then Council's commitment to the Strategy may be reassessed.**

The current budget includes a \$2,000 provision for year one of the three year term.

As will be seen from the attached project budget, Each of the Council's comprising the BWGC have commented funds, as have South West Development Commission and ASW Australia's South West, Tourism Australia).

COMMENT

The attached copy of the MOU sets the stage for the employment of an officer to drive the strategy and provides funds for marketing and projects. This Council's portion of costs is, quite rightly, the lowest due to the size of its rate base (a recognised measure of ability to pay). The City of Bunbury will employ the officer and , as will be seen, meets the lions share of costs.

Discussion on this matter at the last BWGC meeting included noting that tourism was the only industry sector which Local Government provided regular financial support to. The plan was that Local Government kick the strategy off, as proved for by the MOU, and transition it to management by the industry. Based on this then Council's commitment would be for the term of the MOU and there should be no further need to drive or contribute financially to the strategy.

CONSULTATION

The matter of the strategy has been fore Council. The strategy was developed by a committee over a extended period and involving consultation.

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil in the current year as \$2,000 was provided for. But there is commitment to a further \$4,000 over the next two financial years and for staff to be engaged in the strategy (and so an in kind cost).

STRATEGIC IMPLICATIONS

Support for tourism features in the Plan

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

Absolute majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.6

MOVED: Cr Kaltenrieder

SECONDED: Cr Muncey

That Council:

- 1. Note the decision of the Bunbury Wellington Group of Councils to enter into the draft Memorandum of Understanding between the City of Bunbury, the Shire of Harvey, Shire of Capel, Shire of Collie, Shire of Dardanup, Shire of Donny-Brook Balingup, Shire of Boyup Brook, Australia's South West and South West Development Commission as attached.**
- 2. Authorise the Chief Executive Officer to sign the Memorandum of Understanding.**
- 3. Budget to contribute \$2,000 per year to the Bunbury Wellington and Boyup Brook Regional Tourism Strategy, in accordance with the Memorandum of Understanding, for 2017/18 and 2018/19.**

CARRIED BY ABSOLUTE MAJORITY 9/0

Res 130/16

8.3.7 Purchase of land - 7 Hospital Road Boyup Brook

Location:	<i>7 Hospital Road</i>
Applicant:	<i>N/a</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>12th October 2016</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Chief Executive Officer</i>
Attachments:	<i>Relevant portion of the town drainage plans, Landgate images and property information.</i>

SUMMARY

The purpose of this report is to recommend that Council commence the process to purchase the lot to facilitate drainage improvements and future development of the Shire managed land opposite.

BACKGROUND

It appears that at some time in the past, Council has installed piping on the vacant lot at 7 Hospital Road. Further that this may have been done to better contain/control natural watercourse.

No agreement from the owner of the lot could be found and there appears to be no easement.

Forward planning includes an upgrade to town drainage in 2017/18 using R to R funds. A town drainage study conducted in 2011 showed that stormwater piping on the hospital side of Hospital Road and through 2 Hospital Road, is undersized. Empirical evidence bears this out as there is often minor flooding at the intersection of Bridge and Knapp.

7 (Lot 49) Hospital Road is advertised for sale as are the adjoining lots 48 and 47.

COMMENT

As reported previously when Council was looking to develop Shire managed land on the hospital side of Hospital Road:

- there may be an issue regarding works done on the land
- the simple option was to purchase the land.

Council has a number of options it could pursue to gain access and control over a portion of the land but the quickest and easiest will be to purchase the lot, whilst it is on the market, improve the drainage, take an easement over the portion of land that contains the drain pipe, then sell or develop the land (GROH opportunity?).

It is recommended that Council authorise the Chief Executive Officer to lodge an offer to purchase 7 Hospital Road subject to Council approval with the matter coming back to Council once accepted.

CONSULTATION

Some aspects of the matter have been discussed with Council in the past and at officer level.

STATUTORY OBLIGATIONS

Local Government Act:

3.55. Acquisition of land

A local government can only take land under Part 9 of the Land Administration Act 1997 if it is in, or is to be regarded as being included in, its own district.

[Section 3.55 amended by No. 24 of 2000 s. 22.]

Land Administration Act

Part 8 — Easements

144. Easements over Crown land, Minister's powers to grant etc.

(1) Subject to this section, the Minister may —

- (a) with the consent of every management body of the relevant Crown land and of every person having any interest, right, title or power in respect of that land, grant to any person an easement in, on, over, through or under that Crown land for a specified purpose or any other purpose the Minister thinks fit; and*
- (b) in that grant express that easement to be subject to specified conditions and the payment of specified consideration.*

(2) The grantee of an easement may, with the consent of any management body or lessee of the relevant Crown land, apply to the Minister for the easement to be varied or cancelled.

(2a) An easement may be granted under this section despite the fact that the characteristics of the easement do not satisfy all of the characteristics that must be satisfied for an easement to be created under the common law.

(3) The Minister may, on receiving an application under subsection (2) —

- (a) *by order or other instrument vary or cancel the relevant easement; or*
 - (b) *refuse the application.*
- (4) *In this section —*
- specified purpose*** *means for —*
- (a) *the provision of pipes, conduits, cables, transmission lines, and other services; or*
 - (b) *the provision of any structure, plant, or equipment; or*
 - (c) *the provision of access for carrying out of any works and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (a) or (b); or*
 - (d) *a prescribed purpose.*

[Section 144 amended by No. 59 of 2000 s. 39.]

145. *Cancelling s. 144 easements*

- (1) *The Minister may, after notice in writing in an approved form has been served on the grantee of an easement under section 144 and any lessee or management body of the relevant Crown land, by order cancel the easement if —*
- (a) *the easement has been used —*
 - (i) *for a purpose other than the purpose for which it was granted; or*
 - (ii) *contrary to any right, power or privilege pertaining to the easement;*
- or*
- (b) *default occurs in complying with any condition, or in paying any consideration, to which the easement is subject; or*
 - (c) *that grantee in writing requests the Minister to cancel the easement.*
- (2) *A grantee of an easement may, within the period of 30 days after the service on him or her of notice under subsection (1) or such longer period as the Minister in special circumstances allows, lodge with the Minister an appeal under Part 3 against the proposed cancellation of the easement under subsection (1)(a) or (b).*

146. *Easements granted under s. 144, effect of*

Subject to section 229A of the TLA and to sections 144 and 145, an easement granted under section 144 continues to have effect in respect of the land subject to it despite —

- (a) *the grant of any other interest in; or*
- (b) *the transfer in fee simple of; or*

(c) *the surrender or other extinguishment of any other interest in, that land.*

147. *Easements in gross may be granted under s. 144*

An easement may be granted under section 144 without there being a dominant tenement and there may be made appurtenant to or annexed to an easement so granted another easement or the benefit of a restriction relating to the user of the land concerned.

148. *Conditional tenure land, grant of easement by holder of*

A person holding land for an estate in fee simple transferred under section 75 is not prevented from creating in favour of any person an easement affecting the land only because the land is to be used for a particular purpose or in accordance with a particular condition, positive covenant or restrictive covenant, but must not create any such easement without the permission of the Minister.

149. *Holder of interest in Crown land with right to acquire fee simple, grant of easement by*

When an interest in Crown land is granted subject to the right of the holder of that interest to acquire the fee simple of the Crown land, that holder is not prevented from creating in favour of any person an easement affecting the Crown land only because that holder has not yet acquired that fee simple, but an easement so created terminates if the right to acquire that fee simple is forfeited under section 35.

150. *Easements no longer serving any purpose, cancelling*

(1) *When an easement is registered in respect of Crown land —*

- (a) *any management body or lessee of the Crown land; or*
- (b) *any other person having any interest or right in the Crown land,*

may request the Minister by order to cancel the easement because it no longer serves any purpose.

(2) *On receiving a request made under subsection (1), the Minister must, if he or she intends to comply with that request, serve notice of that intention on —*

- (a) *the grantee under section 144 of the easement concerned, or the person in whose favour it was created, as the case requires; and*
- (b) *any other person who appears to have an estate or interest in land that comprises a dominant tenement benefiting from the easement concerned; and*
- (c) *the Registrar.*

(3) *A notice served under subsection (2) must be dated, and must include or contain a copy of a plan of survey or sketch plan showing the relevant easement.*

- (4) *An entry made in the Register recording that a notice was served under subsection (2) on a person whose address appears in the Register and the date of that service is —*
- (a) *admissible in evidence in any proceedings; and*
 - (b) *in the absence of evidence to the contrary, proof of the facts so recorded.*
- (5) *The Minister may, if he or she is satisfied after making all reasonable inquiries that the easement the subject of that request no longer serves any purpose —*
- (a) *by order cancel that easement; and*
 - (b) *advise in writing each person on whom notice was served under subsection (2) of the making of that order.*

Part 9 — Compulsory acquisition of interests in land

Division 1 — Preliminary

Subdivision 1 — Interpretation

151. Terms used

- (1) *In this Part and Part 10 —*

acquiring authority, in relation to land, means the person or body having the statutory authorisation referred to in section 161 to undertake, construct or provide any public work;

claimant means a person entitled to claim compensation under Part 10;

date of taking, in relation to an interest in land taken under this Part, means —

- (a) *the date specified in the taking order as the date of taking, if a date is so specified; or*
- (b) *the date of registration of the taking order, in any other case;*

designate, in relation to an interest in land, means to reserve, declare, covenant, dedicate, set apart or otherwise mark off for use for a specified purpose by means of an annotation on or instrument registered against the certificate of title or certificate of Crown land title; and **designated** and **designation** are construed accordingly;

holding authority, in relation to an interest in land designated for the purpose of a public work, means —

- (a) *the management body, if the interest is held by the Crown and subject to a management order; or*
- (b) *the holder of the interest, in any other case;*

interest means any legal or equitable estate or interest in land, including —

- (a) *native title rights and interests; and*

- (b) *interests or rights created under any written law; and*
- (c) *the rights of a management body under a management order;*

native title, native title holder and native title rights and interests have the same meaning as they have in the NTA;

notice of intention means a notice issued under section 170;

NTA means the Native Title Act 1993 of the Commonwealth;

occupier, in relation to land, means a person who, in exercise of a right of possession, is in actual occupation of the land, but does not include anyone who is in occupation of the land merely as a member of the family or household of such a person;

principal proprietor, in relation to land, means —

- (a) *the Minister, in the case of Crown land not subject to a management order and of which no lease has been granted; or*
- (b) *the lessee, in the case of Crown land not subject to a management order and of which a lease has been granted; or*
- (c) *the management body, in the case of Crown land subject to a management order; or*
- (d) *the holder of the fee simple, in any other case;*

Principal Registrar of the Supreme Court has the same meaning as in the Supreme Court Act 1935;

proprietor, in relation to a portion of land, means —

- (a) *a person with a registered interest in the land; or*
- (b) *the holder of any native title rights and interests in the land, whether or not registered;*

public work and work have the same meaning as in the Public Works Act 1902;

railway has the same meaning as in the Public Works Act 1902;

Registrar of Deeds, in relation to land under the Registration of Deeds Act 1856, means the Registrar of Deeds and Transfers under that Act;

special Act has the same meaning as in the Public Works Act 1902;

take, taken and taking have the meaning given by subsection (2);

taking order means an order made under section 177.

- (2) *For the purposes of this Part and Part 10 —*

- (a) *a reference to the taking of an interest in land is a reference to the extinguishment of the interest, or its extinguishment subject to section 155, by a taking order;*
- (b) *a reference to the taking of land is a reference to the extinguishment of every interest in the land, or its extinguishment subject to section 155, together with the revocation of each management order in relation to the land, by a taking order, subject to such exceptions as are specified in the order.*
- (3) *Terms used in Part 10 relating to members of the State Administrative Tribunal have the meanings given to them in section 3(1) of the State Administrative Tribunal Act 2004.*

[Section 151 amended by No. 59 of 2000 s. 40; No. 55 of 2004 s. 547; No. 47 of 2011 s. 16.]

Subdivision 2 — Provisions relating to native title

152. Objective of this Part and Part 10 as to NTA

It is an objective of this Part and Part 10 to ensure that —

- (a) *if the taking of interests in land under this Part affects native title, in terms of section 227 of the NTA, the taking is a valid future act under sections 24MB(1)(b) and 24MD(1) of the NTA;*
- [(b) deleted]*
- (c) *this Act is consistent with the procedural requirements of the NTA.*

[Section 152 amended by No. 61 of 1998 s. 6.]

[152A. Has not come into operation ^{2, 3, 4}.]

153. Giving notice under NTA to native title holders if no approved determination of native title, effect of for this Act

(1) This section applies if —

- (a) *this Act requires notice of any thing to be given to persons who include native title holders; and*
- (b) *there has been no approved determination of native title within the meaning of that expression in the NTA; and*
- (c) *section 154 does not apply.*

(2) Where this section applies —

- (a) *the giving of notice in accordance with the NTA satisfies the relevant requirement of this Act in relation to native title holders; and*
- (b) *if the notice relates to a taking, the subsequent service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in*

accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.

(3) *In subsection (2) —*

in accordance with the NTA means —

- (a) *if Part 5 of the Native Title (State Provisions) Act 1998 is in operation^{1a} and the notice, or the order and forms, relate to a taking that is a Part 5 act within the meaning of that Act, in accordance with Division 2 of Part 5 of that Act; or*
- (b) *if paragraph (a) does not apply, in the manner provided for by section 24MD(7) of the Native Title Act 1993 of the Commonwealth.*

[Section 153 inserted by No. 61 of 1998 s. 8.]

154. *Giving notice under NTA to native title holders if NTA Part 2 Div. 3 Subdiv. P applies, effect of for this Act*

(1) *This section applies if —*

- (a) *interests in land are intended to be taken under section 161 or 165; and*
- (b) *Part 2, Division 3, Subdivision P of the NTA is applicable to the taking by virtue of section 26(1)(c)(iii) of the NTA.*

(2) *Where this section applies —*

- (a) *the giving of notice in accordance with the NTA satisfies the requirements of section 170(5)(b) of this Act in relation to native title holders; and*
- (b) *the service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.*

(3) *In subsection (2) —*

in accordance with the NTA means —

- (a) *if Part 3 of the Native Title (State Provisions) Act 1998 is in operation^{1a} and the taking is a Part 3 act within the meaning of that Act, in accordance with Division 3 of Part 3 of that Act; or*
- (b) *if Part 4 of the Native Title (State Provisions) Act 1998 is in operation^{1a} and the taking is a Part 4 act within the meaning of that Act, in accordance with Division 3 of Part 4 of that Act; or*
- (c) *if paragraph (a) or (b) does not apply, in accordance with section 29 of the Native Title Act 1993 of the Commonwealth.*

[Section 154 inserted by No. 61 of 1998 s. 8.]

155. *Native title rights and interests, effect of taking under this Part*

If any native title right or interest is taken under this Part, the right or interest is extinguished to the extent permitted by the NTA.

[Section 155 inserted by No. 61 of 1998 s. 9.]

156. *Claims for compensation for native rights and interests, determining etc.*

- (1) A claim for compensation by native title holders for the taking of native title rights and interests is to be determined as if the rights and interests —
 - (a) had been extinguished by the taking; and*
 - (b) at that time had been converted into a claim for compensation in accordance with section 179.**
- (2) No further claim for compensation arises under Part 10 from the subsequent effect on the native title rights and interests of any act that is done in giving effect to the purpose of the acquisition.*
- (3) In the determination of compensation under Part 10 for the effect on native title rights and interests of the taking of interests in land, account is to be taken of any compensation awarded under the NTA, or any other written law, for essentially the same loss.*

157. *Claims for compensation for native title rights and interests, who may make*

Any claim for compensation under Part 10 for the effect on native title rights and interests of the taking of interests in land under this Part is to be made by the native title holders.

158. *Compensation paid for native title rights and interests, recovery of if purpose of taking is cancelled*

- (1) If —
 - (a) an interest in land has been taken under this Part; and*
 - (b) compensation has been paid for the effect on native title rights and interests of the taking of the interest; and*
 - (c) the designation of the interest is cancelled in accordance with section 187,*
*the taking of the interest, so far as it may have affected native title rights and interests, wholly ceases to operate.**
- (2) Notice of the cancellation must be given to the native title holders, and may be given in the manner provided for by subsection (7) of section 24MD of the NTA as if the cancellation were an act to which that subsection applies.*
- (3) Subject to this section, on registration of the cancellation —
 - (a) a sum equal to the amount of the monetary compensation mentioned in subsection (1)(b) that has been paid to any person becomes a debt due by that person to the Crown; and**

- (b) *the debt may be recovered by the Minister in a court of competent jurisdiction.*
- (4) *Subsection (3) does not apply to any compensation that has been paid to a person, other than a trustee under the NTA, if a period of 3 years or more has passed since the interest in the land was taken.*
- (5) *This section has no effect in relation to any person, not being a native title holder, who had an interest that was taken.*

[Section 158 amended by No. 61 of 1998 s. 10.]

Subdivision 3 — Delegation

[Heading amended by No. 13 of 2000 s. 97.]

159. Delegation by Minister to certain other Ministers

The Minister may, by notice published in the Gazette, either generally or as otherwise provided by the notice, delegate to —

- (a) *the Minister responsible for the administration of the Public Works Act 1902; or*
- (b) *the Minister responsible for administering the Main Roads Act 1930; or*
- (c) *the Minister responsible for administering the Energy Operators (Powers) Act 1979; or*
- [(d) *deleted*]
- (da) *the DBNGP Land Access Minister established by section 29(1) of the Dampier to Bunbury Pipeline Act 1997; or*
- (db) *the Minister responsible for administering the Government Railways Act 1904; or*
- (e) *the Minister responsible for administering the Water Agencies (Powers) Act 1984; or*
- (ea) *the Minister responsible for administering the Contaminated Sites Act 2003; or*
- (eb) *the Minister responsible for administering the Water Services Act 2012; or*
- (f) *the Minister responsible for administering the Marine and Harbours Act 1981; or*
- (g) *the Minister responsible for administering the Financial Management Act 2006,*

any of his or her powers or duties under this Part or Part 10.

[Section 159 amended by No. 53 of 1997 s. 52; No. 58 of 1999 s. 104(a); No. 13 of 2000 s. 98; No. 24 of 2000 s. 20(1); No. 59 of 2000 s. 41; No. 31 of 2003

s. 150(2); No. 60 of 2003 s. 100; No. 25 of 2005 s. 34; No. 77 of 2006 Sch. 1 cl. 93(6); No. 46 of 2009 s. 17; No. 25 of 2012 s. 220(2).]

160. *Subdelegation of power or duty delegated under s. 159*

- (1) *A Minister or body to whom a power or duty has been delegated under section 159 may, either generally or as otherwise provided by the notice concerned, by notice published in the Gazette delegate —*
- (a) *in the case of the Minister referred to in section 159(a), to the chief executive officer of the Department principally assisting that Minister in the administration of the Public Works Act 1902 or to any other officer of that Department;*
 - (b) *in the case of the Minister referred to in section 159(b), to the Commissioner within the meaning of the Main Roads Act 1930 or to any officer of that Commissioner;*
 - (c) *in the case of the Minister referred to in section 159(c), to a body established by section 4(1) of the Electricity Corporations Act 2005, namely —*
 - (i) *the Electricity Networks Corporation; and*
 - (ii) *the Regional Power Corporation,**or to an officer of such a body;*
 - [(d) *deleted*]
 - (da) *in the case of the DBNGP Land Access Minister established by section 29(1) of the Dampier to Bunbury Pipeline Act 1997, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department;*
 - (db) *in the case of the Minister referred to in section 159(db), to the Authority within the meaning of the Government Railways Act 1904 or to any officer of the Authority within the meaning of that Act;*
 - (e) *in the case of the Minister referred to in section 159(e), to the CEO within the meaning of the Water Agencies (Powers) Act 1984 or to any officer of the Department within the meaning of that Act;*
 - (ea) *in the case of the Minister referred to in section 159(ea), to the chief executive officer of the Department principally assisting the Minister in the administration of the Contaminated Sites Act 2003 or to any other officer of that Department;*
 - (eb) *in the case of the Minister referred to in section 159(eb), to the holder of a licence granted under the Water Services Act 2012 section 11 or to any officer or employee of the holder of the licence;*

- (f) *in the case of the Minister referred to in section 159(f), to the chief executive officer of the Department principally assisting that Minister in the administration of the Marine and Harbours Act 1981 or to any other officer of that Department;*
- (g) *in the case of the Minister referred to in section 159(g), to the chief executive officer of the Department principally assisting that Minister in the administration of the Financial Management Act 2006 or to any other officer of that Department,*

the whole or any part of the power or duty.

- (2) *A Minister or body who exercises the power of delegation conferred on him or her by subsection (1), must as soon as is practicable transmit to the Minister a copy of the notice by which that power was exercised.*

[Section 160 amended by No. 53 of 1997 s. 52; No. 58 of 1999 s. 104(b); No. 13 of 2000 s. 99; No. 24 of 2000 s. 14(13) and 20(2); No. 59 of 2000 s. 42; No. 31 of 2003 s. 150(3); No. 60 of 2003 s. 100; No. 18 of 2005 s. 139; No. 25 of 2005 s. 35; No. 77 of 2006 Sch. 1 cl. 93(7); No. 38 of 2007 s. 196; No. 46 of 2009 s. 17; No. 25 of 2012 s. 220(3).]

Division 2 — Taking interests in land

Subdivision 1 — Land required for a public work

161. *Interests in land may be taken etc.*

- (1) *Whenever the Crown, the Governor, the Government, any Minister of the Crown, any State instrumentality or any local government is authorised, by this Act, the Public Works Act 1902 or any other Act, to undertake, construct or provide any public work, and the use of any land or any interest in land is required for the purposes of the work, then, unless otherwise specially provided —*
 - (a) *any interest in the land held by a person other than the Crown may be taken; and*
 - (b) *subject to Part 4, any designation of the land or of any interest in the land may be removed; and*
 - (c) *any management order affecting the land may be revoked or modified, whatever the purpose for which the order had been made, whether local or general; and*
 - (d) *any interest in the land held by the Crown or taken from some other person under paragraph (a) may be disposed of or granted to any other person; and*
 - (e) *any interest in the land held by the Crown or taken from some other person under paragraph (a) (including an interest disposed of or granted under paragraph (d)) may be designated for the purpose of the public work,*

in accordance with this Part.

- (2) *The powers under subsection (1) may be exercised at any time, and whether or not the powers have previously been exercised for the purposes of that public work.*

162. *Underground land, interests in may be taken etc.*

- (1) *For the purpose of constructing any underground work, an interest in land under the surface may be taken under this Part without taking any interest in the surface.*
- (2) *In such a case no compensation is payable unless —*
- (a) *the surface of the overlying soil is disturbed; or*
 - (b) *the support to the surface is destroyed or injuriously affected; or*
 - (c) *a mine, underground working, spring, reservoir, dam, or well in or adjacent to the land is injuriously affected,*
- by the construction of the work.*

163. *Certain materials and interests in land not to be taken without consent of Minister or principal proprietor*

Except for the purposes of a railway, of roads in connection with such purposes, or of a work to be made under the authority of a special Act, nothing in this Part authorises —

- (a) *the taking of any stone or other material from any quarry, brickfield, or like place ordinarily used to produce the material for sale; or*
- (b) *the taking of any interest in land that is occupied by any building, yard, garden, orchard, or vineyard, or is in genuine use as a recreation park,*

without the consent in writing of the Minister or of the principal proprietor of the land.

164. *Mineral, petroleum and geothermal energy rights may be excluded from taking order*

- (1) *If a taking order provides that land is to be taken, or that an interest in fee simple in land is to be taken, the interest taken includes —*
- (a) *all rights to any minerals under the land; and*
 - (b) *the petroleum rights referred to in the Petroleum and Geothermal Energy Resources Act 1967, the Petroleum Pipelines Act 1969, and the Petroleum (Submerged Lands) Act 1982; and*
 - (c) *the rights relating to geothermal energy resources and geothermal energy referred to in the Petroleum and Geothermal Energy Resources Act 1967,*
- unless the order provides otherwise.*
- (2) *If a claim is made for compensation in respect of the taking of any right referred to in subsection (1), the acquiring authority may elect either to make*

compensation or to re-grant the whole of those rights or such part of those rights as the acquiring authority thinks fit.

- (3) *If rights are re-granted to the claimant under subsection (2), no compensation is payable in respect of the taking of the rights re-granted.*

[Section 164 amended by No. 35 of 2007 s. 98(7).]

Subdivision 2 — Land required for the purpose of conferring interests

165. *Interests in land may be taken etc.*

- (1) *Whenever a written law permits the grant of any estate, interest, right, power or privilege in, over or in relation to land, and any land is required for the purposes of the grant, the Minister may by order authorise the doing in relation to the land of any of the acts permitted under section 161.*
- (2) *The Minister may only exercise the power conferred by subsection (1) or (4) in respect of any land if every proposed grant will be for the purpose of enabling the use or development of the land, or the doing of both of those things, in a way that, in the opinion of the Minister, confers an economic or social benefit on the State or the relevant region or locality.*
- (3) *Nothing in this Subdivision affects the power under a written law to make a grant of a kind referred to in subsection (1) in, over or in relation to land where interests in the land have been taken under Subdivision 1.*
- (4) *The Minister may by order —*
- (a) revoke or amend an order made under subsection (1); or*
 - (b) revoke an order made under subsection (1) and replace it with another order.*

[Section 165 amended by No. 61 of 1998 s. 11; No. 59 of 2000 s. 43.]

166. *Application of this Part and Part 10 to taking authorised, and interests taken, under s. 165*

- (1) *This Part and Part 10 apply in relation to a taking of interests in land authorised under section 165 as if —*
- (a) the taking were for a public work; and*
 - (b) a reference to the purposes of a public work were a reference to the purposes of a proposed grant.*
- (2) *This Part and Part 10 apply in relation to interests in land that have been taken in accordance with an authorisation under section 165(1) as if —*
- (a) the interests had been designated for the purposes of the granting of the estate, interest, right, power or privilege in, over or in relation to land for which the taking had been authorised; and*
 - (b) those purposes were the purposes of a public work.*

167. *Agreement as to payment of compensation etc. by person who will get grant for which s. 165 taking is authorised*

- (1) *If, at the request of a person, it is proposed that the taking of an interest in land be authorised under section 165 for the purpose of a grant to the person, the Minister and the person may enter into an agreement as to the amount or the maximum amount that the person will be liable to pay to the Crown in respect of the taking, if it occurs, by way of reimbursement of —*
 - (a) *the moneys payable by way of costs or compensation under section 258; and*
 - (b) *the value of any non-money compensation given under section 212; and*
 - (c) *any compensation payable under section 24MD(2)(e) or (3)(b) of the NTA.*
- (2) *If the proposal is carried out, the Minister may in writing require the person to pay to the Crown the amount or the maximum amount so agreed, and at such time or times as the Minister may specify.*
- (3) *An amount required to be paid by a person under this section is a debt due by that person to the Crown and may be recovered by the Minister in a court of competent jurisdiction.*

[Section 167 amended by No. 61 of 1998 s. 12.]

Division 3 — Procedure for taking interests in land and designating for a public work

Subdivision 1 — Procedure for taking interests in land by agreement

168. *Agreement to purchase or consent to take required interest, acquiring authority's powers as to*

- (1) *If any interest in land is required for a public work, the acquiring authority may, whether or not a notice of intention has been registered —*
 - (a) *enter into an agreement to purchase the interest; or*
 - (b) *obtain the written consent of the person to the taking of the interest, with compensation to be provided under Part 10.*
- (2) *On commencing negotiations with any person for such an agreement, the acquiring authority must advise the person, by means of a statement in an approved form, of procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of interests in land taken by agreement or compulsorily taken.*

[Section 168 amended by No. 55 of 2004 s. 567.]

169. *Purchase price in agreement to purchase*

- (1) *An agreement under section 168(1)(a) may specify a purchase price or other consideration for the interest in the land, or may provide for it to be assessed as if for compensation under Part 10.*

- (2) *Consideration for the interest may include a grant of an interest in any Crown land available for the purpose.*
- (3) *An agreement may provide for the reimbursement of property valuation costs incurred by the holder of the interest.*

Subdivision 2 — Procedure for taking interests in land without agreement

170. Notice of intention to take required interest, issue of etc.

- (1) *Subject to this section, if it is proposed to take interests in land without agreement under this Part, the Minister must issue a notice of intention to take the interests, in accordance with this section.*
- (2) *A notice of intention need not be issued if the proposed taking is for the purpose of a railway authorised by a special Act.*
- (3) *A copy of the notice must be sent to the Registrar of Titles or the Registrar of Deeds, as appropriate.*
- (4) *Upon the receipt of the notice —*
 - (a) *the Registrar of Titles must register the notice in the document of title relating to the land; or*
 - (b) *the Registrar of Deeds must register a memorial of the notice on the Deeds Register,**as appropriate.*
- (5) *As soon as possible after the registration of the notice, the Minister must —*
 - (a) *cause a copy of the notice to be published once in a daily newspaper circulating throughout the State;*
 - (b) *cause a copy of the notice to be served on the principal proprietor of any land affected by the notice, the occupier of the land and the holders of any native title rights or interests, or of any mining, petroleum or geothermal energy rights, in the land, either personally or by certified mail posted to their last known place of residence;*
 - (c) *cause a copy of the notice to be given to the Director General of Mines referred to in the Mining Act 1978;*
 - (d) *advise the persons mentioned in paragraph (b) of the procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement and compulsorily taken, unless they have already been given that advice.*
- (6) *The Minister may cancel or amend the notice of intention, or cancel the notice and substitute another notice of intention, by a notice issued, published and distributed in the same way as the original notice.*

- (7) *The notice of intention, or substituted notice of intention, remains current for 12 months, or a longer period determined under subsection (8), from the date of registration, unless cancelled.*
- (8) *The Minister may, in respect of a particular notice of intention, determine that a longer period applies for the purposes of subsection (7).*
- (9) *A determination under subsection (8) —*
 - (a) *must be made while the notice of intention is current; and*
 - (b) *must be notified in writing to the relevant persons mentioned in subsection (5)(b) and (c); and*
 - (c) *may be made more than once.*
- (10) *Subsections (3) and (4) apply to a determination under subsection (8) as if it were a notice of intention.*

[Section 170 amended by No. 61 of 1998 s. 13(1) and (2) ¹⁰; No. 55 of 2004 s. 567; No. 35 of 2007 s. 98(8).]

171. Notice of intention, content and validity of

- (1) *A notice of intention must include —*
 - (a) *a description of the land required; and*
 - (b) *particulars of —*
 - (i) *the purpose of the public work for which the land is proposed to be designated;*
 - (ii) *the nature of the interests to be taken;*

and

 - (c) *if it is proposed to make a disposition or grant to any person out of the interests proposed to be taken, a statement to that effect and particulars of the disposition or grant to be made; and*
 - (d) *particulars of —*
 - (i) *a place where persons interested may at any reasonable time inspect a plan of the land; and*
 - (ii) *the reasons why the land is suitable for, or is needed for, the public work; and*
 - (iii) *the date from which the land is likely to be required; and*
 - (iv) *the name of a contact officer in the acquiring authority; and*
 - (v) *an address for lodging objections;*

and

- (e) *a statement of the effect of section 172; and*
- (f) *a statement of the effect of section 173.*
- (2) *A notice of intention issued in good faith is not invalidated by reason only that it contains an error or omission in the information required by subsection (1)(d), (e) or (f).*

172. No transaction affecting required land without Minister's consent

- (1) *This section applies to a transaction affecting land which is included in a current notice of intention, other than a transaction mentioned in subsection (6).*
- (2) *A person may not enter into a transaction to which this section applies except with the consent in writing of the Minister.*
- (3) *A transaction entered into in contravention of subsection (2) is void.*
- (4) *An application for the Minister's consent under this section for a proposed transaction must be in writing.*
- (5) *A person who is a party to the transaction must —*
 - (a) *furnish in writing such particulars of the transaction as the Minister may require as being necessary to enable the Minister to determine whether any party to the transaction is fully aware of the implications of the notice of intention to take the land; and*
 - (b) *to furnish such statutory declarations in support of the particulars furnished under paragraph (a) as the Minister may require.*
- (6) *If the Minister is of the opinion that any party to a transaction to which this section applies is not fully aware of the implications of the notice of intention to take the land affected by the transaction, and that the party would, if his or her consent were given, be likely to incur loss, the Minister may withhold consent to the transaction.*
- (7) *This section does not apply to a transaction —*
 - (a) *to which the State or the Commonwealth, or any authority of the State or Commonwealth, or a person acting on behalf of the State, the Commonwealth or such an authority, other than the Public Trustee, is a party; or*
 - (b) *by which an interest in land is acquired on sale under a writ or warrant of execution issued out of any court; or*
 - (c) *by way of discharge of a mortgage or charge; or*
 - (d) *by way of partition between co-proprietors; or*
 - (e) *by way of deed of arrangement between beneficiaries under a will or settlement; or*

- (f) *which vests an interest in land in the personal representative of a deceased person; or*
- (g) *which vests an interest in land in a trustee of the estate of a deceased person, a trustee in bankruptcy, or a newly appointed trustee under any instrument; or*
- (h) *which vests an interest in land held by a company in a liquidator, administrator, receiver, receiver-manager or manager of the company; or*
- (i) *which is without consideration and the purpose of which is to vest an interest in land in a person beneficially entitled to the interest, under or by virtue of a will or intestacy or by way of gift; or*
- (j) *by way of a personal insolvency agreement under the Bankruptcy Act 1966 of the Commonwealth, or any Act of the Commonwealth passed amending, or in substitution for, that Act.*

[Section 172 amended by No. 18 of 2009 s. 48.]

173. *No improvements to be made to required land without Minister's approval*

While a notice of intention is current in relation to land, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister.

174. *Minister's consent under s. 172 to transaction, Registrar of Titles may require evidence of*

If an instrument relates to a transaction affecting land included in a current notice of intention, and the instrument is presented to the Registrar of Titles for registration, the Registrar must require the production of the consent in writing of the Minister, or such evidence as he or she thinks sufficient that section 172 does not apply to the transaction, and may refuse to register the instrument until that consent or evidence is produced.

175. *Objections to proposed taking of interests in land*

(1) *When a notice of intention is issued —*

(a) *any person who is —*

- (i) *the principal proprietor of land affected by the notice; or*
- (ii) *an occupier of land affected by the notice; or*
- (iii) *the holder of any mining, petroleum or geothermal energy rights in land affected by the notice,*

and whose interest is affected by the proposal; or

- (b) *any management body whose management order will be affected by the proposal,*

may, alone or jointly with any other person or body so qualified, serve on the Minister, at an address mentioned in the notice of intention, a written objection to the taking of interests in the land, not relating to compensation.

- (2) *An objection must be lodged within 60 days after the registration of the notice of intention or such further time as the Minister may allow.*
- (3) *An objection must identify the land and specify the nature of the interest of the objector in the land, the address of the objector and the grounds of objection.*
- (4) *The Minister must consider any objections and any other representations by the objectors.*
- (5) *After considering the objections and representations, the Minister is to —*
 - (a) *determine that the notice of intention is to stand unchanged; or*
 - (b) *cancel or amend the notice of intention, or cancel the notice and substitute another notice of intention, in accordance with section 170(6).*
- (6) *If a notice of intention is amended, or cancelled and another notice substituted, under subsection (5)(b), the amended or substituted notice is to be treated as a new notice of intention for the purpose of allowing objections under this section, unless —*
 - (a) *the changes to the notice of intention do not affect any interests in land apart from those of persons who have already objected; and*
 - (b) *each objector has agreed to the change in writing.*

[Section 175 amended by No. 35 of 2007 s. 98(9).]

176. *Proprietor may require acquiring authority to also take small remainders of land*

- (1) *Subject to this section, if it is proposed to take, under this Part, all the interests in an area of land and the result of the taking would be that —*
 - (a) *the land taken is excised from a portion of land (the **original portion**);*
 - (b) *the remainder is divided into non-contiguous portions, of which at least one has an area of less than 1 000 square metres (a **small portion**),*

the proprietors of the fee simple, a lease of Crown land or native title rights and interests in the original portion may require the acquiring authority to take any or all of the small portions in addition to the other land taken.
- (2) *This section does not apply if the original portion —*
 - (a) *is situated in land referred to in clause 37 of Schedule 9.3 to the Local Government Act 1995; or*
 - (b) *is built upon; or*
 - (c) *has an area of 4 000 square metres or less.*

- (3) *If the proprietors referred to in subsection (1) also hold the same interest in other contiguous land with which a small portion referred to in that subsection may conveniently be amalgamated, the acquiring authority may, instead of taking the small portion, cause it to be amalgamated with the contiguous land.*

177. *Taking order, Minister's powers to make etc.*

(1) *If —*

- (a) *a notice of intention has been registered in relation to land; and*
- (b) *the Minister either —*
 - (i) *has received no objections from any proprietor or occupier within 60 days after the registration or within such further time as is allowed by the Minister; or*
 - (ii) *has determined that the objections received in that time do not warrant the cancellation, amendment or cancellation and substitution of the notice of intention; or*
 - (iii) *is satisfied that every objector concerned has consented in writing to the purchase or taking of the objector's interest,*

the Minister may make a taking order consistent with the notice of intention.

- (2) *If a special Act has been passed authorising the construction of a railway, the Minister may make a taking order consistent with that Act.*
- (3) *If an agreement has been concluded in accordance with section 168, the Minister may make a taking order in relation to the interest the subject of the agreement.*
- (4) *The Minister, when making a taking order under this section, may also make such other orders under this Act as are necessary to give effect to the purpose of the taking.*
- (5) *As soon as possible after the registration of the order, the Minister must —*
 - (a) *cause an extract from the order, in the approved form, to be published once in a daily newspaper circulating throughout the State; and*
 - (b) *cause a copy of the order to be given to the Director-General of Mines referred to in the Mining Act 1978; and*
 - (c) *cause a copy of the order together with forms for the claiming of compensation under Part 10 to be served on each proprietor and each occupier of the land and each holder of any mining, petroleum or geothermal energy rights in the land, or such of them as can with reasonable diligence be ascertained at the time of the making of the order, either personally or by certified mail posted to their last known place of residence; and*
 - (d) *advise the persons mentioned in paragraph (c) of the procedures under Part 10 for compensation for interests taken, unless they have already been given that advice.*

[Section 177 amended by No. 61 of 1998 s. 14; No. 35 of 2007 s. 98(10).]

178. *Taking order, content of*

(1) A taking order must —

- (a) identify the land affected by the order; and*
- (b) either —*
 - (i) identify any registered or unregistered interest to be taken; or*
 - (ii) specify that the land is taken, subject to any provision made under subsection (2)(a);*
- and*
- (c) specify that, subject to any provisions made under subsection (2)(d), any interest taken is to be held as Crown land in the name of the State of Western Australia; and*
- (d) designate appropriately any land or interests in land required for the purpose of the public work; and*
- (e) if the land, or interests in the land, required for the public work will be held by a person other than the Crown — specify any covenants in favour of the public work that will apply to the land or the interests; and*
- (f) if land affected by the order is not under the Transfer of Land Act 1893 — provide that it will be registered under that Act.*

(2) A taking order may, as necessary —

- (a) provide that specified interests are to be preserved in land affected by the order;*
 - (b) provide that any existing designation of the land is to be cancelled;*
 - (c) vary an existing management order;*
 - (d) provide that specified interests are to be disposed of or granted in land affected by the order to specified persons;*
 - (e) provide that land will be excised from an existing portion or portions of land;*
 - (f) provide as necessary for the cancellation, amendment or issue of certificates of Crown land or certificates of title.*
- (3) The interests which may be disposed of or granted under subsection (2)(d) include the fee simple, a lease of Crown land or any easement or obligation.*
- (4) A grant or disposition under subsection (2)(d) may be made to the acquiring authority or any other person.*

- (5) *If it is proposed to dispose or grant an interest under subsection (2)(d) out of an interest held by the Crown before the taking order, the making of the order is subject to section 18.*
- (6) *An easement granted under subsection (2)(d) may be specified as being subject to revocation without compensation on a breach of any of the conditions subject to which it was granted.*
- (7) *The Minister may, by the same or a subsequent order, declare that the interest of any lessee or occupier of the land is to continue until a date specified in the order or uninterrupted until taken by further notice, and may declare that the continued interest is not to be considered to be in satisfaction or part satisfaction of compensation for the land.*
- (8) *If the land affected by the taking order was occupied under section 183 or 186, the taking order may specify the date of actual occupation as the date of taking.*

[Section 178 amended by No. 74 of 2003 s. 72(3).]

Subdivision 3 — Effect of taking order

179. Registration of taking order, effect of

On the registration of a taking order in relation to land —

- (a) *the order has effect according to its terms; and*
- (b) *if the order provides that the land is taken — every registered and unregistered interest in the land not preserved under section 178(2)(a) is extinguished, and each person who formerly held such an interest has that holding converted into a claim for compensation under Part 10; and*
- (c) *if the order does not provide that the land is taken —*
 - (i) *each interest declared by the order to be taken is extinguished and each person who formerly held such an interest has that holding converted into a claim for compensation under Part 10; and*
 - (ii) *every unregistered interest in the land inconsistent with the effect and purpose of the taking order is also extinguished to the extent of the inconsistency, and each person who formerly held such an interest has that part of the holding which was extinguished converted into a claim for compensation under Part 10.*

180. Taking order may be annulled or amended

- (1) *A taking order may, at any time within 90 days after its registration, be annulled or amended by the registration of an order to that effect.*
- (1a) *As soon as possible after the registration of an order under subsection (1) the Minister must cause a copy of the order to be published once in a daily newspaper circulating throughout the State.*
- (2) *Section 177(5)(b) and (c) apply to the order annulling or amending the taking order as if it were a taking order.*

(3) *Subject to this section —*

- (a) *an order so annulled; and*
- (b) *if an order is so amended — any part of the earlier order that is inconsistent with the order as amended,*

is void ab initio.

- (4) *No person is to be prejudiced in respect of any interest in the land or in any right arising from such an interest by reason of having, in consequence of or in reliance on the earlier order, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation in respect of the interest or right.*
- (5) *Except as provided in section 181, no person has any right of action or claim against the Crown, the Minister, or an acquiring authority for anything done in good faith done under the taking order before it was annulled or amended.*
- (6) *This section does not limit the power of the Minister to take, by any subsequent order, any interest in the land described in any order annulled or amended.*

[Section 180 amended by No. 61 of 1998 s. 15.]

181. *Compensation if taking order annulled or amended*

- (1) *When a taking order, or an amended taking order, is annulled or amended, any claimant who would otherwise have been entitled to compensation is entitled to compensation for reasonable costs incurred, in relation to the taking, up to and including the date of taking and, if the land has been entered under Division 4, for actual damage to the land.*
- (2) *A claim under this section must be made to the acquiring authority within 60 days after the date of registration of the annulling or amending order, or within such longer period as the Minister may allow.*
- (3) *Compensation under this section is to be paid by the acquiring authority.*
- (4) *If the parties fail to agree on the amount of the compensation, the amount may be determined in accordance with Part 10.*

Division 4 — Entry on to land

182. *Entry for feasibility study*

- (1) *If it appears to the Minister that it may be necessary to use any land for a proposed public work for which the Minister is authorised to take interests in land, the Minister may authorise a person —*
 - (a) *to enter on that land; and*
 - (b) *to do anything necessary in order to study the feasibility of the proposed public work.*

- (2) *The Minister or person authorised must, before entering on any land under this section, give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 30 days notice in writing, giving a description of the area of the land to be entered upon, a description of what is proposed to be done for the feasibility study, and the time that it is expected to take.*

183. *Land for railway identified in special Act, entry of etc.*

- (1) *If a special Act has been passed authorising the construction of a railway, the Minister may authorise a person to enter on the land between the authorised limits of deviation and do anything that under the special Act or the Public Works Act 1902 is authorised to be done for the purposes of constructing the railway and any ancillary public works, in all respects as if the necessary taking order had been made for the purposes of the railway.*
- (2) *The Minister or person authorised must, as far as is practicable, before entering on any land under this section —*
 - (a) *give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 7 days notice in writing, giving a description of the area of the land to be entered on, a description of what is proposed to be done, and the time that it is expected to take; and*
 - (b) *advise the persons mentioned in paragraph (a) of the effect of this section and the procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement or compulsorily taken, unless they have already been given that advice.*

[Section 183 amended by No. 31 of 2003 s. 167(2); No. 55 of 2004 s. 567.]

184. *Land in notice of intention, entry of for inspection, surveys etc.*

- (1) *At any time after the registration of a notice of intention, a person authorised in writing by the Minister may at all reasonable times enter on land included in the notice for the purpose of inspecting the land or making an assessment of compensation payable for the taking of interests in the land.*
- (2) *At any time after the registration of a notice of intention, a person authorised in writing by the Minister may at all reasonable times enter on land included in the notice and do anything necessary or convenient for the surveying of the land for the purposes of the public work.*
- (3) *The Minister or person authorised must, as far as is practicable, before entering on any land under this section give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 48 hours notice in writing, describing the area of land to be entered on and the purpose of the entry.*

185. *Land may be occupied temporarily to construct etc. public work*

- (1) *The Minister may authorise a person to occupy and use any land temporarily for the purpose of constructing or repairing any public work, and a person so authorised may —*
 - (a) *take stone, gravel, earth and other materials from the land; and*
 - (b) *deposit any such material on the land; and*
 - (c) *make and use temporary roads; and*
 - (d) *manufacture bricks or other materials; and*
 - (e) *erect temporary workshops, sheds and other buildings.*
- (2) *Property in anything deposited, made or erected under this section remains with the Minister.*
- (3) *Subject to subsection (4), the Minister or person authorised must, before the land is used or occupied under this section, give to the principal proprietor or occupier of the land, and to the holders of any native title rights and interests in the land, not less than 7 days notice in writing, and must state in the notice the use proposed to be made of the land and an approximate period during which the use is expected to continue.*
- (4) *If the Minister is satisfied that the situation is sufficiently urgent, the notice period may be shortened or the land may be occupied before notification has been given.*

186. *Entry etc. before land taken in certain circumstances*

- (1) *If the Minister is satisfied that —*
 - (a) *it is necessary to use any land for a proposed public work for which the Minister is authorised to take interests in land; and*
 - (b) *because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken in accordance with this Part,*

the Minister may authorise a person —

- (c) *to enter on the land; and*
- (d) *to do anything necessary in order to study the feasibility of the proposed public work; and*
- (e) *to do anything necessary as preliminary or ancillary to the undertaking, constructing, or providing of the public work; and*
- (f) *to carry out the public work,*

in all respects as if the necessary taking order had been made for the purposes of the public work.

- (2) *This section applies whether or not a notice of intention has been issued in relation to the land, and whether or not the land has been entered on under any other section.*
- (3) *The Minister or person authorised must, as far as is practicable, before entering on any land under this section —*
 - (a) *give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 7 days notice in writing, giving a description of the area of the land to be entered upon, a description of what is proposed to be done, and the time that it is expected to take; and*
 - (b) *advise the persons mentioned in paragraph (a) of the effect of this section and the procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement or compulsorily taken, unless they have already been given that advice.*
- (4) *As soon as practicable after any land has been entered on under this section, the Minister must determine the interests in the land which it is necessary to take.*
- (5) *On the making of a determination under subsection (4), the Minister may make an appropriate taking order in relation to the land as if section 177 had been satisfied, and as if the determination were a notice of intention.*

[Section 186 amended by No. 55 of 2004 s. 567.]

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

No specific provision has been made in the budget for the purchase of this land. Council could see it as being part of the Aged Accommodation initiative that is budgeted for as the water flow from Shire managed land, on the opposite side of Hospital Road, is directed via the pipe on 7 Hospital Road, into a natural water course that eventually flows into the Boyup Brook then Blackwood. It was previously suggested that Council may wish to look at gaining access/management of to the whole of the water course to beautify the area and construct a pathway to link the Lodge area with the shops, medical centre, etc without the need to use the footpath on Bridge Street. Whilst this may be a longer term aim the purchase of vacant land at 7 Hospital Road would then not only meet a current drainage requirement, it could be the first stage of another project.

If Council saw it as being part of the Aged Accommodation project then the funds are budgeted, If not then a budget amendment would be required with the funds coming from savings to be made during the year.

The action being authorised is not a commitment from Council to purchase and so spend money, and so there is no budget implication at this stage.

STRATEGIC IMPLICATIONS

Nil

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

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.7

MOVED: Cr Muncey

SECONDED: Cr Moir

That Council authorise the Chief Executive Officer to lodge an offer to purchase 7 Hospital Road subject to Council approval with the matter coming back to Council once accepted.

CARRIED 9/0

Res 131/16

COUNCIL DECISION

MOVED: Cr Moir

SECONDED: Cr Muncey

That the Council adopts enbloc 9.1.1 and 9.1.2.

CARRIED 9/0

Res 132/16

9 COMMITTEE MINUTES

9.1.1 Minutes of the Bunbury Wellington Group of Councils

Location: N/A
Applicant: N/A
Disclosure of Officer Interest: Nil
Date: 13 October 2016
Author: Alan Lamb - CEO
Attachments: Yes – Minutes

BACKGROUND

The Bunbury Wellington Group of Councils meeting was held on 21st September 2016.

Minutes of the meeting are laid on the table and circulated.

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 9.1.1

That the minutes of the Bunbury Wellington Group of Councils meeting be received.

CARRIED BY ENBLOC

Res 133/16

9.1.2 Minutes of the Southwest Regional Waste Group

Location: N/A
Applicant: N/A
Disclosure of Officer Interest: Nil
Date: 13 October 2016
Author: Alan Lamb - CEO
Attachments: Yes – Minutes

BACKGROUND

The Southwest Regional Waste Group meeting was held on 2nd September 2016.

Minutes of the meeting are laid on the table and circulated.

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 9.1.2

That the minutes of the Southwest Regional Waste Group meeting be received.

CARRIED BY ENBLOC

Res 134/16

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

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

The President noted the following late items to the meeting and, with dissent, agreed to deal with them.

Cr Rear left the Chambers at 5.41pm.

Impartiality Interest

Cr Giles, Cr Kaltenrieder, Cr Oversby, Cr Blackburn and Mr Rob Staniforth-Smith declared an impartiality interest in item 11.1.1 as they are members of the Club.

11.1.1 Donation Request - Boyup Brook Club

<i>Location:</i>	<i>Railway Parade</i>
<i>Applicant:</i>	<i>Boyup Brook Club</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>18th October 2016</i>
<i>Author:</i>	<i>Alan Lamb</i>
<i>Authorizing Officer:</i>	<i>Chief Executive Officer</i>
<i>Attachments:</i>	<i>Copy of letter</i>

SUMMARY

The purpose of this report is to put before Council the donation request, estimated costs and a recommendation that Council assist the Club in this instance.

BACKGROUND

As set out in the attachment, the onsite waste disposal system's leach drain has collapsed and the Club seeks Council's assistance to renew it.

COMMENT

Whilst the request is outside of the annual donations round, had a dollar value more than the limits set by the policy for the President and CEO to deal with and so should be rejected, it is expected that the level of assistance sought is required by the Club.

The Director or Works and Services estimated the value of the requested material and works to be (ex GST):

<u>Item</u>	<u>Units</u>	<u>Rate \$</u>	<u>Value \$</u>
leach drain segments - purchased for a project but now excess to requirement	3	110.00	330.00
Backhoe - wet and private works hourly rate	8	118.18	945.44
Sand - bucket	1	250.00	250.00
Total estimated value			<u>1525.44</u>

The Club will be purchasing additional leach drain segments and providing labour for the project.

The recommendation is for Council to approve material and works to \$2,000 to allow for variations to the estimates.

CONSULTATION

Internal only

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

POLICY NO.	F.02
POLICY SUBJECT	Donations
ADOPTION DATE	17 June 2004
VARIATION DATE	21 December 2007

Objective

To promote and support community-based initiatives, which meet Shire's strategic direction.

Statement

Definitions

The following definitions apply to this policy:

- Organisation is an incorporated body under the Associations Incorporation's Act 1987 or a recognised corporate body created by government with an Australian Companies Number (ACN).
- Individual is a resident of the Shire.
- Grant – is the provision of a set amount of funds for a single year in order to achieve a specific identified purpose.
- Sponsorship- is the provision of cash, in-kind support or subsidy to organisations or individuals in return for specifically identified promotional opportunities for the Shire.
- Subsidy is the provision of in-kind in the form of a cash book entry which enables the Shire to determine the real cost of support provisions and donations to community groups.

Eligibility

Only organisations are eligible for funding support. In some instances, organisations may apply for funding on behalf of individuals who must be residents of the shire. Only one application per year may be funded for any one organisation.

In general, applications for funding shall fulfill the following criteria:-

- Not for direct profit or financial gain to the organisation or an individual;
- The proposal supports the mission statement, values and strategic direction of the Shire;
- The applicant organisation can demonstrate the capacity to manage and be accountable for the funds and the project.

The Council will: -

- only allocate funds for identified purposes and with specific expenditure estimates provided and will not provide block grants under any circumstances;
- require each applicant organisation to submit a new funding application on each occasion before Council will commit any funds;
- require each successful applicant to agree that they do not represent the Shire in any capacity.

Program Promotion

All funding programs will be advertised annually in March with all applicants advised of the outcome of their application within one month of the adoption of the annual Budget.

These requests will be presented to the Council with a brief précis.

Lodging of Applications

Applications for assistance should be made on the application form available from the Shire Office.

The information required for applications of less than \$500 shall include:-

- The name of the organisation and applicant, accompanied by contact details;
- The purpose and value of the funding required;
- The value of funding which will be provided by the organisation;
- The timeframe for completion of the project or activity;
- Such other details as required from time to time.

The information required for applications of more than \$500 shall include: -

- The name of the organisation and applicant, accompanied by contact details
- The purpose and value of the funding required;
- The value of funding which will be provided by the organisation;
- The timeframe for completion of the project or activity;
- confirmation by the President or Secretary that the application has been supported by resolution of the Organisation;
- the names of current Office Bearers and Committee members and a copy of the Certificate of Incorporation;
- A copy of the most recent audited financial statements;
- Such other details as required from time to time.

Accountability

Organisations successful in their application are generally required to:-

- Acquit the funds by 30 June in the year following their successful grant application. The acquittal is to include the appropriate financial statements as determined by the Shire, and to demonstrate that the funds have been spent on the purpose for which they were allocated;
- Provide a written report to the Shire on the outcome of their project including relevant statistics and whether objectives of the project have been met. The contents of the report requirements will be determined by the Shire;

Where an organisation has applied for funds, an individual on behalf of the group may be required to make a presentation to the Council, participate in an interview or address a group of people regarding the activity.

It is expected that all projects, events and activities will:-

- acknowledge Shire's support in its advertising, promotion and any media publicity to the satisfaction of the Shire;

- utilise Shire's logo where appropriate;
- provide a detailed report at the conclusion of the project, which outlines the project's achievements measured against the objectives.

Availability of Information

A central register of grants will be maintained and will be submitted to Council for noting annually. The register will contain the following information: -

- Name of recipient organisation and individual concerned (where applicable);
- Amount of funds provided;
- Purpose of funds provision;
- Date project/activity is expected to be complete;
- Date funds were approved;
- Date/notification of satisfactory acquittal of funds has been received by the Shire;
- Any other information considered by the Chief Executive Officer to be of value to the Council in its decision-making and funds management.

Decision Final

Decisions regarding funding applications are final and will not be reconsidered during the financial year in which the application was made.

Procedures for grants or contributions of \$10,000 or more:

On receipt of approval of a grant application the recipient agrees:-

- that the funds be applied only for the purpose approved;
- to supply an audited statement of income and expenditure supported by copies of invoices on the completion of the project;
- that 50% of the grant will be provided at the commencement of project (and following receipt of the duly signed approval terms).

- Progressive claims (to a maximum of 50%) will be payable upon production of an income and expenditure statement accompanied by relevant invoices, or as otherwise agreed to in writing by the Shire.

General

The Chief Executive Officer may in consultation with the Shire President approve extraordinary donation requests up to \$100.00 in cash, or \$500.00 in-kind (excluding administrative support e.g. photocopying), to local community groups throughout the year when requested.

The Annual Budget to include \$500.00 per year in cash for this purpose.

Extraordinary in-kind support may be carried out during normal working hours where there is no impact on work programs.

The CEO shall reject all other requests throughout the year outside the donation funding program.

BUDGET/FINANCIAL IMPLICATIONS

As reported the value of the requested donation is expected to be in excess of \$1,500.

STRATEGIC IMPLICATIONS

The Club is an integral part of the community, and has been so for many years, which is experiencing difficulties at this time. Council has provided assistance in terms of gardening works and cash (to assist with rate costs).

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
There are no known significant economic issues.
- **Social**
Assisting the Club may enable it to better work through issues and return to viability.

VOTING REQUIREMENTS

Absolute majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 11.1.1

MOVED: Cr Muncey

SECONDED: Cr Oversby

That Council donate material and works to the Boyup Brook Club, to assist it to replace its existing leach drain system, to a maximum value of \$2,000.

CARRIED BY ABSOLUTE MAJORITY 7/1

Res 135/16

Cr Rear returned to the Chambers at 5.44pm.

COUNCIL DECISION

MOVED: Cr Rear

SECONDED: Cr Oversby

That the Council adopts enbloc points 1 and 2.

CARRIED 9/0

Res 136/16

11.1.2 Recommendations from Reviewer - CEO Review 2016

COUNCIL RECOMMENDATION

1. **Council assess the performance of the CEO as being satisfactory.**

Performance Criteria

The Reviewer, in conjunction with the CEO recommended the following to Council:

2. **That Council set the CEO performance criteria for the next term as follows:**

Performance Criteria	Timeframe
1. Provide accurate and timely advice to the Council.	Ongoing
2. Annual review of all relevant long term plans, as part of the budget preparation process and to add the new tenth year, to Council for adoption by 30 June each year.	30 June 2017
3. Draft budget to Council for adoption by 31 st August each year.	31 August 2017
4. Maintain a high level of financial control and reporting as assessed by periodic audits and financial systems reviews.	Ongoing
5. Ensure progress of projects identified in the Corporate Business plan i.e. achievement of specific milestones as they appear in the Strategic, Business and Long Term Financial Plans.	Ongoing
6. Strategic Community Plan review completed and before Council by 30 April 2016.	30 April 2017

CARRIED BY ENBLOC 9/0

Res 137/16

12 CONFIDENTIAL MATTERS – BEHIND CLOSED DOORS

Nil

13 CLOSURE OF MEETING

There be no further business the Shire President, Cr Giles thanked all for attending and declared the meeting closed at 5.50pm.