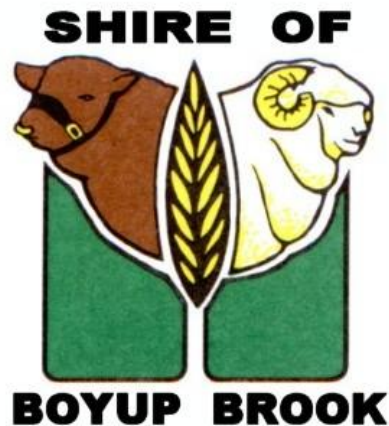


Minutes



ORDINARY MEETING

held

THURSDAY 18 February 2016
Commenced AT 5.00PM

AT

SHIRE OF BOYUP BROOK
CHAMBERS
ABEL STREET - BOYUP BROOK

TABLE OF CONTENTS

1	RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED	3
1.1	Attendance.....	3
1.2	Apologies.....	3
1.3	Leave of Absence.....	3
2	PUBLIC QUESTION TIME.....	3
2.1	Response to Previous Public Questions Taken on Notice	3
3	APPLICATIONS FOR LEAVE OF ABSENCE	3
4	PETITIONS/DEPUTATIONS/PRESENTATIONS/REPORTS	4
5	CONFIRMATION OF MINUTES	4
6	PRESIDENTIAL COMMUNICATIONS	4
7	COUNCILLORS QUESTIONS ON NOTICE.....	4
8.1	MANAGER WORKS & SERVICES.....	5
8.1.1.	Roadside Pruning	5
8.1.2	Storage of Blackwood Basin Group ripper moulder and seed planter	8
8.1.3	Roads to Recovery Funds Revision and Town Drainage Upgrades	10
8.1.4	Demolition of Kiosk in Recreation Grounds.....	12
8.1.5	Demolition of “old Weighbridge” on Railway Parade	14
8.2	FINANCE.....	16
8.2.1	List of Accounts Paid in December 2015	16
8.2.2	List of Accounts Paid in January 2016	19
8.2.3	31 December 2015 Statement of Financial Activity.....	22
8.2.4	31 January 2016 Statement of Financial Activity.....	24
8.2.5	Adoption of Review of 2015-16 Schedule of Fees & Charges	27
8.3	CHIEF EXECUTIVE OFFICER.....	31
8.3.1	Resolution to Prepare Amendment to Scheme – Lot 1 Forrest Street, Boyup Brook.....	31
8.3.2	Ancillary Dwelling – Lot 109 Zig Zag Road, Boyup Brook.....	37
8.3.3	Outbuilding – 504 Dwalganup Road, Boyup Brook.....	50
8.3.4	Upper Blackwood Agriculture Society Lease.....	57
8.3.5	Rules of Conduct Regulations - review.....	59
8.3.6	Boyup Brook Museum – approval to locate a new building	73
8.3.7	Development Assessment Panels - nominations.....	78
9	COMMITTEE REPORTS.....	97
9.1.1	Minutes of the Blackwood River Valley Marketing Association	97
9.1.2	Minutes of Annual Awards Committee.....	97
10	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	98
11	URGENT BUSINESS BY APPROVAL OF THE PRESIDENT OR A MAJORITY OF COUNCILLORS PRESENT.....	98
12	CONFIDENTIAL MATTERS – BEHIND CLOSED DOORS.....	98
13	CLOSURE OF MEETING.....	98

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)
Ms Kerry Fisher (Manager of Finance)
Mrs Maria Lane (Executive Assistant)

AUDITOR: Mr Tim Partridge

PUBLIC: Mr John Eddy

1.2 Apologies

1.3 Leave of Absence

2 PUBLIC QUESTION TIME

Mr John Eddy briefed Council on developing an ancillary dwelling (granny flat) at Lot 109 Zig Zag Road, Boyup Brook.

2.1 Response to Previous Public Questions Taken on Notice

3 APPLICATIONS FOR LEAVE OF ABSENCE

4 PETITIONS/DEPUTATIONS/PRESENTATIONS/REPORTS

Tim Partridge – Auditor (AMD) gave a brief overview to Council on the Independent Auditor’s Report and Management Report for the year ending 30th June 2015.

Tim Partridge left at 5.40pm

Cr Muncey attended the CWA meeting and provided the CEO with the questions that were raised at the meeting.

Cr Imrie informed Council that cabinets have been rearranged at the Museum; Cr Imrie also informed Council the Wilga Horse Ride is being held on 12th March and a Fish & Chip night being held on 24th March.

5 CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council - Thursday 17 December 2015

COUNCIL DECISION & OFFICER RECOMMENDATION

MOVED: Cr Aird

SECONDED: Cr Muncey

That the minutes of the Ordinary Meeting of Council held on Thursday 17 December 2015 be confirmed as an accurate record.

CARRIED 9/0

Res 02/16

6 PRESIDENTIAL COMMUNICATIONS

Attended the Councillors Christmas function on 18th December 2015

Cr Giles thanked Councillors for assisting with Australia Day on 26th January 2016.

Cr Giles was unable to attend the Grain Freight meeting; the minutes are available if anybody is interested.

7 COUNCILLORS QUESTIONS ON NOTICE

Nil

8 REPORTS OF OFFICERS

8.1 MANAGER WORKS & SERVICES

8.1.1 Roadside Pruning

Location:	N/A
Applicant:	
File:	
Disclosure of Officer Interest:	None
Date:	11 th of February, 2016
Author:	Rob Staniforth-Smith
Authorizing Officer:	Alan Lamb
Attachments:	Nil

SUMMARY

This report recommends that Council approve the current method of using an excavator mounted mulching head to prune roadside trees on its roads.

BACKGROUND

Council currently uses an excavator mounted pruning head to remove branches and overhanging vegetation from the Shires roadsides to allow the safe passage of vehicles.

We have had a single complaint this year on the way we prune, however we have received several saying we need to prune more.

Our current method of pruning is safer to the personnel performing the work as it is mechanical and does not require manpower in the vicinity of the pruning (apart from the operator) and it is more efficient than pruning from a cherry picker – see approximations below..

The current method of pruning (pruning head) costs approximately:

Pruning machine	\$2300
2 x traffic control	\$1200
Total	<u>= \$3500 per day</u>

Distance covered approximately 1km per day.

Cost per kilometre \$3500 per km

Km per year on our current budget (\$80,000) :23 km

Years to get around Councils Network: 45 years

Pruning using a man cage and a cherry picker will cost approximately:

Traffic Control:	\$1200
2 x man with chainsaw	\$1200
Cherry Picker and Operator	\$1100
Loader with Grabs	\$1000
2 x trucks to cart away	\$1600
Total	<u>\$6100 per day</u>

Distance covered approximately 300 metres

Cost per kilometre approximately \$20,000 per km

Assuming that my estimates are 200% over actual costs (which they are not)

Cost per kilometre approximately \$10000 per km

Km per year on our current budget (\$80,000) : 2.4km

Years to get around Councils Network: 437 years

COMMENT

Our road network does act as a nature strip to both fauna and wildlife, however its prime role is as an efficient, safe and effective transport corridor allowing our residents access to and from their homes and businesses.

In order to maintain the efficiency and safety on our roads, overhanging limbs must be removed from the vehicle envelope (4.6metres high and full width of road including drains) and also minimised from site distances to allow oncoming vehicles to see what is ahead of them.

Whilst all care is taken in pruning of our road verges, the resulting mulch from the machine will cover the road verges, however surely this is a small price to pay for the safe and efficient passage of vehicles.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Adoption of Cherry Picker pruning of our verges will cost in the order of 3 to 6 times the current pruning practices.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
Mulch from pruning covers verges.

Not mulching will mean that 1/3 rd of the distance of roads will be pruned for the same money
- **Economic**
Using a cherry picker to prune will cost more 1/3rd of the distance will be covered. More accidents and damage to vehicles will result. Drains and verges will become overgrown and the road network will suffer
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.1.1

MOVED: Cr Oversby

SECONDED: Cr Kaltenrieder

This report recommends that Council approve the current method of using an excavator mounted mulching head to prune roadside trees on its roads as opposed to using a cherry picker to prune.

CARRIED 9/0

Res 03/16

8.1.2 Storage of Blackwood Basin Group ripper moulder and seed planter

Location:	N/A
Applicant:	
File:	
Disclosure of Officer Interest:	None
Date:	11th of February, 2016
Author:	Rob Staniforth-Smith
Authorizing Officer:	Alan Lamb
Attachments:	Nil

SUMMARY

This report recommends that Council approve the storage of the Blackwood Basin Groups (BBG) ripper moulder and seed planter in its Flax Mill storage complex and that the fees for this storage are waived.

BACKGROUND

The BBG have purchased a ripper moulder and a seeder for landowners in the Shire to use to aid in the planting of trees to rehabilitate land areas in the Shire. They have requested that the Shire store these units for them in the Flax Mill storage complex free of charge in exchange for the Shire being able to use them when they require.

The ripper moulder is 2.4m x 2.4m (5.76m²) and the seeder planter is 1.8m x 3m (5.4m²).

COMMENT

Both the ripper moulder and the seeder will benefit the environment in the Boyup Brook Shire by allowing landowners to plant trees correctly and quickly. In the case of the Shire, we have 1 hectare of planting to do at the North Boyup Brook tip site this year and both of the machines will be off significant benefit to us.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

If Councils revised fees and charges are adopted at this meeting (item 8.2.1) the waived hire fee be in the order of \$592 per annum.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
The availability of a ripper moulder and tree planter in the Shire of Boyup Brook, will greatly help the environment as it will allow trees to be planted more economically.
- **Economic**
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.1.2

MOVED: Cr Kaltenrieder

SECONDED: Cr Muncey

This report recommends that Council approve the storage of the Blackwood Basin Groups (BBG) ripper moulder and seed planter in its Flax Mill storage complex and that the fees for this storage are waived.

CARRIED 8/1

Res 04/16

8.1.3 Roads to Recovery Funds Revision and Town Drainage Upgrades

Location:	<i>N/A</i>
Applicant:	
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>11th of February, 2016</i>
Author:	<i>Rob Staniforth-Smith</i>
Authorizing Officer:	<i>Alan Lamb</i>
Attachments:	<i>Roads to Recovery Circular 2016/1</i>

SUMMARY

This report recommends that Council approve the expenditure of the additional Roads to Recovery funds from the Federal government fuel excise in the 2015-2016 financial year to complete drainage upgrades commenced in the 2015-2016 year. These funds were approved for expenditure in 2016/2017 at the October 2015 Council Meeting – item 8.1.1.

BACKGROUND

The Federal Government via its Roads to Recovery (RTR) programme initially allocated annual funds of \$304,019 per annum over the 5 year programme. This was subsequently doubled to \$608,038 in the 2015/2016 financial year. Bridge Study funding (bridge 270 – Tone Bridge) was successfully sourced through the programme which added another \$309,000 to the 5 year programme. In July 2015 additional funding was then announced for the 2015/2016 years and the 2016/2017 years. This resulted in the net 2015/2016 allocation being \$843,046 (see attached spreadsheet), where as Councils 2015/2016 budget only budgeted for \$662,795.

The RTR programme mandates that annual expenditures, where practicable must be spent in the years allocated which means that Council must increase its budgeted allocation to match the RTR programmes.

Council at its October 2015 meeting, Item 8.1.1 resolution 96/15, resolved to endorse the continuation of the 2015/2016 drainage upgrades in the town of Boyup Brook into 2016/2017. It is now proposed to perform these upgrades in the 2015/2016 financial year in light of the unallocated funds from the 2015/2016 Roads to Recovery Programme.

COMMENT

With the advent of additional funds from RTR and the requirement to spend each year's allocation in each of the financial years where it has been allocated, Council must approve additional RTR projects for the 2015/2016 year.

The drainage upgrades proposed for 2016/2017 financial year have already been designed, planned and costed and as they do not put additional work load onto the Councils work crew, due to the work being done by contractors, fit the requirements of RTR perfectly.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil net affect.

Councils RTR expenditure has been increased to match the RTR allocations for 2015/2016

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 8.1.3

MOVED: Cr Aird

SECONDED: Cr Oversby

That Council endorses the revised Roads to recovery Programme for 2015/2016.

Carried 9/0

Res 05/16

COUNCIL DECISION

MOVED: Cr Moir

SECONDED: Cr Blackburn

That the Council adopts enbloc 8.1.4 and 8.1.5

CARRIED 9/0

Res 06/16

8.1.4 Demolition of Kiosk in Recreation Grounds
--

<i>Location:</i>	<i>N/A</i>
<i>Applicant:</i>	
<i>File:</i>	
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>11th of February, 2016</i>
<i>Author:</i>	<i>Rob Staniforth-Smith</i>
<i>Authorizing Officer:</i>	<i>Alan Lamb</i>
<i>Attachments:</i>	<i>Photos</i>

SUMMARY

This report recommends that Council approve the demolition of the old Kiosk building at the Recreation Grounds (Football Club Grounds) in the 2016/2017 financial year.

BACKGROUND

The old Kiosk building at the Recreation Grounds are in a poor structural state and are dangerous to the public. Youths have been vandalising the dilapidated building and graffitiing inside. All of the power fixtures have been smashed (power subsequently disconnected) and the insides have been damaged.

The building is un-used and will require considerable money to be spent on it to bring it up to a safe standard.

As the building is classified as “class 2” for demolition purposes, it will need a licensed demolition contractor.

It is proposed to demolish the building in the 2016/2017 financial year.

COMMENT

This un-used building is in a poor state and requires substantial repairs both structurally and electrically.

The removal of unused redundant buildings decreases Councils depreciation liability and maintenance liability.

CONSULTATION

CEO, DCS

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Increase in expenditure in 2016/2017 budget to carry out the demolition.

Decrease in depreciation and maintenance liability for ever.

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 8.1.4

That Council endorses the demolition of the old Kiosk building in the recreation grounds in the 2016/2017 financial year.

8.1.5 Demolition of “old Weighbridge” on Railway Parade

Location:	<i>N/A</i>
Applicant:	
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>11th of February, 2016</i>
Author:	<i>Rob Staniforth-Smith</i>
Authorizing Officer:	<i>Alan Lamb</i>
Attachments:	<i>Photos</i>

SUMMARY

This report recommends that Council approve the demolition of the old Weighbridge building on Railway Parade (end of Inglis Street) in the 2016/2017 financial year, and that the weighbridge deck and controls are given to the Boyup Brook museum.

BACKGROUND

The old Weighbridge building on Railway Parade is in a poor structural state as it has been hit by a vehicle and could be dangerous to the public.

The building is un-used and will require considerable money to be spent on it to bring it up to a safe standard.

The weighbridge deck and the weighing “balance” were constructed in Australia and as such have a level of interest historically. The Boyup Brook Museum has shown interest in setting them up at their grounds as a display.

The weighbridge have no commercial use as the bridge does not have the capacity to weigh today’s road trains and semi trailers without many movements of the vehicle, not to mention that the scales themselves will not have been calibrated form many years. Cooperative Bulk Handling allows free use of their weighbridge which is calibrated annually.

As the building is classified as “class 2” for demolition purposes, it will need a licensed demolition contractor.

It is proposed to demolish the building in the 2016/2017 financial year.

COMMENT

This un-used building is in a poor state and requires substantial repairs both structurally and electrically.

The removal of unused redundant buildings decreases Councils depreciation liability and maintenance liability.

CONSULTATION

CEO, DCS

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Increase in expenditure in 2016/2017 budget to carry out the demolition.

Decrease in depreciation and maintenance liability for ever.

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 8.1.5

That Council endorses the demolition of the old Weighbridge and building on Railway Parade in the 2016/2017 financial year, and that the weighbridge is donated to the Museum.

COUNCIL DECISION

MOVED: Cr Moir

SECONDED: Cr Imrie

That the Council adopts enbloc 8.1.5, 8.2.1, 8.2.2, 8.2.3 and 8.2.4

CARRIED 9/0

Res 07/16

FINANCE

8.2.1 List of Accounts Paid in December 2015

<i>Location:</i>	<i>Not applicable</i>
<i>Applicant:</i>	<i>Not applicable</i>
<i>File:</i>	<i>FM/1/002</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>10 February 2016</i>
<i>Author:</i>	<i>Kerry Fisher – Manager of Finance</i>
<i>Authorizing Officer:</i>	<i>Alan Lamb – Chief Executive Officer</i>
<i>Attachments:</i>	<i>Yes – List of Accounts Paid in December</i>

SUMMARY

In accordance with the *Local Government (Financial Management) Regulations 1996* the list of accounts paid in December 2015 are presented to Council.

BACKGROUND

This report presents accounts/invoices received for the supply of goods and services, salaries and wages, and the like which were paid during the period 01 to 31 December 2015.

COMMENT

The attached listing represents accounts/invoices the shire paid by cheque or electronic means during the period 01 to 31 December 2015.

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 2015-16 Annual Budget.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.1

That at its February 2016 ordinary meeting Council receive as presented the list of accounts paid in December 2015, and totalling \$1,206,249.91 and as represented by: cheque voucher numbers 19896-19921 totalling \$107,890.58; and accounts paid by direct electronic payments through the Municipal Account totalling \$1,098,359.33.

That at its 18 February 2016 ordinary meeting Council receive as presented the list of accounts paid in December 2015, and totalling \$459.65 from Trust Account represented by cheque voucher 2056-2061.

8.2.2 List of Accounts Paid in January 2016

Location:	<i>Not applicable</i>
Applicant:	<i>Not applicable</i>
File:	<i>FM/1/002</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>12 February 2016</i>
Author:	<i>Kerry Fisher – Manager of Finance</i>
Authorizing Officer:	<i>Alan Lamb – Chief Executive Officer</i>
Attachments:	<i>Yes – List of Accounts Paid in December</i>

SUMMARY

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

BACKGROUND

This report presents accounts/invoices received for the supply of goods and services, salaries and wages, and the like which were paid during the period 01 to 31 January 2016.

COMMENT

The attached listing represents accounts/invoices the shire paid by cheque or electronic means during the period 01 to 31 January 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 2015-16 Annual Budget.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.2

That at its February 2016 ordinary meeting Council receive as presented the list of accounts paid in January 2016, and totalling \$361,409.94 and as represented by: cheque voucher numbers 19922-19935 totalling \$57,831.76; and accounts paid by direct electronic payments through the Municipal Account totalling \$303,578.18

That at its 18 February 2016 ordinary meeting Council receive as presented the list of accounts paid in January 2016, and totalling \$3,100.00 from Trust Account represented by cheque voucher 2062-2068.

8.2.3 31 December 2015 Statement of Financial Activity

Location:	Not applicable
Applicant:	Not applicable
File:	FM/10/003
Disclosure of Officer Interest:	None
Date:	10 February 2016
Author:	Kerry Fisher – Manager of Finance
Authorizing Officer:	Alan Lamb – Chief Executive Officer
Attachments:	Yes – Financial Reports

SUMMARY

This report recommends that Council receive the Statement of Financial Activities and Net Current Assets for the month ended 31 December 2015.

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

Alan Lamb – Chief Executive Officer

STATUTORY OBLIGATIONS

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

As presented in the attached reports.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.3

That having regard for any material variances, Council receive the 31 December 2015 Statement of Financial Activity and Statement of Net Current Assets, as presented.

8.2.4 31 January 2016 Statement of Financial Activity

Location:	Not applicable
Applicant:	Not applicable
File:	FM/10/003
Disclosure of Officer Interest:	None
Date:	10 February 2016
Author:	Kerry Fisher – Manager of Finance
Authorizing Officer:	Alan Lamb – Chief Executive Officer
Attachments:	Yes – Financial Reports

SUMMARY

This report recommends that Council receive the Statement of Financial Activities and Net Current Assets for the month ended 31 January 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

Alan Lamb – Chief Executive Officer

STATUTORY OBLIGATIONS

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

As presented in the attached reports.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 8.2.4

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

MOVED INTO COMMITTEE

MOVED: Cr Rear

SECONDED: Cr Muncey

That the Council move into a committee of the whole under clause 15.6 of the Standing Orders, Local Law No.1.to allow members free discussion on the matter.

CARRIED 9/0

Res 08/16

MOVED OUT OF COMMITTEE

MOVED: Cr Oversbt

SECONDED: Cr Blackburn

That the Council moves out of committee of the whole under clause 15.6 of the Standing Orders, Local Law No.1.

CARRIED 9/0

Res 09/16

8.2.5 Adoption of Review of 2015-16 Schedule of Fees & Charges

Location: N/A
File:
Disclosure of Interest: N/A
Date: 10 February 2016
Author: Alan Lamb – Chief Executive Officer &
Kerry Fisher – Manager of Finance
Authorising Officer: Alan Lamb – Chief Executive Officer
Attachments: Draft Review of 2015-16 Schedule of Fees & Charges

SUMMARY

This matter is put before Council for information, and for Council to consider and adopt a Revised Schedule of Fees & Charges for 2015-16.

BACKGROUND

The Schedule attached shows the fees and charges that were previously adopted and the changes recommended for the revised Fees and Charges 2015-16.

Proposed changes in the revision or 2015-16 Schedule of Fees include:

- Boyup Brook Medical Centre - 4% increase
- Boyup Brook Transfer Station & Landfill charges – 4% increase on 14/15 not included in the 15/16 fees and charges
- Boyup Brook Swimming Pool – additions to current charges
- Some wording changes for clarity

For those fees that are statutory in nature (e.g. – development application fees, building fees, swimming pool inspection fees, FOI fees, etc), Council is without discretion to set fees higher than permitted by the applicable legislation.

Once adopted, as per Section 6.19 of the *Local Government Act 1995* a notice will be inserted in the Gazette advising of the newly adopted fees and commencement date.

COMMENT

All fees are reviewed annually. Often fees do not cover the cost of providing a service (the subject of the fee), with a proportion of the service costs being funded from other (General Purpose) revenues streams e.g. rates.

CONSULTATION

All sectors within the organisation have had an opportunity for input into the review of the proposed 2015-16 fees and charges.

STATUTORY OBLIGATIONS

The following sections of the Local Government Act have relevance:

1.7. *Local public notice*

- (1) *Where under this Act local public notice of a matter is required to be given, a notice of the matter is to be —*
- (a) *published in a newspaper circulating generally throughout the district; and*
 - (b) *exhibited to the public on a notice board at the local government's offices; and*
 - (c) *exhibited to the public on a notice board at every local government library in the district.*
- (2) *Unless expressly stated otherwise it is sufficient if the notice is —*
- (a) *published under subsection (1)(a) on at least one occasion; and*
 - (b) *exhibited under subsection (1)(b) and (c) for a reasonable time, being not less than —*
 - (i) *the time prescribed for the purposes of this paragraph; or*
 - (ii) *if no time is prescribed, 7 days.*

[Section 1.7 amended by No. 64 of 1998 s. 18(3).]

Subdivision 2 — Fees and charges

6.16. *Imposition of fees and charges*

- (1) *A local government may impose* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*

** Absolute majority required.*

- (2) *A fee or charge may be imposed for the following —*
- (a) *providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;*
 - (b) *supplying a service or carrying out work at the request of a person;*
 - (c) *subject to section 5.94, providing information from local government records;*
 - (d) *receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;*
 - (e) *supplying goods;*

- (f) *such other service as may be prescribed.*
- (3) *Fees and charges are to be imposed when adopting the annual budget but may be —*
 - (a) *imposed* during a financial year; and*
 - (b) *amended* from time to time during a financial year.*

** Absolute majority required.*

6.17. *Setting level of fees and charges*

- (1) *In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —*
 - (a) *the cost to the local government of providing the service or goods; and*
 - (b) *the importance of the service or goods to the community; and*
 - (c) *the price at which the service or goods could be provided by an alternative provider.*
- (2) *A higher fee or charge or additional fee or charge may be imposed for an expedited service or supply of goods if it is requested that the service or goods be provided urgently.*
- (3) *The basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —*
 - (a) *under section 5.96; or*
 - (b) *under section 6.16(2)(d); or*
 - (c) *prescribed under section 6.16(2)(f), where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.*
- (4) *Regulations may —*
 - (a) *prohibit the imposition of a fee or charge in prescribed circumstances; or*
 - (b) *limit the amount of a fee or charge in prescribed circumstances.*

6.18. *Effect of other written laws*

- (1) *If the amount of a fee or charge for a service or for goods is determined under another written law a local government may not —*
 - (a) *determine an amount that is inconsistent with the amount determined under the other written law; or*
 - (b) *charge a fee or charge in addition to the amount determined by or under the other written law.*

- (2) *A local government is not to impose a fee or charge for a service or goods under this Act if the imposition of a fee or charge for the service or goods is prohibited under another written law.*

6.19. *Local government to give notice of fees and charges*

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

- (a) *its intention to do so; and*
(b) *the date from which it is proposed the fees or charges will be imposed.*

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

The proposed review of the 2015 – 2016 Fees and Charges does not represent a significant impact on the budget. Currently income from the Waste facilities and Medical Centre is below budget. The 4% increase proposed will provide for a more accurate estimate of the 2015 – 2016 annual budget amounts. Although due to the timing of the review, this will still need to be considered in the budget review.

Strategic Implications

Every effort has been made to identify those appropriate areas where the user pays cost recovery principle might reasonably be applied.

SUSTAINABILITY IMPLICATIONS

The fees are determined having regard to the cost of providing the service, the scope of the service and the anticipated preparedness of a person to pay the fee.

VOTING REQUIREMENTS

Absolute Majority

COUNCIL DECISION & OFFICER RECOMMENDATION

MOVED: Cr Oversby

SECONDED: Cr Giles

That Council:

- 1. Adopt the new and amended fees and charges as set out in the attached 2015-16 Schedule of Fees & Charges**
- 2. Advertise the new and amended fees and charges as required**
- 3. Impose the new and amended fees and charges as from 7 March 2016.**

CARRIED by ABSOLUTE MAJORITY 9/0

Res 10/16

8.2 CHIEF EXECUTIVE OFFICER

8.3.1 Resolution to Prepare Amendment to Scheme – Lot 1 Forrest Street, Boyup Brook

Location:	Lot 1 Forrest Street
Applicant:	Shire Boyup Brook
File:	LN/42/001
Disclosure of Officer Interest:	None
Date:	February 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 resolve to prepare an amendment to the Shire of Boyup Brook *District Planning Scheme 2*. The amendment involves transferring Lot 1 Forrest Street, Boyup Brook, from the 'Parks and Recreation' reserve to the 'Residential' zone, with a density of R15/30.

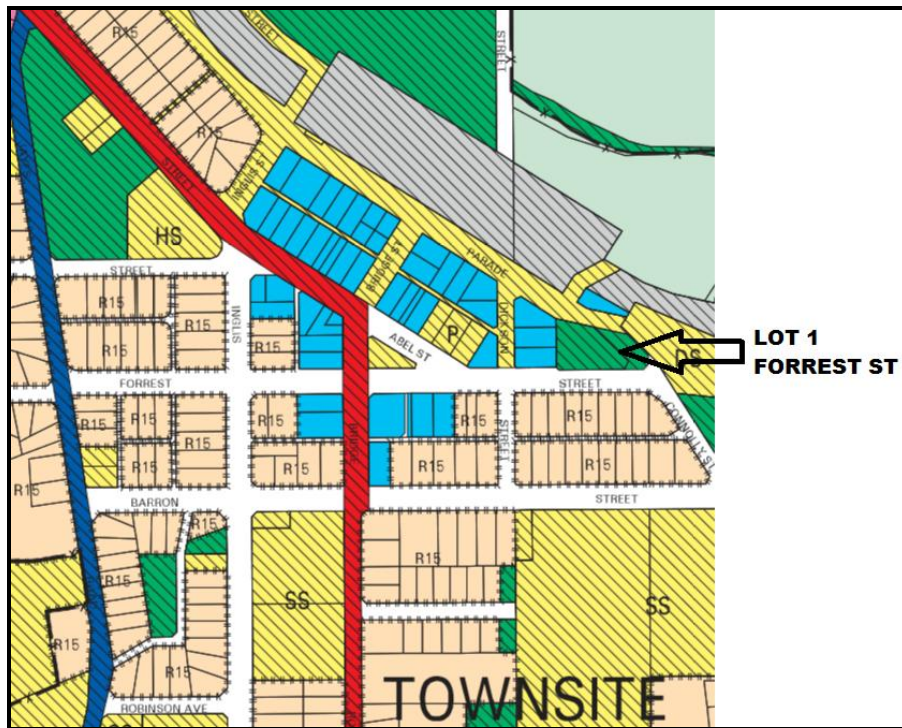
The R15 density enables development without deep sewer (subject to Department of Health approval) at the average lot size of 666m². The R30 density enables development subject to connecting to deep sewer at the average lot size of 300m².

Council discretion is required in accordance with regulations 35(1) and 35(2) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, which states:

r.35 (1) A resolution of a local government to prepare or adopt an amendment to a local planning scheme must be in a form approved by the Commission.

r.35 (2) A resolution must —

- (a) specify whether, in the opinion of the local government, the amendment is a complex amendment, a standard amendment or a basic amendment; and*
- (b) include an explanation of the reason for the local government forming that opinion.*



Lot 1 Forrestr Street – Currently ‘Reserved’ for ‘Parks and Recreation’

BACKGROUND

The Shire of Boyup Brook is in short supply of housing that’s:

- Specifically designed to accommodate aged persons (social and compact); and
- Affordable (Shire ownership).

Lot 1 Forrestr Street has been highlighted as a site possibly suitable for housing development, to accommodate aged persons.



Aerial View - Lot 1 Forrestr Street

COMMENT

With people living longer, the number of aged persons throughout regional areas is increasing.

If services, including affordable housing for the aged can be made available in regional areas, the general trend is for aged persons to stay in regional towns where their friends and family reside.

Lot 1 Forrest Street was used as a bowling green some years ago. The site has since been vacant. Given the site is owned by the Shire, is within walking distance to shops, has flat terrain and has two road frontage, the site should be considered for housing to accommodate aged persons.

STATUTORY OBLIGATIONS

Statutory Obligations	Recommendations
<p><i>District Planning Scheme 2</i></p> <ul style="list-style-type: none"> • Lot 1 Forest St is reserved for ‘Parks and Recreation’. • The Shire’s scheme states at Part II-Reserved Land: <p><i>2.1 RESERVATION OF LAND & DEVELOPMENT THERE OF</i></p> <p><i>2.1.1 Parts of the Scheme Area are included in Reserves as set out hereunder:</i></p> <p><i>2.1.2 Land set aside under this Scheme for the purpose of a reservation is deemed to be reserved for the purpose indicated on the Scheme Map.</i></p>	<p>Recommend amending the scheme such that housing development can be accommodated at Lot 1 Forrest Street.</p>

Statutory procedures following Council resolution to resolve to prepare an amendment include:

1. Develop amendment document and Council resolve to adopt amendment (March Council Meeting);

2. Advertise proposed amendment for minimum period of 42 days;
3. Consider submissions on amendment;
4. Consider finally supporting amendment with or without modifications;
5. Provide amendment to commission for Minister Endorsement.

POLICY IMPLICATIONS

There are no policy implications relating to this item.

CONSULTATION

The Shire consulted with the Department of Planning on the notion of developing Lot 1 Forrest Street prior to amending the scheme.

The Department of Planning advised that such a procedure would be contrary to the scheme purpose of 'Parks and Recreation' reservation as per scheme map.

The Department of Planning gave in-principle support to the notion of amending the scheme to enable development of the site for housing for aged persons.

BUDGET/FINANCIAL IMPLICATIONS

Financial outlay for the planning consultancy fees involving the preparation and up-to final adoption of the scheme amendment, is expected to be in the order of \$2500. The extent of planning fees can be catered for within the 2015/16 budget.

Additional financial outlay may include:

1. Geotechnical Survey (sewer and development capability);
2. Financial reporting to itemize development costs;
3. Development and/or subdivision design;
4. Development of deep-sewer;
5. Development and/or subdivision.

Funding opportunities to assist development may exist in the future through Royalties for Regions. Royalties for Regions is the State Government's multi-billion dollar program to help grow Western Australia's regional areas into thriving and sustainable communities. The Great Southern Development Commission is now accepting applications for funding through two Royalties for Regions programs. Applications close at 4pm on March 17 2016 for projects commencing after July 1 2016.

STRATEGIC IMPLICATIONS

There are no strategic implications relating to this item. There is a bowling green in operation in the townsite at Lots 83 and 84 Railway Parade.



Consideration is being given through a draft Local Planning Strategy to co-locate active recreation facilities in the one location adjacent to Beatty Street.



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 REQUIREMENT

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.1

MOVED: Cr Aird

SECONDED: Cr Rear

That Council

Resolves to prepare an amendment to the *District Planning Scheme 2* in accordance with regulations 35(1) and 35(2) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, as follows:

Planning and Development Act 2005

RESOLUTION TO PREPARE AMENDMENT TO LOCAL PLANNING SCHEME

District Planning Scheme 2

Amendment No 16

Resolved that the local government pursuant to section 72 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

1. Transferring Lot 1 Forrest Street, from 'Parks and Recreation' reserve to 'Residential' zone, with a density of R15/30.
 - The R15 enables development without deep sewer (subject to Department of Health approval) at the average lot size of 666m².
 - The R30 enables development subject to connecting to deep sewer at the average lot size of 300m².

The Amendment is a 'Standard' amendment under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- a) The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment;
- b) The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.

Dated this day of 20

Alan Lamb

Chief Executive Officer

CARRIED 9/0

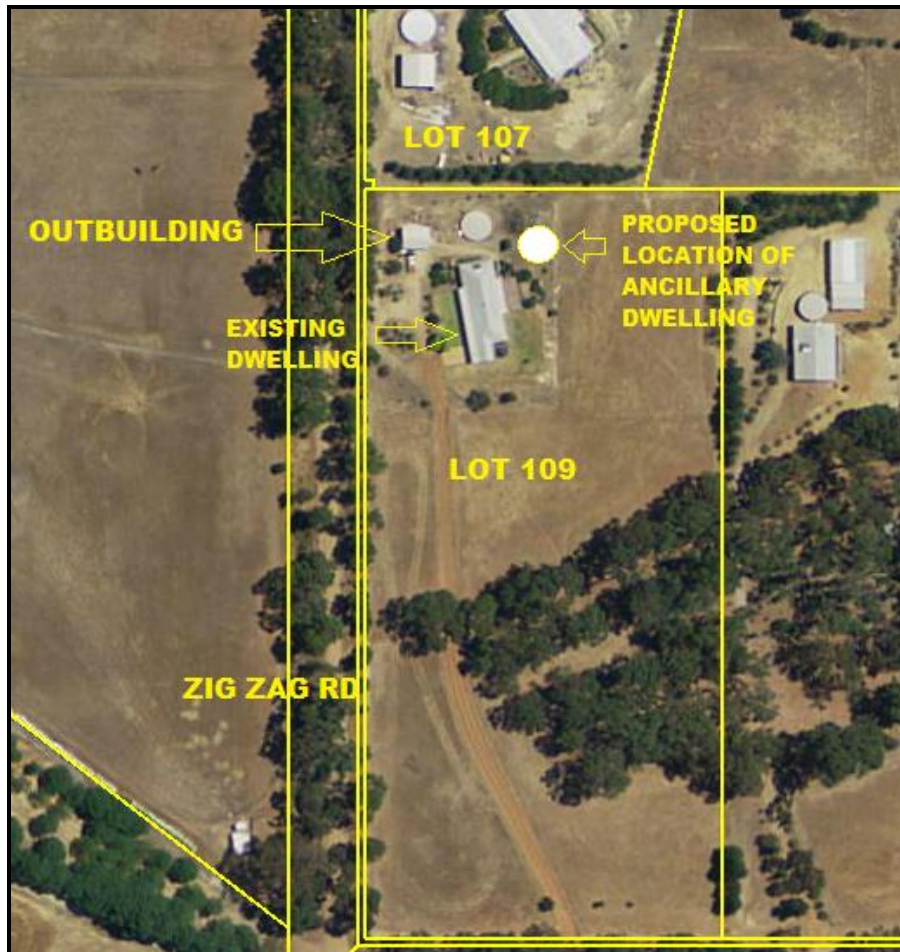
Res 11/16

8.3.2 Ancillary Dwelling – Lot 109 Zig Zag Road, Boyup Brook

Location:	<i>Lot 109 Zig Zag Road</i>
Applicant:	<i>J & G Eddy</i>
File:	<i>A3083</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>February 2016</i>
Author:	<i>A. Nicoll, Town Planner</i>
Authorizing Officer:	<i>Alan Lamb, Chief Executive Officer</i>
Attachments:	<i>Nil</i>

SUMMARY

The purpose of this report is to put before Council the request to develop an ancillary dwelling (granny flat) at Lot 109 Zig Zag Road, Boyup Brook.



Aerial view – existing and proposed development

Lot 109 Zig Zag Road is zoned 'Special Rural 6' in accordance with the Shire's *District Planning Scheme 2*, and located approximately 4km from the Boyup Townsite.

Ancillary dwelling means, *self-contained dwelling on the same lot as a single house which may be attached to, integrated with or detached from the single house* (Source: Residential Design Codes).

Council discretion is required due to the application proposing to locate the ancillary dwelling:

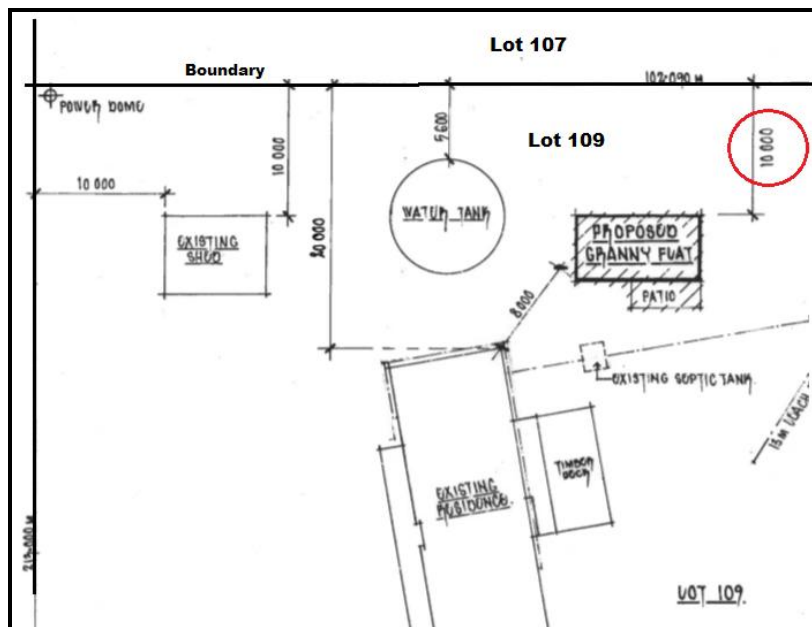
- Closer to a shared property boundary than what is required by the Shire's *District Planning Scheme 2*; and
- Within a bushfire prone area.

BACKGROUND

The 'Special Rural 6' area has been established to enable rural lifestyle living, within reasonable distance to services, located at the Boyup Townsite.

Conditions apply to the use and development of the area, as a means to protect the rural lifestyle amenity and natural elements.

The owner of Lot 109 Zig Zag Road lodged a development application for an ancillary dwelling with the request to reduce the setback between the proposed dwelling and the boundary of Lots 109 and 107, by 10m. The *District Planning Scheme 2* requires a setback of 20m. Locating the ancillary dwelling elsewhere on the property is subject to complications, including undulating topography, existing developments and bushfire prone vegetation.

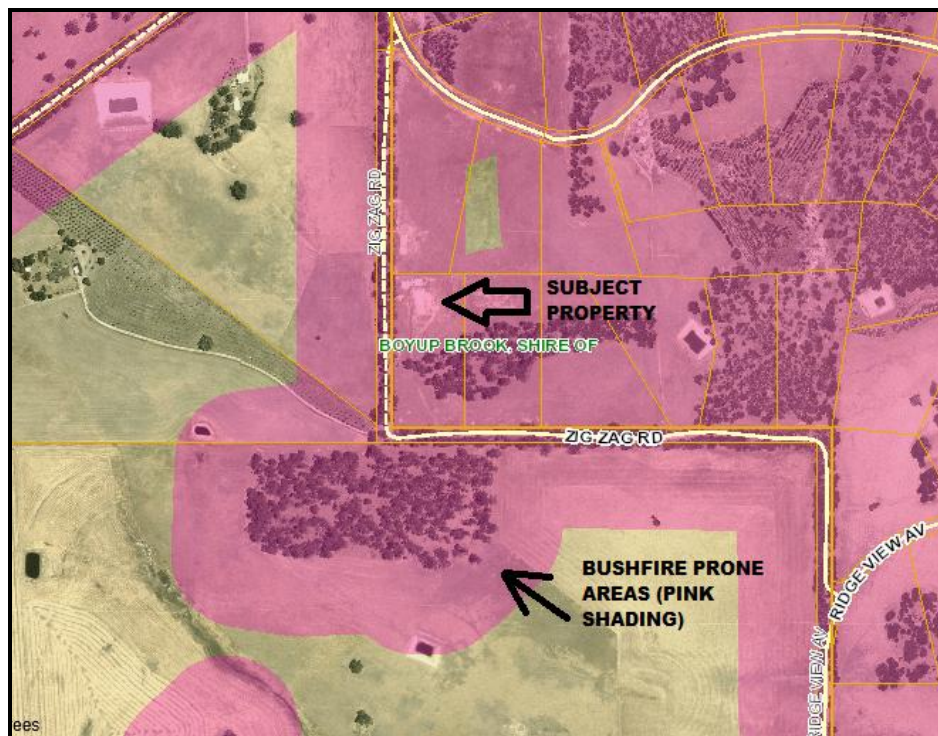


Proposed location of ancillary dwelling (granny flat)

The owner of Lot 109 Zig Zag Road sought comment from the neighbouring property (Lot 107), the subject of the proposed setback relaxation. The neighbouring property provided a letter, supporting the reduced setback.

Because the ancillary dwelling is proposed to be located within 100m of bushfire prone vegetation, a 'Bushfire Attack Level' assessment, completed by a fire consultant, was also submitted as part of the application.

The 'Bushfire Attack Level' assessment reported a need for the dwelling design and construction to be made superior (e.g. thickened glass for windows) to withstand bushfire - flame and ember attack.



Aerial view illustrating vegetation and areas within 100m of vegetation

The 'Bushfire Attack Level' assessment report also expressed the need for fuels (grass, leaves, and dead branches) within 20m of the ancillary dwelling to be managed to an acceptable level.

Because the ancillary dwelling is proposed to be located within 10m of a shared property boundary, 10m of the 20m fuel management area will be located on the neighbouring Lot 107. In effect, Lot 107 would be burdened as a result of the ancillary dwelling. Unless a formal agreement is established, it is not appropriate to expect Lot 107 to manage fuel loads in favour of a neighbouring property development.

Discussions with the fire consultant revealed the option of decreasing the fuel management area, otherwise known as the 'Asset Protection Area' (APZ), subject to increasing the construction standard of the ancillary dwelling.

The Western Australian Planning Commission *Guidelines for Planning in Bushfire Prone Areas 2015 – Appendix*, states (A2.1a.):

Where a full 20 metre APZ is not possible, the APZ should be sufficient enough to ensure the potential radiant heat impact of a fire does not exceed 29kW/m².

The fire consultant was requested to review the 'Bushfire Attack Level' assessment report, and in doing so, the following was determined:

- A minimum 12m setback to the boundary can be achieved subject to:
 - the northern side of the new dwelling being developed to comply with the Australian 3959 construction standard of 3 and 8 (BAL40 – capable of withstanding 29kW/m²); and
 - the southern, western, and eastern sides complying with the Australian 3959 construction standard of 3 and 7 (BAL29).

COMMENT

Subject Property

The subject property is:

- Zoned 'Special Rural 6';
- 2ha in area; and
- Developed with an existing dwelling, outbuilding and water tank.

Proposal

The proposal involves the development of an ancillary dwelling at Lot 109 Zig Zag Road. The ancillary dwelling is proposed to be located behind an existing dwelling and will need to achieve a minimum setback of 12m to the shared boundary of Lots 109 and 107, in accordance of an updated 'Bushfire Attack Level' assessment'. This means that the site plan submitted to illustrate a setback of 10m, will need to be amended as a condition of approval.

The design of the ancillary dwelling includes:

- Single storey, one bedroom, one bathroom, living room and patio;
- 9m X 5m (45m²) and 2.4m height; and
- Colourbond walls and zinalume pitched roof.

The following conditions of development will need to apply as recommended by the 'Bushfire Attack Level' assessment:

- The northern side of the new dwelling being developed to comply with the Australian 3959 construction standard of 3 and 8 (BAL40 – capable of withstanding 29kW/m²);
- The southern, western, and eastern sides complying with the Australian 3959 construction standard of 3 and 7 (BAL29);
- Flammable materials (grass and tree canopies) within 12m of the ancillary dwelling to the north being maintained to a minimum; and
- Flammable materials (grass and tree canopies) within 20m of the ancillary dwelling to the southern, western, and eastern sides being maintained to a minimum.

STATUTORY OBLIGATIONS

Statutory Obligations	Recommendations
<p>Lot 109 Zig Zag Road is zoned 'Special Rural 6' in accordance with the Shire's <i>District Planning Scheme 2</i>.</p> <p>The following requirements apply to development and use on properties zoned 'Special Rural 6':</p> <p>iv) Uses permitted within the zone are:-</p> <ul style="list-style-type: none"> • Ancillary Accommodation... <p>vi) Buildings, structures and on-site effluent disposal systems may not be constructed within the 'building exclusion area' which is defined as being -</p> <ul style="list-style-type: none"> • 20m from side boundaries; <p>xi) All buildings constructed shall, by virtue of materials and design, be reasonably fire resistant. The Council shall from time to time specify its standards for fire resistant buildings.</p>	<p>Recommend that the Council agree to conditionally support a setback relaxation from 20m to 12m for the following reasons:</p> <ol style="list-style-type: none"> 1. Council previously supported the development of an outbuilding at Lot 109 with a reduced setback of 10m to the boundary shared by Lots 109 and 107; 2. A 'Bushfire Attack Level' assessment suggests that a 12m fuel reduction area (Asset Protection Area) and superior construction requirements are sufficient in terms of reducing risk to property and life the result of a bushfire; 3. Alternative locations are constrained due to bushfire prone vegetation, undulating topography and other developments; 4. The neighbouring property has given support in writing to the proposed setback relaxation; and 5. The location of the ancillary dwelling behind an existing dwelling means that the amenity to the road will not be impacted.

Clause 3.6.1 of the Shire's *District Planning Scheme 2* states:

Except for development in respect of which the Residential Planning Codes apply under this Scheme, if a development the subject of an application for Planning Consent does not comply with 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 Council may, notwithstanding that non-compliance, approve the application unconditionally or subject to such conditions

as the Council thinks fit. The power conferred by this clause may only be exercised if the Council is satisfied that:

- i) 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.*
- ii) 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*
- iii) the spirit and purpose of the standard or requirement will not be unreasonably departed from.*

POLICY IMPLICATIONS

Policy Obligations	Recommendations
Clause 19b) of the Shire’s Policy P.10 – Fire, requires: I. A 20m cleared building protection zone surrounding all development; II. A hazard separation zone located within subject property boundaries; IV. Applicable construction standard in accordance with Australian Standards 3959.	Recommend that the Council agree to support: 1. A reduced 12m building protection zone (to the north) in accordance with a ‘Bushfire Attack Level’ assessment; 2. Superior building standards for the ancillary dwelling, as required by the ‘Bushfire Attack Level’ assessment and in accordance with the Australian Standards 3959.

Clause 9.6.6 of the *Shire’s District Planning Scheme 2* states:

A Policy shall not bind the Council in respect of any application for planning approval but the Council shall have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its decision.

CONSULTATION

The neighbouring property was consulted and has provided written support for the proposed setback relaxation.

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

New bushfire planning requirements apply to all new planning proposals for habitable buildings (e.g. house, restaurant, office, etc.) or specified buildings from the 8 April 2016.

The new requirements apply to areas designated as bushfire prone on the Map of Bush Fire Prone Areas.

If a property is located within a bushfire prone area according to this map a bushfire attack level (BAL) assessment will need to be undertaken.

The new requirements will supersede any current bushfire planning standards, including the Shire's Fire Policy No.10.

SUSTAINABILITY IMPLICATIONS

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

VOTING REQUIREMENTS

Simple majority

OFFICER RECOMMENDATION – ITEM 8.3.2

That Council

Grants development approval for Lot 109 Zig Zag Road, Boyup Brook for the purpose of ancillary dwelling and subject to the following conditions:

Conditions

1. Development is to be carried out in accordance with the approved plans, as amended and dated February 2016, unless varied by conditions of Planning and Building approval.
2. If the development the subject of this approval is not substantially commenced within a period of 2 years, the approval will lapse and be of no further effect.
3. All stormwater is to be managed and contained on-site, to the satisfaction of the Shire of Boyup Brook.
4. The ancillary dwelling being constructed to comply with Australian 3959 standards:
 - a. 3 and 7 for the southern, eastern and western sides of the development; and
 - b. 3 and 8 for the northern side of the development.
5. Flammable materials (grass and tree canopies) within 12m of the ancillary dwelling to the north being maintained to a minimum (2t/ha).
6. Flammable materials (grass and tree canopies) within 20m of the ancillary dwelling to the southern, western, and eastern sides being maintained to a minimum (2t/ha).

Notes

This Planning Scheme Consent contains 6 conditions.

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. For further information regarding this, refer to www.sat.justice.wa.gov.au, with reference to section 252 of the Planning and Development Act (2005) (as amended).

COUNCIL DECISION – ITEM 8.3.2

MOVED: Cr Oversby

Seconded: Cr Muncey

That Council

Grants development approval for Lot 109 Zig Zag Road, Boyup Brook for the purpose of ancillary dwelling and subject to the following conditions:

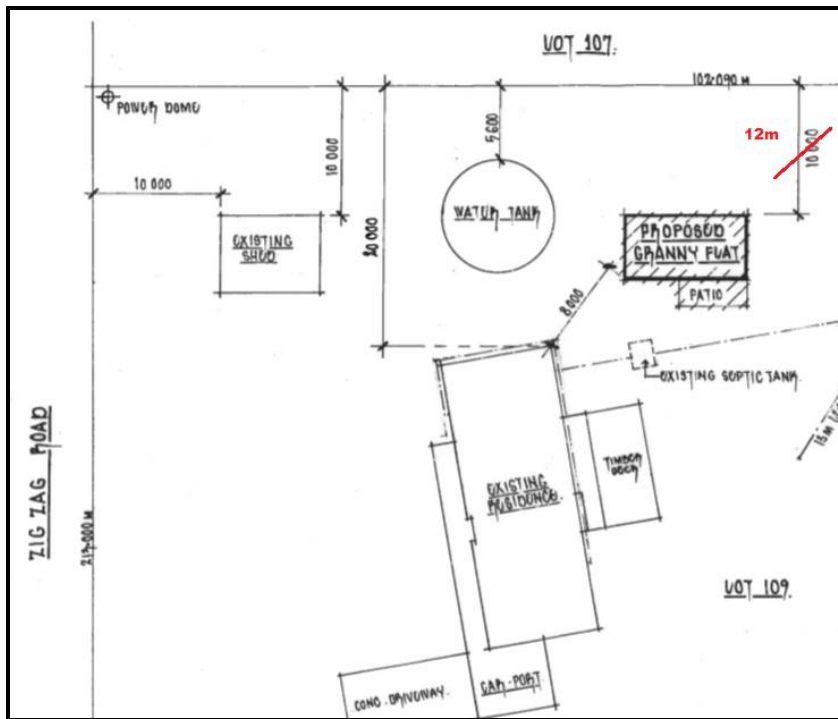
Conditions

1. Development is to be carried out in accordance with the approved plans, as amended and dated February 2016, unless varied by conditions of Planning and Building approval.
2. If the development the subject of this approval is not substantially commenced within a period of 2 years, the approval will lapse and be of no further effect.
3. All stormwater is to be managed and contained on-site, to the satisfaction of the Shire of Boyup Brook.
4. The ancillary dwelling being constructed to comply with Australian 3959 standards:
 - a. 3 and 7 for the southern, eastern and western sides of the development; and
 - b. 3 and 8 for the northern side of the development.
5. Flammable materials (grass and tree canopies) within 10m of the ancillary dwelling to the north being maintained to a minimum (2t/ha).
6. Flammable materials (grass and tree canopies) within 20m of the ancillary dwelling to the southern, western, and eastern sides being maintained to a minimum (2t/ha).

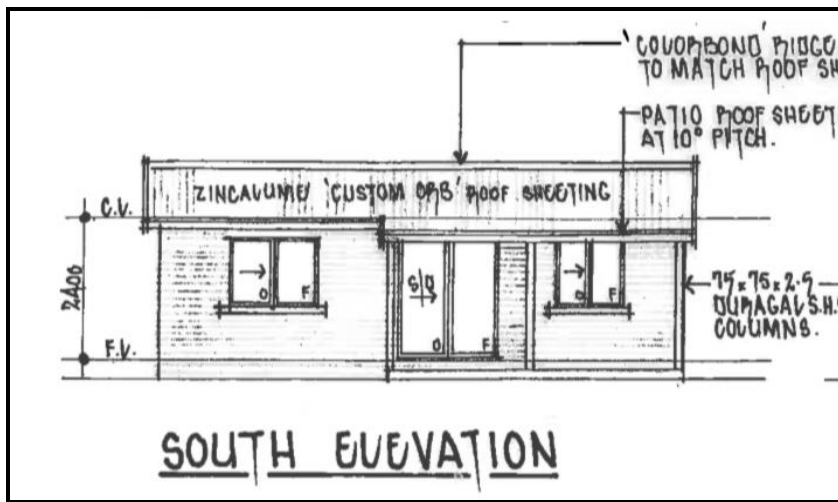
CARRIED 9/0

Res 12/16

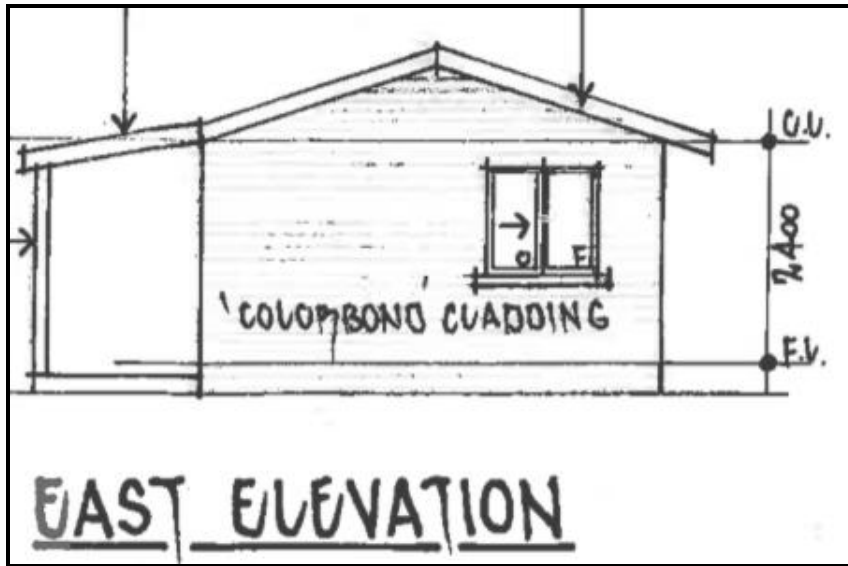
NOTE: Council noted that the applicant opposed the recommended cleared building protection zone of 12m but supported a 10m cleared zone. The additional 2m would have ramifications in relation to the plan to utilize the existing waste disposal system. That whilst relevant legislation was coming in Council was currently working with a Council Policy, which it was not bound by but had to give due regard to. The applicant pointed out that the neighboring property was required to have a boundary fire break and so the effective cleared area was greater than the 10m cleared zone he sought for his planned development. Council noted that whilst the applicant could not rely on the neighbour to provide his property with a cleared building protection zone, the neighbour was currently required to maintain a fire break at the boundary and there were no plans to change this requirement. Council also noted that the applicant had previously sought and obtained approval for a 10m set back instead of the 20m as set out in the Scheme. On balance Council saw that the additional 2m would make a significant difference to the applicant and that the applicant was already required to meet a higher and more costly standard of construction, and so approved a 1m cleared building protection zone/building setback.



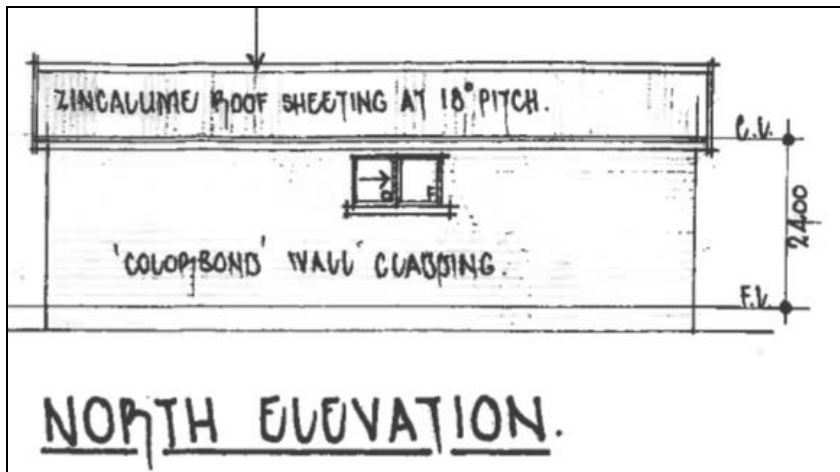
Ancillary Dwelling (granny flat) - Site Plan (as amended)



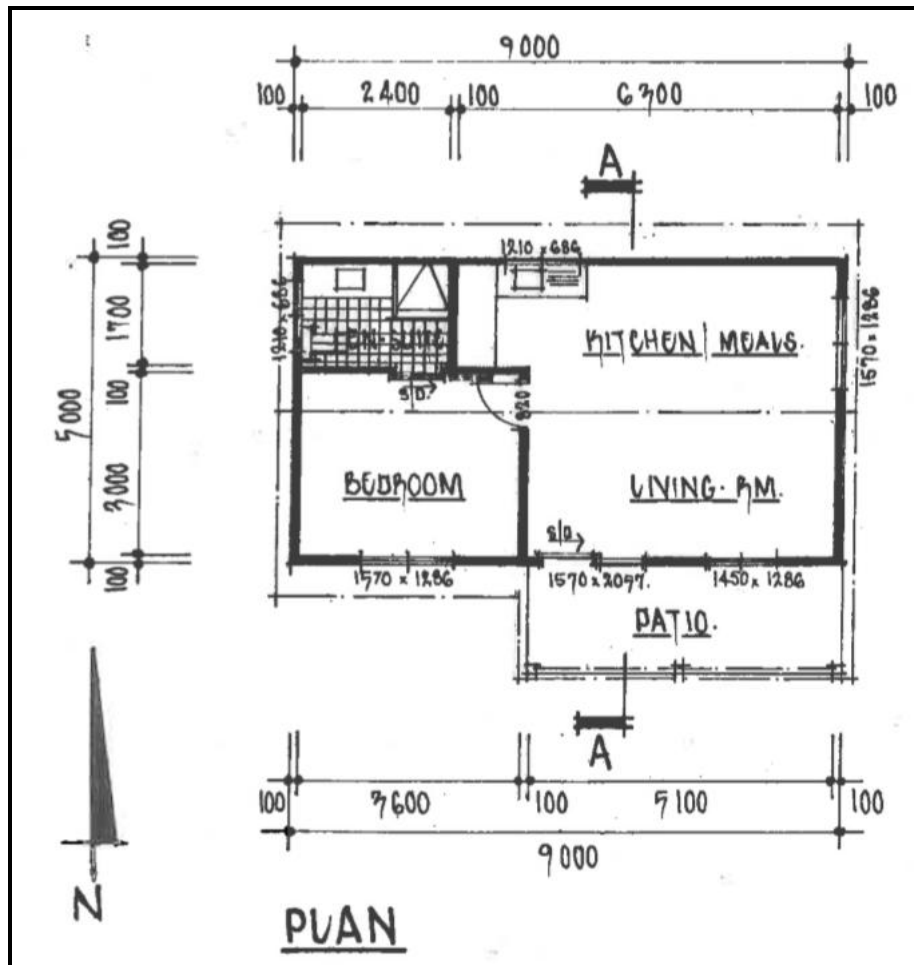
Ancillary Dwelling – Elevation –south view



Ancillary Dwelling – Elevation – east view



Ancillary Dwelling – north view



Ancillary Dwelling – floor plan

Joh n Eddy left the Chambers at 5.57pm

8.3.3 Outbuilding – 504 Dwalganup Road, Boyup Brook

Location:	<i>504 Dwalganup Road.</i>
Applicant:	<i>WBS GROUP</i>
File:	<i>A9860</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>February 2016</i>
Author:	<i>A. Nicoll, Town Planner</i>
Authorizing Officer:	<i>Alan Lamb, Chief Executive Officer</i>
Attachments:	<i>Nil</i>

SUMMARY

The purpose of this report is to put before Council the request to develop an outbuilding at 504 Dwalganup Road, Boyup Brook.

Council discretion is required due to the proposed large size of outbuilding - 45m X 14.750m X 5.5m. Council's Town Planning Scheme 2 states:

3.4.3 The Council in considering an application for planning approval is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application...(n) the preservation of the amenity of the locality;...



BACKGROUND

A planning application for an outbuilding was lodged with the Shire to determine the likely impact on the amenity of the area.



Site Plan - Proposed Outbuilding - 504 Dwalganup Road, Boyup Brook

COMMENT

Subject Property

The subject property is:

- Zoned 'Rural';
- 202ha in area;
- Predominantly used for cattle grazing; and
- Developed with an existing dwelling, shearing shed, cattle yards, shed and silos.

Proposal

The proposal is for a 45m X 14.750m (663.75m²) outbuilding for the purpose of storing hay and farm machinery. The height of the outbuilding is proposed to be 5.5m.

The outbuilding is proposed to be located central to the property - adjacent to existing outbuildings and cattle yards, and away from public roads and neighbouring sensitive uses.

The materials proposed for the outbuilding includes steel posts, steel trusses and zincalume steel roof and wall sheeting.

STATUTORY OBLIGATIONS

Statutory Obligations	Recommendations
<p>Town Planning Scheme 2, states:</p> <p><i>3.4.3 The Council in considering an application for planning approval is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application...</i></p> <p><i>(n) the preservation of the amenity of the locality;...</i></p> <p><i>5.2.1 In considering applications</i></p>	<p>Recommend approving the application for the proposed outbuilding for the following reasons:</p> <ol style="list-style-type: none"> 1. The outbuilding will improve the potential to undertake agricultural practices by enabling suitable storage of feed produce; 2. The outbuilding is well setback from neighbouring property boundaries (Approx 300m) and is therefore not expected to impact on the amenity of the locality.

for...planning consent in the Rural zone, Council shall have regard to:

i) the need to protect the agricultural practices of the Rural zone in light of its importance to the District's economy;

ii) the need to protect the area from uses which will reduce the amount of land available for agriculture;

iii) the need to preserve the rural character and rural appearance of the area

5.2.5 No building development shall be located within 10 metres of any boundary of a lot in the Rural Zone.

POLICY IMPLICATIONS

There are no policy implications relating to the proposed outbuilding at the 'Rural' zone property - 504 Dwalganup Road.

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

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.3

MOVED: Cr Oversby

SECONDED: Cr Blackburn

That Council

Grants planning scheme consent for 504 Dwalganup Road, Boyup Brook for the purpose of Outbuilding and subject to the following conditions:

Conditions

1. Development is to be carried out in accordance with the approved plans dated February 2016, unless varied by conditions of Planning and Building approval.
2. If the development the subject of this approval is not substantially commenced within a period of 2 years, the approval will lapse and be of no further effect.
3. All stormwater is to be managed and contained on-site, to the satisfaction of the Shire of Boyup Brook.

CARRIED 9/0

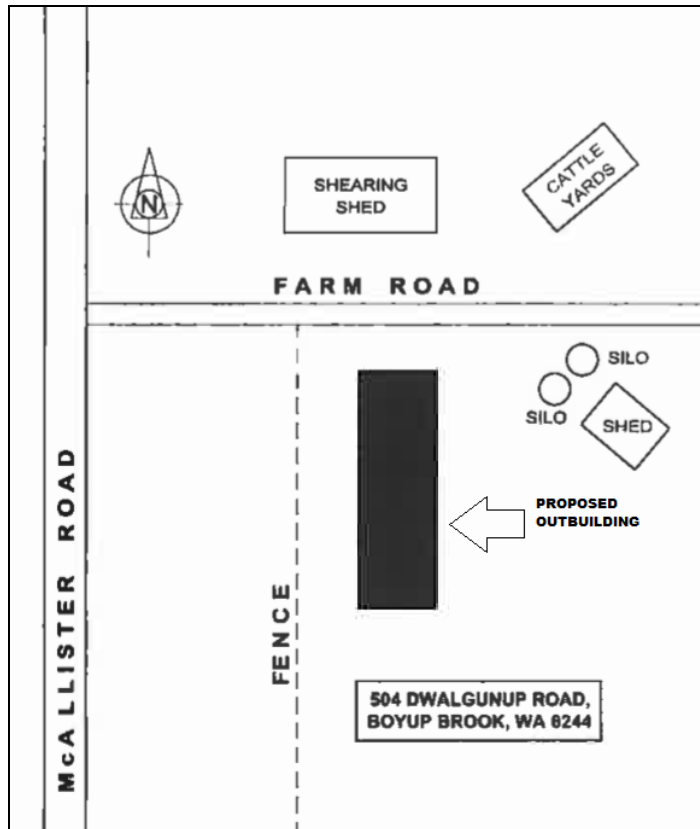
Res 13/16

Notes

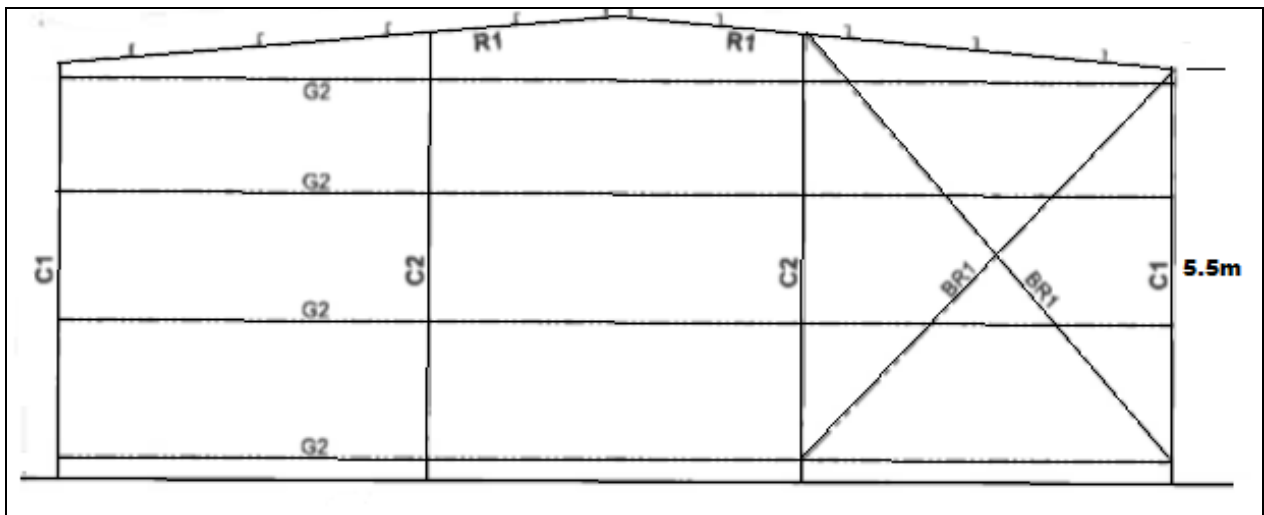
This Planning Scheme Consent contains **3** conditions.

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. For further information regarding this, refer to www.sat.justice.wa.gov.au, with reference to section 252 of the Planning and Development Act (2005) (as amended).

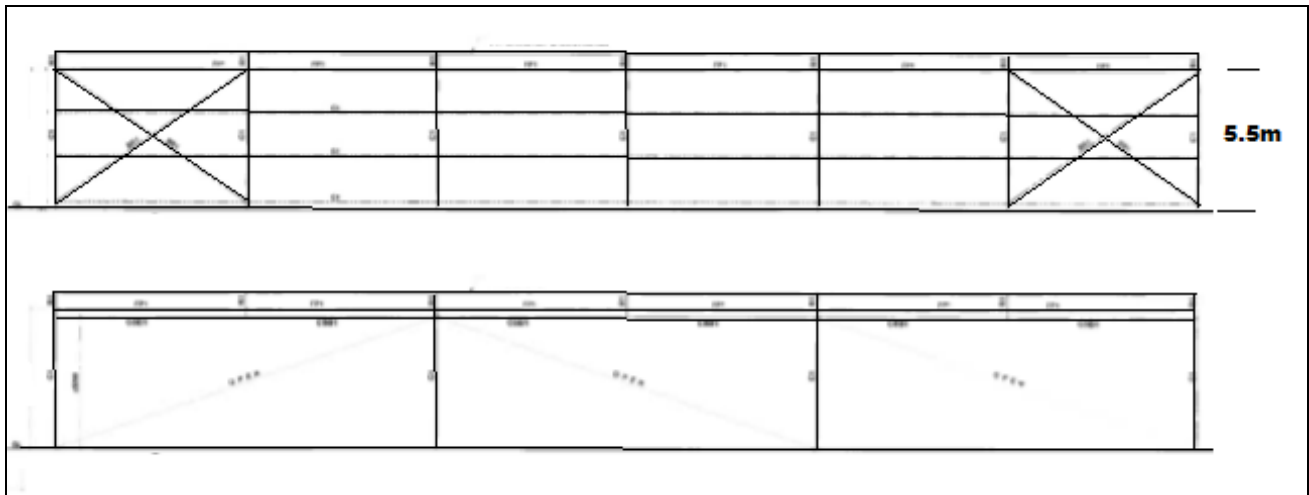
Approved Plans – February 2016



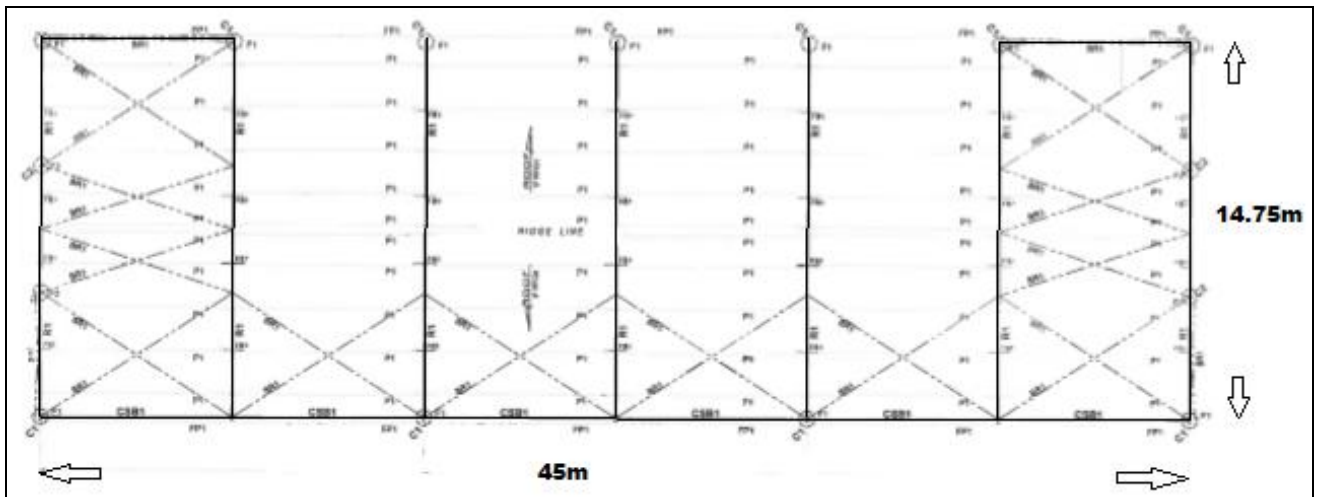
Outbuilding - Site Plan



Outbuilding – Elevation –End view



Outbuilding – Elevation – Side views



Outbuilding – Top View

Impartiality Interest

Cr Oversby declared an impartiality interest in the following item due to being the Ex-President of the Upper Blackwood Agricultural Society.

8.3.4 Upper Blackwood Agriculture Society Lease
--

Location:	<i>Lots 53 Boyup Brook Arthur Road</i>
Applicant:	<i>Upper Blackwood Agricultural Society</i>
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10 February 2016</i>
Author:	<i>Stephen Carstairs – Director Corporate Services</i>
Authorising Officer:	<i>Alan Lamb - Chief Executive Officer</i>
Attachments:	<i>Upper Blackwood Agricultural Society Lease including Annexure 1 Plan</i>

SUMMARY

For Council to endorse the lease document for the Upper Blackwood Agricultural Society.

BACKGROUND

The Upper Blackwood Agricultural Society (the Society) operates from Council property at Lot 53 Boyup Brook Arthur Road. A lease to legitimise the Society's tenure has been prepared.

Lot 53 on Deposited Plan 191384 being the whole of the land in Qualified Certificate of Crown Land Title Volume 3102 Folio 470, is held by the Lessor in trust for charitable and community purposes.

COMMENT

Discussions on the proposed new lease have occurred over the past few months, and a draft lease prepared some time ago, was updated, proofed, and submitted to the society for ratification. Subject to the Society agreeing with the terms and conditions of the lease at its 16 February 2016 AGM, the document is submitted to Council for endorsement.

The land subject to the lease, is not the subject of a Management Order requiring the Minister for Lands approval to lease.

CONSULTATION

Shane Collie (Consultant), Chief Executive Officer, and Anne Ritson (former President, and now Committee Member – Upper Blackwood Agricultural Society).

STATUTORY OBLIGATIONS

The lease document becomes a legal document and is entered into pursuant to the Land Administration Act 1997. It is intended to have the lease document run by Council's solicitors for a final check.

The final document would be registered with Landgate with original copies being held by the Shire of Boyup Brook and the Boyup Brook Pioneer Museum Committee.

POLICY IMPLICATIONS

There are no policy implications relating to this item.

BUDGET/FINANCIAL IMPLICATIONS

There are minor legal costs in finalising this matter. Council's solicitors would be providing a final checking, not a full document drafting which occurred prior, and hence the cost would not be substantial.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.4

MOVED: Cr Muncey

SECONDED: Cr Rear

That Council endorse the lease document between the Shire of Boyup Brook and the Upper Blackwood Agricultural Society over that portion of Lot 53 Boyup Brook Arthur Road as depicted on Annexure 1 of the draft Lease document confirming the following actions –

- **Signing and sealing of the document by the Shire President and Chief Executive Officer.**
- **A final checking of the document by Council's solicitors with any non-substantial changes incorporated into the lease document.**
- **Submission to Landgate for Registration.**

CARRIED 9/0

Res 14/16

8.3.5 Rules of Conduct Regulations - review

Location:	<i>N/a</i>
Applicant:	<i>WALGA</i>
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>11February 2016</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Chief Executive Officer</i>
Attachments:	<i>Copy of WALGA email, Copy of the Regulations, information on DLGC review (from its website), copy of consultation paper, copy of summary of proposals and issues, a copy of Local Government Standards Panel complaint number SP21 of 2015 (obtained from the DLGC website and so publicly available).</i>

SUMMARY

The purpose of this report is to put before Council a Western Australian Local Government Association) WALGA request for a response in relation to the Department of Local Government and Communities (DLGC) review of the Local Government (Rules of Conduct) Regulations 2007.

BACKGROUND

The Local Government (Rules of Conduct) Regulations 2007 are being reviewed by DLGC and Council may either lodge a submission directly to DLGC by 4 March 2016 or through WALGA, for a collective view. WALGA sought comment back by 29 January 2016, in order to include outcomes for WALGA Zone and State Council consideration in February March. Many Council's do not hold a January meeting and so will not have been able to make this deadline.

Council has the options of:

- Sending any comments directly to DLGC, and/or
- Sending any comments to WALGA following the Council meeting, and/or
- Putting any comments to the next Zone meeting or otherwise influencing any debate/decision at that meeting, or
- Making no comment.

It is noted that the WALGA request included comment on operations of the Local Government Standards Panel but the DLGC review appears to be limited to the Regulations. Attached is a copy of a recent determination by the Panel (taken from the DLGC website and so publicly available). The document sets out the role of the Panel and is an example of minor breaches.

COMMENT

The Rules of Conduct are important and every Council Member makes a declaration to observe them, and so Members may have a view as to their appropriateness, or not.

Personal experience indicates that breaches of legislation and the like, by Councillors, are more prevalent in the Metropolitan area and its surrounds and so Councillors may wish to see what the review comes up with, following submissions from these Councils, rather than make a comment now.

From an officer perspective, I see no particular issues with the current Regulations as so the recommendation is to note the opportunity to comment.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

The following Form 7 from the Local Government (Constitution) Regulations has relevance:

Form 7. Declaration by elected member of council [r. 13(1)(c)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998
Declaration by elected member

I,
of¹,
having been elected to the office of² mayor/deputy mayor/president/deputy president/councillor of the³
.....,
declare that I take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties
of the office for the people in the district according to the best of my judgment and ability, and will observe
the Local Government (Rules of Conduct) Regulations 2007.

Declared at on
by
Before me:

The following part of the Local Government Act has relevance:

Division 9 — Conduct of certain officials

[Heading inserted by No. 1 of 2007 s. 8.]

5.102A. Terms used

In this Division —

breach means a minor breach or a serious breach;

complaints officer means the person who is the complaints officer under section 5.120 for the local government concerned;

minor breach has the meaning given in section 5.105(1), and it includes a recurrent breach;

party, when used in connection with a complaint, means —

- (a) the person who made the complaint; or
- (b) the person against whom the complaint was made;

primary standards panel means the standards panel established under section 5.122(1);

recurrent breach has the meaning given in section 5.105(2);

rules of conduct means rules of conduct for council members referred to in section 5.104(1);

serious breach has the meaning given in section 5.105(3);

standards panel means a standards panel established under section 5.122(1) or (2).

[Section 5.102A inserted by No. 1 of 2007 s. 9.]

5.103. *Codes of conduct*

(1) *Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.*

[(2) *deleted*]

(3) *Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.*

[Section 5.103 amended by No. 49 of 2004 s. 55; No. 1 of 2007 s. 10.]

5.104. *Other regulations about conduct of council members*

(1) *Regulations may prescribe rules, to be known as the rules of conduct for council members, that council members are required to observe.*

(2) *The rules of conduct for council members apply, to the extent stated in the regulations, to a council member when acting as a committee member.*

(3) *The rules of conduct may contain provisions dealing with any aspect of the conduct of council members whether or not it is otherwise dealt with in this Act.*

(4) *Regulations cannot prescribe a rule of conduct if contravention of the rule would, in addition to being a minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).*

(5) *Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under section 5.105(1)(b), also be a serious breach under section 5.105(3).*

(6) *The rules of conduct do not limit what a code of conduct under section 5.103 may contain.*

(7) *The regulations may, in addition to rules of conduct, prescribe general principles to guide the behaviour of council members.*

[Section 5.104 inserted by No. 1 of 2007 s. 11.]

5.105. *Breaches by council members*

(1) *A council member commits a minor breach if he or she contravenes —*

(a) *a rule of conduct under section 5.104(1); or*

(b) *a local law under this Act, contravention of which the regulations specify to be a minor breach.*

- (2) *A minor breach is a recurrent breach if it occurs after the council member has been found under this Division to have committed 2 or more other minor breaches.*
- (3) *A council member who commits any offence under a written law, other than a local law made under this Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member commits a serious breach.*

[Section 5.105 inserted by No. 1 of 2007 s. 11.]

5.106. Deciding whether breach occurred

A finding that a breach has occurred is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

[Section 5.106 inserted by No. 1 of 2007 s. 11.]

5.107. Complaining to complaints officer of minor breach

- (1) *A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the complaints officer a complaint in accordance with subsection (2).*
- (2) *The complaint has to be made in writing, in a form approved by the Minister, giving details of —*
 - (a) *who is making the complaint; and*
 - (b) *who is alleged to have committed the breach; and*
 - (c) *the contravention that is alleged to have resulted in the breach; and*
 - (d) *any other information that the regulations may require.*
- (3) *Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —*
 - (a) *give to the person making the complaint an acknowledgment in writing that the complaint has been received; and*
 - (b) *give to the council member about whom the complaint is made a copy of the complaint; and*
 - (c) *send —*
 - (i) *the complaint; and*
 - (ii) *anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,*

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

- (4) *A person can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.*

[Section 5.107 inserted by No. 1 of 2007 s. 11.]

5.108. *Departmental CEO may send complaint of minor breach to complaints officer*

- (1) *If it appears to the Departmental CEO that a complaint a person seeks to make under section 5.114 discloses a minor breach, the Departmental CEO may send the complaint to the complaints officer of the local government concerned.*
- (2) *Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —*
- (a) *give to the person who sent the complaint to the Departmental CEO written notice that the complaint is to be dealt with as a complaint of a minor breach; and*
 - (b) *give to the council member about whom the complaint is made a copy of the complaint; and*
 - (c) *send —*
 - (i) *the complaint; and*
 - (ii) *anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,*

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- (3) *The Departmental CEO can send a complaint to a complaints officer under this section within 2 years after the breach alleged in the complaint occurred, but not later.*

[Section 5.108 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.109. *Complaint initiated by complaints officer*

- (1) *A person who is a complaints officer may make a complaint of a minor breach by —*
- (a) *preparing the complaint in the form required under section 5.107(2); and*
 - (b) *giving the council member about whom the complaint is made a copy of the complaint; and*
 - (c) *sending —*
 - (i) *the complaint; and*
 - (ii) *anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more*

minor breaches that the council member has previously been found to have committed,

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

- (2) *A complaints officer can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.*

[Section 5.109 inserted by No. 1 of 2007 s. 11.]

5.110. Dealing with complaint of minor breach

- (1) *The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to —*
- (a) allocate that complaint to a standards panel; and*
 - (b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).*
- (2) *After receiving a complaint allocated to it under subsection (1), a standards panel is required to —*
- (a) make a finding as to whether the breach alleged in the complaint occurred; or*
 - (b) send the complaint to the Departmental CEO under section 5.111.*
- (3) *For the purpose of helping it to deal with a complaint, a standards panel may request the complaints officer to provide anything further that the standards panel requires, and the complaints officer is required to comply with the request so far as it is practicable to do so.*
- (4) *A standards panel is required to give each party written notice of the reasons for any finding it makes under subsection (2).*
- (5) *If a standards panel finds that a council member has committed a minor breach, the standards panel is required to give the council member an opportunity to make submissions about how the breach should be dealt with under subsection (6).*
- (6) *The breach is to be dealt with by —*
- (a) dismissing the complaint; or*
 - (b) ordering that —*
 - (i) the person against whom the complaint was made be publicly censured as specified in the order; or*
 - (ii) the person against whom the complaint was made apologise publicly as specified in the order; or*

(iii) *the person against whom the complaint was made undertake training as specified in the order;*

or

(c) *ordering 2 or more of the sanctions described in paragraph (b).*

(7) *A standards panel is required to give to each party and the complaints officer notice of how it deals with the matter under subsection (6).*

[Section 5.110 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.111. Dealing with recurrent breach

(1) *If a standards panel is allocated a complaint as described in section 5.110(1) and the breach alleged, if it were found to have been committed, would be a recurrent breach, the standards panel may send the complaint to the Departmental CEO or proceed under section 5.110 to make a finding and deal with the complaint.*

(2) *If a standards panel sends the complaint to the Departmental CEO under subsection (1), the standards panel is required to notify —*

(a) *each of the parties; and*

(b) *the complaints officer.*

[Section 5.111 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.112. Allegation of recurrent breach

(1) *If a standards panel sends to the Departmental CEO, under section 5.111, a complaint of a minor breach that, if it were found to have been committed, would be a recurrent breach, the Departmental CEO has to decide whether to make an allegation under subsection (2).*

(2) *If the Departmental CEO considers it appropriate to do so, the Departmental CEO may make an allegation to the State Administrative Tribunal that the council member committed the breach.*

(3) *The Departmental CEO is required to give the complaints officer and each of the parties notice in writing of the decision.*

(4) *If the Departmental CEO decides not to make an allegation to the State Administrative Tribunal —*

(a) *the Departmental CEO is required to send the complaint to the standards panel that sent the complaint to the Departmental CEO; and*

(b) *the standards panel is required to notify each of the parties and the complaints officer that the complaint will be dealt with by the standards panel; and*

(c) *the standards panel is required to deal with the complaint under section 5.110.*

- (5) *The fact that the person who made the complaint does not want an allegation to be made to the State Administrative Tribunal does not prevent the Departmental CEO from making the allegation.*

[Section 5.112 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.113. *Punishment for recurrent breach*

If, on an allegation under section 5.112, the State Administrative Tribunal finds that a person committed a recurrent breach, it may make any of the orders described in section 5.117.

[Section 5.113 inserted by No. 1 of 2007 s. 11.]

5.114. *Making complaint of serious breach*

- (1) *A person who has reason to believe that a council member has committed a serious breach may complain to the Departmental CEO as described in subsection (2).*
- (2) *The complaint has to be made in writing in a form approved by the Minister, giving details of—*
- (a) who is making the complaint; and*
 - (b) who is alleged to have committed the breach; and*
 - (c) the offence that is alleged to have resulted in the breach; and*
 - (d) any other information that the regulations may require,*
- and sent to the Departmental CEO.*
- (3) *If there is a limit on the time within which proceedings may be commenced for the offence to which a complaint of a serious breach relates, the complaint cannot be made after that time has elapsed.*

[Section 5.114 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.115. *Complaints officer to send complaint of serious breach to Departmental CEO*

- (1) *If it appears to a complaints officer that a complaint a person seeks to make under section 5.107 discloses a serious breach, the complaints officer is required to send the complaint to the Departmental CEO.*
- (2) *If the complaints officer sends the complaint to the Departmental CEO, the complaints officer is required to notify each of the parties.*

[Section 5.115 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.116. *Allegation by Departmental CEO of serious breach*

- (1) *If—*

- (a) *a person sends to the Departmental CEO a complaint under section 5.114(1) that a council member has committed a serious breach; or*
 - (b) *a complaints officer sends to the Departmental CEO, under section 5.115(1), a complaint that appears to disclose a serious breach, the Departmental CEO has to decide whether to make an allegation under subsection (2).*
- (2) *If the Departmental CEO considers it appropriate to do so, the Departmental CEO may, whether or not a complaint has been sent to the Departmental CEO, make an allegation to the State Administrative Tribunal that the council member committed a serious breach.*
 - (3) *In deciding whether it would be appropriate to make an allegation to the State Administrative Tribunal, the Departmental CEO has to consider whether it would be more appropriate for the matter to be dealt with in another way.*
 - (4) *The Departmental CEO cannot make an allegation under subsection (2) if the council member has already been tried by a court for the offence the commission of which is the serious breach.*
 - (5) *Within 14 days after the day on which the Departmental CEO receives a complaint that is sent to the Departmental CEO under section 5.114 or 5.115, the Departmental CEO is required to give each party notice in writing —*
 - (a) *acknowledging that the complaint is in accordance with the Act; and*
 - (b) *stating that the Departmental CEO will decide whether to make an allegation under subsection (2).*
 - (6) *The fact that a person who made a complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Departmental CEO from making the allegation.*

[Section 5.116 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.117. Punishment for serious breach

- (1) *If, on an allegation under section 5.116(2), the State Administrative Tribunal finds that a person committed a serious breach, it may —*
 - (a) *order that —*
 - (i) *the person against whom the allegation was made be publicly censured as specified in the order; or*
 - (ii) *the person against whom the allegation was made apologise publicly as specified in the order; or*
 - (iii) *the person against whom the allegation was made undertake training as specified in the order; or*

- (iv) *the person against whom the allegation was made is suspended for a period of not more than 6 months specified in the order; or*
 - (v) *the person against whom the allegation was made is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;*
- or*
- (b) *order 2 or more of the sanctions described in paragraph (a).*
- (2) *An order described in subsection (1)(a)(iv) or (v) may be expressed in such a way that the order —*
- (a) *only takes effect if, on finding that the person subject to the order has not complied with a condition specified in the order, the State Administrative Tribunal directs under subsection (7) that the order take effect; and*
 - (b) *lapses if it has not taken effect within a period specified in the order,*
*and an order so expressed is called a **suspended order**.*
- (3) *The period referred to in subsection (2)(b) cannot exceed 2 years.*
- (4) *The Departmental CEO may make an allegation to the State Administrative Tribunal that a person subject to a suspended order has failed to comply with a condition specified in the order.*
- (5) *The Departmental CEO must give a person notice in writing of a decision to make an allegation about the person under subsection (4).*
- (6) *If the State Administrative Tribunal receives an allegation under subsection (4), it must make a finding as to whether the alleged failure occurred.*
- (7) *If the State Administrative Tribunal finds that a person failed to comply with a condition of a suspended order, it may if it considers it appropriate to do so direct that the suspended order take effect.*
- (8) *When a council member is suspended under subsection (1)(a)(iv), section 8.29 applies to the member as if the council had been suspended.*

[Section 5.117 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.118. *Carrying out orders*

- (1) *The CEO of the local government concerned is required to arrange the publication of any censure ordered under section 5.110(6) by a standards panel and is to refer to the State Administrative Tribunal any failure to comply with any other order made under that subsection.*
- (2) *The Departmental CEO is required to arrange the publication of any censure ordered under section 5.113 or 5.117 by the State Administrative Tribunal and is to refer to the State Administrative Tribunal any failure to comply with any other order made under either of those sections.*

[Section 5.118 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.119. *SAT's enforcement powers*

- (1) *If, under section 5.118, the CEO of a local government or the Departmental CEO refers to the State Administrative Tribunal a failure of a person to comply with an order of a standards panel or the State Administrative Tribunal, the State Administrative Tribunal may, if satisfied that the person failed to comply with the order, make an order described in section 5.117(1)(a)(iv) or (v).*
- (2) *Section 5.117(2) extends to an order made under subsection (1).*

[Section 5.119 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]

5.120. *Complaints officer*

- (1) *Each local government is to designate a senior employee, as defined under section 5.37, to be its complaints officer.*
- (2) *If a local government does not have any other person as its complaints officer, the person holding office as, or acting as, its CEO is its complaints officer.*

[Section 5.120 inserted by No. 1 of 2007 s. 11.]

5.121. *Register of certain complaints of minor breaches*

- (1) *The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in action under section 5.110(6)(b) or (c).*
- (2) *The register of complaints is to include, for each recorded complaint —*
 - (a) *the name of the council member about whom the complaint is made; and*
 - (b) *the name of the person who makes the complaint; and*
 - (c) *a description of the minor breach that the standards panel finds has occurred; and*
 - (d) *details of the action taken under section 5.110(6)(b) or (c).*

[Section 5.121 inserted by No. 1 of 2007 s. 11.]

5.122. *Standards panels*

- (1) *The Minister is to establish a standards panel (the **primary standards panel**).*
- (2) *The Minister may establish other standards panels.*
- (3) *Schedule 5.1 applies to a standards panel.*

[Section 5.122 inserted by No. 1 of 2007 s. 11.]

5.123. *Confidentiality*

- (1) *A person who —*
 - (a) *makes a complaint during a campaign period; or*

- (b) *performs a function under this Act in respect of a complaint made during a campaign period; or*
- (c) *as a result of anything done under this Division, becomes aware of any detail of a complaint made during a campaign period knowing it to be relevant to the complaint,*

and during the campaign period discloses information that the complaint has been made, or discloses information of any detail of the complaint, commits an offence.

- (2) *It is not an offence against subsection (1) to disclose information if —*
 - (a) *the disclosure is made for the purposes of investigating or dealing with the complaint; or*
 - (b) *the disclosure is required under a written law; or*
 - (c) *the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6)(b) or (c); or*
 - (d) *the complaint to which the information relates is a complaint of a serious breach and the State Administrative Tribunal has made an order under section 5.117(1).*

- (3) *In this section —*

campaign period *means the period beginning on the first day of the period referred to in section 4.49(a) and ending on election day as that term is defined in section 4.1.*

[Section 5.123 inserted by No. 1 of 2007 s. 11.]

5.124. Giving false or misleading information

- (1) *A person commits an offence if the person gives information, in any of the circumstances described in subsection (2), knowing the information to be false or misleading in a material particular.*
- (2) *The circumstances in which subsection (1) applies are —*
 - (a) *when the information is given in a complaint under section 5.107 or 5.114; or*
 - (b) *when the information is given to a person for the purposes of an investigation of whether or not a breach has been committed; or*
 - (c) *when the information is given to a standards panel.*

[Section 5.124 inserted by No. 1 of 2007 s. 11.]

5.125. Review of certain decisions

- (1) *A party may apply to the State Administrative Tribunal for a review of a decision of a standards panel.*

(2) *In subsection (1) —*

decision means a decision to dismiss a complaint or to make an order.

[Section 5.125 inserted by No. 1 of 2007 s. 11.]

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 Aird

SECONDED: Cr Kaltenrieder

That Council receive the Department of Local Government and Communities, and the Western Australian Local Government Association, calls for comments on the Local Government (Rules of Conduct) Regulations 2007, being conducted by the Department of Local Government and Communities, and make no comment at this time.

CARRIED 9/0

Res 15/16

Impartiality Interest

Cr Imrie declared an impartiality interest in the following item due to being a Committee Member.

8.3.6 Boyup Brook Museum – approval to locate a new building

<i>Location</i>	<i>Lot 1 Jayes Road and Lot 34 Blechynden Street Boyup Brook</i>
<i>Applicant:</i>	<i>Boyup Brook District Pioneers’ Museum Inc</i>
<i>File:</i>	<i>A 906</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>10 February 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 of request and a Landgate image.</i>

SUMMARY

The purpose of this report is to put before Council the Boyup Brook District Pioneers’ Museum Inc (BBDPM) request for approval, as the owner of the land and buildings, to locate another building on site.

BACKGROUND

Lots 1 and 34 are freehold titled properties owned by the Shire (as is lot 38 which fronts Mitchell Avenue and adjoins lot 1). The two lots adjoin each other and contain a number of structures comprising the town’s museum.

The museum has been operated by the BBDPM for many years and it has made a number of improvements to the facility over time. It now seeks approval to build a new structure on the land.

At its general meeting 15th June 2015, Council approved the final draft of a lease agreement with the BBDPM. The lease was for lots 1 and 34 and had been the subject of negotiation with the group over an extended period.

Clause 10 of the lease provides that the lessee is to obtain the lessor’s approval for alterations, new builds and the like. This clause also requires that the lessee meets the cost of any such works (essentially, the matter of any assistance from

the Shire is neither guaranteed nor tied to the lease agreement and must be the subject of a separate process).

COMMENT

The BBDPM has been very active in recent years, which is a turnaround from a period where volunteer numbers were down and its financial position bleak. The Shire's annual contribution toward the groups operating costs has helped turn things around.

The matter before Council now is the group's request for approval to build a carport style of structure. The project will be the subject of further applications and assessment (Planning and Building) where detailed plans and the like will be required, but at this stage the information provided (letter and plans) may be sufficient for Council to deal with the request as the owner.

The plans indicate that the structure will be located on lot 34. However it may be safer to leave the specific location out of any approval, at this time, in case the regulatory phases dictate the building has to move to lot 1.

It is recommended that in accordance with Clause 10 of the current lease agreement, Council approve of a carport being placed on the Boyup Brook Museum Site (comprising lots 1 and 34) Jayes Road subject to the BBDPM making application for Town Planning and Building approvals, as required, and obtaining relevant approvals.

CONSULTATION

The BBDPM have been liaising with Council's Building Surveyor over its proposed new building

STATUTORY OBLIGATIONS

There are no statutory obligations relevant to the lessee's request to the lessor in accordance with the lease.

POLICY IMPLICATIONS

The following policy has application:

<i>POLICY NO.</i>	<i>B.01</i>
<i>POLICY SUBJECT</i>	<i>Building Permit Fees</i>
<i>ADOPTION DATE</i>	<i>17 June 2004</i>
<i>VARIATION DATE</i>	<i>21 December 2007</i>

Objective

To determine procedures for the calculation and payment of building permit application fees.

Statement

Building Value

It is the Council's policy that Building Licence applications be assessed before approval to determine the estimated value of the proposed construction in accordance with schedule 2 of the Building Regulations 2012, for the purpose of setting Building Permit fees. The Shire's Building Surveyor is empowered by the Building Regulations 2012, to estimate the value of construction where the nominated value is considered unrealistic.

If an applicant does not agree with the estimated value which has been calculated, the applicant may be required to submit such supporting evidence on construction value as considered necessary by the Building Surveyor to enable a revision of the estimated value.

Fee Exemption

That the payment of building permit fees by sporting, charitable and other community groups be waived for building works up to the construction value of \$10,000 (plus GST).

Building constructions works exceeding \$10,000 (plus GST) will only be considered for exemption by the Council if the works are fully funded by the community group and/or the Shire.

This policy does not apply to the levy required by the Builders Services Board (BSL), the Construction Training Fund (CTF), sewage apparatus (septic tanks, leach drains etc) applications or any other statutory fees and charges.

Refunds

That in all cases where a building project is abandoned and a refund of building licence fee is sought by the holder of the building permit: -

that 50% of the fees paid be reimbursed if the claim is made within 12 months of issue of the building permit where no building work has commenced and;

That no refunds are payable after expiry of 12 months from date of issue of the permit, as the permit is then void.

Duration and Extension to Permits

An extension of time or renewal of Building Permits is to be limited to 12 months per extension.

The fee payable on the renewal of a Building Permits is to be in proportion to the extent of the building to be completed, e.g.:

If 50% completed then 50% of fee charged.

If 75% completed then 25% of fee charged.

BUDGET/FINANCIAL IMPLICATIONS

Nil at this time however if the BBDDPM lodges a building application it's likely that the application fee will be waived in accordance with Council policy. The group may also seek to have any planning application fee waived should an application be required (the information provided is not sufficient to determine the need or otherwise for a planning application).

STRATEGIC IMPLICATIONS

OUTCOMES

Council and
Community
Leadership

OBJECTIVES

Foster community
participation and
collaboration.

PRIORITIES

✦ Support volunteers and
encourage community
involvement.

The proposed project aligns with the foregoing because Council would be supporting the BBDDPM volunteers in their quest to improve the museum which they lease and operate for the community

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
The proposed building may improve the museum displays and in so doing attract more visitors.
- **Social**
The group is active and moving forward with plans and so, it is recommended, should be encouraged to maintain the very high level of "Ownership" it has over the facility Council leases to it.

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION & OFFICER RECOMMENDATION – ITEM 8.3.6

MOVED: Cr Moir

SECONDED: Cr Muncey

That in accordance with Clause 10 of the current lease agreement, Council approve of a carport being placed on the Boyup Brook Museum Site (comprising lots 1 and 34) Jayes Road, Boyup Brook, subject to the Boyup Brook District Pioneers' Museum Inc making application for Town Planning and Building approvals, as required, and obtaining relevant approvals.

CARRIED 9/0

Res 16/16

ITEM 8.3.7 WAS WITHDRAWN BY THE CEO

8.3.7 Development Assessment Panels - nominations

Location:	<i>N/A</i>
Applicant:	<i>Department of Planning</i>
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10 February 2016</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Chief Executive Officer</i>
Attachments:	<i>Previous reports on the matter (May 2011 and February 2013) and email correspondence from Department of Planning.</i>

SUMMARY

The purpose of this report is to put before Council the opportunity to nominate two additional Councillors to for appointment to the Development Assessment Panel (DAP) with the recommendation that Council consider the need before making any further nominations.

BACKGROUND

The Planning and Development (Development Assessment Panels) Regulations 2011 were gazetted on the 2nd May and the panels (DAPs) commenced operation from the 1st July 2011.

Fifteen regional DAPs have been established and Boyup Brook is in the South West Region.

DAPs are panels comprising a mix of technical experts and local government representatives with the power to determine applications for development approvals in place of the relevant decision-making authority.

An application for development where the estimated cost of development is more than \$10 million must be determined by a DAP.

Where an application for development with an estimated cost of development is between \$2 million and more than \$10 million, the applicant can elect to have it determined by a DAP.

The Regulations (available on either the Department of Planning website or from the State Law Publisher site) provide that Local Governments are to nominate two members and two alternate members. The term of office is no more than two years, there is an application form and CV required for each Councillor nominated, and all DAP members have to attend training.

In May 2011 Council nominated two Members (Councillors Doust and O'Hare) to sit on the DAP and one Member (Cr Ginnane) as a deputy. In February 2013 Council re nominated Councillors O'Hare and Kaltenrieder to be members and Councillors Moir and Walker to be alternate members. At some time between May 2011 and February 2013 Council amended its list of nominees.

In November 2015, following the October 2015 general elections, the DAP's Secretariat sought an up date on Council membership (a Local Government representative on a DAP ceases to hold that position when their term of offices as a Councillor ends). They were advised that one nominee for membership and one nominee as an alternative member were no longer Council Members. The Department then asked if Council wished to nominate two more DAP members.

Whilst the term of appointment to a DAP is a maximum of two years, it appears that Council's nominees from 2013, who are still Council Members, have been reappointed by the Minister till 26 April 2017. Checking with the Department of Planning, DAP section, Council has Councillors Kaltenrieder and Moir as DAP members until 2017, and it now offers Council the opportunity to appoint two alternate members. This appears to be consistent with Regulation 34:

34. *Extension of term of office during vacancy in membership*

- (1) *If the office of a DAP member becomes vacant because the member's term of office expires, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).*
- (2) *However, subregulation (1) ceases to apply if the member resigns or is removed from office under these regulations.*
- (3) *The maximum period for which a DAP member is taken to continue to be a member under this regulation after the member's term of office expires is 3 months.*

COMMENT

When considering this matter, it's important to note that Council nominates Councillors to sit on a DAP and the Minister either accepts or rejects that person. That person is required to undertake training (provided by the Department) before they can sit in a panel.

It is understood that no Boyup Brook Councillor has been called to sit on a DAP to determine a planning application since 2011 when the legislation was enacted. It is expected that there would be limited numbers of a planning applications for developments of \$10m or more within the Shire. Also that the \$2m trigger, to

give developers the option of having their application dealt with by a DAP, would not be met very often.

If considering the matter of two new nominees, Council may want to take this opportunity to review current nominations, however it should take note that both Councillors will have already met the relevant requirements to be DAP members, they have not been called on to sit to date and may not be called on for the balance of their current term (i.e. till April 2017). Council may wish to seek their advice in relation to the need or not for two alternate DAP nominees. Also if the training they undertook was any benefit to them in dealing with Council development applications.

It is recommended that if there are two Councillors who are keen to be nominate that Council nominate these Members. On reflection it may also be safer to reaffirm the nomination of the two current DAP members.

CONSULTATION

The author spoke with DAPs Secretariat officers.

STATUTORY OBLIGATIONS

The following Divisions of the Planning and Development Act 2005 has application:

Division 1 — Functions of DAPs

[Heading inserted by No. 28 of 2010 s. 43.]

171A. *Prescribed development applications, DAP to determine and regulations for*

(1) *In this section —*

planning instrument means —

- (a) *a planning scheme; or*
- (b) *an interim development order;*

prescribed development application means —

- (a) *a development application of a class or kind prescribed for the purposes of subsection (2)(a); or*
- (b) *a development application of a class or kind prescribed for the purposes of subsection (2)(ba) in respect of which an applicant has made an election in accordance with regulations made under subsection (2)(ba)(i);*

(2) *The Governor may make regulations —*

- (a) *providing that, despite any other provision of this Act or a planning instrument, a development application of a class or kind prescribed for the purposes of this paragraph —*

- (i) *must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and*
 - (ii) *cannot be determined by a local government or the Commission;*
 - (ba) *providing that, despite any other provision of this Act or a planning instrument, if—*
 - (i) *an applicant for approval of development elects in accordance with the prescribed procedure to have a development application determined by a DAP; and*
 - (ii) *the development application is of a class or kind prescribed by the regulations for the purposes of this paragraph,*
the development application —
 - (iii) *must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and*
 - (iv) *cannot be determined by a local government or the Commission;*
 - (b) *providing for the duties and responsibilities of local governments and the Commission in relation to prescribed development applications;*
 - (c) *providing for the procedures for dealing with prescribed development applications;*
 - (d) *providing for the application of the provisions of this Act and planning instruments in relation to prescribed development applications;*
 - (e) *providing for the procedures to be followed by, and powers of, a DAP when determining a prescribed development application;*
 - (f) *providing for the effect of a determination of a prescribed development application;*
 - (g) *providing for the notification of a determination of a prescribed development application;*
 - (h) *providing for the review of a determination of a prescribed development application.*
- (3) *Unless otherwise provided under regulations made for the purposes of subsection (2) —*
- (a) *a determination by a DAP of a prescribed development application; and*
 - (b) *a failure by a DAP to make a determination of a prescribed development application,*

is to be regarded as, and has effect as if it were, a determination or failure of the responsible authority to which the application was made.

[Section 171A inserted by No. 28 of 2010 s. 43.]

171B. DAP to carry out delegated functions

- (1) In addition to the functions conferred on it by regulations made under section 171A, a DAP is to perform the functions that are delegated to it by a responsible authority in accordance with regulations made under subsection (2).*
- (2) The Governor may make regulations —*
 - (a) prescribing the functions under this Act or a planning scheme that may be delegated by a responsible authority to a DAP; and*
 - (b) making provision in relation to the making and effect of the delegation of functions by a responsible authority to a DAP.*

[Section 171B inserted by No. 28 of 2010 s. 43.]

Division 2 — Development Assessment Panels: establishment and administration

[Heading inserted by No. 28 of 2010 s. 43.]

171C. Establishment of DAPs

- (1) The Minister may, by order published in the Gazette, establish —*
 - (a) a LDAP for a district;*
 - (b) a JDAP for 2 or more districts.*
- (2) The order must give the DAP a name.*
- (3) A JDAP cannot be established for a district for which a LDAP is established.*
- (4) A LDAP cannot be established for a district for which a JDAP is established.*
- (5) If a JDAP is established for 2 or more districts, the districts need not be contiguous.*
- (6) The Minister may revoke or amend an order made under subsection (1) by further order published in the Gazette.*
- (7) The regulations may prescribe transitional provisions in relation to the revocation or amendment of an order under this section.*

[Section 171C inserted by No. 28 of 2010 s. 43.]

171D. Constitution, procedure and conduct of DAPs

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed, for the establishment and functioning of DAPs.*
- (2) Without limiting subsection (1), regulations may be made about the constitution, procedure and conduct of DAPs, including but not limited to regulations about the following —*

- (a) *the total number of persons who are to be on a DAP;*
 - (b) *the qualifications to be held by each person on a DAP;*
 - (c) *the procedure to be followed for nominating and appointing DAP members;*
 - (d) *the remuneration and allowances payable to DAP members;*
 - (e) *the term of office of DAP members;*
 - (f) *the removal of DAP members;*
 - (g) *compiling and maintaining a register of persons who are eligible to be DAP members;*
 - (h) *the paid training of persons appointed to be DAP members;*
 - (i) *procedures at DAP meetings;*
 - (j) *the conduct of DAP members.*
- (3) *The qualifications to be held by a person on a DAP may be specified in the regulations by reference to one or more of these —*
- (a) *an office or position;*
 - (b) *an educational qualification;*
 - (c) *a type or level of knowledge;*
 - (d) *a type or level of experience.*

[Section 171D inserted by No. 28 of 2010 s. 43.]

171E. Administration and costs of DAPs

- (1) *The Governor may make regulations about —*
- (a) *the administration of DAPs; and*
 - (b) *the payment of the costs and expenses of DAPs.*
- (2) *Without limiting subsection (1), regulations may be made —*
- (a) *about the staffing, facilities and services that are to be provided to DAPs by the chief executive officer or by local governments; and*
 - (b) *about the access of the Minister to information in the possession of a DAP; and*
 - (c) *about reporting requirements in relation to —*
 - (i) *directions under the regulations; and*
 - (ii) *expenditure in relation to DAPs; and*
 - (iii) *determinations by DAPs; and*

(iv) *any other matter specified in the regulations.*

- (3) *A local government must comply with a direction given and requirements prescribed under subsection (2).*

[Section 171E inserted by No. 28 of 2010 s. 43.]

171F. *Review of regulations*

- (1) *An appropriate Standing Committee of the Legislative Council is to carry out a review of the operation and effectiveness of all regulations made under this Part as soon as practicable after the expiry of 2 years from the day on which regulations made under this Part first come into operation.*
- (2) *The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.*

[Section 171F inserted by No. 28 of 2010 s. 43.]

The following parts of the Planning and Development (Development and Assessment Panels) Regulations 2011 have application:

Part 2 — Development applications and determinations

5. *Mandatory DAP applications (Act s. 171A(2)(a))*

Any development application that —

- (a) *is not an excluded development application; and*
- (b) *in the case of an application for development in the district of the City of Perth — is for the approval of development that has an estimated cost of \$20 million or more; and*
- (c) *in the case of an application for development in a district outside of the district of the City of Perth — is for the approval of development that has an estimated cost of \$10 million or more,*

is of a class prescribed under section 171A(2)(a) of the Act.

[Regulation 5 amended in Gazette 17 Apr 2015 p. 1380-1.]

6. *Optional DAP applications (Act s. 171A(2)(ba))*

Any development application that —

- (a) *is not —*
- (i) *an excluded development application; or*
- (ii) *a development application in respect of which the responsible authority has under regulation 19 delegated the power of determination;*

and

- (b) *in the case of an application for development in the district of the City of Perth — is for the approval of development that has an estimated cost of \$2 million or more and less than \$20 million; and*
- (c) *in the case of an application for development in a district outside of the district of the City of Perth — is for the approval of development that has an estimated cost of \$2 million or more and less than \$10 million,*

is of a class prescribed under section 171A(2)(ba) of the Act.

[Regulation 6 amended in Gazette 17 Apr 2015 p. 1381.]

Part 4 — Development assessment panels

Division 1 — DAP members

23. *LDAP members*

- (1) *The members of a LDAP are —*
 - (a) *2 persons appointed to the LDAP as local government members; and*
 - (b) *3 persons appointed to the LDAP as specialist members.*
- (2) *The members must be appointed in writing by the Minister.*
- (3) *Regulation 24 applies to the appointment of local government members.*
- (4) *Regulation 37 applies to the appointment of specialist members.*

24. *Local government members of LDAP*

- (1) *Whenever it is necessary to make an appointment under regulation 23(1)(a), the Minister must —*
 - (a) *in writing, request the local government of the district for which the DAP is established to nominate a member of the council of the local government for appointment; and*
 - (b) *unless subregulation (2) applies, appoint the person so nominated.*
- (2) *If, within 40 days after the date on which the Minister makes a request to a local government under subregulation (1) or such longer period as the Minister may allow, the local government fails to nominate a person for appointment in accordance with the request, the Minister may appoint under regulation 23(1)(a) a person who —*
 - (a) *is an eligible voter of the district for which the LDAP is established; and*
 - (b) *the Minister considers has relevant knowledge or experience that will enable that person to represent the interests of the local community of that district.*

- (3) *For the purposes of subregulation (2)(a) a person is an eligible voter of a district if that person is eligible under the Local Government Act 1995 section 4.29 or 4.30 to be enrolled to vote at elections for the district.*

25. *JDAP members*

- (1) *The members of a JDAP, at any meeting of the JDAP to determine or otherwise deal with a development application or an application to amend or cancel a determination of the JDAP, are —*
- (a) *the 2 local government members included on the local government register as representatives of the relevant local government in relation to the development application; and*
- (b) *3 persons appointed to the JDAP as specialist members.*
- (2) *In subregulation (1)(a) —*
- relevant local government***, *in relation to a development application, means the local government of the district in which the land to which the development application relates is situated.*
- (3) *The specialist members must be appointed in writing by the Minister.*
- (4) *Regulation 37 applies to the appointment of specialist members.*

26. *JDAP local government member register*

- (1) *The Minister must cause to be established and maintained a register of local government members of JDAPs.*
- (2) *Subject to subregulation (4), the register must include the names of 2 members of the council of each local government of a district for which a JDAP is established.*
- (3) *Whenever it is necessary to include a member of a council of a local government on a local government register under subregulation (2), the Minister must —*
- (a) *in writing, request the local government to nominate a member of the council of the local government for inclusion on the register; and*
- (b) *unless subregulation (4) applies, include on the register the name of the person nominated.*
- (4) *If, within 40 days after the date on which the Minister makes a request under subregulation (3) or such longer period as the Minister may allow, the local government fails to nominate a person for inclusion on the local government register in accordance with the request, the Minister may include on the register as a representative of the local government a person who —*
- (a) *is an eligible voter of the district of the local government; and*
- (b) *the Minister considers has relevant knowledge or experience that will enable that person to represent the interests of the local community of that district.*

- (5) *For the purposes of subregulation (4)(a) a person is an eligible voter of a district if that person is eligible under the Local Government Act 1995 section 4.29 or 4.30 to be enrolled to vote at elections for the district.*

27. *Presiding member and deputy presiding member*

- (1) *The Minister must appoint —*
- (a) *one of the specialist members of a DAP with experience and a tertiary qualification in planning as the presiding member of the DAP; and*
 - (b) *another of the specialist members with that experience and qualification as the deputy presiding member.*
- (2) *Subject to subregulation 3A, the deputy presiding member must act as presiding member when the presiding member is unable to do so by reason of illness, absence or other cause.*
- (3A) *If both the presiding member and the deputy presiding member of a DAP are unable to act as presiding member of the DAP by reason of illness, absence or other cause, the Director General may appoint the presiding member of another DAP to act as presiding member of the DAP.*
- (3) *No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.*

[Regulation 27 amended in Gazette 17 Apr 2015 p. 1384.]

28. *Alternate members*

- (1) *The Minister may, in writing, appoint —*
- (a) *an alternate member for any person appointed under regulation 23(1)(a); and*
 - (b) *an alternate member for any person included on the local government register under regulation 26; and*
 - (c) *such number of persons eligible to be appointed as specialist members as the Minister considers necessary to form a pool of alternate members for specialist members.*
- (2) *Regulation 24 applies in relation to an appointment under subregulation (1)(a).*
- (3) *Regulation 26 applies in relation to an appointment under subregulation (1)(b).*
- (4) *An alternate member for a local government member of a DAP may act in the place of the local government member if the local government member is unable to perform the functions of the member by reason of illness, absence or other cause.*
- (5) *If a specialist member other than the presiding member is unable to perform the functions of the member by reason of illness, absence or other cause, an alternate*

member from the pool referred to in subregulation (1)(c) may, on the request of the presiding member, act in the place of the specialist member.

- (6) *A person cannot act in the place of a specialist member of a DAP if the person is —*
 - (a) *employed under the Local Government Act 1995 section 5.36 by the local government of a district for which the DAP is established; or*
 - (b) *a member of the council of the local government of a district for which the DAP is established.*
- (7) *An alternate member acting under this regulation may despite anything in these regulations, continue to act, after the occasion for so acting has ceased, for the purpose of completing any determination of a DAP application.*
- (8) *An alternate member, while acting in the place of a DAP member, has the same functions and protection from liability as a DAP member.*
- (9) *No act or omission of a person acting in place of another under this regulation is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.*

29. *Term of office*

- (1) *A DAP member holds office for the term specified in the member's instrument of appointment.*
- (2) *The term of office specified in an instrument of appointment must not exceed 2 years.*
- (3) *A person's eligibility for reappointment as a DAP member or the term for which a person may be reappointed is not affected by an earlier appointment.*

30. *Training of DAP members*

- (1) *A person who is appointed as a DAP member cannot perform any functions as a member of that DAP until the Director General is of the opinion that the member has satisfactorily completed the training for DAP members provided by the department.*
- (2) *Subject to subregulation (3), a DAP member who satisfactorily completes training for DAP members provided by the department is entitled to be paid the amount specified in Schedule 2 item 7.*
- (3) *Unless the Minister has given written consent to the payment, the amount referred to in subregulation (2) is not payable to a DAP member who is —*
 - (a) *an employee as defined in the Public Sector Management Act 1994; or*
 - (b) *an employee of a department or other agency of the Commonwealth; or*
 - (c) *a local government employee; or*
 - (d) *a judicial officer or retired judicial officer; or*

(e) *an employee of a public academic institution.*

[Regulation 30 amended in Gazette 25 Jan 2013 p. 272-3; 17 Apr 2015 p. 1386.]

31. *Fees and allowances for DAP members*

- (1) *Subject to subregulation (6), a DAP member who attends a DAP meeting is entitled to be paid the fee set out in Schedule 2 item 1 or 2, as the case requires.*
- (2) *Subject to subregulation (6), a DAP member who attends a DAP meeting to determine an application under regulation 17 is entitled to be paid the relevant fee set out in Schedule 2 item 3 or 4 but is not entitled to be paid the fee set out in Schedule 2 item 1 or 2.*
- (3A) *A DAP member may be paid 50% of the fee to which the member would have been entitled under subregulation (1) or (2) for attending a DAP meeting if —*
 - (a) *the DAP meeting is cancelled after the agenda for the meeting was published in accordance with regulation 39(1); and*
 - (b) *the Director General approves the payment.*
- (3) *Subject to subregulation (6), a DAP member who, at the invitation or requirement of the State Administrative Tribunal, attends a proceeding in the Tribunal in relation to the review of a determination of the DAP is entitled to be paid the fee set out in Schedule 2 item 5 or 6, as the case requires.*
- (4) *A DAP member is entitled to be reimbursed for motor vehicle and travel expenses at the rate decided from time to time by the Public Sector Commissioner for members of Government boards and committees.*
- (5) *Fees and allowances for DAP members are payable by the department.*
- (6) *Unless the Minister has given written consent to the payment, fees are not payable under this regulation to a DAP member who is —*
 - (a) *an employee as defined in the Public Sector Management Act 1994; or*
 - (b) *an employee of a department or other agency of the Commonwealth; or*
 - (c) *a local government employee; or*
 - (d) *a judicial officer or retired judicial officer; or*
 - (e) *an employee of a public academic institution.*

[Regulation 31 amended in Gazette 17 Apr 2015 p. 1385.]

32. *Casual vacancies*

- (1) *The office of a DAP member becomes vacant if the member —*
 - (a) *dies, resigns or is removed from office under this regulation; or*
 - (b) *is, according to the Interpretation Act 1984 section 13D, a bankrupt or a person whose affairs are under insolvency laws; or*

- (c) *is convicted of an offence punishable by imprisonment for more than 12 months; or*
- (d) *is convicted of an offence against section 266 of the Act.*
- (2) *A DAP member may at any time resign from office by giving a written resignation to the Minister.*
- (3) *The Minister may, by notice in writing given to the member, remove a DAP member from office on the grounds of —*
 - (a) *neglect of duty; or*
 - (b) *misconduct or incompetence; or*
 - (c) *mental or physical incapacity to carry out the member's duties in a satisfactory manner; or*
 - (d) *absence without leave granted under regulation 33 from 3 consecutive meetings of the DAP of which the member had notice.*
- (4) *Failure to comply with regulation 45(2), 46(2) or (3), 47 or 48 is capable of constituting misconduct for the purposes of subregulation (3)(b).*
- (5A) *A person appointed as a local government member of a DAP on the nomination of a local government under regulation 24(1)(a) ceases to be a member of the DAP if the person ceases to be a member of the council of the local government.*
- (5) *Except in the circumstances referred to in subregulation (5A), the Minister must, by notice in writing given to the member, remove a DAP member from office if the member ceases to hold a position or qualification by virtue of which the member was appointed.*
- (6) *A notice given under subregulation (3) or (5) must specify the ground of removal.*
- (7) *The removal takes effect on the day on which the member is given the notice or on such later day as is specified in the notice.*

[Regulation 32 amended in Gazette 17 Apr 2015 p. 1385.]

33. *Leave of absence*

The Minister may grant leave of absence to a DAP member on the terms and conditions determined by the Minister.

34. *Extension of term of office during vacancy in membership*

- (1) *If the office of a DAP member becomes vacant because the member's term of office expires, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).*
- (2) *However, subregulation (1) ceases to apply if the member resigns or is removed from office under these regulations.*

- (3) *The maximum period for which a DAP member is taken to continue to be a member under this regulation after the member's term of office expires is 3 months.*

Division 2 — Specialist members

35. *Register of persons eligible to be specialist members*

- (1) *The Minister must cause to be compiled and maintained a register of persons who —*
- (a) *have experience in one or more of the following areas of expertise —*
 - (i) *town planning;*
 - (ii) *architecture;*
 - (iii) *urban design;*
 - (iv) *engineering;*
 - (v) *landscape design;*
 - (vi) *environment;*
 - (vii) *law;*
 - (viii) *property development or management;*
 - and*
 - (b) *have —*
 - (i) *a tertiary qualification relevant to their area of expertise and experience practising or working in their area of expertise that is, in the opinion of the Minister, sufficient to allow them to perform the duties of a specialist member; or*
 - (ii) *extensive experience practising or working in their area of expertise that is, in the opinion of the Minister, sufficient to allow them to perform the duties of a specialist member;*
 - and*
 - (c) *are willing to hold office as a specialist member of a DAP.*
- (2) *The following persons are not eligible to be included on the register —*
- (a) *an officer of the department;*
 - (b) *a member of a parliament as defined in the Local Government Act 1995 section 2.20.*
- (3) *The register must include the following details in relation to each person on it —*
- (a) *the name of the person;*

- (b) *the qualifications and experience of the person;*
- (c) *any other details the Minister considers appropriate.*
- (4) *The Minister may from time to time add a person to the register.*
- (5) *The Minister may remove a person from the register —*
 - (a) *on the written request of that person; or*
 - (b) *if the person is removed from office as a DAP member under regulation 32; or*
 - (c) *if the person is, according to the Interpretation Act 1984 section 13D, a bankrupt or a person whose affairs are under insolvency laws; or*
 - (d) *if the person is convicted of an offence punishable by imprisonment for more than 12 months; or*
 - (e) *if the Minister is satisfied that the person is no longer eligible to be included on the register or willing to hold office as a specialist member of a DAP.*

Division 4 — Conduct of DAP members

45. *Code of conduct*

- (1) *The Director General must make and maintain a written code of conduct in respect of DAPs.*
- (2) *Each person performing functions as a DAP member must comply with the code of conduct.*
- (3) *The Director General may amend the code of conduct from time to time.*

[Regulation 45 amended in Gazette 25 Jan 2013 p. 272-3; 17 Apr 2015 p. 1386.]

46. *Gifts*

- (1) *In this regulation —*

gift *has the meaning given in the Local Government Act 1995 section 5.82(4) except that it does not include a gift from a relative as defined in section 5.74(1) of that Act;*

notifiable gift, *in relation to a DAP member, means —*

- (a) *a gift worth more than \$50 and less than \$300; or*
- (b) *a gift that is one of 2 or more gifts given to the member by the same person within a period of 6 months that are in total worth more than \$50 and less than \$300;*

prohibited gift, *in relation to a DAP member, means —*

- (a) *a gift worth \$300 or more; or*
 - (b) *a gift that is one of 2 or more gifts given to the member by the same person within a period of 6 months that are in total worth \$300 or more.*
- (2) *A person who is a DAP member must not accept a prohibited gift from a person who —*
- (a) *is undertaking development approved by the DAP; or*
 - (b) *is seeking to undertake development requiring approval by the DAP; or*
 - (c) *it is reasonable to believe is intending to undertake development requiring approval by the DAP.*
- (3) *A person who is a DAP member and who accepts a notifiable gift from a person who —*
- (a) *is undertaking development approved by the DAP; or*
 - (b) *is seeking to undertake development requiring approval by the DAP; or*
 - (c) *it is reasonable to believe is intending to undertake development requiring approval by the DAP,*

must notify the Director General of the acceptance in accordance with subregulation (4) as soon as practicable after the member becomes aware that the person has made or is intending to make the application for approval.

- (4) *Notification of the acceptance of a notifiable gift must be in writing and must include the following —*
- (a) *the name of the person who gave the gift;*
 - (b) *the date on which the gift was accepted;*
 - (c) *a description, and the estimated value, of the gift;*
 - (d) *the nature of the relationship between the DAP member and the person who gave the gift;*
 - (e) *if the gift is a notifiable gift under paragraph (b) of the definition of **notifiable gift** in subregulation (1) (whether or not it is also a notifiable gift under paragraph (a) of that definition) —*
 - (i) *a description; and*
 - (ii) *the estimated value; and*
 - (iii) *the date of acceptance,**of each other gift accepted within the 6 month period.*

- (5) *The Director General must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.*

[Regulation 46 amended in Gazette 25 Jan 2013 p. 272-3; 17 Apr 2015 p. 1386.]

47. *Relations with local government and public sector employees*

A DAP member attending a DAP meeting must not, either orally, in writing or by any other means —

- (a) make a statement that a local government or public sector employee is incompetent or dishonest; or*
- (b) use offensive or objectionable expressions in reference to a local government or public sector employee.*

48. *Public comment*

- (1) A DAP member, other than the presiding member, must not publicly comment, either orally or in writing, on any action or determination of a DAP.*
- (2) Subregulation (1) does not apply to comments made at a meeting of a DAP.*

Schedule 2 — Fees for DAP members

[r. 30, 31]

1. *Fee for presiding member per meeting to determine development applications* \$500
2. *Fee for any other member per meeting to determine development applications* \$400
3. *Fee per meeting for presiding member to determine applications to amend or cancel determination* \$100
4. *Fee per meeting for any other member to determine applications to amend or cancel determination* \$50
5. *Fee for presiding member attending proceeding in State Administrative Tribunal* \$500
6. *Fee for any other member attending proceeding in State Administrative Tribunal* \$400
7. *Fee for training* \$400

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

OFFICER RECOMMENDATION – ITEM 8.3.7

That Council nominate Councillors Kaltenrieder and Moir to be members of the Development Assessment Panel and Councillors _____ and _____ as alternate members.

NOTE

Council noted that whilst it had originally nominated two Councillors to be members, and two alternate members, of the DAP none had been called upon to sit on the Panel. That the likelihood of any development, in the Shire, triggering the need for DAP assessment was low. That the opportunity to nominate other Councillors was offered, not demanded and that the two Councillors currently members of the DAP had been reappointed and so there was no need to re nominate them. That the requirement for training may be onerous on Councillors and that no Councillors had indicated an intention to put their names forward for nomination. On balance then Council saw no point in nominating two additional Councillors to be alternate DAP members.

COUNCIL DECISION

MOVED: Cr Moir

SECONDED: Cr Kaltenrieder

That the Council adopts enbloc 9.1.1 and 9.1.2

CARRIED 9/0

Res 17/16

9 COMMITTEE REPORTS

9.1.1 Minutes of the Blackwood River Valley Marketing Association

Location: N/A
Applicant: N/A
File:
Disclosure of Officer Interest: Nil
Date: 19 August 2015
Author: Alan Lamb - CEO
Attachments: Yes – Minutes

BACKGROUND

The Blackwood River Valley Marketing Association meeting was held on 9th December 2015 & 10 February 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 Blackwood River Valley Marketing Association meeting be received.

9.1.2 Minutes of Annual Awards Committee

Location: N/A
Applicant: N/A
File:
Disclosure of Officer Interest: Nil
Date: 19 August 2015
Author: Alan Lamb - CEO
Attachments: Yes – Minutes

BACKGROUND

The Annual Awards Committee meeting was held on 9th December 2015.
Minutes of the meeting are laid on the table and circulated.

COUNCIL DECISION & OFFICER RECOMMENDATION – Item 9.1.2

That the minutes of the Annual Awards Committee meeting be received.

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

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

Nil

12 CONFIDENTIAL MATTERS – BEHIND CLOSED DOORS

Nil

13 CLOSURE OF MEETING

There being no further business the Shire President thanked all for attending and declared the meeting closed at 6.50pm.