



SHIRE OF DERBY/WEST KIMBERLEY

NOTICE OF COUNCIL MEETING

Dear Elected Member,

An Ordinary Meeting of the Council of the Shire of Derby/West Kimberley is to be held on

Thursday, 25 May 2017

At

Council Chambers, Clarendon Street Derby

Commencing at

05:30pm

Stephen Gash

CHIEF EXECUTIVE OFFICER

Date: 16 May 2017

AGENDA

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Our Guiding Values

Respectful

By being helpful, friendly and supportive

Integrity

Through honesty, accountability and ethical behaviour

Leadership

By the Shire at the local and regional level and through encouragement of community leaders

Knowledgeable

By being well informed and accurate in what we do

Building Good Relationships

By being communicative, responsive and inclusive

Disclaimer

No responsibility whatsoever is implied or accepted by the Shire of Derby/West Kimberley (Shire) for any act, omission or statement or intimation occurring during Council or Committee meetings.

The Shire disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

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The Shire warns that anyone who has any application lodged with the Shire must obtain and should only rely on written confirmation of the outcome of the application and any conditions attaching to the decision made by the Shire in respect of the application.

Notes for Members of the Public

PUBLIC QUESTION TIME

The Shire of Derby/West Kimberley extends a warm welcome to you in attending any Shire meeting. The Shire is committed to involving the public in its decision making processes whenever possible. The ability to ask questions during 'Public Question Time' is of critical importance in pursuing this public participation objective. The Shire sets aside a period of 'Public Question Time' to enable a member of the public to put questions. Questions should only relate to the business of the Shire and should not be a statement or personal opinion. Upon receipt of a question from a member of the public, the Presiding Member may either answer the question or direct it to an officer to answer, or it will be taken on notice.

Any comments made by a member of the public become a matter of public record as they are minuted by Council. Members of the public are advised that they are deemed to be held personally responsible and legally liable for any comments made by them that might be construed as defamatory or otherwise considered offensive by any other party.

MEETING FORMALITIES

Local government Council meetings are governed by legislation and regulations. During the meeting, no member of the public may interrupt the meetings proceedings or enter into conversation. Members of the public shall ensure that their mobile telephone or audible pager is not switched on or used during any Shire meeting.

Members of the public are hereby advised that the use of any electronic, visual or audio recording device or instrument to record proceedings of the meeting is not permitted without the permission of the Presiding Member.

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Notes for Elected Members

NATURE OF COUNCIL'S ROLE IN DECISION MAKING

Advocacy:	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
Executive/Strategic:	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations, grants, and setting and amending budgets.
Legislative:	Includes adopting local laws, town planning schemes and policies.
Administrative:	When Council administers legislation and applies the legislative regime to factual situations and circumstances that affect the rights of people. Examples include town planning applications, building licences and other decisions that may be appealable to the State Administrative Tribunal.
Review:	When Council reviews a decision made by Officers.
Information:	Includes items provided to Council for information purposed only that do not require a decision of Council (that is for 'noting').

ALTERNATIVE MOTIONS

Councillors wishing to make alternative motions to officer recommendations are requested to provide notice of such motions in written form to the Director Corporate and Community Services prior to the Council meeting.

DECLARATIONS OF INTERESTS

Elected Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences. Section 5.60A of the *Local Government Act 1995* states;

"a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person."

Section 5.60B states;

"a person has a proximity interest in a matter if the matter concerns –

- (a) a proposed change to a planning scheme affecting land that adjoins the person's land; or*
- (b) a proposed change to the zoning or use of land that adjoins the person's land; or*
- (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land."*

Regulation 34C (Impartiality) states;

"interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association."

2017 MEETING DATES

At its Ordinary Meeting of Council on 24 November, 2016, Council adopted the following meeting dates for 2017;

January			Council in Recess
Thursday	23 February 2017	5.30 pm	Council Chambers, Derby
Thursday	30 March 2017	1.00 pm	Fitzroy Crossing Inn, Fitzroy Crossing
Thursday	27 April 2017	5.30 pm	Council Chambers, Derby
Thursday	25 May 2017	5.30 pm	Council Chambers, Derby
Thursday	29 June 2017	1.00 pm	Fitzroy Crossing Inn, Fitzroy Crossing
Thursday	27 July 2017	5.30 pm	Council Chambers, Derby
Thursday	31 August 2017	5.30 pm	Council Chambers, Derby
Thursday	28 September 2017	1.00 pm	Aboriginal Community or Station (to be advised)
Thursday	26 October 2017	5.30 pm	Council Chambers, Derby
Thursday	30 November 2017	1.00 pm	Fitzroy Crossing Inn, Fitzroy Crossing
Thursday	14 December 2017	5.30 pm	Council Chambers, Derby

Council's Compliance and Strategic Review Committee and the Housing and Works Committee meet when required. Details of these meetings are advised as appropriate.

MEETING ATTENDANCE

The following table provides information on attendance at the 2016-17 Ordinary and Special Council Meetings;

Councillor	28 Jul 2016	25 Aug 2016	29 Sept 2016	27 Oct 2016	24 Nov 2016	15 Dec 2016	09 Feb 2017	23 Feb 2017	30 Mar 2017	27 Apr 2017	25 May 2017	29 Jun 2017
	OCM	OCM	OCM	OCM	OCM	OCM	SCM	OCM	OCM	OCM	OCM	OCM
E Archer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
P White	✓	✓	LOA	✓	✓	✓	✓	✓	✓	✓		
P Coggins	✓	✓	✓	LOA	✓	✓	A	✓	✓	✓		
C Kloss	✓	✓	✓	✓	✓	✓	✓	✓	LOA	LOA		
A Kogolo	AB	A	✓	A	A	LOA	A	A	✓	A		
P McCumstie	LOA	✓	✓	✓	LOA	✓	✓	✓	A	✓		
J Oscar	✓	✓	LOA	✓	LOA	✓	A	A	Resigned 30/03/2017			
I Prouse	✓	✓	✓	✓	✓	✓	A	✓	✓	✓		
A Twaddle	✓	✓	A	✓	✓	✓	✓	✓	✓	✓		

APPLICATION FOR LEAVE OF ABSENCE

In accordance with Section 2.25 of the *Local Government Act 1995*, an application for leave requires a Council resolution granting leave requested. Council may grant approval for Leave of Absence for an Elected Member for ordinary Council meetings for up to but not more than six consecutive meetings. The approval of the Minister is required for leave of absence greater than six ordinary Council meetings.

This approval must be by Council resolution and differs from the situation where an Elected Member records their apologies for the meeting. A failure to observe the requirements of the Act that relates to absence from meetings can lead to an Elected Member being disqualified should they be absent without leave for three consecutive meetings.

SHIRE OF DERBY/WEST KIMBERLEY

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ORDINARY MEETING OF COUNCIL

AGENDA

1.0 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS

The meeting was opened atpm by.....

2.0 RECORD OF ATTENDANCE

2.1 ATTENDANCE

ELECTED MEMBERS:

STAFF:

VISITORS:

GALLERY:

2.2 APOLOGIES

2.3 APPROVED LEAVE OF ABSENCE

2.4 ABSENT

2.5 DISCLOSURE OF INTERESTS

Section 5.65 and 5.70 of the *Local Government Act 1995* requires an Elected Member or officer who has an interest in any matter to be discussed at a Committee/Council Meeting that will be attended by the Elected Member or officer must disclose the nature of the interest in a written notice given to the Chief Executive Officer before the meeting; or at the meeting before the matter is discussed.

An Elected Member who makes a disclosure under section 5.65 or 5.70 must not preside at the part of the meeting relating to the matter; or participate in; or be present during, any discussion or decision making procedure relating to the matter, unless allowed by the Committee/Council. If Committee/Council allow an Elected Member to speak, the extent of the interest must also be stated.

2.5.1 DECLARATIONS OF FINANCIAL INTERESTS

2.5.2 DECLARATIONS OF PROXIMITY INTERESTS

2.5.3 DECLARATIONS OF IMPARTIALITY INTERESTS

3.0 APPLICATIONS FOR LEAVE OF ABSENCE

4.0 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS

5.0 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Mr Chris Travers

RE: SUTHERLAND STREET, DERBY

Questions:

1. Are there funds allocated in the Shire of Derby/West Kimberley 2016-17 budget for works on Sutherland Street?

Response – As advised in answer to your public question on the same subject at the 15 December 2016 meeting funds for the upgrade of Sutherland Street were not included in the 2016-17 Budget. It was included in the draft budget but not the final adopted 2016-17 budget.

2. Can an update be provided on any proposed road works, flood damage/washout repairs, footpaths and street lighting upgrades on Sutherland Street?

Response - The work to upgrade Sutherland Street will be included in the proposed 2017-18 budget and you are more than welcome to make an appointment with Wayne Neate – Director of Technical and Development services to view the plans and discuss the proposal.

3. The road is currently an absolute disgrace, I have been asking Council for 2 years for something to be done, keep getting assurances from Council something will be done but still nothing has been done.

Response - There are no funds currently allocated to Knowsley Street to be relocated.

4. There is money in the current budget for works on Knowsley Street. Could these funds be reallocated to Sutherland Street works as a priority?

Response - There are no funds currently allocated to Knowsley Street to be relocated.

5. Also, Wodehouse Street back towards the Powerhouse – there are no footpaths and the street lighting needs upgrading.

Response – There are no long term plans to upgrade the lighting or footpaths on Wodehouse street as it does not form part of Councils noted Bike/Footpath plan which was adopted by Council on the 28th June 2012.

6.0 PUBLIC TIME

6.1 PUBLIC QUESTION TIME

6.2 PUBLIC STATEMENTS

6.3 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS

7.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION

8.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

OFFICER RECOMMENDATION:

That the minutes of the ordinary meeting of the Shire of Derby/West Kimberley held at the Council Chambers, Clarendon Street, Derby, on 27 April 2017 be confirmed.

9.0 RECOMMENDATIONS AND REPORTS OF COMMITTEES

Nil

10.0 REPORTS

10.1 EXECUTIVE SERVICES

10.1.1 SUBMISSION IN RESPECT TO THIRD PARTY APPEAL RIGHTS IN PLANNING

Location/Address:	N/A
Name of Applicant:	Western Australian Local Government Association
File Reference:	4075
Author:	Noel Myers – Manager Planning Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	28 April 2017
Attachments:	1. WALGA Discussion paper
Authority/Discretion:	Advocacy

SUMMARY:

For Council to consider a submission in respect to the Introduction of Third Party Appeal Rights in Planning advising the Western Australian Local Government Association (WALGA) that it does not support the introduction of the Appeal Rights.

BACKGROUND:

At its December 2016 meeting, State Council requested a review of the WALGA Policy position in relation to Third Party Appeal Rights for planning decisions. The decision making environment has changed since WALGA made its policy position in 2008, and therefore a review of the current position was considered to be warranted.

Unlike most of the other jurisdictions in Australia, Western Australia is unique in that no Third Party Appeal Rights exist under the *Planning and Development Act 2005*, although in the past some local government planning schemes allowed them.

The introduction of Third Party Appeal Rights has been considered by member Councils on several occasions over the last few decades with the latest and current position against the proposition of being arrived at in 2008.

The decision of the State Council at that time was:

That:

1. *the member for Alfred Cove, Dr Janet Woollard MLA and the Minister for Planning and Development, Hon Alannah MacTiernan be advised of the inaccuracies and duplications contained in the proposed Planning and Development Amendment (Third Party Appeals) Bill 2007; and*

2. *as there is no justification for the proposed legislation and there are significant negative implications for Local Government, industry and the community, Local Government continues to be opposed to the introduction of third party appeal rights in Western Australia.*

STATUTORY ENVIRONMENT:

Planning and Development Act 2005

POLICY IMPLICATIONS:

Nil in respect to consideration of this submission

FINANCIAL IMPLICATIONS:

Nil in respect to consideration of this submission

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
2: A balance between the natural and built environments Sustainable natural and built environments that meet the needs of the community and support future growth	2.1: Appropriate development that enhances the unique character and heritage of the Shire's townships	2.1.5: Actively work with other government bodies on state, regional planning and development issues

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
N/A				

CONSULTATION:

There has been no specific consultation undertaken in respect to this matter.

COMMENT:

A discussion paper has been prepared that provides background on the development of WALGA's current policy position and a review of the arguments both for and against third party appeals. A literature review was carried out to establish the basis of each argument. The Discussion paper is marked as Attachment 1.

Historically local government in Western Australia has been the main authority tasked with decision-making for development applications, under delegation arrangements from the Western Australian Planning Commission (WAPC).

Since 2009 a number of changes have been implemented to the planning framework, directly impacting on the decision-making powers of local government, including:

-) The establishment of the Metropolitan Redevelopment Authority (MRA);
-) Changes to Structure Planning processes;
-) Changes to section 76 of the *Planning and Development Act 2005* to give the Minister for Planning the power to order a local government to prepare or adopt an amendment to a local planning scheme;
-) The introduction of Improvement Schemes and Plans; and
-) The introduction Development Assessment Panels (DAPs).
-) The introduction of ‘Deemed Provisions’ for local planning schemes in the *Planning and Development (Local Planning Schemes) Regulations 2015*;

Given the substantial changes that have occurred within the decision-making environment in Western Australia, and the recently reported community concerns over the creation of the DAP system to determine development applications in place of local governments, it has been considered appropriate to initiate a discussion on the possible role of Third Party Appeal Rights in the Western Australian planning system.

The discussion paper identifies that Third Party Appeal Rights vary by state, with no common ‘best practice’

Western Australia State Government Position:

In its 2015 report on the review of the *Planning and Development (Development Assessment Panels) Regulations 2011*, the Western Australia Legislative Council noted that the State’s position on Third Party Appeal Rights was set out on 3 June 2009, by the then Minister for Child Protection, representing the Minister for Planning, who advised the Legislative Council of the Government’s position on third party appeals:

The Government does not currently have any plans to introduce third party appeal rights in Western Australia.

The Government does not believe that the introduction of third party appeal rights in Western Australia is consistent with current attempts to simplify and streamline the planning approvals process. The Planning and Development Act 2005 requires public consultation in relation to the planning framework established in local and regional areas, with public consultation mandated for local and region planning scheme amendments, as well as State Planning Policies, local planning policies and structure plans. As such, the Government believes that the current planning process provides sufficient opportunity for the local community to have a say in what happens in their neighbourhoods. (p.31)

The report states that this remains the Government’s policy.

Arguments For and Against Third Party Appeal Rights:

A literature review was conducted by WALGA to establish the most common arguments both for and against third party appeals as well as examine the issues and benefits that may arise from their use. Victoria has the broadest third party appeal rights, and therefore much of the current literature examining third party appeals is focused on that state's experience.

Legitimate Interest and Third Party Appeals – Many authors note that the traditional view of appeal rights holds that the only parties with a direct interest in a development application are the applicant and the responsible authority; meaning property owners are the only ones who should have the right to appeal over their land and that they should be able to use their property with minimal external interference. Therefore, Third Party Appeal Rights, if not clearly defined, may allow individuals to take part in planning decisions in which they have no direct interest.

Loss of Representation – This arguments states that the appeals process shifts decision making for development applications away from local government and therefore away from the locally elected representation. This shift may reduce accountability and transparency in the planning decisions process for the local community. A large amount of decision making power has been removed from local government with the introduction of DAPs. It is argued that Third Party Appeal Rights further weaken the representative nature of local government decision making (Ellis 2006) (Willey 2006) (Hurley et al 2011).

Current Planning Processes Provide Opportunities to Participate – A strong argument against Third Party Appeal Rights is that proactive public engagement, participation and collaboration in policy formation and strategic planning is preferable as these processes focus on higher order engagement which leads to better policy and greater certainty in the process and outcome. Third party appeals tend to encourage adversarial rather than collaborative debate on planning issues. The effect of Third Party Appeal Rights may be to promote short-term decision making and could create planning outcomes that are not in the longer term interest of the community (Ellis 2006) (Willey 2006) (Hurley et al 2011)(Cook et al 2012) (Hurley et al 2013).

Not Representative of the Broader Community – The idea of equity of access to planning decisions is often cited in the literature as a justification for third party appeal rights, however some research reviewed found that the majority of people lodging third party appeals come from a well-organised, well-connected and well-resourced segment of the community, which raises the question of how representative these objections are of the wider community's views (Ellis 2006) (Willey 2006) (Cook et al 2012) (Hurley et al 2013). For example, in their review of Third Party Appeals against multi-unit developments in Victoria, Hurley et al (2013) found that the number of objections against applications increase in more socioeconomically advantaged areas, which indicates that developments in these

areas are facing more organised community resistance, either by greater propensity for individuals to object, or by effective resident mobilisation (Hurley et al (2013) p.4).

Impact on the Decision Making Process – Researchers argue that the introduction of Third Party Appeal Rights will lead to increased cost and delays, and the possibility of appeals being lodged because of vexatious or commercial interests, not because of genuine planning matters. As a result, the planning approval processes will experience delays which will create inefficiency, uncertainty, increased costs, and could ultimately act as a brake on investment and economic growth (Ellis2006) (Willey 2006) (Hurley et al 2011). This can lead to opposition on non-planning grounds, rather than because of an issue with the merit or substance of the proposal (Ellis2006) (Willey 2006) (Hurley et al 2011).

Failure to Determine/Deemed Refusal – While researching multi-unit development in Victoria, Cook et al (2012) found that as the volume of objections to a development application increases, so too does the likelihood of appeal to VCAT. Additionally, failure to determine (where Council fails to render a decision within the prescribed timeframes, equivalent to deemed refusal in Western Australia) cases are strongly related to high objection numbers. Therefore, applications which receive the highest number of objections are also the applications which are most likely to be appealed, and are also most likely to be the applications which Council fails to determine. While failures to determine may be instances where the local authority is unable to process applications due to resource constraints, the results and anecdotal evidence suggest that often these cases involve the authority declining to make a decision where there is significant resident opposition (Cook et al (2012) p.39).

Turning Planning into a ‘Numbers Game’ – Some researchers noted the existence of third party appeals may lead members of the community to believe that the number of objections in and of itself is a way of engaging in the planning process and prevent developments they do not support (Planning Institute of Australia (NSW Division) 2012) (Hurley et al 2013). However, in order to be considered by the responsible authority, an objection needs to be about a valid planning concern. As a result the community’s expectations about how it can influence the planning system may not be met.

4.2 Arguments for Third Party Appeals Legitimate Interest – A strong argument is made that neighbouring landowners, occupiers and members of the community often have a very legitimate interest in whether development occurs and the form of that development, as any new development has impacts on existing neighbourhood character, amenity, infrastructure and property values. Equity in the development process is also important, if an applicant has rights of appeal, the argument is that a third party should also have right of appeal to maintain equity. Without Third Party Appeal Rights the wider community is removed as a stakeholder (Ellis 2006) (Willey 2006) (Trenorden 2009).

Improved Participation and Decision Making – It is often noted that planning is a communicative process which needs to embrace the public in meaningful ways. Third party appeals would have the potential to increase avenues for public engagement with planning, and may deliver better planning decisions as an empowered public, with increased opportunities for participation, can result in improved planning outcomes. Therefore, Third Party Appeal Rights affords the combination of a broader base of input, increased debate and the ability for ‘local knowledge’ to inform planning approvals which can lead to improved outcomes (Morris 2005) (Ellis 2006) (Willey 2006). As an example, Willey (2006) notes that it is comparatively rare in Victoria for an objector to completely succeed in overturning a decision, but often their involvement is considered to lead to a better planning decision.

Improved Consultation – Third party appeal rights may encourage developers to deal with the local community in a more engaging manner and places pressure to concede or improve design elements where appropriate and reasonable to do so (Willey 2006).

Improved Transparency – Applicant appeals are a means by which decision-making can be checked and provide property owners a recourse to an independent review body as a safeguard against inconsistent decisions. An argument for Third Party Appeal Rights is that they provide the same opportunity for third parties to scrutinise and challenge decision making, thus keeping decision-makers accountable. Additionally, Third Party Appeal Rights are purported to discourage corrupt behaviour between developers and local government (Morris 2005) (Willey 2006) (Trenorden 2009).

Competing Viewpoints:

There are strong arguments both for and against third party appeals. The research notes that which side of the argument one lands on often has a great deal to do with the planning culture in which they are operating (Willey 2006) (Trenorden 2009). In Victoria, where third party appeals have become an embedded practice, most stakeholders are supportive of the practice, even while acknowledging negative aspects may be associated with them. In contrast in places such as Western Australia where third party appeal rights are not a part of the planning culture, views tend to focus predominately on the negative aspects of Third Party Appeal Rights. For example, a concern often expressed is that allowing third party appeals would lead to a ‘flood’ of appeals, however evidence from Victoria shows that Third Party Appeals account for only 19% of VCAT cases (Hurley et al 2013). So while allowing Third Party Appeals would lead to an increase in appeals, the effect may be overemphasized.

In a 2009 paper, Judge Christine Trenorden, Senior Judge of the Environment, Resources and Development Court in South Australia, argued that the issue of whether Third Party Appeal Rights are necessary may be resolved by the answers to the following questions:

1. *Does the community have confidence that the policy document for a particular area sufficiently describes the desired future character, and contains a comprehensive set of objectives and principles for development in the area, relevant to the local context including the environment?*
2. *Does the community have confidence in the decision-makers to make a decision in the best interests of the community now and in the future?*
3. *Is there a transparency about the decision-making?*
4. *Is there a guarantee that the decision-makers will assess the development in the context of the desired future character, objectives and principles of development for the area (assuming the adequacy of these policy statements)? (Trenorden, 2009 p. 13)*

The questions put forward by Judge Trenorden speak not to the capability of the decision maker to determine an application, but the “community’s confidence” in their ability. These are not necessarily the same thing. When the decision-maker is appointed by an external body, the community’s confidence in them to make a decision in the best interests of the community now and in the future is diminished. Any lack of transparency around the decision-making process further erodes confidence.

Issues to Consider

Criteria for Third Party Appeal Rights in Other States:

After considering the arguments for and against Third Party Appeal Rights, as well as Judge Trenorden’s questions on determining the necessity of such rights, there may be further debate on what limitations, if any, should be placed on Third Party Appeal Rights were they to be introduced. For instance, it may be that Third Party Appeals be limited to only certain types of applications involving the use of discretionary powers, or instances where the decision-maker has advertised the development. If this were to be the case, then Third Party Appeal Rights would apply to determinations made by both local government and DAPs.

Based on the summary of Third Party Appeals processes that exist in other jurisdictions, the primary criteria for allowing Third Party Appeal Rights include:

-) Excluding vexatious or commercial interests appeals, and any appeals made on none-genuine planning matters,
-) Excluding appeals by those parties who did not previously make a submission.
-) Excluding appeals where an application meets ‘deem-to-comply’ requirements, and no discretion has been excised.
-) Excluding appeals for some cases of minor development.
-) Having a short window in which to appeal (example 14 days)

5.2 Implications for Local Government:

Whilst the introduction of third party appeal rights would give the community the ability to appeal decisions made by DAPs, it would also result in the majority of appeals being lodged against decisions made by local government. Staff would be impacted as officers would require additional time to prepare for and attend third party appeals, which would likely have an effect on the ability of local government officers to complete development application assessment within the required statutory timeframes.

Additional resources would likely be required to administer, resource and potentially engage legal counsel to defend these decisions and this would most likely create an additional financial burden for local government. Without proper resources, such a situation could lead to delays in making planning decisions, which in turn, would create inefficiency, uncertainty, increased costs, and could ultimately act as a brake on investment and economic growth. While limitations could be placed on the type and scope of Third Party Appeal Rights, it is likely that any system which allows Third Party Appeals would result in increased workload and cost for local government.

SUMMARY:

Third Party Appeal Rights are a complex issue, with strong arguments both for and against their implementation. Property rights must be balanced against the community's rights of participation, and the desire for transparency and accountability in government and decision-making bodies. Local government must also consider the likely impacts in terms of cost, resourcing and the timely delivery of services.

-) The planning system as previously highlighted in this paper has undergone significant reform over recent years in an endeavour to streamline the processes and expedite the decision making process;
-) These objectives have been compromised to some extent by the implementation of new State Government planning policies that whilst relevant and appropriate have had the unforeseen effect of increasing development approval timelines and costs for proponents;
-) These impacts are felt more keenly in the regional areas than the metropolitan areas given remoteness often means there are fewer practitioners and there are higher costs to employ the requisite professionals. State Planning Policy 3.7 – Planning for Bushfire Prone Areas;
-) In the context of this Shire, to date, there has been no demonstrable demand shown for the introduction of Third Party Appeals. Residential

development is undertaken in accordance with State planning policies and other relevant local planning policies that have been required to go through a public consultation process. It is suggested that dealing with planning matters at the ‘front end’ such as when developing planning policies and strategies is a more balanced approach to address planning concerns than by introducing a system that allows for appeals to be lodged at the ‘end point’ which would appear as being counterintuitive to an efficient planning system;

-) Variations to acceptable development standards in residential contexts requires a process of consultation with affected neighbours and this process affords transparent and accountable decisions by the responsible local government as opposed to deferring the decision making process to third party entities such as State Administrative Tribunal;
-) There is the potential for significant cost to this local government should third party appeals become more common place due to the high administrative burden associated with appeals and no apparent mechanism in place to recoup those costs;
-) The prospect of Third Party Appeals would have the potential to make the planning process less clear and create unpredictability for landowners.

RECOMMENDATION:

Having regard to the matters detailed above, it is the recommendation of the administration that the Shire makes a submission to WALGA that the Council does not support the introduction of Third Party Appeal Rights and maintains that the position articulated by the Minister for Planning in June 2008 that:

‘The Government does not believe that the introduction of third party appeal rights in Western Australia is consistent with current attempts to simplify and streamline the planning approvals process. The Planning and Development Act 2005 requires public consultation in relation to the planning framework established in local and regional areas, with public consultation mandated for local and region planning scheme amendments, as well as State planning policies, local planning policies and structure plans. As such, the Government believes that the current planning process provides sufficient opportunity for the local community to have a say in what happens in their neighbourhoods’

remains relevant.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That Council ADVISES the Western Australian Local Government Association that it does not support the introduction of Third Party Appeal Rights for the following reasons:

- i. The Shire of Derby/West Kimberley does not believe that the introduction of Third Party Appeal rights in Western Australia is consistent with current attempts to simplify and streamline the planning approvals process.**
- ii. The *Planning and Development Act 2005* requires public consultation in relation to the planning framework established in local and regional areas, with public consultation mandated for local and region planning scheme amendments, as well as State planning policies, local planning policies and structure plans. As such, the Government believes that the current planning process provides sufficient opportunity for the local community to have a say in what happens in their neighbourhoods.**

10.1.2 ADDITIONAL USE – CARAVAN PARK, LOT 100 LOVEGROVE STREET, DERBY

Location/Address:	Lot 100 Lovegrove Street, Derby
Name of Applicant:	RFF Australia
File Reference:	A900748
Author:	Noel Myers – Manager Planning Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	10 May 2017
Attachments:	<ol style="list-style-type: none"> 2. Site Plans 3. WAPC Planning Bulletin 49/2014 – Caravan Parks 4. Bushfire Management Plan
Authority/Discretion:	Administrative

SUMMARY:

The purpose of this report is for Council to consider approval of a proposed additional “Caravan Park” use on Lot 100 Lovegrove Street, Derby.

BACKGROUND:

The site comprises an area of approximately 2.04 hectares. Approximately 5,735m² of the site is developed and operates as a short stay accommodation development. The remaining 1.42 hectares is predominately undeveloped bushland with various informal tracks and firebreaks. The site is generally flat with a slight elevation rising east to west by approximately 2 – 3m across the approximately 214m length of the site.

Existing Land Use

In 2012, the Shire granted planning consent for a Stage 1 development of thirty-three (33) Short Stay Accommodation Units on the site. A total of eleven (11) accommodation units have been developed comprising eight (8) 1-bedroom, three (3) 2-bedroom accommodation units and one (1) manager’s residence/ reception.

It is noted that since the time of that approval being granted, the lot has been subdivided into two separate parcels and as such that approval would no longer be valid.

Local Context

The site is located on the eastern fringe of the Derby Peninsula approximately 3km from the Derby Town Centre and approximately 780m from Derby Highway, being

the major road connecting Derby to the wider region. The site is accessed from Derby Highway along Knowsley Street East and then onto Lovegrove Street.

The site abuts Lovegrove Street and tidal mudflats to the east and undeveloped bushland to the north, south and west. More widely, the site is surrounded by expansive bushland to the south, tidal mudflats to the north and east, and existing and planned low density residential development to the west.

STATUTORY ENVIRONMENT:

Local Planning Scheme No.5: in respect to permissibility of land use:

State Planning Policy 3.7 – Planning in Bushfire Prone Areas

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Nil

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
2: A balance between the natural and built environments Sustainable natural and built environments that meet the needs of the community and support future growth	2.1: Appropriate development that enhances the unique character and heritage of the Shire's townships.	2.1.4: Ensure quality, consistent and responsive development and building assessment approval processes and enforcement

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
N/A				

CONSULTATION:

Notification of the proposed development was posted on the Shire's website and also on the Shire Facebook site with public submissions invited up to 14 April 2017. No submissions were received.

COMMENT:

The site has previously been approved for a thirty-three (33) 'Short Stay Accommodation' development. Under that approval, eleven (11) of the accommodation units have been constructed on site. This proposal seeks to develop

the vacant bushland area into a 'Caravan Park' and ancillary facilities which will be shared with the existing 'Short Stay Accommodation' development.

The proposed development seeks to provide the following additional development on the site:

- Caravan Park:

-) 12 x Large Powered Sites (9.5m x 15m);
-) 2 x Small Powered Sites (8m x 15m);
-) 6 x Small Drive Through Powered Sites (8m x 14m);

- Ancillary Facilities:

-) Amenity/Laundry Facility;
-) Camp Kitchen;
-) Caravan Dump Point;
-) Landscaped Outdoor Seating Areas;
-) Pool (9m); and
-) BBQ Shelter/ Gazebo.

In addition to the above, the proposal seeks to extend the internal road network and landscaping. Plans of the proposal are marked as **Attachment 2**.

The proposed 'Caravan Park' will comprise an area of approximately 2,670m² excluding the proposed ancillary facilities which will support both the existing 'Short Stay Accommodation' and proposed 'Caravan Park' land uses on the site.

Occupation of the 'Caravan Park' is generally anticipated to be limited to the tourist season (May – October) whilst the 'Short Stay Accommodation', including the proposed ancillary facilities are expected to be utilised all year round. The site will be managed as an integrated operation with the use of ancillary facilities shared between the two land uses.

Town Planning Considerations:

The site is zoned 'Special Use – S7' under the provisions of the Shire of Derby/West Kimberley Town Planning Scheme No. 5 (TPS5). There are a number of provisions that generally relate to the use and development within a 'Special Use' zone and specifically that relate to the site. Compliance of the proposal against these provisions has been undertaken and outlined below.

Permissibility:

Under the provisions of Clause 3.5 – Special Use Zone of TPS5, the permissibility of land uses within a 'Special use' zone is restricted to:

No person shall use land, or any building or structure thereon in a Special Use Zone, except for the purpose set against that land in Appendix 3 and any other use deemed by Council to be incidental to the predominant use, and subject to compliance with any conditions specified in that Appendix with respect to the land. Council may apply such additional development conditions to a proposal as it thinks fit providing such standards are not less than those specified in Appendix 3 or pertaining to similar uses permitted under the Scheme.

Under Appendix 3 of TPS5, the purpose for the site is limited to ‘Short Stay Accommodation’ and ‘Rural Residential’ land uses, and other uses deemed by Council to be incidental to the predominate use.

Under the provisions of TPS5 a ‘Caravan Park’ is defined as:

means an area of land specifically set aside for the parking of caravans and park homes or for the erection of camps on bays or tent sites allocated for that purpose.

Under the definition provided within TPS5, the proposed ‘Caravan Park’ comprises an area of approximately 2,670m², which represents approximately 13% of the site. The existing ‘Short Stay Accommodation’ use comprises approximately 28% of the site. Therefore, the area set aside for the proposed ‘Caravan Park’ can reasonably be argued as being incidental to the predominate ‘Short Stay Accommodation’. In terms of use and demand, occupation of the ‘Caravan Park’ is anticipated to be limited to the tourist season (May – October), whereas the ‘Short Stay Accommodation’ is expected to be occupied at some capacity throughout the year. Therefore, the ‘Caravan Park’ will further be incidental in terms of demand and use to the predominate and existing use.

As per the definitions under TPS5, ancillary facilities are not included within the definition of a ‘Caravan Park’, but fall under the definition of ‘Short Stay Accommodation’, outlined as below (emphasis added):

means any land or buildings used for the overnight or holiday accommodation of patrons in self-contained units and/or shared accommodation and may include ancillary facilities. It includes dormitory style accommodation, hostel/backpackers, tourist lodgings and guest houses, but excludes single suite bed and breakfast facilities.

Therefore, the shared ancillary facilities further increase the predominate ‘Short Stay Accommodation’ land use on the site. In a commercial sense, it is common practice for ‘Caravan Park’ and ‘Short Stay Accommodation’ land uses to be developed as an integrated facility (e.g. Palm Grove Caravan Park, Broome).

In light of all of the above, the scale and operation of the proposed ‘Caravan Park’ is regarded as being incidental and complimentary to the predominate ‘Short Stay

Accommodation’ use and therefore consistent with the permissibility provisions under TPS5. The proposed ancillary facilities, while shared with the ‘Caravan Park’ use are, by definition of TPS5 an extension to the ‘Short Stay Accommodation’ development.

Development Provisions:

Appendix 3 within TPS5 outlines the following development provisions for the site must be achieved:

Connection to reticulated water supply. Effluent disposal system subject to Waters and Rivers Commission and Health Department approval. Any development application is required to be advertised for public comment.

Through the previous approval and subsequent development of the ‘Short Stay Accommodation’ use, the site has been connected to a reticulated water supply and has an approved disposal system. The proposed development includes a new amenities/ laundry facility and a new caravan waste dump point. It is expected that should approval be granted, suitable conditioned can be included to ensure these facilities are appropriately installed and operated.

Objectives and Policies

Under Clause 3.2 – Zone Objectives and Policies the following provisions relate to the objectives and policies for development within a ‘Special Use’ zone:

To provide the appropriate development control to a land use or combination of land uses that are consistent with the character and amenity of the locality but by their nature require specific consideration.

To permit development consistent with the provisions of the scheme relating to the subject land and the protection of the amenity of the locality.

In response to the above, the site is located on the outskirts on the Derby town site along the eastern fringe of the Derby Peninsula. The site is generally surrounded by undeveloped bushland and is completely screened from the closest residential development being the partially developed Boab Estate located approximately 260m west of the site.

The proposed development will be suitably setback from the site boundaries, with the closest proposed Caravan Site setback at least 5m from the eastern boundary, and the closest proposed building setback approximately 22m from the eastern boundary. As part of the proposed development it is expected that the existing bushland on the site will be retained where possible to preserve the natural amenity of the locality.

In light of the above, the proposed development is consistent with the objectives and policies as outlined within TPS5.

WAPC Planning Bulletin 49/2014 – Caravan Parks:

The WAPC released Planning Bulletin 49 to provide guidance on matters to be taken into consideration in planning for caravan parks and local governments are encouraged to consider the position set out by this bulletin in planning and decision making for caravan park related developments.

The Bulletin includes criteria to assess new and/or the redevelopment of existing caravan parks and a range of factors that should be taken into consideration when planning or assessing new caravan parks.

The current proposal has been assessed against the various criteria detailed within the Bulletin which is attached to this report as **Attachment 3**. The development is considered to meet the various criteria set out under the Bulletin that would enable the Council to support the application.

State Planning Policy 3.7 – Planning in Bushfire Prone Areas:

As the proposed development is located within a designated bushfire prone area within the Department of Fire and Emergency Services (DFES) mapping, the provisions of State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP3.7) needs consideration.

Under Clause 6.5 of SPP3.7 development applications need to be supported by either a Bushfire Attack Level (BAL) Assessment or BAL Contour Map to identify if the proposed development is impacted by any bushfire hazard issues.

In accordance with SPP3.7 a BAL Assessment of the proposed development has been undertaken and is attached to this report. The BAL Assessment indicates a BAL – FZ rating for the proposed development. As such a Bushfire Management Plan (BMP) has been required to be submitted to provide an assessment of the proposed development against the bushfire protection criteria contained within the Guidelines for Planning in Bushfire Prone Areas (Guidelines).

The BMP has been prepared and then reviewed by an accredited Level 3 Assessor who has confirmed that the BMP and the Bushfire Emergency Evacuation Plan (BEEP) *are suitable to the threat for the lots and provide practical guidance and recommendations to the safe and orderly movement of people in a vulnerable land use during an emergency.* **See Attachment 4.**

As the land use is defined as a ‘Vulnerable Land Use ‘ under the terms of SPP3.7, the plans have been referred to DFES for endorsement and under the SPP provisions,

Council should only issue approvals for Vulnerable Land Use proposals where the BMP has been endorsed by DFES.

DFES have advised that they are currently experiencing high demand for assessments and that their response times are extending beyond their targeted response time. Given that this could unduly delay the granting of any approval by Council given timing of monthly Council meetings, it is proposed that the Council will be requested to delegate authority to Chief Executive Officer to issue Development Approval upon endorsement of the BMP and BEEP by DFES and authorise the CEO to apply conditions to the approval that may be required by DFES. Should DFES not endorse the BMP or BEEP, then the matter would be referred back to Council for determination.

SUMMARY:

Having regard to the above, it is considered that the proposed development by virtue of the land area and anticipated use can be reasonably regarded as being incidental and complimentary to the Short Term Accommodation development and use of the site.

The form of the proposed development is consistent with the Zone Objectives and also considered to meet with the various criteria as set out under the WAPC Planning Bulletin.

The overall development whilst relatively modest, provides an additional accommodation and choice for tourists and is in a location that does not impinge upon the amenity of other land owners and will provide a pleasant setting for those future residents of the park.

As such, the application is recommended for approval subject to the final endorsement of the BMP and BEEP from DFES.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That Council, BY AN ABSOLUTE MAJORITY, DELEGATES approval to the Chief Executive Officer to issue Development Approval for an 'Additional Use – Caravan Park' on a portion of Lot 100 Lovegrove Street, Derby in accordance with the application dated 21 March 2017 subject to the following conditions:

- i. That the Bushfire Management Plan prepared by Strategen (Reference Number – RFF17097 be endorsed by the Department of Fire and Emergency Services.**

- ii. That the Chief Executive Officer be authorised to place any condition on the Development Approval as required by the Department of Fire and Emergency Services to give effect to the Bushfire Management Plan.

10.1.3 NUMBLA NUNGA – PROPOSED STAFF ACCOMMODATION DWELLINGS.

Location/Address:	Reserve 28992 Lot 500 Sutherland Street, Derby
Name of Applicant:	Juniper
File Reference:	A108230
Author:	Noel Myers – Manager Planning Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	8 March 2017
Attachments:	5. Site Plans
Authority/Discretion:	Administrative

SUMMARY:

For Council to approve the construction of fifteen staff accommodation dwellings at the rear of the Numbla Nunga Aged Care Hostel.

BACKGROUND:

Location:	The subject land on which the new development is proposed is described as Reserve No.28992, Lot 500 Sutherland Street, Derby;
Applicant:	The applicant is Juniper Pty Ltd who are the current operators of the Numbla Nunga Aged Care Hostel and adjacent Ngamang Barwoona Frail Aged Hostel;
Owner:	The land is vested to the Health Department of Western Australia with a Management Order for the purposes of Health Hospital and Allied Purposes with the power to lease;
Zoning:	The land is Reserved under Town Planning Scheme No.5 as Public Purpose – Hospital;
Site Area:	The site has an overall area of 5.7649ha

STATUTORY ENVIRONMENT:

Town Planning Scheme No.5:

Table 2 – Zoning Table in regard to permissibility of uses;

Planning and Development (Local Planning Scheme) Amendment Regulations 2015:

Deemed provisions relating to bushfire at Part 10A;

Residential Design Codes of WA:

Part 5 – Design elements for single and grouped dwellings

State Planning Policy 2.6 - State Coastal Planning Policy:

The overall purpose of SPP2.6 is to ensure that use and development within the coastal zone accounts for coastal processes and hazards and that areas of the coastal foreshore should be reserved, protected, conserved and enhanced where suitable.

State Planning Policy 3.7 - Planning in Bush Fire Prone Areas:

SPP3.7 provides the foundation for land use planning decisions in designated bushfire prone areas and local governments need to give due regard to the policy provisions

Development applications in designated bushfire prone areas are required to be accompanied by a BAL assessment

POLICY IMPLICATIONS:

Not applicable

FINANCIAL IMPLICATIONS:

Not applicable

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
1: Community wellbeing A diverse, caring and safe community providing opportunities for all its people	1.3: Access to affordable housing options	1.3.1: Encourage affordable housing through town planning, zoning and land release
1: Community wellbeing A diverse, caring and safe community providing opportunities for all its people	1.7: Quality of life for the aged and disabled	1.7.1: Lobby for support services and infrastructure for the aged and disabled
2: A balance between the natural and built environments Sustainable natural and built environments that meet the needs of the community and support future growth	2.1: Appropriate development that enhances the unique character and heritage of the Shire's townships	2.1.4: Ensure quality, consistent and responsive development and building assessment approval processes and enforcement

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
N/A				

CONSULTATION:

There is no Scheme requirement for consultation regarding development on Reserved land.

Notwithstanding, the proposal has been discussed with officers from the State Heritage Office(SHO) given that the adjoining ‘Old Numbla Nunga” hospital site has been recommended for inclusion onto the State Registrar of Heritage Places which was supported by the Council –see Council **Minute No. 136/2016**.

The SHO confirmed that the adjoining site has not yet formally been entered onto the registrar as yet so they would not be able to offer any formal comment, however, as the Numbla Nunga site is on the Shire Inventory of Heritage Places the Shire should satisfy itself about whether there were potential impacts on the heritage values.

Officer comment on Heritage issues in addressed later in this report.

COMMENT:

The application proposes the following scope of works to provide accommodation and amenities for staff employed by Juniper in the operation of their aged care facilities;

-) Demolition and removal of redundant dwellings and ancillary buildings;
-) Construction of Eight, two bedroom dwellings;
-) Construction of Six, one bedroom dwellings;
-) Construction of One, three bedroom dwelling;
-) Construction of a new pool and surrounds, incorporating a new shade structure and equipment shelter;
-) Construction of paved access and parking areas.

The subject site is located on the northern side of Sutherland Street as shown in **Attachment 5**.

Adjoining development to the east and rear of the lot is the site of the former Numbla Nunga Nursing Home and the Ngamang Barwoona Frail Aged hostel is located on the adjacent lot to the west. Single dwelling developments are located on the southern side of Sutherland Street.

The existing Numbla Nunga Aged Care Hostel is developed towards the front of the lot and comprises single storey buildings of a domestic scale and form as is the Frail Aged hostel on the adjoining lot.

The application proposes to construct a total of 15 single storey ‘grouped dwellings’ in one, two and three bedroom configurations on the rear half of the lot that will provide accommodation for staff employed by Juniper. The development is configured around a central area of communal open space that will incorporate a pool and ancillary facilities for the private use and benefit of residents within the new units. An internal driveway will circulate through the development and link the area to Sutherland Street via a private driveway orientated along the eastern boundary of the lot.

Assessment of Built Form:

Town Planning Scheme No.5 is largely silent on development controls affecting Reserved land and does not stipulate specific development controls. Rather, reference and guidance is to be taken from the R Codes to ensure that the new development meets the standard objectives for grouped dwelling developments. As there are no ‘Deemed-to-comply’ provisions applicable to the land, given there is no applicable Density Code ascribed to Reserved land, the application has been assessed against the relevant ‘Design principles’ set out under the R Codes which is a performance based assessment that seeks to ensure a development meets objectives to ensure buildings are of an appropriate design for the intended residential purpose.

The plans have been assessed against the requirements as set out under the R Codes and comment is provided both generally and specifically where conditions are proposed to be applied to any approval granted.

Design Principle – 5.1.2 Street setback	Comment
<p>P2.1 – Buildings setback from street boundaries an appropriate distance to ensure they;</p> <ul style="list-style-type: none">)] Contribute to and are consistent with an established streetscape)] Provide adequate privacy and open space for dwellings)] Accommodate site planning r’qments such as parking, landscaping and utilities 	<p>)] The new buildings are located behind the existing aged care hostel. As such the new buildings will be largely screened from view from the street and does not impart any impact on the streetscape</p> <p>)] Each unit is provided with a fenced yard area to provide areas of private open space, integrated carpark and store and adequate separation between dwellings is provided</p> <p>Having regard to the above, the Design Principle for this element is considered to be satisfied</p>

Design Principle – 5.1.4 Open space	Comment
<p>P4 – Development incorporates suitable open space for its context to:</p> <ul style="list-style-type: none">)] Reflect existing streetscape character)] Provide access to natural sunlight for the 	<p>)] Buildings are set back approximately 70 metres back from Sutherland street and are screened by the existing hostel buildings – no impact</p> <p>)] Layout of buildings reflects a low form of</p>

<p>dwelling</p> <p>) Reduce building bulk on the site</p> <p>) Provide an attractive setting for buildings, landscape, vegetation and streetscape</p> <p>) Provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access around the site</p>	<p>density with 15 dwellings located on the rear half of the lot which has an overall area of 5.7ha. The new buildings are to be constructed on approximately half of the lot (2.8ha) which equates to a density coding of R5 or 1 dwelling per 2,000m². Site coverage is minimal given the modest floor areas of each dwelling and well below permissible site cover for an area coded R5 which is 30%</p> <p>) All buildings are distributed around the perimeter of the lot providing a large area of central open space where the communal pool and facilities are located</p> <p>) Buildings have been sited to retain existing vegetation in a low density setting</p> <p>Having regard to the above, the Design Principle for this element is considered to be satisfied</p>
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Design Principle – 6.3.3 Parking	Comment
<p>P3.1 – Adequate car and bicycle parking provided on site in accordance with projected need related to:</p> <ul style="list-style-type: none"> - Type and number of dwellings - The availability of on-street and other off street parking 	<p>) Parking has been provided at each unit in addition to a number of parking bays for visitors to the site and an adequate ratio to meet the anticipated needs of future residents</p> <p>) Additional street parking, albeit unformed, is readily available at the front of the property should visitor parking demand periodically exceed the on-site provision</p> <p>Having regard to the above, the Design Principle for this element is considered to be satisfied</p>

Design Principle – Vehicular Access	Comment
<p>P5 – Vehicular access provided so as to minimise the number of crossovers, to be safe in use and not detract from the streetscape</p>	<p>) The site is to be connected by a single crossover located adjacent to the eastern boundary of the lot</p> <p>) The overall length of the driveway requires that a passing point be provided so that there is the opportunity for vehicles to pass without having to reverse. There are clear sightlines so that vehicles entering and exiting the site will see the other approaching and can adjust their travel to ensure the safe movement of vehicles and pedestrians</p>

	Having regard to the above, the Design Principle for this element is considered to be satisfied by way of condition requiring the installation of the passing point
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The officer assessment and recommendation is that the layout and form of the proposed development is appropriate to the location and can be supported.

State Planning Policy 2.6 State Coastal Planning Policy:

The Shire completed a Coastal Vulnerability Study (CVS) in 2015 providing an assessment of the coastal hazard from erosion and inundation that will affect Derby's coastal areas in future planning periods to the year 2110. The CVS is prepared in accordance with the Department of Planning State Coastal Planning Policy No. 2.6. The Shire is currently undertaking a Coastal Hazard Risk Management and Adaption Plan (CHRMAP) to manage the potential hazards. The CHRMAP process involves stakeholder and community engagement to:

-) Consider coastal hazards and evaluate their likelihood and the consequence for specific assets;
-) Identify realistic and effective management and adaption responses to those risks; and
-) Prioritise potential management and adaption responses.

Whilst the CHRMAP remains in draft form at this time, it is appropriate that regard is had to the information that has been prepared to date when assessing this particular application.

The CHARMAP can be summarised as being the analysis of potential coastal hazard risk requires the consideration of likelihood and consequence on specific assets over the next 100 years. In regard to this particular application the following comments are provided:

Erosion:

The extent of likely short term storm erosion as a result of storm surge has been modelled to extend approximately 5m onto the Town Site Area shoreline. This impact would be contained almost entirely within the coastal reserve and tidal areas with no impact to existing assets or the subject site. In relation to long term coastal recession, the CVS outlined that erosion effects caused by sea level rise, *"would result in no translation and associated erosion, just inundation corresponding to the magnitude of sea level rise"*.

In light of the above, while the extent of coastal erosion has been mapped and the exposure of assets identified, **no assets are considered to be sensitive to coastal erosion impacts.**

The effect of the above is that whilst the site is in an area that has been identified as being in an area where a potential coastal hazard risk could occur within the next 100 years, the level of potential risk has been assessed as LOW which represents acceptable level of risk and there are no mitigating actions required to be undertaken in respect to this particular development.

Notwithstanding, State Planning Policy 2.6 recommends that where it is identified that there is the potential for coastal risk, irrespective of the level of risk, it should be disclosed to those likely to be affected. On consideration of approval for subdivision and/or development current and/or future lot owners should be made aware of the coastal hazard risk by providing the following notification on the certificate on title: ***VULNERABLE COASTAL AREA –This lot is located in an area likely to be subject to coastal erosion and/or inundation over the next 100 years.***

Inundation:

The potential for coastal inundation was considered to be a more realistic threat within the study area. The CVS outlined the inundation exposure of the entire study area under the present, 50-year and 100-year time scenarios.

Exhaustive modelling and analysis of the risk of inundation have been prepared, utilising the methodology as prescribed under State Planning Policy 2.6. The modelling has provided a suite of plans that map both the extent and depth of inundation expected to occur across a period of timelines and this mapping and modelling enables the Council to consider the potential impacts on development on a case by case basis.

The mapping shows that the subject site is not impacted by inundation and therefore there are no remedial or adaptive measures needed to be applied to the development to ameliorate the level of risk.

The only action recommended is that a notification be placed on the title for the reasons and in the form described in the preceding comments regarding coastal erosion.

On balance and having regard to the above matters, it is considered that suitable mitigating factors exist that would enable the Council to support the proposal in this instance.

State Planning Policy 3.7 Planning in Bush Fire Prone Areas:

The subject site is located in an area that is designated as a bushfire prone area and in accordance with State Planning Policy 3.7 (SPP3.7), there is a requirement that the Development Application is required be accompanied by a Bushfire Attack Level (BAL) assessment.

Bushfire Prone Areas are classified by the presence of and proximity to bushfire prone vegetation. The Department of Fire and Emergency Services formally identifies these areas on the State-wide Map of Bushfire Prone Areas.

A BAL assessment is a method of determining the level of bushfire risk of a proposed development and establishes the construction requirements to improve the protection of a building from a bushfire attack. The new buildings have been planned and located on the site in order to maximise the retention and benefits afforded by the existing vegetation and mature trees and this has meant that the new buildings will be located near areas of bushland.

Under the provisions of SPP 3.7 a BAL assessment is required to be undertaken to determine the level of bushfire threat and should the resulting BAL rating be determined above BAL Low then a Bushfire Management Plan (BMP) is required to be prepared that demonstrates that the bushfire threat is manageable.

The BAL assessment that has been undertaken which has classified as the site as a BAL FZ which has required the preparation of a BMP to demonstrate that management measures can be put in place to manage the risk and the document has now been referred to DEFES for endorsement. DEFES are the statutory body to whom BMP's are referred to for endorsement and they will provide advice to the local government on the acceptability or otherwise of the BMP.

SUMMARY:

There are several matters for Council to consider in their consideration of this application which are summarised as:

Land Use:

The use and development of the land for accommodation of staff employed by Juniper is not specifically provided for under the Reserve Purpose or Management Order (*Health Hospital and Allied Purposes*) and there is no clear Delegation to staff to determine this matter.

The development of housing to be used exclusively for the accommodation of staff employed in the provision of Health Care provided on the site is however considered to be consistent with the "Ancillary" use and is therefore recommended that Council may support the proposed land use and it is the recommendation of the administration that the form of the proposed development is an appropriate one in the location;

Coastal Inundation:

The proposed development has been assessed having regard to potential coastal risk as required under State Coastal Planning Policy 2.6. The Shire's Coastal Vulnerability Study and subsequent draft Coastal Hazard Risk Management Adaption plan has identified that;

-) The subject site is clear of inundation and does not require modification to address any identified risk;
-) The CVS and CHRMAP have identified Erosion effects caused by sea level rise, *“would result in no translation and associated erosion, just inundation corresponding to the magnitude of sea level rise”* and therefore does not require any planning response other than to consider the application of a Notice being placed on the title in accordance with the recommendations of SPP 3.7.

Bushfire Risk:

Under SPP 3.7 developments within identified Bushfire Prone areas are required to prepare a BAL assessment and if necessary a BMP. In this particular situation, the BAL assessment has been prepared and has been referred to DFES for endorsement.

The Council is requested to consider delegating authority to the Chief Executive Officer to issue Development Approval once the endorsement of DEFES has been received. The delegation is only on the basis that BMP is endorsed by DEFES demonstrating that the development can be undertaken in a manner that meets with SPP 3.7. Should DEFES not endorse the BMP or require substantial modifications to the plans submitted, then the matter would be refer back to Council to either refuse the application or approve an amended application.

The request to delegate this authority is to support the general progression of the application which had needed to be deferred for an extended period of time whilst greater clarity on the coastal risk was investigated and identified by the Council.

Recommendation:

Having regard to the matters set out above it is the recommendation of the administration that the Council may approve this application, subject to the conditions set out in the officer recommendation.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That Council, BY AN ABSOLUTE MAJORITY, DELEGATES approval to the Chief Executive Officer to issue Development Approval to Juniper for the construction of fifteen dwellings on a portion of Reserve 28992 Lot 500 Sutherland Street, Derby in accordance with the application dated 14 September 2016 subject to the following conditions:

- 1. A Bushfire Attack Level assessment is to be undertaken for the property in accordance with State Planning Policy 3.7 to determine the Bushfire Attack Level;**

- 2. Should the Bushfire Attack Level assessment required in Condition 1) above require a Bushfire Management Plan be prepared as per State Planning Policy 3.7, then that Plan will be referred by the Shire to the Department of Fire and Emergency Services for their review and endorsement;**
- 3. Upon the receipt of an endorsed Bushfire Management Plan if and as required under State Planning Policy 3.7, the Chief Executive Officer will issue the Development Approval subject to Conditions including but not limited to requiring the applicant to place a Notice on the Title to the Land in accordance with State Planning Policy 2.6 – *VULNERABLE COASTAL AREA –This lot is located in an area likely to be subject to coastal erosion and/or inundation over the next 100 years.***

10.1.4 COMMUNITY FUNDING SCHEME – 2017-18 GRANT ALLOCATIONS

Location/Address:	N/A
Name of Applicant:	Various
File Reference:	5135 – Donations and Support Requests – Community Grants
Author:	Sara Hennessy, Community Development Officer
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Sara Hennessy, Community Development Officer and Robert Verboon, Aquatic and Recreation Manager – members of Mary Island Fishing Club
Date of Report:	15 May 2017
Attachments:	<ul style="list-style-type: none"> 6. Community Grants Priority List 7. Development Grants Priority List 8. Application from Derby Emergency Services Cadets
Authority/Discretion:	Executive

SUMMARY:

This item seeks Council endorsement of the prioritised list of community and development grant applications (Attachments 1 and 2) for the 2017-18 financial year.

BACKGROUND:

Each year, Council considers an annual round of funding applications from not-for-profit community groups and provides grants valued between \$500 and \$10,000 (Community Grants) and \$10,000 and above (Development Grants).

In the 2017-18 funding round, 10 eligible Community Grant applications were received.

In the 2017-18 funding round there was only one development grant application, however there are two previous awarded development grants for recurrent funding still in progress. In 2017-18 Wildlife West Inc will receive the final \$5,000 instalment of a \$15,000 development grant awarded in the 2015-16 financial year and Derby Landcare Group will receive the second \$5,000 instalment of a \$15,000 development grant awarded in 2016-17 financial year.

STATUTORY ENVIRONMENT:

Nil

POLICY IMPLICATIONS:

AF34 Community Funding Scheme provides for three types of grants:

-) Quick Grants for amounts under \$500 which are available at any time of the year, dependent on available funding.
-) Community Grants Scheme for amounts between \$500 and \$10,000.
-) Development Grants for large scale projects seeking upwards of \$10,000 or recurrent funding.

1. Eligibility

1.1 *To be eligible for a grant an application must be:*

-) An amateur sporting group or association
-) Incorporated not-for-profit organisation
-) Non-Incorporated organisations seeking grant support through an incorporated, not-for-profit organisation (auspicing)
-) A cultural group/organisation
-) Voluntary services
-) Other incorporated associations that are based within the Shire of Derby West Kimberley.

4. Funding Criteria

- 4.1** Events, projects and services that provide a positive social return to the community in the areas of art and culture, education, sport and recreation, youth, seniors, health and welfare, tourism and 'not for profit' business development.
- 4.2** That services are accessible and affordable for the community.
- 4.3** That community cultural activities and services are encouraged to assist in building identity within the Shire.
- 4.4** That the grant money is distributed across a wide range of projects and services to ensure diversity of activities across the Shire and region.
- 4.5** Funds may be provided to community groups and organisations as an in-kind contribution towards venue hire for community events and services.
- 4.6** Projects and services which can demonstrate the involvement of volunteers.

- 4.7** Funds may be allocated for equipment purchase where there is evidence that such equipment is vital to the ongoing viability or the quality of the service/program offered.
- 4.8** Equity – The community should have a fair share of resources and equal opportunity, regardless of socio-economic status, gender, race, age, marital status, religion, political affiliation, social networks or ability.
- 4.9** To ensure disadvantaged groups enjoy equal access and special programs targeting their needs as requested.
- 4.10** Community Development – the performance of the Community Funding Scheme will be informed by Community Development principles and strategic planning.
- 4.11** Recipients must recognise and promote the Shire of Derby/West Kimberley's financial contribution to the event, project or services.
- 4.12** For Community and Development Grants, a detailed business plan may be requested by Council in certain circumstances.
- 4.13** Applicants for Development Grants are required to demonstrate that they have investigated funding opportunities from other funding providers.
- 4.14** In circumstances when grants are auspiced by an incorporated organisation on behalf of a non-incorporated body, the responsibility for ensuring compliance with grant conditions rests with the auspicing body.

In 2011 Council entered into a Memorandum of Understanding (MOU) with Energy Development Limited (EDL) to place funds into a Council Reserve Account. As per the MOU these funds are to be used to nurture community wellbeing in the West Kimberley through support to not-for-profit community groups or activities. Projects need to be consistent with the following principles –

- 1) Support social cohesion, inclusiveness, equal opportunity and the wellbeing of the community.
- 2) Support long-term community development.
- 3) Be genuinely community-driven initiatives.
- 4) Address community needs in the towns of Broome, Derby, Fitzroy Crossing, Halls Creek, Camballin and Looma located in the Shires of Broome, Derby/West Kimberley and Halls Creek.

FINANCIAL IMPLICATIONS:

The Reserve Account created under the MOU with EDL that is titled *Energy Development Limited West Kimberley Community Donation Account* allows for a maximum draw down limit of \$80,000 per year. The Shire of Derby/West Kimberley proposes to allocate \$20,000 of this draw down limit towards Quick Grant

application throughout the financial year and the remaining \$60,000 towards Community and Development Grant applications. The proposed list of supported projects draws on the EDL contribution.

The recommendation creates a priority listing of programmes and projects for Council consideration. They have been recommended on their merit and ability to achieve outcomes that are consistent with Council's priorities for community funding.

For the 2017-18 financial year the total recommended amount of funding to be allocated is:

-) \$44,600 – Community Grants (\$500 – \$10,000)
-) \$10,000 – Development Grants (Over \$10,000)
-) \$20,000 – Quick Grants (under \$500 to provide fee waivers, other services and cash support). NB \$5,000 of which is specifically allocated for Fitzroy Crossing applications.

These funds will be drawn from the EDL account.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
1: Community wellbeing A diverse, caring and safe community providing opportunities for all its people	1.4: An inclusive and participative community	1.4.2: Actively promote and assist community groups and clubs
1: Community wellbeing A diverse, caring and safe community providing opportunities for all its people	1.5: Sport, recreation and leisure opportunities that support community health and well-being	1.5.2: Promote sporting, recreation and leisure facilities and programs
1: Community wellbeing A diverse, caring and safe community providing opportunities for all its people	1.8: Access to learning, cultural and arts opportunities that support community growth and diversity	1.8.4: Promote and support community and cultural events

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Community groups rely on, and have an expectation that Council	Unlikely	Minor	Low	Continued support of community groups and

will support as per the Strategic Community Plan				sporting clubs
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CONSULTATION:

The 2017-18 funding round of Community Grants were promoted through local newspaper advertisements, notice boards, email broadcast, the Shire website, reminders in the Shire's regular news column and community radio announcements.

Community Development Officers and the Aquatic and Recreation Manager fielded queries and gave general advice and support to applicants during the application process.

Council's Community Grants Working Group, along with the Chief Executive Officer, and Aquatic and Recreation Manager assessed the applications and produced the priority listing.

COMMENT:

The 2017-18 Community Grant applicants represent a broad mix of community groups and volunteer organisations, some of which have received funding from Council in the past.

Applicants include:

- Boab Festival at Derby
- Derby Playgroup Inc.
- Camera Story
- West Kimberley/Derby Air Branch of the CWA
- Derby Dance Group
- Derby Play Group
- Marra Worra Worra
- Mary Island Fishing Club
- Mowanjum Artist Spirit of the Wandjina Aboriginal Corporation
- Derby 1st Scout Group
- Glass Jar Australia
- Wild Life West Inc

As per the attached table some of the organisations funding allocations are subject to the organisations meeting additional conditions such as signing a lease and providing additional quotes.

Feedback will be provided, in particular, to unsuccessful applicants on where to seek additional or more appropriate funding such as the Department of Local Government and Communities, Royalties for Regions, Community Chest Funding, Healthway and Lotterywest.

The Quick Grant allocation is \$20,000 with \$5,000 specifically allocated for Fitzroy Crossing applications. Council is requested to consider the priority listing (attachment 1) recommended by the Community Grants Working Group and to either endorse the list or provide an alternative priority listing that better meets the strategic needs of Council.

VOTING REQUIREMENT:

Simple majority

COMMUNITY GRANTS WORKING GROUP RECOMMENDATION:

That Council:

- 1) Endorses the attached priority listing (attachment 6) for allocation of community grants for projects requiring between \$500 and \$10,000 in the 2017-18 financial year.**
- 2) Subject to budget approval, allocated a total of \$44,600 for endorsed community grant projects in the 2017-18 financial year.**
- 3) Endorses the attached priority listing (attachment 7) for allocation of development grants for projects over \$10,000 and recurrent funding in the 2017-18 financial year.**
- 4) Subject to budget approval, allocate a total of \$10,000 for endorsed development grant projects in the 2017-18 financial year.**
- 5) Subject to budget approval, allocate \$20,000 for quick grants to provide fee waivers, other services and cash support throughout the 2017-18 financial year.**
- 6) Transfer \$74,600 from Reserve Account Energy Development Limited West Kimberley Community Donation Account for the purposes of supporting the community grant projects endorsed in attachment 1 and 2 and providing money for ongoing quick grant applications throughout 2017-18**

ADDITIONAL OFFICER RECOMMENDATION:

That Council:

- 7) Approve a Community Grant for the Derby Emergency Services Cadets for \$_____.**

Reason for addition / change. The grant application (Attachment 8 was received on time and complied with application guidelines but was not considered by the committee due to an administration oversight.

10.1.5 DERBY AIRPORT REDEVELOPMENT

Location/Address:	Shire of Derby West Kimberley
Name of Applicant:	NA
File Reference:	5286 – Grants – Transport – Airport Redevelopment
Author:	Stephen Gash – Chief Executive Officer
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	19 May 2017
Attachments:	Nil
Authority/Discretion:	Executive

SUMMARY:

1. To award a fixed price contract for building works under tender exemption resolution 005/2017, 23 February 2017.
2. To receive an update on the Derby Airport Redevelopment.

BACKGROUND:

The Shire of Derby/West Kimberley has been pursuing the redevelopment of the Derby Airport since 2014. Since this time, the Shire has invested significant resources to bring the project to a construction ready state, the delivery of which will see Regular Public Transport (RPT) capacity transferred to Derby Airport.

In 2016 the Shire was successful in receiving support through round 3 of the national stronger regions fund. The scope of work for the funded project is outlined below

Scope

The Scope of the Redevelopment is as per below:

Terminal development

This will see the construction of a new terminal using the gifted transportable buildings. The design has been structured to allow for an arrivals area, security screening and departures hall and has the capacity to hold up to 100 people at any one time. The site also has a kiosk area for light refreshments that will be contracted out to a business in the township, and facilities for hire car administration.

The design has been reviewed by the Shires aviation consultants to comply with the Office of Transport Security requirements. The parking area is included within the terminal and tourism air lounge component.

Tourism air lounge

The initial decision to investigate the viability of the construct of a dedicated Tourism Air Lounge (TAL) came on the back of a Councillor workshop on the strengths of Derby in a regional context. At this workshop a considerable list of tourism assets were noted as being more favourably accessed via Derby. An example of this is the Horizontal Falls located within Talbot Bay in the Buccaneer Archipelago. The tourism company “Horizontal Falls Sea Planes” currently utilises Derby Airport as a starting point for their 4 sea planes to take visitors to the attraction. Further investigation was undertaken into the viability of the tourism lounge and with consideration to the reduced cost of usage (when compared to the main terminal) and the opportunity to create a tourism hub at the Derby Airport, Councillors supported its inclusion in the scope.

The facility has been designed to cater for an arrival/check in area, briefing lounge and waiting area with tourism operator hot desks available for administrative purposes.

Apron upgrades

To support the RPT capacity, transfer apron upgrades are required and have accordingly been included within the scope. The new layout allows for 2 RPT aircraft to utilise the apron while not affecting the usability of the area for tourism planes, the Royal Flying Doctors Service (RFDS) or other general aviation purposes. Detailed design and specification of this scope is yet to be completed. This scope of works will be tendered and awarded separately to the remainder of the scope and contractor procurement will be through an open tender process.

Firefighting system upgrades

Tests undertaken on the current fire system at the time of scoping the RFDS new building (constructed in 2015) revealed the need to upgrade the sites overall firefighting system. Detailed design of this firefighting system has been completed.

Waste water treatment upgrades

During the detailed design process for the terminal the need to upgrade to a potable water treatment system was highlighted. Wastewater system upgrades During the

detailed design process for the terminal the need to upgrade the waste water system was highlighted.

Backup power generation upgrades

The current onsite generator was originally commissioned in the 1960s. Although still operational this asset is at the end of its useful life and requires replacing. The Shire commissioned Eneraque, who delivered the backup power solution for Perth Airport Corporation, to scope the sites requirements. The scoping delivered the requirement for a 140kVA standby rated generator of which the Shire has costed the supply and installation of this product.

General site preliminary works

To facilitate the delivery of the four core projects namely; the terminal, tourism air lounge, apron upgrades and hydrant system it is considered important to undertake general site preliminary works. These works are considered to not only improve the ability of the contractors to deliver the works but also will improve general site functionality into the future. The site preliminary works include: ☐ tie down of existing transportable buildings ☐ demolition of condemned airport house and termination of services upgrades to runway lighting.

Shire consideration of project and associated grant.

Follow significant works undertaken on the project the Shire considered the project and the associated grant at the February OCM.

The resolution below was passed by an absolute majority.

MINUTE NO. 005/2017

Moved: Cr P White

Seconded: Cr C Kloss

The Council, BY AN ABSOLUTE MAJORITY:

- 1. ENDORSE the \$8,033,802 Derby airport redevelopment project to be funded by \$5,099,163 National Stronger Regions grant and the balance from in kind contributions, third party grants and Shire loan funds;**
- 2. AUTHORISE the Chief Executive Officer and Shire President to affix the common seal to the funding agreement for \$5,099,163 grant for the Derby Airport Redevelopment Project;**
- 3. NOTE the inclusion of the airport development loan within the 2016-17 budget;**

- 4. *ENDORSE the Procurement and Governance Strategy, with the addition of a heads of agreement required to bind all parties to the grant obligations and outcomes and clearly defines the supply of goods and services by the Winun Ngari Aboriginal Corporation/ H&M Tracey partnership;***
- 5. *APPROVE the tender exemption for the contract building works components being the terminal, transport lounge, fire hydrants, and all service connections, on the basis of the unique nature of the partnership between Winun Ngari Aboriginal Corporation and H&M Tracey and it's the specific requirements for their delivery of goods and services under the grant, in accordance with regulation 11(2)f of the Local Government (Functions and General) Regulations 1996.***
- 6. *NOTE the fixed price estimate for the building works components submitted by H&M Tracey at \$4.4million excl GST and request a second round of Derby local sub-contractor request to quote on relevant components before contract finalisation;***
- 7. *NOTE that authorisation to call tenders for other components will be considered when the final building component cost is considered, following local sub-contractor request for quote process.***

CARRIED 7/0 BY AN ABSOLUTE MAJORITY

Following this resolution the Shire confirmed the undertakings of the parties in a heads of agreement between the Shire, Winun Ngari Aboriginal Corporation, and H&M Tracey to support the collaborative delivery model of the terminal component.

STATUTORY ENVIRONMENT:

This process has implications in relation to the following elements of the Local Government Act 1995:

3.57. Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.
- (2) Regulations may make provision about tenders.

POLICY IMPLICATIONS:

Items to be tendered by the Shire for the project will be subject to policies:

- AF1 Procurement of Goods and Services
- MG2 Consideration of Tenders

FINANCIAL IMPLICATIONS:

The Shire's required contribution to Derby Airport Redevelopment is \$2,931,637 which will leverage the \$5,099,165 National Stronger Regions Fund grant. The Shire contribution has been positioned as a maximum amount due to the projected in-kind contributions, third party labour from Winun Ngari Aboriginal Corporation (to be finalised), and third party airport grants towards lighting.

The budget implications will be across two financial years with long term financial planning modelling a loan draw down to support airport and port developments during 2016/17 to a maximum of \$7million. The \$2,931,637 underwriting contribution is considered consistent with the intent of the loan draw down, however once the in-kind and third party contributions to the grant are included it is likely the Shires loan draw down would be closer to \$2million.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
2: Sustainable natural and built environments that meet the needs of the community and support future growth	2.3: Reliable and safe transport infrastructure	2.3.4: Investigate and progress development opportunities for the Debry Airport
3: A strong local economy that is supported by a broad industry base with opportunities for business development and employment	3.4: Appropriate infrastructure that supports economic development	3.4.1: Promote release of serviced industrial, commercial and residential land 3.4.2: Advocate for improved provision of utility services across the region
4: Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.1: Effective governance and leadership	4.1.1: Provide leadership in balancing the needs of the community, government, industry and the environment 4.1.4: Ensure governance policies and procedures are in accordance with legislative requirements
4: Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.4: Financial sustainability and accountability for performance	4.4.3: Actively pursue alternative sources of income to fund the Shire's services and infrastructure

CONSULTATION:

Consultation on this matter has occurred with the Shire President and the ports project group. The Department of Local Government and Communities has been provided a copy of the Governance and Procurement Strategy for awareness of compliance considerations with the Local Government Act around tender exemption for specific components linked to the grant.

COMMENT:

Noting the Council's direction to maximise local contractor involvement, work has been undertaken to enhance the procurement process. Further to this, since the OCM, significant progress has been made on the overall redevelopment.

The overall project has been divided into 5 main areas which include:

Securing of transportable buildings – complete

This work was undertaken by a local Derby Business on time and within budget.

Demolition of airport infrastructure to enable development – partially complete

The initial demolition works was undertaken by a local contractor on time and budget without any variations requested. Additional demolition will be required later in the project.

Airport Terminal and tourism air lounge construction – construction ready

Since the February OCM detailed work has been undertaken to refine the project scope, reduce the risk for variations, articulate the training outcomes from the project, enhance the local procurement and be in a construction ready state. At an award value of \$4,539,935 this is within 4% of the projected project cost noted within the February OCM agenda item. This cost escalation is due to refinement of design to enhance the usability of the terminal and tourism air lounge, coordination of security and BCA protocols related to fire safety and is considered to be fair and reasonable.

The local sub-contractor component of this project has been quantified at **\$1,149,491.00 ex GST** with 9 Derby Based contractors being involved in the project in addition to H&M servicing the project from their Derby Office.

Authority is requested to execute the construction contract for this project in line with the tender exemption passed by the Shire Council at the February OCM.

Apron upgrades – tender ready

Following completion of detailed design including additional geotechnical work following the wet season the apron upgrade is ready to be tendered. The Quantity Surveyor estimates have the project being delivered within budget with a sufficient project contingency across the entire redevelopment to support the efficient delivery of the scope of works.

Authority is requested to let the tender for the delivery of the Apron upgrades.

Airside lighting upgrades – tender ready

Following completion of detailed design of airside lighting upgrades to both Derby and Fitzroy Crossing airports, the Shire has prepared a Tender package which is ready to be advertised. Federal Grant funding has been secured for this work to be supplemented by capital contributions by the Shire.

Authority is requested to let the tender for the delivery of the lighting upgrades.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That the Council:

- 1. Award contract in accordance with tender exemption resolved 005/2017 to H&M Tracey Construction for \$4,539,935.**
- 2. Authorise the Chief Executive Officer to execute the contract to H&M Tracey.**
- 3. Authorise the CEO to call for tender in relation to the airside lighting upgrades.**
- 4. Authorise the CEO to call for tenders for the apron upgrades at the Derby Airport.**

10.2 CORPORATE SERVICES

10.2.1 ACCOUNTS FOR PAYMENT – APRIL 2017

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	5110 – Accounts Payable
Author:	David Evans, Finance Officer – Expenditure
Responsible Officer:	Martin Cuthbert, Director Corporate Services
Disclosure of any Interest:	Nil
Date of Report:	12 May 2017
Attachments:	9. Cheque reconciliation and schedule of accounts
Authority/Discretion:	Information

SUMMARY:

For Council to note the list of accounts paid under the Chief Executive Officer's delegated authority during the month of April 2017.

BACKGROUND:

Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the Shire's municipal and trust funds. In accordance with regulation 13 of the *Local Government (Financial Management) Regulations 1996*, a list of accounts paid by the Chief Executive Office is to be provided to Council.

STATUTORY ENVIRONMENT:

Local Government (Financial Management) Regulations 1996

12. Payments from municipal fund or trust fund, restrictions on making

12(1) A payment may only be made from the municipal fund or a trust fund –

- (a) if the local government has delegated to the Chief Executive Officer 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.*

The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.

13. Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.

(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; and*
- (b) the amount of the payment; and*
- (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; and*
 - (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 subregulation (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:

Nil

FINANCIAL IMPLICATIONS:

All expenditure from the municipal fund was included in the annual budget as adopted or revised by Council.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.4: Financial sustainability and accountability for performance	4.4.4: Provide resources to support the Shire's operations and to meet planning, reporting and accountability requirements

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal and Compliance: In accordance with section 6.8 of the <i>Local Government Act 1995</i> , a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure is authorised in advance by an absolute majority of Council	Rare	Minor	Low	Expenditure to only be incurred in accordance with budget parameters, which have been structured on financial viability and sustainability principles

CONSULTATION:

Internal consultation within the corporate services department.

COMMENT:

All municipal fund expenditure included in the list of payments is incurred in accordance with the 2016-17 Annual Budget as adopted by Council at its meeting held 25 August 2016 (Minute No. 089/2016 refers) and subsequently revised or has been authorised in advance by the President or by resolution of Council as applicable.

The table below summarises the payments drawn on the funds during the month of April 2017. Lists detailing the payments made are appended as an attachment.

FUND	DETAILS	AMOUNT
Municipal Account		
EFT Payments	EP# 41784 – EP# 41907	\$300,809.97
Municipal Cheques	54612 – 54623	\$2,320.84
Direct Debits	Fees, Charges, Payroll and Payroll Liabilities	\$518,563.36
Trust Account		
Trust Cheques	–	\$Nil
Total		\$821,694.17

Creditor's outstanding as at 30 April 2017 totalled \$693,886.96.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That Council NOTES the Chief Executive Officer's list of accounts for April 2017 paid under Delegated Authority in accordance with regulation 13(1) of the *Local Government (Financial Management) Regulations 1996* forming Attachment 9 to Report 10.2.1, totalling \$821,694.17.

**10.2.2 STATEMENT OF FINANCIAL ACTIVITY FOR THE PERIOD ENDING 30
APRIL 2017**

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	5152 – Monthly Financial Reports
Author:	Gary O’Neil, Manager of Finance
Responsible Officer:	Martin Cuthbert, Director Corporate Services
Disclosure of any Interest:	Nil
Date of Report:	12 May 2017
Attachments:	10. Monthly Financial Report April 2017
Authority/Discretion:	Information

SUMMARY:

For Council to note the statement of financial activity for the period ended 30 April 2017 as required by the *Local Government Act 1995* ('the Act').

Pursuant to section 6.4 of the *Local Government Act 1995* and regulation 34(4) of the *Local Government (Financial Management) Regulations 1996* ('the Regulations'), a local government is to prepare, on a monthly basis, a statement of financial activity that reports on the Shire's financial performance in relation to its adopted/amended budget.

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the Shire's financial performance on a year to date basis for the period ending 30 April 2017.

BACKGROUND:

At its meeting held 25 August 2016 (Minute No. 089/2016 refers), Council adopted the annual budget for the 2016-17 financial year. The figures in this report are compared to the adopted budget.

It should be noted that these reports do not represent a projection to the end of year position or that there are funds surplus to requirements. It represents the year to date position to 30 April 2017 and results from a number of factors identified in the report. There are a number of factors that influence any variances, but it is predominately due to the timing of revenue and expenditure compared to the budget estimates. The notes to the statement of financial activity identify and provide commentary on the individual key material revenue and expenditure variances to date.

The following reports are for Council to note for the period ending 30 April 2017.

-) Statement of Financial Activity for the Month
-) Notes to and forming part of the Statement of Financial Activity:
 1. Net Current Asset Position
 2. Identification of Material Variances
 3. Schedule of Committed Assets and Restricted Assets
-) Statement of Financial Activity by Nature/Type
-) Schedule of Investments
-) Visual Graph displaying Net Current Asset Position
-) Rates Outstanding Report
-) Sundry Debtors Outstanding Report
-) Statement of Financial Position
-) Bank Reconciliation
-) Visual Graphs displaying Operating and Capital Income and Expenditure

Additionally, and pursuant to regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year. At its meeting of 25 August 2016, the Council adopted (Minute No. 089/2016 part G refers) the following material variance reporting threshold for the 2016-17 financial year:

In accordance with regulation 34(5) of the Local Government (Financial Management) Regulations 1996, and AASB 1031 Materiality, the level to be used in Statements of Financial Activity in 2016-17 for reporting material variances shall be 10%, with a minimum reportable value amount of \$30,000.

STATUTORY ENVIRONMENT:

Section 34 of the *Local Government (Financial Management) Regulations 1996* provides:

34. Financial activity statement required each month (Act s. 6.4)

- (1) *A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —*
- (a) *annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and*
 - (b) *budget estimates to the end of the month to which the statement relates; and*
 - (c) *actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and*
 - (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*

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

POLICY IMPLICATIONS:

AF14 – Significant Accounting Policies
 AF18 – Sundry Debtors Collection
 AF19 – Outstanding Rates Collection
 FM4 – Reserve Accounts
 FM7 – Cashflow Management
 FM8 – Investments

FINANCIAL IMPLICATIONS:

Expenditure for the period ending 30 April 2017 has been incurred in accordance with the 2016-17 budget parameters, which have been structured on financial viability and sustainability principles.

Details of any budget variation in excess of \$30,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good Governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.1: Effective Governance and Leadership	4.1.4: Ensure governance policies and procedures are in accordance with legislative requirements

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Finance: The Shire is exposed to a number of financial risks. Most of these risks exist in respect to recurrent revenue streams which are required to meet current service levels. Any reduction in these revenue stream into the future is likely to have an impact on the Shire's ability to meet service levels or asset renewal funding requirements, unless the Shire can replace this revenue or alternatively reduce costs.	Possible	Major	High	Risk assessments have been completed in relation to a number of higher level financial matters. The timely and accurate completion of monthly financial reporting enabling Council to make fully informed decisions is a control that assists in addressing this risk.
Reputation: The Shire currently has unspent grant funding, including Country Local Government Fund and various Road Project Funds. This funding is associated with capital works programs. If the Shire does not expend and acquit the funding in a timely manner the funding bodies may not approve carry-over into future years and the funding could potentially be lost. This could also damage future funding opportunities.	Possible	Moderate	Medium	Manage by monitoring progress towards project completion

CONSULTATION:

Internal consultation within the corporate services department.

In accordance with section 6.2 of the *Local Government Act 1995*, the annual budget was prepared having regard to the Strategic Community Plan, prepared under section 5.56 of the *Local Government Act 1995*.

COMMENT:

All expenditure included in the financial statements is incurred in accordance with Council's adopted budget or subsequent approval in advance.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That Council NOTES the Monthly Financial Management Report incorporating the Statement of Financial Activity for the period ending 30 April 2017 forming Attachment 10 to Report 10.2.3.

10.2.3 VARIATION TO 2016-17 BUDGET – CREATION OF AN UNSPENT GRANTS RESERVE

Location/Address:	N/A
Name of Applicant:	N/A
File Reference:	5151 Financial Reporting – Annual
Author:	Gary O’Neil, Manager of Finance
Responsible Officer:	Martin Cuthbert, Director Corporate Services
Disclosure of any Interest:	Nil
Date of Report:	15 May 2017
Attachments:	Nil
Authority/Discretion:	Legislative

SUMMARY:

This report recommends that any unspent grant and contribution funds that require further expenditure commitments in future financial years be transferred into a newly created cash backed reserve named “Unspent Grants and Contributions Reserve”. The purpose of this reserve will be to quarantine unspent grants and contributions from the brought forward budget surplus or deficit at the end of each financial year.

BACKGROUND:

The Shire has historically excluded unspent grant funds at the end of each financial year within its brought forward budget position by reducing the surplus/deficit position in the Rate Setting Statement and in the Notes to the Financial Statements – Information on Surplus Deficit Brought Forward. If the surplus was, for example, \$1M and unspent government grants was \$500,000, the surplus would be adjusted down to \$500,000.

For the 2015-16 Financial Year, the Shire’s auditors have required that this adjustment not be disclosed in the Rate Setting Statement or the Information on Surplus Deficit Brought Forward. The surplus recorded for 2015-16 of \$2,456,164 would historically have been adjusted down by \$1,824,558 for “Unspent Government Grants Recorded as Revenue” making the adjusted surplus \$631,606.

In addition, the Commonwealth Grants Commission has decided that an advance of the 2017-18 Federal Assistant Grant will be paid in June 2017 which will cause the Shire of Derby/West Kimberley to have an unrealistic and distorted surplus carried forward from 2016-17 to 2017-18.

STATUTORY ENVIRONMENT:

Section 6.11(1) of the *Local Government Act 1995* provides local governments with the power to set aside money for use for a purpose in a future financial year and as such to establish and maintain a reserve account for each such purpose.

6.11. Reserve accounts

- (1) *Subject to subsection (5), where a local government wishes to set aside money for use for a purpose in a future financial year, it is to establish and maintain a reserve account for each such purpose.*
- (2) *Subject to subsection (3), before a local government —*
 - (a) *changes* the purpose of a reserve account; or*
 - (b) *uses* the money in a reserve account for another purpose, it must give one month's local public notice of the proposed change of purpose or proposed use. **

Absolute majority required.

- (3) *A local government is not required to give local public notice under subsection (2) —*
 - (a) *where the change of purpose or of proposed use of money has been disclosed in the annual budget of the local government for that financial year; or*
 - (b) *in such other circumstances as are prescribed.*
- (4) *A change of purpose of, or use of money in, a reserve account is to be disclosed in the annual financial report for the year in which the change occurs.*
- (5) *Regulations may prescribe the circumstances and the manner in which a local government may set aside money for use for a purpose in a future financial year without the requirement to establish and maintain a reserve account.*

The *Local Government (Financial Management) Regulations 1996* state:

17. Reserve accounts, title of etc.

- (1) *A reserve account is to have a title that clearly identifies the purpose for which the money in the account is set aside.*
- (2) *In the accounts, annual budget and financial reports of the local government a reserve account is to be referred to —*
 - (a) *in the information required by regulations 27(g) and 38, by its full title; and*
 - (b) *otherwise, by its full title or by an abbreviation of that title.*

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Unspent grants and contributions will again not be included in the brought forward budget position and will be quarantined in a cash backed reserve. This will improve comparative information from year to year and mean that the surplus brought forward is a more meaningful measurement of performance in regards to actual income and expenditure against that provided in the budget.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good Governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.4: Financial sustainability and accountability for performance	4.4.4: Provide resources to support the Shire's operations and to meet planning, reporting and accountability requirements

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Finance: The Shire is exposed to a number of financial risks. The Shire currently has unspent grant funding, including Country Local Government Fund and various Road Project Funds. This funding is associated with capital works programs. If the Shire does not expend and acquit the funding in a timely manner the funding bodies may not approve carry-over into future years and the funding could potentially be lost. This could also damage future funding opportunities.	Possible	Major	High	Manage by monitoring progress towards project completion. The timely and accurate completion of monthly financial reporting enabling Council to make fully informed decisions is a control that assists in addressing this risk.

CONSULTATION:

Executive Manager Corporate Services.

COMMENT:

The practice of including unspent grant funds at the end of each financial year within the brought forward budget position is acceptable, however the surplus or deficit can be significantly distorted when government grants are received later in a financial year for works that will occur in the next financial year. If staff miss including corresponding expenditure in the following year's budget the grant funds are inadvertently absorbed into the surplus and incorrectly subsidise rates. A more financially prudent practice would be to transfer unspent grant funds into a specific reserve so as these funds can be quarantined for the purpose for which they were intended.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That Council, BY AN ABSOLUTE MAJORITY, CREATES an Unspent Grants and Contributions Reserve, the purpose of which will be to quarantine unspent grant and contribution funds at the end of each financial year.

10.2.4 RATES EXEMPTION APPLICATION

Location/Address:	Lease I150295 on Lot 16 on Deposited Plan 26300 – Kingfisher Island
Name of Applicant:	RFF on behalf of Kingfisher Island Resort Pty Ltd
File Reference:	A600230
Author:	Martin Cuthbert, Director Corporate Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	13 April 2017
Attachments:	11. Correspondence from RFF supporting application
Authority/Discretion:	Administrative

SUMMARY:

For Council to consider a request for a rate exemption on Lease I150295 on Lot 16 on Deposited Plan 26300 comprising a portion of Kingfisher Island by the Kingfisher Island Resort Pty Ltd under section 6.26(2)(d)(g) and section 6.53 of the *Local Government Act 1995*.

BACKGROUND:

A request for a rate exemption has been received from the Kingfisher Island Resort Pty Ltd for their leased portion of land on Kingfisher Island located in the Buccaneer Archipelago.

The lease of portion of Kingfisher Island was previously held by Dynasty Pty Ltd. At its meeting held 25 March 1998 Council resolved (Minute No. 68/98 refers) to apply a concession on the rates and penalties levied on Kingfisher Island until such time that construction of a resort was commenced. The concession granted was to apply the yearly minimum rates to the property.

The concession to Dynasty Pty Ltd ceased for the 2013-14 financial year after they failed to re-apply for the concession and since that time have been charged full rates.

STATUTORY ENVIRONMENT:

There are two sections of the Local Government Act 1995 that apply.

6.26. Rateable land

(1) Except as provided in this section all land within a district is rateable land.

(2) The following land is not rateable land —

(a) land which is the property of the Crown and —

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

- (3) *If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that co-operative or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.*
- (4) *The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.*
- (5) *Notice of any declaration made under subsection (4) is to be published in the Gazette.*
- (6) *Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.*

6.53. Land becoming or ceasing to be rateable land

Where during a financial year —

- (a) *land that was not rateable becomes rateable land; or*
- (b) *rateable land becomes land that is not liable to rates, the owner of that land —*
- (c) *is liable for rates proportionate to the portion of the year during which the land is rateable land; or*
- (d) *is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land,*
as the case requires.

POLICY IMPLICATIONS:

AF20 – Rating Administration Policy, Determining Non Rateable Land.

FINANCIAL IMPLICATIONS:

If Council resolved to provide for a rates exemption, the 2017-18 rates income of approximately \$16,000 would be forfeited, indexed by annual rate increases would be forfeited until such time that any construction is commenced.

The Emergency Services Levy of \$71.00 is not exempt and would still be payable as it is not classified as Rates under the *Local Government Act 1995*.

If Council resolves to grant a rates concession the minimum rate charge each year would be applied which is \$940 for the 2016-17 financial year.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.4: Financial sustainability and accountability for performance	4.4.5: Develop, maintain and monitor rating and property strategies

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Finance: If Council does not approve the application they may be required to defend its decision if the matter were to be appealed by the applicant to the State Administrative Tribunal and that legal costs may be incurred as a result.	Possible	Minor	Medium	Accept risk and accept officer recommendation

CONSULTATION:

There has been no specific consultation undertaken in respect to this matter.

COMMENT:

The island was originally leased to Dynasty Pty Ltd who were granted the lease in 1996 and were given a rates concession by Council in 1998. Kingfisher Island Resort Pty Ltd purchased the lease from Dynasty in December 2015 and are now seeking a rates exemption on the lease.

Kingfisher Island Resort Pty Ltd have a development approval to construct short-stay accommodation on the island, but have not yet applied to begin construction on the island. Kingfisher Island previously had a rate concession from 1998 to 2014, to previous lessee Dynasty who never reapplied for rate concession when it came due in 2015.

The application from RFF is requesting a rate exemption on the property for the following reasons:

Local Government Act 1995

The functions of Local Governments, including the imposition rates and services charges is provided within the provisions of the Local Government Act 1995 (LG Act).

Clause 6.26 within the LG Act outlines the provisions relating to Rateable Land. The relevant sections of Clause 6.26 as they relate to this request are outlined below (emphasis added):

6.26 Rateable Land

- 1) *Except as provided in this section all land within a district is rateable land.*
- 2) ***The following land is not rateable land –***
 - a) ***Land which is the property of the Crown and –***
 - i. *is being used or held for a public purpose; or*
 - ii. ***is unoccupied, except –***
 - (I) *where any person is, under paragraph (e) of the definition of owner in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the Mining Act 1978 in respect of land the area of which does not exceed 10 ha or a miscellaneous licence held under that Act; or*
 - (II) *where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of owner in section 1.4 occupies or makes use of the land;*

In summary of the above, if land is the property of the Crown and is unoccupied it shall be exempt from rates, except where the 'owner' holds the land under circumstances under the Mining Act 1978 or where the 'owner' is in unauthorised occupation of Crown land and/ or makes use of the land. The subject site is the property of the Crown and unoccupied.

The above statement “2) *the following land is not rateable land a) Land which is the property of the Crown and ii) is unoccupied, except – (i) where any person is, under paragraph (e) of the definition of owner in section 1.4*” does not mention the definition of section 1.4.

Section 1.4 of the *Local Government Act 1995* states:

a. Terms used

In this Act, unless the contrary intention appears –

Owner, where used in relation to land –

- (a) *means a person who is in possession as –*
- (ii) *a Crown lessee or a lessee or tenant under a lease or tenancy agreement of the land which in the hands of the lessor is not rateable land under this Act, but which in the hands of the lessee or tenant is by reason of the lease or tenancy rateable land under this or another Act for the purposes of this Act.*

Whenever Crown land is leased to an individual or company the land is deemed rateable and a valuation is applied by the Valuer General, Landgate who operates under the *Valuation of Land Act 1978*.

The application also states that the previous lease holder was granted a rates exemption over the subject site, and that the subject site is undeveloped, unoccupied and located approximately 141km from the Derby town-site and has no reliance on Shire services.

The subject site has never been considered exempt from rates under the *Local Government Act 1995* or by Council, the previous lease holder was granted a rates concession and paid the minimum rate set by the Council each year when adopting the annual budget.

Kingfisher Island does have some reliance on Shire services, however it is agreed that they are minor and that a concession to a minimum rate can be justified.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That Council, BY AN ABSOLUTE MAJORITY:

- 1. In accordance with section 6.26 of the *Local Government Act 1995*, NOT ACCEPT the request from Kingfisher Island Resort Pty Ltd for a rates exemption on Lease I150295 on Lot 16 on Deposited Plan 26300 comprising a portion of Kingfisher Island, and covered by Assessment 600230 as the land is not considered exempt under section 1.4(a)(ii) of the *Local Government Act 1995*.**
- 2. GRANT a rate concession on rate assessment A600230 and rate at the minimum rate for the current financial year and for future financial years until such time that construction is commenced, subject to Kingfisher Island Resort Pty Ltd providing a statutory declaration confirming the use of the land and such statutory declaration is renewed annually to confirm the continued stated use of the land.**

10.2.5 RATES CONCESSION APPLICATION

Location/Address:	Loc 13/300 Omalinde Location LR3159-297
Name of Applicant:	Bulgundi Aboriginal Corporation
File Reference:	A900616
Author:	Martin Cuthbert, Director Corporate Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	13 April 2017
Attachments:	12. Correspondence from Bulgundi Aboriginal Corporation 13. Location Plans
Authority/Discretion:	Administrative

SUMMARY:

For Council to consider a request for a rate exemption on Location 13/Lot 300 Omalinde Location LR3159-297 by the Bulgundi Aboriginal Corporation under section 6.26 of the *Local Government Act 1995*.

BACKGROUND:

Council has received a rates objection from Many Rivers Microfinance, acting for Bulgundi Aboriginal Corporation, requesting a rating exemption on property Location 13/Lot 300 Omalinde Location LR3159-297 for current and future financial years, on the grounds that there is an error in the rate records as the property is not rateable land. The property is used exclusively for charitable purposes and therefore not rateable land under section 6.26(2)(g) of the *Local Government Act 1995*.

STATUTORY ENVIRONMENT:**6.26. Rateable land**

(1) *Except as provided in this section all land within a district is rateable land.*

(2) *The following land is not rateable land —*

(a) *land which is the property of the Crown and —*

(i) *is being used or held for a public purpose; or*

(ii) *is unoccupied, except —*

(iii) *where any person is, under paragraph (e) of the definition of owner in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the Mining Act 1978 in respect of land*

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

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

Where an application is refused, the applicant may object under section 6.76 of the *Local Government Act 1995* to the rate record, on the basis that the land or part of the land was not rateable land. The applicant has the right to appeal a decision made under section 6.76 to the State Administrative Tribunal.

POLICY IMPLICATIONS:

AF19 – Outstanding Rates Collection Policy

FINANCIAL IMPLICATIONS:

The Shire will write off a total of \$14,995.73 which is made up of \$11,945.39 arrear rates and \$3,050.34 current rates. There is also legal charges of \$1,740.59 from previous attempts to recover the rates, and interest of \$5,681.37.

This amount will be an unbudgeted cost for the 2016-17 financial year and will be a loss in revenue for future years if a rate exemption is granted.

The Emergency Services Levy of \$71.00 per year is not exempt and would still be payable as it is not classified as Rates under the *Local Government Act 1995*. Bulgundi Aboriginal Corporation will still be required to pay the State ESL charge, interest and penalties of \$329.30.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.4: Financial sustainability and accountability for performance	4.4.5: Develop, maintain and monitor rating and property strategies

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Finance: If Council does not approve the application they may be required to defend its decision if the matter were to be appealed by the applicant to the State Administrative Tribunal and that legal costs may be incurred as a result.	Possible	Minor	Medium	Accept officer recommendation

CONSULTATION:

There has been no specific consultation undertaken in respect to this matter.

COMMENT:

The Bulgundi Aboriginal Corporation was granted a lease from the Crown in 2011, and as shown in the attached General Report submitted by the Corporation to the Office of the Registrar of Indigenous Corporations, no income has been derived from the property during that time.

The property is currently vacant with no persons residing there or commercial activity of any nature. It is the future intention of the Board to find interested parties to invest in the land to generate an income which would allow the members to return to the land.

As per the Western Australian Local Government Association's best practice guidelines publication, Bulgundi Aboriginal Corporation meets the criteria of "charitable purposes" under the *Local Government Act 1995*. This interpretation is also well established in case law and the State Administrative Tribunal for charitable organisations, therefore it is recommended that Council grant a rating exemption to Bulgundi Aboriginal Corporation based on advice, case law and State Administrative Tribunal precedent.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That Council, BY AN ABSOLUTE MAJORITY,

- 4. APPROVE the write off current rates, arrear rates and interest charges on Location 13/Lot 300 Omalinde Location LR3159-297, covered by Assessment 900616;**
- 5. GRANT a rate exemption on Location 13/Lot 300 Omalinde Location LR3159-297, covered by Assessment 900616, and amend the Rate Book to record that pursuant to section 6.26(2)(g) of the *Local Government Act 1995*, the property leased by Bulgundi Aboriginal Corporation be non-rateable effective from 1 July 2012.**

10.2.6 RUBBISH CHARGES – INTEREST WRITE OFF

Location/Address:	Loc 107 Great Northern Highway – Mindi Rardi Community Loc 49 Mission Road – Junjuwa Community 65 Stanley Street, Derby – Djimung Gnuda Aboriginal Corporation
Name of Applicant:	Housing Authority – Aboriginal Housing Services
File Reference:	A600258, A300620 and A107906
Author:	Martin Cuthbert, Director Corporate Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	9 May 2017
Attachments:	Nil
Authority/Discretion:	Administrative

SUMMARY:

For Council to consider a request to waive the payment of interest charges for three communities totalling \$4,032.72.

BACKGROUND:

A request for a waiver of interest arrears has been received from Housing Authority for outstanding monies in various Aboriginal Communities that Housing Authority have recently accepted the management of in relation to payment of fees and charges. In return, the Shire will receive full payment of all outstanding waste charges in the Communities totalling \$66,181.22.

STATUTORY ENVIRONMENT:**6.12 Power to defer, grant discounts, waive or write off debts**

- (1) *Subject to subsection (2) and any other written law, a local government may*
- - (a) *when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) *waive or grant concessions in relation to any amount of money; or*
 - (c) *write off any amount of money, which is owed to the local government.*

Which is owed to the local government.

** Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*
- (4) *Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.*

6.13 Interest on money owing to local governments

- (1) *Subject to any other written law, a local government may resolve* to require a person to pay interest at the rate set in its annual budget on any amount of money (other than rates and service charges) which —*
 - (a) that person owes to the local government; and*
 - (b) has been owed for the period of time referred to in subsection (6).*

** Absolute majority required.*

- (2) *A resolution under subsection (1) is to be included in the annual budget.*
- (3) *The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.*
- (4) *Where a local government imposes interest under subsection (1) on any outstanding amount of money the local government is not to also impose an additional charge in relation to that amount.*
- (5) *Accrued interest is, for the purpose of its recovery, taken to form part of the money owed to the local government on which it is charged.*
- (6) *A local government is not to impose interest on any amount of money under subsection (1) until the money has been owed to the local government for the period of time set by the local government in its annual budget (not being less than 35 days) after the date which is stated on the relevant account for payment as being the date the account was issued.*
- (7) *Regulations may provide for the method of calculation of interest.*

6.44. Liability for rates or service charges

- (1) *The owner for the time being of land on which a rate or service charge has been imposed is liable to pay the rate or service charge to the local government.*
- (2) *If there are 2 or more owners of the land they are jointly and severally liable to pay the rate or service charge, as the case requires.*

6.54 Term used: service charge

In sections 6.55, 6.60 and 6.62 —

service charge does not include a service charge imposed under section 6.38(1)(b) on the occupier of land who is not the owner of that land.

6.55 Recovery of rates and service charges

- (1) *Subject to subsection (2) and the Rates and Charges (Rebates and Deferments) Act 1992 rates and service charges on land are recoverable by a local government from—*
- (i) *the owner at the time of the compilation of the rate record; or*
 - (ii) *a person who whilst the rates or service charges are unpaid becomes the owner of the land.*
- (2) *A person who, by virtue of an Act relating to bankruptcy or insolvency or to the winding up of companies, has become the owner of land in the capacity of a trustee or liquidator, is not on that account personally liable to pay, out of the person's own money, rates or service charges which are already due on, or become due on that land while that person is the owner in that capacity.*

6.56 Rates or service charges recoverable in court

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.*
- (2) *Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.*

POLICY IMPLICATIONS:

AF19 – Outstanding Rates Collection Policy

FINANCIAL IMPLICATIONS:

Waiving the interest repayment would result in lost penalties of \$4,032.72. Accepting this arrangement would result in full payment of other arrears resulting in Council recouping \$66,181.22.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.4: Financial sustainability and accountability for performance	4.4.5: Develop, maintain and monitor rating and property strategies

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal and Compliance: If Council does not approve the application they may be required to defend its decision if the matter were to be appealed by the applicant to the State Administrative Tribunal and that legal costs may be incurred as a result.	Possible	Minor	Medium	Accept risk and accept officer recommendation

CONSULTATION:

Consultation has been undertaken with Geoff Alger, Manager Aboriginal Housing Central, Aboriginal Housing Services, Housing Authority WA.

COMMENT:

Housing Authority have accepted responsibility for outstanding and future waste charges on several Aboriginal Communities.

With the ongoing management of the Communities through Housing Authority, the Shire's annual fees and charges associated with these Communities will be paid on time in the future, on the condition Council agree to waive the interest arrears currently owing against the assessments.

Housing Authority have already paid \$65,108.73 in waste arrear charges over three Communities.

Housing Authority, Aboriginal Housing Services, now make payment for Karmulinunga A107122, Bungardi A300570, DarInguaya A300605, Djimung Gnuda A107906, Junjuwa A300620, Kurnangki A600285, Loanbun A600292 and Mindi Rardi A600258.

VOTING REQUIREMENT:

Absolute majority

OFFICER RECOMMENDATION:

That Council, BY AN ABSOLUTE MAJORITY, WAIVE the requirement for the payment of outstanding interest charges on Assessments 600258, 300620 and 107906 totalling \$4,032.72.

10.3 TECHNICAL SERVICES

Nil

10.4 DEVELOPMENT SERVICES

10.4.1 WAIVING OF FEES IN RELATION TO THE DEMOLITION AND CLEARING OF LOT 2, NO 6 NEVILLE STREET, DERBY

Location/Address:	Lot 2, No 6 Neville Street, Derby
Name of Applicant:	Kimberley Community Legal Services on behalf of Ms Loretta Councillor
File Reference:	A106880
Author:	Wayne Neate – Director Technical and Development Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	6 May 2017
Attachments:	14. Correspondence from Kimberley Legal Services
Authority/Discretion:	Legislative

SUMMARY:

This report recommends that Council consider waiving the applicable fees that would be applied for the demolition and clean-up of the property located on Lot 2, No. 6 Neville Street, Derby.

BACKGROUND:

On 4 May 2016 a fire engulfed the residence located at Lot 2, No 6 Neville Street, Derby causing irreparable damage to the building and structure. The property is jointly owned by Ms Councillor and Keystart loans under a 50/50 dual ownership arrangement.

Not long after the fire, Ms Councillor developed serious health issues that required her to be in Perth for some time and not returning to Derby until late 2016. During that period samples of the buildings eave linings were collected by Council Officers and sent away for analysis which confirmed the presence of asbestos.

Officers of Council then began to correspond with both Ms Councillor and Keystart to bring to their attention the serious and dangerous state of the building and that the site has been confirmed to contain asbestos.

Ms Councillor and Keystart have begun investigations into demolition and cleaning the property up which has culminated in the approach to Council to waive the fees due to financial hardship. It is understood that the property was not insured which has been confirmed by Ms Councillor.

STATUTORY ENVIRONMENT:

Local Government Act 1995

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

(1) *Subject to subsection (2) and any other written law, a local government may:*

(b) *wave or grant concessions in relation to any amount of money;*

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

In the letter the fees requested to be waived are as follows

1. Demolition Permit fee – \$96.00
2. Charges for the disposal of non-contaminated waste at \$45/cubic metre – estimated at 30 cubic meters – \$1,350
3. Charges for the disposal of contaminated waste at \$200/load or part there of – estimated at 6 loads – \$1,200 (this includes topsoil which will need to be removed due to potential contamination)
4. Any other fees and charges applicable – None at this stage

Council should note that there is one fee in the request that cannot be waived due to the Shire being the collection agent only.

1. Building Services Levy – \$61.65

It must also be noted that this property is in rate arrears to the amount \$15,911.61.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.1: Effective governance and leadership.	4.1.1: provide leadership in balancing the needs of the community, government, industry and the environment

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Environment:	Likely	Major	High	The property needs to be remediated as soon as possible to prevent any further contamination
Finance:	Possible	Moderate	Medium	Potentially a larger debt could occur if fees not waived
Legal and Compliance:	Unlikely	Moderate	Medium	Asbestos contamination is a serious breach of legislation and needs to be remediated ASAP.

CONSULTATION:

Correspondence has occurred with both Ms Councillor and Keystart.

COMMENT:

Officers of Council having been working with Ms Councillor and Keystart to try and get this issue resolved as soon as practicable being aware of other extenuating circumstances regarding the health of Ms Councillor.

The ultimate aim of Council is to have the block cleared of the asbestos risk and the unsafe building. If Council was to undertake its standard procedure of declaring the building unfit and then serving a notice for demolition and the subsequent demolition of the building it would cost Council in the vicinity of \$35,000 plus. Potentially Council may not see any of those funds for some time as the property is already in rates arrears.

If the result of a clean property is the result Council is trying to achieve then waiving fees totalling approximately \$2,700 versus incurring an expense of \$35,000 is a very positive outcome.

It will be the officer's recommendation to support the waiving of the fees.

VOTING REQUIREMENT:

Simple majority

OFFICER RECOMMENDATION:

That Council WAIVE the applicable fees (that it is able to) in relation to the demolition and disposal of the residence and contaminated soil at Lot 2, No 6 Neville Street, Derby.

11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12.0 NEW BUSINESS OF AN URGENT NATURE

13.0 MATTERS FOR WHICH THE MEETING MAY BE CLOSED (CONFIDENTIAL MATTERS)

14.0 CLOSURE

14.1 DATE OF NEXT MEETING

The next ordinary meeting of Council will be held Thursday, 29 June 2017 at the Crossing Inn, Fitzroy Crossing.

14.2 CLOSURE OF MEETING

The Presiding Member closed the meeting at pm.

These minutes were confirmed at a meeting on

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Signed:

Presiding Person at the meeting at which these minutes were confirmed.

Date: