



SHIRE OF DERBY/WEST KIMBERLEY

ORDINARY MEETING OF COUNCIL

**HELD AT THE CROSSING INN
FITZROY CROSSING
THURSDAY, 29 JUNE 2017**

MINUTES

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SHIRE OF DERBY/WEST KIMBERLEY

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ORDINARY MEETING OF COUNCIL

MINUTES

1.0 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS

The meeting was opened at 1.03pm by Shire President, Cr Elsia Archer OAM, JP.

2.0 RECORD OF ATTENDANCE

2.1 ATTENDANCE

ELECTED MEMBERS:

Cr Elsia Archer OAM, JP	Shire President, Presiding Member
Cr Paul White	Deputy Shire President
Cr Iris Prouse	Councillor
Cr Andrew Twaddle	Councillor
Cr P McCumstie	Councillor
Cr Chris Kloss	Councillor
Cr Annette Kogolo	Councillor
Cr Peter Coggins	Councillor

STAFF:

Mr Stephen Gash	Chief Executive Officer
Mr Martin Cuthbert	Director Corporate and Community Services
Mr Noel Myers	Manager Planning Services

VISITORS:

Nil

GALLERY:

Nil

2.2 APOLOGIES

Mr Wayne Neate	Director Technical and Development Services
Mr Ross Sullivan	Manager Administration and Governance

2.3 APPROVED LEAVE OF ABSENCE

Nil

2.4 ABSENT

Nil

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

Cr Peter Coggins, Councillor, declared a financial interest in item 10.1.2.

2.5.2 DECLARATIONS OF PROXIMITY INTERESTS

Cr Peter McCumstie, Councillor, declared a proximity interest in item 10.1.2.

2.5.3 DECLARATIONS OF IMPARTIALITY INTERESTS

Nil

3.0 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

4.0 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS

Nil

5.0 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

6.0 PUBLIC TIME

6.1 PUBLIC QUESTION TIME

Nil

6.2 PUBLIC STATEMENTS

Nil

6.3 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS

Nil

7.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION

Nil

8.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

COUNCIL DECISION AND OFFICER RECOMMENDATION:

MINUTE NO. 064/2017

Moved: Cr P McCumstie

Seconded: Cr A Kogolo

That the minutes of the ordinary meeting of the Shire of Derby/West Kimberley held at the Council Chambers, Clarendon Street, Derby, on 25 May 2017 be confirmed.

CARRIED 8/0

9.0 RECOMMENDATIONS AND REPORTS OF COMMITTEES

9.1 DELEGATIONS OF AUTHORITY – REVIEW

Location/Address:	N/A
Name of Applicant:	Shire of Derby/West Kimberley
File Reference:	0120 – Compliance Registers
Author:	Martin Cuthbert, Director Corporate Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	30 May 2017
Attachments:	<ol style="list-style-type: none"> 1. Revised Register of Delegated Authority 2. Current Register of Delegated Authority
Authority/Discretion:	Executive

SUMMARY:

For Council to meet its statutory compliance requirement to review the delegation of specified powers and duties to the Chief Executive Officer and other employees in accordance with the provisions of the *Local Government Act 1995* (the Act).

BACKGROUND:

In accordance with sections 5.16 and 5.42 of the Act, a local government can delegate certain functions to a committee of Council, or to the Chief Executive Officer. A variety of other legislation also permits the delegations of functions to the Chief Executive Officer, as well as other officers. The Chief Executive Officer's statutory powers and duties under the Act and any powers or duties delegated by the Council can be further delegated by the Chief Executive Officer to other officers of Council. Delegation details must be recorded in a register, which is available for inspection by the public.

Sections 5.18 and 5.46 of the Local Government Act 1995 require that at least once every financial year, delegations are to be reviewed by the delegator. The Council last reviewed its delegations on 28 April 2016 (Minute No. 044/2016 refers).

STATUTORY ENVIRONMENT:

Local Government Act 1995

5.16. Delegation of some powers and duties to certain committees

- (1) *Under and subject to section 5.17, a local government may delegate* to a committee any of its powers and duties other than this power of delegation.*

* Absolute majority required.

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *Without limiting the application of sections 58 and 59 of the Interpretation Act 1984 –*
 - (a) *a delegation made under this section has effect for the period of time specified in the delegation or if no period has been specified, indefinitely; and*
 - (b) *any decision to amend or revoke a delegation under this section is to be by an absolute majority.*
- (4) *Nothing in this section is to be read as preventing a local government from performing any of its functions by acting through another person.*

5.17. Limits on delegation of powers and duties to certain committees

- (1) *A local government can delegate –*
 - (a) *to a committee comprising council members only, any of the council's powers or duties under this Act except –*
 - (i) *any power or duty that requires a decision of an absolute majority or a 75% majority of the local government; and*
 - (ii) *any other power or duty that is prescribed;*

And

- (b) *to a committee comprising council members and employees, any of the local government's powers or duties that can be delegated to the CEO under Division 4; and*
 - (c) *to a committee referred to in section 5.9(2)(c), (d) or (e), any of the local government's powers or duties that are necessary or convenient for the proper management of –*
 - (i) *the local government's property; or*
 - (ii) *an event in which the local government is involved.*
- (2) *A local government cannot delegate any of its powers or duties to a committee referred to in section 5.9(2)(f).*

5.18. Register of delegations to committees

A local government is to keep a register of the delegations made under this Division and review the delegations at least once every financial year.

5.42. Delegation of some powers and duties to CEO

- (1) *A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under*

- (a) *this Act other than those referred to in section 5.43.*
- (b) *the Planning and Development Act 2005 section 214(2), (3) or (5)*

** Absolute majority required.*

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

5.43. Limits on delegations to CEO

A local government cannot delegate to a CEO any of the following powers or duties —

- (a) *any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) *accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) *appointing an auditor;*
- (d) *acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;*
- (e) *any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;*
- (f) *borrowing money on behalf of the local government;*
- (g) *hearing or determining an objection of a kind referred to in section 9.5;*
- (ha) *the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;*
- (h) *any power or duty that requires the approval of the Minister or the Governor;*
- (i) *such other powers or duties as may be prescribed.*

5.44. CEO may delegate powers and duties to other employees

- (1) *A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —*
 - (a) *The CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and*

(b) the exercise of that power or the discharge of that duty by the CEO's delegate,

are subject to any conditions imposed by the local government on its delegation to the CEO.

(4) Subsection (3) (b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.

(5) In subsections (3) and (4) — conditions includes qualifications, limitations or exceptions.

5.45. Other matters relevant to delegations under this Division

(1) Without limiting the application of sections 58 and 59 of the Interpretation Act 1984 —

(a) A delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and

(b) Any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.

(2) Nothing in this Division is to be read as preventing —

(a) A local government from performing any of its functions by acting through a person other than the CEO; or

(b) A CEO from performing any of his or her functions by acting through another person.

5.46. Register of, and records relevant to, delegations to CEO and employees

(1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.

(2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.

(3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Regulation 19 of the Local Government (Administration) Regulations relates to records to be kept of delegations exercised.

19. Delegates to keep certain records (Act s. 5.46(3))

Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is to keep a written record of —

(a) how the person exercised the power or discharged the duty; and

(b) when the person exercised the power or discharged the duty; and

- (c) *the persons or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty.*

Building Act 2011 section 127

Bush Fires Act 1954 section 48

Cat Act 2011 section 44

Dog Act 1976 section 10AA

Food Act 2008 section 118

Public Health Act 2016 section 21

Road Traffic (Events on Roads) Regulations 1991

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Nil

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
Legal and Compliance: Non-compliance with the Shire's statutory requirement to review the delegations every financial year A properly constructed delegations register reduces risk as it ensures a clear understanding of authority to make decisions as approved by Council	Unlikely	Moderate	Medium	Accept officer recommendation to ensure review completed prior to 30 June 2017

CONSULTATION:

ELT – Executive Leadership Team

COMMENT:

A register of delegations of authority is essential in order to inform the public of the activities, functions, powers and duties of the local government as well as meeting the requirements of section 5.46 of the *Local Government Act 1995*.

Local governments utilise levels of delegated authority to undertake day-to-day statutory functions, thereby allowing Council to focus on policy development, representation, strategic planning and community leadership, with the organisation focussing on the day-to-day operations of the Shire. The use of delegated authority means the large volume of routine work of a local government can be effectively managed and acted on promptly, which in turn facilitates efficient service delivery to the community.

The annual review process does not preclude the Council from granting new delegations to the Chief Executive Officer if and when required, nor for it to review existing delegations at any time during the course of the financial year.

The Shire of Derby/West Kimberley's register of delegations of authority was last reviewed by Council in April 2016 and is now due for review. The register of delegations of authority has undergone significant amendment both in format and content.

Format

The new format of the delegations contained in the register seeks to reflect the legislative requirements of the Act. Each delegation specifies the head of power under which the delegation has been made and the legislative reference of the power that is delegated. The current register referred mostly to the general power of delegation under section 5.42 of the Act and only in limited circumstances to the legislative reference. The new format clearly states the function delegated and any conditions that Council wishes to place on the exercise of delegation. It notes whether the Chief Executive Officer has the power to sub-delegate under section 5.44 of the Act to another employee. It also records whether the function or duty has been sub-delegated and to whom.

It should be noted that whether a function or duty has been sub-delegated is determined by the Chief Executive Officer unless the Council has made it a condition that the original delegation may not be sub-delegated.

Content

Each delegation has been considered on the basis of whether or not the delegation is necessary and if it will provide greater efficiency in service delivery for the Shire. A number of new delegations have been created that reflect legislative changes since

the April 2016 review. Foremost has been the passage of the *Public Health Act 2016* and the enactment of part of that legislation. A delegation to the Chief Executive Officer under section 21 of that Act to appoint officers has been included in the current list of delegations. New delegations for the *Cat Act 2011* and the *Dog Act 1976* have been included as has a general delegation pursuant to the *Bush Fires Act 1954*.

Repeal

A number of existing delegations were deleted that were already a function of the Chief Executive Officer and could not be delegated. Under section 5.45 of the Act, a delegation made under the Act will be effective for the period of time specified in the delegation or otherwise indefinitely. Any amendment or repeal of a delegation by a local government is to be by an absolute majority. Some existing delegations have been significantly amended whilst others have been deemed invalid, therefore it is appropriate to repeal the existing delegations as contained in the April 2016 register of delegations of authority and to adopt the new delegations as rewritten.

Delegation to the Chief Executive Officer

It should be noted that a delegation made under the *Local Government Act 1995*, may only be made to the Chief Executive Officer. However, not all delegations are made under the *Local Government Act 1995*. Other Acts such as the *Dog Act 1976* and *Cat Act 2011* also allow for delegations to be made. In some instances such as the *Building Act 2011* delegations may be made to employees other than the Chief Executive Officer.

VOTING REQUIREMENT:

Absolute majority

COMMITTEE AND OFFICER RECOMMENDATION:

That the Compliance and Strategic Review Committee BY AN ABSOLUTE MAJORITY:

- 1. ENDORSES the review of its delegations in accordance with sections 5.46 of the *Local Government Act 1995* and recommends adoption by Council.**

COUNCIL DECISION AND OFFICER RECOMMENDATION:**MINUTE NO. 065/2017****Moved: Cr P White****Seconded: Cr A Twaddke****That Council, BY AN ABSOLUTE MAJORITY:**

- 1. ENDORSES the review of its delegations in accordance with sections 5.46 of the *Local Government Act 1995*;**
- 2. REPEAL the Register of Delegations of Authority contained in the Shire of Derby/West Kimberley Register of Delegations of Authority dated April 2016 in accordance with section 5.45 of the *Local Government Act 1995*; and**
- 3. DELEGATE authority to the Chief Executive Officer, the local government functions as listed in the amended Register of Delegations of Authority forming Attachment 1 to report 9.1, in accordance with section 5.42 of the *Local Government Act 1995*, acknowledging the relevant heads of power in addition to the *Local Government Act 1995*:**
 -) *Building Act 2011* – section 127**
 -) *Bush Fires Act 1954* – section 48**
 -) *Cat Act 2011* – section 44**
 -) *Dog Act 1976* – section 10AA**
 -) *Food Act 2008* – section 118**
 -) *Public Health Act 2016* – section 21**
 -) *Road Traffic (Events on Roads) Regulations 1991*.**

CARRIED 8/0 BY AN ABSOLUTE MAJORITY

9.2 GOVERNANCE AND RISK IMPROVEMENT PLAN

Location/Address:	N/A
Name of Applicant:	Shire of Derby/West Kimberley
File Reference:	5475 – Risk Assessment
Author:	Stephen Gash, Chief Executive Officer
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	13 June 2017
Attachments:	3. Confidential – Governance and Risk Improvement Plan
Authority/Discretion:	Administrative

SUMMARY:

The summary Governance and Risk Improvement Plan was presented to the Compliance and Strategic Review Committee for review and is now presented to Council.

BACKGROUND:

The Compliance and Strategic Review Committee received the Chief Executive Officer's biennial review of the appropriateness and effectiveness of the Shire's systems and procedures in relation to risk management, internal controls and legislative compliance in December 2016. This was done in accordance with regulation 17 of the *Local Government (Audit) Regulations 1996*.

Further risk assessment and suggested improvements have been documented in a Governance and Risk Improvement Plan to detail possible actions for Council in addressing the risks. The improvement plan has also reviewed recommendations over the last four years, arising from:

-) Department of Local Government and Communities 'Better Practice' reviews of the sector, guidelines, and Statutory changes;
-) Public Sector Commission guidelines on local government code of conduct;
-) Corruption and Crime Commission reports on local government issues; and
-) Internal Shire reviews.

STATUTORY ENVIRONMENT:

Local Government (Audit) Regulations 1996 17 – CEO to review certain systems and procedures:

1. The CEO is to review the appropriateness and effectiveness of a local governments systems and procedures in relation to –

- (a) Risk management
 - (b) Internal control; and
 - (c) Legislative compliance
2. The review may relate to any or all of the matters referred to in sub regulation (1)(a), (b) and (c)
 3. The CEO is to report of the audit committee the results of that review.

POLICY IMPLICATIONS:

The implementation plan includes policy review recommendations to ensure alignment with statutory requirements and changes to industry practice identified in the reports above.

FINANCIAL IMPLICATIONS:

The implementation of any of the recommendations of the report would be funded within the governance or administration allocation of the approved 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	4.1: Effective governance and leadership	4.1.4: Develop and maintain risk management policies and procedures
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.3: Accessible and effective customer service and information systems	4.3.2: Ensure effective integration and management of information and communication technology systems
4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	4.5: Skilled, committed and professional staff in a supportive environment	4.5.3: Ensure safe work practices through implementation of appropriate Occupational, Health, Safety and Welfare practices

RISK MANAGEMENT CONSIDERATIONS:

The Governance and Risk Improvement plan has regard to all statutory and operational risk management activities and is proposed as the guiding document for alignment of the enterprise risk management implementation.

CONSULTATION:

Senior Management Group

Council (workshops)

COMMENT:

The improvement plan specifically looks at compliance with statutory processes, and suggested system improvements where any areas of concern were noted. Some of these suggestions have already been workshopped with Council regarding meeting and planning processes to ensure better communication.

The analysis of internal reviews over the last four years and alignment with external industry reports aims to capture emerging areas of risk and support continuous improvement.

The plan also collates the financial improvement and risk management strategies developed over the last two years following the economic downturn and has regard to industry benchmarks for financial performance and sustainability.

VOTING REQUIREMENT:

Simple majority

COMMITTEE AND OFFICER RECOMMENDATION:

That the Compliance and Strategic Review Committee:

- 1. RECEIVE the Governance and Risk Improvement Plan; and**
- 2. RECOMMEND that Council receive the report for prioritisation within the 2017/18 budget process.**

COUNCIL DECISION:

MINUTE NO. 066/2017

Moved: Cr I Prouse

Seconded: Cr C Kloss

That Council RECEIVE the Governance and Risk Improvement Plan report for prioritisation within the 2017/18 budget process.

CARRIED 8/0

10.0 REPORTS

10.1 EXECUTIVE SERVICES

10.1.1 DERBY JETTY LICENCE – PORT OF DERBY BARGE RAMP

Location/Address:	Derby Jetty
Name of Applicant:	Shire of Derby/West Kimberley
File Reference:	A102785
Author:	Ross Sullivan, Manager Administration and Governance
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	9 June 2017
Attachments:	4. Site Plan
Authority/Discretion:	Administrative

SUMMARY:

The purpose of this report is for Council to authorise the Common Seal of the Shire of Derby/West Kimberley to be affixed on the Agreement with The Manager, Property Services, Coastal Facilities Management of the Department of Transport (DoT) for the Jetty Licence – Port of Derby Barge Ramp. This Agreement is for a term of twenty one years.

BACKGROUND:

The area relating to this Licence is essentially the existing gravel barge ramp that has been used for a number of years to support mining operations on Koolan and Cockatoo Islands. As the only site that facilitates the movement of heavy plant and equipment and bulk ammonium nitrate products between Darwin and Port Hedland, the barge ramp is a critical asset to the mining industry and indeed any other instances where roll on-roll off barge movements are required.

This Agreement formalises the site as being a licenced jetty as required by the *Jetties Act 1926* which defines a jetty as any structure connected to a body of waters that, wholly or in part, may be used for the purpose of launching or landing a vessel.

This includes:

-) Wharves
-) Piers
-) Grids
-) Slips
-) Landing places

-) Stages
-) Platforms
-) Ramps
-) Fixed or floating structures
-) Erected or placed structures

Accordingly, all jetties require a licence to ensure that they meet all safety and maintenance standards, and do not interfere with navigation.

With the Agreement duly executed, Mt Gibson can commence stabilisation works thereby eliminating the requirement to constantly replenish and reform the facility with gravel. Apart from reducing operational costs to mining operators, this will address the accumulation of material which is subject to erosion and migration towards the back boat ramp through the strong tidal movements.

STATUTORY ENVIRONMENT:

Local Government Act 1995

9.49A. Execution of documents:

- (1) *A document is duly executed by a local government if —
 - (a) the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or
 - (b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.*
- (2) *The common seal of a local government is not to be affixed to any document except as authorised by the local government.*
- (3) *The common seal of the local government is to be affixed to a document in the presence of —
 - (a) the mayor or president; and
 - (b) the chief executive officer or a senior employee authorised by the chief executive officer, each of whom is to sign the document to attest that the common seal was so affixed.*
- (4) *A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.*
- (5) *A document executed by a person under an authority under subsection is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.*

- (6) *A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.*
- (7) *When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.*

POLICY IMPLICATIONS:

The Shire has an existing policy concerning the Common Seal but the Act was subsequently amended as above and points (1) and (2) in particular, require that authorisation by the Council.

FINANCIAL IMPLICATIONS:

Initial licence fee is \$1,154 (including first year of term) and \$680.30 per annum thereafter.

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
<p>2: A balance between the natural and built environments Sustained natural and built environments that meet the needs of the community and support future growth</p>	<p>2.3: Reliable and safe transport infrastructure</p>	<p>2.3.5: Maintain wharves and lobby for funding</p>

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<p>Environment:</p>	<p>Almost certain</p>	<p>Moderate</p>	<p>High</p>	<p>Jetty licence enabler for development to address gravel</p>

CONSULTATION:

Consultation has been undertaken with the Department of Transport to progress an Agreement and Mt Gibson has provided engineered design plans for the proposed structure to both Council and the Department.

COMMENT:

The barge loading ramp at Derby Wharf is critical to the ongoing mining operations at Koolan and Cockatoo Islands as well as being available for requirements that may arise from time to time. Through formalisation as a licensed jetty, this provides security for the facility to be developed and used for such purposes across the term of the Agreement.

As the Licensee, the Shire will be in a better position to regulate access to the ramp through issuing licences to users.

With the plans to stabilise the ramp as provided by Mt Gibson, the need for regular gravel replenishment resulting in a large accumulation of material over a number of years affecting the back boat ramp will be eliminated.

The specific authorisation of the Council to affix the common seal to the legal document is necessary for the validation of the variation to the Lease.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:**MINUTE NO. 067/2017****Moved: Cr P White****Seconded: Cr A Twaddle**

That Council AUTHORISES the Shire President and Chief Executive Officer to sign and affix the Common Seal to the Agreement between the Shire of Derby/West Kimberley and The Manager, Property Services, Coastal Facilities Management of the Department of Transport dated at the time of signing.

CARRIED 8/0

Cr P Coggins, Councillor, declared a financial interest in item 10.1.2

Cr P McCumstie, Councillor, declared a proximity interest in item 10.1.2

1.06pm – Cr's P Coggins and P McCumstie left the meeting and did not participate in the discussion or vote.

10.1.2 ADDITIONAL USE – AQUACULTURE CENTRE

Location/Address:	Lot 1205 Rodgers Street, Derby
Name of Applicant:	Emama Nguda Aboriginal Corporation
File Reference:	A103070
Author:	Noel Myers – Manager Planning Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	6 June 2017
Attachments:	5. Location Plan/Indicative Site Plan
Authority/Discretion:	Administrative

SUMMARY:

The proponent seeks approval to establish an Additional Use – Aquaculture Centre at the above premises.

BACKGROUND:

The subject lot is owned by Emama Gnuda Aboriginal Corporation and is utilised by the organisation as the base from where they undertake a range of businesses, training and education programs.

The site is 'lightly' developed with a number of buildings and structures primarily used in association with those programmes which includes a plant nursery.

Zoning: Town Planning Scheme No.5 – General Industry

Site Area: The property has an overall area of 5.18ha, is regular in shape and is generally level.

Surrounding Land uses:

The site is located toward the south-west corner of the General Industry area. General Industry lots and uses bound the site to the north and east which includes a non-conforming use (Theological Training College). The town's waste management facility abuts the southern boundary of the property and Unallocated Crown Land, currently Zoned as a future Light Industrial Development area abuts the site to the west.

STATUTORY ENVIRONMENT:

-) Local Planning Scheme No.5 – Zoning and Land Use permissibility
-) Local Planning Strategy – Future land use and development
-) *Planning and Development (Local Planning Scheme) Regulations 2015* – Deemed provisions

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:

There is minimal risk to Council in determining this application.

CONSULTATION:

No consultation is required in regard to this matter.

COMMENT:

This proposal seeks approval to establish an aquaculture centre on the site that will enable Emama Nguda to run training and education programs and will also enable the Corporation to reactivate their aquaculture activities (mud crabbing) that had previously been located at the Derby Port.

It is proposed that an application to vary that licence will be made to allow the farming of barramundi and cherabin in addition to the two species of mud crab to be undertaken as an opportunity to provide alternative education and training streams.

-) The project is to be considered in two parts. This application seeks Council's approval to establish the use from the site which will enable Emama Nguda to make the application to transfer their existing licence to the property and then

make application for the variation to the licence to broaden the range of associated aquaculture activities that they may undertake.

-) Once those matters are to hand, a Development Application will be submitted for the full development intent. Preliminary plans have been provided (**Attachment 1**) which shows an indicative layout of the facility that incorporates a twin dam arrangement, however, this form of system is not committed to and any future proposal would be subject to further assessment and approvals from other statutory decision making bodies – ie: Department of Water/Department of Fisheries.

The approval being sought now does not fetter the Council to approve or refuse a future Development Application as that application will need to be considered on its merits.

Town Planning Considerations:

The site is zoned General Industry under the provisions of the Shire of Derby/West Kimberley Town Planning Scheme No. 5 (TPS No.5). The permissibility of a particular land use in a particular zone is established by cross referencing between the list of Use Classes and the list of zones at the top of the Zoning Table (Table 2) as set out under Clause 3.3 of TPS No.5.

In this instance, whilst the proposed land use (aquaculture) is not specifically mentioned in the Zoning Table, it is considered that the use can reasonably be determined as falling within the interpretation of a 'Light Industry' use which is a "P" use within the General Industry zone.

Appendix 1 of TPS No.5 defines Light Industry as:

) means an industry:

- (a) *in which the processes carried on, the machinery used, and the goods and commodities carried to and from the premises will not cause any injury to, or will not adversely affect the amenity of the locality by reason of the emission of light, noise, electrical interference, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water or other waste products; and*
- (b) *the establishment of which will not or the conduct of which does not impose an undue load on any existing or projected service for the supply or provision of water, gas, electricity, sewerage facilities, or any other like services.*

In considering the appropriateness of the proposed use, regard is also had to the objectives and policies of the zone as set out under Table 1 – Zone Objectives and Policies of TPS No.5.

The objectives for the Industrial Zones are:

Zone Objective :

- (a) *To provide adequate, accessible serviced land for a variety of industrial uses appropriate to the Derby townsite in locations that will have minimum detrimental effect upon residential areas and the Town Centre.*

Zone Policies:

- i. *To permit industrial uses which provide desirable and conveniently located service to the townsite;*
- ii. *To ensure that development provides reasonable standards of amenity and appearance;*
- iii. *To allow retail uses from premises with a primary industrial or wholesale function which would be inappropriately located in other zones;*
- iv. *In the Port Industry zone to maintain land for port facilities required for the continuation of the Port of Derby and provide for a range of uses to facilitate the increased use of the port;*
- v. *To permit a range of industrial uses of a scale and type suitable to the available services, character and amenity of each of the industrial zones;*
- vi. *To only permit the development of a caretakers dwelling where this is required for the development proposed and will not constrain the industrial use of the area within which it is located.*

Notwithstanding that the final details of the proposal will not be fully described until a Development Application is submitted, the nature of the proposed use is considered to meet with the above definition in that the scale of the development will be:

-) relatively modest in scale, understanding the primary focus will be on training and research rather than production;
-) the proposed systems would involve two closed system ponds that recirculates water; and
-) will not be the cause of any significant odour or emissions.

SUMMARY:

It is the recommendation of the Administration that the proposed additional use is consistent with the Zone Objectives and Policies for the Industrial Zones and the use is one that can be reasonably be interpreted as falling within the definition of a Light Industrial Use.

By endorsing the additional use now, Emama Gnuda will be able to transfer their existing aquaculture licence and apply for the variation to the licence and will provide the opportunity for them to lodge a Development Application for the further development of the site as an aquaculture facility.

Having regard to the above, it is recommended that the Council may approve the additional use, subject to conditions set out within the officer recommendation.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:

MINUTE NO. 068/2017

Moved: Cr A Kogolo

Seconded: Cr C Kloss

That Council APPROVES the Additional Use – Aquaculture on a portion of Lot 1205 Rodgers Street, Derby subject to the following condition:

- a) A Development Application is required to be submitted and approved prior to any development whatsoever proceeding on the land.**

CARRIED 6/0

1.07pm – Cr's P Coggins and P McCumstie returned to the meeting and were advised of the outcome by Mr S Gash, Chief Executive Officer.

10.1.3 PROPOSED ADOPTION OF SCHEME AMENDMENT 25 TO TPS5 – REZONING OF LOTS 4 (12), 632 (10) RUSS STREET AND LOT 634 (17) CONWAY STREET

Location/Address:	Lot 4 (12), 631 (10) Russ Street and Lot 634 (17) Conway Street, Derby
Name of Applicant:	RFF Pty Ltd
File Reference:	0185 – Town Planning Scheme 5
Author:	Noel Myers, Manager Planning Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	7 June 2017
Attachments:	6. Schedule of Submissions
Authority/Discretion:	Legislative

SUMMARY:

The purpose of this report is for the Council to endorse Amendment No.25 to the Shire of Derby/West Kimberley Town Planning Scheme No. 5 (TPS5) by rezoning Lot 4 (12) Russ Street, Lot 631 (10) Russ Street and Lot 634 (17) Conway Street, Derby from the respective 'Rural Residential', 'Special Use – S10' and 'Rural' zones to a 'Light Industry' zone, and deletion of reference to Special Use – S10 within Appendix 3.

It is recommended that Council endorses the amendment without modification.

BACKGROUND:

The Shire received a request on behalf of the landowners of Lot 4 (12) Russ Street, Lot 631 (10) Russ Street and Lot 634 (17) Conway Street to rezone their properties to 'Light Industry'.

Council resolved to initiate Amendment No.25 at the Ordinary Meeting of Council held 30 March 2017. The decision of Council at that meeting was:

MINUTE NO. 021/2017

That Council:

- 1. Pursuant to section 75 of the Planning and Development Act 2005, amend the Shire of Derby/West Kimberley Town Planning Scheme No. 5 to:**
 - a) Rezone Lot 4 (12) Russ Street, Lot 631 (10) Russ Street and Lot 634 (17) Conway Street from the respective 'Rural Residential', 'Special Use' and 'Rural' zones to a 'Light Industry' zone by amending the scheme maps accordingly; and**
 - b) Deleting text in reference to S10 from Appendix 3 – Special Site Schedule.**

2. Accept Scheme Amendment No. 25 as a Standard Amendment under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 as it is:

- a) An amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;**
- b) An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment; and**
- c) An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.**

STATUTORY ENVIRONMENT:

-) *Planning and Development Act 2005*
-) *Planning and Development (Local Planning Schemes) Regulations 2015*
-) *Town Planning Scheme No.5*
-) *Local Planning Strategy*
-) *State Planning Policy 3.7 – Planning in Bushfire Prone Areas*
-) *State Planning Policy 4.1 – State Industrial Buffer Policy*

Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.

Regulation 35 of the *Planning and Development (Local Planning Schemes) Regulations 2015* requires a resolution of a local government to adopt an amendment to a local planning scheme which must specify if the amendment is a “basic amendment”, “standard amendment” or “complex amendment”.

Council at its meeting of 30 March 2017 resolved the proposed amendment to be a “standard Amendment”. Council has discretion, pursuant to regulation 50 (3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* to support an amendment to a local planning scheme without modification or to support it with proposed modifications to address issues raised in submissions out of public advertising or not to support the amendment.

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Costs associated with the progression of this amendment are borne by the applicant and charged in accordance with the Local Government Planning Charges.

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	2.1.1: Review, update and implement the Shire's Local Planning 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
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:

There is minimal risk to Council in determining this matter.

CONSULTATION:

The amendment has been progressed in accordance with the requirements of the Planning and Development (Local Planning Scheme) Regulations 2015.

In accordance with the Regulations, consultation is required to be undertaken in the following manner:

-) Council initiates the amendment;
-) Proposal is referred to the Environmental Protection Authority (EPA) for comment;
-) Upon receipt of advice from the EPA, the general advertising of the amendment commences (42 days);
-) Council reconsiders proposal in light of any submissions received and decides to proceed or not proceed with or without amendment.

Following approval from the EPA, a notice was placed in the West Australian Newspaper on Saturday 13 May 2017, on the Shire website and surrounding landowners and service agencies were notified directly. Public submissions were invited on the proposal with last day for submissions being Friday 23 June 2017.

As at date of this report, the submission period had not yet closed. An updated schedule of submissions will be circulated to Councillors post the closure of the public submission period and prior to the Council Meeting with an updated officer comment in respect to any submission received and amended officer recommendation should it be necessary.

COMMENT:

The proposed amendment seeks to rezone Lot 4 (12) Russ Street, Lot 631 (10) Russ Street and Lot 634 (17) Conway Street from the respective 'Rural Residential', 'Special Use' and 'Rural' to 'Light Industry'.

As previously reported to Council, the proposed amendment area is located on the periphery of the Derby town site surrounded by a mixture of undeveloped bushland (north), low density rural residential developments (east and south) and various industrial operations (west).

The proposed amendment provides an opportunity to implement identified actions within the Local Planning Strategy and resolve potential future land use complications. Figures 1 and 2 below show the location of the proposed amendment.



Figure 1 – Wider Context of the Amendment Area



The proposed 'Light Industrial' zone will transition heavy industrial operations to lighter operations with limited emissions. In addition, restricting the proposed amendment area to the three identified lots, retains 'Rural Residential' zoned properties along Derby Highway to preserve the rural town amenity for locals and visitors entering the Derby town site.

The Local Planning Strategy identifies the need to provide an adequate supply of residential, commercial and industrial land to cater for future growth. The existing supply of 'Light Industrial' zoned land within the town is either taken up or has not yet been constructed. Therefore, there is limited project ready 'Light Industrial' zoned land within the Derby town site. Strategic Action 30 within the Local Planning Strategy directly identifies the amendment area for consideration as identified as:

Review status of Rural zoned lots located within the existing General Industry area. These currently serve as buffers between rural residential lots. Consider alternative zonings that would enable lots to be put to more productive uses.

The amendment area currently contains a mixture of 'Rural', 'Rural Residential' and 'Special Use' zones all of which have the right to accommodate a range of sensitive land uses (e.g. 'Single House') under the provisions of TPS5. The current adjoining 'General Industry' zone has the as of right to accommodate a range of heavy and noxious industries which may require off-site buffers. As such, the proposed 'Light Industry' zone, in accordance with Action 30 within the LPS, will serve as a buffer between these two contrasting zones. In addition, the existing 'Special Use' zone within the amendment area already permits a range of light industrial land uses. The proposed amendment provides an opportunity to resolve the current 'Special Use' use into a more transparent zoning.

The amendment has been progressed in accordance with the requirements of the Local Planning Schemes Regulations and there has been no objection raised to the amendment progressing from adjoining landowners or servicing authorities.

In light of the above, it is recommended that Council proceeds to endorse Amendment No.25 without modification.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:

MINUTE NO. 069/2017

Moved: Cr C Kloss

Seconded: Cr P Coggins

1. That Council Resolves pursuant to section 75 of the *Planning and Development Act 2005*, AMEND the above Local Planning Scheme by:

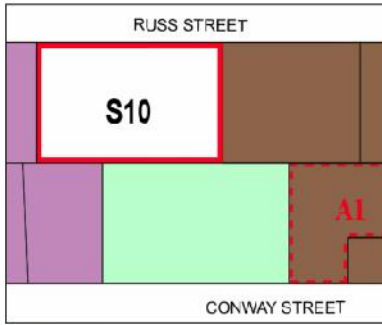
- a) Rezoning Lot 4 (12) Russ Street, Lot 631 (10) Russ Street and Lot 634 (17) Conway Street from the respective 'Rural Residential', 'Special Use' and 'Rural' zones to a 'Light Industry' zone by amending the scheme maps accordingly; and**
- b) Deleting text in reference to S10 from Appendix 3 – Special Site Schedule.**

The Amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:

-) The amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;**
-) The amendment is considered to have minimal impact on land in the scheme area that is not the subject of the amendment; and**
-) The amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.**

CARRIED 8/0

Shire of Derby / West Kimberley
Town Planning Scheme No. 5
Proposed Amendment 25



LEGEND

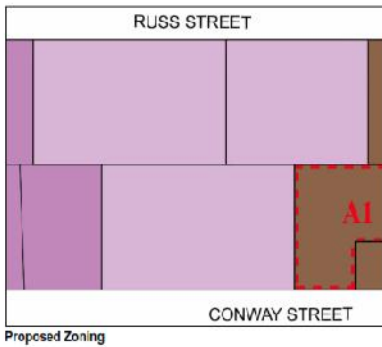
- General Industry
- Light industry
- Rural
- Rural residential
- Special use
- AI Additional uses

ADOPTION

Adopted by resolution of the Shire of Derby / West Kimberley Council at the Ordinary Council Meeting held on the..... of 20....

.....
President

.....
Chief Executive Officer



FINAL APPROVAL

Final approval was granted by resolution of the Shire of Derby / West Kimberley Council at the Ordinary Council Meeting held on the... of 20.... The Common Seal of the Shire of Derby / West Kimberley was hereunto affixed in the presence of

.....
President

.....
Chief Executive Officer

Recommended for Final Approval

.....
Delegated under S16 of the P&D Act 2005 Date:

Final Approval

.....
Minister for Planning Date:

10.1.4 REQUEST TO REMOVE BOAB TREE

Location/Address:	Lot 662 Kunamarra Street, Derby
Name of Applicant:	D Livingstone
File Reference:	A104990
Author:	Noel Myers – Manager Planning Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	14 June 2017
Attachments:	7. Photographs/Site Plan
Authority/Discretion:	Administrative

SUMMARY:

This report seeks Council's approval for the landowner to remove a Boab Tree from the rear of his property.

BACKGROUND:

-) The subject property is No.7 Lot 662 Kunamarra Street, Derby;
-) The applicant is the owner of the property;
-) Property is zoned Residential R15 and has an area of 856m²;
-) Property is developed with a single residential dwelling;
-) The Water Corporation sewer runs across the rear boundary of the property and there is a sewer inspection pit located in the right hand rear corner of the lot.

STATUTORY ENVIRONMENT:

-) Local Planning Scheme No.5 – Land Use and development issues and specifically Part 4 – Clause 4.9 – Landscaping and preservation of existing vegetation

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Nil

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
<p>2: A balance between the natural and built environment Sustainable environments that meets the needs of the community and supports growth</p>	<p>2.1: Appropriate development that enhances the unique character and heritage of the Shire's township</p>	<p>2.1.4: Ensure quality, consistent and responsive development and building assessment approval processes and enforcement</p>

RISK MANAGEMENT CONSIDERATIONS:

There is minimal risk to Council in determining this application.

CONSULTATION:

None in respect to this matter.

COMMENT:

The applicant is seeking to undertake renovations and additions to the existing dwelling which includes the construction of a new free standing shed at the rear of the property.

The applicant is seeking approval to remove a Boab tree that is located in the rear left hand corner of the property so that he can erect the new shed in that area of the lot and make the best use of his rear yard.

The subject tree has an overall height of approximately 5 metres and is located within close proximity to both the side and rear fences and generally appears in good health apart from an invasive climber that has grown up to and through the canopy. The structure of the tree comprises multiple trunks which makes its relocation and lopping difficult and it is likely that the tree will, in time, cause damage to the boundary fencing as the trunks grow.

The owner is hopeful of locating the shed in the same location where the tree is as this will create a clearer area of open space on the eastern side of his lot.

Planning considerations:

TPS No.5 includes the following provisions regarding landscaping and preservation of existing vegetation:

- Clause 4.9.3 To maintain and enhance the character of the Town of Derby, no person shall remove a Boab Tree from any land within the scheme area without the prior written consent of the Council. For the purpose of this Clause:
- (a) the consent of Council shall not be unreasonably withheld and shall be issued where the tree is dead, dying or dangerous;

- (b) it shall be sufficient defence to show that a tree that has been removed was dead, dying or dangerous prior to its removal.

4.9.4 When considering an application for Planning Consent the Council shall determine whether any Boab tree or other vegetation on the subject site has landscape or environmental significance and should be retained and in granting consent to an application may:

- (a) impose a condition on the planning consent requiring the retention or relocation of the tree or trees;
- (b) request a modification of the proposal; and/or
- (c) permit a variation of the site development requirements to provide for retention of the tree or trees.

In this particular instance, the tree does not appear as having any disease or structural faults that are causing any immediate risks. Rather the issue is that the location of the tree is likely to cause damage to boundary fencing in the future as the tree continues to grow and that it also restricts the options for the location of the new shed and thus impacts on the quiet enjoyment of the owners property. The structure of the tree would also make its relocation problematical as is advocated under the scheme provisions. **(See Attachment 1 – Images)**

The tree being located at the rear of the property is not readily visible from the street and as such would not be regarded as having substantive landscape or environmental significance to the area generally. There is another Boab tree in the front setback area of the lot which the owner is retaining and is having other exotic tree species removed that have grown and are ‘crowding-out’ that tree.

Options:

Council has the following options in this matter:

1. Require the owner to retain the tree and relocate the shed to another location on the lot.

This option would mean the tree will in all likelihood cause damage to the boundary fencing at some time in the future which will impose additional cost to the owner and could still ultimately require removal of the tree. Retention of the tree will require that the owner constructs the new shed over to the eastern boundary of the lot which is compromised by the presence of the Water Corporation sewer and inspection pit. This will cause the owner to have to site the new shed some 4m from the rear boundary and will compromise the amenity and function of his rear yard and the manner he wishes to develop areas of private open space.

2. Impose a condition requiring the owner to relocate the tree.

As previously described, the subject tree does not comprise a single trunk but instead comprises up to five trunks that appear to be joined at the base which would complicate its removal and relocation and may impact upon its future viability and structural integrity.

3. Council may deem that that the tree does not have any significant landscape or environmental issues that demands its retention over and beyond the owners' right to develop and use the land as proposed.

As described above, the tree is located at the rear of the property and is not readily visible from the street. The size of the tree suggests that it is not a particularly aged specimen and there is another Boab tree located at the front of the property that affords a greater contribution to the streetscape and the amenity of the area.

SUMMARY:

Having regard to the matters set out above, it is recommended that Option Three (3) be adopted and that the Council advises the owner that the subject tree may be removed.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:**MINUTE NO. 070/2017****Moved: Cr A Twaddle****Seconded: Cr A Kogolo**

That Council, having regard to the matters set out within Local Planning Scheme No.5, advises the owner of Lot 662 Kunamarra Street, Derby that it APPROVES the removal of the Boab tree located within the north west corner of the lot.

CARRIED 8/0

1.09pm – Mr Stephen Gash, Chief Executive Officer, declared a financial interest in item 10.1.5 and left the room.

1.09pm – Mr Martin Cuthbert, Director Corporate and Community Services and Mr Noel Myers, Manager Planning Services, left the room.

10.1.5 CHIEF EXECUTIVE OFFICER ANNUAL PERFORMANCE REVIEW

Location/Address:	Nil
Name of Applicant:	Nil
File Reference:	1000 – Executive Services – 195 Gash, Stephen
Author:	Martin Cuthbert, Director Corporate and Community Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Stephen Gash, Chief Executive Officer Direct Financial Interest – Decision affects Mr Gash’s personal employ and remuneration
Date of Report:	22 June 2017
Attachments:	8. Confidential – Key Focus Areas 2017/2018 Distributed to Elected Members under separate cover
Authority/Discretion:	Executive

SUMMARY:

The annual appraisal of Mr Stephen Gash’s performance as the Chief Executive Officer of the Shire of Derby/West Kimberley has been carried out in accordance with Council’s statutory and contractual (employment) obligations.

Council appointed Mr John Phillips, ‘John Phillips Consulting’ to facilitate the annual review process. This included distributing questionnaires based on the key result areas which were part of the August 2016 appraisal process to all Councillors, collating the responses, as well as preparing a report for Councillors.

The review period was July 2016 to April 2017. The most recent annual appraisal was undertaken on 22 August 2016.

The responses obtained from respondents indicate that Mr Gash is meeting the performance requirements for the position Chief Executive Officer of the Shire of Derby/West Kimberley.

BACKGROUND:

The appraisal process included the use of a questionnaire based on the key result areas which were agreed as part of the 2016 appraisal process.

Mr Gash provided his own report based on the same criteria, and this was provided to all Elected Members. Elected Members were also provided with the questionnaire as the opportunity to provide feedback on Mr Gash's performance, with six Councillors providing written feedback (this is the same response rate as for the 2015 and 2016 appraisals). Five attended a personal interview with the facilitator on 26 April and one submitted a written response.

Ratings and comments were aggregated and summarised and presented in the 'reviewer report' for consideration by Elected Members and Mr Gash at the formal appraisal meeting undertaken in Derby on 22 August 2016.

STATUTORY ENVIRONMENT:***Local Government Act 1995******5.38. Annual review of certain employees' performances***

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

5.39. Contracts for CEO and senior employees

- (3) A contract under this section is of no effect unless —*
- (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance;*

Local Government (Administration) Regulations 1996***18D. Performance review of CEO, local government's duties as to***

A local government is to consider each review on the performance of the CEO carried out under section 5.38 and is to accept the review, with or without modification, or to reject the review.

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

All employee expenses are 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	4.5: Skilled, committed and professional staff in a supportive environment	4.5.: Maintain and develop human resource management policies, procedures and systems for current and future workforce needs

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal and Compliance: In accordance with section 5.38 of the Local Government Act 1995, Council is required to conduct an annual performance review of the CEO. That has been conducted, Council now needs to receive the report and set KRA for the coming year	Unlikely	Minor	Low	Adopt officer recommendation

CONSULTATION:

Consultation has occurred between the Chief Executive Officer, Elected Members and John Phillips of John Phillips Consulting.

COMMENT:

Mr Gash's performance is considered to meet the performance requirements for the position of Chief Executive Officer for the review period July 2016 to April 2017.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:

MINUTE NO. 071/2017

Moved: Cr P White

Seconded: Cr I Prouse

That Council:

- 1. RECEIVES the performance review report and endorses the overall performance rating for Mr Gash as the Shire of Derby/West Kimberley CEO, for the review period July 2016 to April 2017, as ‘Meets Performance Requirements’.**
- 2. Endorses the proposed Key Result Areas and indicators for 2017/18.**
- 3. Schedules the commencement of the 2018 appraisal process by 1 April 2018, with the appraisal to be completed before the May 2018 Ordinary Council Meeting.**

CARRIED 8/0

1.11pm – Mr Stephen Gash, Chief Executive Officer, returned to the room and was advised of the outcome by the Shire President.

1.11pm – Mr Martin Cuthbert, Director Corporate and Community Services, and Mr Noel Myers, Manager Planning Services, returned to the meeting and were advised of the outcome by the Shire President.

10.2 CORPORATE SERVICES

10.2.1 ACCOUNTS FOR PAYMENT – MAY 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 and Community Services
Disclosure of any Interest:	Nil
Date of Report:	21 June 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 May 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 May 2017. Lists detailing the payments made are appended as an attachment.

FUND	DETAILS	AMOUNT
Municipal Account		
EFT Payments	EP# 41908 – EP# 42155	\$1,461,219.58
Municipal Cheques	54626 – 54632	\$21,985.24
Direct Debits	Fees, Charges, Payroll and Payroll Liabilities	\$579,998.87
Trust Account		
Trust Cheques	006458 – 006459	\$677.93
	Total	\$2,063,881.62

Creditor's outstanding as at 31 May 2017 totalled \$221,484.00.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:

MINUTE NO. 072/2017

Moved: Cr P Coggins

Seconded: Cr C Kloss

That Council NOTES the Chief Executive Officer's list of accounts for May 2017 paid under Delegated Authority in accordance with regulation 13(1) of the *Local Government (Financial Management) Regulations 1996* forming Attachment 8 to Report 10.2.1, totalling \$2,063,881.62.

CARRIED 8/0

10.2.2 STATEMENT OF FINANCIAL ACTIVITY FOR THE PERIOD ENDING 31 MAY 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 and Community Services
Disclosure of any Interest:	Nil
Date of Report:	21 June 2017
Attachments:	10. Monthly Financial Report May 2017
Authority/Discretion:	Information

SUMMARY:

For Council to note the statement of financial activity for the period ended 31 May 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 31 May 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 31 May 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 31 May 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 31 May 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

COUNCIL DECISION AND OFFICER RECOMMENDATION:

MINUTE NO. 073/2017

Moved: Cr P White

Seconded: Cr C Kloss

That Council NOTES the Monthly Financial Management Report incorporating the Statement of Financial Activity for the period ending 31 May 2017 forming Attachment 9 to Report 10.2.2.

CARRIED 8/0

10.2.3 ANNUAL MEETING OF ELECTORS 25 MAY 2017

Location/Address:	N/A
Name of Applicant:	Shire of Derby/West Kimberley
File Reference:	4210 – Agendas and Minutes – Electors Meetings
Author:	Martin Cuthbert, Director Corporate and Community Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	30 May 2017
Attachments:	11. Minutes – Annual Meeting of Electors
Authority/Discretion:	Information

SUMMARY:

The annual meeting of electors for the year ending 30 June 2016 was held on Thursday 25 May, 2017. In accordance with the *Local Government Act 1995* all decisions made at an electors meeting are to be considered at the next ordinary Council meeting, or if that is not practicable, at the first ordinary Council meeting after that meeting, or a special meeting convened for that purpose, whichever happens first.

No decisions were made at the electors meeting, other than acceptance and noting of the annual report, including the financial and audit reports, and the progress report by the Chief Executive Officer. Council is requested to note the minutes of the meeting and to receive this report.

BACKGROUND:

The annual electors meeting was held on 25 May, 2017 and was attended by 1 member of the public. No resolutions requiring Council action were made to Council.

STATUTORY ENVIRONMENT:

Sections 5.27, 5.29 – 5.33 of the *Local Government Act 1995* refers to the requirement to hold an annual electors meeting, the procedures for such meetings, who is to preside at the meeting, keeping of minutes and how to deal with decisions made at that meeting.

The *Local Government (Administration) Regulations 1996* clause 15, 17 and 18 detail the matters prescribed to be discussed at this meeting, (firstly, the contents of the annual report for the previous financial year and then any other general business) the method of voting (simple majority) and procedures for the meeting (to be determined by the presiding person).

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Nil

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
4: 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
N/A				

CONSULTATION:

Electors meeting held 25 May 2017.

COMMENT:

As no decisions were made at the annual electors meeting, Council is only required to note the minutes of that meeting (they will need to be confirmed at the next Annual Electors Meeting) and to receive this report. The minutes of the annual electors meeting held 25 May, 2017 are attached.

VOTING REQUIREMENT:

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION:**MINUTE NO. 074/2017****Moved: Cr A Twaddle****Seconded: Cr I Prouse**

That Council RECEIVES the report on the outcomes of the annual electors meeting held on 25 May, 2017 and notes the minutes of that meeting.

CARRIED 8/0

10.3 TECHNICAL SERVICES

Nil

10.4 DEVELOPMENT SERVICES

Nil

11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

11.1 RATES MODELLING 2017/2018

Location/Address:	N/A
Name of Applicant:	Shire of Derby/West Kimberley
File Reference:	5174 – Rates and Charges
Author:	Martin Cuthbert, Director Corporate and Community Services
Responsible Officer:	Stephen Gash, Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	30 May 2017
Attachments:	12. Rates Modelling Worksheet 13. Statement of Objects and Reasons 2017/2018
Authority/Discretion:	Review

SUMMARY:

For Council to consider the Statement of Objects and Reasons and proposed Differential Rates and Minimum Payments for the 2017/2018 financial year for the purpose of advertising and seeking public submissions as required by the *Local Government Act 1995*.

BACKGROUND:

In accordance with section 6.36 of the *Local Government Act 1995*, where a local government intends to impose differential rates, or a minimum payment applying to a differential rate category, it is required to give local public notice of its intention to do so. The public notice is to invite submissions to the proposal for a period of not less than twenty one days. The Council is required to consider any submissions received prior to it formally imposing the proposed differential rates in the dollar and associated minimum payments, with or without modification.

As it is intended that differential rates will be imposed as part of the Council's 2017/2018 annual budget, this report seeks the Council's endorsement to provide public notice of the proposed differential rates in the dollar and associated minimum payments as recommended in this report.

It is important that Council adopts an adequate rating structure to ensure it continues to maintain and increase its own income sources, so as to finance the services needed by the community.

The recommendations involve the following:-

-) Increase in the general GRV rate in the dollar by 1.7% to 12.4458 cents in the dollar;
-) Increase in the general UV rate in the dollar by 1.7% to 21.3944 cents in the dollar;
-) Increase in the pastoral UV rate in the dollar by 1.7% to 6.3544 cents in the dollar;
-) Increase the mining UV rate in the dollar by 1.7% to 26.4530 cents in the dollar;
-) Increase in minimums by 1.7% from \$940 to \$956;
-) Adoption of a 2.0% discount for the early payment of rates.

Pursuant to section 6.33 of the *Local Government Act 1995*, a local government may determine to impose differential rates according to a range of characteristics, including the purpose for which land is zoned, the purpose for which land is held or used, or whether the land is vacant land. As part of its 2016/2017 adopted budget, Council imposed differential rates and associated minimum payments in line with the above characteristics.

A synopsis of the adopted rating categories as per the Statement of Objects and Reasons is provided as follows:

Gross Rental Value (GRV)

The *Local Government Act 1995* determines that properties of a non-rural purpose be rated using the gross rental valuation (GRV) as the basis for the calculation of annual rates. The Valuer General determines the GRV for all properties within the Shire every five years and assigns a GRV. A full revaluation of all GRV properties was conducted during the 2015/2016 financial year and the new valuations were effective from 1 July 2016. Interim valuations are provided monthly to Council by the Valuer General for properties where changes have occurred. Examples of these are subdivisions or strata title of property, amalgamations, building constructions, demolition, additions and/or property rezoning. In such instances Council recalculates the rates for the affected properties and issues interim rates notices.

GRV – Residential

Consists of properties located within the townsite boundaries with a predominant residential use. Is considered by Council to be the base rate by which all other GRV rated properties are assessed.

GRV – Commercial

Properties used for commercial or town centre purposes and non-residential vacant land. All GRV properties within the Shire of Derby/West Kimberley are rated using the same rate in the dollar. It is noted that rate levies paid by commercial property owners are generally tax deductible.

GRV – Industrial

Properties used for industrial purposes and non-residential vacant land. All GRV properties within the Shire of Derby/West Kimberley are rated using the same rate in the dollar. It is noted that rate levies paid by industrial property owners are generally tax deductible.

GRV – Special Rural

Properties used for special rural purposes. All GRV properties within the Shire of Derby/West Kimberley are rated using the same rate in the dollar.

GRV – Other Locations

Properties used for other purposes that do not fall within the other GRV categories. All GRV properties within the Shire of Derby/West Kimberley are rated using the same rate in the dollar.

Unimproved Value (UV)

Properties that are predominantly of a rural purpose are assigned an unimproved value that is supplied and updated by the Valuer General on an annual basis. The rate in the dollar set for the UV – pastoral category forms the basis for calculating all other UV differential rates.

UV – Pastoral (The base rate for Unimproved Value)

Consists of properties that are exclusively for pastoral use and is considered to be the base rate by which all other UV rated properties are assessed.

The reason the Council has adopted a lower rate in the dollar for properties predominately used for pastoral properties is that the Council is of the view that there have been large valuation increases over the past few years for pastoral properties and the lower rate in the dollar will create a more equitable level of contribution for this property type when comparing to neighbouring Shire's.

UV – Residential

Consists of properties that are used for residential purposes outside of the townsite. This category is rated the same as all other UV categories excepting mining and pastoral properties.

UV – Commercial

Consists of properties that are used for commercial purposes outside the townsite. This category is rated the same as all other UV categories excepting mining and

pastoral properties. It is noted that rates paid by mining operators are generally tax deductible.

UV – Mining

Consists of properties that are used for mining, exploration or prospecting purposes. This category is rated higher than UV commercial to reflect the higher road infrastructure maintenance costs to Council as a result of frequent very heavy vehicle use over extensive lengths of Shire roads throughout the year. It is noted that rates paid by mining operators are generally tax deductible.

UV – Islands

Cockatoo Island is the only assessment in the UV islands category that falls within the Shire of Derby/West Kimberley. The Island is utilised for mining due to its iron ore deposits. This category is rated the same as all other UV categories excepting mining and pastoral properties.

UV – Other Locations

Within this rate code there is an assessment that has specific properties. This company is being charged rates on usable land only and this significantly reduces the rates charged on the property. This category is rated the same as all other UV categories excepting mining and pastoral properties.

UV – Concessions

There are three assessments that sit within this rate group. All three assessments are given a concession rate by the Council. The Council provides a concessional rate that is equal to the minimum rate for UV properties for that financial year. The minimum rate is proposed to increase from \$940 to \$956 for 2017/2018.

Minimum Rates

The setting of minimum rates within rating categories is an important method of ensuring that all properties contribute an equitable rate amount. A minimum rate of \$956 is being proposed for all rate categories.

The minimum levels are uniform for all properties, and are set by taking into account the level of service to be supplied to each area.

Council currently does not impose specified area rates.

It is proposed to continue to use differential rates for both mining and pastoral leases. The main reason to use a higher rate in the dollar for properties predominately used for mining purposes is that it will create a more equitable level of contribution for the level of services provided. The main reason to use a lower rate in the dollar for properties predominately used for pastoral purposes is that due to large increases in property valuations in previous years the lower rate in the dollar will create a more equitable level of contribution for this property type when comparing to neighbouring

Shire's. The differential rates for 2017/2018 for mining and pastoral properties will be increased by 1.7%.

A discount is recommended at the level of 2.0% for the 2017/2018 year.

It is considered important that Council continue to review and adjust its rates and other sources of income. WALGA have produced a report noting that the adoption of the general CPI rate is not a good indication of inflation for local governments as a large portion of cost increases in local government is concerned with infrastructure and transport costs which are considerably higher than the standard CPI for a family. Rates increases are crucial to fund the replacement and maintenance of assets as identified within the Plan for the Future of the District, Long Term Financial Plan and Corporate Business Plan.

In 2012/2013 the Council adopted a Long Term Financial Plan which outlined the Rating Strategy required to ensure the long term sustainability of the Shire and implement the Corporate Business Plan. The % increase in the Long Term Financial Plan and Corporate Business Plan was for an increase of 9.2% per year from 2013-2014 to 2016-2017 and then reduce to a 6.2% increase for the remainder of the Plan. Since the 2012-2013 financial year there has been significant changes to Council operations and also increases in operating expenditure and capital expenditure have not been as high as expected. Therefore the projected 6.2% increase for 2017-2018 is not required and a rate in the dollar increase of 1.7% is considered more appropriate.

There are increasing expectations from the community that the Council will act in a wide variety of fields providing additional services and in the majority of cases this involves additional costs. Therefore Council needs to increase its rates and other sources of income in order to maintain assets and services for the future.

GRV Properties – Proposed Rates

The rates model includes a new GRV rate in the dollar of 12.4458 cents in the dollar for residential properties, and other GRV properties, including those classified/coded as commercial or industrial properties. This is a 1.7% increase in the rate in the dollar from the previous year.

A complete revaluation of all GRV properties was completed during 2015/2016 and implemented in the 2016/2017 financial year. This revaluation resulted in a significant decrease in the value of properties in Derby. The next revaluation of GRV properties will be completed in 2020/2021. The condition of the property market in Derby at that time will be a contributing factor to the valuation process as it was in 2010/2011 and 2015/2016.

UV Properties – Proposed Rate (other than Mining and Pastoral)

The rate in the dollar for UV properties, except those coded as being predominately used for mining and pastoral, is proposed at 21.3944 cents in the dollar for these properties, which is a 1.7% increase over the previous year's level.

Mining Properties – Proposed Differential Rate

It is considered important that mining properties adequately contribute to Council's rate income as they are heavy users of Council's road system, and contribute to its deterioration at a far higher level than other ratepayers. Because of this it is not unusual for Councils throughout Australia to adopt higher rates for mining properties and other heavy users of road systems, than that which applies to other properties.

Pastoral Properties – Proposed Differential Rate

It is proposed that the rate in the dollar for pastoral properties be set at 6.3544 cents in the dollar. This differential rate was reduced heavily during 2010 in recognition of high property valuations that were received in prior years.

Many Councils use differential rates on a multitude of different use properties. For the information of Councillors the Shire of Broome has 16 different classifications for rates while the Shire of Wyndham–East Kimberley has 5 different rates classifications. It is proposed that the Shire of Derby/West Kimberley have 4 classifications for the 2017/2018 year.

Minimum Rate

It is proposed that these also be increased by 1.7% from \$940 to \$956 for the 2017/2018 financial year. This level is not considered high compared to the extensive level of services provided by the Shire of Derby/West Kimberley as well as comparing it to other Councils throughout the State.

Discount System/Scheme

Council introduced a discount system in the 2002/2003 financial year.

There are positive benefits to ratepayers who can pay early and remains cost neutral to those who cannot.

Earlier payments can help Council's cash flow and possibly debt recovery however there is often a loss (of forgone income) to the Council of utilising such a scheme.

Given the level of costs of replacing major capital assets that need to be addressed, forgoing a large amount of income is not considered the most appropriate action. The foregone income for 2011/2012 was \$51,265, in 2012/2013 was \$58,888, in 2013/2014 was \$71,406, in 2014/2015 was \$69,240, in 2015/2016 was \$69,902 and in 2016/2017 was \$77,392.

The Council will have an outstanding rates ratio of approximately 12% at the end of the 2016/2017 financial year. The implementation of a greater discount for early payment would be unlikely to improve this figure.

When considering utilising such a discount scheme, Council should take into account the practical application of such schemes as well as ensuring they are in accordance with the *Local Government Act 1995*. The proposal for the 2017/2018 year is the same as that which applies in a number of other Councils in WA, that being the discount only

applies where the rates and all arrears are paid in full by the due date which is 35 days from the date of the service of the rate notice.

No discount applies where the instalment payment option is used, nor does the discount apply to rubbish service charges. As mentioned, this is the same as that which applies in many other Councils.

The amount of the discount will be shown on each rate notice.

It is proposed that a discount of 2.0% apply.

The attached spreadsheet displays the current year rates and the proposed rates for next financial year.

STATUTORY ENVIRONMENT:

Sections 6.25 to 6.82 of the *Local Government Act 1995* refer to rates and service charges. However, this report more specifically refers to the following sections of the Act;

6.28. Basis of Rates

- (1) *The Minister is to —*
 - (a) *determine the method of valuation of land to be used by a local government as the basis for a rate; and*
 - (b) *publish a notice of the determination in the Government Gazette.*
- (2) *In determining the method of valuation of land to be used by a local government the Minister is to have regard to the general principle that the basis for a rate on any land is to be —*
 - (a) *where the land is used predominantly for rural purposes, the unimproved value of the land; and*
 - (b) *where the land is used predominantly for non-rural purposes, the gross rental value of the land.*
- (3) *The unimproved value or gross rental value, as the case requires, of rateable land in the district of a local government is to be recorded in the rate record of that local government.*
- (4) *Subject to subsection (5), for the purposes of this section the valuation to be used by a local government is to be the valuation in force under the Valuation of Land Act 1978 as at 1 July in each financial year.*
- (5) *Where during a financial year —*
 - (a) *an interim valuation is made under the Valuation of Land Act 1978; or*
 - (b) *a valuation comes into force under the Valuation of Land Act 1978 as a result of the amendment of a valuation under that Act; or*

- (c) *a new valuation is made under the Valuation of Land Act 1978 in the course of completing a general valuation that has previously come into force, the interim valuation, amended valuation or new valuation, as the case requires, is to be used by a local government for the purposes of this section.*

6.33. Differential General Rates

- (1) *A local government may impose differential general rates according to any, or a combination, of the following characteristics —*
 - (a) *the purpose for which the land is zoned, whether or not under a local planning scheme or improvement scheme in force under the Planning and Development Act 2005; or*
 - (b) *a purpose for which the land is held or used as determined by the local government; or*
 - (c) *whether or not the land is vacant land; or*
 - (d) *any other characteristic or combination of characteristics prescribed.*
- (2) *Regulations may —*
 - (a) *specify the characteristics under subsection (1) which a local government is to use; or*
 - (b) *limit the characteristics under subsection (1) which a local government is permitted to use.*
- (3) *In imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.*
- (4) *If during a financial year, the characteristics of any land which form the basis for the imposition of a differential general rate have changed, the local government is not to, on account of that change, amend the assessment of rates payable on that land in respect of that financial year but this subsection does not apply in any case where section 6.40(1)(a) applies.*
- (5) *A differential general rate that a local government purported to impose under this Act before the Local Government Amendment Act 2009 Section 39(1)(a) came into operation is to be taken to have been as valid as if the amendment made by that paragraph had been made before the purported imposition of that rate.*

6.35. Minimum Payment

- (1) *Subject to this section, a local government may impose on any rateable land in its district a minimum payment which is greater than the general rate which would otherwise be payable on that land.*

- (2) *A minimum payment is to be a general minimum but, subject to subsection (3), a lesser minimum may be imposed in respect of any portion of the district.*
- (3) *In applying subsection (2) the local government is to ensure the general minimum is imposed on not less than —*
 - (a) *50% of the total number of separately rated properties in the district; or*
 - (b) *50% of the number of properties in each category referred to in subsection (6), on which a minimum payment is imposed.*
- (4) *A minimum payment is not to be imposed on more than the prescribed percentage of —*
 - (a) *the number of separately rated properties in the district; or*
 - (b) *the number of properties in each category referred to in subsection (6), unless the general minimum does not exceed the prescribed amount.*
- (5) *If a local government imposes a differential general rate on any land on the basis that the land is vacant land it may, with the approval of the Minister, impose a minimum payment in a manner that does not comply with subsections (2), (3) and (4) for that land.*
- (6) *For the purposes of this section a minimum payment is to be applied separately, in accordance with the principles set forth in subsections (2), (3) and (4) in respect of each of the following categories —*
 - (a) *to land rated on gross rental value; and*
 - (b) *to land rated on unimproved value; and*
 - (c) *to each differential rating category where a differential general rate is imposed.*

6.36. Local Government to Give Notice of Certain Rates

- (1) *Before imposing any differential general rates or a minimum payment applying to a differential rate category under section 6.35(6)(c) a local government is to give local public notice of its intention to do so.*
- (2) *A local government is required to ensure that a notice referred to in subsection (1) is published in sufficient time to allow compliance with the requirements specified in this section and section 6.2(1).*
- (3) *A notice referred to in subsection (1) —*
 - (a) *may be published within the period of 2 months preceding the commencement of the financial year to which the proposed rates are to apply on the basis of the local government's estimate of the budget deficiency; and*
 - (b) *is to contain —*

- (i) *details of each rate or minimum payment the local government intends to impose; and*
- (ii) *an invitation for submissions to be made by an elector or a ratepayer in respect of the proposed rate or minimum payment and any related matters within 21 days (or such longer period as is specified in the notice) of the notice; and*
- (iii) *any further information in relation to the matters specified in subparagraphs (i) and (ii) which may be prescribed; and*
- (c) *is to advise electors and ratepayers of the time and place where a document describing the objects of, and reasons for, each proposed rate and minimum payment may be inspected.*
- (4) *The local government is required to consider any submissions received before imposing the proposed rate or minimum payment with or without modification.*
- (5) *Where a local government –*
 - (a) *in an emergency, proposes to impose a supplementary general rate or specified area rate under section 6.32(3)(a); or*
 - (b) *proposes to modify the proposed rates or minimum payments after considering any submissions under subsection (4), it is not required to give local public notice of that proposed supplementary general rate, specified area rate, modified rate or minimum payment.*

POLICY IMPLICATIONS:

AF20 – Rating Administration Policy

In accordance with the Department of Local Government and Communities “Rating Policy – Differential Rates”, for the Minister to grant approval under section 6.33(3) Council must satisfy the Minister that consideration has been given to the key values of Objectivity, Fairness and Equity, Consistency, Transparency and Administrative Efficiency.

The following indicates how these values are satisfied by the proposed differential rates:

Objectivity:

-) The land on which differential general rates is proposed has been rated according to zoning and land use. No land is proposed for differential general rates based on being vacant land.
-) There has been no change to the boundaries of the District in the past five years.

-) One differential general rate has been proposed which is more than twice the lowest differential – this being the mining differential rating category compared to the pastoral differential rating category.

Fairness and Equity:

-) Council has reviewed its expenditure and considered efficiency measures as part of its budget deliberations. In particular, to improve efficiency and reduce expenditure Council has:
- Commenced the process to negotiate a new enterprise agreement;
 - Reviewed the need for and remuneration of each position as vacancies arise;
 - Reduced the number of houses leased for staff housing;
 - Deferred capital expenditure where possible;
 - Installed energy efficient fixtures and equipment;
 - Implemented Vendor Marketplace (eQuotes) for procurement below the tender threshold; and
 - Disposed of under-utilised light fleet and plant;
-) The objects of imposing differential rates and reasons for each rate are set out in the attached document that will be publically available.
-) These objects and reasons clearly explain why each differential general rate is proposed to be imposed.
-) The objects and reasons clearly explain why it is proposed to set the differential general rate at that particular rate.
-) Where any category of ratepayer is significantly contributing to revenue through fees, charges and other payments, these same costs have not been used as the justification for the difference in differential general rate.
-) There is more than 30 ratepayers who will be subject to the proposed differential rates categories.
-) All submissions from ratepayers will be presented to Council for consideration at a later meeting and the minutes of this meeting, including the responses to ratepayer submissions, will be provided to the Department of Local Government and Communities and the Minister.

Consistency:

-) All properties with the same land use characteristics have been rated in the same way.
-) The proposed differential rates align with the principles of the rating strategy in the Corporate Business Plan and Long Term Financial Plan, however they

differ in application as the proposed increase to rates in the dollar (predominantly 1.7%) is significantly lower than the 6.2% increase forecast for 2017/18 in the Long Term Financial Plan. This reduction is a response to the changing economic conditions in the district and implementation of efficiency measures within the organisation.

-) Consideration has been given to rates proposed in neighbouring or similar local government districts.

Transparency and Administrative Efficiency:

-) A document has been prepared clearly describing the object of and reason for each differential general rate. This will be made publically available.
-) Public notice will be exhibited on a notice board at Council's offices and at each library within the District. This public notice will also be published in local newspapers.
-) The public notice will detail each differential general rate to be imposed, advise ratepayers where to obtain a copy of the objects and reasons, invite submissions from ratepayers on the proposed differential general rates and advise the closing date for submissions.
-) After the closing date for submissions, each submission received will be presented to Council for consideration prior to resolving to make application to the Minister for approval of the proposed differential general rates.

FINANCIAL IMPLICATIONS:

The 2017/2018 draft annual budget is being developed in line with the rating determinations contained in this report.

Variation from these proposals will change the affordability projections of the items proposed in Council's Plan for the Future and Corporate Business Plan. Any decrease could then mean that the projects included may not occur as proposed.

STRATEGIC IMPLICATIONS:

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

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal and Compliance: Non-compliance with the Local Government Act 1995	Unlikely	Moderate	Medium	Accept officer recommendation

CONSULTATION:

Before Council can establish a differential rating model, the proposed differential rates together with the Statement of Objects and Reasons for Differential Rates and Minimum Payments and reasons for each rate must be advertised for a minimum period of 21 days. This period of advertising allows ratepayers to consider the proposed rates and make any submissions prior to Council considering the adoption of differential rates as part of the budget approval process. The advertising process does not prevent Council from amending the rate model at budget adoption.

COMMENT:

The Local Government Act 1995 provides for Councils to levy rates to fund the estimated annual budget deficiency for the forthcoming financial year.

The estimated budget deficit for the 2017/2018 financial year has not yet been finalised, as the detailed budget estimates covering various expense and revenue items are currently being prepared. At present, the amount required from rates to fund the outcomes of the draft budget is in excess of the rate increase proposed of 1.7%. Staff are currently revising the draft budget and service levels and are looking at all avenues to reduce the gap, including alternative revenue sources.

Whilst rate modelling has been undertaken using a 1.7% increase, it is important to note that properties valued at unimproved value (UV) are subject to an annual valuation, whereas gross rental valuations (GRV) are conducted every five years. Accordingly, the rate increases on individual properties within the UV land use groups may vary from the general 1.7% increase; albeit the collective value of rates levied within each land use group will generally increase by this percentage.

It is also worthy of noting that section 6.33 (differential rates) and section 6.35 (minimum payment) of the *Local Government Act 1995* require that certain ratios be complied with in respect of, amongst others, differential rating comparatives, general minimum payments and the number of properties subject to minimum payments. These matters are also required to be considered as part of the rates modelling process.

In accordance with section 6.36 of the Act (local government to give notice of certain rates), public notice is required to be given where a local government intends to impose differential rates, or a minimum payment applying to a differential rate category. The public notice is to invite submissions to the proposal for a period of not less than twenty one (21) days. The Council is required to consider any submissions received prior to it formally imposing the proposed differential rates in the dollar and associated minimum payments, with or without modification. As in previous years, and unless circumstances require otherwise, it is proposed that any submissions received will be presented to the Council at which time it formally considers its 2017/2018 annual budget.

Whilst not required to do so, it is proposed that in addition to the differential rates in the dollar and associated minimum payments, that the Council also gives public notice of the general rates in the dollar and associated minimum payments. This is simply to provide ratepayers with additional comparative data.

The proposed differential rates in the dollar and associated minimum payments are analogous with related Council determinations, and as such, are recommended for endorsement for public notice purposes. Notwithstanding this however, the Council may determine to amend the advertised rates in the dollar and/or associated minimum payments at which time it formally adopts its budget, without the need for further public notice. Should this occur, the reasons for not adopting the advertised rates in the dollar and/or associated minimum payments are required to be disclosed in the annual budget and also as part of the rates notice; pursuant to regulations 23(b) and 56(4)(b) of the *Local Government (Financial Management) Regulations 1996*.

In the past Council has adopted rates that are more than twice the minimum differential rate and must therefore seek Ministerial approval, as required by the provisions of the *Local Government Act 1995*. The Department of Local Government and Communities has been scrutinising local government's differential rating strategies in more detail in recent years and may request modifications to be made, if they are not satisfied that the rating strategy is fair and equitable.

VOTING REQUIREMENT:

Simple majority

This is all that is required, as the matter is merely an "In Principle" issue at this time, as the formal adoption of rates is part of the budget resolutions.

COUNCIL DECISION AND OFFICER RECOMMENDATION:**MINUTE NO. 075/2017****Moved: Cr P Coggins****Seconded: Cr A Twaddle****That Council:**

- 1. Supports the proposals included in the rating model as outlined in this report be adopted “in principle” as Council’s proposed rating structure for the 2017/2018 financial year, which includes the following proposed rates:-**
 - 1.1 A GRV rate of 12.4458 cents in the dollar for all GRV rated properties;**
 - 1.2 A UV rate of 21.3944 cents in the dollar for all UV rated properties, except those used or coded as used for mining and pastoral purposes;**
 - 1.3 A UV differential rate of 26.4530 cents in the dollar for all those properties predominantly used for mining purposes, or where held as a lease for mining purposes;**
 - 1.4 A UV differential rate of 6.3544 cents in the dollar for all those properties predominantly used for pastoral purposes;**
 - 1.5 A minimum rate of \$956.00 for all properties, both GRV valuations and UV valuations.**
- 2. That a provision be included in the budget for the offering of a 2.0% discount on the early payment of rates for the 2017/2018 year.**
- 3. Advertise for public comment, the differential rates and the minimum payments stated in 1 above, as per the requirements of section 6.36 of the *Local Government Act 1995*.**
- 4. Apply to the Minister for Local Government for approval to impose differential general rates which are more than twice the lowest differential rate, for the 2017/2018 financial year, as per section 6.33(3) of the *Local Government Act 1995*.**

CARRIED 8/0

12.0 NEW BUSINESS OF AN URGENT NATURE

12.1 PERMISSION TO CONSTRUCT BIO-RETENTION TREATMENT AREA ON RESERVE No.36826

Location/Address:	Reserve No.36826 Lot 89 Forrest Road, Fitzroy Crossing
Name of Applicant:	Marra Worra Worra Aboriginal Corporation
File Reference:	A300115
Author:	Noel Myers – Manager Planning Services
Responsible Officer:	Stephen Gash – Chief Executive Officer
Disclosure of any Interest:	Nil
Date of Report:	26 June 2017
Attachments:	Site Plan
Authority/Discretion:	Administrative

SUMMARY:

This report is for Council to approve the construction of a bio retention area on a portion of Shire Reserve 36826, required as part of the Urban Water Management Plan for the new Marra Worra Worra mixed use development that is proposed on Lot 888 Emanuel Way, Fitzroy Crossing.

BACKGROUND:

Shire issued Development Approval to Marra Worra Worra (MWW) for a Mixed Use Development on the subject lot, subject to conditions, at the Ordinary Meeting of Council held 30 June 2016. The decision of the Council at that meeting was:

OFFICER RECOMMENDATION: MINUTE NO. 071/2016

Moved: Cr P White

Seconded: Cr A Twaddle

- That Council, agrees to issue Development Approval for a Mixed Use Development consisting of Commercial Shops and Offices, Eight Accommodation Units and Eleven Self Storage Units together with requisite car parking areas on Lots 90 and 91 Emanuel Way, Fitzroy Crossing in accordance with the application and plans dated 8 March 2016 and Amended Site Plan dated 10 May 2016 subject to the following:***
 - The applicant causes a subdivision and amalgamation application to be lodged and approved by the Western Australian Planning Commission to have Lots 90 and 91 Emanuel Way, Fitzroy Crossing amalgamated and that the amalgamation process be finalised.***

2. ***That upon satisfaction of Condition 1 a). as stated above, Council by ABSOLUTE MAJORITY delegates authority to the Chief Executive Officer to issue Planning Consent for a Mixed Use Development consisting of Commercial Shops and Offices, Eight Accommodation Units and Eleven Self Storage Units together with requisite car parking areas on Lots 90 and 91 Emanuel Way, Fitzroy Crossing in accordance with the application and plans dated 8th March 2016 and amended site plan dated 10th May 2016 subject to the following:***
- i) All development is to be in accordance with the approved plans dated 8th March 2016 and the amended site plan dated 10th May 2016;***
 - ii) The Planning Consent will be valid for two years from the date of the issue of the letter. This approval shall expire if the development works have not been substantially commenced within this two-year period or within any extended period for which the Council has granted consent;***
 - iii) A Building Permit under the provisions of the Building Act 2011 must be submitted to and approved by Council prior to the commencement of any on-site works whatsoever. Development under a Building Permit must be substantially commenced within 12 months and completed within two years;***
 - iv) Plans submitted for the Building Permit are to detail all storm water and roof run-off disposal and be designed so as to ensure storm water is not is able to flow onto adjoining properties. Engineering plans will need to detail what retaining methods are to be employed around the perimeter of the site and be to the satisfaction of the Executive Manager Technical and Development Services;***
 - v) The development being connected to the town's reticulated water supply and sewer system to the requirements of the Water Corporation;***
 - vi) The parking bays, driveways and access points servicing the Office to be designed in accordance with Australian Standard for Off-street Car Parking (AS/NZS2890.6 as amended) and Off-street Car Parking for People with Disabilities (AS/NZS2890.6 2009 as amended). Such areas are to be constructed, drained and marked prior to the development being occupied and thereafter maintained to the satisfaction of the Executive Manager, Technical and Development Services;***
 - vii) The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct.***

- viii) The vehicle crossover shall be constructed and sealed to Council's specification to connect site access to the existing road seal and designed as to not impact on the street drainage system and grade into the seal and is to be installed prior to the commencement of the occupation and use and of the site;**
- ix) Prior to the final approval and installation of the new and upgraded parking areas within the Emanuel Way road reserve and the new sealed access way servicing the Hardware and the Self-Storage Units, the applicant/owner is to enter into a suitable legal agreement between the applicant and the Shire which confirms that the applicant/owner will be responsible for the future maintenance of the carpark and access way located within the road reserve. All costs associated with the preparation and execution of documents is to be for the care of the applicant and be to the satisfaction of the Chief Executive Officer of the Shire of Derby/West Kimberley;**
- x) Prior to the commencement of the use, the applicant is to construct a footpath to Council specifications connecting the site to the existing footpath network on the western side of Forrest Road to the satisfaction of the Executive Manager, Technical & Development Services. The footpath is to extend from the driveway entrance to provide pedestrian linkage to the proposed footpath as shown on the plans on the northern boundary of the lot so as to provide contiguous pedestrian access to the development and all paths are to meet with Australian Standards for Disability Access;**
- xi) Occupation of the Accommodation Units is restricted and limited to persons employed by the approved business's operating from the property and or those persons engaged in training or employment programs with the Marra Worra Worra Aboriginal Corporation;**
- xii) All car parking areas servicing the accommodation units and pathways linking the area to accommodation units are to be provided with suitable lighting to the relevant Australian Standard;**
- xiii) All pathways linking the accommodation units to the carpark areas and to the front of the property are to have a minimum dimension of 1.5 metres and comply with disability access requirements;**
- xiv) A Landscaping Plan is to be prepared and submitted to the satisfaction of the Shire Planner which when approved will be endorsed and form part of this Development Approval. The plan must be submitted and approved prior to the issue of a Building Permit and shall be installed and thereafter maintained in accordance with the approved plan;**

- xv) Suitable site investigations are to be undertaken prior to the use and development of Lot 90 Emanuel Way for residential purposes that there are no contaminants present from the prior use of the site for industrial purposes; and*
- xvi) A plinth is to be provided within the Emanuel Way road reserve for the placement and collection of rubbish bins and is to be to the satisfaction of the Executive Manger Technical and Development Services.*
- 3. That Council by ABSOLUTE MAJORITY delegates to the Chief Executive Officer, authority to approve the application once the proposal has been advertised for a period of 14 days. Authority is delegated on the basis that no sustainable objections to the development are received and in the case that an objection is received that cannot be satisfactorily resolved, the application is to be referred back to the next available Council meeting for determination.**

CARRIED 9/0

CARRIED BY ABSOLUTE MAJORITY

Since obtaining Council's approval, the applicant has finalised the amalgamation of the lots 90 and 91 Emanuel Way (now described as Lot 888) and has provided updated plans and reports to satisfy the various conditions of approval. As at date, the final matter to be resolved relates to Condition iv).which pertains to the requirement to have a stormwater management plan put in place.

Further commentary on this matter is detailed in ensuing sections of this report.

STATUTORY ENVIRONMENT:

Interim Development Order No.8.

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

Nil

STRATEGIC IMPLICATIONS:

GOAL	OUTCOME	STRATEGY
<p>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</p>	<p>2.1: Appropriate development that enhances the unique character and heritage of the Shire's townships</p>	<p>2.1.4: ensure quality, consistent and responsive development and building assessment approval processes and enforcement</p>
<p>4: Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery</p>	<p>4.1: Effective governance and leadership</p>	<p>4.1.4: Ensure governance policies and procedures are in accordance with legislative requirements</p>

RISK MANAGEMENT CONSIDERATIONS:

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<p>Environment: Discharge contaminated stormwater</p>	Rare	Minor	Low	Endorse development of bio-retention treatment area as proposed within the UWMP
<p>People, Health and Safety: Pooling of water in public area, vector breeding, risk to people</p>	Rare	Moderate	Medium	Retention area to be designed and maintained in accordance with established DoW standards, enforceable by legal agreement Design to incorporate battered side slopes at 1:4 enable easy egress
<p>Reputation: Non approval of the request would demand substantial reconsideration of the overall development and delay construction</p>	Unlikely	Moderate	Medium	Accept officer recommendation with any amendments (as specified by Council)

CONSULTATION:

Consultation has been undertaken with the applicant and consultant in respect to the preparation of the Urban Water Management Plan required to satisfy the conditions of Council's approval. Discussions with the applicant have also been held in respect to the need to have the legal agreement amended to include for the future maintenance of the retention area should Council be agreeable to its construction upon a portion of Reserve No.36826.

COMMENT:

The approval of Council is being sought for the applicant to construct a bio-retention basin within the Council managed Reserve No. 36826 which is located immediately in front of the Lot 888 Emanuel Way on which the applicant is constructing a mixed use development.

The need to construct the retention basin was identified during the preparation of the Urban Water Management Plan (UWMP) that was required to satisfy Condition iv) of the Development Application previously approved by Council.

The UWMP has been prepared to address the following:

-) Provide details of how stormwater quality will be managed on the site, given the proposed development is nearly completely hardstand surfaces;
-) Confirm that sufficient capacity is available within the existing town site drainage system to manage the additional flows directed from the proposed development; and
-) Confirm that the development will be above the flood level of 111.5mAH identified in the Fitzroy Crossing Recommended Floodplain Management Strategy, plus a freeboard allowance of 500mm.

The report (prepared by 360 Environmental Pty Ltd) has identified that there is a need to construct a vegetated bio-retention treatment area. In brief, this is a shallow (viz 500mm deep) vegetated basin (15m x 2.5m – 35m³) that is constructed with the purpose of holding back stormwater from large rainfall events that are discharged from the site so that pollutants and sediments are stripped from stormwater and that the rate of overland stormwater flows are slowed.

There is insufficient area to locate this within Lot 888 Emanuel Way and accordingly, the applicant is seeking permission to construct this within Reserve No.36826 which is immediately within front of the subject lot and there is a management order over the land in favour to the Shire for the purpose of Parks and Recreation.

The Reserve is lightly developed with grass and trees and acts as an area of passive open space and to some extent already provides a drainage function for Forrest Road and the properties beyond. The plans submitted and approved for the broader overall development show there is a 'feature' fence to be constructed along the western boundary of Lot 888 that fronts Forrest Road. The cumulative effect of that feature fencing with the vegetated retention basin in front should have a positive impact upon the streetscape which serves as part of the entry statement into the town.

As the basin is to the direct benefit of the development being undertaken on Lot 888 Emanuel Way and will require some planting in order to function correctly and thereafter require a degree of maintenance, it is recommended that any support be contingent upon the applicant assuming responsibility for that maintenance. Similarly the proponent should assume responsibility for costs and for the undertaking of any modifications required to the existing in-ground infrastructure that may be impacted by the new retention basin. This can be managed by having the legal agreement that was prepared to satisfy Condition ix) of the Development Application amended so that it captures the issues surrounding the construction and operation of the proposed retention basin. This matter has been discussed with MWW staff and there has been a general agreement to this suggestion.

SUMMARY:

The need to construct the bio-retention basin was not known when the Council considered the initial proposal in June 2016 and the requirement has only become evident whilst preparing the UWMP.

-) The existing area is relatively benign, however the retention basin will introduce a landscape element into the area;
-) The landscaping of this area, combined with the new feature fence as shown on the approved plans will have positive impact on the streetscape and should enhance the main entry into the town;
-) The UWMP sets out an annual maintenance schedule for the retention basin and the responsibility for that work can be delegated to MWW as the owners of the land via a modification to the legal agreement that has been drawn to satisfy Condition ix) of the Development Application No. 06/16 dated 20 February 2017.

Council has the following options in regard to this matter:

- Option 1:** Agree to the construction of the bio-retention basin as proposed within the UWMP on a portion of Reserve No.36826 subject to the applicant assuming future maintenance responsibility for the area;
- Option 2:** Not agree to the construction of the bio-retention basin on the Shire Reserve and require the proponent to redesign the project so that all stormwater treatment areas are contained on-site.

The development of the area is considered to be an appropriate form of infrastructure to be developed within a Reserve vested for Parks and Recreation and also provides a windfall planning gain that will see the main entry into the town enhanced by the introduction of a landscaped element.

The future maintenance burden of the area is likely to be relatively low, however, there is the mechanism to assign that responsibility to the proponent whom is the primary beneficiary via the legal agreement.

Should the Council decide to adopt **Option 2**, it will require the proponent to substantially revise the plan and resubmit an amended plan to Council for reconsideration.

Having regard to the matters outlined above, it is the recommendation of the Administration that **Option 1** be adopted.

VOTING REQUIREMENT:

Simple majority

Absolute where indicated

COUNCIL DECISION AND OFFICER RECOMMENDATION:**MINUTE NO. 076/2017****Moved: Cr C Kloss****Seconded: Cr P Coggins**

- 1. That Council GRANTS APPROVAL to Marra Worra Worra Aboriginal Corporation to construct a bio-retention treatment area within a portion of reserve No.36826, as detailed within the draft Urban Water Management Plan prepared by 360 Environmental Pty Ltd, dated May 2017 subject to the following conditions;**
 - a) Detailed plans of the bio-retention area including planting schedules are to be provided and be to the satisfaction of the Chief Executive Officer prior to any development of the area whatsoever. Planting is to include replacement of all turf removed during the excavation works;**
 - b) The maintenance of the bio-retention area once completed will remain the responsibility of the applicant and or any future owner of Lot 888 Emanuel Way, Fitzroy Crossing and this liability is to be documented within a suitable legal agreement. All costs associated with the preparation and execution of the documents is for the care of the applicant and will be to the satisfaction of the Chief Executive Officer;**
 - c) That the applicant is responsible for the reinstatement and any costs for incurred of any infrastructure that is either damaged or modified during the construction of the bio-retention area.**
- 2. That Council, by ABSOLUTE MAJORITY, DELEGATES authority to the Chief Executive Officer and the Shire President to execute and affix the Common Seal to the Legal Agreement drawn by McLeod Solicitors in respect to Condition ix) of Planning Consent 06/16 dated 20 February 2017 with suitable modifications being made to satisfy Condition 1 b) as set out within the officer recommendation above.**

CARRIED 8/0 BY AN ABSOLUTE MAJORITY

COUNCIL DECISION:

MINUTE NO. 077/2017

Moved: Cr P Coggins

Seconded: Cr C Kloss

That Council:

- 1. AUTHORISES the Chief Executive Officer to extend all existing Memorandum of Understanding's at the Derby Wharf Precinct;**
- 2. AUTHORISES the Shire President and Chief Executive Officer to sign and affix the Common Seal to the Memorandum of Understanding between the Shire of Derby/West Kimberley and the relevant parties.**

CARRIED 8/0

COUNCIL DECISION:

MINUTE NO. 078/2017

Moved: Cr C Kloss

Seconded: Cr P Coggins

That Council AWARDS the technical supply and installation of the CCTV project to Security and Technology Services Pty Ltd.

CARRIED 8/0

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

Nil

14.0 CLOSURE

14.1 DATE OF NEXT MEETING

The next ordinary meeting of Council will be held Thursday, 27 July 2017 at the Council Chambers, Clarendon Street, Derby.

14.2 CLOSURE OF MEETING

The Presiding Member closed the meeting at 1.31pm.

<p>These minutes were confirmed at a meeting on</p> <p>.....</p> <p>Signed:</p> <p>Presiding Person at the meeting at which these minutes were confirmed.</p> <p>Date:</p>
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