



# **SHIRE OF DERBY/WEST KIMBERLEY**

## **NOTICE OF COUNCIL MEETING**

**Dear Elected Member,**

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

Thursday, 26 July 2018

At

Council Chambers, 68 Clarendon Street, Derby

Commencing at

5:30pm

Stephen Gash  
**CHIEF EXECUTIVE OFFICER**

Date: 20/07/2018

## **AGENDA**

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## **Our Guiding Values**

### **Respectful**

By being helpful, friendly and supportive

### **Integrity**

Through honesty, accountability and ethical behaviour

### **Leadership**

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

### **Knowledgeable**

By being well informed and accurate in what we do

### **Building Good Relationships**

By being communicative, responsive and inclusive

## **Disclaimer**

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

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

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any Elected Member or officer of the Shire during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire.

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

## **Notes for Members of the Public**

### **PUBLIC QUESTION TIME**

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

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

### **MEETING FORMALITIES**

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

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

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## Notes for Elected Members

### NATURE OF COUNCIL’S ROLE IN DECISION MAKING

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

### ALTERNATIVE MOTIONS

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

### DECLARATIONS OF INTERESTS

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

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

Section 5.60B states;

*“a person has a proximity interest in a matter if the matter concerns –*

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

Regulation 34C (Impartiality) states;

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

**2018 MEETING DATES**

At its Ordinary Meeting of Council on 30 November, 2017, Council adopted the following meeting dates for 2018;

January			Council in Recess
Thursday	22 February 2018	5.30 pm	Council Chambers, Derby
Thursday	29 March 2018	1.00 pm	Karrayili Adult Education Centre, Fitzroy Crossing
Thursday	26 April 2018	5.30 pm	Council Chambers, Derby
Thursday	31 May 2018	5.30 pm	Council Chambers, Derby
Thursday	28 June 2018	1.00 pm	Karrayili Adult Education Centre, Fitzroy Crossing
Thursday	26 July 2018	5.30 pm	Council Chambers, Derby
Thursday	30 August 2018	5.30 pm	Council Chambers, Derby
Thursday	27 September 2018	1.00 pm	Council Chambers, Derby
Thursday	25 October 2018	5.30 pm	Council Chambers, Derby
Thursday	29 November 2018	1.00 pm	Karrayili Adult Education Centre, Fitzroy Crossing
Thursday	13 December 2018	5.30 pm	Council Chambers, Derby

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

**MEETING ATTENDANCE**

The following table provides information on attendance at the 2017-2018 Ordinary and Special Council Meetings;

Councillor	22 Feb 2018	29 Mar 2018	26 Apr 2018	31 May 2018	14 Jun 2018	28 Jun 2018	26 Jul 2018	30 Aug 2018	27 Sep 2018	25 Oct 2018	29 Nov 2018	13 Dec 2018
	OCM	OCM	OCM	OCM	SCM	OCM	OCM	OCM	OCM	OCM	OCM	OCM
P White	✓	✓	✓	✓	✓	✓						
P Coggins	✓	✓	LOA	✓	✓	✓						
C Kloss	✓	✓	✓	✓	✓	✓						
P McCumstie	✓	LOA	✓	✓	✓	✓						
I Prouse	✓	✓	✓	LOA	✓	✓						
A Twaddle	✓	✓	LOA	✓	✓	✓						
G Davis	A	✓	✓	✓	✓	✓						
G Haerewa	✓	✓	✓	✓	✓	✓						
D Andrews	A	A	✓	A	A	LOA						

**APPLICATION FOR LEAVE OF ABSENCE**

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

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

## SHIRE OF DERBY/WEST KIMBERLEY

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## **ORDINARY MEETING OF COUNCIL**

### **AGENDA**

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#### **1.0 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS**

The meeting was opened at ..... by.....

#### **2.0 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS**

In accordance with regulation 14A of the *Local Government (Administration) Regulations 1996* Council must approve (by Absolute Majority) the attendance of a person, not physically present at a meeting of Council, by audio contact. The person must be in a 'suitable place' as approved (by absolute majority) by Council. A 'suitable place' means a place that is located in a townsite or other residential area and 150km or further from the place at which the meeting is to be held.

#### **3.0 RECORD OF ATTENDANCE**

##### **3.1 ATTENDANCE**

**ELECTED MEMBERS:**

**STAFF:**

**VISITORS:**

**GALLERY:**

##### **3.2 APOLOGIES**

##### **3.3 APPROVED LEAVE OF ABSENCE**

##### **3.4 ABSENT**

### **3.5 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.

#### **3.5.1 DECLARATIONS OF FINANCIAL INTERESTS**

#### **3.5.2 DECLARATIONS OF PROXIMITY INTERESTS**

#### **3.5.3 DECLARATIONS OF IMPARTIALITY INTERESTS**

### **4.0 APPLICATIONS FOR LEAVE OF ABSENCE**

### **5.0 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

### **6.0 PUBLIC TIME**

#### **6.1 PUBLIC QUESTION TIME**

#### **6.2 PUBLIC STATEMENTS**

**6.3 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS**

**7.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION**

**8.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

**OFFICER RECOMMENDATION:**

**Moved: Cr**

**Seconded: Cr**

**That the Minutes of the Ordinary Meeting of the Shire of Derby/West Kimberley held at Karrayili Adult Education Centre, Fitzroy Crossing, on 28 June 2018 be CONFIRMED.**

**CARRIED:**

**9.0 RECOMMENDATIONS AND REPORTS OF COMMITTEES**

Nil

## **10.0 REPORTS**

### **10.1 EXECUTIVE SERVICES**

#### **10.1.1 LOT 1 BLOODWOOD CRS. DERBY - GROUPED DWELLING DEVELOPMENT.**

<b>Location/Address:</b>	Lot 1 Bloodwood Crescent Derby
<b>Name of Applicant:</b>	PlanFact on behalf of Main Roads Western Australia
<b>File Reference:</b>	A101525
<b>Author:</b>	Noel Myers – Manager Planning Services
<b>Responsible Officer:</b>	Stephen Gash – Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	10 July 2018
<b>Attachments:</b>	Location Plan/Site Plan/Floor Plans
<b>Authority/Discretion:</b>	Administrative

#### **SUMMARY:**

Report is for Council to endorse plans for the redevelopment of Lot 1 Bloodwood Crescent, Derby with two grouped dwellings.

#### **BACKGROUND:**

- Subject lot is Zoned Residential R12.5 under Town Planning Scheme No.5.
- Surrounding land uses are exclusively residential - adjoining lots to both side and rear boundaries are single residential dwellings;
- Lot is currently developed with three grouped dwellings;

#### **STATUTORY ENVIRONMENT:**

- Town Planning Scheme No.5 – regarding Zoning and Coding of targeted properties – Zone Objectives and Policies;
- Local Planning Strategy – regarding future planning initiatives over the 10-15 year planning horizon;
- Residential Design Codes of Western Australia – Table 1 – general site requirements for all single and grouped dwellings & part 5 – design elements for all single and grouped residential dwellings;
- Public Works Act 1902 – regarding projects deemed to be public works;
- Planning and Development Act 2005 – regarding exemptions for works deemed public works

The construction of housing by Main Roads Western Australia (MRWA) is deemed to be a public work under the provisions of the Public Works Act 1902 and the Planning & Development Act 2005.

The Planning and Development Act 2005 exempts public works from the need to obtain planning approval under the Shire of Derby- West Kimberley Town Planning Scheme No.5. Whilst this is the case, when exercising its right to undertake public works, the Department must have regard to:

- The purpose and intent of any planning scheme affecting the land;
- Orderly and proper planning; and
- The amenity of the locality.

The Planning & Development Act 2005 also requires that the Department consult with the local authority on the above at the time of undertaking the public work.

#### **POLICY IMPLICATIONS:**

The current request is considered against the Zone Objectives & Policies detailed within TPS No.5.

#### **RESIDENTIAL ZONE:**

##### Zone Objectives:

- (a) To designate land for residential development to meet the needs of the town in locations that can be economically serviced and are environmentally suitable.
- (b) To provide a range in housing and lifestyle choice and protect the amenity and character of residential areas.

##### Zone Policies:

- (i) To promote development that is suitable for the local climate, designed to minimise energy consumption and reinforces the character of the residential precinct within which it is located;
- (ii) To ensure that necessary physical and social infrastructure is provided in conjunction with residential development;
- (iii) To promote residential development consistent with the Residential Planning codes or any variations to those codes as set out in this scheme;
- (iv) To limit the height and scale of any residential development to that of a domestic character consistent with surrounding residential development.

The proposed development by virtue of its scale and design is considered to be consistent with the zone objectives and policies and the proper and orderly planning of the area.

**FINANCIAL IMPLICATIONS:**

Nil

**STRATEGIC IMPLICATIONS:**

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

**RISK MANAGEMENT CONSIDERATIONS:**

It is the view of the Administration that there is a minimal risk profile to Council by supporting the development. As stated earlier, there are exemptions available to MRWA via the Public Works Act which would enable the state to proceed with the development if it was so deemed necessary. The Act requires consultation with and for due regard to be had to comment from comments by the local government but does bind the state by such comment.

In any event it has been proposed that the current non-conforming use be rectified by way of the new local planning scheme whereby the zoning of the lot would be amended to match the existing density. Support to this current proposal pre-empts that intent to rectify a non-conforming use rather than it introducing new higher density development into a lower density area.

**CONSULTATION:**

The plans submitted have been prepared with preliminary input being provided by the Shire Planner.

Typically grouped dwelling developments are advertised to surrounding property owners for comment prior to presentation to Council, however, in this instance, the

adjoining properties to either side of the subject lot are owned and managed by the Department of Housing and the lot to the rear is a Council owned property which is similarly developed with two grouped dwellings with frontages to Woollybutt Corner. Given the nature of adjoining land ownership the proposal has not been advertised.

**COMMENT:**

The subject property is owned by MRWA and is developed with three single bedroom grouped dwellings which will be demolished to facilitate the redevelopment of the site with two, three bedroom units.

The development is regarded as a Public Work and as such is eligible for exemption from the requirement to obtain development approval on the basis that the proposal is consistent with the proper and orderly planning of an area and has been referred to the local government for review and comment.

**Issues:**

The subject lot is zoned R12.5 under TPS No.5 and the existing development, (constructed prior to the gazettal of TPS No.5) is regarded as a non-conforming use insofar that the density of dwellings is higher than the current zoning permits.

Under this proposal the existing dwellings will be demolished and that action would typically extinguish the non-conforming use right and any subsequent redevelopment of the site would be in accordance with the prevailing R12.5 coding. This would limit development to one dwelling only. In order to achieve the desired density, MRWA relies upon the exemptions under the Public Works Act which is contingent upon consultation with and ideally securing the support of the local government.

**Comment:**

The proposed development will result in a net reduction of one dwelling on the site bringing the density of development closer to compliance with the prevailing Coding of the property.

The existing development is of a relatively modest form, being a brick and iron construction that is typical of the late 1970's to mid-1980's era of architecture. The development has little connection to the streetscape by virtue of the units being



aligned along the northern boundary of the lot and at a right angle to the street. A multi-bay, freestanding carport dominates the frontage of the property.

The plans of the new dwellings reveal a more contemporary form of building whereby free standing dwellings will be arranged side by side providing each unit with direct frontage to the street. The form of the new dwellings is more in keeping with the prevailing built form of the locality and will positively contribute to the streetscape.

The units have been assessed against the R Codes and are assessed as being compliant with the various design elements and would not require Council to exercise any discretion in respect to the set out and form of the development intent.

**Options:**

Council has several options in regard to this matter;

1. Decline to support the development and require the land to be developed in accordance with the prevailing zoning;
2. Defer the proposal and require the applicant to initiate an amendment to TPS No.5 so that the lot is zoned to accommodate the proposed density;
3. Endorse the proposed plan which would enable the consultant architect to take Council's support to the governments internal permitting body and have the development approved internally by the State

**RECOMMENDATION:**

It is the Administration's recommendation that Council adopts Option 3 insofar that the development is regarded as being;

- Consistent with the zone objectives and policies for the area;
- Consistent with the orderly and proper planning of the area; and
- Consistent in form with the existing amenity of the locality.

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:**

**Moved: Cr**

**Seconded: Cr**

**That Council endorses the plans for two grouped dwellings to be constructed on Lot 1 Bloodwood Crescent, Derby by Main Roads Western Australia and notes that the development will be undertaken as a public work.**

**CARRIED:**

### 10.1.2 PROPOSED ACCOMMODATION UNIT

<b>Location/Address:</b>	Lot 34 Loch Street, Derby
<b>Name of Applicant:</b>	Mr S Hefel
<b>File Reference:</b>	A105930
<b>Author:</b>	Noel Myers – Manager Planning Services
<b>Responsible Officer:</b>	Stephen Gash – Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	12 July 2018
<b>Attachments:</b>	Plans
<b>Authority/Discretion:</b>	Administrative

#### SUMMARY:

To consider an application for development approval for a residential accommodation unit to be constructed at the rear of the heritage listed (former) 'Cordial Factory' building – Lot 34 Loch Street, Derby.

#### BACKGROUND:

- The subject site is located toward the eastern end of the Derby townsite and has direct frontage to Loch Street;
- The subject property is known as the "Old Cordial Factory" which is included within the Shire's Municipal Inventory of Heritage Sites (MI). The MI notes that the existing building which is a corrugated iron shed "*is believed to have been used as a cordial factory*" and is noted as being significant to the history of the development of Derby;
- The property is Zoned R5 under Town Planning Scheme No.5 as are those properties abutting the side and rear boundaries of the lot;
- Notwithstanding current residential zoning of the property, the property enjoys a non-conforming use right that facilitates the ongoing use of the property as a Builders Yard (Light Industry). File records indicate that the property has been used on an ongoing basis for that purpose since 1980 (approximately).

#### STATUTORY ENVIRONMENT:

- Town Planning Scheme No.5 – Part 3 Clause 3.6 in respect to Non-conforming Use Rights
- Town Planning Scheme No.5 – Part 4 Clause 4.8 in respect to transportable and second-hand buildings
- Town Planning Scheme No.5 – Part 8 Clause 8.4 in respect to applications for development approval affecting heritage listed places

- Planning and Development (Local Planning Scheme) Regulations; Schedule 2 Part 7 Clause 61 – requirement for obtaining development approval

**POLICY IMPLICATIONS:**

None

**FINANCIAL IMPLICATIONS:**

None

**STRATEGIC IMPLICATIONS:**

GOAL	OUTCOME	STRATEGY
Goal 2: A balance between the natural and built environment – sustainable environments that meets the needs of the community and supports 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.
Goal 2: A balance between the natural and built environment – sustainable environments that meets the needs of the community and supports growth	2.1: Appropriate development that enhances the unique character and heritage of the Shire’s townships	2.1.6: Support the conservation and maintenance of heritage buildings, heritage items and places of interest.

**RISK MANAGEMENT CONSIDERATIONS:**

It is Administration’s view that there are minimal risks to Council and the Shire’s business function when Council exercises its discretionary power to determine a planning application

**CONSULTATION:**

The inclusion of a property on the Shire MI does not demand that all development applications are referred to the State Heritage Office (SHO) for approval, however, applications may be referred to the SHO for advice. In this instance, the application *has not* been referred given that the proposed accommodation unit is a free standing, transportable type that neither interferes with the heritage listed building or significantly impacts on the setting of the building.

**COMMENT:**

As previously detailed the subject property has had a long history of commercial use and for this reason it has been included in the Shire's MI.

The current owner is desirous of being able to reside on the property and to continue to use the building as a commercial workspace from where a carpentry business is operated. The building in its current form is not suitable for habitable purposes and would require extensive modifications to be undertaken and such modifications would compromise the internal workspace of the building and to an extent the heritage values of the building.

As a consequence the applicant is seeking approval to place a free standing transportable accommodation unit at the rear of the existing building. The development is to be undertaken in two stages.

- Stage one involves the placement of the building and undertaking internal and external upgrades and the construction of a verandah/deck to the front of the dwelling.
- Stage two involves the construction of a tropical roof cover over the new building.

**Non-Conforming Use:**

Clause 3.6.1 of TPS No.5 states:

*"A person shall not alter or extend a non-conforming use or erect, alter or extend a building used in conjunction with a non-conforming use without first having applied for and obtained the planning consent of the Council under the Scheme and unless in conformity with any other provision and requirement contained in the Scheme".*

The proposal to develop an accommodation unit on the site is regarded as being acceptable insofar that the introduction of living quarters does not extend or intensify the non-conforming use of the site. Those properties abutting the site are zoned for and used exclusively for residential uses and the new development is consistent with the underlying zoning of the land.

**Built form:**

Clause 4.8 of TPS No.5 enables Council to approve the use of second hand transportable buildings for accommodation purposes on the basis they are satisfied that;

*"the erection or placement of any transportable or second-hand building on a lot providing that the architectural design, external appearance and structural*

*integrity of the building is to the satisfaction of Council and, in Council's opinion, will not adversely affect the amenity of other properties in the area".*

As previously described it is proposed to locate a transportable accommodation unit on the site that will be upgraded internally and externally so that its appearance is complimentary to the finish of the main building on the lot that is clad in coloured zincalume sheeting.

In this instance, the amenity and character of the site is of an industrial nature which is established by virtue of the existing shed/workshop. The new building is regarded as being incidental and supplementary to the dominant built form and use of the property and therefore is unlikely to impart any significant adverse effect on the amenity of the surrounding properties.

#### Heritage Places:

Part 8 of TPS No.5 deals with applications affecting heritage places. The various provisions set out within the Scheme enable the Council to vary development standards and offer incentives where such discretion would assist in conserving or enhancing a heritage place.

The plans of the new development and the scope of works to be undertaken to the building are consistent and compliant with the relevant development standards set out within the Scheme and the Residential Design Codes and as such the Council would not have to exercise any specific discretion to a development standard.

The only discretion being sought is the waiver of a development bond as called for under Clause 4.8.3 of TPS No.5. Clause 4.8.3 enables Council to require an applicant to lodge a bond as surety as to the completion of the building to a standard of presentation acceptable to Council and within such period of time as Council may deem appropriate.

In this particular situation the building to be used is in good order and only requires superficial treatments to its exterior to achieve an acceptable standard of presentation. Council has the ability to vary development standards under Clauses 8.7 and 8.8 of TPS No.5. In this instance the waiver of the requirement of the applicant to lodge a bond is considered reasonable in so far that;

- The proposed building will enable the retention of the heritage building in its existing form;
- The new building only requires superficial external upgrades to bring it to the requisite level of presentation and to make it compatible with the heritage listed building; and
- Adequate development control can be exercised via conditions applied to any approval to ensure the works are completed in a timely manner.

**SUMMARY:**

The proposed development is regarded as being consistent with surrounding residential uses and supports the continuing use and maintenance of a heritage listed building. The introduction of a dwelling to the site does not intensify or extend the existing non-conforming use of the new building and is consistent with the underpinning residential zoning of the lot.

Although the proposal seeks discretion in relation to the waiver of a development bond, the scope of works proposed to be undertaken in Stage One are readily achievable and are enforceable through the application of conditions.

The overall layout and proposed treatments to openings are considered to meet the design principles set out in the R-Codes and do not require the Council to exercise any discretion.

Having regard to the above, the proposal is recommended for approval subject to conditions.

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:****Moved: Cr****Seconded: Cr**

**That Council, in accordance with the provisions of the Shire of Derby/West Kimberley Town Planning Scheme No. 5, APPROVES the development application for the proposed Accommodation Dwelling at No. 171 (Lot 34) Loch Street, Derby subject to the following:**

- 1. All development is to be in accordance with the approved plan dated 19 June 2018;**
- 2. The Planning Consent is valid for two years from the date of the approval 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;**
- 3. The schedule of works for the upgrade of the dwelling as detailed on the approved plans (Stage One) are required to be completed within 3 months of the location of the dwelling on-site and all works are to be completed prior to the occupation of the building;**

- 4. The dwelling is to be secured to the footings immediately on its relocation to the site;**
- 5. Conditions that have a time limitation for compliance, and the condition is not met in the required time frame, the obligation to comply with the requirements of the condition continues whilst the approved development exists.**

**CARRIED:**



### **10.1.3 MOWANJUM COMMUNITY LAYOUT PLAN – ENDORSEMENT OF AMENDMENT 8**

<b>Location/Address:</b>	Mowanjum Community
<b>Name of Applicant:</b>	Western Australian Planning Commission
<b>File Reference:</b>	A500420
<b>Author:</b>	Noel Myers – Manager Planning Services
<b>Responsible Officer:</b>	Stephen Gash – Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	9 July 2018
<b>Attachments:</b>	Plans
<b>Authority/Discretion:</b>	Administrative

#### **SUMMARY:**

Purpose of this report is for Council to consider the endorsement of Amendment No.8 to the Mowanjum Layout Plan No.1.

#### **BACKGROUND:**

Mowanjum Layout Plan 1 was endorsed by the by the Mowanjum Community Council and the Shire of Derby/West Kimberley in July 2003 and received formal endorsement from the WAPC in September 2003.

The purpose of a Layout Plan is to guide the growth and development of the community by providing a layout of future land uses in the community. There is a need to review plans from time to time as demands change and there is a defined process set out within the plans to effect changes which requires the support of the community, traditional owners where appropriate, the Shire and finally the WAPC. Since the time of its initial adoption there have been seven prior amendments made to the plan, all of which have been of a relatively minor and procedural nature.

#### **STATUTORY ENVIRONMENT:**

Local Government is required to have regard to all WAPC State Planning Policies (SPP). The SPP No.3.2 provides a state based policy approach to the planning for Aboriginal communities through the preparation of Layout Plans. Council is required under the Policy to endorse the Layout Plan, subject to it being satisfactory.

Proposed developments within the community only require a planning assessment at a policy level to ensure the development is in accordance with the intent of the Layout

Plan. With respect to the Building Code of Australia, a Building Permit is required to be issued as part of the development process and the implementation of the Layout Plan. The Mowanjum Community is located within TPS No.5 and is zoned “Settlement”. The scheme provisions are complimentary to and cover the same planning process and requirements for the preparation of a CLP, as detailed in the SPP No.3.2.

**POLICY IMPLICATIONS:**

None arising from the consideration of this matter.

**FINANCIAL IMPLICATIONS:**

Nil.

**STRATEGIC IMPLICATIONS:**

GOAL	OUTCOME	STRATEGY
<p><b>Goal 3:</b> A strong and diverse local economy</p>	<p><b>Outcome 3.4:</b> Appropriate infrastructure that supports economic development</p>	<p><b>Strategy 3.4.1:</b> Promote release of serviced industrial, commercial and residential land</p>

**RISK MANAGEMENT CONSIDERATIONS:**

Nil.

**CONSULTATION:**

Consultation with the Community in this instance has been undertaken via officers from the Department of Communities – Housing Division. The Mowanjum Community Council have endorsed the changes proposed to Layout Plan No.1.

**COMMENT:**

Amendment No.8 proposes an update to Layout Plan No.1 that will map the expansion of the existing wastewater infrastructure. The expansion of the plant is being undertaken to increase the capacity and function of the plant to ensure the system is able to adequately service the needs of the community.

The scope of work includes the construction of two additional ponds, one of which will accept primary waste and the other will act as an evaporation pond. Both ponds are to be located to the south of the existing ponds and will be constructed wholly within Lot 85 which is held by Mowanjum.

On face value there is no cause for objection to the expansion or to the update of the layout plan. Both actions are practical and logical to ensure the health and safety of the local residents is provided for in the short and long term.

A review of the proposal identifies however that there is an unresolved land tenure situation whereby half of evaporation pond No.1 and the whole of evaporation pond No.2 have been constructed on a portion of Reserve 1326, Lot 501 which forms part of the Derby Commonage and is vested to the management of the Shire. The Administration has raised this issue with various state agencies who have carriage for municipal services within the community on a number of occasions dating back to at least 2015. To date there has been no action initiated to resolve the situation. The issues that arise for the Shire and generally from this encroachment are:

- Wastewater treatment plants are prescribed premises and by virtue of their function will cause the land to be classified as a contaminated site. This will create legacy issues for the rehabilitation of the land in the future;
- Wastewater treatment plants need to be duly licenced and thereafter operated and maintained in accordance with conditions of any licence issued;
- The Shire does not exercise management control or maintenance of the ponds nor can it control what waste is being discharged into the ponds, yet the location of at least a portion of the system on Shire managed land may leave the Shire open to future prosecution should there be an incident or possibly be responsible for future remediation/management of a contaminated site;
- The action to excise the requisite land area from Reserve 1326 and then amalgamate the parcel into Mowanjum's land holding (Lot 85) is likely to trigger native title processes and considerations;
- Given the infrastructure has been constructed and funded by the state through some earlier funding arrangement, it is unreasonable that the resolution of the matter is cost shifted down to the responsibility of the local government.

#### Options:

Council is seen to have several options in regard to this matter;

1. Decline to endorse the amendment;
2. Defer the endorsement of the amendment until the tenure situation is resolved.
3. Endorse the amendment but condition/note the endorsement to the resolution of the tenure and provision of an indemnity in the favour of the Council

Neither Options 1 and 2 are regarded as being an effective response to this current request insofar that offending encroachment onto the Shire managed land is already mapped in previous iterations of the Mowanjum Layout Plan. The new ponds will be located wholly within the boundary of Lot 85 and thus the amendment to the Layout Plan does not 'exacerbate' the existing encroachment. Declining to endorse the

Amendment would essentially be expressing a philosophical position that the situation exists and should be resolved.

Option 3 shows the Council’s support towards actions that provide for the health and safety of the community but is tempered by the desire to have the encroachment and associated issues resolved. Option 3 flags that the Shire is willing to release the area of land to from its Commonage Reserve so that Mowanjum has full management and control of the community’s infrastructure.

As a minimum, the Shire should seek to obtain an indemnity/undertaking from Mowanjum in respect to any prosecution or enforcement issue that may arise from having treatment plants located on land under our management. The structure or writing of such an indemnity would need to be provided in a form that is to the satisfaction of the Chief Executive Officer

**RECOMMENDATION:**

It is the Administration’s recommendation that Council adopt Option 3 for the reasons set out above, subject to actions detailed in the officer recommendation.

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:**

<b>Moved: Cr</b>	<b>Seconded: Cr</b>
<ol style="list-style-type: none"> <li><b>1. That Council endorses Amendment 8 to the Mowanjum Layout Plan No.1 noting that the Waste Water Treatment plant encroaches onto a portion of Reserve 1326 (Lot 501) being the Derby Commonage that has a management order to Shire of Derby/West Kimberley;</b></li> <li><b>2. That Council authorises the Chief Executive Officer to initiate actions with the Department of Communities and the Mowanjum Community to rectify the encroachment as part of the work being undertaken by the Regional Services Reform Unit – Essential and Municipal Services Upgrade Program; and</b></li> <li><b>3. That the Council write to the Mowanjum Community requesting that the Council be provided with an indemnity/undertaking from Mowanjum against any future prosecution or enforcement action that may arise from the location and operation of the Mowanjum waste water treatment plant being located on land under the Shire’s management.</b></li> </ol>	
<b>CARRIED:</b>	

## 10.2 CORPORATE SERVICES

### 10.2.1 ACCOUNTS FOR PAYMENT – MONTH 2018

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	5110 – Accounts Payable
<b>Author:</b>	Emma Gugeri - Finance Officer
<b>Responsible Officer:</b>	Myra Henry – Manager Finance
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	20 July 2018
<b>Attachments:</b>	Cheque reconciliation and schedule of accounts
<b>Authority/Discretion:</b>	Information

#### SUMMARY:

For Council to note the list of accounts paid under the Chief Executive Officer's delegated authority during the month of June 2018.

#### 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:**

<b>GOAL</b>	<b>OUTCOME</b>	<b>STRATEGY</b>
<b>4:</b> Good governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery	<b>4.4:</b> Financial sustainability and accountability for performance	<b>4.4.4:</b> 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
<b>Legal and Compliance:</b> 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 2017-18 Annual Budget as adopted by Council at its meeting held 31 August 2017 (Minute No. 097/2017 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. Lists detailing the payments made are appended as an attachment.

FUND	DETAILS	AMOUNT
<b>Municipal Account</b>		
EFT Payments		\$2,103,327.67
Municipal Cheques	54709 - 54710	\$15,269.13
Direct Debits – Payroll	Fees, Charges, Credit Card Payment, Payroll and Payroll Liabilities	\$429,932.63
Manual Cheques	NIL	NIL
<b>Trust Account</b>		
Trust Cheques	6519 - 6521	\$445.62
	<b>Total</b>	<b>\$2,548,975.05</b>

Creditors outstanding as at 30 June 2018 totalled \$2,553,055.22

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:**

**Moved: Cr**

**Seconded: Cr**

**That Council NOTES the Chief Executive Officer's list of accounts for June 2018 paid under Delegated Authority in accordance with regulation 13(1) of the *Local Government (Financial Management) Regulations 1996* attached to Report 10.2.1, totalling \$2,548,975.05.**



## 10.2.2 STATEMENT OF FINANCIAL ACTIVITY FOR THE PERIOD ENDING DD MONTH 2018

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	5152 – Monthly Financial Reports
<b>Author:</b>	Myra Henry, Manager of Finance
<b>Responsible Officer:</b>	Myra Henry, Manager of Finance
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	20 July 2018
<b>Attachments:</b>	Monthly Financial Report – June 2018
<b>Authority/Discretion:</b>	Information

### SUMMARY:

For Council to note the statement of financial activity for the period ended 30 June 2018 as required by the *Local Government Act 1995* ('the Act').

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

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the Shire's financial performance on a year to date basis for the period ending 30 June 2018.

### BACKGROUND:

At its meeting held 31 August 2017 (Minute No. 097/2017 refers), Council adopted the annual budget for the 2017-18 financial year. The figures in this report are compared to the adopted budget.

It should be noted that these reports do not represent a projection to the end of year position or that there are funds surplus to requirements. It represents the year to date position to 30 June 2018 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.

- Summary Graphs – Financial Activity
- Statement of Financial Activity by Program
- Statement of Financial Activity by Nature or Type
- Notes –
  - Significant Accounting Policies
  - Net Current Funding Position
  - Capital – Acquisitions, Funding and Disposal
  - Cash and Investments
  - Receivables
  - Payables
  - Cash Backed Reserves
  - Rating Information
  - Information on Borrowings
  - Grants and Contributions
  - Budget Amendments
  - Trust Fund
  - Material Variances

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 31 August 2017, the Council adopted (Minute No. 097/2017 part 7 refers) the following material variance reporting threshold for the 2017-18 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 2017-18 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 has been incurred in accordance with the 2017-18 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
<p><b>4:</b> Good Governance and an effective organisation Leadership that provides strategic direction for the community, supported by efficient and effective service delivery</p>	<p><b>4.1:</b> Effective Governance and Leadership</p>	<p><b>4.1.4:</b> Ensure governance policies and procedures are in accordance with legislative requirements</p>

**RISK MANAGEMENT CONSIDERATIONS:**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<p><b>Finance:</b> 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.</p>	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.
<p><b>Reputation:</b> 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.</p>	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.

The Statement of Financial Activity is presented monthly, being generated by our off-site Accountants, Moore Stephens, and then printed in our office.

Once the reports are received by Moore Stephens, comments are added to various sections of the report to provide additional information or explanation. Explanations for any material variance identified in the reports are provided in Note 13 – Explanation of Material Variances.

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:**

**Moved: Cr**

**Seconded: Cr**

**That Council NOTES the Monthly Financial Management Report incorporating the Statement of Financial Activity for the period ending 30 June 2018 attached to Report 10.2.2.**

**CARRIED:**

### **10.2.3 AFFIXING COMMON SEAL - CONTRACT FOR THE PROVISION OF LICENSING SERVICES FOR THE SHIRE OF DERBY/WEST KIMBERLEY (INCLUSIVE OF FITZROY CROSSING)**

<b>Location/Address:</b>	Shire of Derby/West Kimberley
<b>Name of Applicant:</b>	N/a
<b>File Reference:</b>	5005
<b>Author:</b>	Danielle Hurstfield – Manager Administration & Governance
<b>Responsible Officer:</b>	Stephen Gash – Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	16 July 2018
<b>Attachments:</b>	Confidential – Online Licensing – Main Agreement Confidential – Non Road Law Agreement
<b>Authority/Discretion:</b>	Administrative

#### **SUMMARY:**

The purpose of this report is for the Council to authorise the Common Seal of the Shire to be affixed on the contract for the provision of licensing services for the Shire of Derby/West Kimberley (inclusive of Fitzroy Crossing) in terms of Section 6B of the Road Traffic Act 1974.

#### **BACKGROUND:**

Driver and Vehicle licensing services have been provided by the Shire as an agent for the Department of Transport for the past three and half years after the Court House in Derby were no longer able to accommodate the service.

Again the Department of Transport has provided a contract for 3 years (renewable) with the scope of services being *“The Agent will undertake motor vehicle and drivers licensing functions of the Principal by processing licensing transactions online for the Principal’s customers.”*

The contract is awaiting execution by the Shire of Derby/West Kimberley.

**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 (4) 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.

**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 authorisation by the Council.

**FINANCIAL IMPLICATIONS:**

No change to previous budget.

**STRATEGIC IMPLICATIONS:**

GOAL	OUTCOME	STRATEGY
Goal 4 : Good governance and an effective organisation	Outcome 4.1: Effective governance and leadership.	Strategy 4.1.4: Ensure governance policies and procedures are in accordance with legislative requirements

**RISK MANAGEMENT CONSIDERATIONS:**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Community:	Low	Moderate	Medium	Council adopt officer recommendation

**CONSULTATION:**

Nil.

**COMMENT:**

The specific authorisation of the Council to affix the Common Seal to the legal document is necessary for the validation of the contract.

A copy of the contract is provided under separate cover.

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:**

<b>Moved: Cr</b>	<b>Seconded: Cr</b>
<p><b>That Council authorises the Shire President and Chief Executive officer to sign and affix the Common Seal to the Contract between the Director General of the Department of Transport and the Shire of Derby/West Kimberley for the Provision of Licensing Services for the Shire of Derby/West Kimberley (inclusive of Fitzroy Crossing) in Terms of Section 6B of the Road Traffic Act 1974.</b></p>	
<b>CARRIED:</b>	



#### 10.2.4 SUBMISSION REGARDING DIFFERENTIAL MINING RATES

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	McMahon Mining Title Services Pty Ltd
<b>File Reference:</b>	5174 – Rates and Charges
<b>Author:</b>	Myra Henry, Manager Finance
<b>Responsible Officer:</b>	Stephen Gash, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	19 July 2018
<b>Attachments:</b>	DMIRS Fees and Charges 2018-2019
<b>Authority/Discretion:</b>	Administrative

#### SUMMARY:

At the June 2018 Ordinary Council Meeting Council resolved to raise Differential Rates on mining and pastoral properties in accordance with Section 6.33 of the Local Government Act. Council also resolved to give notice of its intention to raise Differential Rates in accordance with Section 6.36 of the Local Government Act with closing date of submission being 31<sup>st</sup> July 2018. One submission has been received from McMahon Mining Title Services Pty Ltd. Council is required to consider any submissions received.

#### BACKGROUND:

McMahon Mining Title Services Pty Ltd has forwarded a submission regarding the Shire of Derby West Kimberley's intention to raise Differential Rates on mining properties. The submission appears below;

*We act for a number of exploration and prospecting companies in WA and thank you for the opportunity to make a general submission regarding the proposed rates for 2018-19.*

*We note that valuations provided by the Valuer General are used to calculate rates for mining tenements each year, and that valuations are based on the rent rate imposed by the Department of Mines, Industry Regulation and Safety.*

*In 2018-19, the Department will increase all tenement rents by six percent (except for exploration licences), with an additional six per cent increase in 2019-20 to fund the Exploration Incentive Scheme (EIS). For the first three years of an exploration licence, rents will increase by 1.5 per cent in 2018-19 and 2019-20 to protect the junior sector in finding the deposits of the future.*

*This rent increase will automatically result in an inflation in valuation and increase in rates even before any further increase in the rate in the dollar or minimum is applied by the Shire. The EIS is aimed at generating exploration activity and further increase in rates on top of the automatic increase, may result in double-dipping and diminish these intended effects.*

*The rent increases were published in the Gazette on 25 June 2018. A copy of the Department's 2018-19 Fees and Charges is enclosed for reference.*

*We ask that the Shire consider this automatic increase in its rates modelling and give consideration to whether the rate in dollar and minimum for mining tenements can be reduced for the 2018-19 year.*

*I would be happy to discuss this matter further on (Phone number supplied).*

## **STATUTORY ENVIRONMENT:**

### *Local Government Act Section 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.*

### *Local Government Act 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 under a local planning scheme in force under the Planning and Development Act 2005;*
  - (b) *the predominant purpose for which the land is held or used as determined by the local government;*
  - (c) *whether or not the land is vacant land; or*
  - (d) *any other characteristic or combination of characteristics prescribed.*

*Local Government act 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

**FINANCIAL IMPLICATIONS:**

For the 2018/19 financial year the proposed differential rates for mining will raise an estimated rates revenue of \$761,675.

**STRATEGIC IMPLICATIONS:**

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

**RISK MANAGEMENT CONSIDERATIONS:**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Finance:</b> Loss of Revenue	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 submission is a result of that consultation

**COMMENT:**

In many cases exploration tenements may represent lower transport infrastructure use, however contributions are required from all ratepayers to enable the Shire to develop, upgrade and maintain transport infrastructure, social infrastructure, emergency services, ranger services, remote community services, recreation facilities, community support programs and governance. Ratepayers contribute to these services from residential property, investment property, business property, varying size mining tenements or exploration licences regardless of their individual service use. The level and number of the services provided that are used by individual properties and ratepayers varies significantly. The Shire cannot individually rate property based on the level of use of facilities and is therefore justified using a "one-size-fits-all" approach to mining tenements. This approach is the very basis of local government rating systems required due to the variety of local government rate payers.

In addition, due to the information that we receive from Landgate and the property systems capabilities, there is no way of automatically or differing between an Exploration Licence and a Mining Tenement. These are both grouped into the same category, Mining UV. If we were to differ between all the categories the Shire has in the Mining UV it would have to be done manually. The cost and staff hours involved in doing such a large project would be non-realistic and therefore unachievable. There

is insufficient justification to warrant a separate rate category, particularly given the nature of exploration tenements which tend to be in place for short periods of time.

Although the exploration licences have rates they need to pay, if at any stage the tenement is surrendered or dies, once informed by Landgate the Shire adjusts the annual fees to a pro rata rate of when the tenement was live. A uniform UV rate category is proposed to simplify the rates model, and to closely align to the key rating principles. A uniform minimum payments also ensures that all ratepayers are making equitable contributions to the rate yield.

Pastoral rates cannot be compared with mining rates or residential/commercial rates in the dollar. During the 2010 valuation that rolled out in the Shire the pastoral valuations rose considerably. Many Unimproved Values increased by 500% with an average increase of some 380%. This would have a devastating impact on pastoral lessees unless the Shire adjusted the rate in the dollar and resulted in the lower rate in the dollar compared to Mining and Residential/Commercial.

#### **VOTING REQUIREMENT:**

Simple majority

#### **OFFICER RECOMMENDATION:**

**That Council:**

**1.0 Considers all submissions received;**

**1.1 Notes the submission received from McMahon Mining Title Services Pty Ltd.**

**1.2 Advise McMahon Mining Title Services Pty Ltd that it does not take the decision to Impose differential rates lightly, however, based on considerations that have regard for the Shire's entire rates portfolio, intends to levy rates as advertised**

**2.0 That if no further submissions are received by the closing date of 31 July 2018, that the Chief Executive Officer will continue with application to the Minister for Local Government for approval to impose differential general rates which are more than twice the lowest differential rate, for the 2018/2019 financial year, as per section 6.33(3) of *the Local Government Act 1995*.**

**10.3 TECHNICAL SERVICES**

Nil.

**10.4 DEVELOPMENT SERVICES**

Nil.

**10.5 COMMUNITY DEVELOPMENT AND RECREATION SERVICES**

Nil.

**11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

**12.0 NEW BUSINESS OF AN URGENT NATURE**

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

**14.0 CLOSURE**

**14.1 DATE OF NEXT MEETING**

The next ordinary meeting of Council will be held Thursday, 30 August 2018 in the Council Chambers, Clarendon Street Derby.

**14.2 CLOSURE OF MEETING**

The Presiding Member closed the meeting at

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