



MINUTES OF THE ORDINARY COUNCIL MEETING

18 NOVEMBER 2020

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MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBERS AT 21 VICTORIA STREET, MINGENEW ON 18 NOVEMBER 2020 COMMENCING AT 4.30PM

1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at 4:30pm.

2.0 RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

COUNCILLORS

JD Bagley	Councillor	Rural Ward
GJ Cosgrove	Councillor	Town Ward
HR McTaggart	Councillor	Rural Ward
HM Newton	Councillor	Town Ward
RW Newton	Councillor	Rural Ward
AR Smyth	Councillor	Town Ward
CV Farr	Councillor	Town Ward

APOLOGIES

Nil

STAFF

N Hay	Chief Executive Officer
J Clapham	Finance Manager
E Greaves	Governance Officer

GUESTS

R Tyndale Powell
T Nitschke

3.0 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

4.0 PUBLIC QUESTION TIME / PUBLIC STATEMENT TIME

Mr T Nitschke spoke to the planning application for a transportable dwelling to be located on his property at 14 Ikewa Street, indicating his desire to settle in Mingene and outlining that the presented plan was considerate of his financial situation and the need to have a nice looking home. Following the rejection of his request for planning approval to construct a shed on the property, being advised that a residence needed to be built prior to the shed being considered, Mr Nitschke investigated numerous options, with a new transportable home being the most affordable option and compliant with Council requirements.

Mr Tyndale Powell spoke to the construction of the shed on his property at 10 Enanty Street, Mingene and confirmed that the shed positioning was amended following the planning approval received by Council in August 2020. When the approved site plan was received from Council he

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realised that it was incorrect and submitted an amended plan for building approval. He requested that Council consider the altered plan for planning approval and outlined that he has letters from 2 x neighbours supporting the amended site plan (letters submitted to Council at the meeting).

5.0 APPLICATIONS FOR LEAVE OF ABSENCE
Nil.

6.0 PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS
Nil.

7.0 CONFIRMATION OF PREVIOUS MEETING MINUTES

7.1 ORDINARY COUNCIL MEETING HELD 21 OCTOBER 2020

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 7.1 RESOLUTION# 01181120
MOVED: Cr HR McTaggart SECONDED: Cr AR Smyth

That the Minutes of the Ordinary Council Meeting of the Shire of Mingenew held in the Council Chambers on 21 October 2020 be confirmed as a true and accurate record of proceedings.

VOTING: CARRIED BY SIMPLE MAJORITY: 7/0

8.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION
Nil.

9.0 DECLARATIONS OF INTEREST
Nil.

10.0 RECOMMENDATIONS OF COMMITTEES
Nil.

11 CHIEF EXECUTIVE OFFICER REPORTS

11.1 LOCAL GOVERNMENT (MODEL CODE OF CONDUCT) REGULATIONS 2020 RESPONSE

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
Disclosure of Interest: Nil
File Reference: ADM0059
Date: 10 November 2020
Author: Nils Hay, Chief Executive Officer
Authorising Officer: Nils Hay, Chief Executive Officer
Voting Requirements: Simple Majority

Summary

To consider the Shire's response to the *Local Government (Model Code of Conduct) Regulations 2020*.

Key Points

- As part of the ongoing review of the Local Government Act, new Model Code of Conduct Regulations are proposed
- The proposed regulations will cover conduct of Council and Committee Members, as well as candidates running for election
- The Department has provided an (extended) deadline of 6 December for submissions

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 11.1 RESOLUTION# 02181120

MOVED: Cr HR McTaggart SECONDED: Cr HM Newton

That Council endorses the prepared Shire of Mingenew response to the Local Government (Model Code of Conduct) Regulations 2020, as presented in Attachment Booklet – November 2020, to be submitted as Council's formal feedback to the Western Australian Local Government Association (WALGA) and the Department of Local Government, Sport and Cultural Industries (DLGSC).

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Attachment

- 11.1.1 Local Government (Model Code of Conduct) Regulations 2020 Consultation Draft
- 11.1.2 2016 Consultation Paper on Local Government Rules of Conduct and Minor Breaches
- 11.1.3 Draft Shire of Mingenew comments on proposed Local Government (Model Code of Conduct) Regulations 2020

Background

Following the announcement in 2017, that a review of the *Local Government Act 1995* would be commenced, a significant course of consultation and reform has been undertaken to establish a more modern and relevant suite of legislation to better deliver for WA communities. The Government's vision is for local governments to be "agile, smart and inclusive".

Given the breadth of matters covered by the Local Government Act, a staged approach to the review has been adopted:

- Stage one: priority reforms
- Stage two: wide ranging reforms

The majority of the stage one priority reforms are now in place following the passage of the *Local Government Legislation Amendment Act 2019*. These reforms include:

- A new gift framework for elected members;

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- A mandatory online induction for all candidates;
- Universal training for elected members;
- Changes to the Standards Panel; and
- Easier access to information to provide greater transparency to the community.

The remaining priority reforms which are expected to be implemented later this year include:

- New mandatory code of conduct for elected members, committee members and candidates (as addressed in this paper);
- Best practice standards for Chief Executive Officer (CEO) recruitment, performance review and early termination (as addressed in a following item at the November 2020 Ordinary Council Meeting); and
- Further transparency measures.

Extensive community consultation was conducted on stage two topics between September 2018 and March 2019 by the Department of Local Government, Sport and Cultural Industries (the Department) with contributions from community members, ratepayer associations, industry groups, local governments, elected members, and peak bodies.

On the basis of that work, a draft Local Government (Model Code of Conduct) Regulation 2020 has been prepared and was put out for consultation in late October 2020. The consultation draft, along with a proposed response document are both attached. The due date for submissions is 6 December 2020.

Comment

In preparing the Shire's proposed response, consideration has been given to our previous position on similar items, as well as the (attached) 2016 consultation paper relating to Local Government rules of conduct. Whilst legislative reform in this area is welcomed, it is important that:

- It does not create unreasonable administrative burdens for small local governments like ours, or duplicate/conflate/confuse existing instruments such as local laws relating to meeting procedures
- The regulations fairly manage candidate behaviour; even in the event that candidates are not ultimately elected
- Consideration is given to the relationship between elected members and administration and the difficulties that arise where the administration is required to serve as investigator and adjudicator on elected member breaches of conduct

Consultation

- WA Local Government Association (WALGA)
- Local Government Professionals WA

Statutory Environment

These regulations will bring into effect **sections 48 to 51** of the *Local Government Legislation Amendment Act 2019*. In particular, the following will take effect: sections 5.102A, 5.103, 5.104 and 5.105

Policy Implications

Nil at this stage. Ultimately, if adopted, review will be required of the Council's Code of Conduct to align with any new provisions.

Financial Implications

Nil.

Strategic Implications

Strategic Community Plan 2019-2029

Strategy 1.3.1 Provide a high level of compliance with external regulation, in a resource-efficient manner.

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- A mandatory online induction for all candidates;
- Universal training for elected members;
- Changes to the Standards Panel; and
- Easier access to information to provide greater transparency to the community.

The remaining priority reforms which are expected to be implemented later this year include:

- New mandatory code of conduct for elected members, committee members and candidates (as addressed earlier in the November 2020 Ordinary Council Meeting agenda);
- Best practice standards for Chief Executive Officer (CEO) recruitment, performance review and early termination (as addressed in this item); and
- Further transparency measures.

Extensive community consultation was conducted on stage two topics between September 2018 and March 2019 by the Department of Local Government, Sport and Cultural Industries (the Department) with contributions from community members, ratepayer associations, industry groups, local governments, elected members, and peak bodies.

On the basis of that work, a draft Local Government (Administration) Regulation (No. 2) 2020 has been prepared and was put out for consultation in late October 2020. The consultation draft, along with a proposed response document are both attached. The due date for submissions is 6 December 2020.

Comment

In preparing the Shire's proposed response, consideration has been given to our previous position on similar items, as well as the (attached) WALGA InfoPage. Whilst legislative reform in this area is welcomed, it is important that:

- Councils maintain control over the CEO recruitment, performance management and termination process
- Legislation does not introduce any additional compliance/cost burden, particularly for small local governments like ours
- Regulations do not cause harm to well-functioning Council/CEO employment relationships

Consultation

- WA Local Government Association (WALGA)
- Local Government Professionals WA
- Other Mid West local governments

Statutory Environment

The *Local Government Legislation Amendment Act 2019* introduced numerous amendments to the *Local Government Act 1995*, including the yet to commence insertion of new sections introducing mandatory Model Standards for CEO recruitment, performance and termination.

These proposed regulations will form those sections.

Policy Implications

Nil at this stage. Ultimately, if adopted, some Council policies and procedures may need to be reviewed to ensure compliance with the updated legislation.

Financial Implications

Nil at this stage.

Strategic Implications

Strategic Community Plan 2019-2029

Strategy 1.3.1 Provide a high level of compliance with external regulation, in a resource-efficient manner.

- A lack of harmony and cooperation developed within the Executive Leadership Group (ELG), which included the CEO and five directors
- Some council members used their positions to advance their own personal interests, or those of family and associates
- Some council members misused their official entitlements
- Some council members failed to make proper declarations of conflicts of interest, gifts and/or sources of income
- Some council members became involved in City administrative matters, which were not legitimately their concern, including human resources matters
- The CEO was unable to prevent council members interfering in administrative matters
 - Some council members manipulated election processes
 - Some procurements were not properly handled by City employees
 - Some complaints and allegations were not properly dealt with by the City

The full City of Perth Inquiry has not been included with this report (due to its size) however, a copy of each Volume of the Report is available on the Department of Local Government, Sport and Cultural Industries' (DLGSC) website at <https://www.dlgsc.wa.gov.au/local-government/inquiries/inquiry-into-the-city-of-perth>.

Comment

The Inquiry into the City of Perth has identified a number of risk areas for the broader local government sector and therefore, the Inquiry Panel as made a number of recommendations to the Minister to address the issues and put in place appropriate control measures to safeguard against similar future failings. The Department of Local Government has indicated that consideration of these recommendations will be incorporated into the wider review of the Local Government Act.

There is general concern over the increased responsibilities and potential costs for local governments should some of the recommendations by implemented within the Local Government Act Review, particularly for smaller local governments attempting to resource compliance, enforcement and auditing. There are also functionalities of Council that are somewhat diminished by some of the recommendations that brings into question the democratic rights of each Council to govern effectively and efficiently for their respective communities.

Consultation

Elected Members at Concept Forum Debrief – October 2020

Statutory Environment

Local Government Act 1995 under Part 8, Division 2

Policy Implications

The full implications of the City of Perth Inquiry Report are not yet known, until the outcomes and recommendations of the Report are considered as part of the Local Government Act Review.

Financial Implications

As above, there may be financial implications depending on the Local Government Act Review.

Strategic Implications

Strategic Community Plan 2019-2029

Strategy 1.2.3 Provide sound corporate governance of Shire and create an attractive work environment.

11.4 STATE ELECTION PRIORITIES 2020

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
Disclosure of Interest: Nil
File Reference: ADM0349
Date: 2 November 2020
Author: Erin Greaves, Governance Officer
Authorising Officer: Nils Hay, Chief Executive Officer
Voting Requirements: Simple Majority

Summary

To consider endorsing a set of key strategies priorities for the Shire of Mingenew to communicate to State political parties in light of the upcoming State Election in March 2021.

Key Points

- The next State general election is scheduled to held on 13 March 2021
- To ensure political parties have an understanding of our own priorities and projects in the next 1-5 years, a list of key strategies has been developed to assist in advocating for funding support.
- The list has been informed by the Shire's Strategic Community Plan and Corporate Business Plan.

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 11.4 RESOLUTION# 05181120

MOVED: Cr HM Newton SECONDED: Cr JD Bagley

That Council:

1. Endorses the following key strategic issues and projects, as detailed in the Attachment Booklet, to be communicated to State political parties for consideration in developing funding and advocacy priorities in the lead up to the 2021 State Government Election:
 - Strategies to address declining populations in rural WA
 - Housing and Land, including incentives for developers / investors to build in regional WA, and State Government property maintenance
 - Heavy Vehicle Traffic (RAV5 and larger) via Mingenew Townsite
 - Space Industry Profile and Development Support, including support for Mingenew Space Precinct Business Case
 - Support for Regional State Employment – State Government Agencies
 - Secondary Grain Freight Route Project
 - Regional Fibre Project (Three Springs to Tenindewa)
 - Smart enabled Street Light Retrofit Program
 - “Wander out Yonder” initiatives to include support for hospitality and childcare industries
 - Support for health services in regional WA to attract and retain doctors and other specialist health services
 - Digital Farms project
 - Incentivise creative industries and sport and recreation to increase accessibility and engagement, particularly youth and at-risk people
2. Authorises the Chief Executive Officer to write to the four major political parties, and any other relevant agency, outlining the Shire's identified key priorities.

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Attachment

11.4.1 State Election Priorities – Key Strategic Issues and Projects for Shire of Mingenew

Background

State General Elections for both the Legislative Assembly (lower house) and Legislative Council (upper house) are held every four years on the second Saturday in March. Therefore, the next State Government Election is scheduled to be held on 13 March 2021. Western Australia is divided into 59 Legislative Assembly districts and six Legislative Council regions. During an election, one candidate is elected for each Legislative Assembly district and six candidates are elected for each Legislative Council region.

A draft list of strategic issues and initiatives were presented to Councillors for discussion at a Council Forum in October 2020. The list presented at this meeting collates the points raised by elected members.

Comment

In the lead up to an election, political parties are often active in communicating the policy positions, strategies for addressing constituent issues and announcing funding priorities for the proceeding years, in the hope of garnering voter support.

Council have the opportunity to be proactive in advocating local community needs and priorities with State Government political parties in the lead up to the 2021 State Government Election so that feedback and regional issues may be considered when the parties develop their strategies and priorities for communicating with constituents.

Consultation

Council Concept Forum

Statutory Environment

Local Government Act 1995

Policy Implications

Nil

Financial Implications

State and Federal Government funding priorities have an effect on the Shire's ability to source external funding opportunities based on its own priorities. Council can play a role in advocating for funding priorities for its Shire and the sector based on its local understanding and needs.

Strategic Implications

Strategic Community Plan 2019-2029

Strategy 1.2.2 Enhance open and trusting communication between Council and the community, and deliver high quality services in partnership with external stakeholders

11.5 WALGA STATE COUNCIL MEETING – 2 DECEMBER 2020

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
Disclosure of Interest: Nil
File Reference: ADM0118
Date: 9 November 2020
Author: Erin Greaves, Governance Officer
Authorising Officer: Nils Hay, Chief Executive Officer
Voting Requirements: Simple Majority

Summary

To consider and vote on the WALGA State Council Matters for Decision and submit those to the Council.

Key Points

- The WALGA State Council meeting is scheduled to be held on 2 December 2020 commencing at 4pm.
- The Shire of Mingenew is represented at State Council by Cr Karen Chappel, Deputy President of WALGA and Chair of the Northern Country Zone of WALGA.
- The next WALGA State Council meeting is proposed to be held on 3 March 2021.

**OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 11.5 RESOLUTION# 06181120
MOVED: Cr CV Farr SECONDED: Cr HR McTaggart**

PART A

That Council supports WALGA's recommendations submitted in the 2 December 2020 WALGA State Council Meeting Agenda, as follows:

Item 5.1 Local Government Act Review Advocacy Paper – Key Issues from Recent Inquiries into Local Government

That:

1. Ongoing advocacy relating to the Review of the Local Government Act 1995 be noted: and
2. The Advocacy Positions for a New Local Government Act: Key Issues from recent Inquiries into Local Government – be endorsed.

Item 5.2 Submission – Registration of Building Engineers in WA

That WALGA:

1. Advise the Department of Mines Industry Regulation and Safety (DMIRS) that the registration of Building Engineers in WA is supported.
2. Request that DMIRS also consider the registration of Electrical Engineers, Façade Engineers, Energy Assessors, Bush Fire Consultants, Access consultants, Swimming pool, Patio installers and Demolition contractors.
3. Request that DMIRS clarify that dilapidation reports may only be undertaken by Registered Engineers.
4. Provide this report to Department of Mines Industry Regulation and Safety as feedback on the Consultation Regulatory Impact Statement.

Item 5.3 Family and Domestic Violence and the Role of Local Governments

That:

1. WA Local Governments recognise the prevalence, seriousness and preventable nature of family and domestic violence and the roles that Local Governments can play in addressing gender equity and promoting respectful relationships in their local community.
2. WALGA advocates to the State Government:

- a. to define and communicate the role, responsibilities and expectations of Local Governments in family and domestic violence.
 - b. for adequate funding for family and domestic violence programs and services, particularly in regional areas.
 - c. for appropriate resources and funding be allocated to Local Governments to implement any particular roles and actions addressing family and domestic violence as defined in the State Strategy.
 - d. to provide support to Local Government in the broader rollout of the Prevention Toolkit for Local Government.
 - e. to continue advocacy to the Commonwealth Government for additional funding and support.
3. WALGA organises presentations for Local Governments that address family and domestic violence, as part of relevant events or webinars.

Item 5.4 Underground Power

That Local Government supports the:

1. continuation of cooperative arrangements between the State Government, Western Power and Local Government to progressively replace the overhead electricity distribution network in residential areas with underground power.
2. development of a new approach to identifying and prioritizing areas for investment in underground power, initiated by the need to invest in the overhead network to meet safety, reliability and capability requirements.
3. development of a new approach to allocating State Government resources to facilitate projects proceeding in areas with a high electricity network need and lower economic capacity of ratepayers while retaining a commitment to funding an average of 25% of program costs.
4. opportunity for Local Governments to initiate projects to convert areas to underground power be retained with Western Power to continue to contribute the amount recoverable.

PART B

That Council notes that Matters for Noting / Information and Organisational Reports provided within the 2 December 2020 WALGA State Council Meeting Agenda, as follows:

- 6.1 Submission to the Infrastructure WA State Infrastructure Strategy Discussion Paper
- 6.2 Draft Amendments to the Planning and Development (Local Planning Scheme) Regulations 2015
- 6.3 Interim Review – State Planning Policy 3.1 Residential Design Codes
- 6.4 State and Federal Budgets
- 6.5 Noongar Heritage Agreement for Local Government
- 6.6 Aboriginal Cultural Heritage Bill Consultation
- 6.7 Local Government Animal Welfare in Emergencies Grant Program
- 6.8 2020 Annual General Meeting
- 6.9 COVID-19 – Update
- 7.1 Key Activity Reports
- 7.2 Policy Forum Reports

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Attachment

11.5.1 WALGA State Council Agenda – 2 December 2020

Background and Comment

Item 5.1 Local Government Act Review Advocacy Paper – Key Issues from Recent Inquiries into Local Government

WALGA has developed an Advocacy Paper focusing on key issues identified in final reports of three recent Local Government Inquiries:

1. Final Report of the Local Government Review Panel
2. Report of the Inquiry into the City of Perth
3. Select Committee into Local Government Final Report

The Advocacy Paper clarifies WALGA's position in regards to the following identified key issues:

New Local Government Act
That the State Government prepare a new Local Government Act as a priority.
Legislative Intent
That the following key principles be embodied in the Local Government Act: <ol style="list-style-type: none"> 1. Uphold the general competence principle currently embodied in the Local Government Act 2. Provide for a flexible, principles-based legislative framework 3. Promote a size and scale compliance regime 4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration Local Governments' role in creating a sustainable and resilient community through: <ol style="list-style-type: none"> i. Economic development ii. Environmental protection, and iii. Social advancement 5. Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act, and 6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.
Intergovernmental Cooperation
That a Partners in Government Agreement promoting a collaborative partnership approach be signed by the Premier, Minister for Local Government and Local Government leaders at the commencement of each term of the State Government.
Elections
The Local Government sector supports: <ol style="list-style-type: none"> 1. Four year terms with a two year spill 2. Greater participation in Local Government elections 3. The option to hold elections through <ul style="list-style-type: none"> - Online voting - Postal voting, and - In-person voting 4. Voting at Local Government elections to be voluntary 5. The first past the post method of counting votes 6. Local Governments being enabled to determine the number of Elected Members required on the Council between six and 15 (including the Mayor/President) 7. Local Governments to determine if the Mayor or President is elected by the Council or the community at large 8. Continuation of the property franchise.
Rating Exemptions
That an independent review of all rate exemptions be undertaken.
Fees and Charges

<p>That:</p> <ol style="list-style-type: none"> 1. An independent review be undertaken to remove fees and charges from legislation and regulation and, 2. Local Government be empowered to set fees and charges for Local Government services.
<p>Road Funding</p>
<p>That the Government returns to Local Government at least 27 percent of motor vehicle licence fee collections.</p>
<p>Regional Collaboration</p>
<p>That:</p> <ol style="list-style-type: none"> 1. Local Governments be empowered to form single and joint subsidiaries, and beneficial enterprises, and 2. Compliance requirements of Regional Councils be reviewed and reduced.
<p>Community Engagement</p>
<p>The Local Government sector supports:</p> <ol style="list-style-type: none"> 1. Responsive, aspirational and innovative community engagement principles 2. Encapsulation of aims and principles in a community engagement policy, and 3. The option of hosting an Annual Community Meeting to present on past performance and outline future prospects and plans.
<p>Roles and Responsibilities</p>
<p>That clarification of roles and responsibilities for mayors/presidents, councillors and CEOs be considered in conjunction with the separation of powers between the Council as governing body and the administration of the Local Government.</p>
<p>External Oversight</p>
<p>The Local Government sector supports:</p> <ol style="list-style-type: none"> 1. Establishing an Office of the Independent Assessor to replace the Standards Panel to provide an independent body to receive, investigate and assess complaints against elected members and undertake inquiries. 2. Remove the CEO from being involved in processing complaints 3. That an early intervention framework of monitoring to support local governments be provided.
<p>Financial Management and Procurement</p>
<p>That the Local Government sector:</p> <ol style="list-style-type: none"> 1. Requests the Minister for Local Government to require the Department of Local Government to prepare a Model set of Financial Reports for the Local Government sector, in consultation with the Office of the Auditor General; 2. Requests the Department of Local Government to re-assess the amount of detail required to be included in annual financial reports, in particular for small and medium sized entities as suggested by the Office of Auditor General; 3. Supports Local Governments being able to use freehold land to secure debt; 4. Supports Building Upgrade Finance being permitted for specific purposes such as cladding, heritage and green improvements; 5. Supports the alignment of Local Government procurement thresholds, rules and policies with the State Government.
<p>Accountability and Audit</p>
<p>That audit committees of Local Government, led and overseen by the Council, have a clearly defined role with an Elected Member majority.</p>

The Advocacy Paper does not replace or diminish existing detailed policy positions, which are underpinned by multiple consultation processes and State Council deliberations. Whilst there may be some variation to WALGA's formal position and the Shire's, the advocacy positions presented generally represents the key issues identified by the broader local government sector. The Shire of Mingenew has participated in the

various consultation means to outline its own position and specific feedback on the Local Government Act Review Panel recommendations, Select Committee recommendations and City of Perth recommendations.

Item 5.2 Submission – Registration of Building Engineers in WA

The Department of Mines Industry Regulations and Safety (DMIRS) are consulting with industry on amendments to the *Building Services (Registration) Regulations 2011* to require certain categories of engineers to be registered to carry out building engineering work to improve public safety and provide consumer protection.

A review of the Regulations is in response to the *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* report that have identified a number of issues and deficiencies in the building industry. WA and the ACT are the only jurisdictions with no regulatory requirements for building-related engineers.

The proposed changes are outlined in the Consultation Regulatory Impact Statement which has been developed in consultation with the Australian Building Codes Board (ABCB). The CRIS is open for comment to 3 December 2020.

This is likely to have minimal impact on the Shire of Mingenew and its ratepayers given the low volume of building activity. However, this may result in increased costs to those requiring building/engineering services should professionals requiring registration pass on any costs to consumers.

Item 5.3 Family and Domestic Violence and the Role of Local Governments

WALGA have received Zone requests to analyse and clarify the role of local governments in addressing family and domestic violence and, in response, developed a Family and Domestic Violence: The Role of Local Governments Discussion Paper to facilitate feedback from local governments. The proposed recommendation seeks clarification from the State Government on its role, responsibilities and funding availability for family and domestic violence matters.

Item 5.4 Underground Power

With the completion of projects identified under Round 6 of the State Underground Power Program in 2022, WALGA are seeking to review and update its policy position that considers future prioritisation strategies and investment of underground power.

WALGA have also prepared a number of papers for noting/information and further comment is provided below:

- The Department of Planning, Lands and Heritage will commence consultation on the development of the new Aboriginal cultural heritage legislation for WA soon
- In response to the State Council resolution in September 2020 relating to Drought funding in WA, the Federal Government has responded to WALGA's correspondence, outlining that a further \$50m has been allocated for the On-farm Emergency Water Infrastructure Rebate Scheme and is working on the Local Government Regional Drought Resilience Planning Program which will inform future funding allocations.
- The Local Government Review panel have recommended a review of the local government rating system which may address concerns regarding the exemption for State Government Unallocated Crown Land (currently exempt).
- From Saturday, 14 November, WA will move from a 'hard' to a 'controlled' interstate border under the Emergency Management Act, subject to every state and territory recording a 14-day rolling average of less than 5 community cases of COVID-19 per day.

Consultation

WALGA

Statutory Environment

Local Government Act 1995

Policy Implications

Nil.

Financial Implications

Nil.

Strategic Implications

Strategic Community Plan 2019-2029

Strategy 1.3.1 Provide a high level of compliance with external regulation, in a resource-efficient manner.

Prior to consideration of Item 11.6, Cr HR McTaggart declared a Proximity and Indirect Financial Interest due to the business relationship held with property owners of Lot 97s and 98 Ikewa Street (consulted neighbours who provided a submission on this development), left the meeting at 4:41pm and did not participate in discussion or vote on the matter.

11.6 PROPOSED TRANSPORTABLE BUILDING – 14 IKEWA STREET, MINGENEW

Location/Address: 14 (Lot 95) Ikewa Street, Mingenew (corner Wattle & Ikewa Streets)
Name of Applicant: T. Nitschke
Disclosure of Interest: Nil
File Reference: A276
Date: 9 November 2020
Author: Simon Lancaster, DCEO / Planning Advisor, Shire of Chapman Valley
Senior Officer: Nils Hay, Chief Executive Officer
Voting Requirements: Simple Majority

Summary

Council is in receipt of an application seeking to site a transportable building upon Lot 95 corner Wattle & Ikewa Streets to serve as a residence. The application has been advertised for comment and no objections were received. This report recommends that Council approve the application subject to additional external works being undertaken once the building is on-site.

Key Points

- Mr T Nitschke is proposing to install a new transportable 1-bedroom residence at 14 (Lot 95) Ikewa Street, Mingenew (currently vacant residential lot)
- The building is 12m x 3.2m (38.4m²), with a 2.4m wall height and would be sited 500mm above ground level with lattice between the floor level and ground level.
- The building would have colorbond 'Surfmist' walls and a zinalume trimdeck roof
- As the proposed building is not intended to be constructed on site, advertising of the proposal was required, and planning approval is sought
- No objections were received from members of the public during the consultation period

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 11.6 RESOLUTION# 07181120
MOVED: Cr JD Bagley SECONDED: Cr AR Smyth

That Council grant formal planning approval for a transportable building to be sited upon 14 (Lot 95) Ikewa Street, Mingenew (corner of Wattle and Ikewa Streets) to serve as a residence, subject to the following conditions:

- 1 Development shall be in accordance with the attached approved plans dated 18 November 2020 and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.
- 2 Any additions to or change of use of any part of the building or land (not the subject of this consent/approval) requires further application and planning approval for that use/addition.
- 3 The building shall be clad to a finish and colour to the approval of the local government.
- 4 A verandah is required to be constructed along the length of the northern elevation of the building to the approval of the local government and using materials and colours that are to the approval of the local government.
- 5 Skirting is required to be installed between the floor level of the building and the ground level to the approval of the local government and using materials and colours that are to the approval of the local government.

- 7 Landscaping is required to be installed and maintained about the development for the purpose of softening the visual impact of the building to the approval of the local government.
- 8 Installation of crossing place/s to the approval of the local government.
- 9 The conditions relating to this approval are to be complied with to the approval of the local government within 12 months of the building being sited upon the property.

Notes:

If an applicant is aggrieved by this determination there is a right (pursuant to the *Planning and Development Act 2005*) to have the decision reviewed by the State Administrative Tribunal. Such application must be lodged within 28 days from the date of determination.

VOTING:

CARRIED BY SIMPLE MAJORITY: 6/0

Attachments

Attachment 11.6.1 - Copy of submitted application (provided as separate attachment)

Attachment 11.6.2 - Copy of received submissions (provided as separate attachment)

Background

Lot 95 is an 817m² property located on the south-east corner of the Wattle and Ikewa Street intersection.

Figure 11.4(a) – Location Plan for Lot 95 corner Wattle & Ikewa Streets, Mingenew



Figure 11.4(b) – Aerial Photograph of Lot 95 corner Wattle & Ikewa Streets, Mingenev



The applicant is proposing to site a 12m x 3.2m (38.4m²) transportable building upon Lot 95 to serve as a residence. The building is 2.4m in wall height and would be sited 500mm above ground level with lattice between the floor level and ground level.

The internal layout of the building consists of 1 bedroom, a main kitchen/living area and a toilet/shower room. The building would have colorbond 'Surfmist' walls and a zincalume trimdeck roof.

The building is proposed to be sited 5m from the Wattle Street (western) boundary and 16m from the Ikewa Street (northern) boundary, and 5m from the side (eastern) boundary and 15m from the rear (southern) boundary).

The applicant's submitted site, elevation and floor plans and supporting correspondence are provided as Attachment 11.6.1.

Figure 11.1(c) – View looking east at Lot 95 from Wattle Street



Council previously refused an application to construct a shed prior to a residence upon Lot 95 at its 19 June 2019 meeting.

Comment

The appearance of the transportable building might be considered more commonly associated with a worker's accommodation camp than within the context of a residential townsite and Council might therefore deem that the application should be refused.

However, it might also be considered that with the addition of further external works, such as skirting and a verandah along its frontage, and landscaping, this would improve the visual appearance of the building, and these measures have been included within the officer recommendation.

Council might consider that further external works should also be imposed as conditions of approval, such as eaves around the sides and rear of the building and/or carport to one side of the building.

Council might also consider that a condition be imposed requiring the lodgement of a bond by the applicant, that would be held by the Shire until the additional external works had been completed, to encourage the applicant to complete the works in a timely fashion to create a residence, that whilst on a markedly reduced scale, is not out of keeping with the character of the surrounding area.

In the event that Council deems that the application should not be supported it might consider the following alternative wording appropriate in its deliberations:

"That Council refuse the application for a transportable building upon Lot 95 corner Wattle & Ikewa Streets, Mingenew for the following reasons:

- 1 *The proposed development is not deemed to meet the objectives for the 'Residential' zone as established in Clause 3 of the Shire of Mingenew Local Planning Scheme No.4.*

- 2 *The proposed development is not deemed to meet the requirements for a repurposed dwelling/second hand dwelling as established in Schedule 1 of the Shire of Mingenew Local Planning Scheme No.4.*
- 3 *In its consideration of the application Council is not satisfied that the development satisfies the matters under Clause 67 of the deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015.*
- 4 *Approval of this application would set an undesirable precedent for future variation to the Shire's statutory and policy requirements, which in time could prove to be detrimental to the amenity of the 'Residential' zone.*

Advice Note:

Should the applicant be aggrieved by this determination there is a right pursuant to the Planning and Development Act 2005 to request to have the decision reviewed by the State Administrative Tribunal. Such application must be lodged within 28 days from the date of determination."

Consultation

The Shire wrote to the landowners of the 13 surrounding properties on 6 October 2020 providing details of the application and inviting comment upon the proposal prior to 30 October 2020, a sign was also displayed on-site to advise of the received application and the opportunity for comment.

At the conclusion of the advertising period 3 submissions had been received, all expressing support for the application (with one of the submissions suggesting that a verandah be added to the front of the building to enhance its appearance). Copies of the received submissions have been provided as **separate Attachment 11.6.2**.

Statutory Environment

Lot 95 corner Wattle & Ikewa Streets, Mingenew is zoned 'Residential R12.5' under the Shire of Mingenew Local Planning Scheme No.4 ('the Scheme').

Clause 9 of the Scheme includes the following aims of the scheme:

- "(a) to preserve, protect and enhance the amenity and character of Mingenew Townsite, and areas of cultural, heritage and natural and biodiversity significance across the Shire; and"*
- "(c) to provide for a range of accommodation and lifestyle choices that meet the needs and aspirations of the community"*

Clause 16 of the Scheme lists the objectives of the 'Residential' zone as being:

- "• To provide for a range of housing and a choice of residential densities to meet the needs of the community.*
- To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.*
- To provide for a range of non-residential uses, which are compatible with and complementary to residential development."*

Schedule 2 Part 7 Clause 61 of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations') provides for exemption from the requirement to make planning application for residences that comply with the requirements of the Residential Design Codes of Western Australia (i.e. providing the residence meets state-wide requirements relating to matters such as boundary setback, access, privacy,

overshadowing, site coverage etc.). However, the exemptions relate to development that is erected (i.e. constructed) on-site.

The application was not therefore subject to exemption and required application to be made, and can be considered to meet the definition of either of the following land use definition listed in Clause 38 of the Scheme:

“second-hand dwelling means a dwelling that has been in a different location, and has been dismantled and transported to another location”

“repurposed dwelling means a building or structure not previously used as a single house which has been repurposed for use as a dwelling”

Both of these land uses are listed as ‘A’ uses in the ‘Residential’ zone in the Scheme’s Zoning Table (i.e. they must be advertised prior to determination).

Schedule 1 of the Shire’s Scheme also notes the following:

Repurposed dwellings and second-hand dwellings	<ol style="list-style-type: none"> 1. The standards of finish of Repurposed Dwellings and/or Second-Hand Dwellings shall be agreed on between the applicant and the local government prior to the issue of development approval and must be consistent with those prevailing in the locality in which the building is to be located or any policy adopted by local government. 2. Local government may permit the erection or placement of a Repurposed Dwelling and/or Second-Hand Dwelling on a lot providing that the design of the building is to the satisfaction of the local government and: <ol style="list-style-type: none"> (a) is in a satisfactory condition; (b) will not detrimentally affect the amenity of the area; (c) is permanently affixed to the ground; and (d) is finished to a high standard.
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Schedule 2 Part 9 Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* lists the following relevant matters to be considered by local government in considering a development application:

- “(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;...*
- ...(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) the amenity of the locality including the following —*
 - (i) environmental impacts of the development;*
 - (ii) the character of the locality;*
 - (iii) social impacts of the development;...*
- ...(p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;...*
- ...(x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) any submissions received on the application;...*
- ...(zb) any other planning consideration the local government considers appropriate.”*

Policy Implications

Nil

Financial Implications

The application would not have a budgetary impact to Council.

Strategic Implications

Lot 95 falls within the area at the eastern end of the townsite identified on the Mingenew Townsite Local Planning Strategy Map as being suitable for rezoning to 'Special Use' to allow for the development of a Live-Work Area.

Section 4.3.9 'Amenity Impacts of Existing Industrial Development' of the Mingenew Townsite Local Planning Strategy notes that:

"Existing industrial development in proximity to the Mingenew townsite, particularly the CBH grain receival point, is considered by residents to have some off-site amenity impacts, such as noise and dust. As a result the vacant residential land south of Ikewa Street and north of View Street is not seen locally as being attractive for development.

There may be an opportunity to consider a live/work investigation area (i.e. for home based businesses and workshops) in this section of Mingenew."

"Objective 5.1 - Allow for a mixture of residential and small scale mixed business/light industrial uses to provide work-live options.

Planning Provision 5.1 - Rezone the area between Ikewa and View Streets to a Special Use zone, with small scale light industrial uses to be permitted in association with a residence."

Mr T Nitschke left the meeting at 4:43pm and Cr McTaggart returned to the meeting.

Prior to discussion on Item 11.7, Cr CV Farr declared a financial interest as owner of the Mingenew Spring Caravan Park and an Impartiality Interest with the applicant being an immediate family member, left the meeting at 4:44pm and did not participate in discussion or voting on the matter.

11.7 PROPOSED SITING OF MOBILE FOOD & COFFEE VAN

Location/Address: 20 (Lot 267) Lee Steere Street, Mingenew (Mingenew Spring Caravan Park)
Reserve 47995 Midlands Road, Mingenew (car parking bay)
86 (Lot 50) Midlands Road, Mingenew (former service station)
Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park)

Name of Applicant: F. Catchick

Disclosure of Interest: Cr CV Farr

File Reference: ADM0514, A761, A701, A787, A903

Date: 10 November 2020

Author: Simon Lancaster, DCEO/Planning Advisor, Shire of Chapman Valley

Senior Officer: Nils Hay, Chief Executive Officer

Voting Requirements: Simple Majority

Summary

Council is in receipt of an application seeking to operate a mobile food & coffee van at the following locations:

- 20 (Lot 267) Lee Steere Street, Mingenew (Mingenew Spring Caravan Park);
- Reserve 47995 Midlands Road, Mingenew (car parking bay);
- 86 (Lot 50) Midlands Road, Mingenew (former service station);
- Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park).

This report recommends that Council conditionally approve the application for a 12-month trial period.

OFFICER RECOMMENDATION – ITEM 11.7

MOVED: Cr HM Newton **SECONDED:** Cr JD Bagley

That Council grant formal planning approval for the siting of a mobile food & coffee van at the following locations subject to the below conditions:

- 20 (Lot 267) Lee Steere Street, Mingenew (Mingenew Spring Caravan Park);
- Reserve 47995 Midlands Road, Mingenew (car parking bay);
- 86 (Lot 50) Midlands Road, Mingenew (former service station);
- Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park)

Conditions:

- 1 The approval is valid for a period of 12 months (until 18 November 2021) after which time the application shall be reconsidered by the Shire Chief Executive Officer (under the delegated authority of Council) as to any impacts arising from the operation of the development in the local government's determination on whether to grant any extension to the approval period.
- 2 Any additions to or change of use of any part of the development (not the subject of this consent/approval) considered by the Shire Chief Executive Officer to represent significant variation from the approved development requires further application and planning approval for that use/addition.
- 3 The applicant is required to obtain the necessary consents from the landowners of 20 (Lot 267) Lee Steere Street, Mingenew (Brett Farr & Caroline Dillon) and 86 (Lot 50) Midlands Road, Mingenew (Michael Ormesher) and the management authority for Reserve 900 Coalseam Road, Holmwood

(Department of Biodiversity, Conservation & Attractions) before the commencement of operations.

- 4 The location of the mobile food & coffee van, and maintenance of public access about the mobile food & coffee van, being to the approval of the local government.
- 5 The applicant shall ensure that the mobile food & coffee van and immediate surrounding area is kept clean and tidy to the approval of the local government.
- 6 The applicant shall ensure that rubbish associated with the operation of the mobile food & coffee van is managed to the approval of the local government.
- 7 No freestanding signs or hoardings advertising the operation of the mobile food & coffee van are permitted to be erected whether temporary or permanent in nature.
- 8 The use of mechanical chimes or amplified music which could cause a noise nuisance is not permitted. The mobile food & coffee van shall at all times comply with the *Environmental Protection (Noise) Regulations 1997*.
- 9 The mobile food & coffee van shall not be located upon Reserve 47995 Midlands Road, Mingenew during times when the Mingenew Bakery is open for business.
- 10 The mobile food & coffee van shall comply with the requirements of the *Food Act 2008* and *Food Regulations 2009*.
- 11 The applicant shall obtain the written approval of the local government that the mobile food & coffee van meets the required food, health, waste management and access standards before the commencement of operations.
- 12 The applicant must possess (and provide copy to the local government) public liability insurance cover of not less than \$10 million.
- 13 This approval is issued only to the applicant and is not transferable to any other party.

Notes:

- (a) The applicant is advised that this approval is only issued for a trial period of 12 months and the operation of this development will be monitored by the local government and should complaints arise and not be adequately managed to the satisfaction of the local government, then it should not be construed that further approval would be granted.
- (b) That Council delegate authority to the Shire Chief Executive Officer for the annual renewal of the approval should no written, author-identified complaints be received during the preceding 12 month period, and there being no change in the circumstances under which the previous approval was granted. In the event that written, author-identified complaints are received in relation to the development this matter is to be returned to Council for further consideration.
- (c) In relation to conditions 10 & 11 the applicant is advised that they are required to liaise with the Shire's Environmental Health Officer to ensure compliance before the commencement of the operations (and as required by legislation thereafter to continue operations).
- (d) The applicant is advised that this planning approval does not negate the requirement for any additional approvals which may be required under separate legislation and it is the applicant's responsibility to obtain any additional approvals required before the development commences.
- (e) This planning approval issued to the applicant is not to be construed as the granting of an exclusive commercial use and the local government reserves the right to issue approval to other parties who may seek to conduct commercial activities.
- (f) If an applicant is aggrieved by this determination there is a right (pursuant to the *Planning and Development Act 2005*) to have the decision reviewed by the State Administrative Tribunal. Such application must be lodged within 28 days from the date of determination.

AMENDMENT TO MOTION AND COUNCIL DECISION – ITEM 11.7 RESOLUTION# 08181120

MOVED: Cr HM Newton SECONDED: Cr JD Bagley

That the following be added to the second location listed in the resolution “...Reserve 47995 Midlands Road, Mingenew (car parking bay) during times that the Mingenew Bakery and Palm Roadhouse are closed”.

SUBSTANTIVE MOTION

That Council grant formal planning approval for the siting of a mobile food & coffee van at the following locations subject to the below conditions:

- 20 (Lot 267) Lee Steere Street, Mingenew (Mingenew Spring Caravan Park);
- Reserve 47995 Midlands Road, Mingenew (car parking bay) during times that the Mingenew Bakery and Palm Roadhouse are closed;
- 86 (Lot 50) Midlands Road, Mingenew (former service station);
- Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park)

Conditions:

- 1 The approval is valid for a period of 12 months (until 18 November 2021) after which time the application shall be reconsidered by the Shire Chief Executive Officer (under the delegated authority of Council) as to any impacts arising from the operation of the development in the local government’s determination on whether to grant any extension to the approval period.
- 2 Any additions to or change of use of any part of the development (not the subject of this consent/approval) considered by the Shire Chief Executive Officer to represent significant variation from the approved development requires further application and planning approval for that use/addition.
- 3 The applicant is required to obtain the necessary consents from the landowners of 20 (Lot 267) Lee Steere Street, Mingenew (Brett Farr & Caroline Dillon) and 86 (Lot 50) Midlands Road, Mingenew (Michael Ormesher) and the management authority for Reserve 900 Coalseam Road, Holmwood (Department of Biodiversity, Conservation & Attractions) before the commencement of operations.
- 4 The location of the mobile food & coffee van, and maintenance of public access about the mobile food & coffee van, being to the approval of the local government.
- 5 The applicant shall ensure that the mobile food & coffee van and immediate surrounding area is kept clean and tidy to the approval of the local government.
- 6 The applicant shall ensure that rubbish associated with the operation of the mobile food & coffee van is managed to the approval of the local government.
- 7 No freestanding signs or hoardings advertising the operation of the mobile food & coffee van are permitted to be erected whether temporary or permanent in nature.
- 8 The use of mechanical chimes or amplified music which could cause a noise nuisance is not permitted. The mobile food & coffee van shall at all times comply with the *Environmental Protection (Noise) Regulations 1997*.
- 9 The mobile food & coffee van shall not be located upon Reserve 47995 Midlands Road, Mingenew during times when the Mingenew Bakery is open for business.
- 10 The mobile food & coffee van shall comply with the requirements of the *Food Act 2008* and *Food Regulations 2009*.
- 11 The applicant shall obtain the written approval of the local government that the mobile food & coffee van meets the required food, health, waste management and access standards before the commencement of operations.
- 12 The applicant must possess (and provide copy to the local government) public liability insurance cover of not less than \$10 million.
- 13 This approval is issued only to the applicant and is not transferable to any other party.

Notes:

- (a) The applicant is advised that this approval is only issued for a trial period of 12 months and the operation of this development will be monitored by the local government and should complaints arise and not be adequately managed to the satisfaction of the local government, then it should not be construed that further approval would be granted.
- (b) That Council delegate authority to the Shire Chief Executive Officer for the annual renewal of the approval should no written, author-identified complaints be received during the preceding 12 month period, and there being no change in the circumstances under which the previous approval was granted. In the event that written, author-identified complaints are received in relation to the development this matter is to be returned to Council for further consideration.
- (c) In relation to conditions 10 & 11 the applicant is advised that they are required to liaise with the Shire's Environmental Health Officer to ensure compliance before the commencement of the operations (and as required by legislation thereafter to continue operations).
- (d) The applicant is advised that this planning approval does not negate the requirement for any additional approvals which may be required under separate legislation and it is the applicant's responsibility to obtain any additional approvals required before the development commences.
- (e) This planning approval issued to the applicant is not to be construed as the granting of an exclusive commercial use and the local government reserves the right to issue approval to other parties who may seek to conduct commercial activities.
- (f) If an applicant is aggrieved by this determination there is a right (pursuant to the *Planning and Development Act 2005*) to have the decision reviewed by the State Administrative Tribunal. Such application must be lodged within 28 days from the date of determination.

VOTING:

CARRIED BY SIMPLE MAJORITY: 6/0

Attachments

Attachment 11.7.1 - Copy of submitted application (provided as separate attachment)

Background

The applicant is seeking approval to site their 'Wild Side Coffee' van at 4 locations in the Shire of Mingenew and are proposing to be *"selling Karvan blend 4 coffee, soft drink, water, bagels, jaffles, gourmet salads, small array of baked goods, ready made meals such as lasagna and salad, tuna bake and salad."*

The submitted application is provided as **separate Attachment 11.7.1** for Council's information

Comment

The applicant is seeking to site their food & coffee van at the following 4 locations within the Shire of Mingenew.

20 (Lot 267) Lee Steere Street, Mingenew is a 2.3118ha property owned by Brett Farr & Caroline Dillon that contains the Mingenew Spring Caravan Park.

Figure 11.2(a) – 20 (Lot 267) Lee Steere Street, Mingenew (Mingenew Spring Caravan Park)



Reserve 47995 Midlands Road, Mingenew is a 2.3493ha Crown Reserve that contains a car parking area with a management order for 'Civic Purposes' issued to the Shire of Mingenew. The applicant is proposing to site the food & coffee van at this location only on Sunday afternoon when the Mingenew Bakery is closed for business.

Figure 11.2(b) – Reserve 47995 Midlands Road, Mingenew (parking bay)



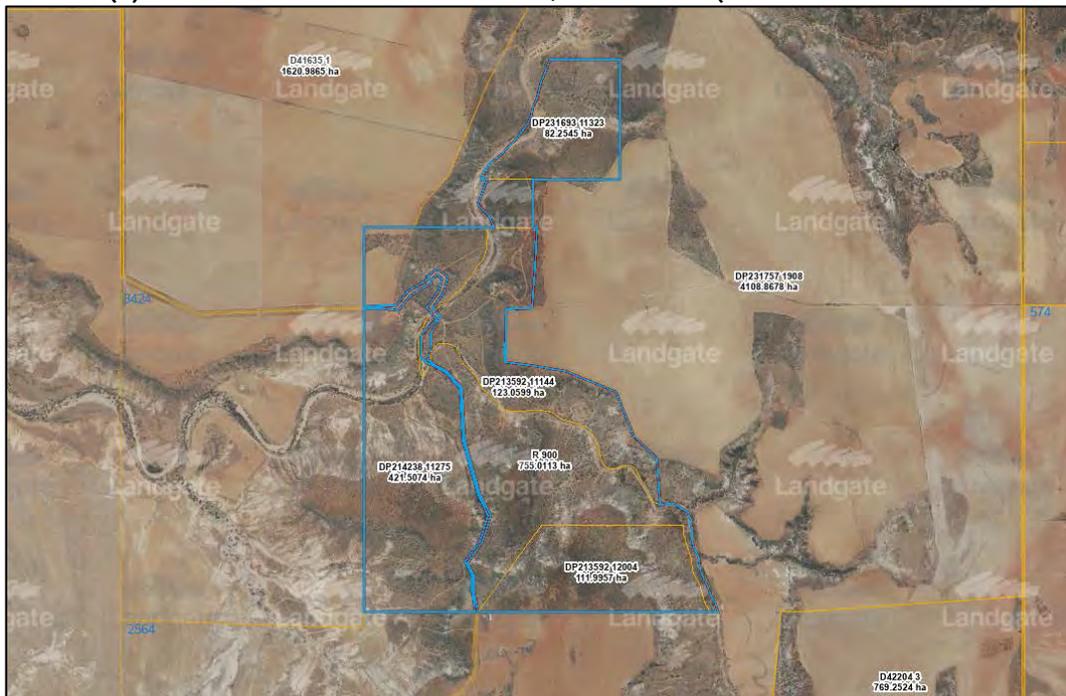
86 (Lot 50) Midlands Road, Mingenew is a 1,540m² property owned by Michael Ormesher that contains a former service station

Figure 11.2(c) – 86 (Lot 50) Midlands Road, Mingenew (former service station)



Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park) is a 753.8343ha Crown Reserve with a management order for 'Conservation Park' issued to the Department of Biodiversity, Conservation & Attractions.

Figure 11.2(d) – Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park)



Consultation

The application has not been advertised for public comment. Should Council wish to defer determination upon this application to allow for the undertaking of a formal advertising period inviting submissions it may do so under Clause 18(4)(b) of the Scheme.

The applicant advises in their correspondence that they have the support of the owners of 20 Lee Steere Street and 86 Midlands Road and are pending approval from the Department of Biodiversity, Conservation & Attractions.

The Shire wrote to the owners of 20 Lee Steere Street and 86 Midlands Road advising them of the receipt of the coffee & food van application proposing to operate from their properties.

The Shire also wrote to the Department of Biodiversity, Conservation & Attractions on 3 November 2020 advising them of the receipt of the food & coffee van application.

The DBCA advised on 4 November 2020 that it had issued a licence to the applicant to conduct commercial operations within Coalseam Conservation Park, a copy of the DBCA licence is included within **separate Attachment 11.7.1**.

In the event that Council considers supporting this application it is recommended that it be for a trial period of 12 months and that the following condition be applied:

"The applicant is required to obtain the necessary consents from the landowners of 20 (Lot 267) Lee Steere Street, Mingenew (Brett Farr & Caroline Dillon) and 86 (Lot 50) Midlands Road, Mingenew (Michael Ormesher) and the management authority for Reserve 900 Coalseam Road, Holmwood (Department of Biodiversity, Conservation & Attractions) before the commencement of operations."

Statutory Environment

Part 1 Section 4 of the *Planning & Development Act 2005* ('the Act') defines development as follows:

*"development means the development or **use of any land**, including —*

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
- (b) the carrying out on the land of any excavation or other works;*
- (c) in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, any act or thing that —*
 - (i) is likely to change the character of that place or the external appearance of any building; or*
 - (ii) would constitute an irreversible alteration of the fabric of any building."*

Whilst the proposed siting of a mobile food & coffee van does not constitute a development as defined within parts (a)-(c) it should still be considered a development as by operating a commercial/retail activity from the land it does constitute the *"use of any land"*.

The proposal is further considered to constitute the use of land as it would be established for extended periods, and should therefore be viewed differently to a more transitory operation such as an ice cream van that is generally in motion and might typically only be stationary when hailed by customers, that might be able to be considered under the exemption provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Schedule 2 Part 7 Clause 61(2)(d) of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations') provides for exemption from the requirement to obtain development approval for a temporary use which is in existence for less than 48 hours, or a longer period agreed by the local government, in any 12 month period. This application is not considered to meet this requirement as whilst the food & coffee van would be sited for periods of less than 48 hours, it would be sited in any of the 4 proposed locations for a period of greater than 48 hours across a 12 month period.

Mobile Food Van is not a listed use in the Scheme, and it is not considered that the proposed land use would meet with the following definition that is listed in the Scheme and is considered to be the most closely aligned:

“restaurant/cafe means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the Liquor Control Act 1988”

On this basis Clause 18(4) of the Scheme is therefore considered to apply in this instance:

“The local government may, in respect of a use that is not specifically referred to in the zoning table and that cannot reasonably be determined as falling within a use class referred to in the zoning table –

- (a) determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the local government; or*
- (b) determine that the use may be consistent with the objectives of a particular zone and give notice under clause 64 of the deemed provisions before considering an application for development approval for the use of the land; or*
- (c) determine that the use is not consistent with the objectives of a particular zone and is therefore not permitted in the zone.”*

Clause 9 of the Scheme includes the following aims of the scheme:

- “(a) to preserve, protect and enhance the amenity and character of Mingenew Townsite, and areas of cultural, heritage and natural and biodiversity significance across the Shire; and”*
- “(d) provide opportunities for the ongoing use and potential expansion of commercial areas, and tourist facilities to serve the needs of the residents and visitors”*

20 (Lot 267) Lee Steere Street, Mingenew (Mingenew Spring Caravan Park) is zoned ‘Tourism’ under the Shire of Mingenew Local Planning Scheme No.4 (‘the Scheme’). Clause 16 of the Scheme lists the objectives for the ‘Tourism’ zone as being:

- To promote and provide for tourism opportunities.*
- To provide for a variety of holiday accommodation styles and associated uses, including retail and service facilities where those facilities are provided in support of the tourist accommodation and are of an appropriate scale where they will not impact detrimentally on the surrounding or wider area.*
- To allow limited residential uses where appropriate.*
- To encourage the location of tourist facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities.”*

Reserve 47995 Midlands Road, Mingenew (car parking bay) is zoned ‘Railways’ under the Scheme. Clause 14 of the Scheme lists the objectives for the ‘Railways’ zone as being:

- To set aside land required for passenger rail and rail freight services.”*

86 (Lot 50) Midlands Road, Mingenew (former service station) is zoned ‘Rural Townsite’ under the Scheme. Clause 16 of the Scheme lists the objectives for the ‘Rural Townsite’ zone as being:

- To provide for a range of land uses that would typically be found in a small country town.*

- *To provide for the variety of predominantly commercial, service, social and administrative uses required to service the needs of local residents and visitors alike."*

Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park) is zoned 'Environmental Conservation' under the Scheme. Clause 14 of the Scheme lists the objectives for the 'Environmental Conservation' zone as being:

- *To identify areas with biodiversity and conservation value, and to protect those areas from development and subdivision.*
- *To identify and protect areas of biodiversity conservation significance within National Parks and State and other conservation reserves."*

Schedule 2 Part 9 Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* lists the following relevant matters to be considered by local government in considering a development application:

- "(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;...*
- ...(j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;...*
- ...(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) the amenity of the locality including the following —*
 - (i) environmental impacts of the development;*
 - (ii) the character of the locality;*
 - (iii) social impacts of the development;...*
- ...(s) the adequacy of –*
 - (i) the proposed means of access to and egress from the site; and*
 - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;*
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;...*
- ...(v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;*
- (w) the history of the site where the development is to be located;*
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;...*
- ...(zb) any other planning consideration the local government considers appropriate."*

Policy Implications

Nil

Financial Implications

A planning application fee was received and, as a food business, the Shire would collect an annual surveillance fee, in accordance with Council's Fees & Charges.

Strategic Implications

The Shire of Mingenew Strategic Community Plan 2019 sets the following strategic objective:

“Strategy 5: Making Business Easy in Mingenew

Goal: Ensure Mingenew is supporting local businesses to grow and maintain employment within the community”

It may be considered that a mobile food & coffee van whilst offering a new service to the residents of, and visitors to, the Shire of Mingenew also has the potential to impact upon existing Mingenew businesses and may be considered contrary to this Strategic Community Plan Strategy.

Competition and impact on existing local businesses is an issue that local governments have often been forced to grapple with, particularly where arguments have been mounted that an existing retailing operation offers multiple services and employment to a local community, and when faced with an arriving (sometimes mobile, or unmanned, or non-locally employing) competitor that offers a more limited service (in terms of products or hours of operation) that undermines their profitability, this can result in the existing service provider no longer being viable and the local community resultantly losing those associated services and employment. Existing businesses might also note that they are required to pay local government rates and service authority charges (e.g. power and water) and these are not required of mobile food outlets who might seek to park in the most advantageous locations and only in periods of high activity whereas permanent business support local communities all year round.

Council can have some regard for this issue under Clause 67 of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* including the requirements of orderly and proper planning, having regard for the amenity of the locality including social impacts of the development, the amount of traffic likely to be generated by the development particularly in relation to the capacity of the local road system in the locality, the impact of the development on the community as a whole, and any submissions received on the application. However, it is noted that the Clause 67 of the Regulations also lists the following matter to be considered by local government:

“(v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses.”

This is also an issue that Section 3.3.7 ‘Economic Competition’ of the Western Australian Planning Commission publication ‘Development Assessment Panel Training Notes – Making Good Planning Decisions’ (2011) addresses as follows:

“The threat of competition to existing businesses is not a relevant planning consideration. It only becomes a relevant planning consideration if there is a prospect that there will be a reduction in the facilities available to the community.

This was made clear in the High Court decision of Kentucky Fried Chicken Pty Ltd v Gantidis (1979) 140 CLR 675. In that case, Barwick CJ at [681] said that:

“economic competition feared or expected from a proposed use is not a planning consideration within the terms of the planning ordinance governing this matter”.

Stephen J at [687] noted that:

“...the mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration.”

However, it is also noted that Section 2.10 of the *Local Government Act 1995* lists one of the roles of a Councillor as being:

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"A councillor —

(a) represents the interests of electors, ratepayers and residents of the district;"

In the event that Council considers supporting this application it is recommended that it be for a trial period of 12 months and that the following condition be applied:

"The mobile food & coffee van shall not be located upon Reserve 47995 Midlands Road, Mingenew during times when the Mingenew Bakery is open for business."

Cr CV Farr returned to the meeting at 4:56pm and Mr R Tyndale Powell left the meeting.

12.0 FINANCE AND ADMINISTRATION MANAGER REPORTS

12.1 FINANCIAL REPORT FOR THE PERIOD ENDED 31 OCTOBER 2020

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference: ADM0304
Attachment/s: Monthly Financial Report – October 2020
Disclosure of Interest: Nil
Date: 9 November 2020
Author: Helen Sternick, Senior Finance Officer
Authorised by: Jeremy Clapham, Finance & Administration Manager
Voting Requirement: Simple Majority

Summary

This report recommends that the Monthly Financial Report for the period ending 31 October 2020 as presented to the Council be received.

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 12.1 RESOLUTION# 09181120
MOVED: Cr HM Newton SECONDED: Cr AR Smyth

That the Monthly Financial Report for the period 1 July 2020 to 31 October 2020 be received.

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Attachment

Monthly Financial Report for period ending 31 October 2020

Background

The Monthly Financial Report to 31 October 2020 is prepared in accordance with the requirements of the Local Government Act and the Local Government (Financial Management) Regulations and includes the following:

- Summary Information
- Statement of Financial Activity by Program
- Statement of Financial Activity by Nature & Type
- Statement of Financial Activity Information
- Cash and Financial Assets
- Receivables
- Other Current Assets
- Payables
- Rating Revenue
- Disposal of Assets
- Capital Acquisitions
- Borrowings
- Cash Reserves
- Other Current Liabilities
- Grants and Contributions
- Bonds and Deposits
- Explanation of Material Variances

Comment

Summary of Funds as per bank statements – Shire of Mingenew as at 31 October 2020	
Municipal Funds	\$1,920,267
Cash on Hand	\$100
Restricted Funds – 6 Month Term Deposit @ 0.9%	\$164,613
Trust Fund	\$1
Reserve fund - 6 Month Term Deposit @ 0.9%	\$427,012

Debtor's accounts continue to be monitored with all efforts being made to ensure that monies are recovered.

The Statement of Financial Activities Report contains explanations of Councils adopted variances for the 2020/21 financial year.

The Financial Report for the year ending 30 June 2020 has not yet been audited and is subject to change. The Opening Funding Surplus on 1 July 2020 is different to the Closing Funding Surplus at 30 June 2020. The reason for this is that the Closing Funding Surplus at 30 June 2020 was estimated in order to prepare the budget, due to the June 2020 accounts not yet being finalised. There were a number of adjustments made after year end, mainly to do with legislation changes (the treatment of income, the treatment of leases and the treatment of loss allowances). The largest of these adjustments was to do with the Bridge Funds received in 2016/17 but not yet spent, amounting to \$146,667. An adjustment was required as the funds received needed to be shown as a liability rather than as income. When the funds get paid to MRWA for the work done, they will be transferred back to income and increase the Funding Surplus once more.

Consultation

Nil

Statutory Environment

Local Government Act 1995 Section 6.4

Local Government (Financial Management) Regulations 1996 Section 34

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

(1A) In this regulation —

committed assets means revenue unspent but set aside under the annual budget for a specific purpose.

- (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 sub regulation (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 sub regulation (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

Nil

Financial Implications

No financial implications are indicated in this report.

Strategic Implications

Nil

12.2 LIST OF PAYMENTS FOR THE PERIOD 1 OCTOBER 2020 TO 31 OCTOBER 2020

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference: ADM0042
Attachment/s: List of Payments – October 2020
Disclosure of Interest: Nil
Date: 11 November 2020
Author: Helen Sternick, Senior Finance Officer
Authorised by: Jeremy Clapham, Finance & Administration Manager
Voting Requirement: Simple Majority

Summary

This report recommends that Council receive the list of payments for period 1 September 2020 to 30 September 2020 in accordance with the Local Government (Financial Management) Regulations 1996 section 13(1).

**OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 12.1 RESOLUTION# 10181120
MOVED: Cr CV Farr SECONDED: Cr AR Smyth**

That Council receive the attached list of payments for the period of 1 October 2020 to 31 October 2020 as follows:

\$166,982.04	Municipal EFT's;
\$79,251.80	Municipal Direct Debit Department of Transport (Licencing) Payments;
\$43,599.88	Municipal Direct Debit Other;
\$444.55	Municipal Other Charges;
\$74,328.81	Net Salaries

Total \$364,607.08 as per attached list of payments.

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Background

Financial Regulations require a schedule of payments made through the Council bank accounts to be presented to Council for their inspection. The list includes details for each account paid incorporating the payee's name, amount of payment, date of payment and sufficient information to identify the transaction.

Comment

Invoices supporting all payments are available for inspection. All invoices and vouchers presented to Council have been certified as to the receipt of goods and the rendition of services and as to prices, computations and costings, and that the amounts shown were due for payment.

Consultation

Nil

Statutory Environment

Local Government Act 1996, Section 6.4

Local Government (Financial Management) Regulations 1996, Sections 12, 13 and 15

Policy Implications

Payments have been made under delegation.

Financial Implications

Funds available to meet expenditure.

Strategic Implications

Nil

13.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN/FOR CONSIDERATION AT FOLLOWING MEETING

Nil.

14.0 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

A Late Item 14.1 was considered following Item 15.1.

15.0 CONFIDENTIAL ITEMS

PROCEDURAL MOTION – CONFIDENTIAL ITEM 15.1 – RESOLUTION# 11181120

MOVED: Cr HR McTaggart SECONDED: Cr HM Newton

That Council closes the meeting to the public at 4:56pm in accordance with s5.23(2)(e)(ii), in order to consider Item 15.1 TENDER – RFT 2-202/21 DISPOSAL OF RESIDENTIAL LAND, which if disclosed would reveal information that has a commercial value to a person.

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Prior to consideration of Item 15.1, Cr RW Newton declared a Proximity Interest as a neighbouring landowner (opposite) to the Broad Street blocks for sale, left the meeting at 5:02pm and did not participate in discussion or vote on the matter.

15.1 CLOSED SESSION [s5.23 (2)(c)]: TENDER – RFT 2 2020/21: DISPOSAL OF RESIDENTIAL LAND

Location/Address: Not Applicable
Name of Applicant: Shire of Mingenew
Disclosure of Interest: Nil
File Reference: TEN025
Date: 11 November 2020
Author: Nils Hay, CEO
Authorising Officer: Nils Hay, CEO
Voting Requirements: Simple Majority

Summary

To award Tender RFT 2 2020/21: Disposal of Residential Land, the sale of nine parcels of residential land in the Mingenew townsite from \$1.

Key Points

- More submissions received than land available (10 submissions to 9 blocks of land)
- A mixture of local applicants and those from outside the region
- A mixture of residential and investment intentions
- Following allocation of successful tenderers, draft contracts have been prepared to allow for swift execution.

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 15.1 RESOLUTION# 12181120
MOVED: Cr JD Bagley SECONDED: Cr AR Smyth

That Council:

1. Note the attached Evaluation Table (CONFIDENTIAL ATTACHMENT) 15.1.1 with respect to RFT 2 2020/21: Disposal of Residential Land;
2. Award the tender for the following blocks of land to the following parties at the listed prices:
 - a. 29 Oliver Street (Lot 184 on P2893) to Sandy Jones for \$200
 - b. 36 Oliver Street (Lot 176 on P2893) to Mark Crowley for \$500
 - c. 38 Oliver Street (Lot 177 on P2893) to Clint Koulouvi (Irwin Plumbing) for \$500
 - d. 40 Oliver Street (Lot 178 on P2893) to Warren Madson for \$50
 - e. 5 Broad Street (Lot 164 on P2893) to Peter Neale for \$1
 - f. 7 Broad Street (Lot 163 on P2893) to Peter Micono for \$500
 - g. 4 Queen Street (Lot 100 on DP174741) to Willara Wyatt for \$300
 - h. 35 King Street (Lot 14 on DP222813) to Scott & Lisa Rose for \$10
 - i. 38 King Street (Lot 19 on DP222813) to Peter Wilson for \$1
 - j. In the case that any of the above do not wish to proceed with their allocated block, that it be offered to Shirley Elliott for \$10
3. Authorise the Chief Executive Officer and Shire President to enter into contracts for the sale of the properties listed above at the prices quoted.

VOTING:

CARRIED BY SIMPLE MAJORITY: 6/0

Attachments

- 15.1.1 Evaluation Table RFT2 2020/21
- 15.1.2 Copy of responses received
- 15.1.3 Draft Contract for Sale of Land

Background

The Shire of Mingenew advertised RFT2 2020/21 in the West Australian and the Mid West Times on 14 October 2020, and via social media, the Shire website, Mingenew Matters and local noticeboards. It also received media coverage through the Mid West Times, West Australian, ABC Radio and 6PR Radio.

The tender closed at 5pm on Friday 6 November 2020.

10 submissions (attachment 15.1.2) were received for the 9 blocks of land available. They have been evaluated as per the table in attachment 15.1.1.

Comment

As anticipated, the sale of land from \$1 generated a reasonable amount of media interest and resulted in the tender being oversubscribed. The applicants represented a cross-section of locals and non-locals, as well as those looking to build and move to Mingenew, or build for business or investment purposes.

What was also of interest was the desire from some buyers for a double-block – which supports a potential demand theory around larger lifestyle blocks in Mingenew. Due to the number of tender submissions however, at this stage, it has not been recommended that any party is offered more than a single block of land.

As much as possible, successful tenderers were offered their preferred block or – if that was unavailable (a higher-scoring response had secured it) – the block of available land next-highest preferred by them. In the case where not all blocks had been preferred, the nearest block (geographically) to the preferred block was awarded.

Should any party not wish to proceed, it is proposed that the unsuccessful tenderer be offered an opportunity to take that block on.

In the interest of giving prospective buyers the maximum amount of time to arrange builders and enter into contracts (as part of securing State and/or Federal building assistance), draft contracts for sale have already been prepared (attached) and will be entered into as soon as practicable after Council's awarding of the tender.

It is also proposed that we assist the unsuccessful tenderer to make contact with local landholders that may be looking to sell (noting that they will want market price, but that this is likely to be between \$5,000 and \$7,000).

Consultation:

Leadership Team

Statutory Environment

Section 3.58 of the *Local Government Act 1995* addresses the disposal of property by lease or sale

- (1) In this section —
 1. dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;
 2. property includes the whole or any part of the interest of a local government in property, but does not include money.
- (2) Except as stated in this section, a local government can only dispose of property to —
 - (a) the highest bidder at public auction; or
 - (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender
- (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

- (a) it gives local public notice of the proposed disposition —
 - (i) describing the property concerned; and
 - (ii) giving details of the proposed disposition; and
 - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and
 - (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —
- (a) the names of all other parties concerned; and
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition —
 - (i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or
 - (ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.
- (2) This section does not apply to —
- (a) a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or
 - (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or
 - or
 - (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
- any other disposition that is excluded by regulations from the application of this section.

Policy Implications

Nil

Financial Implications

The legal fees for the conveyancing process are provided for within the Budget. Also, based upon the prices offered, the Shire stands to earn \$2,062 from the sale of the blocks.

Once the properties change hands, they will become liable for rates, which will see a slight increase in GRV rates this year, and moving forward.

Strategic Implications

Strategic Community Plan 2019-29: Strategy 3.1.1 – Ensure pipeline of land available for development.

It is noted that our SCP's KPIs include:

- 4 new businesses attracted to set up in Mingenew
- 20 houses built (different configurations)

This initiative could assist to partially (or even quite significantly) address both of those KPIs.

Voting Requirements

Simple Majority

Cr RW Newton returned to the meeting at 5:07pm.

PROCEDURAL MOTION – LATE / CONFIDENTIAL ITEM 14.1 – RESOLUTION# 13181120

MOVED: Cr JD Bagley SECONDED: Cr HR McTaggart

That Council, in accordance with Clause 3.12 and 3.13 of the Shire of Mingenew Standing Orders Local Law 2017, accept the Late Item 14.1 PROPOSED OUTBUILDING 10 (LOT 137) ENANTY STREET, MINGENEW and keep the meeting closed to members of the public in accordance with s5.23(2)(e)(ii), as the matter, if disclosed, could reasonably be expected to impair the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.

VOTING:

CARRIED BY SIMPLE MAJORITY: 7/0

Prior to Item 14.1 being considered, CR HM Newton declared a proximity interest as the owner of properties neighbouring 10 Enanty Street, Mingenew, left the meeting at 5:08pm and did not participate in discussion or vote on the matter.

14.1 LATE / CONFIDENTIAL ITEM - PROPOSED OUTBUILDING 10 (LOT 137) ENANTY STREET, MINGENEW

Location/Address: 10 (Lot 137) Enanty Street, Mingenew
Name of Applicant: NuSteel Patios & Sheds for R.Tyndale-Powell
Disclosure of Interest: Nil
File Reference: A208
Date: 17 November 2020
Author: Simon Lancaster, DCEO/Planning Advisor, Shire of Chapman Valley
Authorising Officer: Nils Hay, Chief Executive Officer
Voting Requirements: Simple Majority

Summary

Council approved an application for a 144m² shed upon 10 (Lot 137) Enanty Street in the Mingenew townsite at its 19 August 2020 meeting. Construction of the shed has commenced in a different location to that approved by Council and a 'stop work' direction notice has been issued by the Shire. The matter is now returned to Council for reconsideration. This report recommends that Council approve the shed in the new location subject to the application of an additional condition relating to construction of a crossover.

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 14.1 RESOLUTION# 14181120

MOVED: Cr AR Smyth SECONDED: Cr JD Bagley

That Council grant formal planning approval for an outbuilding to be constructed upon 10 (Lot 137) Enanty Street, Mingenew in the revised location, as illustrated in separate Attachment 14.1(c) subject to the following:

Conditions

1. Development shall be in accordance with the attached approved plans (as shown in separate Attachment 14.1(c)) and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.
2. Any additions to or change of use of any part of the building or land (not the subject of this consent/approval) requires further application and planning approval for that use/addition.

3. All stormwater is to be disposed of on-site to the approval of the local government.
4. Any soils disturbed or deposited on-site shall be stabilised to the approval of the local government.
5. The installation of a crossing place/crossover onto Phillip Street by the landowner at their expense to the standards and specifications of the local government.

Notes:

- (a) Where an approval has so lapsed, no development/land use shall be carried out without the further approval of the local government having first been sought and obtained.
- (b) If an applicant is aggrieved by this determination there is a right (pursuant to the *Planning and Development Act 2005*) to have the decision reviewed by the State Administrative Tribunal. Such application must be lodged within 28 days from the date of determination.

VOTING:

CARRIED BY SIMPLE MAJORITY: 6/0

Attachment (all provided as separate attachments to Agenda)

Attachment 14.1(a) - Copy of development application given Shire planning approval

Attachment 14.1(b) - Copy of planning approval letter

Attachment 14.1(c) - Copy of revised application given Shire building approval

Attachment 14.1(d) - Copy of 'stop work' direction notice

Background

Lot 137 is a 1,133m² property on the corner of Enanty Street and Phillip Street.

Figure 14.1(a) – Location Plan for 10 (Lot 137) Enanty Street, Mingenew



Figure 14.1(b) – Aerial Photograph of 10 (Lot 137) Enanty Street, Mingenew



Figure 14.1(c) – View of Lot 137 looking east from Enanty Street



Figure 14.1(d) – View of Lot 137 looking north from Phillip Street prior to commencement of shed construction



Figure 14.1(e) – View of Lot 137 looking north-west from Phillip Street following commencement of shed construction



Figure 14.1(f) – View of Lot 137 looking east illustrating nil setback to Phillip Street



Comment

A chronology of events is provided as follows:

15 June 2020

Planning application received proposing to construct an 18m x 8m (144m²) shed, with a wall height of 3.2m and a total gable roof height of 4.27m. The shed would be clad in Classic Cream colorbond wall and roof sheeting and roller doors, with Manor Red colorbond downpipes, gutters and flashing.

The shed would be sited 12m to the rear/east of the existing residence, setback 5m from the rear/eastern property boundary, 2m from the northern side boundary, and 5m from the Phillip Street/side property boundary.

The originally submitted planning application including site, elevation and floor plans and supporting correspondence are provided as **separate Attachment 14.1(a)**.

3 July 2020 – 24 July 2020

The Shire advertised the application by writing to the landowners of the 10 surrounding properties providing details of the application and inviting comment, a sign was also placed on-site to advise of the received application and the opportunity for comment.

At the conclusion of the advertising period, no objections had had been received, and 1 submission expressing support was received.

19 August 2020

Council resolved:

“That Council grant formal planning approval for an outbuilding to be constructed upon 10 (Lot 137) Enanty Street, Mingenew subject to the following:

Conditions

MINGENEW SHIRE COUNCIL ORDINARY MEETING MINUTES – 18 November 2020

- 1 *Development shall be in accordance with the attached approved plans dated 19 August 2020 and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.*
- 2 *Any additions to or change of use of any part of the building or land (not the subject of this consent/approval) requires further application and planning approval for that use/addition.*
- 3 *All stormwater is to be disposed of on-site to the approval of the local government.*
- 4 *Any soils disturbed or deposited on-site shall be stabilised to the approval of the local government.*
- 5 *If the development/land use, the subject of this approval, is not substantially commenced within a period of two years after the date of determination, the approval shall lapse and be of no further effect.*

Notes:

- (a) *Where an approval has so lapsed, no development/land use shall be carried out without the further approval of the local government having first been sought and obtained.*
- (b) *If an applicant is aggrieved by this determination there is a right (pursuant to the Planning and Development Act 2005) to have the decision reviewed by the State Administrative Tribunal. Such application must be lodged within 28 days from the date of determination."*

24 August 2020

The Shire issued a letter of planning approval advising of Council's decision a copy of which is provided as **separate Attachment 14.1(b)**.

18 September 2020

The applicant lodged a building permit application for a shed with the same dimensions but with a site plan that had been altered so that the shed was no longer orientated north-south with a 2m northern boundary setback, 5m eastern boundary setback and 5m (Phillip Street) southern boundary setback as approved by Council. The shed was instead orientated east-west with a 17m northern boundary setback, 1.5m eastern boundary setback and nil (Phillip Street) southern boundary setback. The altered site plan appears to have been photocopied from the site plan issued with planning approval by the Shire with the original shed location removed and new shed location hand-drawn upon it and the Shire planning approval stamp and signature retained.

This plan was provided to the City of Greater Geraldton who, given the presence of the Shire's planning approval stamp, processed it as normal.

30 September 2020

The Shire, upon receipt of the building application document from the City of Greater Geraldton issued a building permit for the shed in the revised location a copy of which is provided as **separate Attachment 14.1(c)**.

It would appear that two issues contributed to this situation:

1. The landowner has altered a planning approval stamped plan and submitted it for building approval without advising the Shire they were seeking approval for an amended shed location (as required under Condition 1 of the planning approval); and
2. The Shire has approved the building permit without cross-checking the original planning approval site plan (as the signed planning approval signature block already appeared on the plan it was incorrectly assumed, in good faith, that the plan was the same).

16 November 2020

The location of the new shed – as differing from what was approved by Council – was brought to the attention of the CEO, who investigated the discrepancy.

A 'stop work' direction notice was issued by the Shire to the landowner of 10 (Lot 137) Enanty Street, Mingenew a copy of which is provided as **separate Attachment 14.1(d)**. The CEO also spoke with the landowner directly, who confirmed they had amended the plans issued by Council.

The initial consideration of the shed application primarily concerned itself with the issue of the outbuilding's area which was the basis for sought variation/exceeding of Shire staff's delegated authority. The comment of Shire staff in the 17 August 2020 Council Agenda report considered that conditional approval of the application was warranted, based upon the following:

- *whilst the proposed 144m² total outbuilding area exceeds the 80m² Outbuildings Policy requirement (for lot under 1,500m²) it is noted that the outbuilding would be orientated north-south so that it would be presenting its lesser elevation to the Phillip Street secondary street frontage;*
- *the proposed outbuilding extension would not dominate the streetscape as it would comply with the height requirements of the Outbuildings Policy and be sited behind a 1.8m high existing colorbond fence;*
- *the requested outbuilding area is required for the parking of a vehicle, caravan and general storage and it may be considered preferable for these items to be secured out of the weather rather than about the rear yard, not just for the applicant but also for general amenity and appearance;*
- *the outbuilding would be clad in matching colours to the existing colorbond fence;*
- *the acceptance of the proposed outbuilding as being within the character of the surrounding area may be considered to have been demonstrated through no objections being received when the application was advertised for comment."*

The new location for the shed introduces a further variation that exceeds the delegated authority of Shire staff, this being a nil boundary setback to a secondary street when Table 1 of the Residential Design Codes of Western Australia ('R-Codes') recommends a 3m boundary setback for secondary streets in the R10 zone. On this basis the outbuilding does not meet the deemed-to-comply provisions under Section 5.4.3.C3.vi of the R-Codes and cannot be determined by Shire staff under delegated authority and is therefore returned to Council for its consideration.

The R-Codes Explanatory Guidelines provides the following guidance in relation to assessing matters relating to street setbacks and secondary streets:

“Street Setback

The urban design presumption is for the street setback area to be free from buildings and structures, enabling a clear view to and from the street. This provides a comfortable and secure relationship and transition between public and private space.

From a social point of view, the street setback area and how it is developed and managed allows for comfortable communication and interaction between residents, neighbours and passers-by or callers who may not be known to the occupants. This creates the opportunity for casual and safe interaction to enhance a sense of community and safety.

At the same time, an open setback area provides for mutual surveillance between the street and building, enhancing security for the building (and its occupants) and for people passing by.

From a visual point of view, an open setback area provides a more attractive setting for the building. The street setback should also provide, depending on the location of essential services, adequate clearances from, and access to, essential services for reasons of safety and utility.

The same principles apply to communal streets and rights-of-way that provide the frontage to dwellings.

There will, of course, be exceptions, principally where the street is an arterial road carrying significant volumes of traffic.

Frontage streets

Street setback areas are an integral part of the streetscape and are fundamental to the amenity and particular character of residential localities. They may perform a number of different, but complementary roles:

- continuity of the streetscape;*
- a visual setting for the dwelling;*
- a buffer against noise and general activity on the public street;*
- privacy for the dwelling;*
- visual connection to the street, its users and to neighbours;*
- space for car parking and access; and*
- a transition zone between the public street and private dwelling.*

These considerations apply particularly to public streets to influence orientation of the main frontage to dwellings as it presents to the street. Similar principles apply to communal streets, and rights-of-way used to provide frontage to dwellings. Secondary or side streets may also function in this way.

Side or secondary streets

Different streetscape characteristics usually occur on secondary or side streets, with the street alignments formed by the long side boundaries of corner lots. These are characterised by side fences or walls rather than open gardens, and a small setback to the building.

In many cases these streetscapes are being altered by urban redevelopment and infill, by the subdivision of corner lots, creating new frontages to the side street. Where this happens, similar considerations to those for setbacks to frontage streets will apply although there will be scope for common-sense rationalisation between existing houses which create the character of the street and infill development.

The setback area should be open but with a reduced setback for practical and streetscape reasons. Private open space may be located to one side of the building rather than a narrow strip along the rear.” (Section 4.1, pages 16-17)

“Appropriate street setback distances

In the case of new residential areas, the desirable street setback distance is often fixed as an integral part of the subdivision, for example as part of structure plan(s) or local development plan(s).

In the case of established residential areas with valued streetscapes, it will usually be the case that there is a consistent pattern of street setbacks. In these cases, new development should closely conform to the established pattern. Where the pattern varies, a setback mid-way between that of the buildings on either side may be appropriate.

In established areas, it may be desirable for the decision-maker to stipulate setbacks for a particular area by setting them out in the local planning framework. The R-Codes Volume 1 street setback requirements apply in all other cases.

The manner in which street setbacks may be reduced is illustrated in figure 2a of the R-Codes Volume 1. This includes a provision allowing a street setback reduction of up to 50 per cent, providing the area of building (including any carport or garage) forward of the required street setback line is compensated for by an equal or greater area of open space behind the street setback line.

The prime purpose of this provision is to only allow a reduced setback from the street where this will create flexibility of design to achieve the design objectives for the area, and lead to a more varied and interesting streetscape. Figures 2a and 2b in the R-Codes Volume 1 illustrate situations

where portions of the dwelling may intrude into the street setback provided there is a positive relationship with adjacent dwellings and the streetscape.

Other structures

Other than carports and garages (subject to clause 5.2.1 of the R-Codes Volume 1), no substantial structures are allowed in street setback areas. Structures that may be allowed are:

- low fences or walls, which are the subject of separate consideration;*
- landscape or sculptural structures, ornamental features designed to enhance the relationship between street and dwelling; and*
- appropriately scaled archways or gateways, provided they are in character with the streetscape.*

In addition, architectural features, including balconies, porches, chimneys and open verandahs, may be acceptable as minor incursions into the setback area, the criterion being that the main setback line is not unduly interrupted. Those minor incursions, where they do not exceed the limits prescribed at clause 5.1.2 C2.4, should not be taken into consideration when calculating average setback requirements.” (Section 4.1.1, page 18)

The recommendation of this report is that the new shed location with nil boundary setback be supported based upon the following:

- the shed at a nil boundary setback would be located approximately 6.5m from the edge of the roadway which would still provide reasonable sightlines to vehicles exiting the outbuilding onto the roadway and for vehicles travelling along Phillip Street.
- the shed would be located 35m from the Enanty Street and Phillip Street intersection which would provide a reasonable setback distance to this intersection for vehicle sightlines.
- there is not a footpath located along this section of Phillip Street and it is suggested that a footpath would be better suited to the other/southern side of Phillip Street as this is the same side of the road as the Primary School located approximately 175m to the east of the proposed outbuilding.
- there are other examples of outbuildings with nil and reduced secondary street setbacks in the Mingenew townsite on Ikewa Street, Lockier Street, King Street, Irwin Street, Moore Street, Phillip Street and Oliver Street.
- whilst the applicant has not sought the required planning approval for the shed in the new location, and has submitted as part of their building application an applicant altered site plan that retains a Shire planning approval stamp, the Shire has provided building approval to the applicant for the shed with the building approval including the applicant altered site plan being stamped for building approval by the Shire, and it might be therefore argued that the applicant commenced construction of the shed in the new location on the understanding that they had Shire approval for the new location.

It is recommended that were Council to approve the shed in the new location that it be made subject to the application of an additional condition of approval requiring the landowner to construct a crossover to Phillip Street at their expense to the requirements of the Shire (this being a sealed standard).

In the event that Council considers that the shed could be supported in a new location to that approved at the 19 August 2020 meeting but one that is in accordance with the R-Codes then it may wish to consider the following wording in formulation of its resolution:

“That Council advise the applicant that it is willing to approve the shed in an alternate location that is not closer than 3m to the southern property boundary as this would meet with the requirements of Table 1 of the Residential Design Codes of Western Australia for secondary street minimum setback for Residential R10 zoned properties.”

Were Council to pursue the above, the existing concrete slab that is located between the property boundary and the 3m setback line could remain on-site and form part of the vehicle crossover between the shed and roadway.

In the event that Council considers that further consultation should be undertaken with surrounding landowners prior to making its determination then it may wish to consider the following wording in formulation of its resolution:

“That Council write to surrounding landowners of 10 (Lot 137) Enanty Street, Mingenew inviting comment for a period of 14 days (from 20 November 2020 until 4 December 2020) upon the revised shed location and at the conclusion of the advertising period a summary of any submissions shall be provided to the applicant and they be invited to submit a response to any comments raised prior to 11 December 2020, and the matter be returned to the 16 December 2020 meeting of Council for consideration.”

In the event that Council consider that the shed should not be supported in its new location then it may wish to consider the following wording in formulation of its resolution:

“That Council endorse the issuing of the Stop Work Direction Notice to the landowner of 10 (Lot 137) Enanty Street, Mingenew (provided as separate Attachment 14.1(d)) and:

- (a) Pursue enforcement of the planning direction to stop all work; and/or*
- (b) Serve a further direction requiring the unapproved development to be removed; and/or*
- (c) Commence a prosecution under s218(c) of the Planning and Development Act for carrying out development otherwise than in accordance with a condition of approval.”*

These courses of action would likely be met with legal action from the landholder, and would not be recommended without first canvassing neighbouring properties to determine if there are any objections to the structure’s newly proposed location.

Consultation

The Shire wrote to the landowners of the 10 surrounding properties on 3 July 2020 providing details of the application (i.e. in the location later given planning approval) and inviting comment upon the proposal prior to 24 July 2020, a sign was also erected on-site to advise of the received application and the opportunity for comment. At the conclusion of the advertising period, no objections had been received, and 1 submission expressing support was received.

As noted above, Council might consider it appropriate to consult again with the surrounding landowners regarding the new shed location prior to making its determination.

Staff have also consulted with:

- City of Greater Geraldton Planning and Compliance staff
- Landholder
- Tim Beckett of McLeods Barristers & Solicitors

Statutory Environment

Lot 137 corner Enanty & Phillip Streets, Mingenew is zoned ‘Residential R12.5’ under the Shire of Mingenew Local Planning Scheme No.4.

Table 2 of the Scheme lists the objectives of the ‘Residential’ zone as being:

- “• To provide for a range of housing and a choice of residential densities to meet the needs of the community.

- *To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.*
- *To provide for a range of non-residential uses, which are compatible with and complementary to residential development."*

Schedule 2 Part 9 Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* lists the following relevant matters to be considered by local government in considering a development application:

- "(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;...*
- ...(g) any local planning policy for the Scheme area;...*
- ...(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) the amenity of the locality including the following —*
 - (i) environmental impacts of the development;*
 - (ii) the character of the locality;*
 - (iii) social impacts of the development;...*
- ...(x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) any submissions received on the application;...*
- ...(zb) any other planning consideration the local government considers appropriate."*

Policy Implications

The Shire of Mingenew 'Outbuildings' Local Planning Policy was adopted by Council at its 17 April 2019 meeting and reviewed at its 21 August 2019 meeting.

The Shire of Mingenew Outbuildings Local Planning Policy sets a maximum outbuilding area of 80m² for Mingenew townsite lots that are less than 1,500m² (and 200m² for lots greater than 1,500m²). Lot 137 is 1,133m² in area and as the original application proposed variation to the area requirements under this policy it was unable to be determined by Shire staff under delegated authority and was presented to Council at its 19 August 2020 meeting for its consideration.

The proposed shed would comply with the 4m maximum wall height and 5m maximum total roof height set by the Outbuildings Policy.

The Outbuildings Policy lists the following:

"Objectives

- 1 To provide development standards for outbuildings specific to the Shire of Mingenew, as appropriate.*
- 2 To provide a clear definition of what constitutes an "outbuilding".*
- 3 To ensure that outbuildings are not used for habitation, commercial or industrial purposes by controlling building size and location.*
- 4 To limit the visual impact of outbuildings.*
- 5 To encourage the use of outbuilding materials and colours that complement the landscape and amenity of the surrounding areas.*
- 6 To ensure that the outbuilding remains an ancillary use to the main dwelling or the principle land use on the property."*

"Policy Provisions

General

- 1 *Pre-fabricated garden sheds, "cubby houses", kennels and other animal enclosures (such as aviaries, stables) less than 9m² in total aggregate area and less than 2.5m in height (measured from natural ground level) are exempt from this policy provided they are located to the rear of the house, and of a design and colour considered in keeping with the amenity of the area by the local government.*
- 2 *Other than for general storage and/or agricultural purposes an outbuilding shall not be used for any commercial or industrial use without prior approval from Council.*
- 3 *The storage of accumulated personal items and any items in connection with a commercial or industrial operation (e.g. building materials, earthmoving equipment etc.) is considered contrary to the objectives of this policy and is therefore not considered sufficient justification for an increase in the maximum standards prescribed.*

Height, Size and Setbacks

Outbuildings within the Residential, Rural Townsite or Tourism zones shall;

- (a) be single storey;*
- (b) be located behind any dwelling on site;*
- (c) meet all setback requirements set out in the Local Planning Scheme and this policy;*
- (d) not be approved by the local government on a lot not containing a dwelling;*
- (e) be attached to, or setback 1.8m from any dwelling and 1.2m from any septic tank."*

A Local Planning Policy does not bind the local government in respect of any application for planning approval, but the local government is to have due regard to the provisions of the policy and the objectives which the policy is designed to achieve before making its determination.

In most circumstances the Council will adhere to the standards prescribed in a Local Planning Policy, however, the Council is not bound by the policy provisions and has the right to vary the standards and approve development where it is satisfied that sufficient justification warrants a concession and the variation granted will not set an undesirable precedent for future development.

Financial Implications

The engagement of the Shire's solicitors will have a budgetary impact to Council.

Strategic Implications

The Mingenew Townsite Local Planning Strategy notes in Section 4.26 'Architectural Style' that:

"In keeping with the rural nature of the community many homes have open style fencing, larger sheds and outbuildings, rain water tanks and other modern improvements."

MINGENEW SHIRE COUNCIL ORDINARY MEETING MINUTES – 18 November 2020

Following Item 14.1, Cr HM Newton returned to the meeting at 5:29pm.

16.0 TIME AND DATE OF NEXT MEETING

Next Ordinary Council Meeting to be held on Wednesday 16 December 2020 commencing at 4.30pm.

17.0 CLOSURE

The Presiding Member, Cr GA Cosgrove, closed the meeting at 5:29pm.

These minutes were confirmed at an Ordinary Council meeting on 16 December 2020.

Signed _____
Presiding Officer

Date: _____