



MINUTES OF THE ORDINARY COUNCIL MEETING

17 AUGUST 2022

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**MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD IN COUNCIL CHAMBERS ON
17 AUGUST 2022 COMMENCING AT 5.00PM**

1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Shire President opened the meeting at 5:00pm.

2.0 RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

Councillors

Cr GJ Cosgrove	Shire President
Cr JD Bagley	Deputy President
Cr JR Holmes	Councillor
Cr HR McTaggart	Councillor
Cr AT Pearse	Councillor
Cr AR Smyth	Councillor

Staff

Mr Maurice Battilana	Temporary Chief Executive Officer
Mr Jeremy Clapham	Finance and Administration Manager
Ms Erin Greaves	Governance and Community Manager

Leave of Absence

Cr CV Farr	Councillor (approved at this meeting)
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Members of the Gallery

Mr Trevor Nitschke
Mr Mark Conway

3.0 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

4.0 PUBLIC QUESTION TIME/PUBLIC STATEMENT TIME

4.1 Mr Mark Conway – Addressed Council on Agenda Item 11.1 without any specific questions

Response – As there was no specific questions the President responded stating the matter will be dealt with at the meeting.

Mr Conway left meeting at 5:04pm.

5.0 APPLICATIONS FOR LEAVE OF ABSENCE

A written request from Cr CV Farr was received Tuesday, 16 August 2022 for a leave of absence for up to 6 ordinary meetings from June.

Section 2.25(2) and (3) of the Local Government Act 1995 states that a leave of absence cannot be granted for more than 6 consecutive ordinary council meetings, and it cannot be retrospective.

COUNCIL DECISION - ITEM 5.0 – RESOLUTION# 01170822

MOVED: Cr JD Bagley

SECONDED: Cr HR McTaggart

Council grants Cr CV Farr a Leave of Absence commencing from 16 August 2022 for up to 6 consecutive meetings, in accordance with s.2.25 of the *Local Government Act 1995*.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

6.0 PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

7.0 CONFIRMATION OF PREVIOUS MEETING MINUTES

7.1 ORDINARY COUNCIL MEETING HELD 15 JUNE 2022

OFFICER RECOMMENDATION - ITEM 7.1

That the Minutes of the Ordinary Meeting of the Shire of Mingenew held in the Council Chambers on 15 June 2022 be confirmed as a true and accurate record of proceedings.

7.2 SPECIAL COUNCIL MEETING HELD 5 JULY 2022

OFFICER RECOMMENDATION - ITEM 7.2

That the Minutes of the Special Meeting of the Shire of Mingenew held in the Council Chambers on 5 July 2022 be confirmed as a true and accurate record of proceedings.

7.3 SPECIAL COUNCIL MEETING HELD 20 JULY 2022

OFFICER RECOMMENDATION - ITEM 7.2

That the Minutes of the Special Meeting of the Shire of Mingenew held in the Council Chambers on 20 July 2022 be confirmed as a true and accurate record of proceedings.

OFFICER RECOMMENDATION AND COUNCIL DECISION EN BLOCK - ITEM 7.1-7.3 – RESOLUTION# 02170822

MOVED: Cr AR Smyth

SECONDED: Cr JR Holmes

1. That the Minutes of the Ordinary Meeting of the Shire of Mingenew held in the Council Chambers on 15 June 2022 be confirmed as a true and accurate record of proceedings.
2. That the Minutes of the Special Meeting of the Shire of Mingenew held in the Council Chambers on 5 July 2022 be confirmed as a true and accurate record of proceedings.
3. That the Minutes of the Special Meeting of the Shire of Mingenew held in the Council Chambers on 20 July 2022 be confirmed as a true and accurate record of proceedings.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

8.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION

Nil.

9.0 DECLARATIONS OF INTEREST

Cr Holmes disclosed a Proximity Interest in Item 12.4 which includes a proposed Budget amendment relating to a project at Mingenew for which he is the owner of neighbouring property. Similarly, Cr Holmes is also a landowner with proximity to the proposed residential development around Mingenew Hill, which is also presented for a budget amendment.

10.0 RECOMMENDATIONS OF COMMITTEES

10.1 SHIRE OF MINGENEW LOCAL EMERGENCY MANAGEMENT COMMITTEE

**10.1.1 MINUTES OF THE LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING HELD
11 JULY 2022**

COMMITTEE RECOMMENDATION - 10.1.1

That the Minutes of the Shire of Mingenew Local Emergency Management Committee Meeting held on 11 July 2022 be received.

10.1.2 ADOPTION OF DRAFT LOCAL OPERATIONAL RECOVERY PLAN

COMMITTEE RECOMMENDATION - 10.1.2

Council adopts the Draft Local Operational Recovery Plan as presented.

**COMMITTEE RECOMMENDATION AND COUNCIL DECISION EN BLOCK - ITEM 10.1.1 & 10.1.2 –
RESOLUTION# 03170822**

MOVED: Cr JD Bagley

SECONDED: Cr AR Smyth

1. That the Minutes of the Shire of Mingenew Local Emergency Management Committee Meeting held on 11 July 2022 be received.
2. Council adopts the Draft Local Operational Recovery Plan as presented.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

11.0 CHIEF EXECUTIVE OFFICER

11.1 PROPOSED OUTBUILDING, IKEWA STREET

Location/Address:	10 (Lot 87) Ikewa Street, Mingenew
Name of Applicant:	M. Western
Disclosure of Interest:	Nil
File Reference:	A424
Date:	10 August 2022
Author:	Simon Lancaster, Planning Advisor
Senior Officer:	Maurice Battilana, Temporary Chief Executive Officer
Voting Requirements:	Simple Majority

Summary

Council resolved at its 15 June 2022 meeting to advertise the application to construct a 247.25m² outbuilding in place of the previous cyclone damaged 160m² shed upon 10 (Lot 87) Ikewa Street, Mingenew. At the conclusion of the advertising period 5 submissions had been received, 4 in support of the application, and 1 in objection.

Council also considered at its 15 June 2022 meeting that in the event that the outbuilding application was approved the applicant's 2 lots should be amalgamated as a condition of approval. The applicant has submitted correspondence seeking Council's reconsideration of this amalgamation condition.

The matter is returned to Council for consideration and this report recommends that the proposed outbuilding be approved subject to conditions. Alternative resolution wording, in the event that Council instead consider that the application should be refused has also been provided at the end of the Comment section.

OFFICER RECOMMENDATION AND COUNCIL DECISION - ITEM 11.1 – RESOLUTION# 04170822
MOVED: Cr HR McTaggart SECONDED: Cr JR Holmes

Council approves the application for an outbuilding to be constructed upon 10 (Lot 87) Ikewa Street, Mingenew subject to the following:

Conditions

- 1 Development shall be in accordance with the plans included within Attachment 11.1 to the June 2022 Council Agenda Report 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) considered by the Shire CEO to represent significant variation from the approved development plan may require further application and planning approval for that use/addition.
- 3 The walls and roof of the outbuilding must be of materials, finish and colours that are non-reflective (i.e. not zincalume) and complementary to the existing development upon the property to the approval of the local government.
- 4 The outbuilding is only to be used for general storage purposes associated with the predominant use of the land and must not be used for habitation, commercial or industrial purposes.
- 5 All stormwater is to be disposed of on-site to the approval of the local government.
- 6 Any soils disturbed or deposited on-site shall be stabilised to the approval of the local government.
- 7 The applicant is responsible to ensure that no parking of vehicles associated with the development/property occurs within the road reserve, including the road verge.

8 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) This planning consent does not constitute a building permit, which must be sought and obtained from the Shire's Building Department and will require the applicant's demonstration of compliance with the requirements of the *Building Act 2011* and Building Code of Australia. Also, other separate approvals to undertake certain activities may be required from other government agencies under separate legislation of which it is the applicant's responsibility to investigate and address.
- (c) 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 REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

Attachment

Attachment 11.1(a) - Submitted application & Shire of Mingenew Outbuildings Local Planning Policy.

Attachment 11.1(b) - Received Submissions.

Attachment 11.3(c) - Applicant's Response to issues raised during advertising period and request for reconsideration of amalgamation condition.

Background

Lot 87 is an 850m² property fronting Ikewa Street to the north that contained a 160m² outbuilding that was damaged by Cyclone Seroja. Lot 87 also contains a portion of the residence that is primarily located upon adjoining 847m² Lot 88 which is located on the corner of Ikewa and Wattle Streets.

Figure 11.1(a) – Location Plan for 10 (Lots 87 & 88) Ikewa Street, Mingenew



Lots 87 and 88 are owned by the applicant and appear on-ground to form one overall 1,697m² landholding. It is not uncommon in the Mingenew townsite for neighbouring properties to be owned by one landowner and

Figure 11.1(c) – Applicant’s elevation plan and explanatory photograph

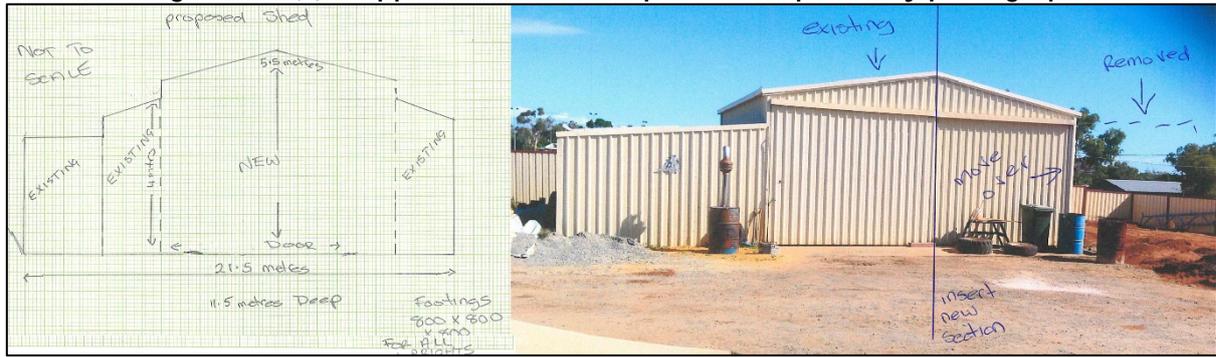


Figure 11.1(d) – Pre-Cyclone (left) and post-cyclone (right) view of outbuilding on Lot 87 looking south-west from Ikewa Street



Figure 11.1(e) – Pre-Cyclone (left) and post-cyclone (right) view of outbuilding on Lot 87 looking south-east from Ikewa Street



A copy of the minutes from the 15 June 2022 Council meeting that contains Council’s resolution can be viewed at the following link:

<https://mingenew.wa.gov.au/minutes/>

Comment

Consideration of the applicant’s sought variation to the outbuilding area policy requirements may be warranted in this instance, based upon the following:

- whilst the proposed 247.25m² total outbuilding area exceeds the 200m² Outbuildings Policy requirement (for lots above 1,500m²) it is noted that the outbuilding would be partially obscured from the neighbouring vacant lot and Ikewa Street by the matching colorbond fence.
- the proposed shed would take up 14.57% of the property and this can be considered a reasonable level of site coverage, and provides sufficient non-impervious surface area upon the property to ensure stormwater runoff is captured and managed within the property boundaries rather than discharged onto Ikewa Street or Wattle Street, and requirement to retain stormwater runoff can be applied as a condition of approval by Council.

- the outbuilding would accommodate the applicant's caravan, camper trailer and vintage truck (which is the reason for the raised gable height) and it is considered preferable for these items to be secured out of the weather rather than about the property, not just for the applicant but also for general amenity and appearance.
- the outbuilding would be clad in colorbond complementary to the existing fencing and outbuilding.
- whilst the new shed would be sited forward of its existing position as viewed from Ikewa Street it would present the same length/elevation as currently can be seen on-site (now that the cyclone damaged lean-to has been demolished) once it has been attached to north of the new larger central portion.

The new location for the shed also introduces a further variation that exceeds the delegated authority of Shire staff, this being the proposed 0.3m boundary setback to Ikewa Street.

In this instance Ikewa Street is being considered the secondary street for assessment purposes as the residence fronts Wattle Street.

Table 1 of the Residential Design Codes of Western Australia ('R-Codes') recommends a 2m boundary setback for secondary streets in the R12.5 zone. On this basis the outbuilding does not meet the deemed-to-comply setback provisions under Section 5.4.3.C3 of the R-Codes and cannot be determined by Shire staff under delegated authority and requires determination by Council in regards to this aspect also.

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.” (Section 4.1.1, page 18)

Consideration of the applicant’s sought variation to the secondary street setback R-Code requirements may be warranted in this instance, based upon the following:

- the shed at a 0.3m setback would be located approximately 7m from the edge of the roadway which would still provide reasonable sightlines to vehicles exiting Lot 87 onto the roadway and for vehicles travelling along Ikewa Street.
- the shed would be located 35m from the Ikewa Street and Wattle Street intersection and would not interfere with vehicle sightlines.
- the shed would present its shorter 11.1m elevation to Ikewa Street rather than the larger 21.5m elevation.
- the vehicles exiting/entering the outbuilding would gain access via the (eastern) elevation facing into Lot 87 rather than directly from Ikewa Street.
- there is ability through guttering and installation of rainwater tanks/soakwells to ensure stormwater runoff is captured and managed within the property boundaries rather than discharged onto Ikewa Street or Wattle Street, and requirement to retain stormwater runoff can be applied as a condition of approval by Council.
- there are precedents of outbuildings with nil and reduced secondary street setbacks in the Mingenew townsite on Enanty Street, Ikewa Street, Irwin Street, King Street, Lockier Street, Moore Street, Oliver Street and Phillip Street.

In the event that Council consider that the application does not meet its requirements and that it should be REFUSED then it may find the following wording appropriate:

“That Council refuse the application for an outbuilding upon 10 (Lot 87) Ikewa Street, Mingenew for the following reasons:

- 1 *The development is considered contrary to Sections 16 & Schedule 1(5) & Schedule 2 of the Shire of Mingenew Local Planning Scheme No.4.*
- 2 *The development is considered contrary to Clause 67 of the deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015.*
- 3 *The development is considered contrary to the objectives of the Shire of Mingenew Outbuildings Local Planning Policy.*
- 4 *Approval of this application may well set an undesirable precedent for future variation to the Shire's statutory and strategic planning requirements.*

Advice Note:

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."

Consultation

The Shire of Mingenew Outbuildings Local Planning Policy states that:

"Applications that propose variation to any part of the Policy may require consultation with effected owners and/or occupiers, by means of the Shire writing directly to the surrounding landowners inviting comment, and placement of an advisory sign on-site for a period of not less than 14 days, prior to the application and any received submissions being placed before a meeting of Council for consideration.

The application was advertised for comment from 22 June 2022 until 22 July 2022 with the Shire writing to the landowners of the 23 surrounding properties, placing an advisory sign on-site, placing a copy of the application on the Shire website, and making the application for viewing at the Shire office.

At the conclusion of the advertising period 5 submissions had been received, 4 in support of the application, and 1 in objection. A copy of the received submissions, with the identities of the respondents redacted, is provided as **separate Attachment 11.1(b)**.

The objection raised the following issues and perceptions:

- the structural engineering for the existing shed will be invalid if cut in half;
- the outbuilding would be sited on a lot that does not contain a residence;
- where other lots on Ikewa Street have outbuildings without residences they are in-line with the established building setback;
- fail to see how the established setback line of 10.5m on Ikewa Street should be varied, in particular for a further oversized outbuilding;
- the proposal is for an industrial sized shed;
- even if the applicant's lots are amalgamated the proposal is still over-sized both in area and height;
- in the Ikewa, Wattle, View and Yandanooka Street precinct there are 14 or 15 residential lots that will be sold as prime real estate between \$25,000-\$35,000;
- the proposed outbuilding should be to the rear of the lot and subject to title amalgamation of the 2 lots.

The applicant was provided with a copy of the received submissions, with the identities of the respondents redacted as per standard Shire practice, and invited to make comment in regards to the issues raised.

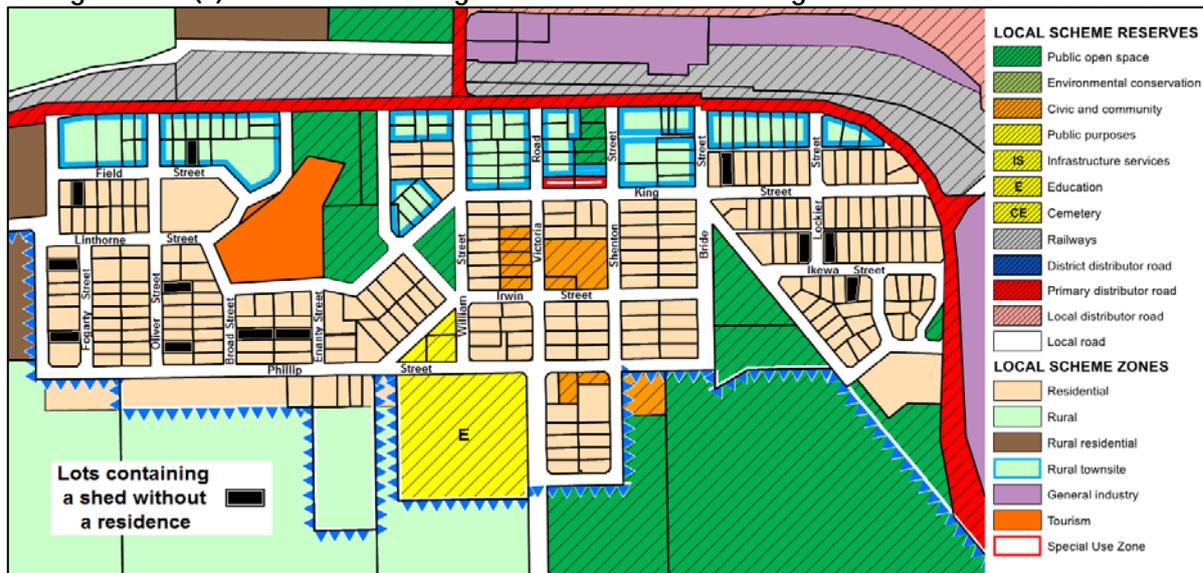
A copy of the applicant's 2 responses are provided as **separate Attachment 11.1(c)**. The first correspondence addresses their reasons for wanting the outbuilding in the proposed location, and the second requests that a condition not be applied (in the event their application is approved) that they must amalgamate their 2 lots due to the cost involved.

Shire staff have obtained quotes from two Geraldton based surveying firms for the cost of amalgamating Lots 87 & 88 Ikewa Street to be able to provide Council with independent verification. These quotes confirm that the cost of amalgamating the 2 townsite lots would be \$7,731.35 GST inclusive. It should be noted that of this figure \$3,493.75 is State Government fees charged by the Western Australian Planning Commission and Landgate and it is the remainder that represents the surveyor cost of preparation of the amalgamation application and preparation of the actual survey diagram. This quote does not include the cost of the settlement agent/conveyancing costs which are estimated to be an additional \$1,000.

In the event that Council were accept that the cost of amalgamation of the lots is disproportionate and approve the outbuilding application upon Lot 87 it is noted that there is limited ability for the landowner to sell the lots independently as the existing residence is built across the lot boundary of Lots 87 & 88.

It is noted that the Mingenew townsite does already contain 12 lots that have a shed without a residence upon the property (including the one subject of this application) and were Council to approve the application it would not therefore be setting a precedent.

Figure 11.1(e) – Lots in the Mingenew townsite containing a shed without a residence



Statutory Environment

Lots 87 & 88 are 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 –*
 - (i) *the compatibility of the development with the desired future character of its setting; and*
 - (ii) *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;...*
- (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;...*
- ...(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;*
- (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. A copy of the policy has been included within **separate Attachment 11.1(a)**.

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. Whilst Lot 87 is 850m² in area it has been assessed under the 200m² outbuilding size/1,500m²+ lot size criteria, due it being owned in common with neighbouring 847m² Lot 88 creating a 1,697m² landholding. The reason for this assessment is that the landholding appears on-ground to be one property and due to the existing residence straddling the Lot 87/88 boundary line and the co-dependence of the residence and outbuilding there is very limited scope for their being sold into separate ownership.

The proposed shed would not comply with the 4m maximum wall height and 5m maximum total roof height set by the Outbuildings Policy with the proposed new outbuilding having a 5.5m gable apex height, although the proposed 4m outbuilding walls would meet with the maximum wall height policy requirement.

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 application would not 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."

Lots 87 & 88 fall 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:

MINGENEW SHIRE COUNCIL ORDINARY MEETING MINUTES – 17 August 2022

“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 Nitschke left the meeting at 5:11pm.

11.2 APPOINTMENTS TO SHIRE COMMITTEE & EXTERNAL ORGANISATION DELEGATES

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference: GV.CMT.5
Disclosure of Interest: Nil
Date: 17 August 2022
Author: Maurice Battilana, Temporary CEO
Voting Requirements: Absolute Majority

Summary

Consideration of:

- ~ Cr Alex Pearse appointment to Committees, Working Groups, External Organisations, etc.
- ~ Cr Hellene McTaggart's request to be the Shire's representative on the Community Builders Program

Key Points

- The Shire President and Chief Executive Officer reserve the right to attend any meeting
- The Shire of Mingenew Executive Management Committee is the only Committee of Council with delegated authority.
- The Audit & Risk Committee has statutory functions under the Local Government Act 1995
- The list of Committees and groups are based on previous appointments made by Council. It is up to Council to consider if the same level of Council representation is relevant and whether a reduction or increase to appointments are necessary

OFFICER RECOMMENDATION – ITEM 11.2

Council:

1. By Absolute Majority, appoints Cr Alex Pearse as a member to the Shire of Mingenew's Committees of Council:

_____;
2. Appoints Cr Alex Pearse as Shire delegate to the following external committees and groups:

_____; and
3. Appoints Cr HR McTaggart as the Shire delegate to the Community Builders Program.

NOTE: Cr McTaggart advised of a correction to the 'Community Builders Program' and the motion was amended accordingly. The Committee appointments for Cr Pearse will be revisited at the next Ordinary Council meeting.

COUNCILLOR AMENDED MOTION AND COUNCIL DECISION - ITEM 11.2 – RESOLUTION# 05170822
MOVED: Cr AR Smyth SECONDED: Cr JR Holmes

Council appoints Cr HR McTaggart as the Shire delegate to the RDAMG Community / Stakeholder Reference Group (Community Capability and Capacity Building).

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

Reason for Deviation from Officer Recommendation – Councillor Pearse requested more time to determine which Committees, organisation he may want to nominate for. The CEO was requested to present this item back to the October 2022 Ordinary Council Meeting for further consideration.

Attachments

- 11.2.1 Audit Terms of Reference
- 11.2.2 Behaviour Complaints Committee Terms of Reference
- 11.2.3 Bush Fire Advisory Committee Terms of Reference
- 11.2.4 Local Emergency Management Committee Terms of Reference
- 11.2.5 Terms of Reference for Elected Member Representation on External Committees/Groups

Background

At a Special Meeting of Council held on 20 October 2021 the following was resolved:

That Council:

1. *By Absolute Majority, appoints the following members to the Shire of Mingenew's Committees of Council:*

SHIRE OF MINGENEW AUDIT & RISK COMMITTEE

Cr HR McTaggart, Cr AR Smyth and Cr GF Pearse, Cr GJ Cosgrove and an Independent Member (to be appointed following the recently instigated recruitment process for filling the vacancy).

SHIRE OF MINGENEW BEHAVIOUR COMPLAINTS COMMITTEE

Cr JD Bagley, Cr AR Smyth and Cr CV Farr, and Cr GF Pearse, Cr HR McTaggart and Cr GJ Cosgrove, as proxy delegates.

SHIRE OF MINGENEW BUSH FIRE ADVISORY COMMITTEE

Cr JD Bagley, and Cr GF Pearse as proxy delegate.

SHIRE OF MINGENEW EXECUTIVE MANAGEMENT COMMITTEE

Cr GJ Cosgrove, Cr HR McTaggart and Cr JD Bagley, and Cr AR Smyth as proxy delegate.

SHIRE OF MINGENEW LOCAL EMERGENCY MANAGEMENT COMMITTEE / LOCAL RECOVERY COORDINATION GROUP

Cr AR Smyth, the Chief Executive Officer (or his/her nominee), and Cr CV Farr as proxy delegate.

2. *Delegates the following members to represent Council on community-run committees:*

MINGENEW COMMUNITY RESOURCE CENTRE MANAGEMENT COMMITTEE

Cr HR McTaggart and the Community Development Officer, and Cr CV Farr as proxy delegate.

*MINGENEW SILVER CHAIN BRANCH COMMITTEE (Councillor delegate considered not required)
Community Development Officer*

*MINGENEW TOURIST AND PROMOTIONS COMMITTEE (Councillor delegate considered not required)
Community Development Officer*

3. *Delegates the following members to represent the Shire of Mingenew on external committees and groups:*

JOINT DEVELOPMENT ASSESSMENT PANEL

Cr GJ Cosgrove and Cr JD Bagley, and Cr GF Pearse and Cr CV Farr as proxy delegates.

MID-WEST REGIONAL ROAD GROUP

Cr GJ Cosgrove and Cr JD Bagley, and Cr AR Smyth as proxy delegate.

NORTHERN COUNTRY ZONE OF WALGA

Cr GJ Cosgrove and Cr HR McTaggart, and Cr GF Pearse as proxy delegate.

WILDFLOWER COUNTRY INC.

Cr CV Farr and the Community Development Officer, and the Chief Executive Officer as proxy delegate.

4. a) *Establishes a CBH Expansion Project Working Group for the purpose of reviewing information and liaising with CBH on expansion plans of the Mingenew's CBH facility including the future layout, associated road / traffic matters and design and development processes that impact the Mingenew community; and*
- b) *Appoints the following members to the Working Group:*

SHIRE OF MINGENEW CBH EXPANSION PROJECT WORKING GROUP

Cr JD Bagley, Cr GJ Cosgrove, the Chief Executive Officer and Cr AR Smyth as proxy delegate.

Then at the June 2022 Ordinary Meeting of Council, the following was subsequently resolved to replace resigned Elected Member GF Pearse:

That Council, by Absolute Majority, appoints:

1. *Cr JR Holmes to the Shire of Mingenew Audit & Risk Committee;*
2. *Cr JR Holmes as proxy delegate to the Behaviour Complaints Committee;*
3. *Cr JR Holmes as proxy delegate to the Regional Joint Development Assessment Panel; and*
4. *Cr JR Holmes as proxy delegate to the Northern Country Zone of WALGA.*

Therefore, the current membership of the Shire committees and external organisation is as follows:

Audit & Risk Committee

Cr HR McTaggart, Cr AR Smyth, Cr JR Holmes, Cr GJ Cosgrove and Independent Member

Behaviour Complaints Committee

Cr JD Bagley, Cr AR Smyth and Cr CV Farr

Cr JR Holmes, Cr HR McTaggart and Cr Cosgrove proxy delegates

Bush Fire Advisory Committee

Cr JD Bagley

Cr GF Pearse proxy delegate

Executive Management Committee

Cr GJ Cosgrove, Cr HR McTaggart and Cr JD Bagley

Cr AR Smyth proxy delegate

LEMC / LRCG

Cr AR Smyth and Chief Executive Officer (or nominee)

Cr CV Farr proxy delegate

Community Assistance Scheme Panel

Cr HR McTaggart and Cr JR Holmes (16 Feb 2022 meeting)

Community Resource Centre Management Committee

Cr HR McTaggart and CDO

Cr CV Farr proxy delegate

Silver Chain Branch Committee

CDO

Tourist and Promotions Committee

CDO

Joint Development Assessment Panel

Cr GJ Cosgrove and Cr JD Bagley

Cr JR Holmes and Cr CV Farr proxy delegates

Midwest Regional Road Group

Cr GJ Cosgrove and Cr JD Bagley

Cr AR Smyth proxy delegate

Northern Country Zone of WALGA

Cr GJ Cosgrove and Cr HR McTaggart

Cr JR Holmes proxy delegate

Wildflower Country Inc.

Cr CV Farr and CDO

Chief Executive Officer proxy delegate

CBH Expansion Project Working Group

Cr JD Bagley, Cr GJ Cosgrove and Chief Executive Officer

Cr AR Smyth proxy delegate

Comment

A summary of the purpose of each Committee and any additional information that may be pertinent is provided below:

Audit & Risk Committee (ARC)

The primary objective of the Audit and Risk Committee “the Committee” is to accept responsibility for the annual external audit and liaise with the local government's auditor so that Council can be satisfied with the performance of the local government in managing its statutory and fiscal affairs.

Reports from the Committee will assist Council in discharging its legislative responsibilities of controlling the local government's affairs, determining the local government's policies, and overseeing the allocation of the local government's finances and resources. The Committee will ensure transparency in the Local Government's reporting and will liaise with the CEO to ensure the effective and efficient management of the local government's systems and processes.

The Terms of Reference require that the Committee consist of at least four members, including an independent member although it has been Council's past practice to have four Elected Members on the Committee plus an independent member.

Behaviour Complaints Committee (BCC)

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the Local Government Act 1995 (the Act) for the purpose of dealing with Behaviour Complaints made under Division 3 of the Shire of Mingenew's Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct).

The Terms of Reference for this Committee require at least three Council Members to be appointed and at least 3 proxy members. This ensures flexibility in Council Member attendance should the Committee be required to meet, as it will depend on who the complaint refers.

Executive Management Committee (EMC)

The Executive Management Committee is purposed with coordinating and undertaking the CEO Performance Review each year. This Committee has delegated powers in accordance with s5.16 and s5.38 of the *Local Government Act* and R18D of the *Local Government (Administration) Regulations 1996* to "Review the performance of the Chief Executive Officer at least once in relation to every year of employment.". This authority is conditional on the following:

1. Authority is subject to the Local Government Act 1995 and its associated Regulations.
2. The review and report are to be presented to Council for acceptance [of the review], with or without modification, or to reject the review.

Council have authorised the Committee, in consultation with the CEO, to:

- Set the date of the Performance Review; and
- Determine if an external facilitator is to be engaged to assist with future performance reviews and be involved in the selection of that third party.

Local Emergency Management Committee (LEMC)

The LEMC has been established in accordance with s38(1) of the *Emergency Management Act 2005* for the purpose of making the Shire of Mingenew a safe community by managing the risk of emergencies through the delivery and implementation of emergency prevention, preparedness, response, and recovery strategies.

The Terms of Reference set out the specific objectives of the Committee and other management details.

Voting membership consists of one Councillor representative endorsed by Council.

The LEMC was suspended in 2021 in lieu of holding Local Recovery Coordination Group meetings for the purposes of recovery following Cyclone Seroja. Council may wish to make the delegates for each committee the same.

CBH Expansion Project Working Group

This is a new group, included to enable Council to review and keep informed of any plans and information relevant to the future expansion of the Mingenew CBH facility to ensure that community impacts and priorities are considered and communicated.

This is not a formal Council Committee, but a working group which will report back to Council as required.

Mingenew Community Resource Centre Management Committee (CRCMC)

The Mingenew Community Resource Centre (CRC) Management Committee oversees the management of the Mingenew CRC and is not a Committee of Council.

Council have previously provided formal representation on this Committee to coordinate any projects and initiatives that require Council support or involvement.

Council representatives do not have voting power but can report back to the local government on any matters of interest or matters that are likely to require Council consideration. Council representatives may also update the Committee members on any matters that may impact them or require feedback on.

Mingenew Silver Chain Branch Committee (MSCBC)

The Mingenev Silver Chain Branch Committee supports the local Silver Chain through in-kind and financial assistance to improve and renew equipment and services of the local branch.

Council have provided formal representation on this Committee to coordinate any projects and initiatives that require Council support or involvement.

Council representatives do not have voting power but can report back to the local government on any matters of interest or matters that are likely to require Council consideration. Council representatives may also update the Committee members on any matters that may impact them or require feedback on.

Mingenew Tourist and Promotions Committee

The Mingenev Tourist and Promotions (T&P) Committee are a *"not-for-profit organisation comprised of community-minded volunteers who take pride in the appearance of our town and work to ensure that it is an appealing place to live, work and visit."* The T&P have not had Committee numbers to hold regular meetings this year, but Council representative is sought on the presumption that the Committee may resume in the near future.

This Committee has previously outlined a desire to work with the Shire to meet its strategic objectives and achieve its aim: *"to put our Shire on the map by giving visitors a memorable experience while here and showcasing Mingenev as an appealing place to live. First impressions are the most lasting impressions, so the town's appearance has to be a top priority. We aim to promote our natural and manmade environment to attract visitors all year round not just during the wildflower season"*. The Committee have requested that a Councillor representative be appointed to the Committee to facilitate discussion at a Council level on projects and ideas.

Council representatives do not have voting power but can report back to the local government on any matters of interest or matters that are likely to require Council consideration. Council representatives may also update the Committee members on any matters that may impact them or require feedback on.

Joint Development Assessment Panel (JDAP)

A Joint Development Assessment Panel (JDAP) is made up of specialist and local government members and are established to determine development applications that meet set type and value thresholds as if it were the responsible authority under the relevant planning instrument, such as the local planning scheme or region planning scheme. The DAP regulations state that DAP applications cannot be determined by local government or the Western Australian Planning Commission (WAPC).

There are 8 JDAPs in Western Australia with the Shire of Mingenev being members of the Mid-west/Wheatbelt region. Local members are members of a local government council who are nominated by that local government to sit on a DAP. Local governments are required to nominate two councillors as local members, and two deputy local members to be called on if an issue of quorum arises. The Minister will appoint the local government representatives in accordance with the local government's nomination.

Should the local government fail to nominate four representatives, the Minister has the power to appoint two alternative community representatives to ensure local representation is always present on a panel. The

regulations require that these alternate representatives are residents of the local area and have relevant knowledge or experience that, in the opinion of the Minister, will enable them to represent the interests of their local community.

An information booklet has been provided as an attachment should Councillors and members of the community wish to learn more about Development Assessment panels and their role.

Mid-West Regional Road Group

There are 10 Regional Road Groups (RRG) in WA, established under the State Road Funds to Local Government Agreement which is overseen by a State Advisory Committee (SAC). The RRGs make recommendations to SAC in relation to the Annual Local Government Roads Program for their Region and any other relevant issues.

The RRGs are comprised of elected representatives from each Local Government within the road group. Most groups are supported by a technical committee comprised of Local Government staff. Administrative support is provided by Main Roads WA. RRGs are important in providing Local Government with a voice in how the State Government's contribution to local roads is spent. Regional Road Group members serve a vital and valuable role in ensuring that road funding decisions maximise community benefits and preserve and improve the road system across Western Australia. The RRG is also responsible for reviewing the Restricted Access Vehicle (RAV) network.

Most decisions of this Committee are made by consensus and only one Council representative has voting rights. Council representatives are expected to keep Council informed of the business and decisions made by the Regional Road Group.

Northern Country Zone of WALGA

State Councillors are elected to State Council from one of 17 Zones, which are groupings of Local Governments convened together on the basis of population, commonalities of interest and geographical alignment. Zones have an integral role in shaping the political and strategic direction of WALGA. Not only are Zones responsible for bringing relevant local and regional issues to the State decision making table, but they are also a key player in developing policy and legislative initiatives for Local Government.

Zone delegates are elected or appointed to represent their Council on the Zone and make decisions on their Council's behalf at the regional level. In fulfilling their role as Council's delegate, the Zone delegate should give regard to their Council's positions on policy issues. There is also an expectation that Zone delegates will report back to their Council about decisions made by the Zone.

Wildflower Country Inc.

Western Australia's Wildflower Country is the collective group of nine local government areas located just north of Perth in Western Australia; Carnamah, Coorow, Dalwallinu, Greater Geraldton – including Mullewa, Moora, Morawa, Mingenew, Perenjori and Three Springs.

The purpose of Wildflower Country Incorporated is to promote this beautiful region as a unique and captivating tourism destination, for the collective mutual benefit of the entire Wildflower Country region. Wildflower Country assists with collaborative destination marketing, and in producing memorable and positive visitor experiences, as well as assisting to develop the tourism industry within the area.

Each local government is entitled to one voting representative.

Community Builders Program – Request for Shire Representative

Below is an email received from *Regional Development Australia - Mid West Gascoyne & Murchison* requesting a Shire representative for the Mid West Community Builders Program:

From: Karin – RDAMWG <engage@rdamwg.com.au>
Sent: Wednesday, 20 July 2022 4:48 PM
To: Karin – RDAMWG <engage@rdamwg.com.au>
Subject: Confidential: Community Builder Program - Further Update

Caution: This email originated from outside the organization. Be cautious with links and attachments.

Good afternoon

The following email is an update on the progress of the Community Builders Program and a request for your assistance. You will recall that Mark (EO, RDAMWG) emailed you on 20 May 2022 providing an update on community response to the proposed program, formation of a reference group, and funding. I have attached the letter for your convenience.

Following the presentation by Bank of Ideas to the WALGA Northern Zone, RDAMWG were asked to provide support and facilitation for a group of interested community representatives, thereby reducing the impact on Council resources.

A meeting was held on 6 June with the community reference group comprising Councillor representatives, Cr Kirralee Warr, Shire of Chapman Valley, Cr Liz Sudlow and Cr Robert Horstman, Shire of Northampton, Cr Hellene McTaggart Mingenew, representatives from the Foundation for Rural and Regional Renewal and a member of staff from the City of Greater Geraldton. Peter Kenyon from the Bank of Ideas was also in attendance. As an action of the meeting, a formal request for a proposal was made to Bank of Ideas to enable a clearer understanding of Community Builder Program elements, responsibility areas, and potential funding partners. This was seen as imperative by the reference group to ensure transparency and to reduce conflicts of interest for local governments should they participate or choose to contribute funding to the program. Unfortunately, Bank of Ideas have declined the opportunity to provide a brief and we understand have reverted to their original 'grassroots' approach.

Over the past month, we have learnt that the Regional Australia Institute, Australian Rural Leadership Foundation and Leadership Australia have been successful in receiving funding from the Australian Government for ten regional leadership development programs under the Building Resilient Regional Leaders Initiative (Pilot). The program in Western Australia will be led by Leadership WA and focusses on the areas of the Mid West and Goldfields. Program development is underway with commencement expected in early 2023 and Leadership WA have asked for input from the community reference group to inform program planning.

We are seeking your recommendation for a representative who may wish to provide input into the key areas of focus for the region to ensure broad participation in the discussion, this could be the Councillor attending WALGA North Zone meetings or a community member. Some of the key points already raised include building resilience, community connection, collaboration in and between towns, and networking.

Further updates will be provided as we have more information, in the meantime, please do not hesitate to contact me should you have any questions.

Regards
Karin

Karin Grima
Project Manager
Regional Development Australia - Mid West Gascoyne & Murchison GeoRegion

p 08 9964-5757
m 0409 527 468



email: engage@rdamwg.com.au



Cr McTaggart has requested Council appoint her as the Shire representative for the Community Builders Program.

Statutory Environment

Local Government Act 1995

Local Government (Administration) Regulations 1996

Emergency Management Act 2005

Policy Implications

Nil

Financial Implications

Nil

Strategic Implications

Community Strategic Plan:

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

Strategy 1.3.2 Provide services and processes to enhance public safety

11.3 SHIRE OF MINGENEW 10 YEAR SHARED PATHWAYS PLAN

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
Disclosure of Interest: Nil
File Reference: TT.DSC.1
Date: 11 August 2022
Author: Margaret Rowe, Community Development Officer
Authorising Officer: Erin Greaves, Governance and Community Manager
Voting Requirement: Simple Majority

Summary

A 10 Year Shared Pathways Plan has been developed for the Shire of Mingenew townsite to improve its path network for cyclists and pedestrians, and the Plan is presented for Council endorsement.

Key Points

The 10 Year Shared Pathways Plan (the Plan):

- identifies and reviews the existing pathway network within the townsite boundaries
- identifies key facilities, locations and areas within the Mingenew townsite that warrant pathway connectivity
- identifies any gaps in the existing pathway network with respect to providing connectivity to key families, locations and areas within the townsite
- provides high-level details on a possible implementation strategy for the pathway network upgrade.

OFFICER RECOMMENDATION AND COUNCIL DECISION - ITEM 11.3 – RESOLUTION# 06170822
MOVED: Cr AR Smyth SECONDED: Cr JD Bagley

Council:

1. Endorses the Shire of Mingenew 10 Year Shared Pathways Plan, as presented;
2. Reallocates the Shire cash component of \$15,000 from the ROADC – Footpaths & Cycleways (Capital) account (4120170) provided for in the 2022/23 Adopted Budget to the relevant footpath maintenance account ROADM – Ancillary Maintenance – Built Up Areas (2120217);
3. Notes the grant income provided for in ROADC – Other Grants – Footpaths (3120114) will not be received for footpath infrastructure works in 2022/23 and is to be removed from the Budget; and
4. Removes the remaining \$15,000 from the expenditure account ROADC – Footpaths & Cycleways (Capital) (4120170) that was anticipated to be grant funded.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

Attachments

11.3.1 Shire of Mingenew 10 Year Shared Pathways Plan

11.3.2 Mingenew Townsite Cycling network Hierarchy

Background

The Shire was granted \$7,500 in funding assistance (50% of the project cost) through the Department of Transport's (DOT) WA Bicycle Network grant program to develop a 10-year plan that will guide infrastructure improvements in the Shire's walking and bicycle network in the Mingenew townsite. This funding allowed the Shire to engage Greenfield Technical Services to prepare the Plan in consultation with the Shire and the Department of Transport.

As part of the preparation of this 10-year plan, the following high-level process was followed in order to assist in identifying the scope of work and the associated priority of the works:

1. Identification of the existing pathway network and associated gaps in the network.
2. Review of the key areas of interest throughout the townsite in the context of how the existing pathway network provides connectivity to these areas.
3. Identification of the key gaps in the existing network that restrict or prevent an appropriate level of connectivity to key areas of interest.
4. Review of Shire-provided community consultation information.
5. Consideration of constructability issues including grouping proposed works by geographical location where possible for construction synergies.

In assessing the current infrastructure, it was identified that a majority of the pathway network is a combination of insitu concrete, brick paving, concrete slabs, asphalt and gravel mediums and is generally considered to be in average to good condition. The Plan gives suggestions as to the construction of any new paths or interconnections with existing infrastructure.

Whilst the existing network is approx. 4,850m long, a significant length of this pathway is on roads with pathways both sides and therefore due to this duplication there is still a significant proportion of the townsite that lacks suitable pathway infrastructure.

Comment

The Plan was originally developed to commence in 2022/23, however there were a number of delays in receiving feedback from the Department of Transport (DOT), implementing changes and gaining their endorsement. As a result, the DOT extended the grant acquittal deadline to 30 September 2022 and the Plan has been amended to commence from 2023/24.

The Plan has identified a number of gaps in the existing pathway infrastructure throughout the townsite and includes a priority list for upgrades and ancillary activities to value-add to public amenities around this infrastructure.

One of the main aims of the Plan is to increase cycling and pathway use throughout the Mingenew townsite. Riding of bicycles is the quickest and most efficient mode of transport over short distances in country towns. Bike riding has been proven to reduce traffic, improve air quality, and provide significant health benefits. With the growing obesity levels of our children, cycling to school and other destinations can help achieve satisfactory amounts of exercise. Using bicycles instead of vehicles can cut greenhouse gas emissions which have increased by 60% since 1990. Socially, cycling can give people more places to go, enabling greater participation in learning, culture and recreation. These areas are critical for attracting and retaining people in regional areas such as Mingenew.

In delivering this program, ongoing consideration must be given to potential environmental impacts and respecting traditional owners. A future aim of the strategy is to help inform future investment through the Regional Bicycle Network, Grants Program, local government capital works programs, as well as other funding sources.

Adopting this Plan significantly increases the Shire's likelihood of receiving grant funding towards pathway infrastructure projects, with DOT typically covering 50% of costs.

Consultation

Department of Transport
Greenfields Technical Services

Statutory Environment

Local Government Act 1995

Policy Implications

Nil.

Financial Implications

The Shire has received partial payments of the grant in 2021/22 (totalling \$6,000), with \$1,500 remaining to be paid following endorsement of the plan. Initially the project was due to be completed and acquitted by 30 June 2022 however, due to delays in receiving feedback from DOT and negotiating and implementing any changes, the project was extended to 30 September 2022.

The 2022/23 Budget includes \$15,000 of Shire funds and \$15,000 anticipated grant funding however, the Shire will not be eligible for funding this year to implement the Plan given the final payment of DOT funding will be received this financial year. Therefore, it is proposed that the \$15,000 provision for footpath capital be reallocated to footpath maintenance to address some of the concerns raised by the community for existing infrastructure.

Funding and works in 2023/24 onwards will be dependent upon a number of factors, including:

- Success (or otherwise) of funding applications
- Available Council funds for future path network program
- Changes in priority for various pathways

The Shire will consider the Plan in developing its Annual Budget for walking / bicycle paths each year and may need to review the Plan to consider achievements and changing priorities based on community need, financial resources, and project feasibility. The Plan serves as a guide and can be reviewed as part of the integrated planning and budgetary process.

Strategic Implications

Strategic Community Plan 2019-2029:

- 1.1.1 Provide and support cost effective transport networks.
- 2.1.2 Develop healthcare and recreation services for all the community to ensure the well-being and health of all age groups within the community
- 2.2.2 Support planning for access to quality education services, including transport planning

Corporate Business Plan

- 2.4.2b Audit and upgrade of footpaths

The Agenda for the meeting was not available at the time of preparing this report but a copy of the Minutes from the 2021 AGM have been included as an attachment.

All Voting Delegates will need to present at the WALGA Delegate Service Desk prior to the AGM to collect their electronic voting device (keypad) for voting and identification tag to gain entry into the Annual General Meeting.

The appointment does not preclude other Councillors or officers from attending the AGM.

Consultation

WALGA

Statutory Environment

Local Government Act 1995

WALGA State Council Constitution

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.

- Explanation of Material Variances

Comment

Summary of Funds as per bank statements – Shire of Mingenew as at 30 June 2022	
Municipal Funds – Corporate cheque account	\$94,894
Cash on Hand	\$100
Trust Fund	\$1
Municipal Funds – Business Maximiser	\$1,525,630
Term Deposit – Reserves	\$472,169

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 Council's adopted variances for the 2021/22 financial year.

The 2020/21 Annual Financial Report has been audited and the opening surplus for the 2021/22 financial year has been adjusted as per audit requirements. There have been adjustments made to the Monthly Financial Report for the period ended 30 June 2022 that was presented at the July Concept Forum. There may be further adjustments before the Annual Financial Report for the year ended 30 June 2022 is finalised, pending final processing and audit finalisation.

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 —
- annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and
 - budget estimates to the end of the month to which the statement relates; and
 - actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and
 - material variances between the comparable amounts referred to in paragraphs (b) and (c); and
 - 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

Strategic Community Plan 2019-2029 Strategies

1.2.1 Manage organisation in a financially sustainable manner

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

Comment

Summary of Funds as per bank statements – Shire of Mingenew as at 31 July 2022	
Municipal Funds – Corporate cheque account	\$454,474
Cash on Hand	\$100
Trust Fund	\$1
Municipal Funds – Business Maximiser	\$825,999
Term Deposit – Reserves	\$472,169

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 2022/23 financial year.

The 2021/22 Annual Financial Report has not been audited and is subject to change, this may alter the opening surplus for the 2021/22 financial year.

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

Strategic Community Plan 2019-2029 Strategies

1.2.1 Manage organisation in a financially sustainable manner

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

Temporary CEO
Governance and Community Manager
Senior Finance Officer

Statutory Environment

Local Government (Financial Management) Regulations 1996.

Policy Implications

Policy 2.3.2 – Debt Collection Policy – Appropriate reports detailing outstanding debts and collection action will be provided to Council on a monthly basis.

Financial Implications

There will be a reduction in income of \$3,811.30 (less potential use of Rental Bond of \$500).

Strategic Implications

Nil

Prior to discussion on Item 12.4, Cr JR Holmes disclosed a Proximity Interest and left the meeting at 5:21pm and did not participate in discussion or vote on the matter.

12.4 BUDGET AMENDMENT – AUGUST 2022

Location/Address: Shire of Mingenew – 21 Victoria Street Mingenew 6522
Name of Applicant: Shire of Mingenew
File Reference: FM.BU.22.23
Disclosure of Interest: Nil
Date: 10 August 2022
Author: Jeremy Clapham – Finance & Administration Manager
Approved by: Maurice Battilana – Temporary Chief Executive Officer
Voting Requirements: Absolute Majority

Summary

As discussed at the Special Council Meeting held on 20 July 2022 and since then, there are a few budget amendments required to be made and adopted.

Key Points

- There is approximately \$26,500 extra in Operating Surplus at 30 June 2022 due to the processing of some year-end adjustments.
- There is approximately \$143,000 of grant funds, being a mixture of DCP and LRCI, brought forward from 2021/22, that relates to projects that have been completed and can be used to fund the budget amendments mentioned below.
- There is approximately \$75,000 of grant funds, being a mixture of DCP and LRCI, brought forward from 2021/22 for the Skate Park Project that can be utilised in 2022/23.
- Increase the expenditure for the Skate Park project by \$61,774.
- Increase the Shire portion of the Tennis Clubhouse Redevelopment (BC030) by \$7,000.
- Increase the income and expenditure for the Airstrip Upgrade (OC010) by \$50,561.
- Increase the expenditure for the Information Bay Sign (PC007) by \$44,000.
- Transfer \$5,364 to the Environmental Reserve to back up the provision of \$25,000 for the rehabilitation of the Waste Management Site/Transfer Station.
- Increase the amount for completion of the Yandanooka NE Rd Mingenew/Morawa Rd intersection realignment project (BS002) by \$57,000.
- Reduce the amount for the purchase of the Rural Residential Land near Mingenew Hill (LC999) by \$20,000 and in turn increase the Shire portion of this project.
- Increase the expense for the Railway project (BC016) by \$5,000.
- Increase the expense for the Public Wi-fi project (OC005) by \$6,000.
- Increase the expense for the Post Office Building painting project by \$2,000.
- Reallocate \$15,000 expenditure on Footpath construction from capital to operating and reduce grant funding for Footpath construction by \$15,000.

OFFICER RECOMMENDATION - ITEM 12.4

That Council, by Absolute Majority, adopts the Budget amendments for 2022/23 as presented in the Attachment Booklet – August 2022.

MINGENEW SHIRE COUNCIL ORDINARY MEETING MINUTES – 17 August 2022

- There are a few minor expenses required to complete the Railway Project, therefore expenditure is to be increased by \$5,000.
- In order to complete the Public Wifi project a further \$6,000 is required.
- The painting of the Post Office Building has gone over budget slightly, there expenditure to be increased by \$2,000.
- Reallocate \$15,000 expenditure on Footpath construction from capital to operating and reduce grant funding for Footpath construction by \$15,000. See Council Report 11.3 for further detail on this item.
- It is estimated that there will still be approximately \$34,415 surplus left over after these amendments have been made.

Consultation

Leadership Team
Community Development Officer
Senior Finance Officer

Statutory Environment

Local Government Act 1995, Local Government (Financial Management) Regulations 1996

Policy Implications

Nil

Financial Implications

It is estimated that there will be a surplus of \$34,415 after all of the budget amendments have been made. There will be Budget Review carried out in the second half of the Financial Year.

Strategic Implications

Community Strategic Plan

- Strategy 1.2.1 Manage organisation in a financially sustainable manner
- Strategy 1.2.4 Seek innovating ways to improve organisational efficiency and effectiveness.

Cr JR Holmes returned to the meeting at 5:34pm, prior to the commencement of Item 12.5.

12.5 LIST OF PAYMENTS FOR THE PERIOD 1 JUNE 2022 TO 31 JULY 2022

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference: FM.CRD
Attachment/s: List of Payments – June 2022 and July 2022
Disclosure of Interest: Nil
Date: 11 August 2022
Author: Helen Sternick Senior Finance Officer
Approved by: Jeremy Clapham Finance & Admin Manager
Voting Requirement: Simple Majority

Summary

This report recommends that Council receive the list of payments for period 1 June 2022 to 31 July 2022 in accordance with the Local Government (Financial Management) Regulations 1996 section 13(1).

OFFICER RECOMMENDATION AND COUNCIL DECISION - ITEM 12.5 – RESOLUTION# 12170822
MOVED: Cr AR Smyth SECONDED: Cr JD Bagley

That Council receive the attached list of payments for the period of 1 June 2022 to 31 July 2022 as follows:

\$2,281,912.81 Municipal EFTs;
\$53,804.05 Municipal Direct Debit Department of Transport (Licencing) Payments;
\$108,825.05 Municipal Direct Debit Other;
\$1,561.18 Municipal Other Charges;
\$192,138.65 Net Salaries
\$2,638,241.74 Total Payments

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

Attachment

12.3.1 List of Payments – June 2022 and July 2022

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

Strategic Community Plan 2019-2029 Strategies

1.2.1 Manage organisation in a financially sustainable manner

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

14.1 PROPOSED SITING OF ICE CREAM VAN

Location/Address:	Reserve 47995 Midlands Road, Mingenew Reserve 20735 Bride Street, Mingenew Depot Hill Road car park, Yarragadee Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park)
Name of Applicant:	S. Hollands
Disclosure of Interest:	Nil
File Reference:	LE.LIC.2
Date:	16 August 2022
Author:	Simon Lancaster, Planning Advisor
Senior Officer:	Maurice Battilana, Acting Chief Executive Officer
Voting Requirements:	Simple Majority

Summary

Council is in receipt of an application seeking to operate an ice cream van within the Shire of Mingenew at the following locations:

- Reserve 47995 Midlands Road, Mingenew (car parking bay opposite Mingenew Bakery & Mingenew Hotel);
- Reserve 20735 Bride Street, Mingenew (adjacent to Bowling Club car park);
- Depot Hill Road car park.
-

This report recommends that Council conditionally approve the operation of the ice cream van for a 12 month trial period at locations outside of the Mingenew townsite and advertise for comment the locations within the Mingenew townsite.

In the event that Council considers that the application should be approved without advertising any of the locations alternate wording has been provided at the end of this report for Council's discussion.

OFFICER RECOMMENDATION AND COUNCIL DECISION - ITEM 14.1 – RESOLUTION# 14170822 MOVED: Cr HR McTaggart SECONDED: Cr AR Smyth

That Council:

- 1 Advertise the proposed siting of an ice cream van at the following locations within the Mingenew townsite:**
 - Reserve 47995 Midlands Road, Mingenew (car parking bay opposite Mingenew Bakery & Mingenew Hotel);
 - Reserve 20735 Bride Street, Mingenew (adjacent to Bowling Club car park);
- 2 Grant formal planning approval for the siting of an ice cream van at the following locations subject to the below conditions:**
 - Depot Hill Road car park;
 - Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park) – subject to the applicant obtaining the necessary consent of the Department of Biodiversity, Conservation & Attractions.

Conditions:

- (a) The approval is valid for a period of 12 months (until 17 August 2023) 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.**

- (b) 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.
- (c) The applicant is required to obtain the necessary consent from the management authority for Reserve 900 Coalseam Road, Holmwood (Department of Biodiversity, Conservation & Attractions) before the commencement of operations.
- (d) The location of the ice cream van, and maintenance of public access about the ice cream van, being to the approval of the local government.
- (e) The applicant shall ensure that the ice cream van and immediate surrounding area is kept clean and tidy to the approval of the local government.
- (f) The applicant shall ensure that rubbish associated with the operation of the ice cream van is managed to the approval of the local government.
- (g) No freestanding signs or hoardings advertising the operation of the ice cream van are permitted to be erected whether temporary or permanent in nature without the approval of the local government.
- (h) The use of mechanical chimes or amplified music at the approved locations which could cause a noise nuisance is not permitted. The ice cream van shall at all times comply with the *Environmental Protection (Noise) Regulations 1997*.
- (i) The ice cream van shall comply with the requirements of the *Food Act 2008* and *Food Regulations 2009*.
- (j) The applicant shall obtain the written approval of the local government that the ice cream van meets the required food, health, waste management and access standards before the commencement of operations.
- (k) The applicant must possess (and provide copy to the local government) public liability insurance cover of not less than \$10 million.
- (l) This approval is issued only to the applicant and is not transferable to any other party.

Notes:

- (i) 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.
- (ii) 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.
- (iii) In relation to conditions (i) & (j) 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).
- (iv) 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.
- (v) 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.
- (vi) 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 REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

Attachments

Attachment 13.1 - Copy of submitted application (provided as **separate attachment**)

Background

The applicant is seeking approval to site their ice cream van at 5 locations in the Shire of Mingenew, 4 of which are on Crown Land under the management of the Shire of Mingenew, these being:

- Reserve 47995 Midlands Road, Mingenew (car parking bay opposite Mingenew Bakery & Mingenew Hotel);
- Reserve 20735 Bride Street, Mingenew (adjacent to Bowling Club car park);
- Depot Hill Road car park.

The 5th proposed location is on the vacant Lot 108 to the west of the Mingenew Roadhouse site which is owned by Ridge Star Pty Ltd. As the applicant has not obtained the necessary consent of the landowner the Shire has advised the applicant that it is unable to accept the application as it relates to this property.

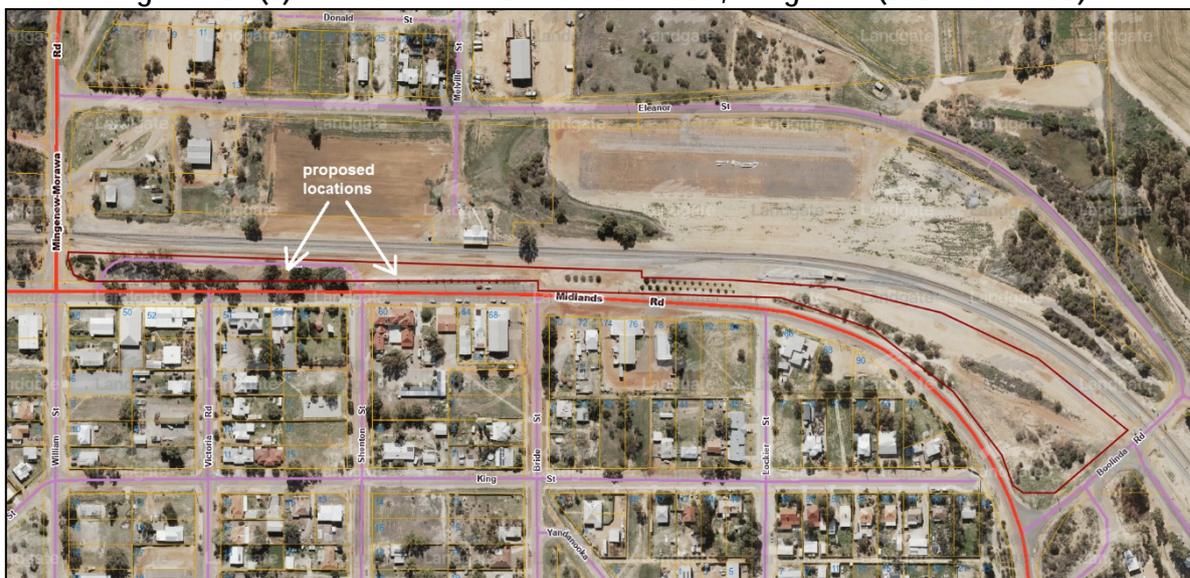
The applicant is seeking approval to sell ice creams from their van with the intended hours of operation being between 11:00am-4:00pm Thursday to Sunday on any given day. The submitted application that provides further background information is provided as **separate Attachment 13.1**.

When not in use the ice cream van would be parked at the applicant's residential address of 39 (Lot 12) King Street in the Mingenew townsite.

Comment

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 ice cream van at 2 locations in this reserve, opposite the Mingenew Bakery and opposite the Mingenew Hotel.

Figure 13.1(a) – Reserve 47995 Midlands Road, Mingenew (outlined in red)



Reserve 20735 Bride Street, Mingenew is an 81.957ha Crown Reserve that contains the Mingenew Recreation Grounds and has a management order for 'Recreation, Racecourse, Showground & Aerial landing Ground' issued to the Shire of Mingenew. The applicant is proposing to site the ice cream van adjacent to Bowling Club car park.

Figure 13.1(b) – Reserve 20735 Bride Street, Mingenew (outlined in red)



The Depot Hill Road car park is located within a Shire managed road reserve.

Figure 13.1(c) – Depot Hill Road Car Park



The applicant has not requested to operate their ice cream van at the Coalseam Conservation Park, however, it is suggested that Council may wish to support this additional site, subject to the applicant obtaining the necessary prior consent of the Department of Biodiversity, Conservation & Attractions ('DBCAs').

- (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 an ice cream 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 when an ice cream van 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 ice cream van would be sited for periods of less than 48 hours, it would be sited in any of the 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 Shire of Mingenew Local Planning Scheme No.4 ('the Scheme'), and it is not considered that the proposed land use would meet with the following Regulations definitions as it does not involve a premises:

“fast food outlet/lunch bar means premises, including premises with a facility for drive-through service, used for the preparation, sale and serving of food to customers in a form ready to be eaten -

- (a) *without further preparation; and*
- (b) *primarily off the premises”*

“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”*

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

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

Reserve 20735 Bride Street, Mingenew is zoned ‘Public Open Space’ and Clause 14 of the Scheme lists the objectives for this zone as being:

- “• To set aside areas for public open space, particularly those established under the Planning and Development Act 2005 s. 152.*
- To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.”*

Depot Hill Road is zoned ‘Primary Distributor Road’ and Clause 14 of the Scheme lists the objectives for this zone as being:

“To set aside land required for a primary distributor road being a road classified as a Regional Distributor or Primary Distributor under the Western Australian Road Hierarchy.”

Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park) is zoned ‘Environmental Conservation’ and Clause 14 of the Scheme lists the objectives for this 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 –*
 - (i) the compatibility of the development with the desired future character of its setting; and*
 - (ii) 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

The application would not have a budgetary impact to Council.

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 an ice cream 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:

"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 to provide it with the opportunity to review the development's operation.

Should Council wish to approve the application without advertising any of the locations it may consider the following wording appropriate:

"That Council grant formal planning approval for the siting of an ice cream van at the following locations subject to the below conditions:

- Reserve 47995 Midlands Road, Mingenew (car parking bay opposite Mingenew Bakery & Mingenew Hotel);*
- Reserve 20735 Bride Street, Mingenew (adjacent to Bowling Club car park);*
- Depot Hill Road car park;*
- Reserve 900 Coalseam Road, Holmwood (Coalseam Conservation Park) – subject to the applicant obtaining the necessary consent of the Department of Biodiversity, Conservation & Attractions.*

Conditions

- 1 The approval is valid for a period of 12 months (until 17 August 2023) 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 consent from the management authority for Reserve 900 Coalseam Road, Holmwood (Department of Biodiversity, Conservation & Attractions) before the commencement of operations.*
- 4 The location of the ice cream van, and maintenance of public access about the ice cream van, being to the approval of the local government.*

- 5 *The applicant shall ensure that the ice cream 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 ice cream van is managed to the approval of the local government.*
- 7 *No freestanding signs or hoardings advertising the operation of the ice cream van are permitted to be erected whether temporary or permanent in nature without the approval of the local government.*
- 8 *The use of mechanical chimes or amplified music at the approved locations which could cause a noise nuisance is not permitted. The ice cream van shall at all times comply with the Environmental Protection (Noise) Regulations 1997.*
- 9 *The ice cream van shall comply with the requirements of the Food Act 2008 and Food Regulations 2009.*
- 10 *The applicant shall obtain the written approval of the local government that the ice cream van meets the required food, health, waste management and access standards before the commencement of operations.*
- 11 *The applicant must possess (and provide copy to the local government) public liability insurance cover of not less than \$10 million.*
- 12 *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 9 & 10 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."*

MINGENEW SHIRE COUNCIL ORDINARY MEETING MINUTES – 17 August 2022

13.0 CONFIDENTIAL ITEMS

Nil.

14.0 TIME AND DATE OF NEXT MEETING

Next Ordinary Council Meeting to be held on Wednesday 19 October 2022 commencing at 5.00pm.

15.0 CLOSURE

The meeting was closed at 5:44pm.

These minutes were confirmed at an Ordinary Council meeting on 19 October 2022.

Signed _____
Presiding Officer

Date: _____