



SHIRE
of
DANDARAGAN

MINUTES
of the
ORDINARY COUNCIL MEETING
held at the
COUNCIL CHAMBERS, JURIE BAY
on
THURSDAY 28 JANUARY 2021
COMMENCING AT 4.59PM

(THIS DOCUMENT IS AVAILABLE IN LARGER PRINT ON REQUEST)

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| MINUTES OF ORDINARY COUNCIL MEETING HELD THURSDAY 28 JANUARY 2021 |
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1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

1.1 DECLARATION OF OPENING

The Shire President declared the meeting open at 4.59pm and welcomed those present.

"I would like to acknowledge the traditional owners of the land we are meeting on today, the Yued people of the great Nyungar Nation and we pay our respects to Elders both past, present and emerging."

Cr Holmes extended her condolences to the Shaw family on the recent passing of Jason Shaw and acknowledged the close working relationship the Shire had had with Jason and continues to have with the Shaw family.

1.2 DISCLAIMER READING

The disclaimer was read aloud as there were 17 members of the public present.

"No responsibility whatsoever is implied or accepted by the Shire of Dandaragan for any act, omission, statement or intimation occurring during this meeting."

It is strongly advised that persons do not act on what is heard, and should only rely on written confirmation of Council's decision, which will be provided within fourteen days."

2 RECORD OF ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE

Members

| | |
|-------------------------|-------------|
| Councillor L Holmes | (President) |
| Councillor J Clarke | |
| Councillor A Eyre | |
| Councillor W Gibson | |
| Councillor D Richardson | |
| Councillor R Rybarczyk | |
| Councillor R Shanhun | |

Staff

| | |
|---------------|--|
| Mr S Clayton | (Executive Manager Corporate & Community Services) |
| Mr D Chidlow | (Executive Manager Development Services) |
| Ms R Headland | (Council Secretary & Personal Assistant) |
| Mr R Mackay | (Planning Officer) |
| Mr T O'Gorman | (Manager Economic Development) |
| Ms M Perkins | (Manager Community & Customer Services) |
| Mrs J Rouse | (Coordinator Infrastructure Services) |

Apologies

Nil

Approved Leave of Absence

Councillor P Scharf

Councillor D Slyns

Observers

Ms A Tierney, Mr V Riseley, Ms T Eyden, Mr L Craig, Mr M Beckingham, Mrs R Carter, Mr D Kent, Mrs S Kent, Mr T Bailey, Mr N Johnston, Mrs J Johnston, Ms B Green, Mr R Campione, Mrs R Campione, Mr M Ackland, Mr W Wimmmler, Mrs R Wimmmler

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Wayne Lang asked the following questions:

Why was the upgrade of Dobbyn Park started at the beginning of peak season?
It was then put on hold over Christmas

The President responded:

The Shire are hopeful of project completion by Easter 2021. The timeframe for Convic to achieve this meant commencement prior to Christmas.

Would anyone in the shire like light towers and a skate park at the front of their properties?

The President responded:

Mr. Lang is referred to Item 9.2.1 in today's meeting which documents the need for lighting at the skate park and outlines how the proposed lighting minimises light spill that should mitigate any detrimental effect on neighbouring properties.

The location of the skatepark at Dobbyn Park has undergone significant community consultation in the lead up to construction commencement.

Barry & Glenda Mackie asked the following questions:

1. We would like to know what measures are going to in place , especially public holiday times, to make sure what the council is saying will actually happen. I.e. the lights are off at 8pm and use of the skate park stops?

The President responded:

Lights will be automated smart lighting which will ensure lights cannot be turned on outside of operating hours. CCTV will be strategically placed over the foreshore development. Any nuisance caused outside of these hours will be a matter for police. A management plan will be developed in conjunction with community consultation prior to the opening of the skate park.

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2. If the lights are on a timer, who will be responsible for resetting this when there is a power outage as we have in Jurien very regularly?

The President responded:

Smart lighting technology should ensure this will not be a concern. However, monitoring will occur as part of day to day Council operations and the implementation of the Management Plan.

3. Please provide details of who should be contacted after hours when there is unruly behaviour?

The President responded:

Unruly behaviour is a matter for the local police. The police and Shire work closely across all elements on unruly behaviour that occurs in the Shire. The Shire can be contacted by phone and email during office hours.

4. What advice did the council receive including other experiences regarding skate park design towards making the lighting 12 metres, it does seem excessive for the low level activities planned.

The President responded:

The company that provided the design (DNS Lighting) are suitably experienced to provide the design based on achieving the best lighting outcome. They have experience Australia wide with providing advice and design for commercial lighting including skate-parks in Mackay and Esperance. Based on the lighting plan provided by DNS the lux readings on the ground at the edge of the park are back to very low levels below 10 lux.

John Nicholas asked the following questions:

1. Could the Shire please explain the need for lighting if the Skate Park is primarily for daytime use?

The President responded:

I refer Mr. Nicholas to item 9.2.1 in today's meeting which states "the extended use of the facility was a material consideration" when funding was granted.

2. Could the Shire please explain how it will mitigate noise and disturbances to residences close by if the Park is to be used after dark?

The President responded:

I refer Mr. Nicholas to item 9.2.1 in today's meeting that proposes a Landscaping Planting Plan, this in addition to design principle mitigates any noise issues for nearby residents. The Shire will develop a management plan for the skate park prior to its opening.

Other disturbances should first be reported to police when they occur.

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3. Could the Shire please advise what security arrangements will be in place to deal with unruly behaviour?

The President responded:

Smart Lighting, regular ranger patrols, cctv and police will all contribute to mitigating unruly behaviour. The location of the skate park with other high traffic community facilities is an approach that allows for an element of community policing that should reduce occurrences of unruly behaviour. The development of a management plan will document this.

4. Could the Shire please explain why it is acceptable to have a lit facility like this next door to residences when other Skate Parks e.g. Fremantle, Mandurah, Falcon etc. are located considerable distances from residences.

The President responded:

I refer Mr. Nicholas to item 9.2.1 in today's meeting which states "the extended use of the facility was a material consideration" when funding was granted. The proposed lighting is dark skies friendly lighting and will minimise light spill outside of the skate park footprint.

5. Could the Shire please confirm why the communication with residents close to Park has been late and haphazard for a project that significantly affects the amenity of their properties

The President responded:

Consultation throughout the project has been extensive. An overview of the planning / development timeline is as follows:

- *5 August 2019 – Workshop 1 (selected stakeholder participation)*
- *23 September 2019 – Workshop 2 (selected stakeholders)*
- *26 November 2019 – Workshop 3 (Community Open Session) (minutes indicate skate park and its location was discussed)*
- *27 February 2020 – Councillors Workshop (not open to public)*
- *23 January 2020 – Council resolution to advertise Jurien Bay and Cervantes Draft Foreshore Masterplans for public comment and submissions*
- *26 March 2020 – Council adopted foreshore master plan*
- *28 May 2020 – Council endorses Jurien Bay Youth Precinct – Skate Park concept plan and authorises CEO to call tenders for the construction of Skate Park*
- *9 July 2020 – Council accept tender by Convic Pty Ltd for Tender 03/20 – Jurien Bay Skate Park and authorise CEO to finalise required contract documentation*

Throughout each of the above processes the Shire widely advertised the opportunity to participate in the planning for the foreshore. In addition key milestones, such as the completion of the masterplan, skate park plans and acceptance of tenders etc. was advertised via website, local newsletters and

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social media. The foreshore master planning process also included local mailbox drops to garner further community input.

Prior to the consultation process outlined above the project is identified in the Shire's Strategic Community Plan and Corporate Business Plan as a marquee project. The level of consultation required for the development of these key integrated planning documents is extensive. Each of these documents are available on our website as well.

Aileen Tierney asked the following questions:

1. What measures will the council take to patrol and enforce the quiet enjoyment of adjoining rate payer homes next to the skate park?

The President responded:

This information will be outlined in the Management Plan.

2. Will there be regular patrols by council security at night time?

The President responded:

The Shire will not be conducting regular patrols at night time.

3. How will the council enforce the non-usage of the skate park after the designated closure time of 8pm regardless if there is lighting or not?

The President responded:

As a public facility, and similarly to the foreshore itself, there is no enforcement of usage. However skatepark lighting will be managed via a Management Plan to be developed.

4. How would the duly elected council members like to be advised of any unruly behaviour after 8pm at the skate park. Directly from their constituents or through the council CEO and who are the residents to contact after hours?

The President responded:

Advising that unruly behaviour should be advised via standard communication email, phone call or letter to the CEO.

5. Why have we been informed by council that the lighting towers are planned to be 6 meters high and the contractor is advising us that they will be 12 meters high. Who is responsible for this misinformation?

The President responded:

That Council has not informed the public that 6m towers are to be installed.

5 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

MINUTES OF ORDINARY COUNCIL MEETING HELD THURSDAY 28 JANUARY 2021**6 CONFIRMATION OF MINUTES****6.1 MINUTES OF THE ORDINARY COUNCIL MEETING HELD 17
DECEMBER 2020****COUNCIL DECISION**

Moved Cr Gibson, seconded Cr Richardson

That the minutes of the Ordinary Meeting of Council held 17
December 2020 be confirmed.

CARRIED 7 / 0

**7 NOTICES AND ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT
DISCUSSION****8 PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS**

Mike Beckingham / Lindsay Craig (Seafront Estates / Skate Park)

9 REPORTS OF COMMITTEES AND OFFICERS

9.1 CORPORATE & COMMUNITY SERVICES

9.1.1 ACCOUNTS FOR PAYMENT – DECEMBER 2020

| | |
|-------------------------|---|
| Location: | Shire of Dandaragan |
| Applicant: | N/A |
| Folder Path: | Business Classification Scheme / Financial Management / Creditors / Expenditure |
| Disclosure of Interest: | None |
| Date: | 13 January 2021 |
| Author: | Scott Clayton, Executive Manager Corporate & Community Services |
| Senior Officer: | Brent Bailey, Chief Executive Officer |

PROPOSAL

To accept the cheque, EFT, BPAY and direct debit listing for the month of December 2020.

BACKGROUND

As part of the Local Government Act 1995, Financial Management Regulations 1996, a list of expenditure payments is required to be presented to Council.

COMMENT

The cheque, electronic funds transfer (EFT), BPAY and direct debit payments for December 2020 totalled \$1,517,647.13 for the Municipal Fund.

Should Councillors wish to raise any issues relating to the December 2020 Accounts for payment, please do not hesitate to contact the Executive Manager Corporate and Community Services prior to the Council Meeting, in order that research can be undertaken and details provided either at the time of the query or at the meeting.

CONSULTATION

- Chief Executive Officer

STATUTORY ENVIRONMENT

- Regulation 13 of the Local Government Financial Management Regulations 1997.

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

There are no adverse trends to report at this time.

STRATEGIC IMPLICATIONS

There are no strategic implications relevant to this item.

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ATTACHMENTS

Circulated with the agenda are the following items relevant to this report:

- Cheque, EFT and direct debit listings for December 2020 (Doc Id: 169164)

(Marked 9.1.1)

VOTING REQUIREMENT

Simple majority

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| OFFICER RECOMMENDATION / COUNCIL DECISION |
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Moved Cr Shanhun, seconded Cr Eyre

That the Cheque and EFT listing for the period ending 31 December 2020 totalling \$1,517,647.13 be adopted.

CARRIED 7 / 0

9.1.2 **FINANCIAL STATEMENTS - MONTHLY REPORTING FOR THE PERIOD ENDING 31 DECEMBER 2020**

| | |
|-------------------------|--|
| Location: | Shire of Dandaragan |
| Applicant: | N/A |
| Folder | Business Classification Scheme / Financial Management / Financial Reporting / Periodic Reports |
| Disclosure of Interest: | None |
| Date: | 18 January 2021 |
| Author: | Scott Clayton, Executive Manager Corporate and Community Services |
| Senior Officer: | Brent Bailey, Chief Executive Officer |

PROPOSAL

To table and adopt the monthly financial statements for the period ending 31 December 2020.

BACKGROUND

As part of the Local Government Act 1995 and Financial Management Regulations (1996), monthly financial statements are required to be presented to Council. Circulated are the monthly financial statements for the period ending 31 December 2020.

COMMENT

Regulation 34 of the Financial Management Regulations (1996) requires the following information to be provided to Council:

1. Net Current Assets

Council's Net Current Assets [i.e. surplus / (deficit)] position as at the 31 December 2020 was \$4,140,539. The composition of this equates to Current Assets minus Current Liabilities less Cash Assets that have restrictions on their use placed on them, in this case Reserves and Restricted Assets. The current position indicates that Council can easily meet its short-term liquidity or solvency.

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The Net Current Asset position is reflected on page 12 and reconciled with the Statement of Financial Activity on page 3 of the financial statements.

The amount raised from rates, shown on the Statement of Financial Activity (page 3), reconciles with note 6 (page 13) of the financial statements and provides information to Council on the budget vs actual rates raised.

2. Material Variances

During budget adoption a 10 percent and \$10,000 threshold for these variances to be reported was set.

Note 12 of the attached report details any significant variances. Should Councillors wish to raise any issues relating to the 30 November 2020 financial statements, please do not hesitate to contact the Executive Manager Corporate and Community Services prior to the Council Meeting in order that research can be undertaken and details provided either at the time of the query or at the meeting.

CONSULTATION

- Chief Executive Officer

STATUTORY ENVIRONMENT

- Regulation 34 of the Local Government Financial Management Regulations (1996)

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

There are no adverse trends to report at this time.

STRATEGIC IMPLICATIONS

There are no strategic implications relevant to this item.

ATTACHMENTS

Circulated with the agenda is the following item relevant to this report:

- Financial statements for the period ending 31 December 2020 (Doc Id: 169210)
(Marked 9.1.2)

VOTING REQUIREMENT

Simple majority

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| OFFICER RECOMMENDATION / COUNCIL DECISION |
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Moved Cr Richardson, seconded Cr Rybarczyk

That the monthly financial statements for the period 31 December 2020 be adopted.

CARRIED 7 / 0

9.1.3 JURIEB BAY COUNTRY GOLF CLUB REQUEST FUNDS ADVANCE

| | |
|-------------------------|---|
| Location: | Jurien Bay Country Golf Club |
| Applicant: | Jurien Bay Country Golf Club |
| Folder Path: | Business Classification Scheme / Grants and Subsidies / Applications / Community Groups |
| Disclosure of Interest: | The CEO, EMCCS have declared impartiality interests as members of the club. |
| Date: | 11 January 2021 |
| Author: | Tony O’Gorman, Economic Development Manager |
| Senior Officer: | Brent Bailey, Chief Executive Officer |

PROPOSAL

To advance \$14,732.50 to the Jurien Bay Country Golf Club from the original amount of \$247,648 agreed at the August Council meeting for the course watering project.

BACKGROUND

At the August 2020 Council meeting Council agreed to support the Jurien Bay Country Golf Club Inc with its CSRFF Annual and Forward Planning Grant application to complete irrigation of the golf course fairways. Council agreed to provide up to \$247,648 as a one third contribution to the project.

“OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr Shanhan, seconded Cr Clarke

That Council:

- 1. Support the Jurien Bay Country Golf Club Inc., Community Sporting and Recreation Facilities Fund (CSRFF) Forward Planning grant application for funding to irrigate the fairways at the Jurien Bay Country Golf Club; The Shire contribution to be up to 1/3 of total project cost to a maximum of \$247,648, to be sourced from the Sporting and Recreation Capital Works Reserve fund;*
- 2. Endorse a budget amendment to provide up to 60% in the 2020/2021 financial year;*
- 3. Provide a 35% contribution in the 2021/2022 financial year sourced from the Sporting and Recreation Capital Works Reserve fund; and*
- 4. Provide the final 5% contribution in the financial year 2022/2023 once acquittals have been completed, from the Sport and Recreation Capital Works Reserve fund.*

CARRIED 8 / 0”

The Club has now been advised that their CSRFF Annual and Forward Planning grant application has been unsuccessful. The Club is currently exploring other opportunities to secure the funding required to complete the course irrigation project.

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The proposed work intends to connect an existing pipeline from the central irrigation pump using the new fresh water supply, to the existing distribution main pipe. These two pipes are approximately 230 metres apart. The connecting pipework accords to the design for the strategic irrigation system design, and as such would be a small part of the new system 'brought forward' for significant benefit at a much earlier date.

Control wires would be run in the same trench as the proposed connecting pipe, and the existing controller relocated to the central pump station shed.

The second part of the proposed work is to purchase and install the second main storage tank (of four planned in total) and connect it to the existing main water pump. There are many occasions when the single installed 250,000 litre tank runs empty, and risks burning the pump out. The existing central irrigation system could operate longer using the already available water supply and would be at much lower risk of damaging the main distribution pump.

COMMENT

The Jurien Bay Country Golf Club has received official notification that the Club's application for CSRFF Forward Planning Grant has been unsuccessful. The course irrigation project is the top priority for the golf club as indicated in their strategic plan. While the club is continuing to explore alternative funding sources there are two projects that the club wish to undertake.

The request for an advance of the amount of \$14732.50 is half the cost of completing the two proposals. The works conform with the original course reticulation design. This amount is based on a 50/50 contribution, which is consistent with the Shire Sport and Recreation Funding Policy C-6SRF01.

The other options available to the Club include an application to the Building Better Regions Fund or Private Sponsorship. Both options have a long lead time and would result in the club having to repair/replace the current infrastructure.

The Officers recommendation is to support the application for an advance based on continuing the roll out of the club water project. Since the CSRFF Grant Application was not successful our Policy allows for a 50/50 contribution.

The other options available to the Club include an application to the Building Better Regions Fund or Private Sponsorship. Both options have a long lead time and would result in the club having to repair/replace the current infrastructure.

The Officers recommendation is to support the application for an advance based on continuing the roll out of the club water project.

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The amount advanced will be deducted from the original amount approved by the Council at its August 2020 meeting.

CONSULTATION

Jurien Bay Country Golf Club members

STATUTORY ENVIRONMENT

Local Government Act 1995

6.8. Expenditure from municipal fund not included in annual budget

- (1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —
- (a) is incurred in a financial year before the adoption of the annual budget by the local government; or
 - (b) is authorised in advance by resolution*; or
 - (c) is authorised in advance by the mayor or president in an emergency.

*Absolute majority required.

POLICY IMPLICATIONS

6.1 C-6SRF01 – Sport and Recreation Funding

Objective

The objective of this Policy is to set out how the Shire of Dandaragan (Shire) will provide assistance to sporting and recreational groups for funding:

1. capital infrastructure for sporting and recreational facilities; and
2. non-consumable sporting and recreational equipment.

Policy Statement

Council recognises and values the important part that excellent sporting and recreational facilities and equipment play in the community. It is committed to ensuring that adequate funding is provided to assist in the provision and maintenance of these facilities and the groups that utilise them.

In order to meet this objective, the Shire has established the following two funds through which annual grants will be made available:

1. Sporting and Recreational Capital Works Fund; and
2. Tronox Management and Shire of Dandaragan Sporting and Recreation Facilities Fund

1. Sporting and Recreational Capital Works Fund

1.1 Funding and Purpose

The Shire will in its annual budget allocate 1% of total budgeted rates to assist sporting and recreational groups

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with the replacement, renewal and improvement of capital infrastructure.

1.2 Funding cycle

Applications to the program will be received and considered in accordance with the following timeframes:

Funding round advertised: April

Funding round closes: Mid- May

Applications considered by Council: June / July

Sporting and recreational groups are encouraged to discuss their projects with Shire staff as early as possible to facilitate the greatest chance of funding success.

1.3 Eligible Applications.

To be eligible for funding under this program applicants must have;

(i) Submitted a Community Sport Recreation Facilities Fund Application (CSRFF) to the Department of Local Government, Sport and Cultural Industries' or submitted an application to another funding source for the project.

(ii) An own source contribution comprising a minimum of 1/6th of the total project cost in cash.

(iii) In determining applications to this fund, the Council will give priority to applications that;

- have successfully sourced CSRFF funds or other source of funding;*
- can demonstrate that their organisation has a strong membership base and is financially sustainable;*
- can demonstrate strong demand for the proposed infrastructure; and*
- can deliver projects without the organisation requiring loan funds.*

(iv) Applicants that have been unsuccessful in a CSRFF application, or other major funding process, remain eligible for funding under this program, however Council's total commitment will not exceed 50% of the approved project budget or the maximum annual funding allocation in a given year.

(v) Requests must be for a total project cost of greater than \$40,000 (excl GST).

FINANCIAL IMPLICATIONS

There are no additional financial implications as the expenditure was approved at the August Council meeting.

| | |
|--------------------------------|---|
| ▪ Cost of project | \$29,465.00 |
| ▪ Shire Funding | \$14,732.50 |
| ▪ Jurien Bay Country Golf Club | \$14,723.50 including in kind labour and materials. |

STRATEGIC IMPLICATIONS

Strategic Community Plan - Envision 2029

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| 04 Community | The Shire's resident population will grow more than the WA regional average supported by increased community recreation and cultural opportunities and access to key liveability factors such as health and wellbeing services and educational opportunities |
| Priority Outcomes | Our Roles |
| A safe, healthy, smart and active community that values its history and supports intergenerational relationships | Increase community-building by providing sustainable recreation infrastructure and services, off-peak events, community building programs and place-making concepts in our public spaces |

ATTACHMENTS

Circulated with the agenda are the following items relevant to this report:

- Sport and Recreation Capital Works Policy 6.1 (Doc Id: 131688)
- Letter requesting advance Jurien Bay Country golf Club Inc (Doc Id 168999)
- Letter re unsuccessful grant Application (169058)
- Feasibility Study (Doc Id: 159896)
- P & L for 2017/2018 (Doc Id: 158761)
- Term Deposit 1 (Doc Id: 158760)
- Statement Cheque Account (Doc Id: 158759)
- Incorporation Certificate (Doc Id: 158762)
- Golf Club Map (Doc Id: 169446)

(Marked 9.1.3)

VOTING REQUIREMENT

Simple majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr Shanhun, seconded Cr Gibson

That Council:

- 1. Authorise an advance of funds in the amount of \$14,732.50 to the Jurien Bay Country Golf Club Inc Irrigation Project based on a 50/50 Shire contribution as per Policy C-6SRF01; and**
- 2. That the amount of \$14,732.50 be deducted from the total amount of \$247,648 approved at the August Council meeting for the Jurien Bay Country Golf Club Inc course watering project.**

CARRIED 7 / 0

9.2 INFRASTRUCTURE SERVICES

9.2.1 JURIEN BAY SKATE PARK – LANDSCAPING PLANTING PLAN AND LIGHTING

| | |
|-------------------------|--|
| Location: | Shire of Dandaragan |
| Applicant: | Not Applicable |
| Folder Path: | Business Classification Scheme / Parks & Reserves / Design & Construction / Jurien Bay & Cervantes Foreshore |
| Disclosure of Interest: | Nil |
| Date: | 20 January 2021 |
| Author: | Brent Bailey, Chief Executive Officer |
| Senior Officer: | Not Applicable |

PROPOSAL

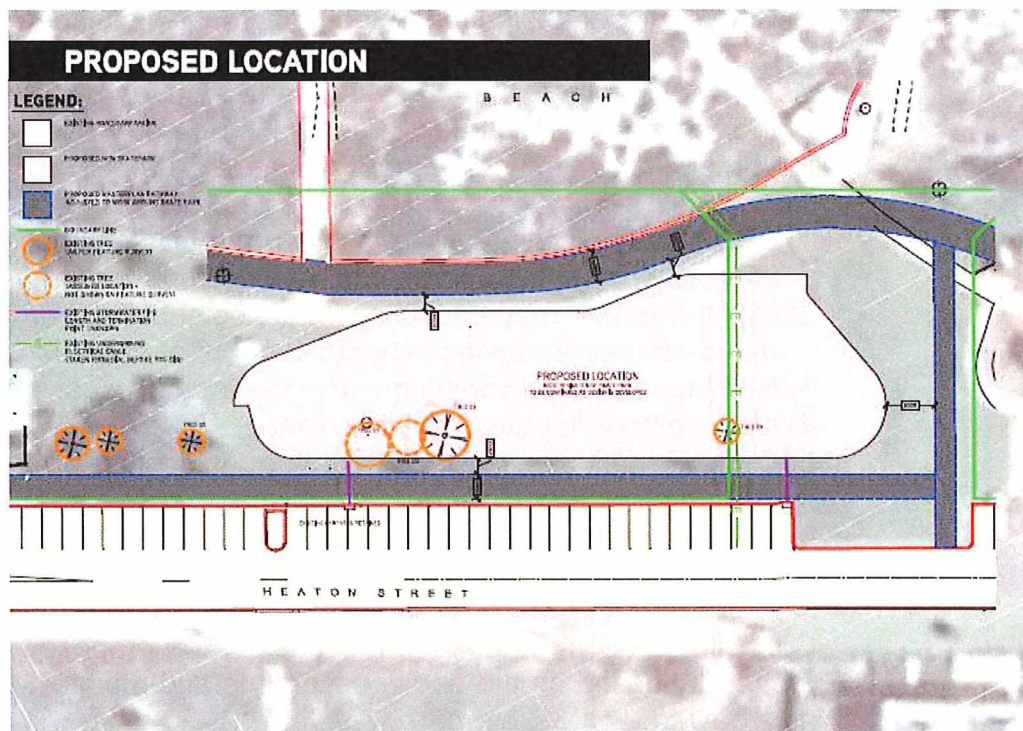
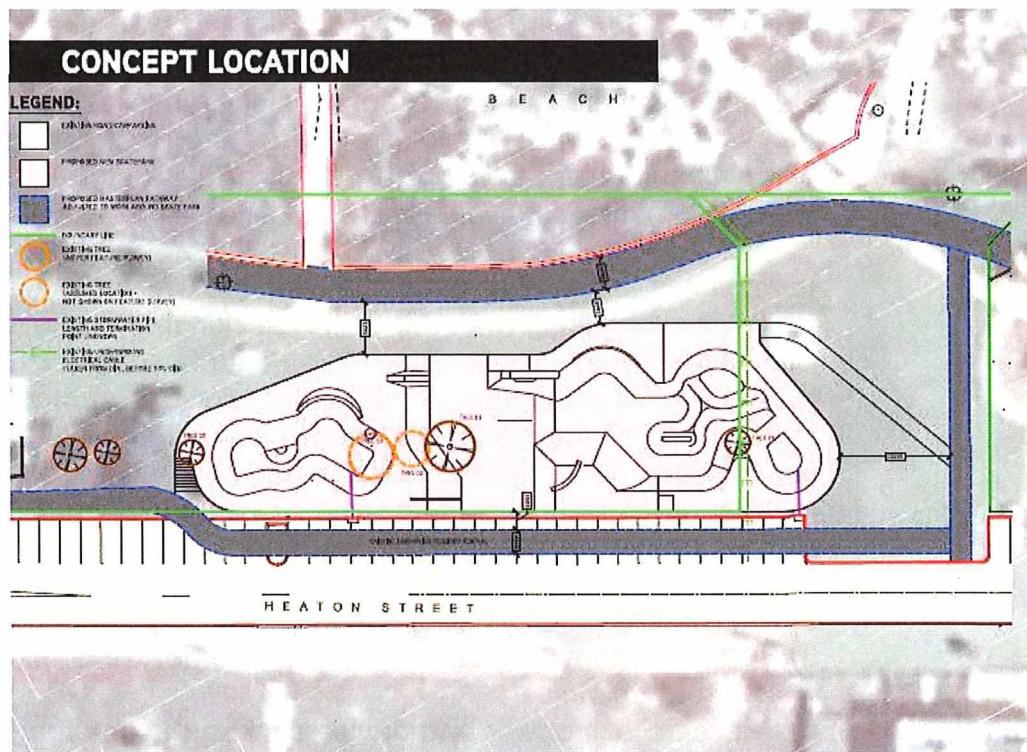
The purpose of this report is for Council to consider facility lighting component of the Jurien Bay Skate Park and endorse a landscaping / planting plan for the project.

BACKGROUND

A new district level skate facility has been under planning and development by the Shire since 2017 when consultation with the community commenced. While these facilities are generically referred to as skate parks the modern functionality is significantly broader and contemporary designs accommodate scooters, BMX and passive social space for youths. The project was integrated into the Jurien Bay Foreshore Masterplan process which designated a site in Dobbyn Park for it to be built.

In May 2020 Council endorsed a concept plan for the skate park developed by Enlocus. In July 2020 Council accepted a tender from Convic to undertake detailed design and construction. During the detailed design phase there were some design changes to the facility that required a shift of the facility slightly north of the endorsed Concept Plan as demonstrated below. This shift enabled the on-street parking to be retained and provide a better pedestrian thoroughfare around the site. During the detailed design the facility was also lowered by constructing the bowls below natural ground level.

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At the commencement of construction, a number of property owners from Seafrost Estate made contact with the Shire to complain that they had not been consulted or advised of the development and its proximity to their properties on Heaton Street. During the planning stages over the past 2 years there was wide local advertising at various stages of the project including an extensive consultation process undertaken in the development of the Jurien Bay Foreshore Masterplan. Consultation channels utilised in the Foreshore Masterplan process and skate park

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project included the Shire's newsletter, website, community workshops, social media, mail box drops and notice boards. Despite this there is an apparent difficulty in raising the awareness of absentee owners who make up the majority of current complainants who state that a project of this nature should have warranted a direct mail approach.

In response to the complaints received, the Chief Executive Officer has been engaging with Mr Mike Beckingham who has been nominated by the strata board for Seafront Estate to represent their collective ownership. A number of concerns around the visual appearance of the site have been mitigated within the attached landscaping plan. Detailed design elements have also seen a number of requests accommodated including:

- 1) The proposed skate park signage being relocated to the southern end of the facility.
- 2) Balustrade design simplified to increase visual permeability.
- 3) CCTV cameras located so they do not face directly into Seafront Estate.
- 4) Public access power and device charging points removed from northern shade structure to mitigate opportunity for loud music at this location.
- 5) Shade shelter design amended to increase visual permeability.

As provided within the attached correspondence a number of further concerns have been raised which predominantly focus on the proposed lighting of the facility, summarised below:

- 1) Proximity to dwellings which while predominantly used for short stay, have planning approval for use as a permanent residence.
- 2) Night time use may encourage anti-social behaviour from older users and noise beyond scheduled hours of operation.
- 3) Night time use will impact privacy, views and visual amenity.
- 4) Light spill will impact property owners.
- 5) Cost / Benefit of extended hours through lighting could be better utilised elsewhere.
- 6) Criminal behaviour such as break-ins and unauthorised access to the swimming pool in Seafront Estate.

Council has been requested to reconsider the proposed lighting of the facility based on the above assertions and maintain the facility as a day-time only skate park.

COMMENT

Lighting has been included as part of the Skate Park project to achieve a number of objectives including:

- 1) Increase asset utilisation and increased public open space activation at the Jurien Bay Foreshore by extending operating hours for evening use.
- 2) Provide recreation opportunities for youths in evenings in a monitored location that is under passive surveillance.

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- 3) Spread user usage and reduce congestion during busy peak holiday periods.
- 4) Provide increased safety as natural light fades, particularly in winter months.
- 5) Deter unapproved makeshift lighting efforts of the facility such as the utilisation of car lights.
- 6) Provide usability at cooler times of the day, particularly in summer months.
- 7) Provide recreation opportunities for older users who make work during normal daytime hours.

Contemporary design approaches prioritise lighting installations that minimise light spill and utilise timer based systems activated by users within set hours rather than always being on at pre-determined hours. The detailed design of the lighting component of the project has been submitted by Convic and is provided within the attachments. Convic have advised that the current design incorporates 7 x 12m poles evenly spaced around the perimeter of the site. An example of similar skate park lighting is provided here.





The lighting component of the project is included in the funding provided by Lotterywest and is currently estimated at \$112,000 by local contractors providing quotes to Convic. This is currently \$13,500 above the provisional sum allocated within the project budget and will require use of contingency budget to implement.

Lotterywest has confirmed that Council has the discretion to apply for a funding variation to remove the lighting component from the project however advice received from officers of the grant provider indicate that the extended use of the facility was a material consideration in their funding decision. It is likely that the variation request will result in a reduction in total funding provided for the project rather than an opportunity to reallocate the funds to other areas of the project.

The officer's recommendation supports retention of the facility lighting.

Contractors have advised that scheduling of the installation of the current lighting design will take 12 weeks from point of order to completion. Delays may result in penalties and additional costs to the Shire. Stage 1 of the project is due for completion by 31 March 2021. As at 28 January, 10 weeks remain of the scheduled build time. Due to the project timeline, contractors are progressing as per the contract until advised otherwise.

The landscaping / planting plan is also presented to Council for endorsement. While the majority of the plan is consistent with the foreshore masterplan and utilises native species compatible with the local environment, the inclusion of Olive Trees (non-fruiting)

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into the street tree planting mix is highlighted. Olive Trees are currently utilised across the Heaton St frontage of Seafront Estate and develop a less invasive root structure which is more compatible with the close by skate park infrastructure. A key request of Seafront Estate for Council consideration is that this row of trees between the two skate bowls is maintained to a vertical height which avoids the interruption of ocean views. This is currently annotated in page 3 of the skate park planting plan. If Council chooses not to support this request, item 2 in the officer's recommendation should be amended accordingly.

At the Jurien Bay Foreshore Working Group Meeting held on 20 January 2021 the group discussed the lighting design and endorsed the current lighting plan and construction of a restricted night-time facility (minuted).

CONSULTATION

- Representatives of Seafront Estate
- Lotterywest
- Convic
- Jurien Bay Foreshore Working Group

STATUTORY ENVIRONMENT

There is no statutory environment relevant to this item.

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

Financial implications are outlined within the comments section of this report.

STRATEGIC IMPLICATIONS

This project is included in Council's Corporate Business Plan as a marquee project.

ATTACHMENTS

Circulated with the agenda is the following item relevant to this report:

- Jurien Bay Foreshore Style Guide – Skate Park Planting (Doc Id: 169450)
- Email Mike & Lisa Beckingham (Doc Id: 169447)
- Skate Park Comments (Doc Id: 169448)
- Skate Park Lighting Example (Doc Id: 169449)
- Jurien Bay Skatepark Lighting Design (with Lux levels) (Doc Id: 169553)
- Areca Series LED Floodlight Specifications (Doc Id: 169554)

VOTING REQUIREMENT

Simple Majority

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OFFICER RECOMMENDATION

Moved Cr Richardson, seconded Cr Eyre

That Council:

- 1) Proceed with the inclusion of facility lighting within the Jurien Bay Skate Park; and
- 2) Endorse the Jurien Bay Skate Park Planting Plan (Doc Id: 169450).

AMENDMENT

Moved Cr Shanahun

That Council:

1. Proceed with the inclusion of facility lighting within the Jurien Bay Skate Park, subject to the following:
 - a) the height of the lighting poles to be between 6m & 12m, determined in consultation with affected property owners of Seafront Estate
 - b) hours of operation of Jurien Bay Skate Park being limited to 8am – 8pm 7 days per week, varied only by exception and subject to Council approval
2. Endorse the Jurien Bay Skate Park Planting Plan (Doc Id: 169450).

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COUNCIL DECISION

Moved Cr Richardson, seconded Cr Eyre

That Council:

- 1) Proceed with the inclusion of facility lighting within the Jurien Bay Skate Park; and
- 2) Endorse the Jurien Bay Skate Park Planting Plan (Doc Id: 169450).

CARRIED 7 / 0

9.3 DEVELOPMENT SERVICES

9.3.1 PROPOSED HOLIDAY HOME – 2/5 GRIGSON STREET, JURIEN BAY

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|-------------------------|--|
| Location: | 2/5 Grigson Street, Jurien Bay |
| Applicant: | Professionals Jurien Bay on behalf of DC Hall |
| File Ref: | Development Services Apps / Development Applications / 2020 / 83 |
| Disclosure of Interest: | Nil |
| Date: | 5 January 2021 |
| Author: | Rory Mackay, Planning Officer |
| Senior Officer: | David Chidlow, Executive Manager of Development Services |

PROPOSAL

The proponent is seeking development approval for the use of 2/5 Grigson Street, Jurien Bay as a commercial holiday home.



Location Map – 5 Grigson Street, Jurien Bay

BACKGROUND

The parent property, 5 Grigson Street consists of a two-storey duplex. The duplex has been constructed symmetrical with both units having 4-bedrooms and 2-bathrooms. However, under the strata subdivision, lot 2 has 1/3 the backyard size of that of lot 1.

Lot 2 changed ownership on 8 November 2019. Professionals Jurien Bay have lodged the subject development application on behalf of the new landowner to seek approval to accommodate up to 11 short stay guests for bookings not exceeding 3 consecutive months.

The application was advertised to immediate neighbouring landowners for a period of 18 days from the 3 December 2020 until 21 December 2020. A total of 5 submissions were received, all objecting to the proposal, resulting in a Council determination being required for the application in accordance with the Shire's Delegations Register.

The subject property and surrounding area are zoned 'Residential' under the Shire's *Local Planning Scheme No.7* (LPS7). The Residential zone has the following objective:

To provide for residential development at a range of densities with a variety of housing to meet the needs of different household types through the application of the Residential Design Codes.

The proposed land use of 'Holiday Home' is listed within the zoning table of LPS7 as a 'discretionary' land use, meaning the use is not permitted unless Council has exercised discretion in its decision making.

Local Planning Policy 9.12 Holiday Homes (the Policy) is adopted by Council to guide the assessment of holiday home development

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applications. The subject application for up to 11 guests is classified as a 'Holiday Home Large' under the Policy which categorises this as a holiday home for guest numbers between 7 and 12. The Policy has the following objectives:

- *To recognise the increasing market demand for holiday accommodation and to provide operators and other stakeholders with clarity on the issues that the Shire wishes to address.*
- *To establish clear guidelines whereby holiday homes can be permitted and controlled in the Regional Centre and Residential zones of Cervantes and Jurien Bay.*
- *To ensure that these types of uses do not compromise the amenity of Residential zoned areas or nearby residents.*
- *To support the role of holiday homes as part of the tourism industry.*
- *To encourage the provision of good quality, well managed holiday homes.*

COMMENT

Dwellings (whether a single house or a grouped or multiple dwelling) provide places for people to shelter, to retreat, to eat and to gather. While temporary accommodation (such as a holiday house) may also provide these, the intensity, and the manner of these two land uses is not the same. This is because in the context of a holiday home, the premises are not being occupied as a dwelling but for holiday accommodation.

For example, it was noted in Hope and City of Joondalup [2007] WASAT that outdoor areas are routinely used more intensively and for longer hours in temporary accommodation than would often be the case for permanent residential use. The duration for which people stay at temporary accommodation is also reduced. Each time a booking begins and ends people would be entering and leaving the premises. The regular movement of different people into and out of the premises has consequential amenity impacts on the surrounding locality.

'Amenity' is defined within the Deemed Provisions of LPS7 to mean:

All those factors which combine to form the character of an area and include the present and likely future amenity.

Under Clause 67 of the Deemed Provisions of LPS7 the following relevant matters are to be considered when determining the subject development application:

(g) any local planning policy for the Scheme area

(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*

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(r) *the suitability of the land for the development taking into account the possible risk to human health or safety*

(u) *the availability and adequacy for the development of the following —*

(iii) *storage, management and collection of waste*

(y) *any submissions received on the application*

As the proposed development is for a grouped dwelling (duplex) added consideration is to be given to the impact of the development on the amenity of immediate neighbours. Responses received from such landowners (including the duplex neighbour) details that the development which has hosted paying guests to date without approval is not in keeping with the character of area and adversely impacts on the permanent residents within close proximity by way of the regular coming and going of different / new people and excessive after-hours noise / unruly party behaviour.

The health and safety impacts of the proposal also requires contemplation. Under the Shire's *Health Local Laws 2005*, each adult requires 14 cubic meters of air space to sleep. Space calculations across the house plans result in 9 adults being able to sleep across the 4 bedrooms of the house. Council has previously resolved in relation to holiday home development applications, that sleeping guests in rooms other than bedrooms is unhygienic and inappropriate. As such the application warrants refusal on this basis alone, as a decision must be made on the number of guests applied for (11 guests) unless the applicant revises this number prior to a determination.

It is for the reasons discussed that the reporting officer has found that the development application warrants refusal on the grounds that such a short stay accommodation development from a duplex-grouped dwelling in an established residential area is inappropriate and goes against orderly and proper town planning.

Should the duplex continue to be used illegally as a holiday home, Shire staff reserve the right to issue a direction order under Section 214 of the *Planning and Development Act 2005*.

CONSULTATION

The following comments were received from neighbouring landowners, please note any sensitive information has been removed from each comment.

| Comments |
|---|
| <p>Further to my phone conversation with you I would like to reiterate the following. We are already subject to a short-term rental house directly behind us. The noise generated by this place is often out of hand. To have another premise 50 metres away is more than we should have to endure. I note that there is already a sign on the front of the duplex half which indicates it's already taking</p> |

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bookings, with or without Council approval.

When we first were here, about 2004 there was no indication that we would be surrounded by temporary rentals.

Grigson Street is possibly one of the best located bits of real estate north of Perth. To have it awash with noisy swearsy people partying all night is not what we signed up for.

We strongly object to this application.

We are opposed to the short-term accommodation rental, due to the amount of patrons staying at the property and using as a party house. We have already had to endure a party weekend on 18 to 20 December. The noise was particularly loud and disruptive until early hours in the morning.

We are a family who come to stay and relax and should not be kept awake every night.

Should this property continue as short stay we will have to endure this throughout the busy season in Jurien Bay.

We are not opposed to long term rental accommodation as regular tenants would not party every weekend.

As the neighbouring property owner, I would like to object to the proposed change as it will impact on the amenity and my enjoyment of my property.

The upstairs bedroom window on my property at 4 Grigson St is approximately 5m from the balcony of 2/6 Grigson St where people at that property tend to gather in the evening. Whilst in the past this has been a minor inconvenience, such gatherings have, when the property used by the owner and his family, been considerate and we have always maintained a good relationship with the owner.

On Friday 18 December the property was rented to a group of young holiday makers who playing loud music and yelled noisily to each other until 1.30am. They were asked politely on two occasions to keep the noise down and responded with verbal abuse and profanity. My ...[family members] reside in my property and I am concerned for their wellbeing. The Police were called and my grandson was advised that they would be attending but they did not arrive.

My ...[family member] regularly starts work at 6am. With short term holiday accommodation late night partying is likely to become a regular occurrence which will impact greatly on my ...[family members]

I am ...[elderly] and reside at X Grigson St with my ...[teenage] who attends Jurien Bay District High School and works early mornings and after school. Their bedroom window is approximately 5m from the balcony of 2/5 Grigson St, Jurien Bay. Late night drinking and noise on the balcony has affected their ability to sleep in the past and I am concerned that if the property becomes short term holiday accommodation this will cause problems for their work and studies next year.

An incident on Friday 18 December when the property was rented to a group of young holiday makers has highlighted the issue and caused considerable stress and concern for myself and teenager. Those staying in short term accommodation have no regard for the comfort or concerns of neighbours and in this instance were rude and intimidating, swearing and turning their music louder in response to requests to turn down their music. Police were called but did not respond in person on the night and the party continued until 1.30am.

As a property able to accommodate 11 persons, I am concerned that this will attract groups rather than families and increase the occurrence of these late-night gatherings on the front balcony.

We presently have one local holiday home adjoining the south side of our property, which is already available for short term accommodation of 12 guests. Advertised on Airbnb at 2 / 7 Grigson Street, Jurien Bay.

This Airbnb also sleep 12 and often has the full quota. This presents many problems with late night parties, loud music, bad language. The attitudes and behaviour of people meeting together for a short gathering, tends to encourage a loud party atmosphere, with little respect for the locals that live here permanently. When our families visit with young children, it is almost impossible at times to settle the young ones, due to the loud music, yelling, bad language, general disrespect for people living here.

We note that the bedrooms of our home are also located on the north eastern side of our building (i.e. adjacent to 2 / 5 Grigson Street).

Permitting the application would compound the issues we experience as our sleeping quarters would be even closer to such disturbances.

From our observation online today, the owners' proposal for 2 / 5 Grigson Street are already advertising it for short term rental. If this went ahead, we would have short term accommodation for

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12 people on both sides of our house.

Desperately hoping you will seriously consider the application for short term rentals, resulting in a negative response, as it will have a significant effect on our lives, especially our sleeping ability.

STATUTORY ENVIRONMENT

- Local Planning Scheme No.7 – as outlined.
- Health Local Laws 2005:

Overcrowding

3.2.2 The owner or occupier of a house shall not permit—

- a) a room in the house that is not a habitable room to be used for sleeping purposes; or*
- b) a habitable room in the house to be used for sleeping purposes unless—*
 - (i) for every person over the age of 10 years using the room there is at least 14 cubic metres of air space per person; and*
 - (ii) for every person between the ages of 1 and 10 years there is at least 8 cubic metres of air space per person; or*
- c) any garage or shed to be used for sleeping purposes.*

Restriction on use of Rooms for Sleeping

8.2.10 (1) Subject to subsection (3) and Section 8.3.10, a keeper shall not use or permit to be used as a sleeping apartment a room in a lodging house –

- (c) which is used as a kitchen, scullery, store room, dining room, general sitting room, lounge room or for the preparation or storage of food;*

POLICY IMPLICATIONS

Local Planning Policy 9.12 Holiday Homes – as outlined.

FINANCIAL IMPLICATIONS

The applicant has paid the required \$147 fee for the development application.

STRATEGIC IMPLICATIONS

Strategic Community Plan – Envision 2029

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| 02 – Prosperity | The Shire will experience broad economic and population growth with decreasing economic barriers, diversified agriculture and fisheries output and vibrant visitor economy. |
| Priority Outcomes | Our Roles |
| Our Shire has a contemporary land use planning system that responds to, and creates, economic opportunities. | Ensuring that our planning framework is modern and meets the needs of industry, small business and emerging opportunities. |

ATTACHMENTS

Circulated with the agenda are the following items relevant to this report:

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- Holiday home management documents (Doc Id: 168642 & 168571)

(Marked 9.3.1)

VOTING REQUIREMENT

Simple majority

OFFICER RECOMMEDATION / COUNCIL DECISION

Moved Cr Eyre, seconded Cr Gibson

That Council refuse the development application for the proposed holiday home large upon Lot 2 on Strata Plan 31463 at 5 Grigson Street, Jurien Bay as the development would:

- 1. not be compatible or complimentary with the established residential area in which it is located;**
- 2. have a detrimental impact on the existing residential amenity of the immediate low density residential area;**
- 3. be inconsistent with orderly and proper planning; and**
- 4. if approved, set an undesirable precedent for similar applications in the future, in contravention of Council adopted policy.**

Advice:

There is a Right of Review under the *Planning and Development Act 2005* (the Act). An Application for Review must be submitted in accordance with Part XIV of the Act within 28 days of the date of this decision to:

**The State Administrative Tribunal
GPO Box U1991
PERTH WA 6845**

CARRIED 7 / 0

**9.3.2 RETROSPECTIVE DEVELOPMENT APPROVAL – LOT 414
JURIEN BAY VISTA, JURIEN BAY HEIGHTS**

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|-------------------------|--|
| Location: | Lot 414 Jurien Bay Vista, Jurien Bay Heights |
| Applicant: | DJ Ball |
| Folder Path: | Development Services Apps / Development Applications / 2018 / 35 |
| Disclosure of Interest: | Nil |
| Date: | 5 January 2021 |
| Author: | Rory Mackay, Planning Officer |
| Senior Officer: | David Chidlow, Executive Manager Development Services |

PROPOSAL

The proponent is seeking retrospective development approval for a collection of repurposed second-hand buildings with newly constructed roof covers between each at Lot 414 Jurien Bay Vista, Jurien Bay.



Location Map

BACKGROUND

On 28 June 2018, Council resolved the following in regards to this property:

That Council:

1. *refuse the application for retrospective planning approval for development on Lot 414 Jurien Bay Vista, Jurien Bay Heights for the following reasons:*
 - a. *approval of the application would set an undesirable precedent for future applications for such development type within the 'Special Use – Rural Development' zone.*
 - b. *Council considers that this type of development will not satisfactorily blend in with the rural development landscape and will have undue adverse impact on the visual amenity of the adjoining sites and surrounding locality in contravention of Clause 2.1 of the Development Criteria for the Estate as listed under Schedule 9 of the Shire of Dandaragan Local Planning Scheme No.7.*
 - c. *the proposed development does not comply with orderly and proper planning for the locality.*
2. *pursuant to Section 214 of the Planning and Development Act 2005 (the Act), authorise Shire staff serve a written direction to the landowner of Lot 414 Jurien Bay Vista, Jurien Bay Heights to remove the unauthorised development and restore the land to its condition immediately before the unauthorised development started within a period of 60 days to the satisfaction of the Shire's Chief Executive Officer. The landowner is to be advised there is a right of review to the*

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State Administrative Tribunal within 40 days after service of the notice under Section 255 of the Act.

Following this decision, Shire Development Service staff met with the applicant onsite on the 17 July 2018 to discuss the requirements of the refusal and building order. The applicant advised that they were intending to build a dwelling on the subject property within 12 months and remove the following buildings at the time the dwelling was constructed. Based on this statement the matter was reconsidered by Council on 26 July 2018, with the following resolved:

That Council grant temporary planning approval to the development on Lot 414 Jurien Bay Vista, Jurien Bay, for a period of 12 months with an option to extend a further 12 months commencing on 26 July 2018 subject to the following conditions:

- 1. All development shall be in accordance with application and plans dated 28 June 2018 unless required to be amended hereunder.*
- 2. If the Bushfire Attack Level for this application is above 29, a new planning application showing fire hazard mapping for the subject property must be provided and implemented to achieve a BAL of 29.*
- 3. An application is to be submitted and approved to the satisfaction of the Shire's Principle Environmental Health Officer for an effluent disposal system on the property within 6 months.*
- 4. The area around the effluent disposal system shall be planted with indigenous trees and shrubs by the land owner and be maintained to the satisfaction of the local authority.*
- 5. The building materials of all structures are to be painted a colour consistent with the surrounding vegetation and/or predominant colours of the individual site to the satisfaction of the Chief Executive Officer or delegate forthwith.*
- 6. The existing sea container and other structures areas to be secured to the satisfaction of the Shire's Manager of Building Services forthwith.*
- 7. This is planning approval only and not a building permit. A building approval certificate must be obtained for the current structures onsite forthwith.*
- 8. Approval is obtained for a building permit to construct a permanent new dwelling on the subject lot within 6 months of this approval.*

Following this decision, all conditions except condition 8 were met before the approval lapsed on 26 July 2020. Following the expiration of the approval it was reported to the Shire that another repurposed second-hand building had been transported and placed on the subject property.

A notice of intention to issue order under Section 214 of the *Planning and Development Act 2005* (the Act) to remove all illegal

development and restore the land to its condition immediately before development started was issued to the landowner on 2 November 2020. This notice provided 60 days to show cause to Shire, of which the applicant lodged the subject retrospective development application 21 December 2020.

Given the previous development approval had lapsed all structures, plus the new structures require approval under this new application, these are:

- 2 x 20m² repurposed buildings
- 36m² repurposed building
- 14m² shipping container
- 46m² patio
- 114m² patio
- 31m² shed

The landowner states within the cover letter provided with the application that native tress have been planted around the building envelope of these structures to shield the development from viewing from Conover Road and Jurien Bay Vista when the trees mature. Additionally, the applicant has also stated that they now have no intention of building a permanent residence on this property and would like to only use the structures for weekend living from time to time, if retrospective approval is provided for a second time by Council.

Section 164 of the Act affords a local authority the ability to retrospectively approve development which was carried out prior to development approval being granted for the subject development. More specifically, Section 164(3) states retrospective approval does not affect the operation of Part 13 of the Act, which comprises the relevant enforcement and penalty provisions. This indicates that retrospective approval will not preclude prosecution for prior unlawful development.

The Shire has deferred commencement of enforcement action in this case as the application for retrospective approval (the subject of this item) has been lodged for assessment.

COMMENT

There are three legal tests to be considered for retrospective development approval, as follows.

Likelihood of Consent

Is the unauthorised development a form of development or activity that, 'but for' the failure to make application for a development consent or an activity approval, would likely have been granted such consent or approval subject to appropriate conditions.

An unauthorised development is understood to 'pass' this test in the event that it is likely that the development or activity would

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have been granted consent, had application been made for such consent prior to the undertaking of the development.

Shire Development Services staff consider if an application was made prior to development that formal consent would not have been granted for the ad hoc development as the excessive use of repurposed second-hand building should not be encouraged within the rural living estate to uphold the desired character and safeguard the amenity of all estate landowners. Even with the painting of all structures one shade of green and vegetation screening the permanent approval of the development is not considered compatibility or complimentary with its setting.

The following was stated within the Council minutes of the previous temporary approval:

The additional information that the offending structures will be temporary within 12 months or a maximum of 2 years has significant bearing on the consideration by Council and officer recommendation. The lengthy process for any appeal against the Council decision of 28 June 2018 and legal expenses incurred are additional considerations taken into account. The ultimate goal is removal of the offending structures and construction of a substantive dwelling on the site which can be achieved with the cooperation of the landowner within a reasonable period of time.

Since the temporary approval, the landowner's intentions have now changed to only wanting to use the property as temporary accommodation from time to time. The further addition of another repurposed second-hand building again without prior approval also shows the landowner still does not respect the development authority of the Council. As such, further approval of this development sets an undesirable precedent for other retrospective applications.

Environmental Impact

Is the unauthorised development likely to cause a significant environmental impact, including impacts on the natural and the built environment? The application of this test requires a determination of the fact of any environmental impact and an assessment of the degree of that impact.

An unauthorised development is understood to 'pass' this test in the event that the impacts of the development or activity are negligible or insignificant and action to control the impacts is not required.

Such development is not common within 'Jurien Bay Heights' and as outlined above the proposal is considered to be in conflict with the established and desired built character for the locality resulting in an adverse impact on the amenity of surrounding landowners through its appearance. However, it is noted a tree buffer has

been planted around the structures, which at maturity will shield the appearance of the structures from Canover Road and Jurien Bay Vista. Additionally, the previously approved structures have been painted the same shade of green in an effort to match the structures with the natural surrounding shrubland. Nonetheless, both these actions are needed to soften the impact of the development, and such, it is concluded that the development does not pass this test.

Public Safety

"Is the unauthorised development likely to lead to injury and/or to create a public liability? The application of this test requires a determination of the fact of any health and safety risk and an assessment of the degree of that risk."

An unauthorised development is understood to 'pass' this test in the event that no significant health and/or safety risk is created by the development.

During the previous approvals both the outstanding health and building approvals were addressed and issued for the development. However, the required Bushfire Attach Level (BAL) Assessment still has not been submitted for the development to date. Without such an assessment, it is not possible to determine if the development is reasonably safe from a bushfire context.

In addition to this another serious health and safety risk is posed by the development in the form of the potable water supply. As per Clause 7.1 of Schedule 9 of *Local Planning Scheme No.7 (LPS7)*: 120,000 litres of potable water storage directly connected to the necessary roof catchment area is required. This is not achieved by the existing 9,000 litre water tank or aggregate roof catchment of approximately 135m². Another 27,500litre tank is proposed to be added, bringing the new potable water total to 36,500 litres, still well below the required amount. However, it could be argued that this is ample water for temporary use from time to time.

The development is also not compliant with Clause 1.4 of Schedule 9 of LPS7 as it does not meet buffer distance of 150 metres from the waste landfill site, varying this standard by approximately 50 metres.

In summary it is considered the development fails this legal test, resulting in the failing of each of the three tests. Thus, the development is recommended for refusal.

In giving refusal for the retrospective application, it is appropriate to undertake enforcement measures to remedy the subject land of the illegal development. This can be facilitated under Section 214 of the Act, whereby, the Shire can issue a written direction for the illegal development to be removed and for the land to be restored to its condition immediately before development started (to the

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Shire's satisfaction) within a period of 60 days. It is recommended Council authorise this written direction be served on the applicant.

Pursuant to Section 215 of the Act, if the direction is not carried out within the specified timeframe, the Shire can execute the required work of the direction with all costs of such works borne by the directed person.

Under Section 255 of the Act there is right of review to the State Administrative Tribunal to the person served the direction under Section 214. If the State Administrative Tribunal confirms or varies the direction, it may, by written notice served on the person to whom the direction was given, direct the owner to comply with the direction as so confirmed or varied, within a period of not less than 40 days after service of the notice, as is specified in the notice.

Alternative Recommendation:

That Council grant retrospective development approval to the development on Lot 414 Jurien Bay Vista, Jurien Bay, subject to the following conditions:

1. Prior to use of the development, the applicant must lodge with the Shire of Dandaragan a 'Bushfire Attack Level (BAL) Assessment' for the Single House. If the subject BAL is 40 or Flame Zone, a new development application accompanied with a 'Bushfire Management Plan' for the subject property must be provided and implemented to achieve a BAL of 29 or less prior to lodging an application for a building permit.
2. All development shall be in accordance with the approved development plans (enclosed), which form part of this development approval, to the specifications and satisfaction of the Shire of Dandaragan.
3. All stormwater must be contained and disposed of on-site at all times, to the satisfaction of the Shire of Dandaragan.
4. The development shall be provided with a demonstrated and sustainable water supply to the satisfaction of the Shire of Dandaragan.
5. Low bushfire fuel buffers, at least 20 metres wide shall be established and maintained around all approved structures.
6. The building materials of all structures are to be painted a colour consistent with the surrounding vegetation and/or predominant colours of the individual site.

CONSULTATION

Given the recommendation is for refusal, no consultation from surrounding landowners was sought.

STATUTORY ENVIRONMENT

- Planning and Development Act 2005
- Local Planning Scheme No.7

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

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FINANCIAL IMPLICATIONS

The applicant has paid the minimum development application fee of \$147.

STRATEGIC IMPLICATIONS

Strategic Community Plan – Envision 2029

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| 02 – Prosperity | The Shire will experience broad economic and population growth with decreasing economic barriers, diversified agriculture and fisheries output and vibrant visitor economy. |
| Priority Outcomes | Our Roles |
| Our Shire has a contemporary land use planning system that responds to, and creates, economic opportunities. | Ensuring that our planning framework is modern and meets the needs of industry, small business and emerging opportunities. |

ATTACHMENTS

Circulated with the agenda are the following items relevant to this report:

- Submitted documents and photos (Doc Id: 112188)
(Marked 9.3.2)

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr Gibson, seconded Cr Eyre

That Council:

- 1. refuse the retrospective development application for Lot 414 Jurien Bay Vista, Jurien Bay as the development would:**
 - A. not satisfactorily blend in with the rural development landscape and will have undue adverse impact on the amenity and character of adjoining sites and surrounding locality;**
 - B. be inconsistent with orderly and proper planning for the locality as set out in Schedule 9 of the Shire of Dandaragan Local Planning Scheme 7; and**
 - C. if approved, set an undesirable precedent for similar applications in the future.**
- 2. pursuant to Section 214 of the *Planning and Development Act 2005* (the Act), authorise Shire staff to serve a written direction to the landowner of Lot 414 Jurien Bay Vista, Jurien Bay Heights to remove the unauthorised development and restore the land to its condition immediately before the unauthorised development started within a period of 60 days to the satisfaction of the Shire of Dandaragan. The landowner is to be advised there is a right of review to the State Administrative Tribunal within 40 days after service of the notice under Section 255 of the Act.**

CARRIED 7 / 0

9.3.3 JURIEBAY PROGRESS ASSOCIATION LOOKOUT

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| Location: | Reserve 18865 |
| Applicant: | Jurien Bay Progress Association Inc. |
| File Path: | Business Classification Scheme / Recreation and Cultural Services / Liaison / Community |
| Disclosure of Interest: | Nil |
| Date: | 14 January 2021 |
| Author: | Rory Mackay, Planning Officer |
| Senior Officer: | David Chidlow, Executive Manager Development Services |

PROPOSAL

For Council to endorse the Jurien Bay Progress Association's approach to the Department of Planning, Lands and Heritage (DPLH) for the ceding of a new Jurien Bay town lookout.

BACKGROUND

The Jurien Bay Progress Association (PA) has identified that the existing 'Lions Lookout' is situated on Water Corporation controlled land with the inability to refurbish the dated and deteriorating gazebo. As a solution to this issue, the PA has identified a new area for a lookout above the Jurien Bay Cemetery within Reserve 18865.

Management of this Reserve rests with DPLH who have advised that the most appropriate way to facilitate the development of new lookout is to dedicate a road under Section 56 of the *Land Administration Act 1997* (LAA) and Section 24KA of the *Native Title Act 1993*. The lookout will be located within this new road corridor.

However, the dedication of a road under the above legislation is a request which must be resolved by the local government. As such the PA has requested Council's endorsement of their approach to DPLH, the purpose of this item.

COMMENT

During the Shire's 2020 hazard reduction burning program, a large portion of the subject reserve was burnt. In undertaking this burn an access leg to the proposed new lookout was cleared as firebreak line.

If the new lookout area is formalised the existing lookout will be decommissioned with the removal of signage and the gazebo. The new area will require suitable gravel treatment to the access road and construction of a new gazebo. These tasks are to be resourced by the PA in due course.

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DPLH has asked that Council indemnify the Minister for Lands against any claims for compensation under the legislation listed previously. This statement of indemnity has been listed within the officer recommendation.

CONSULTATION

Not required in this instance.

STATUTORY ENVIRONMENT

Section 56 Land Administration Act 1997

Dedication of land as road

(1) *If in the district of a local government —*

- (a) *land is reserved or acquired for use by the public, or is used by the public, as a road under the care, control and management of the local government... and that land is described in a plan of survey, sketch plan or document, the local government may request the Minister to dedicate that land as a road.*

Section 24KA Native Title Act 1993

Facilities for services to the public

(1) *This Subdivision applies to a future act if:*

- (a) *it relates, to any extent, to an onshore place; and*
- (b) *it either:*
 - (i) *permits or requires the construction, operation, use, maintenance or repair, by or on behalf of any person, of any of the things listed in subsection (2) that is to be operated, or is operated, for the general public; or*
 - (ii) *consists of the construction, operation, use, maintenance or repair, by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities, of any of the things listed in subsection (2) that is to be operated, or is operated, for the general public; and*

(2) *For the purposes of paragraph (1)(b), the things are as follows:*

- (a) *a road, railway, bridge or other transport facility (other than an airport or port)...*

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

No approach for assistance with resourcing the construction of a new lookout road and accessway has been received to date.

STRATEGIC IMPLICATIONS

Strategic Community Plan – Envision 2029

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| 04 – Community | The Shire's resident population will grow more than the WA regional average supported by increased community recreation and cultural opportunities and access to key liveability factors such as health and wellbeing services and educational opportunities. |
| Priority Outcomes | Our Roles |
| A region that develops and supports community leadership and collective values. | Provide governance support for community groups to deliver their objectives. |

ATTACHMENTS

Circulated with the agenda is the following item relevant to this report:

- Letter from Jurien Bay Progress Association (Doc Id: 168713)
(Marked 9.3.3)

VOTING REQUIREMENT

Simple majority

OFFICER RECOMMENDATION /COUNCIL DECISION

Moved Cr Richardson, seconded Cr Clarke

That Council:

- 1. Resolve to dedicate a road by excision from Lot 12351 on Deposited Plan 220507 (being a portion of Reserve 18865) under Section 56 of the Land Administration Act 1997 and Section 24KA of the Native Title Act 1993 as denoted in attachment (Doc Id: 168713).**
- 2. Agrees that it will indemnify and keep indemnified the State of Western Australia, the Department of Planning, Lands and Heritage and the Minister for Lands and any kind including, without limitation, compensation payable to any party under the Land Administration Act 1997 and Native Title Act 1993 which may be imposed on, or incurred by the Indemnified Parties relating to or arising directly or indirectly from the above dedication of a road process.**

CARRIED 7 / 0

9.4 GOVERNANCE & ADMINISTRATION

9.5 COUNCILLOR INFORMATION BULLETIN

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9.5.1 SHIRE OF DANDARAGAN – DECEMBER 2020 COUNCIL STATUS REPORT

Document ID: 169581

Attached to the agenda is a copy of the Shire's status report from the Council Meeting held 17 December 2020. *(Marked 9.5.1)*

9.5.2 SHIRE OF DANDARAGAN – EXECUTIVE MANAGER INFRASTRUCTURE REPORT – DECEMBER 2020

Document ID: 169631

Attached to the agenda is a copy of the Shire of Dandaragan's Executive Manager Infrastructure Report for December 2020. *(Marked 9.5.2)*

9.5.3 SHIRE OF DANDARAGAN – BUILDING STATISTICS – DECEMBER 2020

Document ID: 169179

Attached to the agenda is a copy of the Shire of Dandaragan Building Statistics for December 2020. *(Marked 9.5.3)*

9.5.4 SHIRE OF DANDARAGAN – PLANNING STATISTICS – DECEMBER 2020

Document ID: 169098

Attached to the agenda is a copy of the Shire of Dandaragan Planning Statistics for December 2020. *(Marked 9.5.4)*

9.5.5 SHIRE OF DANDARAGAN TOURISM / LIBRARY REPORT FOR DECEMBER 2020

Document ID: 169158

Attached to the agenda is monthly report for Tourism / Library for December 2020. *(Marked 9.5.5)*

10 NEW BUSINESS OF AN URGENT NATURE – INTRODUCED BY RESOLUTION OF THE MEETING

11 CONFIDENTIAL ITEMS FOR WHICH MEETING IS CLOSED TO THE PUBLIC


12 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

13 CLOSURE OF MEETING

The presiding member declared the meeting closed at 5.47pm.

MINUTES OF ORDINARY COUNCIL MEETING HELD THURSDAY 28 JANUARY 2021

These minutes were confirmed at a meeting on 25 February 2021

Signed 

Presiding person at the meeting at which the minutes were confirmed

Date 25 February 2021