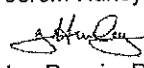
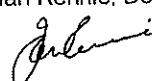


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9.4 TOWN PLANNING

9.4.1 PROPOSED HOTEL AND RESIDENTIAL RESORT DEVELOPMENT – LOT 62 ROBERTS STREET, JURIE BAY

Location:	Lot 62 Roberts Street, Jurie Bay
Applicant:	Lawrence Scanlan Architects for Aliceville Holdings Pty Ltd
File Ref:	TP49
Disclosure of Interest:	Nil
Date:	14 November 2011
Author:	Jerom Hurley, Manager Planning
Signature of Author:	
Senior Officer:	Ian Rennie, Deputy Chief Executive Officer
Signature of Senior Officer:	

PROPOSAL

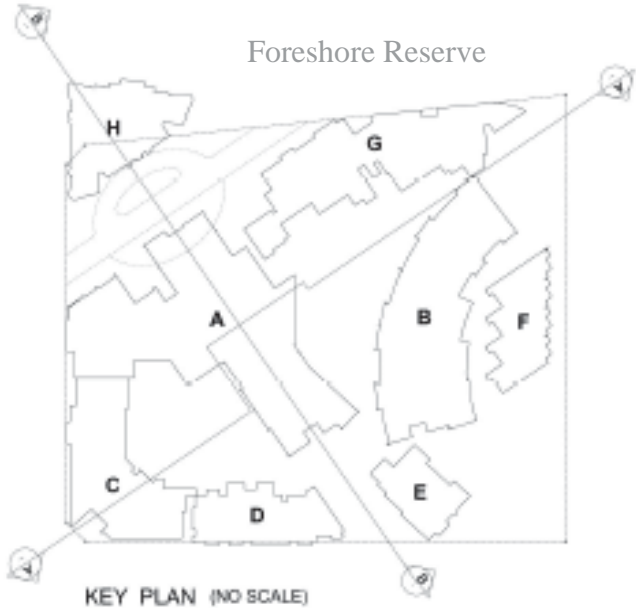

To reconsider the requirement for a deed of agreement as a prerequisite to planning approval.

BACKGROUND

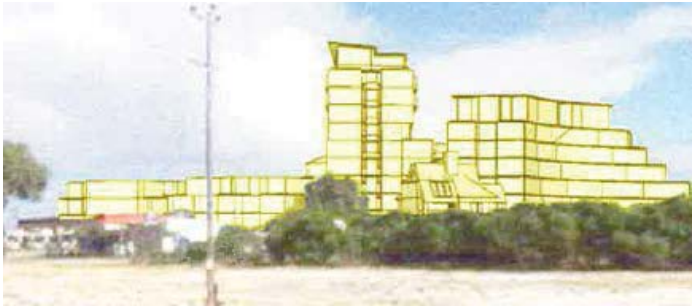
The Council considered the proposed Hotel and Residential Resort development for Lot 62 Roberts Street, Jurie Bay and adjoining road reserve as outlined below at its 17 February 2011 meeting.

Development Proposal Summary	
Criteria	Includes
Allocation of Uses	<ul style="list-style-type: none"> - Building A – tavern, restaurant, function facility, short stay and permanent residences - Building B – retail shops, day spa, amenities, short stay and permanent residences - Building C – retail shops, offices, health club, short stay and permanent residences - Building D – retail shops, short stay and permanent residences - Building E – reception, sales, short stay residences - Building F – permanent (terrace style) residences - Building G – retail shops, permanent residences - Building H – hotel (includes bar, restaurant, rooftop pool and gym)

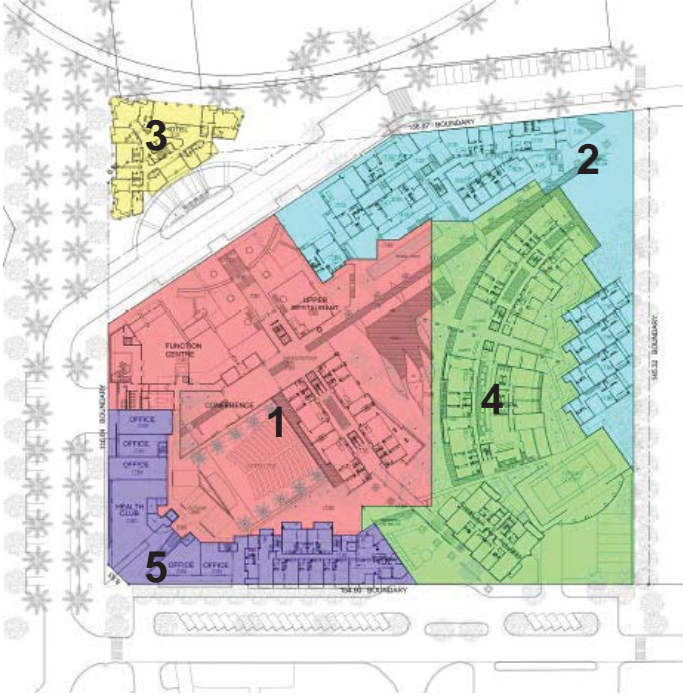
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	 <p style="text-align: center;">Foreshore Reserve</p> <p style="text-align: center;">KEY PLAN (NO SCALE)</p> <ul style="list-style-type: none"> - Commercial development consists of retail shops x 27, offices x 5, restaurants x 3, bars x 2, function centre x 1, health club x 1, and reception areas x 2; - Residential consists of short stay units x 56 [variation of 1-4 bedroom]; hotel rooms x 94; permanent res. units x 127. - Swimming pools x 2 - Outdoor cinema (300 persons). - Staging across 5 years - Development to accord with BCA requirements.
Height	<ul style="list-style-type: none"> - Building A – 10 Stories - Building B – 7 Stories - Building C – 4 Stories - Building D – 4 Stories - Building E – 4 Stories - Building F – 2 Stories - Building G – 5 Stories - Building H – 7 Stories - Highest point above street level is 38.7 metres. - Refer to Attachment A for height context  <p style="text-align: center;">Looking northwest from Cameron Street (500m from centre of site)</p>

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	<p>Looking north down Roberts Street (275m from centre of site)</p>  <p>Looking west from Bashford/Doust Street (500m from centre of site)</p>
Plot Ratio	<ul style="list-style-type: none"> - R60 density nominated under Residential Design Codes - Part 7.2 Mixed Use Development - Plot ratio calculations are: <ul style="list-style-type: none"> ✓ Commercial - 0.2940:1 ✓ Residential - 1.0086:1 - Site area calculation for 127 residential units is 173m² per unit based on lot area at 21,979m².
External Design/Materials	<ul style="list-style-type: none"> - Mix of design elements and materials to complement the local environment and incorporate energy efficiency and sustainability principals
Building Bulk and Density	<ul style="list-style-type: none"> - Development is proposed on varying scales of height and form with residential uses based of R60 density.
Traffic Management and Vehicle Access	<ul style="list-style-type: none"> - Multiple vehicle access from Roberts, Heaton and Sandpiper Streets to a sealed, kerbed and drained standard. - Proposal is to realign Western portion of Heaton Street based on a land exchange with the Shire. - Proposal designates in Appendix C5 'Shared Zones' or 'Local Traffic Areas' with reduced speed limits – more detailed analysis to be undertaken.
Pedestrian Access	<ul style="list-style-type: none"> - Provision of public pedestrian access to be provided on western and northern and eastern boundaries constructed/landscaped as part of the development.
Parking	<ul style="list-style-type: none"> - Provision of basement and ground level car, boat, bus and bicycle parking: Onsite parking of 498 bays for commercial and residential use and 6 boat bays. Off site (street) parking of 85 car parking and one bus bay. - Concession applied for reciprocal use of 117

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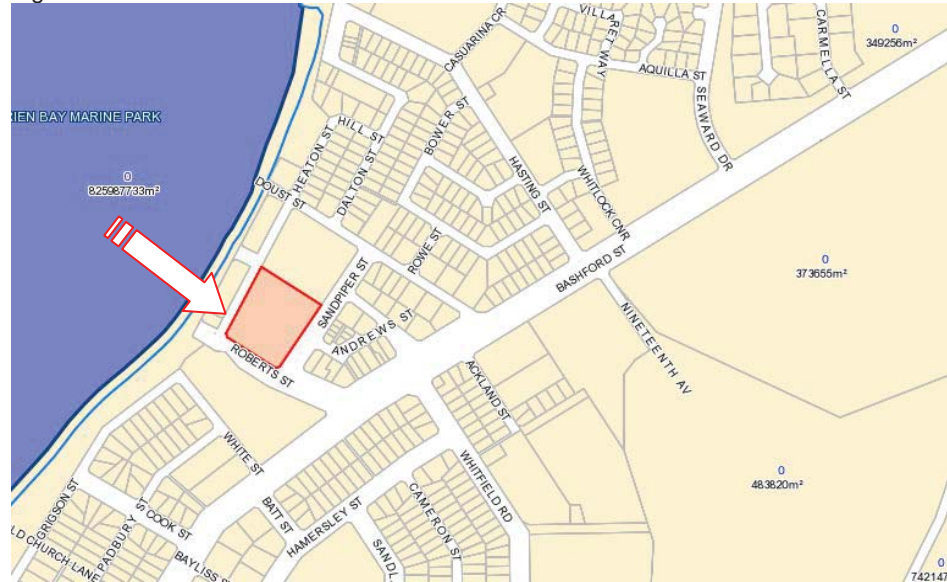
	<p>retail bays.</p> <ul style="list-style-type: none"> - Concession applied at 1 bay for every residential unit (183 as opposed to 353 – reduction of 170 bays)
Services	<ul style="list-style-type: none"> - Access to reticulated power, water, sewerage, telecommunications.
Open Space / Landscaping	<ul style="list-style-type: none"> - Development includes internal atrium, a range of landscape features and streetscape improvements.
Coastal Setbacks	<ul style="list-style-type: none"> - Coastal Engineering Report (MP Rogers & Assoc.) concludes relevant section of shoreline is accreting and setback distance calculated under SPP2.6 formula is 84 metres. All development will be setback beyond this distance. - Application advocates that ground level for the development to be set at Australian Height Datum (AHD) RL 3.1, being 0.9 metre above the foreshore level at RL 2.2 metres.
Property Setbacks	<ul style="list-style-type: none"> - Nil setback distances to all property boundaries – rationale: all boundaries adjoin a thorough fare.
Site Drainage / Stormwater Disposal	<ul style="list-style-type: none"> - Development to incorporate recycling of storm and grey waste water.
Energy Efficiency and Sustainability in Design	<ul style="list-style-type: none"> - Incorporation of 5 star design principles using solar and wind power generation systems. - Buildings designed and positioned to achieve cross ventilation.
Waste Disposal / Bin Storage	<ul style="list-style-type: none"> - Detail to be provided.
Staging	<ul style="list-style-type: none"> - Development to be constructed in stages over a period of 5 years as reflected below: 

For reference purposes Figure 1 shows the location of Lot 62

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within the Jurien Bay town centre; Figure 2 illustrates the indicative building and road layout consistent with Option 2 of the Jurien Bay Foreshore Master Plan; and Figure 3 shows the appearance of north-west and north-east elevations of the proposed development.

Figure 1 – Location Plan



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Figure 2 – Site Plan

Proposed Closure of Heaton Street

Proposed realignment of Heaton Street



Landscape Master Plan 1:500 @ A1

Figure 3 - NW and NE Elevations



NW ELEVATION (HEATON STREET)
SCALE 1:500 @ A1

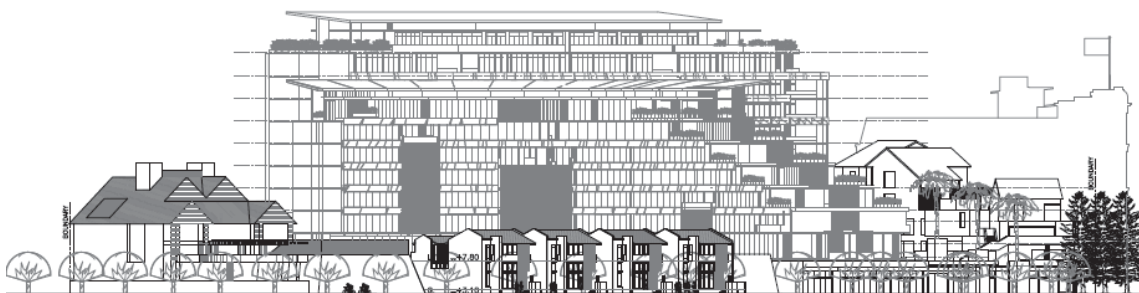


Figure 4 – Foreshore Master Plan and Site Layout for Lot 62 Roberts Street



Council Decision

At its meeting of 17 February 2011, Council resolved as follows:

That Council, in relation to the proposed Hotel and Residential Resort on Lot 62 Roberts Street and adjoining south west portion (910m²) of Heaton Street Jurien Bay ("Subject Site"), inform Lawrence Scanlan Architects (the applicant):

A. *That in light of the fact that:*

- (a) *the development application for a hotel and tourist resort development on Subject Site proposes an integrated tourism facility that requires satisfactory arrangements to be made for a road closure and land swap to allow a significant portion of the development to be carried out in a beachside location on what is presently public land (Heaton Street Road Reserve);*
- (b) *the proposal involves the granting of significant concessions to the developer which would be justified by the completion of the integrated tourism facility proposed, but which may not be justified if the proposal is not completed; and*
- (c) *it is in the public interest and the interests of orderly and proper planning for the Council to ensure, insofar as it is reasonably possible, that the substantial integrated tourism development proposed is fully completed in accordance with a suitable construction timetable,*

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particularly where the proposal seeks to take advantage of what is presently public land, the Council would be prepared to grant development approval if the owner of Lot 62 Roberts Street ("Lot 62") first enters into a deed of agreement with the Shire, prepared by the Shire's solicitors at the owner's cost, which deals with the matters referred to in Part B of this resolution.

The decision then goes on to list matters required to be addressed by the deed of agreement. The matters required to be addressed by the deed of agreement are considered in more detail below but the requirement for a deed of agreement prior to development approval creates the situation whereby the applicant does not actually have an approval. In addition, the current decision is not strictly in accordance with decisions that can be made under clause 10.3 of Shire of Dandaragan Local Planning Scheme No.7. The practical effect of the decision, however, was to refuse the application (ie. a deemed refusal). On that basis, the resolution of Council is valid.

While the applicant has indicated that the landowner is not depending on finance to commence stage 1 of the development (developer now intends to commence with Building D as a motel development, as shown on amended plans submitted by the applicant dated 8 July 2011), the pre-requisite for a deed of agreement is causing the landowner difficulties in obtaining finance for subsequent stages and they therefore cannot proceed with the development under the current decision. In a letter dated 1 June 2011 the applicant requested the requirement for a deed be removed and that an approval be issued. Shire staff and Council have considered this request closely via review of the reasons for the deed being required, the possible alternative means of addressing matters for which the deed was required, the implications of proceeding without the deed in place and additional consultation with Council's solicitor and the proponent to convey Council concerns and hear the proponent's perspective.

It is important to note that comprehensive consideration has already been given to the subject development proposal which resulted in Council's 17 February 2011 decision. The requirement for a deed prior to approval is the main aspect of that decision for which the applicant is seeking review. A summary of the comprehensive consideration of the development proposal that occurred prior to the Council's 17 February 2011 decision is outlined below.

Prior Technical Consideration

The development application was received by the Shire on 19 February 2010.

A Technical Advisory Group (TAG) consisting of representatives from the Shire, Department for Planning, Tourism WA and Department of Regional Development and Lands was convened to

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review the proposal. The TAG identified a range of matters which were referred to the applicant seeking further information, including:

- height;
- mix of permanent and short-stay accommodation;
- staging;
- possible redesign to avoid need for land swap;
- site contamination;
- commitment to completion;
- public access to facilities;
- water and waste management;
- interface with foreshore and surrounding residential and commercial development;
- traffic management and parking;
- landscape maintenance and public art in public areas; and
- land tenure.

The applicant confirmed:

- The hotel and short-stay components will fall under one management body.
- Short stay accommodation will be separated from permanent residential units by level.
- Staging will align with Council direction to maintain tourist focus.
- Acceptance to scheme amendment process should the Council require the land to be rezoned.
- Commitment to work with Council to ensure equitable balance of car parking for both patrons and general public.
- Commencement of decontamination process.

An assessment by the Department for Planning and Department of Transport confirmed and recommended:

- The development setback from the Horizontal Setback Datum (HSD) is to be not less than 46 metres based on the development being classed as 'In Fill'.
- The floor level of the development being increased from 2.9 AHD to 3.4 AHD to allow for a sea level rise of 0.9 metre over the next 100 years.
- The following notification being registered on the certificate of title for all new titles created:
'VULNERABLE COASTAL AREA' – This lot is located in an area likely to be subject to coastal erosion and/or inundation over the next 100 years.
- An appropriate scheme amendment being initiated to vary the provisions of SPP2.6 relating to building height (above 8 storeys within 300m of the coastline).

Public Consultation

At its meeting of 19 August 2010, Council resolved to advertise the proposed development for six weeks seeking public comment. This involved:

- a public information forum on 9 September 2010;
- the placement of two signs on site;

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- publication of advertisements in the local newspapers and on the Shire website; and
- a letter notifying surrounding landowners.

Summary of submissions received

Support	50
Indifferent	3
Government agencies	3
Opposing	60
Total	116

In general, the community recognizes the opportunities such a development will create but there are concerns within the community about the height of the proposed development and the proposal for portion of the development to be over what is currently public land. Council fully considered submissions in arriving at its 17 February 2011 decision. Council now needs to consider whether a deed of agreement prior to the grant of planning approval is required. In relation to community concerns about development over public land, it is noted that this proposal fits with the preferred plan for the foreshore prepared for the Shire by UDLA Consultants – see Figure 5 below.



Figure 5 – Jurien Bay Foreshore Plan Option 2

Road Closure – Legal Advice

In assessing the application, legal advice was obtained on the grant of planning approval for development over the Heaton Street road reserve prior to any formal closure and rezoning. The Shire solicitor has advised the Council may grant planning approval prior to any formal road closure in accordance with Part 3 of the Shire of Dandaragan Local Planning Scheme No.7, subject to:

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- An appropriate condition that states development cannot commence within the road reserve until all necessary arrangements related to the road re-alignment and land transfer have been finalised, or at the very least a mechanism is put in place to satisfy Council that such arrangements will be finalised;
- An appropriate condition requiring the formal road closure with qualification that the process to close the road is subject to a formal public consultation process and Ministerial approval pursuant to Section 58 of the *Land Administration Act, 1997*; and
- The Shire signing the development application form.

Appropriate conditions are included in the recommendation below.

Car Parking

There has been significant attention given to determining car parking requirements for this development on the part of both the applicant and the Shire. The Council established a clear position in relation to car parking in its 17 February 2011 decision. The applicant wishes for the matter of car parking to be further considered, particularly in relation to the requirement for payment of cash-in-lieu of car parking for 65 parking bays. The applicant has provided additional information and revised plans in an effort to minimize the need for cash-in-lieu. Rather than take the Council's attention away from the owner's main concern at this stage, the applicant is prepared to leave conditions relating to car parking as they are in the 17 February 2011 decision to allow Council to focus first on their request for the deed of agreement to be removed. If Council decides to remove the requirement for a deed, the applicant will have an approval to work with. The applicant and Shire will then be able to give more detailed consideration to car parking. This is a reasonable suggested approach.

Site Remediation

The site is being remediated to the satisfaction of the Department of Environment and Conservation in accordance with requirements of the *Contaminated Sites Act 2003*.

Tourism

The proposed overall development would generally achieve tourism outcomes intended in the Shire of Dandaragan draft Local Tourism Planning Strategy (ie: maximum 45% permanent residential units and 75% of beachfront units retained for tourism purposes). In relation to units in prime locations being set aside for tourism, recommended Condition 11 requires a plan to be submitted showing the use of units, with preference given to short stay accommodation units in prime locations.

COMMENT

The report Council considered at its 17 February 2011 meeting considered this proposed development against all relevant

planning and design criteria and concerns raised during public advertising. Council made a decision at that meeting to support this development subject to a deed of agreement being prepared and entered into by the landowner prior to development approval being granted. That decision was based on the Council retaining maximum control over the development. While the legal effect of the decision was a refusal, it clearly established a Council position of supports for the development. The question now, based on the applicant's request for the requirement for the deed of agreement to be removed, is whether a deed of agreement is actually required for any of the purposes listed under clause B of Council's 17 February 2011 decision. Each item is considered in detail below.

Scheme Amendment

Recommended Condition 1 below requires a scheme amendment to be prepared and lodged for Council adoption. The applicant raises no objection to this condition and on this basis, a separate deed of agreement is not required to ensure this is done. That said, it is critical that the rezoning of the site be progressed as a priority to provide certainty on matters considered important to the local government and the community. Accordingly, it is recommended that any approval include timeframes for meeting key milestones in advancing the scheme amendment to rezone this site. The first of these milestones is the scheme amendment being submitted to the local government for adoption, which the recommended decision would require prior to a building licence being issued for the first stage building. In addition, the recommended approval has been limited to Buildings D, A and B only until the scheme amendment has been granted final approval.

Preventing application for subdivision other than built strata

Without a zoning in place for this site that restricts subdivision, as is intended for the required scheme amendment, subdivision applications would be considered by the Western Australian Planning Commission on their merits. The Council decision on the development proposal for the site would be a consideration in determining any application for subdivision regardless of the zoning but would not have the statutory weight afforded by zoning that restricts subdivision. The deed of agreement is intended to provide an interim control of subdivision via an agreement from the landowner not to make application to subdivide. It should be noted that the site has been under its current zoning for some time in which there have been no applications for subdivision. Once the site is rezoned the Scheme will restrict the potential for subdivision as intended. The priority is therefore to progress the scheme amendment. For this reason, the recommended decision ties progression of the development to progression of the scheme amendment. It is important to note that once the scheme amendment has been endorsed by the Western Australian Planning Commission for public advertising, it can be used as a guide to subdivision in law (seriously entertained proposal). It

should be required that this point be reached in the scheme amendment process prior to a building licence being issued for Stage 2 (Building A). In addition, the recommended approval only applies to Buildings D, A and B. This means no further development can occur until the entire site is included in the new zone, at which point no subdivision would be permitted. As the portion of Heaton Street proposed to be closed cannot be amalgamated into Lot 62 until the entire site has been rezoned, there is no possibility for that land to be excised either before or after the land is rezoned. Provision has been made, however, for the excision of any building stage once the building has been completed to Council's satisfaction. The Shire's solicitor supports this approach to addressing Council's concerns about potential fragmentation of the site, the hotel development site in particular.

Satisfactory arrangements for partial closure and transfer of portion of Heaton Street

Recommended Condition 4 requires a deed of agreement to put in place satisfactory arrangements for the complete construction and servicing of the new road realignment prior to closure and freehold transfer of the relevant portion of Heaton Street road reserve and amalgamation into Lot 62, with all costs to be met by the developer.

Satisfactory arrangements for location and ratio of short stay accommodation

Recommended Condition 11 requires a plan to be submitted to the Shire showing the location of all proposed short stay accommodation and permanent residential units for each stage of development, with a preference for short stay accommodation in the best locations. Recommended Condition 10 requires a minimum ratio of 55% short stay accommodation. Provision 6 of the Special Use zone table under Condition 1(g) permits a maximum ratio of 45% permanent residential units. These plans and ratios should apply across the entire site because even though the first three stages would include a substantial amount of short-stay accommodation (61 units), it only represents 40% of the units in those first three stages.

Strata Titles Act 1985 section 5C management statements and agreements for management of tourist resort facility

Recommended Condition 1(e) addresses this requirement.

Payment of cash-in-lieu of car parking bays

Recommended Condition 15 requires cash-in-lieu payment for any shortfall of physical carbay provision. It is standard practice for shortfalls in car parking provision on site to be dealt with via conditions of approval like this. The recommended restricted approval of only Buildings D, A and B means there will be an overprovision of onsite car parking in these first three stages. As for the overall development, the applicant has prepared revised plans to increase the number of car parking bays provided on site,

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thereby reducing the need for cash-in-lieu. Car parking can be considered in more detail once the question of whether a deed of agreement is required prior to development approval, has been resolved.

Replacement of car parking bays lost as a result of the development

Recommended Condition 16 addresses this requirement. The applicant has also reviewed this matter as part of revising car parking plans. Car parking can be considered in more detail once the question of whether a deed of agreement is required prior to development approval, has been resolved.

Agreed estimated construction timetable and authorization for Shire to remove incomplete buildings

The applicant has advised that the landowner intends to commence development of the first stage – the Motel development – in December 2012. The landowner will not be able to commence development, however, until the Shire has issued planning approval. It might be seen as beneficial to get a commitment to complete development of the site in a short timeframe but this may in fact cause bigger problems for the success of the project. While this development does involve a portion of what is currently a relatively small piece of public land, it is unusual for a decision making authority to get involved in construction timetables for private developments other than specifying an approval period. This is a massive development and it is important that development of the site occurs as expected demand warrants. Demand will fluctuate depending on market conditions. If an approval is in place for the type of development Council believes appropriate for this site and there are sufficient planning controls in place to ensure that outcome will not be compromised, which will be achieved through rezoning the site, then it really should be left to the market to drive the development. The landowner would only commence stages of development with an expectation of completing them and with their financiers, would have a far stronger interest than the Shire in completing each stage. There are powers under the *Planning and Development Act 2005* and *Local Government Act 1995* to remove incomplete development. It is not considered appropriate to be asking the landowner to enter a deed of agreement with the Shire that specifies a construction timetable or a process for removing incomplete buildings.

The applicant has also requested removal of the requirement for each stage to be completed prior to commencement of subsequent stages. The applicant wants to have the opportunity to be able to develop stages 2 and 3 (Buildings A and B) simultaneously, which this requirement would prevent. The Council has an interest in development of the site and this requirement seems to hold the developer back from doing that. As the recommended approval only applies to Buildings D, A and B and while there is a need to sequence the development of

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Buildings D and A in accordance with progression of the scheme amendment, there appears no reason why the developer should be prevented from developing Buildings A and B at the same time.

Absolute caveat preventing sale of land unless subsequent purchaser enters deed

As has been outlined above, there are other ways to address matters contemplated for the deed of agreement. The deed of agreement is therefore not necessary. Accordingly, the need for a related caveat falls away as well.

Advice from the Shire's solicitor is that the original report to Council was based on a "no risk to Council" approach. The decision places a high degree of control on the development and this, as acknowledged by the Shire's solicitor, potentially prevents the development from occurring. The Shire's solicitor advises that while removal of the prerequisite deed of agreement slightly increases the risk to Council in terms of the development outcome required by the prerequisite deed (down to an agreed construction timetable), the recommended revised decision still gives Council significant control over the development. Importantly for the developer and the community, this decision is something the developer is able to use as the basis for developing the site.

CONSULTATION

- Meetings with the applicant
- Council Forums on 2 September and 14 October 2011

Advice from Shire's solicitor on ability to consider the applicant's request for review of the requirement for a deed of agreement under the current application and the intention to recommend planning approval be granted without a prerequisite deed.

STATUTORY ENVIRONMENT

The Shire's Solicitor has considered a query regarding the need for this matter to now be referred to a Development Assessment Panel and has advised that because the application was determined prior to the introduction of Development Assessment Panel provisions into legislation and as the request is to revise the existing decision rather than a new application, the matter does not need to be considered by a Development Assessment Panel.

As this report recommends variation of a Council decision, and even though the majority of the decision remains the same, the *Local Government Administration Regulations 1996* require Council to first resolve to revoke its original decision, to revoke its decision and then to issue its new decision.

Shire of Dandaragan Local Planning Scheme No.7 requires Council to either approve an application for planning approval with or without conditions, or refuse the application. Council's 17 February 2011 decision was not in accordance with either of these

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options. The recommendation below is an approval subject to conditions, consistent with provisions of the Scheme.

One of the recommended conditions of approval requires a scheme amendment to be prepared and lodged for Council adoption. The scheme amendment is subject to a separate approval process. Until the scheme is amended, the portion of Heaton Street road reserve remains in a Local Road reserve on the Scheme Map. The recommended approval below prevents transfer of this land to freehold title until the land is rezoned.

In relation to other matters the applicant seeks review and clarification of, these matters can be resolved between Shire officers and the applicant. Shire officers have been delegated authority to resolve matters in relation to conditions of planning approval. Matters will be brought back before Council if acceptable resolution of any matters relating to conditions of approval cannot be reached between Shire officers and the applicant.

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

The Council has received a fee of \$31,100 for this planning application.

An expense has been incurred through the engagement of the Shire's Solicitor in reviewing and providing legal advice on the proposed road closure, approach to various elements of the development proposal and report to Council. All legal costs will be accommodated under the planning legal expenses budget allocation.

STRATEGIC IMPLICATIONS

Section 4.1.4.1 of the draft Local Tourism Planning Strategy promotes rezoning of Lot 62 to facilitate a high quality tourist/mixed use development, where it states:

The assessment of existing Tourist zoned sites within Jurien Bay and Cervantes identified three key vacant tourism sites which have significant tourism value within the Shire including:

- *Lot 62 Roberts Street, Jurien Bay;*
- *Lot 58 Oceanic Way, Jurien Bay; and*
- *Lot 861 Seville Street, Cervantes.*

The main purpose behind rezoning these three sites to a different zone is to facilitate the development of a high quality tourism product. Specifically, the Tourist zoned sites identified as having local significance or are unsuited to having a residential component within the Shire are proposed to be rezoned Special Use and included within Schedule 4: Special Use Zones of the Scheme. To achieve a quality tourism outcome, a number of additional site and development

provisions relating to this zone will be required to be incorporated into the Scheme including:

1. *The preparation and approval of an Outline Development Plan to guide the appropriate development of each site. This plan must give due regard to any relevant Local Planning Policies and must be approved by Council and the WA Planning Commission, in consultation with Tourism WA.*
2. *In addition to compliance with the design principles for tourism development addressed in section 4.1.5.1, an application must include the following:*
 - *The provision of adequate resort style recreational facilities (such as pools, day spa, gymnasium, function space, BBQ area and children's playground), food and beverage facilities and reception/managers residence to be identified on the Development Plan.*
 - *A business plan/feasibility study to support the need for the proposed development and the ongoing viability of it from an operational perspective. Written support of the development from a reputable tourism operator will be highly regarded.*
 - *A staging plan (if staging is proposed) indicating the development of the tourist component (including appropriate common facilities) as part of stage one.*
 - *Should the tourism development be strata titled, a copy of a draft management statement which is consistent with the WAPC's conditions for strata titled tourism development.*

ATTACHMENTS

Nil

VOTING REQUIREMENT

Officer Recommendation 1 - Absolute Majority

Officer Recommendation 2 - Absolute Majority

Officer Recommendation 3 - Simple Majority

If Council wishes to revoke the decision of Council passed at the Ordinary Meeting held 17 February 2011, it will be necessary for at least one third of the Offices (whether vacant or not) of Members of the Council to support consideration of the matter before the Motion can be moved (Administration Regulation 10, *Local Government Act 1995*).

This means the support of three elected members is necessary before the next stage of the process to consider the revocation of the Motion.

To be successful, the revoked Motion must be carried by an Absolute Majority.

Councillors McGlew, Short and Kent indicated support for revocation.

OFFICER RECOMMENDATION 1 / COUNCIL DECISION

Moved Cr Short, seconded Cr Kent

That Council agree to consider the revocation of its motion for item 9.4.3 from the Council Meeting held on 17 February 2011.

CARRIED BY ABSOLUTE MAJORITY 7 / 0

OFFICER RECOMMENDATION 2 / COUNCIL DECISION

Moved Cr Kent, seconded Cr McGlew

That Council's resolution for item 9.4.3 of the Council Meeting held 17 February 2011 being;

That Council, in relation to the proposed Hotel and Residential Resort on Lot 62 Roberts Street and adjoining south west portion (910m²) of Heaton Street Jurien Bay ("Subject Site"), inform Lawrence Scanlan Architects (the applicant):

- A. That in light of the fact that:
- (a) the development application for a hotel and tourist resort development on Subject Site proposes an integrated tourism facility that requires satisfactory arrangements to be made for a road closure and land swap to allow a significant portion of the development to be carried out in a beachside location on what is presently public land (Heaton Street Road Reserve);
 - (b) the proposal involves the granting of significant concessions to the developer which would be justified by the completion of the integrated tourism facility proposed, but which may not be justified if the proposal is not completed; and
 - (c) it is in the public interest and the interests of orderly and proper planning for the Council to ensure, insofar as it is reasonably possible, that the substantial integrated tourism development proposed is fully completed in accordance with a suitable construction timetable, particularly where the proposal seeks to take advantage of what is presently public land,
- the Council would be prepared to grant development approval if the owner of Lot 62 Roberts Street ("Lot 62") first enters into a deed of agreement with the Shire, prepared by the Shire's solicitors at the owner's cost, which deals with the matters referred to in Part B of this resolution.
- B. The deed required by Part A of this resolution shall include provisions which:
- (a) require the owner of Lot 62 to prepare and lodge for adoption by the Council a Scheme amendment which makes provision for the application of development standards and other controls over the

- subject land, generally consistent with the foreshadowed Scheme amendment provisions referred to in Part C of this resolution;
- (b) prevent the owner of Lot 62 from applying to subdivide the land other than via a built strata subdivision, with the possible exception of the land which will be created from the partial closure of the Heaton Street Road Reserve for hotel purposes;
 - (c) make arrangements satisfactory to the Council with respect to the proposed partial closure of Heaton Street and land swap required for the hotel site;
 - (d) make arrangements satisfactory to the Council with respect to the location of short stay accommodation within the development and the ratio of short stay accommodation to permanent residential accommodation within the development;
 - (e) require the owner of Lot 62 to prepare suitable management statements and associated agreements under section 5C of the *Strata Titles Act* with respect to the management of the proposed tourist resort facility, in the event that the facility is subject to a built strata subdivision;
 - (f) deal with the payment by the owner of Lot 62 of cash in lieu of the provision of on site car parking bays in the event that a development approval is granted;
 - (g) deal with the replacement by the owner of Lot 62 of 53 existing car parking bays which will be lost as a consequence of the proposed development;
 - (h) which set out an agreed estimated construction timetable and authorise the Shire to remove uncompleted buildings in the event the development is substantially commenced but not completed generally in accordance with that timetable;
 - (i) which charge the land in favour of the Shire and authorise the Shire to lodge an absolute caveat against the certificate of title in order to prevent the sale of the land unless any subsequent purchaser has entered into a similar deed; and
 - (j) additional to those mentioned above which are necessary and convenient to achieving the objectives of those provisions.
- C. The Scheme amendment referred to in Part B of this resolution:
- (a) shall provide for the subject site to be re-zoned from "Tourist" to "Special Use";
 - (b) shall prohibit the subdivision of land within the development site other than via a built strata subdivision, with the possible exception of the land which will be created by the partial closure of the Heaton Street Road Reserve for hotel purposes;

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- (c) shall prohibit the use of the land area upon which the hotel is proposed for any permanent residential accommodation, and shall make it permissible for that land to be used only for a hotel and associated ancillary uses (such as a bar and restaurant);
- (d) shall require that any built strata subdivision of tourist accommodation (short stay) in the development site shall be subject to a condition which requires a management statement and associated agreements pursuant to section 5C of the *Strata Titles Act (1985)* to apply for a minimum of 25 years, and which includes:
- the establishment of a Schedule 1 by-law that requires, as a minimum, a unit management agreement, lease or alternative arrangement between owner/s and the common facility manager/operator for a minimum period of 25 years;
 - the ability for a Strata Company to terminate a contract with the facility manager/operator at the end of a 5 year contract or lesser period based on performance criteria as determined by the Strata Company;
 - the management agreement shall cover all components (ie resort reception, security, maintenance, care taking, refurbishment, marketing, rights of access and other services) required to operate as a tourist facility; and
 - conditions outlined in Schedules 1, 2 and 2a of the Strata Titles Act together with specific conditions detailed in the Shire's draft Local Tourism Planning Strategy that address facility management, development refurbishment, right of entry, internal fit out, register of bookings, length of stay, availability of services, and approval process;
- (e) shall require that any built strata subdivision of short stay accommodation will include a notification in accordance with section 6 of the *Strata Titles Act (1985)* to the following effect:
"No person shall occupy any tourist accommodation unit for more than a total of 3 months in any 12 month period. A register of guests showing periods of occupancy is to be kept and made available to the local government on request in order to ensure compliance with this requirement."
- (f) should be guided, but not limited, by the following table:

Description of Land	Special Use	Conditions
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<p>Lot 62 Roberts Street, Jurien Bay</p>	<p>Permitted Uses:</p> <p>Tourist Resort Serviced Apartment Restaurant Tavern Shop Office Café Hotel Grouped Dwelling Multiple Dwelling Cinema/theatre</p> <p>Discretionary Uses:</p> <p>Eco-Tourist Facility Civic Use Reception Centre Caretaker's Dwelling Fast Food Outlet Club Premises Convenience Store Art Gallery and Sales</p>	<ol style="list-style-type: none"> 1. Development of the site generally shall be in accordance with the Development Approval granted by Council, unless otherwise determined by the local government in accordance with this Schedule. 2. No development, other than necessary communications equipment as determined by the local government, is permitted to exceed 40.0 metres in height measured from natural ground level. 3. All development shall commence at a minimum finished floor level of 3.4 metres above the Australian Height Datum. 4. Ease of public access to areas of high amenity within or adjoining the site shall be maintained at all times. 5. The maximum proportion of permanent residential occupancy units shall be such that the site area and uses retain a dominant tourism function and character. 6. The proportion of permanent residential units relative to the total number of accommodation units on the site shall be equal to or less than 45%, unless otherwise approved by the local government. 7. A register of guests is to be maintained for each short stay (restricted) unit to be made available for perusal by the local government on request. 8. As a whole any residential component of development, shall be of a design and scale that is subsidiary to the tourism component of the development such that the tourism component remains dominant in all aspects. 9. All units in the development shall be
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		<p>designed to form part of an integrated residential and tourist complex and shall not be subject to compliance with the Residential Design Codes of Western Australia to the extent necessary to meet these requirements, unless specified under the local government planning scheme.</p> <p>10. Permanent residential occupancy units shall be concentrated in an area of the complex and provided with specific recreation and amenity facilities to ensure the management and use is an integrated part of the overall complex. In assessing the location of units, the permanent residential component shall be located to provide a transition between tourism development and surrounding residential uses.</p> <p>11. The development shall incorporate and maintain access to those facilities normally associated with tourist accommodation developments including recreation, entertainment facilities and integrated management facilities at all times.</p> <p>12. The development shall not interfere with, restrict access to, or in any way inhibit public access and use of the Jurien Bay Foreshore area.</p> <p>13. Vacant strata subdivision is not permitted.</p>
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- D. Subject to the owner first entering into the deed required by Parts A and B of this resolution, the Chief Executive Officer is delegated authority pursuant to clause 11.3.1 of the Scheme to grant development approval for the hotel and tourist resort development on the Subject Site, subject to conditions which are generally consistent with the following:**
- 1. The uses approved in the development shall be limited to:**

- Retail shops x 32
- Restaurants x 3
- Bars x2
- Function Centre x 1
- Health Club x 1
- Reception areas x 2
- Hotel Rooms x 94 rooms
- Residential short stay accommodation units x 56 (use not listed) [variation of 1- 4 bedroom]
- Residential Permanent dwelling units x 127 (grouped or multiple dwellings) [variation of 1- 4 bedroom]
- Swimming pools x 2
- Outdoor cinema (300 persons)

as shown the attached approved plan(s) dated 17th February 2011 (incorporating any handwritten annotations by the Shire) and shall be subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be further modified or altered without the prior written approval of the local government. [See Advice Notes (a) and (b)]

2. The development shall be carried out in stages, in accordance with the following programme:

Stage 1 Building A, both basement levels, and road realignment through Lot 62 including underground relocation of essential utilities and services.

Stage 2 Building B, Building E and completion of all onsite parking and a dedicated reception within Building E.

Stage 3 Building G, Building F and the forecourt between.

Stage 4 Building H, including completion of external road and streetscape works for Heaton Street, foreshore interface works and relocation of public parking.

Stage 5 Building C and Building D, including completion of external road, pedestrian path way along the north eastern boundary of Lot 62, and streetscape works for Roberts and Sandpiper Streets.

Each identified stage must be completed before work on the subsequent stage is commenced.

3. The owner of Lot 62 must enter into a land exchange and road dedication process with the Department of Regional Development and Lands and Department for Planning upon ministerial approval for closure the south west portion of Heaton Street, for the purpose of accommodating Building H, with all costs to be met by the developer.

4. **A Certificate of Building Classification for the buildings within Stage 1 and Stage 2 is to be issued prior to the completion of the road closure and land exchange/transfer proceedings for the south west portion of the Heaton Street road reserve (approximately 910m²) to accommodate Building H.**
5. **The finished floor level of the development shall be increased from 2.9 metres above the Australian Height Datum to 3.4 metres above the Australian Height Datum to allow for a predicted sea level rise of 0.9 metres over the next 100 years.**
6. **The height of the development shall be limited to:**
 - **Building A – 10 Storeys**
 - **Building B – 7 Storeys**
 - **Building C – 4 Storeys**
 - **Building D – 4 Storeys**
 - **Building E – 4 Storeys**
 - **Building F – 2 Storeys**
 - **Building G – 5 Storeys**
 - **Building H – 7 Storeys**
 - **Highest point above street level of 40.0 metres (excluding communication aerials and antennas).**
7. **No work on the development may commence until the following have been lodged with and approved by the Shire:**
 - a) **Written confirmation from the Department of Environment and Conservation that the site is clear of all contamination;**
 - b) **A geotechnical report that demonstrates the geological status and stability of the site to accommodate the development; and**
 - c) **A schedule of materials and colour/s for all external finishes. The development shall be constructed in accordance with the approved schedule.**
8. **The following additional plans must be lodged with the Shire for approval prior to or at the time an application for a building licence is lodged with respect to Stage 1:**
 - a) **A 'Landscape Master Plan' which includes:**
 - a. **the landscape layout and features for all the internal atrium areas;**
 - b. **streetscapes for Heaton, Roberts and Sandpiper Streets;**
 - c. **all off site car parking areas associated with the development and interface with the Dobbyn Park foreshore area;**
 - d. **beautification works to the Dobbyn Park foreshore area, Heaton, Roberts and Sandpiper Streets and the 5.0 metre wide pedestrian link along the north eastern boundary of Lot 62;**

- e. the type, level of maturity and placement of plant species with the 'beautification' and car parking areas;
 - f. the nature and colour of paving materials also to be used in the 'beautification' areas and internally within the development;
 - g. the type and placement of street furniture (including external lighting) with the 'beautification' areas; and
 - h. a recurrent maintenance program including reticulation, water supply and developer responsibility for external landscaping (10 year minimum) within the beautification' and car parking areas;
- b) A 'Waste Management Plan' which conforms to the Shire of Dandaragan Health Local Laws and includes:
- a. the location, design and methods applicable to the extraction and disposal of all contaminated soil;
 - b. the proposed method of collection and disposal of all construction and municipal solid waste associated with the development;
 - c. each permanent (unrestricted) accommodation unit having 2 x 240 litre mobile garbage bins;
 - d. each short stay (restricted) accommodation unit having 1 x 240 mobile garbage bin;
 - e. a minimum of 1 mobile garbage bins for each of the retail shops;
 - f. a minimum of 10 mobile garbage bins for each of restaurant/bar and function facility; and
 - g. rubbish bin storage areas being constructed with:
 - walls not less than 1.8 metres in height with an access way of not less than 1 metre in width and fitted with a self closing gate;
 - a smooth, non-slip and impervious floor not less than 75 millimetres in thickness; and evenly graded to an approved liquid refuse disposal system;
 - easily accessibility to allow for the removal of the receptacles;
 - provision of a ramp into the enclosure having a gradient no steeper than 1:8;
 - provision of a tap connected to an adequate supply of water; and

- provision of curbing to prevent entry of surface stormwater, or groundwater, with a roofed of over 17m² in area.
- c) A Water Management Plan detailing the design for collection, control, re-use and disposal of storm and grey water in accordance with best practice outlined in the Department of Water's urban storm and grey water management guidelines and the current Australian rainfall and run-off manual. [See Advice Note (c)]
- d) A Construction Management Plan detailing construction hours, traffic management, deliveries and storage of materials, disposal of building waste, security barrier/fencing and safety measures, signage and dust suppression measures.

No works on the development may commence until the plans required by this condition have been approved by the Shire. The development must thereafter be carried out and maintained in accordance with the approved plans.

9. The proponent ceding to the Western Australian Government a 5.0 metre wide strip of land along the full length of the north east boundary of Lot 62 for the purpose of a Public Access Way, with all costs to be met by the developer.
10. Within the development site the ratio of unrestricted (permanent) rooms at 45% to restricted (short stay) rooms at 55% shall be adhered to unless otherwise approved by the local government.
11. Prior to or at the time of an application for a building licence for each successive stage of the development which includes short stay accommodation units, a plan showing the proposed location of the short stay accommodation units shall be lodged with the local government for approval. In any building containing both short stay accommodation units and permanent residential units, the two uses must be allocated separate floors, or otherwise separated in a manner satisfactory to the local government. The development must subsequently be carried out in accordance with the approved plan. [See Advice Note (d)]
12. No person may occupy any short stay accommodation unit for more than 3 months in any 12 month period.
13. Prior to the commencement of the development, Notifications pursuant to section 70A of the *Transfer of Land Act* shall be lodged against the certificate of title to the land stating respectively:
"No person shall occupy any Tourist

Accommodation Unit for more than a total of 3 months in any one 12 month period. A register of guests showing periods of occupancy is to be made available for perusal by the Local Government on request in order to ensure compliance with this requirement."

“‘VULNERABLE COASTAL AREA’ – This lot is located in an area likely to be subject to coastal erosion and/or inundation over the next 100 years.”

14. The provision of parking for the development in accordance the following table:

Use	Required Onsite	Permitted Offsite
Commercial (retail, restaurants, function Centre, Gym)	160 car bays (2 to ACROD Bays) and 20 bicycle stands	64 car bays (1 ACROD Bay 1)
Hotel Rooms (94 rooms)	50 car bays (2 to ACROD Bays) and 1 bus bay	1 bus bay
Residential Short Stay (58 units)	58 car bays (1 to ACROD Bay)	Nil
Residential Permanent Stay (127 units)	237 car bays	Nil
Boat	6 boat bays	Nil
Total Bays	511	65

15. The payment of cash in lieu for a shortfall 65 parking bays (including 1 bus bay) for the development to be provided off site, with the funds to be paid to the local government in accordance with the following requirements;
- The estimated land value component of a car bay (x 64) and a bus bay as determined by a licensed valuer appointed by the local government, and based on an area of 27.5 m² per car bay and 115.5 m² per bus bay, inclusive of maneuvering area;
 - The estimated construction cost of a car bay (x 64) and bus bay as determined by the local government or by a person nominated by the local government who is competent in the field of civil (road) engineering;
 - Reimbursement for the costs incurred by the

- local government in engaging a licensed valuer and engineer, if applicable; and
- d) All payments being made to the local government prior to the grant of any Certificate of Building Classification for Stage 4 of the development or by alternative arrangement as agreed to by the Chief Executive Officer.
16. The replacement by the proponent of 53 existing car parking bays (including landscaping) as part of Stages 1, 2 and 3 of the development in a location within 400 metres of the site determined by the local government.
 17. All external road works, parking bays and service/loading bays shall be constructed to an impervious sealed, kerbed, drained and line marked standard to the specifications of the local government.
 18. All car parking bays shall conform to the minimum internal dimensions as prescribed in Appendix A of the Shire of Dandaragan Local Planning Policy 8.8 - Car Parking.
 19. All bus parking bays shall conform to the minimum internal dimensions of 16.5 metres in length and 3.5 metres in width, with adequate maneuvering area.
 20. All internal resident, staff, guest, visitor and bus parking shall be constructed to an impervious standard, drained and appropriately marked and/or signposted to the satisfaction of the local government.
 21. Line marking and appropriate warning signage shall be provided at the entrance to the designed loading bays on Roberts Street and the Heaton Street realignment to the satisfaction of the local government.
 22. The installation of traffic calming measures in Robert and Heaton Streets to the specifications and satisfaction of the local government.
 23. A minimum of 20 bicycle racks/stands shall be strategically placed within the development to the satisfaction of the local government.
 24. The construction of a minimum 2.0 metre wide pedestrian path way to a impervious standard along the north east boundary of Lot 62 to the satisfaction of the local government.
 25. Overhead lighting shall be provided within the Heaton Street road realignment with low level external lighting provided at all building entry points and along pathways within the site to the satisfaction of the local government.
 26. All reinstatement of local government infrastructure (including but not limited to drainage, pedestrian pathways, roadways, public open space and

- community furniture) shall be undertaken at the proponents cost and to satisfaction of the local government.
27. The development shall not interfere with, restrict access to, or in any way inhibit public access and use of the Jurien Bay Foreshore area.
 28. The development shall be connected to reticulated power, water, sewerage, telecommunications.
 29. No site earthworks or development shall occur that will cause additional runoff of storm water on to adjacent properties.
 30. Directional and other signage within the development shall be provided to international standards to the satisfaction of the local government.
 31. A detailed construction programme for each stage of the development shall be lodged for approval by the Shire prior to the grant of a building licence for each stage. The programme must show the works to be carried out in that stage (consistent with Condition 2) including associated works required by these conditions proposed to be carried out in that stage. The development must thereafter be carried out in accordance with the approved construction programme.
 32. This approval is valid for a period of three (3) years. If the development has not substantially commenced within this period the approval will lapse.

Advice

- (a) With reference to Condition 1 the proponent is advised the approval of 32 retail shops includes the 5 offices provided for in the application. This approach has been taken as an 'office' use is not permitted within the 'tourist' zone. Further consideration on a change in use from retail 'shop' to 'office' can be entertained once the zoning has changed from 'Tourist' zone to 'Special Use' zone.
- (b) The construction programme – Staged Site Plan 'DAO4' drawn 31.08.10 does not form part of the approved plans.
- (c) With reference to Condition 8(c) of this approval, the Water Management Plan must indicate that all storm and grey water drainage shall be designed and constructed at the applicant's cost. Stormwater retention of run-off from roofs and/or other paved/impervious areas including internal roads and parking areas shall be provided on site. The design is to ensure the discharge of stormwater from the developed site is so as to restrict discharge to that which existed prior to development surrounding the site. Design overflow from the internal drainage system shall ensure that discharge is not directed in to the adjoining properties, but where practical should be offered to the local government for re-use. Details on the site specific

design of control and disposal of storm and grey water from the site are to be submitted with the preparation of a building application.

- (d) With reference to Condition 11 the permanent residential occupancy units shall be concentrated in an area of the complex and provided with specific recreation and amenity facilities. Furthermore, the location shall enable the management and use to be an integrated part of the overall complex. In assessing the location of units, the permanent residential component shall be located to provide a transition between tourism development and surrounding residential uses.
- (e) In the event the development site is subject to a built strata subdivision incorporating short stay accommodation units, the approval of the strata subdivision will be subject to a condition which requires a management statement and associated agreements pursuant to section 5C of the *Strata Titles Act (1985)* to apply for a minimum of 25 years, and which includes:
- the establishment of a Schedule 1 by-law that requires, as a minimum, a unit management agreement, lease or alternative arrangement between owner/s and the common facility manager/operator for a minimum period of 25 years;
 - the ability for a Strata Company to terminate a contract with the facility manager/operator at the end of a 5 year contract or lesser period based on performance criteria as determined by the Strata Company;
 - the management agreement shall cover all components (ie resort reception, security, maintenance, care taking, refurbishment, marketing, rights of access and other services) required to operate as a tourist facility; and
 - conditions outlined in Schedules 1, 2 and 2a of the Strata Titles Act together with specific conditions detailed in the Shire's draft Local Tourism Planning Strategy that address facility management, development refurbishment, right of entry, internal fit out, register of bookings, length of stay, availability of services, and approval process.
- (f) Subdivision and/or strata approval for the development will only be supported on a 'Built Strata' basis.
- (g) That applicant is advised that the atrium wells proposed in Buildings 'A' & 'B' do not appear to comply with the provisions of the BCA part G3.2 'dimensions of atrium well' (i.e. the proposed atrium well dimension is insufficient to contain a cylinder with a minimum diameter of 6m, a requirement that is intended to reduce the effects of radiant heat from a fire). The applicant should liaise with the Manager for Building on this matter.
- (h) All buildings and associated facilities shall be provided

- with disable access in accordance with Australian standards as prescribed under the Building Code of Australia.
- (i) A grant of planning consent is not a building licence. A building licence/s must also be obtained for this development.
 - (j) All external signage for individual business uses are the subject to a further application to the local government for approval.
 - (k) The swimming pools are required to comply with the *Health (Aquatic Facilities) Regulations 2007* and be approved by the Executive Director of Public Health prior to construction. Further, sanitary facilities for the pool area may be required as part of the health requirements.
 - (l) The development is required to comply with the 'Health (Public Buildings) Regulations, 1992'.
 - (m) The development is to comply with the requirements of the 'Food Act 2008' and the 'Australian New Zealand Food Standards Code'.
 - (n) Prior to the construction and fit out of the Approved food premises, detailed plans and specifications of all internal fixtures, finishes and fittings must be submitted to Manager Environmental Health for endorsement.
 - (o) Any Approved food premises using deep fryers and rotisseries (including a restaurant and / or dining room) is required to install a grease trap – to a size specified by the Water Corporation of Western Australia.
 - (p) The waterways (ie reflection ponds) within the development must be constructed with principles outlined in the Department of Health's 'Chironomid midge and mosquito risk assessment guide for constructed water'.
 - (q) The existing effluent disposal systems are required to be decommissioned if no longer in use. Decommissioning must be undertaken in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations (1974)*.
 - (r) The applicant is advised that a right of appeal against Council's decision exists in accordance with the provisions of the *Planning and Development Act, 2005*. In this regard contact should be made with the State Administrative Tribunal on 9219 3111 or via website www.sat.justice.wa.gov.au

Be revoked.

CARRIED BY ABSOLUTE MAJORITY 7 / 0

OFFICER RECOMMENDATION 3 / COUNCIL DECISION

Moved Cr Short, seconded Cr Bailey

That Council, in relation to the proposed Hotel and Residential Resort on Lot 62 Roberts Street, Jurien Bay and adjoining south west portion (910m²) of the Heaton Street

road reserve ("Subject Site"), inform Lawrence Scanlan Architects (the applicant):

A. That further to:

- (a) the Council decision of 17 February 2011;
- (b) the applicant's request of 1 June 2011 for review of the requirement for the owner to enter a deed of agreement with the Shire prior to development approval being granted; and
- (c) subsequent consultation between the parties regarding Council concerns,

Council has come to the conclusion that a prerequisite deed of agreement is not required for the following reason:

A modified version of the scheme amendment required by the Council decision will address the main concerns being:

- (a) the integration of development over the portion of Heaton Street road reserve with the overall development of the site;
- (b) the requirement for the portion of Heaton Street road reserve to only be developed as part of the entire development of this site in accordance with the approved plan;
- (c) to ensure the portion of Heaton Street road reserve is only created on transfer as part of the larger lot upon which the entire development would be situated and that it remains part of that lot.

Council has however determined that the referred scheme amendment is a priority and needs to have been:

- (a) prepared and lodged for adoption by Council prior to issue of a building licence for Stage 1: Building D
- (b) granted consent for public submissions to be sought prior to issue of a building licence for Stage 2: Building A; and
- (c) granted final approval before certain aspects of the development are commenced, the Hotel development in particular.

B. Planning approval to Building D, Building A and Building B as shown on the plans dated 17 February 2011 is hereby granted, subject to conditions which are generally consistent with the following:

1. A scheme amendment being prepared and lodged for adoption by Council prior to issue of a building licence for Stage 1: Building D which shall:
 - a. require the portion of Heaton Street road reserve to be transferred only to become part of the larger lot upon which the entire development would be situated and to remain part of that lot until the Hotel development on the north west corner of the site is completed or there are arrangements in place to satisfy Council that it will be completed;

- b. provide for the subject site to be re-zoned from “Tourist” to “Special Use”;
- c. prohibit the subdivision of land within the development site other than via a built strata subdivision or for the creation of separate lots for completed individual buildings as approved;
- d. prohibit the use of the land area upon which the hotel is proposed for any permanent residential accommodation, and shall make it permissible for that land to be used only for a hotel and associated ancillary uses (such as a bar and restaurant);
- e. require that any built strata subdivision of tourist accommodation (short stay) in the development site shall be subject to a condition which requires a management statement and associated agreements pursuant to section 5C of the *Strata Titles Act* (1985) to apply for a minimum of 25 years, and which includes:
 - the establishment of a Schedule 1 by-law that requires, as a minimum, a unit management agreement, lease or alternative arrangement between owner/s and the common facility manager/operator for a minimum period of 25 years;
 - the ability for a Strata Company to terminate a contract with the facility manager/operator at the end of a 5 year contract or lesser period based on performance criteria as determined by the Strata Company;
 - the management agreement shall cover all components (ie resort reception, security, maintenance, care taking, refurbishment, marketing, rights of access and other services) required to operate as a tourist facility; and
 - conditions outlined in Schedules 1, 2 and 2a of the *Strata Titles Act* together with specific conditions detailed in the Shire’s draft Local Tourism Planning Strategy that address facility management, development refurbishment, right of entry, internal fit out, register of bookings, length of stay, availability of services, and approval process;
- f. require that any built strata subdivision of short stay accommodation will include a notification in accordance with section 6 of the *Strata Titles Act* (1985) to the following effect:

“No person shall occupy any tourist accommodation unit for more than a total of 3 months in any 12 month period. A register of guests showing periods of occupancy is to be

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kept and made available to the local government on request in order to ensure compliance with this requirement.”

- g. in addition to points B (a) – (f) above, be guided by and not limited to the following table:

Description of Land	Special Use	Conditions
<p>Lot 62 Roberts Street, Jurien Bay</p>	<p>Permitted Uses:</p> <p>Tourist Resort Serviced Apartment Restaurant Tavern Shop Office Café Hotel Grouped Dwelling Multiple Dwelling Cinema/theatre</p> <p>Discretionary Uses:</p> <p>Eco-Tourist Facility Civic Use Reception Centre Caretaker's Dwelling Fast Food Outlet Club Premises Convenience Store Art Gallery and Sales</p>	<ol style="list-style-type: none"> 1. Development of the site shall be generally in accordance with the Development Approval granted by Council, unless otherwise determined by the local government in accordance with this Schedule. 2. No development, other than necessary communications equipment as determined by the local government, is permitted to exceed 40.0 metres in height measured from natural ground level. 3. All development shall commence at a minimum finished floor level of 3.4 metres above the Australian Height Datum. 4. Ease of public access to areas of high amenity within or adjoining the site shall be maintained at all times. 5. The maximum proportion of permanent residential occupancy units shall be such that the site area and uses retain a dominant tourism function and character. 6. The proportion of permanent residential units relative to the total number of accommodation units on the site shall be equal to or less than 45%, unless otherwise approved by the local government. 7. A register of guests is to be maintained for each short stay (restricted) unit to be made available for perusal by the local government on request. 8. As a whole any residential component of development, shall be of a design and scale that is subsidiary to the tourism component of the development such that the tourism component remains dominant in all aspects.

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		<p>9. All units in the development shall be designed to form part of an integrated residential and tourist complex and shall not be subject to compliance with the Residential Design Codes of Western Australia to the extent necessary to meet these requirements, unless specified under the local government planning scheme.</p> <p>10. Permanent residential occupancy units shall be concentrated in an area of the complex and provided with specific recreation and amenity facilities to ensure the management and use is an integrated part of the overall complex. In assessing the location of units, the permanent residential component shall be located to provide a transition between tourism development and surrounding residential uses.</p> <p>11. The development shall incorporate and maintain access to those facilities normally associated with tourist accommodation developments including recreation, entertainment facilities and integrated management facilities at all times.</p> <p>12. The development shall not interfere with, restrict access to, or in any way inhibit public access and use of the Jurien Bay Foreshore area.</p> <p>13. Freehold, survey strata and vacant strata subdivision are not permitted.</p>
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2. The uses approved in the development as part of Stages 1, 2 & 3 shall be limited to:
- Retail shops x 1
 - Restaurants x 1
 - Bars x1
 - Function Centre x 1
 - Reception areas x 1
 - Residential short stay accommodation units x 25 (use not listed) [variation of 1- 3 bedroom]
 - Motel x 36 rooms
 - Residential Permanent dwelling units x 92 (grouped or multiple dwellings) [variation of 1- 4

- bedroom]
- Swimming pools x 1
 - Outdoor cinema (300 persons)
- as shown in the attached approved plan(s) dated 17th February 2011 and the amended drawings dated 8 July 2011 (incorporating any handwritten annotations by the Shire) and shall be subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be further modified or altered without the prior written approval of the local government. [See Advice Notes (a) and (b)]
3. The development shall be carried out in stages, in accordance with the following programme:
 - Stage 1 Building D including necessary car parking and streetscape works for Sandpiper Street.
 - Stage 2 Building A, both basement levels, Streetscape works for Roberts Street and road realignment through Lot 62 including underground relocation of essential utilities and services.
 - Stage 3 Building B and completion of all onsite parking.
 4. A deed of agreement being prepared on behalf of the developer and entered into with the local government setting out satisfactory arrangements for the complete construction and servicing of the new road realignment and inclusion of the relevant portion of Heaton Street road reserve in the Special Use zone for the development prior to closure and freehold transfer of the relevant portion of Heaton Street road reserve and amalgamation into Lot 62, with all costs to be met by the developer.
 5. The finished floor level of the development shall be increased from 2.9 metres above the Australian Height Datum to 3.4 metres above the Australian Height Datum to allow for a predicted sea level rise of 0.9 metres over the next 100 years.
 6. The height of the development shall be limited to:
 - Building D – 4 Storeys
 - Building A – 10 Storeys
 - Building B – 7 Storeys
 - Highest point above street level of 40.0 metres (excluding communication aerials and antennas).
 7. No work on the development may commence until the following have been lodged with and approved by the Shire:
 - (a) Written confirmation from the Department of Environment and Conservation that the site is clear of all contamination;
 - (b) A geotechnical report that demonstrates the

- geological status and stability of the site to accommodate the development; and
- (c) A schedule of materials and colour/s for all external finishes. The development shall be constructed in accordance with the approved schedule.
8. The following additional plans must be lodged with the Shire for approval prior to or at the time an application for a building licence is lodged with respect to Stage 1 or as otherwise agreed by the local government:
- a) A 'Landscape Master Plan' which includes:
- a. the landscape layout and features for all the internal atrium areas;
 - b. streetscapes for Heaton, Roberts and Sandpiper Streets;
 - c. all off site car parking areas associated with the development and interface with the Dobbyn Park foreshore area;
 - d. beautification works to the Dobbyn Park foreshore area, Heaton, Roberts and Sandpiper Streets and the 5.0 metre wide pedestrian link along the north eastern boundary of Lot 62;
 - e. the type, level of maturity and placement of plant species with the 'beautification' and car parking areas;
 - f. the nature and colour of paving materials also to be used in the 'beautification' areas and internally within the development;
 - g. the type and placement of street furniture (including external lighting) with the 'beautification' areas; and
 - h. a recurrent maintenance program including reticulation, water supply and developer responsibility for external landscaping (10 year minimum) within the beautification' and car parking areas;
- b) A 'Waste Management Plan' which conforms to the Shire of Dandaragan Health Local Laws and includes:
- a. the location, design and methods applicable to the extraction and disposal of all contaminated soil;
 - b. the proposed method of collection and disposal of all construction and municipal solid waste associated with the development;
 - c. each permanent (unrestricted) accommodation unit having 2 x 240 litre mobile garbage bins;
 - d. each short stay (restricted) accommodation unit having 1 x 240 mobile garbage bin;

- e. a minimum of 1 mobile garbage bins for each of the retail shops;
- f. a minimum of 10 mobile garbage bins for each of restaurant/bar and function facility; and
- g. rubbish bin storage areas being constructed with:
 - walls not less than 1.8 metres in height with an access way of not less than 1 metre in width and fitted with a self closing gate;
 - a smooth, non-slip and impervious floor not less than 75 millimetres in thickness; and evenly graded to an approved liquid refuse disposal system;
 - easily accessibility to allow for the removal of the receptacles;
 - provision of a ramp into the enclosure having a gradient no steeper than 1:8;
 - provision of a tap connected to an adequate supply of water; and
 - provision of curbing to prevent entry of surface stormwater, or groundwater, with a roofed of over 17m² in area.
- c) A Water Management Plan detailing the design for collection, control, re-use and disposal of storm and grey water in accordance with best practice outlined in the Department of Water's urban storm and grey water management guidelines and the current Australian rainfall and run-off manual. [See Advice Note (c)]
- d) A Construction Management Plan detailing construction hours, traffic management, deliveries and storage of materials, disposal of building waste, security barrier/fencing and safety measures, signage and dust suppression measures.

No works on the development may commence until the plans required by this condition have been approved by the Shire. The development must thereafter be carried out and maintained in accordance with the approved plans.

- 9. The proponent ceding to the Western Australian Government a 5.0 metre wide strip of land along the full length of the north east boundary of Lot 62 for the purpose of a Public Access Way, with all costs to be met by the developer.
- 10. Within the development site the ratio of unrestricted (permanent) rooms at 45% to restricted (short stay) rooms at 55% shall be adhered to unless otherwise approved by the local government.
- 11. Prior to or at the time of an application for a building licence for each successive stage of the

development which includes short stay accommodation units, a plan showing the proposed location of the short stay accommodation units shall be lodged with the local government for approval. In any building containing both short stay accommodation units and permanent residential units, preference shall be given to short stay accommodation units in the best locations and the two uses must be allocated separate floors, or otherwise separated in a manner satisfactory to the local government. The development must subsequently be carried out in accordance with the approved plan. [See Advice Note (d)]

12. No person may occupy any short stay accommodation unit for more than 3 months in any 12 month period.
13. Prior to the commencement of the development, Notifications pursuant to section 70A of the *Transfer of Land Act* shall be lodged against the certificate of title to the land stating respectively:
"No person shall occupy any Tourist Accommodation Unit for more than a total of 3 months in any one 12 month period. A register of guests showing periods of occupancy is to be made available for perusal by the Local Government on request in order to ensure compliance with this requirement."
"'VULNERABLE COASTAL AREA' – This lot is located in an area likely to be subject to coastal erosion and/or inundation over the next 100 years."
14. The provision of parking for the total development will generally be in accordance with the following table:

Use	Required Onsite	Permitted Offsite
Commercial (retail, restaurants, function Centre, Gym)	160 car bays (2 to ACROD Bays) and 20 bicycle stands	64 car bays (1 ACROD Bay 1)
Hotel Rooms (94 rooms)	50 car bays (2 to ACROD Bays) and 1 bus bay	1 bus bay
Residential Short Stay (including motel) 61 units)	58 car bays (1 to ACROD Bay)	Nil
Residential Permanent Stay (127 units)	237 car bays	Nil
Boat	6 boat bays	Nil
Total Bays	511	65

15. The payment of cash in lieu for any shortfall in parking bays provided (including bus bays) for the development to be provided off site, with the funds to be paid to the local government in accordance with the following requirements:
 - a) The estimated land value component of a car bay (x 64) and a bus bay as determined by a licensed valuer appointed by the local government, and based on an area of 27.5 m² per car bay and 115.5 m² per bus bay, inclusive of maneuvering area;
 - b) The estimated construction cost of a car bay (x 64) and bus bay as determined by the local government or by a person nominated by the local government who is competent in the field of civil (road) engineering;
 - c) Reimbursement for the costs incurred by the local government in engaging a licensed valuer and engineer, if applicable; and
 - d) All payments being made to the local government prior to the grant of any Certificate of Building Classification for Stage 4 of the development or by alternative arrangement as agreed to by the Chief Executive Officer.
16. The replacement by the proponent of any existing car parking bays (including landscaping) which are affected by the re-alignment and redesign of the street parking as part of Stages 1 and 2 and/or 3 of the development in a location within 400 metres of the site determined by the local government.
17. All external road works, parking bays and service/loading bays shall be constructed to an impervious sealed, kerbed, drained and line marked standard to the specifications of the local government.
18. All car parking bays shall conform to the minimum internal dimensions as prescribed in Appendix A of the Shire of Dandaragan Local Planning Policy 8.8 - Car Parking.
19. All bus parking bays shall conform to the minimum internal dimensions of 16.5 metres in length and 3.5 metres in width, with adequate maneuvering area.
20. All internal resident, staff, guest, visitor and bus parking shall be constructed to an impervious standard, drained and appropriately marked and/or signposted to the satisfaction of the local government.
21. Line marking and appropriate warning signage shall be provided at the entrance to the designed loading bays on Roberts Street and the Heaton Street re-alignment to the satisfaction of the local government.
22. The installation of traffic calming measures in

- Roberts and Heaton Streets to the specifications and satisfaction of the local government.
23. A minimum of 20 bicycle racks/stands shall be strategically placed within the development to the satisfaction of the local government. These will be completed as part of Stage 1, 2 & 3.
 24. The construction of a minimum 2.0 metre wide pedestrian path way to a impervious standard along the north east boundary of Lot 62 to the satisfaction of the local government.
 25. Overhead lighting shall be provided within the Heaton Street road realignment with low level external lighting provided at all building entry points and along pathways within the site to the satisfaction of the local government.
 26. All reinstatement of local government infrastructure (including but not limited to drainage, pedestrian pathways, roadways, public open space and community furniture) shall be undertaken at the proponents cost and to the satisfaction of the local government.
 27. The development shall not interfere with, restrict access to, or in any way inhibit public access and use of the Jurien Bay Foreshore area.
 28. The development shall be connected to reticulated power, water, sewerage, telecommunications.
 29. No site earthworks or development shall occur that will cause additional runoff of storm water onto adjacent properties.
 30. Directional and other signage within the development shall be provided to international standards to the satisfaction of the local government.
 31. A detailed construction programme for each stage of the development shall be lodged for approval by the Shire prior to the grant of a building licence for each stage. The programme must show the works to be carried out in that stage (consistent with Condition 2) including associated works required by these conditions proposed to be carried out in that stage. The development must thereafter be carried out in accordance with the approved construction programme.
 32. This approval is valid for a period of three (3) years. If the development has not substantially commenced within this period the approval will lapse.

Advice

- (a) Planning approval will not be granted to Buildings C, E, F, G or H until the scheme amendment referred to in Condition 1 above has been finalized.
- (b) The construction programme – Staged Site Plan ‘DAO4’

- drawn 31.08.10 does not form part of the approved plans.
- (c) With reference to Condition 8(c) of this approval, the Water Management Plan must indicate that all storm and grey water drainage shall be designed and constructed at the applicant's cost. Stormwater retention of run-off from roofs and/or other paved/impervious areas including internal roads and parking areas shall be provided on site. The design is to ensure the discharge of stormwater from the developed site is so as to restrict discharge to that which existed prior to development surrounding the site. Design overflow from the internal drainage system shall ensure that discharge is not directed in to the adjoining properties, but where practical should be offered to the local government for re-use. Details on the site specific design of control and disposal of storm and grey water from the site are to be submitted with the preparation of a building application.
- (d) With reference to Condition 11 the permanent residential occupancy units shall be concentrated in an area of the complex and provided with specific recreation and amenity facilities. Furthermore, the location shall enable the management and use to be an integrated part of the overall complex. In assessing the location of units, the permanent residential component shall be located to provide a transition between tourism development and surrounding residential uses.
- (e) In relation to Condition 14, Stages 1, 2 & 3 will incorporate 269 commercial carbays and 235 residential carbays. This provision exceeds the requirements for Stages 1, 2 & 3 as it includes carbays that will be allocated to future stages. A final assessment of the allocation of carparking to all stages will be completed prior to the issue of the building license for Stage 1. If a shortfall of carbays is determined, a cash in lieu payment will be required to provide for any shortfall in physical carbay provision.
- (f) In the event the development site is subject to a built strata subdivision incorporating short stay accommodation units, the approval of the strata subdivision will be subject to a condition which requires a management statement and associated agreements pursuant to section 5C of the *Strata Titles Act (1985)* to apply for a minimum of 25 years, and which includes:
- the establishment of a Schedule 1 by-law that requires, as a minimum, a unit management agreement, lease or alternative arrangement between owner/s and the common facility manager/operator for a minimum period of 25 years;
 - the ability for a Strata Company to terminate a contract with the facility manager/operator at the end of a 5 year contract or lesser period based on performance criteria as determined by the Strata Company;

- the management agreement shall cover all components (ie resort reception, security, maintenance, care taking, refurbishment, marketing, rights of access and other services) required to operate as a tourist facility; and
 - conditions outlined in Schedules 1, 2 and 2a of the Strata Titles Act together with specific conditions detailed in the Shire's draft Local Tourism Planning Strategy that address facility management, development refurbishment, right of entry, internal fit out, register of bookings, length of stay, availability of services, and approval process.
- (g) The applicant is advised that the atrium wells proposed in Buildings 'A' & 'B' do not appear to comply with the provisions of the BCA part G3.2 'dimensions of atrium well' (i.e. the proposed atrium well dimension is insufficient to contain a cylinder with a minimum diameter of 6m, a requirement that is intended to reduce the effects of radiant heat from a fire). The applicant should liaise with the Manager for Building on this matter.
- (h) All buildings and associated facilities shall be provided with disable access in accordance with Australian standards as prescribed under the Building Code of Australia.
- (i) A grant of planning consent is not a building licence. A building licence/s must also be obtained for this development.
- (j) All external signage for individual business uses are the subject to a further application to the local government for approval.
- (k) The swimming pools are required to comply with the *Health (Aquatic Facilities) Regulations 2007* and be approved by the Executive Director of Public Health prior to construction. Further, sanitary facilities for the pool area may be required as part of the health requirements.
- (l) The development is required to comply with the 'Health (Public Buildings) Regulations, 1992'.
- (m) The development is to comply with the requirements of the 'Food Act 2008' and the 'Australian New Zealand Food Standards Code'.
- (n) Prior to the construction and fit out of the Approved food premises, detailed plans and specifications of all internal fixtures, finishes and fittings must be submitted to Manager Environmental Health for endorsement.
- (o) Any Approved food premises using deep fryers and rotisseries (including a restaurant and / or dining room) is required to install a grease trap – to a size specified by the Water Corporation of Western Australia.
- (p) The waterways (ie reflection ponds) within the development must be constructed with principles outlined in the Department of Health's 'Chironomid midge and mosquito risk assessment guide for constructed water'.

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- (q) The existing effluent disposal systems are required to be decommissioned if no longer in use. Decommissioning must be undertaken in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations (1974)*.
- (r) The general appearance of the whole site (Lot 62) is important and its preservation is to be addressed as part of the Landscape Master Plan and Construction Management Plan.
- (s) The applicant is advised that a right of appeal against Council's decision exists in accordance with the provisions of the *Planning and Development Act, 2005*. In this regard contact should be made with the State Administrative Tribunal on 9219 3111 or via website www.sat.justice.wa.gov.au

CARRIED 6 / 1