



## **ITEMS FOR DEBATE – COUNCIL MEETING 12 MAY 2021**

### **ADOPTION BY EXCEPTION RESOLUTION**

#### **RECOMMENDATION**

That the Committee Recommendations for items 12.1, 12.2, 12.3 and 12.5 and the Officer Recommendations for items 14.1 and 17.1 be adopted en bloc:

- 12.1 Airport Advisory Committee - 21/4/2021 - BUSSELTON MARGARET RIVER AIRPORT - AIRPORT UPDATE
- 12.2 Airport Advisory Committee - 21/4/2021 - BUSSELTON MARGARET RIVER AIRPORT - GENERAL AVIATION HANGAR PRECINCT PROPOSAL
- 12.3 Audit Committee - 28/4/2021 - 2020 FINANCIAL MANAGEMENT SYSTEM REVIEW
- 12.5 Policy and Legislation Committee - 28/4/2021 - SOUTH WEST DESIGN REVIEW PANEL AND PROPOSED LOCAL PLANNING POLICY - DESIGN REVIEW
- 14.1 RFT 09-21 DUNSBOROUGH LAKES SPORTS PRECINCT - EARTHWORKS
- 17.1 COUNCILLORS' INFORMATION BULLETIN

## ITEMS FOR DEBATE

<b>Item No. 12.4</b>	POLICY AND LEGISLATION COMMITTEE - 28/4/2021 - PROPOSED SCHEME AMENDMENT NO. 49 (WESTERN RINGTAIL POSSUM HABITAT PROTECTION SPECIAL CONTROL AREA) & PROPOSED LOCAL PLANNING POLICY (LPP XX : WESTERN RINGTAIL POSSUM HABITAT PROTECTION AREA) - CONSIDERATION FOR INITIATION FOR ADVERTISING	<b>Pulled by Cr Henley</b>	<b>Page 52</b> <i>Disclosure of Interests – Cr Paine (financial) Cr Henley (impartiality)</i>
<b><u>ALTERNATIVE RECOMMENDATION</u></b>			
<p><b>That the Council defers consideration of Item 12.4 'Policy and Legislation Committee - 28/04/2021 - Proposed Scheme Amendment to No. 49 (Western Ringtail Possum Habitat Protection Special Control Area) &amp; Proposed Local Planning Policy (LPP XX: Western Ringtail Possum Habitat Protection Area) - Consideration for Initiation for Advertising' to allow for further explanatory information to be provided to Councillors and for current planning matters to be considered prior to introducing this proposed amendment, with the item to be returned to Council by the end of 2021.</b></p>			
<b><u>REASONS FOR ALTERNATIVE</u></b>			
<p>Deferral of this item is proposed to allow for further information to be provided to Councillors and to allow consideration of other current planning matters, before introducing another broad scheme amendment.</p> <p>I have observed significant stress in our planning area given the volume, complexity and contentious nature of developments currently being assessed. Throwing in another broad scheme amendment such as this would not, I believe, be wise.</p> <p>I am also aware that not all Councillors have had the benefit of the significant amount of briefings and consultation I have on this issue. I would therefore like to see this item deferred to ensure all Councillors have enough time to understand the item.</p>			
<b><u>OFFICER COMMENT</u></b>			
<p>Overall, officers are comfortable with deferral of the proposed scheme amendment. While the amendment itself has been well planned and researched and is believed by officers to be sound, it is important that Councillors and Council feel fully informed and fully understand the proposed amendment prior to initiating it for advertising. While officers would not request the item to be deferred on the basis of work load, it is true that increased development activity is having some impact on work levels within the Planning and Development Services Directorate, and acknowledgement of this by Councillor Henley is noted.</p>			
<b><u>LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT</u></b>			
<p>Pursuant to regulation 22(7) of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.</p>			

<b>Item No.</b> <b>13.1</b>	DA 20/0916 - MIXED USE DEVELOPMENT (BREWERY, TAVERN, RESTAURANT/CAFE, SHOP AND TOURIST ACCOMMODATION)	<b>Pulled by</b> <b>Cr Hick</b>	<b>Page 110</b> <i>Disclosure of Interest – Cr Hick (impartiality)</i>
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**ALTERNATIVE RECOMMENDATION**

**That the Council determines:**

- A. That application DA20/0916 submitted for a ‘Mixed Use Development (Brewery, Tavern, Restaurant/Cafe, Shop and Tourist Accommodation)’ is considered by the Council to be generally consistent with Local Planning Scheme No. 21 and the objectives and policies of the zone within which it is located.
- B. That Development Approval is issued for the proposal referred to above (A) subject to the following conditions:

**General Conditions**

- 1. The development hereby approved shall be substantially commenced within two years from the date of this decision letter.
- 2. The development hereby approved shall be undertaken in accordance with the signed and stamped Approved Development Plans except as may be modified by the following conditions.

**Prior to Commencement of Any Works Conditions**

- 3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the satisfaction of the City and have been approved in writing:
  - 3.1 Drainage Management Plan, the details of which shall incorporate Water Sensitive Urban Design principles as discussed in the Western Australian Planning Commission’s *Better Urban Water Management* guidelines and should ensure that surface water will be contained within the development site with no direct, unfiltered discharge to the Dugalup Brook.
  - 3.2 Odour Management Plan (OMP), which is to detail how odours emitted from coffee roasting and brewing activities will be managed to prevent impact on the amenity of neighbouring business and residential premises. The OMP shall include (but is not limited to) details of the following:
    - a. Roasting and brewing days and times;
    - b. Scale of production;
    - c. Production techniques to limit odour emission;
    - d. Control equipment and Engineering control measures;
    - e. Monitoring; and
    - f. Odour complaints handling process.

**3.3 Venue Management Plan (VMP), which is to support implementation of the Noise Management Plan and manage patrons' behaviour to mitigate impact on the amenity of neighbouring business and residential premises. The VMP shall include (but is not limited to) details of the following:**

- a. **Outdoor entertainment;**
- b. **Implementation of the approved Noise Management Plan;**
- c. **Management of patrons leaving the site;**
- d. **Control of vandalism, litter and anti-social behavior;**
- e. **Complaints and conflict resolution process;**
- f. **Trading hours as follows:**
  - i. **Between 7am and 10pm, Monday to Sunday (inclusive) the maximum permissible patrons numbers in each of the food and beverage sites shall be as follows:**
    - **Within Building 1 (Brewery) – 206 patrons**
    - **Within Building 2 (Restaurant) – 181 patrons**
    - **Within Building 3 (Café) – 71 patrons**
    - **In the external areas (courtyard and decks) – 542 patrons**
  - ii. **Between 10pm and 12 midnight, Thursday to Saturday (inclusive) the maximum permissible patrons numbers in each of the food and beverage sites shall be as follows:**
    - **Within Building 1 (Brewery) – 206 patrons**
    - **Within Building 2 (Restaurant) – 181 patrons**
    - **Within Building 3 (Café) – Closed**
    - **In the external areas (courtyard and decks) – 160 patrons**
  - iii. **Between 10pm and 12 midnight, Sunday to Wednesday (inclusive) the maximum permissible patrons numbers in each of the food and beverage sites shall be as follows:**
    - **Within Building 1 (Brewery) – 206 patrons**
    - **Within Building 2 (Restaurant) – 181 patrons**
    - **Within Building 3 (Café) – Closed**
    - **In the external areas (courtyard and decks) - Closed**
  - iv. **All food and beverage sites including external areas are to be closed to the public between 12 midnight and 7am.**

**3.4 Acoustic Report which demonstrates that all mechanical services associated with the proposed development, and any other noise source, including noise emanating from Licensed Premises, will comply with the *Environmental Protection (Noise) Regulations 1997*, must be submitted to and approved by the City.**

**3.5 A Noise Management Plan which shall include (but not be limited to) all recommendations specified in the Environmental Noise Report dated 9 November 2020, prepared by Gabriels Hearne Farrell in order to reduce noise disturbance to neighbours and generally comply with the *Environmental Protection (Noise) Regulations 1997*.**

- 3.6** Lighting Management Plan consistent with the 'dark sky principles' and the requirements of Australian Standard AS 4282—2019, *Control of the obtrusive effects of outdoor lighting*.
- 3.7** A schedule of the final materials, finishes and colours. The schedule shall include details of the type of materials proposed to be used, including their colour and texture.
- 3.8** Details of signage, including but not limited to the design, materials and levels of illumination (where applicable).
- 3.9** Details of the proposed bicycle parking facilities. The details shall include, as a minimum, the location, design and materials to be used in their construction.
- 3.10** Details of the entry controls required at the southern crossover to Cape Naturaliste Road to ensure this crossover is only used by service vehicles exiting the site in a left-out movement only.
- 3.11** The southern crossover to Cape Naturaliste Road being designed and constructed to the specification and satisfaction of the City to ensure continuity for pedestrians and that it is of sufficient width to cater for left-out truck movements.
- 3.12** A contribution of \$10,995.80 toward the cost of Road Network Upgrading in the Dunsborough precinct.
- 3.13** A contribution of \$5,795.20 toward the cost of Dual Use Path Network Upgrading in the Dunsborough precinct.
- 3.14** A contribution of \$32,340.00 toward the cost of community facilities in the Dunsborough precinct.
- 3.15** Satisfactory arrangements shall be made with the City to provide public art works within the development site. This entails compliance with the Percent for Art provisions of the City's Development Contribution Policy via appropriate works up to a minimum value of 1% of the Estimated Cost of Development ("ECD"). Where the value of on-site works is less than 1% of the ECD, a payment sufficient to bring the total contribution to 1% of the ECD is required.
- 3.16** A Construction Management Plan (CMP). The CMP shall address the following:
  - a. access to and from the site;
  - b. delivery of materials and equipment to the site;
  - c. storage of materials and equipment on the site;
  - d. parking arrangements for contractors and subcontractors;
  - e. management of construction waste; and
  - f. other matters likely to impact on the surrounding properties.

**3.17 A Landscape Plan which shall include the following:**

- a. the location, number, size and species type of existing and proposed trees and shrubs, including calculations for the landscaping area;
- b. any lawns to be established;
- c. fencing, **including fencing to the northern site boundary to provide definition to and manage access through the Dugalup Brook Recreation Reserve (R42673);**
- d. any existing landscape areas to be retained;
- e. those areas to be reticulated or irrigated; and
- f. verge treatments, **including any proposed footpath upgrades or extensions, and including an extension of the footpath along Cape Naturaliste Road to at least the southern proposed crossover to the site from Cape Naturaliste Road.**

**3.18 A Tree Protection Plan (TPP) for the mature trees to be retained on the site and adjoining road reserves as indicated on the approved site plan and for vegetation within the adjoining Recreation Reserve – R42673 (Dugalup Brook). The approved TPP shall be implemented before any of the substantive development is commenced and shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site. Within the areas so fenced, nothing shall be stored or placed, and the ground levels shall not be altered.**

**3.19 Satisfactory arrangements being made with the City for an easement in accordance with sections 195 and 196 of the Land Administration Act for the benefit of the City of Busselton and the public at large is to be shown on the Deposited Plan to be registered on the Certificate of Title over a 3m wide by 13m deep section of the southeast access way (to Dunn Bay Road) to the satisfaction of the City.**

**3.20 Updated Bushfire Management Plan to address the following:**

- a. Clearly identify where a Performance Principle Solution has been used to address Bushfire Protection Criteria in place of an Acceptable Solution;
- b. Following an audit of vegetation classifications and distance to vegetation, modify inputs in the BMP as necessary;
- c. Confirm the Landscape Plan will comply with Schedule 1 of the *Guidelines for Planning in Bushfire Prone Areas*.

**Prior to Occupation/Use of the Development Conditions**

**4 The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition 3 have been implemented; and the following conditions have been complied with:**

**4.1 Arrangements to the satisfaction of the City being entered into to provide for legal access from Cape Naturaliste Road to the development site across the 1.0m wide portion of adjoining recreation reserve (Lot 4959, R42673).**

- 4.2 All vehicle parking, access ways, footpaths and external lighting shall be constructed in accordance with the Australian Standard for Parking Facilities - Off-Street Car Parking (AS 2890.1) and shall be developed in the form and layout depicted on the approved plans to the satisfaction of the City.
- 4.3 Accessible car parking and access shall be provided and designed in accordance with the Australian Standard for Parking Facilities - Off-Street Car Parking for people with disabilities (AS 2890.6).
- 4.4 Exterior lighting shall be provided under all awnings, in parking areas and all entry points.
- 4.5 Buildings within the approved development shall be constructed in accordance with the 'Architectural Requirements' specified in the Environmental Noise Report dated 9 November 2020, prepared by Gabriels Hearne Farrell.

#### **Ongoing Conditions**

- 5 The works undertaken to satisfy Conditions 2, 3 and 4 shall be subsequently maintained for the life of the development; and the following conditions must be complied with:
  - 5.1 The Venue Management Plan for the development shall be implemented and maintained in accordance with the approval details.
  - 5.2 The Noise Management Plan for the development shall be implemented and maintained in accordance with the approval details.
  - 5.3 The southern crossover to Cape Naturaliste Road shall be provided with controlled access to be limited to use only by service vehicles exiting the site in a left-out movement only.
  - 5.4 No roller doors or screens are permitted to be installed to the windows fronting the commercial tenancies fronting Dunn Bay Road.
  - 5.5 All glazing to the commercial tenancies fronting Dunn Bay Road is to be clear, non-tinted glazing and shall not be subsequently obscured by alternative window treatments, signage or internal shelves.
  - 5.6 All doors to shop premises fronting Dunn Bay Road must be kept unlocked for customer access during all hours when the subject premises are trading.
  - 5.7 All services and service-related hardware, including antennae, satellite dishes and air conditioning units, being suitably located away from public view and/or screened to the satisfaction of the City.
  - 5.8 Compliance with the approved Waste Management Plan.
  - 5.9 The approved Bushfire Management Plan shall be implemented and maintained in accordance with the approval details and any recommendations therein.

**5.10 Landscaping and reticulation shall be maintained in accordance with the approved Landscape Plan to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die, or are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.**

**5.11 Within 6 months of the registration of an easement pursuant to Sections 195 and 196 of the *Land Administration Act 1997* over Lot 108 (no. 57) Dunn Bay Road, providing legal access to Lot 2 (no. 59) Dunn Bay Road and completion of the balance crossover on Lot 108 the relevant crossover onto Dunn Bay Road being amended to the specification and satisfaction of the City to allow for shared access to Dunn Bay Road. Within 30 days of the completion of the crossover the redundant portion of the cross over being removed and the area landscaped to the satisfaction of the City.**

#### **REASONS FOR ALTERNATIVE**

Seeking improved detail and clarity in the articulation of conditions and measures to limit potential amenity impacts to neighbouring residential and business premises.

Enhanced detail to be contained within the conditions is particularly sought relating to:

- the proposed Venue Management Plan (in particular trading hours and proposed patron numbers during those hours and noise mitigation measures),
- Drainage Management Plan with particular conditions to protect the Dugalup Brook,
- Odour Management Plan with express conditions requiring roasting and brewing activities to be managed to prevent impact on the amenity of neighbouring business and residential premises,
- protection of access to the Dugalup Brook Recreation Reserve, and
- safety measures or treatments, including any proposed footpath upgrades or extensions.

#### **OFFICER COMMENT**

While officers do not believe that the proposed changes to the conditions are necessary given the ability to request the additional detail through advice notes on any approval, the proposed amendments raise no significant issues in respect of timing, clarity or enforcement of the conditions. The proposed amendments are considered reasonable and can be supported.

#### **LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT**

Pursuant to regulation 22(7) of the *Local Government (Model Code of Conduct) Regulations 2021*, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.