



Ordinary Council Meeting

Agenda

18 September 2024



Our Vision

Where environment, lifestyle and opportunity meet

Community Aspirations



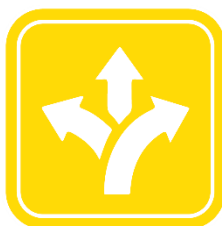
KEY THEME 1 **Environment**

An environment that is valued, conserved and enjoyed by current and future generations.



KEY THEME 2 **Lifestyle**

A place that is relaxed, safe and friendly, with services and facilities that support positive lifestyles and wellbeing.



KEY THEME 3 **Opportunity**

A vibrant City with diverse opportunities and a prosperous economy.



KEY THEME 4 **Leadership**

A Council that connects with the community and is accountable in its decision making.

NOTICE OF MEETING

TO: THE MAYOR AND COUNCILLORS

Notice is given that a meeting of the Council will be held in the Council Chambers, Administration Building, Southern Drive, Busselton on Wednesday 18 September 2024, commencing at 5:30pm.

Your attendance is respectfully requested.

DISCLAIMER

Statements or decisions made at Council meetings or briefings should not be relied on (or acted upon) by an applicant or any other person or entity until subsequent written notification has been given by or received from the City of Busselton. Without derogating from the generality of the above, approval of planning applications and building permits and acceptance of tenders and quotations will only become effective once written notice to that effect has been given to relevant parties. The City of Busselton expressly disclaims any liability for any loss arising from any person or body relying on any statement or decision made during a Council meeting or briefing.



TONY NOTTLE

CHIEF EXECUTIVE OFFICER

5 September 2024

BEHAVIOUR PROTOCOLS

The City of Busselton values are:

- Listening
- Considered Decision Making
- Appreciation
- Respect
- Teamwork

In accordance with these values, the following outlines the behaviour expectations while attending a Council meeting, Committee meeting, Community Access Session, or Public Agenda Presentation:

- Listen respectfully through the meeting or presentation
- Respect the Council process and comply with directions from the Presiding Member
- Use respectful language when addressing Council, staff, and other members of the public
- Behave in a manner that is respectful and non-confrontational
- Do not use offensive language or derogatory language towards others

The City values the diverse input of the community and seeks to ensure that all members of the community can attend a meeting and have their say.

Elected Members, Committee members and Candidates are bound by the City's Code of Conduct and agree to uphold the values of the City of Busselton and principles of good behaviour, maintaining and contributing to a harmonious, safe, and productive environment.

Anyone who does not behave in accordance with the above values and behaviours may be asked by the Presiding Member to leave the gallery.

CITY OF BUSSELTON

Agenda for the Council Meeting to be held on Wednesday 18 September 2024

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1. OFFICIAL OPENING

The City of Busselton welcomes elected members, staff, guests and members of the public to the Ordinary Council Meeting of 18 September 2024.

The City of Busselton acknowledges the Wadandi and Bibbulmun people as the traditional custodians of this region and pay respects to Elders past and present.

This meeting will be audio recorded for minute taking purposes and will also be live streamed on the City of Busselton YouTube channel.

A prayer will be read out as part of the opening of this meeting.

2. ATTENDANCE

PRESIDING MEMBER	MEMBERS
Mayor Phill Cronin	Cr Anne Ryan (Deputy Mayor)
	Cr Val Kaigg
	Cr Jodie Lee
	Cr Kate Cox
	Cr Mikayla Love
	Cr Richard Beecroft
	Cr Andrew Macnish
	Cr Jarrod Kennedy

OFFICERS
Chief Executive Officer
Director Infrastructure and Environment
Director Community Planning
Director Economic and Business Development
Director Corporate Strategy and Performance
Governance and Risk Coordinator
Governance Officer

APOLOGIES
Nil at time of publishing

LEAVE OF ABSENCE
Nil

APPLICATION FOR LEAVE OF ABSENCE	
Cr Richard Beecroft	20 November 2024

3. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

4. DISCLOSURES OF INTEREST

DISCLOSURES OF FINANCIAL INTEREST

A declaration under section 5.65 of the *Local Government Act 1995* requires that the nature of the interest must be disclosed. An elected member or employee who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter on which the subject of the declaration without the approval of the Council in accordance with the Act.

DISCLOSURES OF IMPARTIALITY INTEREST

Elected members and employees are required, in addition to declaring any financial interest, to declare an interest that might cause or perceive to cause a conflict. If the elected member or employee declares that their impartiality will not be affected then they may participate in the decision-making process.

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1. Ordinary Council Meeting 21 August 2024

RECOMMENDATION

That the minutes of the Ordinary Council Meeting 21 August 2024 meeting be confirmed as a true and correct record (as published at 5 September 2024 on the [City of Busselton's website](#), inclusive of any confidential material published on the restricted internal Docs on Tap application).

6. PUBLIC QUESTION TIME

Public question time allows members of the public to participate in local government by asking questions of the Council in relation to issues affecting the City.

6.1. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE

The following questions were taken on notice at the 21 August 2024 Ordinary Council Meeting.

Below is a summary of the question and response provided by the CEO.

Mr Keith Sims

Question:

Can you confirm the planned location of signage in the Hilton car park?

Response:

The City will be liaising with the Hilton Garden Inn to finalise the planned implementation of signage prior to the Christmas / New Year holiday period. Once the plan has been finalised a copy can be provided.

Dr Andrew Dickie

Question:

Results of water testing in the Lower Vasse River conducted by the Department of Water and Environmental Regulation (DWER) showed toxic cyanobacteria exceeded dangerous levels as defined by the World Health Organisation and the Australian National Health and Medical Research Council on at least 20 occasions over a 6 week period between early December 2023 to mid January 2024. On how many occasions did the City of Busselton receive an email from the Department of Health recommending that warnings be issued?

Response:

Searches conducted by the City's Records Management team indicate that the City received email communication from WA Department of Health recommending that warnings be issued on one occasion between 1 December 2023 and 31 January 2024. This email was received on Thursday 28 December 2023.

Question:

How many permanent warning signs are there erected along the Lower Vasse River warning of cyanobacteria and how many temporary warning signs are proposed to be put up along the length of the Lower Vasse River next summer when dangerous levels are reached again?

Response:

There are currently nine (9) permanent signs and five (5) further locations where temporary signs are placed based on WA Department of Health advice.

6.2. QUESTION TIME FOR PUBLIC

Public question time procedures and guidance

- The City will allocate a minimum of 15 minutes and a maximum of 30 minutes per Council meeting for public question time.
- Members of the public should register their intent to ask a question at a Council meeting by completing and submitting the [Public Question Time form](#) before 4pm the day prior to the relevant meeting.
- Members of the public will be invited to ask their question in order of registration.
- Questions will be limited to three per person. Additional questions may be permitted by the Presiding Member where time permits.
- Where a person is not present to ask their submitted question it will be responded to administratively as general correspondence.
- Questions may be taken on notice, to be responded to at a later time by the CEO in accordance with clause 6.7 of the Standing Orders.
- Public question time is for the tabling of questions, not for members of the community to make statements. For context, the Presiding Member may allow a short preamble.
- Questions containing defamatory remarks or offensive language, or that question the competency or personal affairs of Elected Members or employees may be ruled inappropriate by the Presiding Member subject to the Presiding Member taking reasonable steps to assist the member of the public to rephrase the question.
- There will be no debate or discussion on the response provided.

For further information, please see the [Meetings, Information Sessions and Decision Making Processes Policy](#).

7. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS

7.1. PETITIONS

Extract from *City of Busselton Standing Orders Local Law 2018*

6.9 Petitions

- (1) A petition, in order to be considered by the Council, is to –
 - (a) be addressed to the Mayor;
 - (b) be made by the electors of the district;
 - (c) state the request of each page of the petition;
 - (d) contain the name, address and signature of each elector making the request;
 - (e) contain a summary of the reasons for the request;
 - (f) state the name of the person whom, and an address at which, notice to the petitioners can be given;
 - (g) be respectful and temperate in it's language.
- (2) Despite subclause (1), the Presiding member may allow a petition to be considered in circumstances where the petition complies with the majority if the requirements in subclause (1).
- (3) In response to a petition presented to it, the Council may determine –
 - (a) that the petition be received;
 - (b) that the petition be rejected;
 - (c) that the petition be received and referred to the CEO to prepare a report to Council or a committee; or
 - (d) that the petition be received and referred to the CEO for action.
- (4) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented at that meeting, unless –
 - (a) the matter is the subject of a report included in the agenda; and
 - (b) the Council has considered the issues raised in the petition.

7.2. PRESENTATIONS BY PARTIES WITH AN INTEREST

Extract from *City of Busselton Standing Orders Local Law 2018*

6.10 Presentations by parties with an interest

- (1) Once an agenda of a meeting of the Council has been issued, parties with a demonstrable interest in any item listed on the agenda for discussion may seek to present to the Council at the time during the meeting allocated for this purpose.
- (2) A person must demonstrate that they are a party with an interest in an item on the agenda by stating their name, the item to which they wish to speak, whether or not they are in agreement with the recommendation in the agenda and they are—
 - (a) the applicant or one duly authorised representative of the applicant;
 - (b) an adjoining neighbour sharing a common length of boundary or directly opposite neighbour of the affected property;

- (c) one person duly representing a community-based organisation where an item on the agenda has broad community impact and is associated with the objectives of the organisation; or
 - (d) such other person as in the opinion of the presiding member has a significant direct interest or is duly representing those that have a significant direct interest in the item.
- (3) A person addressing the Council on an agenda item will be limited to a period of 5 minutes unless the person is granted an extension by the presiding member.
 - (4) Where multiple parties wish to present on an item, the applicant (or their duly authorised representative) is to be given the opportunity to give the final presentation on the item.
 - (5) Members may, through the presiding member, question a person addressing the Council on the item but no debate or general discussion will be permitted.

7.3. DEPUTATIONS

8. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)

9. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY

ADOPTION BY EXCEPTION RESOLUTION EN BLOC

Extract from the *City of Busselton Standing Orders Local Law 2018*

5.10 Adoption by exception resolution

- (1) In this clause adoption by exception resolution means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the committee or employee recommendation as the Council resolution.
- (2) The Council may pass an adoption by exception resolution.
- (3) An adoption by exception resolution may not be used for a matter—
 - (a) that requires a 75% majority or a special majority;
 - (b) in which an interest has been disclosed;
 - (c) that is a matter on which a member wishes to ask a question;
 - (d) that is a matter on which a member wishes to make a statement; or
 - (e) that is a matter on which a member wishes to move a motion that is different to the recommendation.
- (4) A member who wishes to ask a question or make a statement in relation to a matter that would otherwise be within an adoption by exception motion should, as far as practicable, notify the CEO by 3pm on the day before the meeting.
- (5) A member who wishes to move a motion that is different to the recommendation in a matter that would otherwise be within an adoption by exception resolution should, as far as practicable, give notice of the motion that –
 - (a) is in writing;
 - (b) identifies the matter and gives the reason or reasons for the motion; and
 - (c) is given to the CEO by 3pm on the day before the meeting.
- (6) Where a member intends to move a motion referred to in sub-clause (5), the CEO must be given an opportunity to provide advice to the Council prior to consideration of the motion, in accordance with section 5.41 (b) of the Act .

10. REPORTS OF COMMITTEE

10.1. Busselton Margaret River Airport General Aviation Precinct Lease

Strategic Theme:	Key Theme 3: Opportunity 3.4 Develop aviation opportunities at the Busselton Margaret River Airport.
Directorate:	Economic and Business Development
Reporting Officer:	Manager Airport - Jennifer May
Authorised By:	Director Economic and Business Development - Maxine Palmer
Nature of Decision:	Contractual: To enter into a contract e.g. a lease or the award of a tender etc.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Design option - layout 1 [10.1.1 - 1 page] 2. Design option - layout 2 [10.1.2 - 1 page]

This item was considered by the Airport Advisory Committee at its meeting on 21 August 2024, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council:

1. Not enter into the head lease arrangements proposed by the Busselton Aero Club for the occupation of a portion of Lot 1974, Deposited Plan 411016, Volume 2931, Folio 507, 86 Neville Hyder Drive Yalyalup as referred to as B6, B7 and B8 on Attachment 1; and
2. That the Council authorise an extension to the existing Busselton Aero Club lease arrangements to 2030 and considers the negotiation of a financial contribution of up to \$300,000 to be paid by the City to the Busselton Aero Club, on expiry of the lease. The purpose of the financial contribution is to be for the construction of a new hanger and clubroom in the General Aviation precinct in the location marked H1 in attachment 2.
3. Following the completion of the negotiation in point 2, the CEO is to bring a report back to the Council to vary the current lease arrangements with the Busselton Aero Club.

OFFICER RECOMMENDATION

That the Council not enter into the head lease arrangements proposed by the Busselton Aero Club for the occupation of a portion of Lot 1974, Deposited Plan 411016, Volume 2931, Folio 507, 86 Neville Hyder Drive Yalyalup as referred to as B6, B7 and B8 on Attachment 1.

EXECUTIVE SUMMARY

The City has been in discussions over the past two years with the Busselton Aero Club (Aero Club) regarding a proposal for the Aero Club to lease an area within the General Aviation precinct, including hangar lots B6, B7 and B8 at the Busselton Margaret River Airport (BMRA). This report makes a recommendation not to enter into a lease arrangement with the Busselton Aero Club for a portion of Lot 1974, 86 Neville Hyder Drive being approximately 1,296m² for the purposes of subleasing to private pilots / aircraft owners for aircraft storage and aviation uses.

STRATEGIC CONTEXT

The Busselton Margaret River Airport has been identified in the City of Busselton's Strategic Community Plan (2021-2031) as one of the top five strategic priorities.

BACKGROUND

As part of the Busselton Margaret River Airport (BMRA) redevelopment project completed in 2018, a dedicated General Aviation (GA) precinct was constructed, including two apron areas, taxiway delta connecting the precinct directly to the runway and an original design incorporating up to 34 serviced hangar lots ranging in size from 180- 875m².

In 2018 the City advertised a Registration of Interest (RoI) which included the following proposed lease arrangements:

- Term – 10 years plus a further two 5 year options;
- Rent – market valuation in the range of \$9-\$11 (excl GST) per square meter per annum;
- Rent reviews – every five years with all other years subject to CPI (Perth All Groups) rent reviews; and
- Outgoings – the Lessee to pay City of Busselton rates, water consumption (individually metered), electricity (individually metered), communications/NBN and insurances (including Property, Public Liability and Hangar Keepers).

The RoI was advertised widely in October 2018 including all West Australian aero clubs and aviation businesses located in Perth and Jandakot Airport precincts. Three RoI submissions were received however no leases were entered into. There were a number of reasons that contributed towards the lack of submissions received, including:

- Capital funding for hangar construction was difficult to achieve;
- The majority of the hangar lot sizes were considered too small with limited larger sized hangar lots available;
- Lease term was considered too short (minimum of 30 years was preferred); and
- There was no 'buy back' clause of hangar infrastructure available in the lease.

The GA precinct continued to remain vacant and in 2021 officers revisited the layout of the precinct including feedback received during the last RoI. Officers prepared a new Expressing of Interest (EoI) for hangar ground leases to be advertised and requested a budget allocation from Council for the construction of up to three smaller hangars (150 m²) to facilitate aircraft owners that did not want to build their own hangars. The EOI advertised the availability of hangar ground leases where lessees would construct their own hangars and leases for constructed hangars whereby the City would construct hangars based on demand and secured interest from aircraft owners. The EoI was advertised in late 2021 and while officers received interest in leases, the cost of hangar construction

had more than doubled following the COVID pandemic and associated supply chain impacts and no leases were executed.

In parallel, officers applied to the WA Planning Commission to extend the lease term from 21 years, to 21 years plus an option for a further 21 years, totalling up to 42 years. The WA planning Commission approved the lease term extension in March 2022.

With the cost of hangar construction having significantly increased and aircraft owners requesting a range of hangar lot sizes to facilitate hangar construction that would allow multiple aircraft storage and shared costs amongst several owners, officers revisited and redesigned the GA hangar precinct. Consultation and feedback was sought from the Aero Club and local private pilots and a design review resulted in two different design options with a range in number of hangars and hangar sizes from approximately 400m² to 1,485 m² (Attachment 1 and 2). The second design option was seen as the preferred option as it provides for a higher number of hangars optimizing the use of the GA precinct with 39 hangars ranging in size from 216m²-1485m². Noting that the design requires additional 2,095m² in apron (pavement) areas to be constructed, it is not proposed that the total apron area be constructed at one time but as the hangar lots are leased and the relevant hangars are constructed.

Following consultation of the design options, the Aero Club expressed its interest in a proposal with design option 2 to lease a large portion of the GA precinct from the City and then to enter into subleases directly with interested pilots/aircraft owners. The Aero Club would 'act' as a management agent in advertising and securing tenants and assume responsibility for the sublease arrangements. The City would deal directly with one entity, being the Aero Club through a head lease and the Aero Club would manage the individual subleases.

Since late 2022, officers have met numerous times with the Aero Club to discuss their proposal and sought market valuations in January 2023 and January 2024 as the basis for negotiations and have reached a point where a proposal is ready for final consideration. The valuation reports have valued the hangar lots at the following;

Site	2023	2024
A1-A4	\$14-\$16 m2	\$20-\$22 m2
B1-B8	\$16-\$18 m2	\$20-\$22 m2
C1-C3	\$17-\$19 m2	\$18-\$20 m2
C4-C6	\$15-\$17 m2	\$17-\$19 m2
D1-D4	\$13-\$15 m2	\$14-\$16 m2
H1	\$15-\$17 m2	\$16-\$18 m2
H2	\$15-\$17 m2	\$16-\$18 m2

OFFICER COMMENT

The Aero Club's proposal is to lease GA hangar lots (A1-A4, B1-B8) adjacent to the GA southern apron through a head lease with the City, with the intent of subleasing to private pilots/aircraft owners. The Aero Club will source tenants, including where tenants will partner to share construction and subleasing costs for their hangars.

Initial discussions with the Aero Club in 2023 started with head lease arrangements including all hangar lots located adjacent to the GA southern apron (A1- A4, B1, B6-B8), the base rental rate being \$13-\$17 per square metre, a 20% discount to be applied to the base rent, a term of 21 years plus an option for 21 years, inclusion of rates and utilities, a rent free period during construction and the City constructing the apron areas.

As negotiations have progressed and to facilitate affordable head lease costs, the Aero Club are now proposing to enter into multiple head leases over time, each for a specified grouping of hangar lots per lease, with the initial head lease including hangar lots B6, B7 and B8. The head lease would be for a term of 21 years plus an option for 21 years, a base rental value of \$9.60 per square metre, a 20% discount on the base rental value for the term of the lease and a rent-free period of up to 2 years. Notably the proposed rental value of \$9.60 per square metre is considerably below the market valuation of \$20 per square metre, received in January 2024 for these sites.

The Aero Club's proposal includes a set rateable value of \$200 per hangar per annum compared to the minimum rateable value of \$1704 (2,023/24) per property per annum.

The Aero Club's proposal includes a first right of refusal on the remaining hangar lots A1-A4, B1 and B5 for a 'restriction period' of three years. If during the restriction period the City wishes to lease the lots, the City will first offer the lots to the Aero Club who shall have the first right of refusal to take up a lease, which is to be exercised within 60 days.

The Aero Club are also requesting that lot H1 be reserved for the Aero Club hangar and clubrooms that would be built adjacent to the club hangar. That lot H1 be reserved at no cost to the Aero Club and when ready to execute a lease this would be at a peppercorn rent. The Aero Club are further requesting the City contribute \$300k towards the construction of the Aero Club hangar with the Aero Club contributing towards the design of the hangar/clubrooms and \$100k towards construction. Once constructed, the Aero Club would vacate the existing built hangars within 60 days and vacate the Aero Club clubrooms within 24 months of completion of the new hangar.

The perceived benefits to the City of the Aero Club's proposal can be summarised as follows:

- The Aero Club have existing networks and access to general aviation pilots/aircraft owners and likely to secure hangar tenants, particularly where 2 or more hangar owners are needed to secure the construction of one hangar building;
- Potentially reduces the City's resourcing needs with liaising with a single lessee (the Aero Club) versus multiple tenants and allows for focus in other airport areas;
- Aligns with Aero Club's objectives to grow their membership and create a vibrant GA community;
- Provides the Aero Club with a revenue stream to fund the hangar and clubrooms;
- Facilitates the Aero Club transitioning to the GA precinct, freeing up the existing clubrooms and hangar for future master planned objectives.

The identified risks to the City of the Aero Club's proposal can be summarised as follows:

- The Aero Club are not able to secure tenants and 'hold up' other potential leasing opportunities for a minimum of 2 -3 years;
- The Aero Club are unable to meet the terms and conditions of the head lease and assign the subleases to the City within the term of the lease;
- The Aero Club's sub-lessees do not pay their rent leaving the Aero Club exposed to head lease costs;
- The Aero Club do not manage the subleases effectively resulting in non-compliance;

- The Aero Club do not achieve the funding required to relocate to the GA precinct and want to remain at the existing clubrooms and hangar;
- The Aero Club's hanger rents negatively influence the City's rents in the broader GA precinct resulting in a reduced commercial income to BMRA;
- The Aero Club becomes a competitor to BMRA for tenancy arrangements; and
- The Aero Club proposal does not provide the City with sufficient revenue to cover future apron maintenance costs.

The Aero Club's proposal includes the following lease arrangements:

	Head lease (City)	Sublease (private owner)
Permitted use	Aircraft storage / aviation use	Aircraft storage / aviation use
Term	21 years	21 years
Further Term	option of 21 years	option of 21 years
Lease premises (lots)	Initial head lease B6, B7, B8	
Base Rent	\$9.60 m ² (\$8.00 sqm after discount)	\$15 m ²
Rent discount	20% duration of lease	-
Rent Free period	First 2 years	Allowed 3 months for construction
Exclusive option on premises	A1 –A4, B1, B5 - 5 years + 5 year option	NA
Rates	\$200 per hangar	\$200 per hangar
Utilities	Metered	\$150 per hangar

The proposal also requests that the City contribute \$300k towards the construction of the club hangar, this is in addition to the City constructing the new apron areas required for the GA precinct design option 2. The City's total contribution could be in excess of \$500k.

One of the key drivers for the Aero Club's proposal is to relocate to the GA precinct is due to the existing lease for the Aero Club building expiring 31 March 2028 and the hanger lease on 31 March 2028. The City entered into 4 year leases for both the Aero Club building and hangar in April 2024 to facilitate the Aero Club as they do not have the funds currently to relocate to the GA precinct, allowing extra time for the Club to secure funding. The Aero Club's proposal has the potential to generate income for the Club, along with other revenue streams such as flight training to facilitate funding the construction of the new club hangar and club house within the next 4 years and enable the relocation.

The Aero Club's proposal does have the potential to provide the Aero Club with a modest income stream over the term of the head lease (21 Years) as detailed in the financial implications section. However, the Aero Club's income is not significant over the term (in the region of \$600k) and reduces the City's revenue compared to the City leasing the hangar lots directly. The proposal is also dependent on the City agreeing to a head lease rate of \$8 per square meter, with the proposal being unviable for the Aero Club at higher rental rates or market valuation rates.

With officers considering the risk profile of the proposal to be high, sensitive to rate changes and the overall returns to both the City and Aero Club not resulting in the highest revenue streams possible for either party, Officers are not recommending the proposal.

Officers have considered the following alternatives to the proposal:

1. The Aero Club's Leases are extended for an additional 5 year term, expiring in 2033.

As part of this option, the City does not provide any funding contributions to the Aero Club for the construction of the new hangar and club rooms located in the GA precinct. The Aero Club are given an extended lease term that will enable them to continue their club activities including flight training with the additional lease term enabling the club to accumulate the funding required to relocate in 2033 or before if there is sufficient funding.

The main disadvantage of this option for the City is that the existing Aero Club building remains unavailable for repurposing for other uses, including the use of the existing hangars. The Master Plan "Ultimate" development shows the area where the Aero Club building and existing hangars are redeveloped for other aviation servicing, maintenance and storage facilities and while this is beyond the 2033 timeframe, the Aero Club building and central apron have been reserved for emergency services (DFES, DBCA) firefighting areas once the new terminal is constructed and operational.

Assuming, the new terminal is operating from 2028, DFES firefighting operations will be relocated to the central apron with the existing Aero Club building used as a shared use emergency services base and the existing terminal repurposed for Fixed Based Operators (FBO). With the Aero Club building under lease the existing terminal building will need to be used as the emergency services base. This will result in underutilisation of the existing terminal and potentially limit other FBO opportunities.

2. The City negotiate a funding contribution to be aligned with the expiry of the lease in 2028.

The City could reserve the H1 lot and apron areas in the GA precinct at no cost to the Aero Club and negotiate a fixed funding contribution to coincide with the expiry of the Aero Club building lease in 2028. This would provide the Aero Club with four years to build up reserves for the relocation to the GA precinct with the added confidence that they have a known contribution towards the relocation. The key risk with this option is that the Aero Club are unable to build up sufficient reserves in the four years, even with a City funding contribution and are unable to relocate to the GA precinct.

Statutory Environment

Local Government Act 1995

Should the Council wish to support the proposed lease arrangement with the Aero Club, the grant of a lease will constitute a disposal requiring advertising in accordance with section 3.58 of the *Local Government Act 1995*. Once the terms of the lease have been finalised, local public notice of the lessee, the rent paid and the lease term will be given inviting submissions to be made within a certain period. Council are required to consider any submissions received. If no submissions are received the Officer recommendation seeks approval for the CEO to enter into the lease.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Airport Master Plan Busselton Margaret River Airport 2023-2043

Policy:

Not applicable.

Financial Implications

The financial implications associated with the Aero Club’s proposal can be separated into the following categories;

1. The City enters into a headlease with the Aero club based on their proposal:

The following financials are based on the below assumptions:

Head lease - City/Aero club

- Rent at \$8.00 sqm (inclusive 20% discount)
- First 2 years free
- Rates charged at \$200 per hangar pa
- Utilities at cost

Sublease - Aero club/tenant

- Rent at \$15 sqm
- Rates at \$200 per hangar pa
- Utilities \$150 per hangar pa
- Administration fee \$250 per hangar pa
- Assumes 4 months construction free rent period

Aero Club financial forecast:

Period	1	2	3	4	5	6	7	8	9	10-21	Total
Hangars leased	4	6	10	14	18	22	25	27	27	27	27
City rent income	0	0	\$6912	\$10368	\$17280	\$24192	\$31104	\$38016	\$43200	\$46656	\$730,944
Rates income	\$800	\$1200	\$2000	\$2800	\$3600	\$4400	\$5000	\$5400	\$5400	\$5400	
City Total income	\$800	\$1200	\$8912	\$13168	\$20880	\$28592	\$36104	\$43416	\$48600	\$52056	\$826,344
BAC rent income	\$9072	\$17496	\$28512	\$41472	\$54432	\$67392	\$78084	\$85536	\$87480	\$87480	
BAC admin fee/rates income	\$1800	\$2700	\$4500	\$6300	\$8100	\$9900	\$11250	\$12150	\$12150	\$12150	
BAC admin costs	\$14300	\$14300	\$14300	\$14300	\$14300	\$14300	\$14300	\$14300	\$14300	\$14300	
BAC net position	-\$4228	\$4696	\$9800	\$20304	\$27352	\$34400	\$38930	\$39970	\$36730	\$33274	\$607,242

The above table does not include utilities or inclusive of CPI annual increases or rent review increases.

Based on the above assumptions of rent, outgoings, rates, construction costs estimated at \$120k per hangar (area 216sqm), each sublessee would be paying on a principle plus interest loan

approximately \$18,000 per annum and \$13,600 per annum on an interest only loan over a 21 year period.

The Aero Club have assumed in their analysis that rates would be discounted, if rates were to be charged on the rateable value of the lease sites, then based on the existing hangers rating assessments, it is considered that the minimum rates would apply for both the vacant and improved stages (once hangars have been constructed).

Each site, in addition to rates be subject to an Emergency Services Levy and the City's Waste Infrastructure charge. Based on the 2023/24 financial year, the following would have applied to each site:

- Rates \$1,517.00
- Emergency Services Levy \$98.00
- Waste Infrastructure charge \$87.50

Hence the total charges for rates, waste and ESL would be \$1,702 per lease. The number of subleases per head lease on average is likely to be 4 which would increase the rates by greater than twice the value the Aero Club have allowed for in their projections. While this will be passed onto the tenant, this may impact the affordability of the subleases.

From the figures above it can be seen that the City's revenue from the Aero Club proposal is estimated to be around \$730k over the first 21 years. The capital costs of the apron area is estimated to be in the range of \$160k – \$190k. If the City were also to contribute \$300k towards the Aero Club hangar this would result in the total net income from the GA precinct over 21 years to be in the region of \$240k. Within the first 21 year term, the maintenance costs of maintaining the GA precinct are unlikely to be covered by the net income received over the period, particularly if another apron reseal or rejuvenation is required.

There is the opportunity to repurpose and lease the Aero Club club house which is currently on a peppercorn lease of \$245 pa and re-lease the two existing hangars for which the current rental income is \$7,115 pa each which would offset some of the lost revenue to the City.

2. The second option is for the City to decline the Aero Clubs proposal and to lease directly to private pilots and aircraft owners.

The City would enter into ground leases with individuals where they would build their own hangars. With the current design option 2, this involves building hangars of a minimum size of 432sqm or 864 sqm and potentially subdividing into smaller hangars. There are several options whereby tenants could invest in the capital cost of a larger hangar (864 sqm hangar estimated at \$500k - \$550k) or for aircraft owners to partner and build shared hangars.

The table below shows the approximate rental return if the City were to lease two or four hangar lot sizes, based on the market valuation.

	2 x hangar - 432 m ²	4 x hangars - 864 m ²
Market rent \$20/m²	Rent - \$8640 pa Apron cost \$20,000-\$25,000 Total City income pa \$11,440 Utilities at costs Income 21 years \$168,480	Rent - \$17,280 pa Apron cost \$20,000-\$25,000 Total City income pa \$22,880 Utilities at costs Income 21 years \$336,960

Discounted rent at \$15/ m²	Rent - \$6480 pa	Rent - \$12,960 pa
	Apron cost \$20,000-\$25,000	Apron cost \$20,000-\$25,000
	Total income pa \$9280	Total income pa \$18,560
	Utilities at costs	Utilities at costs
	Income 21 years \$126,360	Income 21 years \$252,720

Based on the above two examples the income over the 21 years to the City (not including rates and allowing for a 2 year rent free period), would be as follows:

Period	1	2	3	4	5	6	7	8	9	10-21	Total
Hangars leased	4	6	10	14	18	22	25	27	27	27	27
Lease at \$20 sqm	0	0	17,280	25,920	43,200	60,480	77,760	95,040	108,000	116,640	2,060,640
Lease at \$15 sqm	0	0	12,960	19,440	32,400	45,360	58,320	71,280	81,000	87,480	1,370,520

*The above table does not include any CPI or rent increases.

Another alternative is for the City to construct the blocks of hangars and then lease individual hangar space. This option requires the City to fully fund the capital investment needed with a block of four hangars with construction costs being estimated at \$500k - \$550k. Current rental values for the existing hangars at the BMRA start from \$35 per square meter and previous rental valuations have indicated a rate of \$40-45 per square meter for constructed hangars could be applied. This results in rental income of approximately \$35,000 - \$39,000 per annum for a block of 4 hangars and a return on capital investment within 14- 15 years. With this option the total capital investment needed by the City to build all hangars is estimated to be in the range of \$2.5 - \$3million. If the capital costs of \$3million are to be loan funded at 4.5% over 15 years and the starting rent is at \$40m², then the return on investment including interest is closer to 23 years.

External Stakeholder Consultation

City officers have consulted with the Busselton Aero Club and private pilots interested in ground leases and hangar lease over the past two years.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City’s risk management framework, with risks assessed taking into account any controls already in place.

Risk The Aero Club are unable to raise the funds required to relocate to the GA Precinct and rely on the City financial support to achieve this outcome.			
Category	Consequence	Likelihood	Rating
Financial Operational	Moderate	Unlikely	Medium
Context			
The Aero Club’s proposal is not endorsed by the Council and reduces the Aero Club’s ability for revenue streams to fund their relocation to the GA precinct and they continue to occupy the existing club house and hangars. The City are then required to provide financial support to relocate the club to the GA precinct.			

Risk The City funds the construction of the hangars through reserve funds or loans and does not achieve the rental returns projected.			
Category	Consequence	Likelihood	Rating
Financial	Moderate	Possible	Medium
Context			
The City loans or uses Airport Reserve funds for the construction of the GA hangars and is unable to lease out the hangars or does not achieve the rental rates to ensure a return on the investment within an acceptable timeframe.			

Risk The City takes out loans to fund the construction of the hangars which then impacts the City’s lending capacity to raise loans for other significant City projects.			
Category	Consequence	Likelihood	Rating
Financial Reputation	Moderate	Possible	Medium
Context			
Other City projects are as yet fully costed, however the City has a healthy borrowing capacity			

and substantial reserve funds.

Options

As an alternative to the proposed recommendation the Council could:

1. Choose to enter into a head lease/sublease arrangement in line with the Aero Club’s proposal; noting the reasons outlined in this report as to why officers are not recommending this option.
2. Choose to enter into a head lease/sublease arrangement based on alternate terms and conditions; noting that the Aero Club have expressly said they are unable to pay a higher rent to the City.
3. Make an alternate recommendation with regards to varying the existing lease arrangements with the Aero Club for the club house and / or hangars to provide the Club with the opportunity to save up for their relocation. The Aero Club President has indicated a preference for a further ten years.
4. Support a budget amendment to reallocate the \$300k from the BMRA 2024/25 budget for hanger construction to the Aero Club to support them to move from their existing leases for the club house and hangars to a new hanger/club room in the GA Precinct. This would require a further report to the Council for the budget amendment and the proposed lease terms and conditions and timeframes for the new arrangements to occur.

CONCLUSION

The General Aviation precinct was constructed as part of the BMRA Development project. The precinct has remained inactive for some time with one hangar lease executed and a small number of aircraft owners interested in individual hangars.

This report outlines a proposal from the Busselton Aeroclub to lease a portion of the GA precinct and then to sublease to private pilots. The proposal includes a significant discount on the headlease market rental value and discounted rates to provide a revenue stream for the Aeroclub to be more sustainable and fund their relocation to the GA precinct. The officers recommendation is not to enter into a head lease with the Busselton Aero Club as proposed and several alternative options for the Council’s consideration have been provided.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Advise Aero Club of the Council’s decision	Within one week of decision

11. COMMUNITY PLANNING REPORTS

11.1. DA24/0125 – Industry Extractive (Gravel) – Lot 1758 (No.161) Gulberti Road, Ruabon – Lot 1757 (No.49) Gulberti Road, Ruabon – Lot 61 (No.755) Ludlow-Hithergreen Road, Ruabon

Strategic Theme:	Key Theme 3: Opportunity 3.2 Facilitate an innovative and diversified economy that supports local enterprise, business, investment and employment growth.
Directorate:	Community Planning
Reporting Officer:	Planning Officer - Angela Satre
Authorised By:	Director Community Planning - Gary Barbour
Nature of Decision:	Regulatory: To determine an application/matter that directly affects a person's right and interests e.g. development applications, applications for other permits/licences, and other decisions that may be reviewable by the State Administrative Tribunal.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Stage 2 Proposal Plan Lot 61 Revision C dated 15 April 24 [11.1.1 - 1 page] 2. Development Site Plan dated 6 March 24 [11.1.2 - 1 page] 3. Works Summary Version 3 dated 11 July 2024 [11.1.3 - 5 pages] 4. Acoustic Assessment Revision 5 [11.1.4 - 16 pages] 5. Summary of Submissions DA 24 0125 [11.1.5 - 41 pages]

OFFICER RECOMMENDATION

That the Council determines:

1. This decision constitutes development approval for an Industry-Extractive (gravel) at Lot 1758, (No.161) Gulberti Road, Lot 1757 (No.49) Gulberti Road and Lot 61 (No. 755) Ludlow-Hithergreen Road ('the Development Sites'). The approval is valid for a period of five years from the date of approval.
2. The Development Sites must be fully rehabilitated, in accordance with the approved Rehabilitation and Staging and Extraction Plan, before the expiry date of this development approval.
3. The development must be undertaken in accordance with the following approved plans, as amended and in accordance with any plans approved pursuant to other conditions of this approval:
 - 3.1. Development Site Plan dated 6 March 2024
 - 3.2. Stage 2 Proposal Plan Revision C dated 15 April 2024
 - 3.3. Acoustic Assessment Revision 5 dated 5 July 2024
 - 3.4. Dieback Management Plan dated 20 February 2024
 - 3.5. Dust Management Plan dated 20 February 2024
 - 3.6. Ground and Surface Water Management Plan dated 20 February 2024
 - 3.7. Noise Management Plan dated 20 February 2024
 - 3.8. Rehabilitation Plan dated 6 March 2024
 - 3.9. Surface Water Management Plan dated 20 February 2024

3.10. Weed Management Plan dated 6 March 2024

3.11. Works Summary Version 3 dated 11 July 2024

Where there is a conflict between a condition of this development approval and any approved plan, the requirements of the condition shall prevail.

4. If at any time, any of the conditions have not been complied with, all extraction activities (including haulage) must cease until such time as the breach has been rectified, to the satisfaction of the City in writing.

PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS:

5. No works can occur on the Development Sites until the following plans and other things have been submitted to, and approved by the City:
 - 5.1. Lodge and have determined an application to cancel development approval DA20/0438.
 - 5.2. A 3D Digital Terrain Model prepared by a licensed surveyor for 161 (Lot 1758) Gulberti Road demonstrating the following in Australian Height Datum (refer to Advice Note d)):
 - a) Existing ground levels;
 - b) Proposed maximum extraction depth;
 - c) Minimum final ground levels after rehabilitation; and
 - d) Global Positioning System (GPS) coordinates of the boundaries of the stages, stockpiles, crusher and screening location.
 - 5.3. A Staging and Extraction Plan including but not limited to the following:
 - a) The updated extraction area divided into 2-hectare cells and indicating the sequence and timeframe within which each individual cell to be extracted and rehabilitated.
 - b) All existing and proposed development including all plant and equipment, stockpiles, bunds, settling ponds, drainage swales, washdown bays, internal roads, vegetation, and fencing.
 - c) Vegetation to be retained (refer to Condition 7.15).
 - d) A 10m vegetation buffer zone from the vegetation crown drip line (tree line).
 - e) Fencing of vegetation buffer zones.
 - f) Finished ground levels post rehabilitation which shall be a minimum of 700mm above the maximum seasonal ground water table.
 - 5.4. An amended Dust Management Plan shall be submitted and shall include, but is not limited to, details of an approved and adequate source of water to implement the approved dust management measures for the life of the development.
 - 5.5. An amended Rehabilitation Plan, prepared by a suitably qualified professional, shall be submitted to the satisfaction of the City of Busselton including demonstrating tree planting of endemic species within 161 (Lot 1758) Gulberti Road.

- 5.6. **An amended Surface Water Management Plan, prepared by a suitably qualified professional, to the specifications of Department of Water and Environmental Regulation (DWER) and to the satisfaction of the City of Busselton.**
- 5.7. **An amended Acoustic Assessment, prepared by a suitably qualified professional, to the specifications of DWER and to the satisfaction of the City of Busselton.**
- 5.8. **A new Noise Management Plan, prepared by a suitably qualified professional, addressing the recommendations in the amended Acoustic Assessment (as required by Condition 5.7 of this approval), including but not limited to:**
 - a) **Details of, and expected levels of noise emissions;**
 - b) **Details of noise reduction measures to be implemented to control noise (including vibration) emissions;**
 - c) **Noise complaint response procedures; and**
 - d) **Assumed mitigation included in noise modelling to be addressed and details of implementation.**
- 5.9. **The crossover to 755 (Lot 61) Ludlow-Hithergreen Road shall be constructed and sealed to the specifications and satisfaction of the City (refer to Advice Note e)).**
- 5.10. **Warning signage (Main Roads sign W5-22) shall be installed 100 metres from the approved crossover location on both approaches to the entrance/exit to 755 (Lot 61) Ludlow-Hithergreen Road.**
- 5.11. **Entry signage shall be erected within the lot boundaries of 755 (Lot 61) Ludlow-Hithergreen Road adjacent to the driveway and crossover, visible and legible to entering/exiting vehicles and shall include the following details:**
 - a) **Approved operating hours;**
 - b) **Site contact details;**
 - c) **Approved haulage route and times; and**
 - d) **School bus times.**
- 5.12. **A bond of \$30,000 (being an unconditional and irrevocable bank guarantee from an institution acceptable to the City) to be held by the City for Compliance Surveys, Road Maintenance, Dust Management and Rehabilitation, which is to be maintained for the life of the development and thereafter until the City is satisfied that the obligations imposed by this approval have been completed.**
- 5.13. **An executed legal agreement with the City (all associated costs being borne by the owner of the land or their nominee). The legal agreement shall provide for:**
 - a) **The ability for the City to use the bond, or parts of the bond as appropriate, and any costs to the City including administrative costs of completing or rectifying any outstanding works in accordance with the conditions of this development approval and any further costs;**
 - b) **Written authorisation from the owners of the land that the City may enter the Development Sites at any time to permit the City to complete or rectify any outstanding work the subject of the bond, to the satisfaction of the City acting reasonably;**
 - c) **If at any time any part of the bond is called upon, used or applied by the City in accordance with the legal agreement, the restoration of the bond to the full amount required by these conditions; and**

- d) The power to lodge an absolute caveat over the Development Sites to secure the City's interest (all associated costs with lodgement and removal being borne by the land owner or nominee).

5.14. A Stormwater Management Plan for the Development Sites, prepared by a suitably qualified professional, to the specifications of the DWER, in accordance with the DWER *Water Quality Protection Note No. 15 Basic raw materials extraction*, and to the satisfaction of the City of Busselton.

5.15. An Acid Sulphate Soils (ASS) Investigation, by a suitably qualified professional, and submitted to the specifications of the DWER and to the satisfaction of the City of Busselton. Subject to the outcomes and recommendations of the ASS Investigation, an ASS Management Plan shall be prepared and implemented on site from commencement of works to the satisfaction of the City of Busselton.

5.16. A Groundwater Monitoring Plan, to the specifications of DWER, which provides for:

- a) Location and type of on-site monitoring bores;
- b) Monitoring methodology; and
- c) Reporting schedule.

PRIOR TO COMMENCEMENT OF EXTRACTION CONDITION:

6. No material shall be extracted from the Development Sites until:

6.1 All of the plans and other things required by Condition 5 have been provided to, approved by, and implemented to the satisfaction of, the City.

6.2 The City has issued a 'Permit to Commence', confirming that extraction can commence.

ONGOING CONDITIONS:

7. The development must be carried out in accordance with all of the plans and other things approved pursuant to Conditions 1, 2, 3, 4, 5 and 6 and maintained for the life of the development. In addition, the following conditions must be complied with:

7.1. The development hereby approved shall be limited to:

- a) The excavation of gravel from its natural state from within the Stage 2 extraction area on 161 (Lot 1758) Gulberti Road and in accordance with the approved Staging and Extraction Plan required in abovementioned Condition 5.3;
- b) Haulage of gravel extracted from 161 (Lot 1758) Gulberti Road through 49 (Lot 1757) Gulberti Road;
- c) Crushing and screening of gravel extracted from 161 (Lot 1758) Gulberti Road at 755 (Lot 61) Ludlow-Hithergreen Road;
- d) Transportation of sand within 161 (Lot 1758) Gulberti Road for the purpose of recontouring and rehabilitation 161 (Lot 1758) Gulberti Road;
- e) Construction of internal roads and rehabilitation works.

At no time shall blasting works be carried out.

- 7.2. The extraction areas of the Industry-Extractive, hereby approved, shall at all times maintain a minimum setback of 20 metres from the eastern boundary of 161 (Lot 1758) Gulberti Road.
- 7.3. The Industry-Extractive operating at 161 (Lot 1758) Gulberti Road under development approval DA20/0438 (Stage 1), shall cease and be entirely rehabilitated prior to commencement of extraction operations in Stage 2, the subject of this approval.
- 7.4. Ground levels shall at no point be less than 24.9 metres AHD or closer than 500mm to the maximum seasonal ground water table (whichever is higher).
- 7.5. In the event the ground water table is intercepted, all works shall cease and the City is to be advised within 24 hours, in writing. Immediate remedial action shall be undertaken by, and at the full cost of the landowner of 161 (Lot 1758) Gulberti Road, to the specifications of DWER and satisfaction of the City. Extraction cannot recommence until a revised Staging and Extraction Plan with an increase in the height of the pit floor is submitted to and agreed by the City.
- 7.6. Stormwater is to be disposed of within the Development Sites, in accordance with the approved Stormwater Management Plan (refer to Advice Note i)).
- 7.7. No more than two hectares of the Stage 2 extraction area, the subject of this approval, is permitted to be extracted from at any one time. This area shall then be rehabilitated in accordance with the approved Rehabilitation Plan concurrently with extraction in the following two hectares area.
- 7.8. All plant, equipment and haulage vehicles associated with the development the subject of this approval shall only access and egress the Industry-Extractive from 755 Ludlow-Hithergreen Road.
- 7.9. A maximum of 70 truck movements (35 trucks entering and 35 trucks exiting) are permitted to exit/enter 755 (Lot 61) Ludlow-Hithergreen Road on any approved operating day. No truck movements shall be permitted on any other day or outside the approved operating hours.
- 7.10. The designated haulage routes and maximum truck movements that are permitted will be:
 - a) A maximum of twenty (20) truck movements north along Ludlow-Hithergreen Road, then west along Ruabon Road to Bussell Highway; and
 - b) A maximum of fifty (50) truck movements south on Ludlow-Hithergreen Road to Vasse Highway.
- 7.11. All plant, equipment and haulage vehicles associated with the Industry-Extractive the subject of this approval shall access and egress 755 (Lot 61) Ludlow-Hithergreen Road using the designated haulage routes. At no time shall Gulberti Road be used for haulage associated with the Industry-Extractive the subject of this approval.
- 7.12. Operating hours, including the use of any vehicle or machinery, or the transportation/haulage of materials, shall be restricted to the hours between:

- a) 7:00am and 5:00pm Mondays to Fridays; and
- b) 8:00am and 1:00pm Saturdays for rehabilitation works only.

No works of any kind are permitted on Sundays or public holidays.

- 7.13. Trucks may not arrive at or depart from the Development Sites prior to 7.00am and may not arrive at or depart from the Development Sites after 5:00pm (Monday to Friday excluding public holidays).
- 7.14. Entry and warning signage, required in abovementioned Conditions 5.10 and 5.11, shall be in place at all times.
- 7.15. Existing mature vegetation in the Stage 2 extraction area, the subject of this approval, shall be retained.
- 7.16. Trucks going to and from the Development Sites shall not use the designated haulage routes during nor within 15 minutes before or after scheduled school bus times, and with regard to any unforeseen modifications that may occur to this service, to the specifications and the satisfaction of the City of Busselton (refer to Advice Note n)).
- 7.17. The Applicant shall notify the City in writing of the scheduled school bus times prior to the commencement of each school term. The City may impose amended exclusion times as required and advise the Applicant in writing.
- 7.18. Should the Applicant fail to notify the City of the school bus service times, in accordance with abovementioned Condition 7.17, trucks going to and from the Development Sites shall not use the designated haulage routes between 7:00am and 8:30am and between 3:30pm and 5:00pm.
- 7.19. All stockpiles, overburden, transport and rehabilitation works shall be contained within the approved development area in accordance with the approved Staging and Extraction Plan.
- 7.20. All stockpiles (gravel) shall be maintained at a maximum height of no greater than 3 metres.
- 7.21. Upon completion of rehabilitation, there shall be no standing ground water.
- 7.22. An annual survey of Lot 1758 (No 161) Gulberti Road (in its entirety) from a practicing licensed surveyor shall be submitted to the satisfaction of the City no later than 1 September of each year (with the surveyor's attendance and report date to fall within 60 calendar days of the 1 September). The annual survey shall include a 3D Digital Terrain Model including Global Positioning System (GPS) coordinates and a report/statement by a licensed surveyor certifying:
 - a) The extent/size and location of the area which has been extracted;
 - b) The extent/size and location of the area which has been rehabilitated; and
 - c) The extent/size and location of the area which is currently under operation.
 - d) Details confirming that the conditions of this approval have been complied with and how the conditions have been complied with.

- e) **Monthly data from on-going ground water monitoring within the approved extraction area.**

7.23. No extraction operations, including the use of any vehicle or machinery or the stockpiling or transportation of extracted material, is to be undertaken on the Development Sites at any time when an annual written report is due after 1 September and has not been provided to the City.

7.24. No development, including the use of any vehicle or machinery or the stockpiling or transportation of extracted material, may be carried out at any time when any bond that is required to be in full force and effect is not in full force and effect.

7.25. Dewatering works are not permitted to be undertaken.

7.26. All surface water shall be managed on site to the specification and satisfaction of the City of Busselton and in accordance with the approved Stormwater Management Plan and approved Surface Water Management Plan(s).

7.27. No hydrocarbons (fuels, oils, lubricants etc) shall be stored within the pit area. All refuelling and maintenance must be carried outside of the pit area in bunded areas.

ADVICE NOTES

- a) **If the applicant and/or owner are aggrieved by this decision, including any conditions of approval, there is a right to lodge a request for reconsideration.**
- b) **If the applicant and/or owner are aggrieved by this decision, there may also be a right of review under the provisions of Part 14 of the Planning and Development Act 2005. A review must be lodged with the State Administrative Tribunal, and must be lodged within 28 days of the decision being made by the City of Busselton.**
- c) **This Decision Notice grants development approval to the development the subject of this application. It cannot be construed as granting development approval for any other structure shown on the Approved Development Plan(s), which was not specifically included in this application.**
- d) **The 3D Digital Terrain Model Survey data is to be delivered to the City of Busselton in 3D .dwg or .dxf with pdf copy to verify digital data. Please contact the City of Busselton prior to engaging the licensed surveyor.**
- e) **In accordance with the requirements of the *Local Government (Uniform Local Provisions) Regulations 1996*, any vehicle access from the land to a road or other public thoroughfare must be in accordance with the City's adopted Crossover Policy and Vehicle Crossovers Technical Specification. The crossover is required to be sealed for a minimum of 10 metres plus the length of vehicles expected to use the access. Loose material covering the crossover and driveway is required to be removed and any necessary repairs to the existing crossover and driveway implemented.**
- f) **In relation to the bonds required under this approval payment may be via cash and/or bank guarantee. Should a bank guarantee be provided you will need to provide the original, ink signed bond documentation from your relevant bank to the City.**
- g) **No dewatering of the extraction area is permitted without authorisation under the *Rights in Water and Irrigation Act 1914*.**

- h) You are advised that on-site refuelling of equipment is required to comply with the requirements of the Department of Mines, Industry Regulations and Safety. No major repairs or maintenance to take place on site.
- i) Stormwater impacts from the operation must be managed in accordance with the DWER *Water Quality Protection Note 15*. Stormwater flowing from disturbed areas, including areas for stockpiles, to be managed particularly for turbidity, to mitigate erosion and flood risks.
- j) The DWER advise that activities such as crushing and screening during extractive industry operations, may cause the premises to become prescribed for the purposes of Part V Division 3 of the '*Environmental Protection Act 1986*' (EP Act). This will occur if the proposed crushing and screening equipment has a design capacity (when operated 24/7 or at a capacity limited by a planning approval) that meets or exceeds the specified production or design capacity of the relevant category under Schedule 1 of the *Environmental Protection Regulations 1997*. The Applicant is therefore advised that their operation may meet the requirement for Prescribed Premises and as such they might require a works approval to construct/install the equipment (mobile or otherwise) and a licence or registration to operate. It should be noted that planning approvals may influence the Department's determination of production or design capacity, where an approval has the effect of restricting capacity (such as constraining hours of operation).
- k) DWER advise that under section 51C of the EP Act, clearing of native vegetation is an offence unless undertaken under the authority of a clearing permit, or the clearing is subject to an exemption. Exemptions for clearing that are a requirement of written law, or authorised under certain statutory processes, are contained in Schedule 6 of the EP Act. Exemptions for low impact routine land management practices outside of environmentally sensitive areas (ESA) are contained in the '*Environmental Protection (Clearing of Native Vegetation) Regulations 2004*'. No exemption applies to clearing in this case and therefore a clearing permit is required and amended to this development approval.
- l) The proponent is advised that they must comply with the *Environmental Protection (Noise) Regulations 1997* at all times.
- m) The proponent is advised that they must comply with the *Environmental Protection (Unauthorised Discharge) Regulations 2004*.
- n) School bus services currently operate from Vasse Highway north up Ludlow-Hithergreen Road before turning right onto Ruabon Road up to the intersection of Bussell Highway between 0740 and 0755 and travelling in the same direction between 1600 and 1615. Trucks are excluded from use of the designated haulage routes between 7:25am and 8:10am and between 3:45pm and 4:30pm on any given school day.

EXECUTIVE SUMMARY

The City has received a development application for an 'Industry – Extractive' (gravel). Material is proposed to be extracted from 161 Gulberti Road and hauled through 49 Gulberti Road to 755 Ludlow-Hithergreen Road, Ruabon ('the **Development Sites**') where it is proposed to be crushed and screened before being transported off site. Haulage is proposed from 755 Ludlow-Hithergreen Road using semi-trailers travelling north and south along Ludlow-Hithergreen Road.

This development application is the second stage of an extractive industry conditionally approved to operate on the Development Sites until July 2025 (DA20/0438). Due to the nature of the issues requiring consideration and comments received during the referral process, the application is being presented to Council for determination, rather than being determined by City officers acting under delegated authority.

Having assessed the application, including submissions received, City officers consider the application to be consistent with the City of Busselton *Local Planning Policy 2.3 – Extractive Industries* (LPP2.3) and is acceptable when assessed against the matters to be considered, as required in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the ‘Deemed Provisions’) at clause 67(2), subject to the application of conditions to any approval granted. The Council is recommended to exercise its discretion to grant conditional development approval pursuant to the Deemed Provisions clause 68(2).

STRATEGIC CONTEXT

In accordance with the City’s Strategic Community Plan the application is considered in the context of ensuring protection and enhancement of environmental values is a central consideration in land use planning.

BACKGROUND

The Development Sites obtained conditional development approval (DA20/0438) on 13 July 2020 for an Industry-Extractive for five years or until 168,750 cubic metres of material has been extracted. The final cell of this operation (referred to as ‘Previous Stage’ on the plan annexed as Attachment 1) is currently under extraction and abuts the northern boundary of the proposed extraction area (referred to as ‘Stage 2’ on Attachment 1).

Key information regarding the application and the Development Sites is set out below —

1. **Landowner/s:** Claire and Mark Wright, Jennifer Bolwell, Gilbert and Maureen Harbeck
2. **Applicant:** Harbeck’s Transport
3. **Site area:** In total the Development Sites are 175.5ha in size.
4. **General description of site and locality:** The Development Sites are located approximately five kilometres east of the intersection of Ruabon Road and Bussell Highway. The sites are bound by Ludlow-Hithergreen Road to the west and Gulberti Road to the south (refer to the locality plan in Figure 1 below).

Each of the Development Sites is established with a Single House.

The surrounding lots are zoned Rural and are used for agricultural purposes. There are nine Single Houses within 1.5km of the Development Sites. The closest approved dwelling is 512m to the south of the proposed extraction area. In addition, a shed converted to a house (without the necessary approvals) is located 360m to the south-west from the proposed extraction area. A plan which identifies the location of all surrounding dwellings within 1.5km of the Development Site is provided within Attachment 1.

Lot 62 Ludlow-Hithergreen Road, directly abutting the Development Sites to the north (refer to Figure 1 below), is the subject of a conditional approval granted by the Regional Joint Development Assessment Panel (JDAP) for an Industry-Extractive at its meeting on 12 February 2024.

A number of mines exist in the locality including Doral Mineral Sands Pty Ltd, located approximately 3.5km to the southwest of the Development Sites, and Cable Sands mining, located approximately 2.7km to the west of the Development Sites (refer to Figure 1). These mines are not subject to development approval by the local government and are approved and regulated under the *Mines Act 1978*.

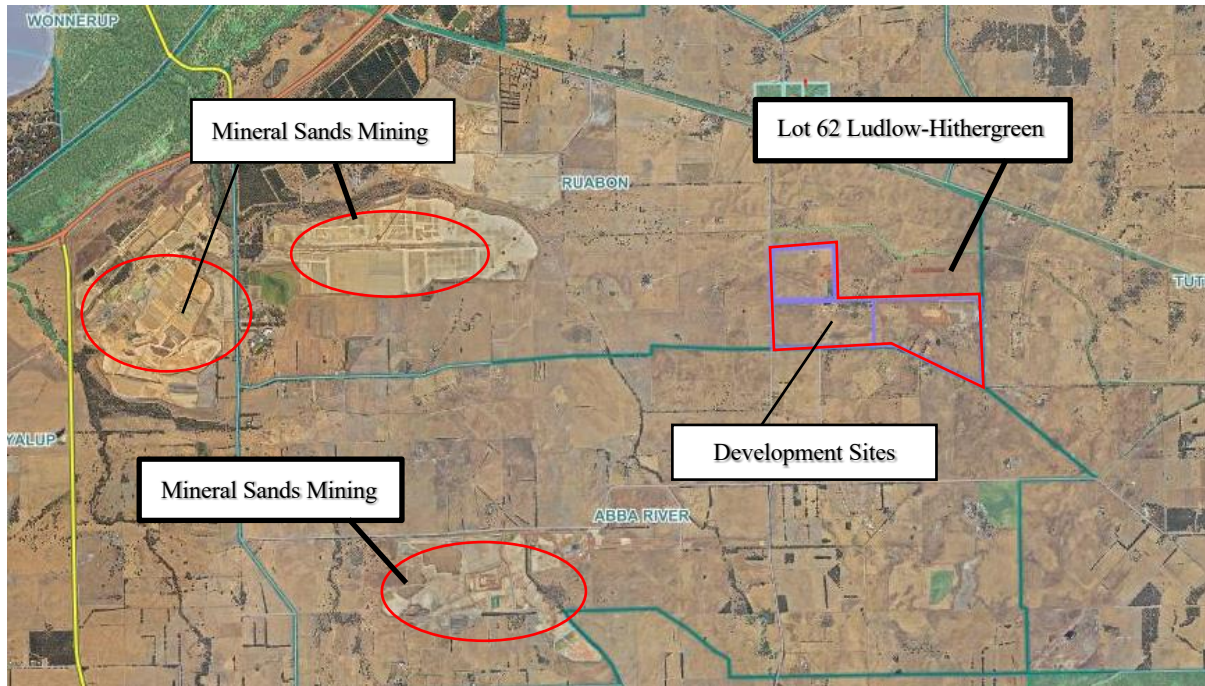


Figure 1: Locality Plan

5. Current development:

- 161 Gulberti Road - The southern and western portions of this site are currently used for agistment with extraction in the north-east.
- 49 Gulberti Road – An internal haulage road has been developed along the northern lot boundary.
- 755 Ludlow-Hithergreen Road - This site is currently used for crushing, screening and stockpiling gravel and is developed with a number of dams.

6. Brief description of proposed development: The Applicant has indicated that there is approximately 240,000 cubic metres of gravel to be extracted from 161 Gulberti Road over 13.6 hectares across eight cells. The extraction area is setback 20m to the eastern boundary and approximately 260m to the southern boundary (refer to the site plan annexed as Attachment 2). Extraction is proposed using a Surface Miner which relies on a rock crushing process. The material is then hauled to 755 Ludlow-Hithergreen Road, via 49 Gulberti Road, where it is crushed, screened and stockpiled for transport off site.

Operating hours are proposed from 7am to 5pm Monday to Friday and Saturdays from 8am to 1pm for rehabilitation only.

The Applicant proposes to sell the gravel to external contractors, using semi-trailers for haulage, transporting the material north and south from 755 Ludlow-Hithergreen Road. A maximum of 70 truck movements (35 entering and 35 exiting the site) are proposed on any operating day.

A minimum separation of 500mm to the maximum seasonal ground water level is sought by the City. Rehabilitation is proposed to result in no less than 700mm of fill above the maximum seasonal ground water table including topsoil.

7. **Applicable Zoning and Special Control Area designations:** The Development Sites are located within the Rural Zone under Local Planning Scheme No. 21 (LPS21).
8. **Land-use permissibility:** Industry – Extractive is an ‘A’ use in the Rural Zone, meaning it is a use that may be permitted in the Zone at the reasonable discretion of the City, following a compulsory period of consultation and consideration of any submissions received. Under LPP2.3 the Development Sites are located within Policy Area 3, which is considered less constrained than other policy areas due to the primarily agriculture nature of the area.

The following attachments are provided –

- Attachment 1 – Stage 2 Proposal Plan Revision C dated 15 April 2024
- Attachment 2 – Development Site Plan dated 6 March 2024
- Attachment 3 – Works Summary Version 3 dated 11 July 2024
- Attachment 4 – Acoustic Assessment Revision 5 dated 5 July 2024
- Attachment 5 – Schedule of Submissions

OFFICER COMMENT

The application has been assessed in accordance with relevant planning legislation and the State and local planning policy framework. Key issues which have arisen for consideration in the determination of the application are discussed further below.

Compliance

Compliance of the existing extractive industry operations on the Development Sites has been raised as an ongoing issue of concern. Pursuant to clause 67(2) of the Deemed Provisions, compliance of an existing operation is not a matter the local government is able to have due regard in its assessment of a development application. In accordance with the *Planning and Development Act 2005*, the local government is obligated to assess the application before it based on its merits and relevant factors at the time. The City is required to assess and determine the subject application based on the details provided, the outcome of the consultation period, and with regard to the statutory environment.

It is noted that since the decision to conditionally approve the previous extractive industry on the Development Sites, the City has made several procedural changes to improve the City’s response and management of extractive industry compliance. In addition, conditions of development approval have been continually revised to improve compliance response and outcomes.

Volume as an assessment measure

While volume has historically been used as a measure of extraction, more recently the City has moved toward use of contour plans and 3D digital terrain modelling to determine the extent of extractive industry operations. These are considered a more accurate and accountable standard by which to determine the extent of operations and accordingly, conditions of development approval

reflect these standards. Should development approval be granted, it is recommended that conditions requiring 3D digital terrain modelling be submitted prior to commencement of works, and subsequent 3D digital terrain modelling be provided by the Applicant to the City every year as part of their annual reporting requirements.

Concurrent Development Approvals

Concerns have been raised in relation to the proposed Stage 2 of the extractive industry operating at the same time as the Previous Stage already approved on the Development Sites. The Applicant has indicated that majority of the material from the Previous Stage has already been extracted and rehabilitation has already occurred with the exception of the final cell. The Applicant has indicated their intention to use this open stage to park machinery when commencing extraction in the first extraction cell in Stage 2 during any overlapping approval timeframe. Notwithstanding, should development approval be granted it is recommended conditions are applied to ensure extraction from the two stages does not occur at the same time and that the Previous Stage/Stage 1 is completed, including rehabilitation, before Stage 2 commences.

State Government Permits and Approvals

Concern has been raised regarding historical land clearing, as early as 1996, and compliance with Department of Water and Environmental Regulation (DWER) licensing requirements including works approval requirements for 'Prescribed Premises' in accordance with Part V of the *Environmental Protection Act 1986*.

Compliance with State Government requirements, including clearing permit requirements, is a matter for each agency and the application has been referred to DWER for compliance assessment in this regard. Advice notes are also recommended on any approval to reflect State Government approval requirements.

It is noted that DWER licensing and approval requirements are independent to local government processes. While there may be overlap in the matters considered by each authority, the local government is obligated to assess and determine the subject application on its merits notwithstanding State Government requirements.

Vegetation Impacts

The Applicant initially advised that several paddock trees would be removed within the proposed extraction area. The development plans show thirteen trees within the Stage 2 extraction area and a site inspection confirmed that at least two trees are mature *Corymbia calophylla* (marris). DWER advise that a clearing permit is required as the removal of vegetation is located within an Environmentally Sensitive Area.

Should development approval be granted it is recommended that a condition be imposed that all trees be retained and a 10 metre buffer zone from the crown drip line of each tree be applied to ensure extraction operations do not damage these trees. Should the Applicant obtain a clearing permit from DWER they may apply to the City to amend this condition of development approval to remove the relevant conditions.

Groundwater Separation

The Applicant sought a reduction in the separation to the maximum seasonal ground water level to 300mm, City officers do not support the variation and a separation of 500mm is required, consistent with LPP2.3 section 4.2.3 (f) and as supported by DWER. The required 500mm of separation would result in 700mm separation above ground water after rehabilitation (500mm of fill plus 200mm topsoil) and is considered a best practice approach given the effect of soil loss due to erosion over time and is consistent with soil and land conservation principles and objectives of the Zone toward supporting agricultural production. This requirement is reflected as a recommended condition.

Concern is also raised regarding the lack of data provided regarding the perched water table. More detail is needed as to how impacts to the perched water table are to be managed. Conditions are recommended requiring the Surface Water Management Plan to be reviewed in this regard.

The City supports extractive industry operations incorporating ground water monitoring, with data reported to DWER, in order to inform understanding of ground water levels more broadly. Conditions are recommended requiring water monitoring to the specifications of DWER.

Haulage Route and School Bus Exclusion Times

The LPP2.3 section 4.2.5.2 requires a haulage exclusion time of 15 minutes of scheduled school bus times on scheduled school bus routes. Whilst haulage is proposed via third party operators, the Applicant is required to take all reasonable steps to ensure compliance with haulage routes and exclusion times specified in conditions of approval. Appropriate conditions are recommended to reflect these limitations.

Haulage Routes and Truck Movements

Following the advertising period in April, the application was amended from a maximum of 20 truck movements per day (10 truck movements to the site and 10 truck movements off the site) to 70 truck movements per day (35 truck movements to the site and 35 truck movements off the site).

The LPP2.3 specifies road standards (refer to LPP2.3 Table 3) based on the addition of the proposed maximum number of truck movements of an extractive industry to the existing average Vehicles Per Day (VPD). In this instance, the maximum number of truck movements for an extractive industry that has been approved, but is yet to commence operating, on an adjoining site to the North has been added to the existing average VPD based on traffic data collected by the City in June 2024 (refer to Table 1 below).

Table 1: Road Upgrade Requirements - 150 to 500 VPD

Haulage route	Current standard	Current average VPD	Proposed VPD	LPP 2.3 Upgrade Requirements (Table 3)
Ludlow-Hithergreen Road				
South of the pit	6.2m wide seal with 8m wide total formation	298VPD + 70VPD* = 368VPD	368VPD + 70VPD** = 438VPD	Road upgrade is not triggered.
North of the pit**	6.2m wide seal with 8.5m wide formation	414VPD + 70VPD* = 484VPD	484VPD + 70VPD** = 554VPD	Road upgrade is triggered.
North of the pit***	6.2m wide seal with 8.5m wide formation	414VPD + 70VPD* = 484VPD	484VPD + 20VPD*** = 504VPD	Road upgrade not deemed necessary. See comments below.

- * VPD approved for Lot 62 Ludlow-Hithergreen Road.
- ** VPD proposed by the subject application – assuming all vehicles travel without a designated haulage route and maximum truck movements would occur either direction.
- *** VPD proposed by subject application with haulage route limitations (maximum 20 movements north).
- **** VPD estimated from the current extractive industry (DA20/0438) in the Previous Stage.

As shown in Table 1, the standard of Ludlow-Hithergreen Road south of the pit entrance is sufficient to accommodate the additional truck movements and a road upgrade for this section is not warranted.

Ludlow-Hithergreen Road north of the pit is in a relatively poor condition. Should all proposed trucks travel north, a road upgrade requirement would be triggered. However, should truck movements be limited on the northern route to a maximum of 20VPD there is no effective increase to vehicle movements along this portion of the haulage route as the maximum truck movements per day is the same as the number that was previously approved as part of the stage 1. As a result upgrades to the haulage route are not deemed necessary.

Accordingly, conditions are recommended to any approval to reflect the proposed haulage routes and limited truck movements on the northern section of Ludlow-Hithergreen Road.

Acoustic Impacts

An Acoustic Assessment (Revision 1) was submitted, advertised in April 2024 and referred to the DWER Noise Branch for comments who raised a number of concerns.

As an outcome of the advertising period and referral response, the Acoustic Assessment was amended. Revision 5 was submitted in July 2024 demonstrating potential compliance with the *Environmental Protection (Noise) Regulations 1997* at the closest neighbouring premises (shed occupied as an unauthorised dwelling) setback 360m to the southwest. The Acoustic Assessment (Revision 5) did not recommend noise management measures for incorporation in the operation.

The Acoustic Assessment (Revision 5) included in its study the cumulative noise impacts of extractive industry operations in the locality including those of the approved extractive industry at Lot 62 Ludlow-Hithergreen Road directly to the north (refer to Figure 1 above). The Acoustic Assessment found that if both extractive industries were operating all their approved plant at the same time, there is sufficient separation from nearby sensitive premises such that noise mitigation measures are not required.

The Acoustic Assessment (Revision 5) was referred to DWER Noise Branch for review. As an outcome of the comments received, the Acoustic Assessment (Revision 5) was amended with regard to the concerns raised in relation to tonal characteristics and the need to provide options to reduce potential noise levels at R5 (R5 being the shed located to the southwest and used as an unauthorised dwelling). It is considered that the requirement to have the Acoustic Assessment and the extraction operation, modified to provide noise control measures is a prudent approach given no complaints or objections to the applications on the Development Sites or to the existing operations have been received from R5.

The Acoustic Assessment (Revision 5) was amended, and Revision 6 was recently submitted demonstrating noise control measures. The Acoustic Assessment (Revision 6) will be reviewed in liaison with the DWER Noise Branch as required. Should development approval be granted, a condition of any approval is recommended to ensure ongoing compliance with the amended

Acoustic Assessment (Revision 6), and an associated Noise Management Plan, for the life of the development.

Dust Management

The Dust Management Plan (DMP) submitted has been prepared in accordance with the former Department of Environment and Conservation (now DWER) "*Guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other related activities*". The DMP includes mitigation measures, however, without appropriate supporting details, namely evidence of a licence to use existing dam water supplies for dust mitigation, the key issue of a suitable water supply has not been addressed.

The DMP also includes a site risk assessment and based on the nature of the site and the proximity to other land uses the site has a classification of 2 which is deemed "low risk". The City agrees with this classification based on the nearest residential dwelling being at least 500 metres from the proposed extraction area. However, it is noted that during the operation of Stage 1 the City received a number of complaints in relation to dust from surrounding land owners. Therefore, it is deemed that, while the Applicant has included a list of preventive measures within the DMP, further details should be provided to the City.

Should development approval be granted, it is recommended that the DMP is required, via a condition of development approval, to be amended including, but not limited to, the following:

- a) More timely implementation of dust mitigation in response to dust complaints (i.e. within 1 hour).
- b) Conditions when operations will cease, for example, during November and April (inclusive) when local wind conditions are predicted by the BOM to exceed 25 Kph (40 knots).
- c) Public notification prior to commencement of operations and regularly thereafter.
- d) Appropriate triggers for dust monitoring by operating staff with dust management measures, for example, identification of appropriate wind directions and speeds that trigger monitoring irrespective of dust complaints.
- e) Details of mitigation measures and timeframes for implementation to the extractive operation, internal haulage road and crushing and screening operations.
- f) Contingency arrangements specifying water cart availability on site at all times.
- g) Commitments to implementation, assessment, monitoring and management by extractive operator and land owner (independently to local and State Government staff) in a timely manner.

The matter of a suitable and approved supply of water is key to the acceptability of the DMP, however, there are alternatives available to reduce reliance on water sources for dust management such as sealing roads and applying dust suppressant. The Applicant is required to identify a suitably approved supply of water and to amend the DMP toward demonstrating adequate dust management measures. While the current DMP is not sufficient, it is considered capable of addressing the City's requirements and a condition is recommended to any approval granted to require the DMP to be amended.

Statutory Environment

Planning and Development (Local Planning Schemes) Regulations 2015

The Deemed Provisions set out the legislative processes the local government is required to follow in the acceptance and assessment of development applications including consultation processes, procedures for dealing with applications, and the matters to be considered in the planning assessment.

In the case of the subject application, the proposal was advertised following the more rigorous process for complex applications pursuant to clause 64 of the Deemed Provisions (as discussed further below).

Pursuant to clause 67(2) of the Deemed Provisions, the application has been assessed against the relevant 'matters to be considered' to which the local government is required to have 'due regard' in planning decision making including:

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- ...*
- (c) any approved State planning policy*
- ...*
- (e) any policy of the Commission;*
- (f) any policy of the State;*
- (g) any local planning policy for the Scheme area;*
- ...*
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance;*
- (n) the amenity of the locality including the following —*
 - (i) environmental impacts of the development;*
 - (ii) the character of the locality;*
 - (iii) social impacts of the development;*
- (o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;*
- (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
- (q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;*
- (s) the adequacy of —*
 - (i) the proposed means of access to and egress from the site; and*
 - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;*
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- ...*
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) any submissions received on the application;*

The Deemed Provisions also set out the local government's discretionary decision-making authority and at clause 68(2) provide for the local government to determine an application for development approval by granting development approval without conditions; or granting development approval with conditions; or refusing to grant development approval.

Local Planning Scheme No. 21 – Zone Objectives

The Site is zoned Rural under the City of Busselton *Local Planning Scheme No. 21* (the Scheme). The objectives of the Rural Zone are provided below –

- (a) *To provide for the maintenance or enhancement of specific local rural character.*
- (b) *To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as viticulture and horticulture as primary uses, with other rural activities as secondary uses in circumstances where they demonstrate compatibility with the primary use.*
- (c) *To maintain and enhance the environmental qualities of the landscape, vegetation, soils and waterways, to protect sensitive areas especially the natural valley and watercourse systems from damage.*
- (d) *To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses.*
- (e) *To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.*
- (f) *To provide for development and expansion of the viticultural, winemaking and associated tourism activities and other industries related to agricultural activities, in addition to general rural pursuits, in a manner that does not cause adverse environmental impact.*
- (g) *To provide for the extraction of basic raw materials, where appropriate.*

Site inspection and aerial photography show that the Stage 2 extraction area has historically been modified by ad hoc excavation leaving the topography highly variable with significant changes in ground level making agistment, hay production and grazing undesirable in places.

While an extraction operation would interrupt the primary agricultural use of the land for the duration of that approval, the final rehabilitated landform will improve agricultural productivity, consistent with rehabilitation in the Previous Stage.

The extractive industry, if operated in accordance with conditions of approval, has the potential to provide a basic raw material while in the long-term enhancing the agricultural productive potential of the land consistent with the objectives of the Rural Zone.

Local Planning Scheme No. 21 - Land-use and permissibility

The proposed land use is defined as follows:

“Industry – Extractive” means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include facilities for any of the following purposes –

- (a) *the processing of raw materials including crushing, screening, washing, blending or grading,*
- (b) *activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration.*

Industry - Extractive is identified as an ‘A’ or discretionary land use requiring advertising within the Rural Zone.

Relevant Plans and Policies

State Planning Policy 6.1 - Leeuwin-Naturaliste Ridge Statement of Planning Policy

The *State Planning Policy 6.1 - Leeuwin-Naturaliste Ridge Statement of Planning Policy* (LNRSP) places a very high priority on the protection of Prime Agricultural Land with the overriding criterion to ensure the predominant agricultural use of land. Other uses, including interspersed lands with lesser agricultural potential, will be compatible with and not jeopardise, agricultural use of adjoining Prime Agricultural Land. The LNRSP requires that development of mineral and basic raw material resources will be subject to programmed rehabilitation which will be recommended as a condition of any planning consent (development application) granted.

Extraction of existing rock in the soil surface, reforming the existing uneven terrain disturbed by historical excavation and rehabilitation to pasture, if conducted in accordance with recommended conditions of approval, will support the predominant agricultural land use consistent with the intent and provisions of the LNRSP.

State Planning Policy 2.4 - Basic Raw Materials

SPP2.4 provides support for decision-making authorities, including guidance toward appropriate land use practices and development approval requirements and ensures that necessary basic raw material management measures are incorporated into land development and responsible extraction whilst facilitating use of the State's basic raw material resources. The SPP2.4 also defines basic raw materials to include hard rock (including dimension stone) whilst separately defining gravel, sand and limestone.

The objectives of SPP2.4 are to:

- ensure basic raw material and its regional importance is considered at the earliest stages of planning
- protect basic raw material by avoiding encroachment from incompatible land uses
- ensure basic raw material resources are used efficiently
- identify basic raw material extraction opportunities through sequential land use without compromising the final intended land use and
- ensure the extraction of basic raw material avoids, minimizes or mitigates any adverse impacts on the community, water resources and biodiversity values.

Environmental Protection Agency Guidance for the Assessment of Environmental Factors No. 3

The Environmental Protection Agency *Guidance for the Assessment of Environmental Factors 2005* ('the EPA Guidance') provides generic separation distances relative to listed industries including for extractive industries and with regard to the type of material processed. Separation distances for gravel, are determined on a case-by-case basis with regard to noise and dust impacts. In the case of the City, the standards described in the EPA Guidance are reflected in the provisions of LPP2.3.

Local Planning Policy 2.3 - Extractive Industries

The LPP2.3 sets out three distinct policy areas which either preclude or provide assessment criteria and policy provisions for extractive industries.

The Development Sites are located in Policy Area 3 – Extractive Industry Less Constrained.

Policy Area 3 represents a large area east of Bussell Highway and covers the majority of the central and eastern part of the City much of which is identified as Prime Agricultural Land. Policy Area 3 contains extensive deposits of sand and some gravel resources although many deposits will be constrained by mineralisation (titanium/zircon) or prime agricultural land.

Extractive industry proposals will need to comply with the same criteria, requirements and conditions as Policy Area 2. However, as Policy Area 3 is recognised as primarily an agricultural area, it is important to ensure the long-term protection of prime agricultural land. Extractive industry will be expected to be approved within Policy Area 3, where such operations can meet the requirements of these provisions and the Scheme.

Local planning policies must be given due regard, but cannot and do not bind the local government, in the assessment and determination of development applications.

Amended information has been submitted in support of the application demonstrating that noise impacts arising from the proposal are likely to comply with the *Environmental Protection (Noise) Regulations 1997*. The closest approved dwellings are setback at least 500m from the extraction site. Objections have not been received to the proposal from the closest neighbouring landowner (occupying an unapproved shed 360m to the south). The proposal therefore meets the policy provisions at clause 4.2.2.2 and 4.2.2.3 in relation to separation distances to neighbouring dwellings with the exception of dust issues which are considered able to be addressed in an amended DMP.

Financial Implications

Not Applicable

External Stakeholder Consultation

The application was initially advertised, as a 'complex' application in accordance with the Deemed Provisions which included the application being advertised for 28 days from 15 March to 22 April with late submissions closing on 29 April 2024.

The application was advertised by the following methods -

- A sign being placed next to the vehicle entry/exit driveway at 755 Ludlow-Hithergreen Road, Ruabon;
- Notice in the newspaper for four consecutive weeks;
- YourSay Page advertisement with supporting information; and
- Letters sent to all owners and occupiers within 1km of the Development Sites.

At the close of this initial advertising period, nine public submissions were received including five submissions of support and four opposed.

With receipt of amended information, the City elected to re-advertise the development application to those who made a submission when the application was initially advertised in April as well as to surrounding landowners of properties located within 1km of the Development Sites. Notification was sent via email (subject to this information being available on the City's records) and a letter was also posted. The consultation period was from 11 to 30 July; a total of 19 days based on a standard 14 day comment period with additional time added for delays in postage.

At the close of the second advertising period, a total of nine public submissions were received including eight submissions objecting to the proposal and one submission of support.

The key issues arising from both public advertising periods are summarised below:

- Inadequate rehabilitation and closure of Previous Stage prior to Stage 2.
- Exclusion of maximum volume as an assessment measure from this application.
- Authenticity of Acoustic Assessment including separation distances to sensitive premises.
- School bus route information.
- Impact of cumulative truck movements on local roads.
- Dust management.
- Historical land clearing.
- Compliance concerns.
- DWER approval requirements

A Schedule of Submissions is provided at Attachment 5.

In addition to the above, the application was referred to State Government agencies with advice and recommendations received from:

- Department of Energy, Mines, Industry Regulation and Safety;
- Department of Primary Industry and Regional Development;
- Department of Biodiversity Conservation and Attractions;
- Water Corporation; and
- DWER, including the DWER Noise Branch.

The key issues raised in the State Government referral process include:

- Vegetation impacts and clearing permit requirements
- Details in the Acoustic Assessment
- Noise impacts
- Water sources for extraction operations
- Maintaining separation to ground water

Copies of agency responses are provided in the Schedule of Submissions in Attachment 5.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. The key risk to the City is considered to be the potential reputational and environmental risk that may arise if the Development Sites are not managed in a manner consistent with the conditions of approval. Mitigation of that risk requires proactive and appropriately resourced compliance activity.

Options

As an alternative to the proposed recommendation the Council could:

1. Approve the development application subject to different/amended conditions; or
2. Refuse the development application.

CONCLUSION

It is considered that the issues arising with the proposal can be addressed through recommended conditions of approval. With regard to separation distances to nearby premises, the acoustic assessment has determined that the proposed extractive industry can operate on the Development Sites in compliance with the *Environmental Protection (Noise) Regulations 1997* and with incorporation of noise management measures to the extraction operation and site. Buffer distances in the LPP2.3 and lesser setback distances to nearby noise sensitive premises are considered acceptable subject to operating conditions.

It is also considered that with the application of appropriate conditions, the operational impacts of the extractive industry including managing the spread of dieback, surface water management, separation to ground water, and land clearing can also be managed. Further, with appropriate rehabilitation the proposal is not considered to be adverse to the long-term agricultural production of the land and is consistent with the intent and provisions of LPS21.

While the application has failed to address the key issue of a suitable supply of water for dust management, it is considered that this issue can be addressed with an amended DMP. With conditions requiring adherence to haulage routes and truck movement limitations on those routes, and truck exclusion times to address school bus conflicts it is considered that traffic impacts arising from the proposal can be reasonably addressed.

For these reasons, the proposal in its current form has been found to be acceptable and is considered capable of support subject to conditions. The Council may determine the application by either approving the application with or without conditions or refusing the application. The Council is recommended to approve the application subject to the conditions listed above.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Issue the Development Approval to the Applicant	Within two weeks of Council decision

11.2. Review of Dog Management Controls - Consultation Outcomes

Strategic Theme:	Key Theme 2: Lifestyle 2.2 Work with key partners to facilitate a safe, healthy and capable community.
Directorate:	Community Planning
Reporting Officer:	Manager Community Safety - Rachel Runco
Authorised By:	Director Community Planning - Gary Barbour
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Tails of the City Consultation Report [11.2.1 - 26 pages]

OFFICER RECOMMENDATION

That the Council:

- 1. Receives the results of the community survey undertaken through Your Say, 'Tails of the City', and acknowledges that 75% of respondents use beach dog exercise areas which includes seasonal areas.**
- 2. Support the continuation of the existing seasonal dog exercise area restrictions for the upcoming applicable period (1 December 2024 – 28 February 2025), with the following additional controls to be implemented by 30 November 2024:**
 - a. Improved and increased signage.**
 - b. Increased Ranger presence.**
 - c. Targeted community education on responsible dog management off-leash.**
- 3. Support the planned consultation approach and timeline for development of a draft Animal Management Plan (AMP) as described within the officer comment section of this report.**
- 4. Request the CEO further review the following factors related to seasonal dog exercise areas model to inform the AMP including:**
 - a. Location of dog exercise areas.**
 - b. Transition zones.**
 - c. Applicable season and timing.**
 - d. Monitoring of usage and compliance issues during the restricted period.**

EXECUTIVE SUMMARY

This report provides the Council with an overview and update of the community consultation outcomes related to Animal Management Controls to date and presents a proposed outline for further community consultation actions to inform the development of an Animal Management Plan.

STRATEGIC CONTEXT

Engaging with the community to review and develop animal management controls that align with broader community sentiment supports achievement of the strategic priority to work with key partners to facilitate a safe, healthy and capable community.

BACKGROUND

At the Ordinary Council Meeting 15 May 2024, the Council carried the following motion (C2405/143):

That the Council requests the CEO:

1. *Undertake a comprehensive review of the current Dog Management Controls to be presented to Council by or before September 2020 which includes the following:*
 - a. *City wide consultation in relation to the current dog management controls; and*
 - b. *Assessment of feasibility of seasonal dog exercise areas.*

The timing of this motion coincided with the City receiving the results from the Community Scorecard survey that was conducted over February and March 2024, the results of which identified a minor decline in the community performance rating of animal management more broadly.

As such a decision was made when undertaking the City-wide consultation to widen the scope to encompass domestic animal management more broadly, to inform an improved understanding of the factors influencing the declining performance rating.

OFFICER COMMENT

City wide consultation was undertaken for a period of 6 weeks between 24 June and 11 August through the 'Tails of the City' survey. The survey was designed to educate community on the existing animal management controls that apply to dogs and cats, obtain an understanding of behaviours of pet owners, gauge community perspectives on the existing animal management framework, and identify areas for improvement. The survey also included focused questions related to use of and issues with dog exercise areas (DEA).

The detailed consultation summary is provided in attachment 11.2.1, with the process identifying eight clear areas of community concern in relation to domestic animal management. These are:

1. Lack of effective control of dogs in dog exercise area.
2. Impact of dog waste on the amenity of local areas.
3. Community disregard for dog management controls – particularly the requirement for dogs to be leashed on City pathway network.
4. Nuisance and roaming cats.
5. Ineffective and unclear signage for dog exercise and dog prohibited areas.
6. Lack of Community reporting of breaches of animal management controls – 71% of survey respondents did not report observations to the City.
7. Lack of Ranger presence increasing gap in upholding existing animal management practices and policies.
8. Improved communication and education required on animal management responsibilities.

The theme of this feedback replicated the responses received during the community scorecard engagement process, where the following key concerns were raised:

- roaming cats.
- lack of ranger presence.
- lack of enforcement of dog management controls.
- need for improved signage of dog exercise areas.
- gap in education and communication to pet owners on their animal management responsibilities.

Assessment of the feasibility of seasonal dog exercise areas

Currently there are three categories of beaches under the management of the City:

- Dog prohibited beaches.
- Dog Exercise beaches.
- Seasonal Dog Exercise beaches where dogs are prohibited between 9am and 5pm between 1 December and 28th February but permitted off-leash at all other times.

The consultation identified 75% of respondents use seasonal dog exercise areas, however, even amongst these users, these are differing perspectives on the effectiveness of, and categorisation within the current management framework.

Resoundingly, the feedback presented through the survey identified lack of enforcement of existing dog management controls by the City as the key contributing factor leading to the conflict and frustrations that exist between beach user groups, closely followed by dog owners not picking up dog excrement, and gaps in signage identifying DEA.

There were varying perspectives in relation to the feasibility of the current seasonal dog exercise areas framework, with four themes:

- Seasonal controls should be removed, and these locations should allow exercising dogs off leash.
- Seasonal controls should be removed, and these locations should become dogs on-leash areas.
- Seasonal controls should be removed, and these locations should become dog prohibited beaches.
- Seasonal controls should remain, but increased enforcement of controls by the City is required due to a blatant disregard by many dog owners to comply with the management controls.

Overall however the community survey identified that the majority of community (over 75%) are broadly happy with the current dog management controls that apply to beach areas. Feedback provided by respondents who indicated dissatisfaction with the controls typically raised concerns in relation to the lack of effective control of dog owners when utilising these areas impacting the amenity of other users, damaging the dunes and impacting wildlife.

The consultation process identified a need to further refine existing dog controls applied within the City more broadly, particularly in relation to transition zones between dog exercise areas and the City playgrounds and pathway networks, along with a need to review the current beach dog exercise area boundaries, including location of seasonal areas and feasibility of trialling on-leash dog beaches.

With consideration to the varying perspectives identified above specific to dog beaches, and the general community feedback, City officers recommend continuing with the current framework for the upcoming seasonal period (being 1 December 2024 – 28 February 2025), with the following actions to be applied as soon as feasibly possible to reduce conflicts between beach user groups:

- Improved and increased signage.
- Increase in ranger presence and patrols, particularly on weekends and holiday periods on beaches.
- Implementation of a community education campaign between November 2024 and January 2025 on responsible dog management when exercising off-leash.

In addition, it is also proposed that a broader review of the current dog management control categories applicable to beach areas are further investigated and refined with any recommended changes to be presented to the Council for consideration by 30 June 2025.

Animal Management Plan

The concerns and issues raised through the consultation processes to date highlight the need for the City to develop a holistic long-term strategy to improve overall animal management, through the development of an Animal Management Plan (AMP). The objective of the AMP is to enable a full review of the existing local legislative model and animal management framework.

Development of an AMP will formalise the City of Busselton's dedication to public safety, responsible pet ownership, and the welfare of all residents, visitors, and domestic pets. The following objectives will be the focus of the AMP:

- Improve Animal Management Controls including a thorough review of dog access to beaches, reserves, parks and outdoor sporting facilities.
- Promote and enforce responsible pet ownership.
- Develop targeted community engagement and education campaigns.
- Address and minimise impacts of nuisance domestic animal behaviours to local wildlife and amenity.
- Promote and improve animal welfare.
- Improve perception of community safety through development of measures addressing animal behaviour and education of roles and responsibilities.
- Strengthen governance and enforcement through review of the local legislative framework.

The AMP will be informed through broad community consultation, to ensure there is an alignment of proposed strategies and actions with the sentiments of the broader community. As such an engagement and education plan is proposed including:

- Individualised engagement with respondents who provided feedback to the Tails of the City community survey.
- Information sessions and workshops with specific communities to identify and consider localised needs, concerns and opportunities.
- Pop-up information booths.
- Workshop with key agency stakeholders including, RSPCA, Animal rescue groups, Veterinary practices in the municipal area, Dogs West, Cats WA, Western Australian Rangers Association, Margaret River Busselton Tourism Association, and neighbouring local governments.
- Community workshops to refine and inform the draft plan.

Following endorsement of the officer recommendation, City officers will commence the process of developing a draft AMP to be presented to the Council for consideration by 30 June 2025.

Statutory Environment

Animal Management within Western Australia is governed through legislation including the following:

- *Animal Welfare Act 2002*: This act, and accompanying regulations provide the legal framework that ensures all animals in Western Australia have appropriated standards of care.
- *Dog Act 1976*: In combination with the City of Busselton *Dog Local Law 2014* and *Dog Regulations 2013* contains a range of measures to improve community safety, encourage responsible dog ownership and nuisance barking by providing for the control, registration, ownership and keeping of dogs.
- *Cat Act 2011*: This act and associated local law to the LGA relates to responsible management of cats.
- *Health (Miscellaneous Provisions) Act 2011*: Combined with the City of Busselton *Health local Law 1997* includes provisions related to the keeping and management of other animals including, birds, poultry, and livestock.

This legislation authorises the City to respond and act on animal complaints and incidents and enforce compliance in consistence with powers granted through the legislation. It also provides the mechanism for associated costs to be recovered through the form of fees and charges.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

[Corporate Business Plan 2022-2026](#)

Policy:

[Compliance and Enforcement](#)

[Rehoming of Impounded Dogs and Cats](#)

Financial Implications

Proposed engagement activities can be completed utilising existing resourcing, however an estimated budget of \$5,000 will be required in the 2025/26 financial year for graphic design costs.

External Stakeholder Consultation

As outlined in the Officer Comment, community consultation was undertaken in the form of the 'Tails of the City' campaign that ran between 24 June and 11 August 2024. The Your Say survey was promoted through a variety of mediums include the City of Busselton Facebook page, City Connect Newspaper, Bay-to-Bay e-newsletter, posters in Busselton and Dunsborough Libraries and flyers at local veterinarians.

The survey page also included downloadable documentation to provide community members additional information including information on responsible dog management, responsible cat

management, current dog exercise areas, and broader Cat and Dog management controls and information relevant to the local government area. The page also provided contact details for the City officer managing the project to allow community members to directly discuss the project.

During the consultation period there were 445 visits to the consultation page, with 196 participants registering to complete the survey. 56 visitors also viewed or downloaded a document.

A detailed consultation report is found in attachment 11.2.1, with a summary of the key results listed below.

- 79% of respondents own pets.
- Of the 154 respondents who own pets, 15% own both dogs and cats, less than 10% own only cats and the majority (75%) own dogs.
- 63% of dog owners utilise grassed off-leash dog exercise areas.
- 75% of dog owners utilise dog beaches.
- 92% of dog owners utilise the dog waste bag dispensers throughout the City.
- 24% of cats are not confined to the property they reside on.
- 57% of respondents have experienced trespassing or wandering cats.
- 62% of respondents have witnessed dog owners not picking up dog waste, with 83% of respondents identifying they have observed dog waste.
- 27% of survey respondents are dissatisfied with City of Busselton Animal Management Practices and Policies

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could request the review of current dog management control categories applicable to beach areas, with any recommended changes to be presented to the Council at the November 2024 OCM to allow implementation of any changes prior to the next seasonal period.

CONCLUSION

City wide community consultation related to domestic animal management controls helped officer to gain a better understanding of community perspectives related to behaviour and usage of grassed, beach and seasonal dog exercise areas.

The consultation indicated over 75% of the community are satisfied with the overarching framework of animal management controls in place, but identified some areas where refinement is necessary. It is therefore proposed the current seasonal areas are retained for the upcoming applicable period, with some targeted adjustments, including increased ranger presence through an adjustment to the summer service model, aimed to reduce conflicts between beach user groups. A broader review will also be completed through the development of the AMP.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Improved signage of beach dog exercise areas	As soon as possible
Development of community education campaign	Prior to December 2024
Development of an Animal Management Plan	30 June 2025

12. INFRASTRUCTURE AND ENVIRONMENT REPORTS

12.1. RFT17/21 Natural Areas Management

Strategic Theme:	Key Theme 2: Environment 1.1 Ensure the protection and enhancement of environmental values is a central consideration in land use planning.
Directorate:	Infrastructure and Environment
Reporting Officer:	Open Space and Environment Technical Officer - Olivia Smith
Authorised By:	Director Infrastructure and Environment - Oliver Darby
Nature of Decision:	Contractual: To enter into a contract e.g. a lease or the award of a tender etc.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	Nil

OFFICER RECOMMENDATION

That the Council endorse the first 12- month extension and authorise the CEO, at his discretion, to exercise further options to extend the term of the contract entered pursuant to RFT17/21 Natural Areas Management with Tranen Pty Ltd ABN 37 054 506 446 (Contract).

EXECUTIVE SUMMARY

Pursuant to RFT17/21 Natural Areas Maintenance (the RFT) the City of Busselton entered into a contract with Tranen Pty Ltd (**Contractor**). The Contract:

- Was for an initial term of 3 years, expiring 29 September 2024; and
- Grants the City an option to extend the term by two further terms of 12 months each.

The Council’s authorisation is required to exercise the options to extend the term of the Contract. This report recommends that the Council endorse the first 12-month extension and authorise the Chief Executive Officer, at his discretion, to exercise the option to further extend the term of the Contract.

STRATEGIC CONTEXT

The nature of the works supports Key Theme 1. Environment of the City’s Strategic Community Plan. 1.1 Ensure the protection and enhancement of environmental values is a central consideration in land use planning.

BACKGROUND

Pursuant to the RFT the City invited in 2021 tenders for the Natural Areas Maintenance within the City of Busselton, to provide various services as required including (but not limited to):

- Planting services.

- Manual woody weed identification and removal.
- Selective and non – selective chemical weed control.
- Reserve inspections and consultancy as an option.

Historically the City has spent approximately \$90,000 per year on these services. The intention was to enter into a rates-based contract and, based on the historic expenditure, the total contract value over the full term (3 + 1+ 1 years) was estimated not to exceed \$450,000.

Under Section 5.42(1)(a) of the *Local Government Act 1995 WA (Act)*, a local government may delegate to the CEO the exercise of any of its powers and/or the discharge of any of its duties subject to certain limitations/conditions.

Under City of Busselton Delegation DA 1-07 “Inviting, Rejecting and Accepting Tenders” Council delegated to the CEO the power to:

- Accept tenders; and
- Enter into contracts for procurement of goods and services.

subject to the contract value not exceeding \$500,000.

As the contract value pursuant to the RFT was expected to be less than abovementioned threshold, the CEO, in accordance with Delegation DA 1-07, accepted the Contractor’s tender and authorised the Director Infrastructure and Environment to enter into the Contract.

However, based on the information provided under Financial Implications below, indications are that the total expenditure under the Contract will exceed the CEO’s abovementioned delegated power if the term of the contract is extended as recommended in this report. Therefore it is recommended that the Council endorse extension of the term of the Contract and authorise the Chief Executive Officer, at his discretion, to exercise the option to further extend the term of the Contract.

OFFICER COMMENT

The Contractor has supplied the requirements over the historic Contract term with efficiency and to the standards required by, and satisfaction of the Contract manager and Contract supervisor. To date the Contractor’s performance under the contract has met the City’s expectations. The proposed Contract extension will ensure continuation of the supply of the requirements.

Based on a comparison with current rates of similar services being provided to the City, City staff are satisfied that the Contract rates that will apply to the further term are market related and will provide good value for money.

City officers are of view that the cost of procuring these type of services have increased since 2021. By extending the Contract term, the City is likely to benefit from contract rates that were locked in in 2021.

For these reasons it is recommended that the City extends the Contract term.

Statutory Environment

Power to procure goods and services

The City’s power to enter into contracts arises from its legal status as a body corporate with the powers of a natural person – see section 2.5 of the *Local Government Act 1995 WA (Act)*. At common law, a natural person can acquire, hold title to and dispose of property and enter into contracts, including contracts for the supply of goods and services.

Under sections 3.1 and 3.18 of the Act the City can do all things necessary or convenient for carrying out its functions. Entering into contracts for the purchase of goods and services is necessary for the City to perform its functions.

Power to accept a tender

Under section 5.42(1)(a) of the Act, a local government may delegate to the CEO the exercise of any of its powers and/or the discharge of any of its duties other than those referred to in section 5.43. Under section 5.43(c), a local government cannot delegate to a CEO the power and duty of accepting a tender which exceeds an amount determined by the local government for the purpose of this section.

By City of Busselton Delegation DA 1-07 “Inviting, Rejecting and Accepting Tenders” Council delegated to the CEO the power and duty to:

- Accept tenders; and
- Enter into contracts for procurement of goods and services, subject to the contract value not exceeding \$500,000.

The Officer Recommendation is consistent with abovementioned statutory framework.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

[City of Busselton Local Environmental Planning Strategy 2011](#)

Policy:

[Environment](#)

[Purchasing](#)

Financial Implications

The actual expenditure over the first Contract term of 3 years is (amount is exclusive of GST):

Total	\$633,149.00
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The estimated expenditure over the full Contract term is:

Total	\$633,149.00
2024/25 (estimated)	\$268,822.00
2025/26 (estimated)	\$276,886.00
Total (estimated)	\$1,178,857.00.

The 2024/25 and 2025/26 estimated expenditure include CPI indexation, as agreed under the Contract.

The reasons for the increased expenditure are:

The initial tender was created to deal with the increasing need and focus on environmental weeds brought about by the Environmental Weed Strategy 2021. This contractor helped guide and map natural area assets, which has given direction on our environmental weed treatment program. Additional funding was redirected in collaboration with the Arum Lily Blitz and supporting various revegetation projects. Some additional mapping and consultation projects were undertaken during this period. The City's Fire Mitigation Officer has also utilised their services for MAF funding implementation.

The expenditure under the Contract is funded from 1017 Parks and Environment Operating Budget including 10171 Environmental Management Administration (O), 10312 Meelup Regional Park (O), 10321 Natural Areas Management and Offsets (O) and other Reserve Cost Codes. The estimated expenditure for the first further term is included in the City's 2024/2025 operational budget.

External Stakeholder Consultation

Not Applicable

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could decline to authorise extension of the Contract term, which will require City staff to commence a procurement process for procuring these services on the open market.

For the reasons provided under Officer Comment, this course of action is not recommended.

CONCLUSION

For the reasons provide in this report, it is considered most advantageous for the City to extend the Contract term as recommended.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Notify the Contractor of extension of the Contract term	As soon as practicable following the Council's decision
Commencement first further term	19 September 2024

13. ECONOMIC AND BUSINESS DEVELOPMENT REPORTS

13.1. Proposed Marine Discovery Building Lease Terms

Strategic Theme:	Key Theme 4: Leadership 4.3 Make decisions that respect our strategic vision for the District.
Directorate:	Economic and Business Development
Reporting Officer:	Director Economic and Business Development - Maxine Palmer
Authorised By:	Director Economic and Business Development - Maxine Palmer
Nature of Decision:	Contractual: To enter into a contract e.g. a lease or the award of a tender etc.
Voting Requirements:	Absolute Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Attachment 1 Concept Drawing Set [13.1.1 - 7 pages] 2. Attachment 2 Lot 501 Reserve 38558 [13.1.2 - 1 page]

OFFICER RECOMMENDATION

That the Council:

1. Resolves to enter into a lease with Busselton Jetty Inc (BJI) for the construction and operation of a Marine Discovery Building, as per the concept design in attachment 1, situated within Lot 501, Reserve 38558, Busselton Foreshore, as depicted in attachment 2, subject to the consent of the Minister for Lands and there being no objections raised through the section 3.58 (of the Local Government Act 1995) advertising.
2. Delegates power and authority to the Chief Executive Officer to negotiate and agree the lease on the following terms and conditions:
 - a) Term: minimum 21 years and maximum of 42 years;
 - b) Rent:
 - Year 1 - \$100 + GST and other outgoings
 - Year 2 - \$15,000 + GST and other outgoings
 - Year 3 - \$33,000 + GST and other outgoings adjusted in accordance with CPI from the commencement of the Lease term plus;
 - c) An amount equal to 25% of the total gross revenue for the previous financial year generated by the Marine Discovery Building, excluding the following:
 - i. Food and beverage kiosk revenue;
 - ii. Bar revenue;
 - iii. Grant funding;
 - iv. Deductible Gift Recipient funding as defined in the Income Tax Assessment Act 1997;
 - v. GST on Gross Revenue;
 - vi. Interest received; and
 - vii. Employee related payments received from Government Agencies;

- d) Commencement of lease no later than 30 June 2025;**
 - e) Rent Review: adjusted annually in accordance with CPI and subject to market rent review every 5 years;**
 - f) A requirement for the Tenant to adequately insure the building and contents and establish and maintain a contingency fund for the purpose of asset management and capital improvements to the Premises. Annual transfer amounts are to be determined by the development by BJI of a Lifecycle Management Plan approved by the City;**
 - g) Permitted Purpose: Marine Discovery Centre, exhibition/event space, museum, marine themed interactive experiences/education and ancillary food and beverage services;**
 - h) All costs associated with the preparation of the lease are to be met by the Tenant; and**
 - i) Such further terms and conditions as required by the CEO.**
- 3. All rent and proceeds collected in relation to points 2b and c are to be transferred into the Jetty Maintenance Reserve.**

EXECUTIVE SUMMARY

Further to the May 2024 resolution of the Council and receipt of a market valuation this report proposes ground lease terms for public advertising for Lot 501, 12 Busselton Foreshore. The proposed ground lease is with Busselton Jetty Inc. (BJI) for the purpose of building and operating a Marine Discovery Centre (MDC). The development is to be fully funded by BJI and State and Federal funding reallocated from the Australian Underwater Discovery Project.

STRATEGIC CONTEXT

Providing a lease arrangement to operate a MDC in this location will increase funding going into the jetty maintenance reserve to help bridge gaps in future asset renewal costs and add to visitor experiences available in the City of Busselton. As such, it satisfies the strategic priorities of providing unique visitor experiences and maintaining significant assets.

BACKGROUND

BJI is a Busselton based voluntary incorporated association who have a vision for the Busselton Jetty to be a must-see coastal attraction, connecting community and the environment. Their mission is to sustain the Jetty and its environment for all generations. Through their commercial activities BJI is obligated to provide funds for the preservation and maintenance of the Busselton Jetty from their operations under a licence agreement with the City (Licence).

In 2019, BJI was successful in obtaining \$13m in Federal Government funding to develop an Australian Underwater Discovery Centre (AUDC), at the end of the Jetty. With rising construction costs, BJI sought State and Local Government assistance towards the project. In 2021 the State Government announced a contribution of \$9.5m (funding previously allocated the Busselton Margaret River Airport new terminal).

Since 2021 the City has worked with BJI to rescope the project several times. However, in February 2023, with construction costs continuing to rise and issues associated with having to strengthen and raise the jetty, BJI eventually terminated their building contract for a marine discovery centre and other facilities at the end of jetty (known as the Jetty Village).

To ensure continued project delivery the Federal Government indicated support to transfer the unspent balance of their funding (\$7,447,702) to the state via the agency of Department of Primary Industries and Regional Development (DPIRD), subject to a supported business case. DPIRD established a Project Control Group (PCG) to oversee further rescoping of the project to ensure it aligns with the original purpose and outcomes.

On 13 December 2023, Council resolved (C2312/206) to enter into a lease and licence with BJI for a portion of the Ballarat Room, in Railway House to temporarily accommodate the MDC element of the project. The interactive software and hardware had already been developed and this gave BJI a location in which to install and to operate the MDC whilst a permanent solution was progressed. The term of that lease is two years with an option exercisable by the City of a further two years. The proposed Marine Discovery Building (the subject of this report) will be the permanent home for the MDC.

On 15 May 2024, the Council resolved (C2405/141) to:

- 1. Provide in principle support to enter into a lease with Busselton Jetty Inc (BJI) for the construction and operation of a Marine Discovery Building, as per the concept design in attachment 1, situated within Lot 501, Reserve 38558, Busselton Foreshore, as depicted in attachment 2, subject to state and federal government approval of funding and authorisation to commence the project.*
- 2. Agree that the terms and conditions of the lease are to be subject to a further report and decision of the Council, and are to consider:*
 - a. Responsibilities for the maintenance and insurance of the asset;*
 - b. Annual costs and budget to maintain and insure the asset; and*
 - c. The financial benefit to the Jetty Maintenance Reserve.*

This report makes recommendations to the Council on the considerations required by the May resolution.

OFFICER COMMENT

Asset maintenance and insurance

Subsequent to the Council's in principal support for construction and operation of a Marine Discovery Centre (MDC) on Lot 501, 12 Busselton Foreshore (attachment 2), \$16m of funding was approved by the Minister for Regional Development (Minister) to be reallocated to BJI for that purpose. The funding was conditional on the City managing the procurement. City Officer's discussed this condition with the PCG, raising concerns with the City's capacity to deliver a project for an external party. It was also felt that in order for the building to operate as forecast in BJI's

business case, and to deliver the project to budget and acquit the funding that BJI should be the contract principal for the design and construction of the MDB. Equally BJI has to be responsible for generating sufficient operating profit to provide a return to the Jetty Maintenance Reserve (JMR), maintain the asset, insure and run it.

Through consultation with BJI it became clear that in order to achieve the above, it would be in the best interest of both BJI and the City if the building asset was BJI's responsibility and a land lease from the City would be the most appropriate form of tenure.

Subject to the Council's approval of the lease terms in this report, a joint proposal will be taken to the PCG that will recommend, for the reasons outlined, that BJI will be responsible for the development, but to satisfy the Minister's condition be required to use the City's procurement processes, and the City will:

- oversee the procurement processes;
- have input into and sign off on all scopes of work and requirements specification;
- form part of evaluation panels and decisions to award contracts; and
- have representatives on the project management team.

Annual rent and return to the Jetty Maintenance Reserve

The concept design for the building (attachment 1) is a preliminary draft and subject to change based on detailed design and further costings. The design is a three-storey structure, the ground floor will house a reception/ticket sale area, a kiosk, office space, and the Jetty Museum/Exhibition area which will take up the majority of the ground floor space. The first floor will have the MDC, a theatre/VR Room and Enviro/Schools Space. The concept for the second floor is a marine themed mini golf space, a roof top function/event area and a bar. The outside of the building will have a decorative screen which will give the suggestion of bubbles under the sea.

The business case developed by BJI forecast the license fee payable to the City based on the current Jetty License Agreement of 25% of gross revenue excluding GST. This was estimated at \$746,678 from the first full year of operation, see table 6 extract from the Business Case below. This assumed the food and beverage kiosk and sky bar would operate under a commercial lease arrangement at \$25,000 per annum each and that the City would be responsible for the MDB maintenance from the JMR. Insurance costs and other outgoings would be passed through to BJI.

Table 6: Estimated Jetty Maintenance Reserve annuity assuming Licence Fee 25% of ticket sales 2028/29

COMPONENT	ESTIMATED LICENCE FEE to JMR – 25% of Gross Revenue after GST	Estimated Surplus to BJI for Asset Management/Replacement AUDC reserve and other investment/s
Dive Trolley and Dive Tank Refills	\$17,299	(\$5,016)
Jetty Museum / Multipurpose Space	\$157,514	\$165,894
Food and Beverage Kiosk	\$25,000	\$235,241
Marine Discovery Centre	\$345,102	\$518,531
Marine Themed Experience	\$176,763	\$92,287
Sky Bar	\$25,000	\$21,012
TOTAL – YR1	\$746,678	\$1,027,948

The City obtained an independent market valuation report dated 5 August 2024. The report compared existing ground leases on the Busselton foreshore, Hilary’s Harbour and Aurora Esplanade Jindalee. The ground rental evidence presented ranges from circa \$44 to \$59 per m² net of GST and outgoings. The report highlighted that the analysed ground rentals for the three nearby properties of 1, 11 and 15 Foreshore Parade, Busselton range from circa \$56 to \$59 per m² per annum net of GST. These properties are located within closer proximity to the beachfront and provide far superior ocean views and therefore a lower rate per m² would apply to the proposed building.

The market rent was assessed at \$33,000 per annum net of GST and outgoings on an “As Is” ground lease basis. This was based on the mid-point of a range of \$45 to \$50 per m².

The City also requested an “As If Complete,” market rent assessment to determine the value of the asset once constructed. The report provides a range of market comparisons. The rental evidence presented ranges from \$130 to \$594 per m² per annum net of GST and outgoings with an overall quantum of rental value ranging from \$65,000 to \$300,000 per annum net of GST and outgoings. The assessment took into consideration alternative commercial/hospitality aligned tenancy arrangements should the subject improvements not be utilised for their proposed “Marine Discovery Centre” purposes. The report considered comparable hospitality evidence, and highlighted the proposed building provides large scale three level improvements (>1,800m²) and therefore generally lower rates per square metre of lettable area are considered applicable. The report states that given the magnitude of the proposed building and associated high quantum of rental, there are considered a relatively shallow pool of potential tenants for this property type which was taken into consideration within the assessment. The report also noted there is substantial trading competition within the immediate locality providing generally superior views.

Based on the available rental evidence and the assumptions above the report assessed the “As If Complete” market value at \$265,000 per annum net of GST and outgoings. This equates to an overall rental rate of \$146 per m² per annum net of GST and outgoings.

To ensure parity with other foreshore leases and given the City’s support for this proposed development is to assist with increasing contributions into the JMR, Officers are recommending a

ground lease with an annual rent net of outgoings commencing at \$33,000 per annum. To allow time for the design and construction of the MDB the following discounted rent periods are proposed:

Year 1 - \$100 + GST

Year 2 - \$15,000 + GST

Year 3 - \$33,000 GST per annum and other outgoings adjusted in accordance with CPI from commencement of the Lease term

In addition, officers recommend there should be alignment with BJI's business case, which committed that through the development of this asset there would be sufficient revenue generated to both maintain it and make a significant additional contribution to the JMR. In addition to the annual rent an amount equal to 25% of the total gross revenue for the previous financial year should also be transferred into the JMR. Officers recommend that this excludes the food, beverage and bar revenue. The following other exclusions would also apply to be consistent with the current Jetty Licence Agreement:

- Grant funding;
- Deductible Gift Recipient funding as defined in the Income Tax Assessment Act 1997;
- GST on Gross Revenue;
- Interest received; and
- Employee related payments received from Government Agencies.

Term

To allow time for the procurement of a project manager, detailed designs and funding to be released to BJI it is recommended the lease commence no later than 30 June 2025.

The Reserve purpose is "Recreation and Community." The City has management of the Reserve with power to lease (consistent with the reserve purpose) for any period not exceeding 42 years and subject to the prior approval of the Minister for Lands.

However, BJI have indicated a preference to tie the lease term to coincide with the end of the current Jetty Licence Agreement, the first term expires 5 April 2038. BJI have the option to renew for three further 7 years terms with the last expiring on 29 October 2058. Given the recognised need to also review and simplify the Jetty Licence Agreement Officers are recommending the CEO is authorised to negotiate the term of the lease and for it to be a minimum of 21 years with a maximum of 42 years, subject to Minister for Lands approval.

Statutory Environment

Local Government Act 1995 (LGA)

When disposing of property whether by sale, lease or other means, a Local Government is bound by the requirements of section 3.58 of the LGA which requires giving local public notice when disposing of property. Under regulation 30(2)(b) of the Local Government (Functions and General) Regulations 1996 disposition of local government property to incorporated bodies with objects of benevolent, cultural, educational or similar nature can be exempt from the advertising and tender requirements of the act.

However, given the commercial nature of the operation of the proposed building and the high profile nature of the Busselton foreshore, Officers recommend advertising the disposition to seek broader community feedback. BJI are supportive of this approach.

Land Administration Act 1997 (LAA)

Lot 501, Deposited Plan 402933, Volume LR3166, Folio 949, 12 Foreshore Pde Busselton (Lot 501) is located on Part Reserve 38558, managed by the City under a Management Order. The City has power to lease for purposes consistent with the designated purpose of 'Recreation and Community' for periods up to 42 years, subject to the consent of the Minister for Lands, under section 18 of the LAA City officers have sought informal, officer level, support for the proposition from the Department of Planning, Lands and Heritage (DPLH) which has raised no issues.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

[Corporate Business Plan 2022-2026](#)

This proposal links most strongly to the area of Opportunity and the creation of a vibrant City with diverse opportunities and a prosperous economy, and specifically the following Strategic Priorities:

- 3.1 Work with key partners to facilitate the activation of our town centres, creating vibrant destinations and consumer choice; and
- 3.2 Facilitate an innovative and diversified economy that supports local enterprise, business investment and employment growth.

Policy:

[Commercial Use of City Land and Facilities](#)

The objectives of this Policy are to set out a framework for managing the commercial use of City Land and Community Facilities which:

- Encourages innovation, business development, and overall economic growth;
- Provides diversified goods and services to residents and visitors;
- Value adds to the overall resident and visitor experience; and
- Enhances the vibrancy and activation of public spaces.

Financial Implications

Currently the amount required to be placed into the JMR to meet the cost of asset replacement and annual maintenance of the Jetty exceeds the amount generated from existing foreshore commercial rents and the existing contributions by BJI.

It is expected the MDB will generate sufficient revenue for BJI to insure, operate and maintain the building. Based on BJI's business case over \$600,000 per annum from 25% of gross revenue and \$33,000 per annum from rent will be accumulated into the JMR to help towards reducing the funding gap for the Jetty's forecast maintenance.

The City will not have any maintenance, insurance or cleaning obligations in respect of the MDB. The lease will provide that BJI will be responsible to maintain the MDB (including structural repair and maintenance) and that BJI must establish and maintain a trust account as a contingency fund for the purpose of making capital improvements to the premises and complying with their maintenance obligations. The annual transfer amount can be established through a Lifecycle Management Plan, which City officers will recommend to DPIRD is a requirement of BJI's Funding Agreement.

External Stakeholder Consultation

Whilst previous consultation for the Australian Underwater Discovery Centre and Jetty Village has informed the concept for the MDB there has been no specific community engagement for the MDB concept to avoid raising expectations should the project not be funded to progress.

The proposed building concept has been discussed with the other foreshore commercial operators. As a result the kiosk servery window on the ground floor will be removed in detailed design and the 2nd storey bar will be designed to be ancillary to the marine themed mini golf experience.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could:

1. Resolve not to support the proposed lease terms for public advertising for the Marine Discovery Building to BJI;
or
2. Require different or other terms and conditions to be considered.

CONCLUSION

The use of Lot 501 provides an ideal location for a permanent home for the MDC and other marine experiences which relate to the Jetty heritage and Geographe Bay. Use of this land for the MDB operated by BJI is in keeping with the site's designated purpose of 'Recreation and Community'.

The business case developed by BJI has demonstrated operating the building for its design purpose will generate sufficient revenues to maintain and insure the buildings and pay the proposed rent to support increase transfers into the JMR. This will help towards the future maintenance of the Jetty. The MDB will also offer an alternative indoor experience on the foreshore which will be accessible all year round and support the sustainability of BJI's operations.

The Council are requested to enter into a lease with BJI for the construction and operation of a MDB on Lot 501 subject to the consent of the Minister for Lands and there being no objections raised through the section 3.58 of the LGA advertising process.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
S3.58 Advertising commence	By 30 September 2024
S3.58 Advertising closing	By 14 October 2024

13.2. Budget Amendments - Airport Artwork

Strategic Theme:	Key Theme 2: Lifestyle 2.1 Recognise, respect and support community diversity and cultural heritage.
Directorate:	Economic and Business Development
Reporting Officer:	Cultural Development Officer – Jacquie Happ
Authorised By:	Director Economic and Business Development - Maxine Palmer
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Absolute Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	Nil

OFFICER RECOMMENDATION

That the Council endorse the following requested budget amendments:

Amendment Description					
Project Description					
Item #	Budgeted Municipal Net Current Position	Operational Expenditure Budget	Capital Expenditure Budget	Grant	Reserves or Restricted Assets
	Increase / (Decrease)	Increase / (Decrease)	Increase / (Decrease)	(Increase) / Decrease	Increase / (Decrease)
1	Add new Grant revenue and new Capital Project				
	Cost Centre 1060 Project 15270 Aboriginal Artwork at BMRA				
	-	-	50,000	(50,000)	-

EXECUTIVE SUMMARY

This report seeks the Council’s approval of budget amendments for one item within the Economic and Business Development Directorate relating to the receipt of a Grant to be utilised to install Aboriginal artwork at the Busselton Margaret River Airport. Adoption of this officer recommendation will have no impact on the City’s budgeted net current position.

STRATEGIC CONTEXT

This project is in alignment with Key Theme 2 of the City’s Strategic Community Plan – 2.1 Recognise, respect and support community diversity and cultural heritage.

BACKGROUND

The Council adopted its 2024/25 Municipal Budget on 31 July 2024.

In accordance with section 6.8(1) of the *Local Government Act 1995*, a local government is not to incur expenditure from its Municipal fund for additional purpose except where the expenditure:

- Is incurred in a financial year before the adoption of the annual budget by the local government; and
- Is authorised in advance by Council resolution – absolute majority required; or
- Is authorised in advance by the Mayor in an emergency.

It is good management practice to revise the adopted budget when it is known that circumstances have changed. In keeping within this practice, budgets are reviewed on a regular basis.

OFFICER COMMENT

The City was approached by Tourism Western Australia (TWA) in October 2023, seeking to facilitate Acknowledgment of Traditional Owners at key gateways into Western Australia. This opportunity is available due to funding through the Jina: Western Australian Aboriginal Tourism Action Plan 2021-2025, which is backed by the Aboriginal Tourism Fund.

The Busselton Margaret River Airport (BMRA) has been identified as a high traffic entry point for visitors to Western Australia by TWA, and a grant to the value of \$50,000 has been offered to the City to manage the development and installation of artwork or artworks to meet the identified objectives.

Through the grant, the City will commission an Aboriginal Artist or Artists to create artwork to feature throughout the Airport. The purpose of the Artwork is to provide visual representation and acknowledgement of Wadandi First Nations Peoples' continued connection to country and culture, and to leave travellers with cultural impressions and memories of the region.

The City works to lead by example and hopes to show best practice in the procurement of the artwork as a reflection of the 2020-2021 Reconciliation Action Plan:

- Respect:** 1.3 Create a sense of Aboriginal place
Relationships: 2.4 Establish working relationships with key Aboriginal stakeholders and community members
Opportunities: 3.3 Promote Aboriginal art in public spaces to show shared history

One of the conditions of the grant was to work with the Karri Karrak Aboriginal Corporation (KKAC) to ensure cultural appropriateness of the artwork and due diligence of the process. Approval to proceed has been received from KKAC, for an Expression of Interest distributed to local Wadandi artists.

Statutory Environment

Section 6.8 of the *Local Government Act 1995* refers to expenditure from the municipal fund that is not included in the annual budget. In the context of this report, where no budget allocation exists, expenditure is not to be incurred until such time as it is authorised in advance, by an absolute majority decision of the Council.

Relevant Plans and Policies

There are multiple plans and policies that support the proposed budget amendments, in particular, the Reconciliation Action Plan.

Plan:

[Asset Management Plan](#)

Policy:

[Asset Management](#)

Financial Implications

Amendments to the budget are categorised into the three key types as listed below:

1. Adjustments impacting the budget balance or net position of the City: Nil
2. Adjustments with no impact on the budget balance: Item: #1
3. Adjustments to transfer budget between capital and operational undertakings: Nil

Item #1 – BMRA Aboriginal Artwork Project (15270)

The City has been successful in obtaining an allocation of \$50,000 for the above project. The funds will be utilised to pay the cost of commissioning and installing the Artwork, and provision for consultation fees for KKAC.

The Council’s approval is sought to incorporate \$50,000 of grant funding revenue which is unaccounted for in the current budget, along with \$50,000 of capital expenditure.

The following table outlines the financial implications and transactions.

Item		Account		Amount (excl. GST)	Period / Timing
1. Aboriginal Artwork BMRA	Receipt of Grant	10-9000-9000-7001-0	Municipal Bank	50,000	3
		15270-1060-1215-0000	BMRA Artwork Grant Received	(50,000)	3
	Payment of Works	15270-1060-3280-0000	Contractors	50,000	5-11
		10-9000-9000-7001-0	Municipal Bank	(50,000)	5-11

External Stakeholder Consultation

Not applicable.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City’s risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

The Council could decide not to proceed with the recommended budget amendment.

CONCLUSION

The Council’s approval is sought to amend the budget as outlined in this report.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Budget amendment processed	Within one month of Council resolution

14. CORPORATE STRATEGY AND PERFORMANCE REPORTS

Nil.

15. CHIEF EXECUTIVE OFFICER REPORTS

15.1. Future of Busselton-Sugito Sister City Relationship

STRATEGIC THEME	Key Theme 2: Lifestyle 2.5 Facilitate events and cultural experiences that provide social connection. Key Theme 3: Opportunity 3.3 Continue to promote the District as the destination of choice for events and unique tourism experiences.
DIRECTORATE	Office of the CEO
REPORTING OFFICER	Manager Stakeholder Relations - Stephanie Addison-Brown
AUTHORISED BY	Chief Executive Officer - Tony Nottle
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
VOTING REQUIREMENTS	Simple Majority
DISCLOSURES OF INTEREST	No officers preparing this item have an interest to declare.
ATTACHMENTS	Nil

OFFICER RECOMMENDATION

That the Council:

1. **Continues with the Busselton-Sugito Sister City Relationship in a new format which does not include the scheduling of regular formal delegations but does enable any future activities and proposals to be assessed by the Council on a case-by-case basis each year, based on their value to the community of the City of Busselton.**
2. **Confirms an in-principle commitment to planning a celebration for the 30-year anniversary of the Busselton-Sugito Sister City Relationship in 2026 in Busselton, with any plans and budget requests to be considered as part of the 2025-26 annual budget deliberations.**
3. **Provides an annual budget allocation (to be determined each year as part of the City's annual budget), to support ideas and activities to sustain the relationship in ways that deliver clear and tangible benefits to the City of Busselton community.**
4. **Requests the CEO undertake a further review following the 30-year anniversary to evaluate the success of any funded activities ahead of the 2027-28 annual budget.**
5. **Discontinues the MOU arrangements with the Busselton and Sugito Sister City Association including future funding commitments, instead referring them to the grant funding round to be established in line with recommendation 3 (above).**

EXECUTIVE SUMMARY

The Busselton-Sugito sister city relationship was established in 1996, and since then numerous delegations, student exchanges, events and cultural experiences have taken place in both cities. The

promotion of the sister city relationship and its objectives has been run with considerable support and coordination by the Busselton and Sugito Sister City Association (BASSCA) over 28 years.

The Covid-19 pandemic caused an interruption in the program, and this in turn provided an opportunity to reflect on the changing operating environment and consider more contemporary models for the future of the Busselton-Sugito sister city relationship.

In light of this, and to discuss ideas and possible changes with the new Mayor of Sugito, in April 2024 the Council endorsed a delegation comprising the Mayor, CEO and the President of BASSCA (Ms Pauline Vukelic) to visit Sugito in August 2024 to enable face to face discussions to take place with the Mayor of Sugito and other key representatives. The Council is now being asked to consider how it wants to proceed regarding the relationship.

STRATEGIC CONTEXT

The sister city relationship between the City of Busselton and Town of Sugito was formed in 1996 with the following aims and objectives which align to 2.1 and 2.5 of the City's current Strategic Community Plan:

- Promotion of goodwill and lasting friendship.
- Exchange programs that foster understanding between the two towns and peoples of Australia and Japan.
- Proactively build a peaceful world.

In 2018 a MOU was signed to formalise the City's funding of BASSCA to coordinate and undertake activities in support of the relationship.

BACKGROUND

BASSCA MOU

The Busselton-Sugito Sister City relationship was established in 1996, and in recent years the City and BASSCA have worked together to plan and deliver a range of activities to support the goals of the sister city relationship. An MOU was entered into between the City and BASSCA in 2018 to guide future activities. In accordance with this MOU BASSCA has been receiving annual funding from the City to undertake annual student exchanges and a range of other activities. The City provides some administrative support to BASSCA and coordinates the community exchange run (traditionally) every 2 to 3 years (noting that community members pay for their own fares etc. for these exchanges). The review of this MOU is overdue but is on hold pending Council's direction following the scheduled visit to Sugito which took place in August 2024. It is also worth noting that the BASSCA President has advised that she believes a transition to a new leadership model would be necessary for the relationship to continue with appropriate momentum, as it has been. BASSCA cannot currently fill all its committee places and has recently been unable to resource activities such as attendance at the SW Festival of Japan or the student excursion to Perth due to lack of available volunteers.

The last ten years

During the Covid-19 pandemic, the scheduled community delegations and school exchanges were not able to continue, meaning the last student exchange arranged by BASSCA was in 2019.

Prior to the visit in August 2024, the last Mayoral delegation from Busselton to Sugito was in 2016 and the last Community Cultural Exchange from Busselton to Sugito took place ten years ago in 2014. A City of Busselton delegation was due to visit Sugito in the lead up to the Olympics in mid 2020, but this visit had to be cancelled due to the Covid-19 pandemic. The last Mayoral and community delegation from Sugito to Busselton was in February 2020, during which the Mayor of Sugito and a number of Sugito representatives visited Busselton. Some of the visitors participated in the Busselton Jetty Swim and half marathon during their visit.

2024 decisions and discussions

In April 2024, the Council made the following decision which was carried 8/1:

That the Council:

- 1. Authorises a delegation comprising the Mayor, CEO and President of Busselton and Sugito Sister Cities Association (BASSCA) to travel to Sugito in Japan in August 2024 to discuss future proposals for the Busselton-Sugito Sister City relationship.*
- 2. Approves expenditure of \$10,000 from the CEO's 2023/24 contingency budget to fund the cost of the delegation to travel to Sugito for this purpose.*

During the subsequent visit in August 2024, the Mayor, CEO and President of BASSCA (the Delegation) entered into discussions with the Mayor of Sugito and other Sugito representatives to explore options for the future of the relationship.

OFFICER COMMENT

Delegation goals and discussions

With the Council's support, the Delegation entered into face to face discussions about each of the past types of activities and commitments, whilst reflecting on recent impacts and changes to priorities. It was acknowledged that since the inception of the relationship 28 years ago, both communities have evolved and adapted, and that the global operating environment has changed significantly, with digital connections and transactions having now come to the fore, and the cost of international travel increasing significantly.

The Delegation advised the Sugito representatives that they were open to hearing their ideas for possible changes to the relationship, including consideration of no longer continuing with the relationship if that was Sugito's preference. The Delegation put forward the challenges associated with continuing the traditional student exchanges due to circumstances such as, only one school teaching Japanese as a language, that school coordinating their own student exchanges, coordination challenges, and limited number of volunteers, particularly impacting on BASSCA's capacity to run the school exchange program as they have done previously. Given these challenges, neither the City nor BASSCA were in a position to coordinate regular exchanges from Busselton to

Sugito moving forward. The Delegation invited the Sugito representatives to advise of any new or different ideas they might wish for the delegation to take back to the Council for their consideration.

The Sugito representatives advised that they would like to continue the sister city relationship into the future and that they would like to bring Japanese students to Busselton (schedule to be confirmed). It was noted that inbound visits could be managed directly with local hosts and organisations involved in arranging tours to and from Japan, without the need for BASSCA (or the City) to coordinate the visits. The City could still consider hosting a Mayoral welcome and any other activities as appropriate, should a delegation decide to visit Busselton, and the Council could budget for civic functions as required in the relevant financial year.

The Community exchange program was also discussed at the meeting with Sugito representatives. It was discussed that in Busselton, responses to expressions of interest had declined for the community cultural exchange. Additionally Sugito representatives advised that it was also difficult to accommodate the community cultural visits due to costs, accommodation etc.

Other opportunities discussed included ideas around possible attendance at sporting events, digital connections, art exchanges, staff visits for specific purposes, and Japanese themed activities and events run locally (e.g. culinary events showcasing Japanese culture and cuisine).

It is suggested that the Council could consider the cost/benefit of each proposal on a case-by-case basis to ensure value to the community, rather than committing to a firm schedule of regular traditional exchanges and activities which require high levels of resourcing to manage.

Options available to the Council:

- 1. Continue to deliver a small number of City-led local promotions and activities that celebrate the relationship but discontinue the formal schedule of exchanges. Additionally consider ways to continue to acknowledge the community's strong links with Sugito over almost 3 decades through new ideas that meet contemporary community expectations in terms of value.**

The City's previous Sister City Officer role has been expanded and blended over recent years into a Public Relations Support Officer position, with a much broader and necessary focus around communications and community engagement. Therefore the level of resourcing previously dedicated to the sister city relationship (0.4 FTE) is no longer available. The City could continue to allocate a lower level of funding (estimate of 0.1 FTE) from within its Stakeholder Relations team to supporting and promoting the relationship locally, for instance through promotion of events such as the South West Japan Festival and through working collaboratively with the City's libraries and other teams to promote Japanese culture.

The City could also consider proposals from community groups who might be interested in developing and running initiatives, through grant funding. One example could be to support and promote events focused on Japanese food and culture, with local restaurants and chefs in the region choosing to celebrate Japanese cuisine as part of a diverse culinary offering in the South West region. To some extent this is occurring already from within the community.

A small annual budget allocation could be provided to support this and maintain the objectives of the sister city relationship in a cost effective way. Beyond that, the level of promotion and activities will depend on the appetite within the community to assist in driving and supporting activities.

There would be no formal schedule of student and civic/community exchanges, as neither the City nor BASSCA currently has the resources to drive and manage them, with occasional milestones and anniversaries being considered by the Council on a case-by-case basis at the appropriate time.

Should however the Council wish to build increased momentum with the relationship (as opposed to maintain it at a lower level), consideration will need to be given to including additional resources in the budget annually.

2. Reinstate the previous student and community exchange schedule

There has been declining interest in recent years in student exchanges and the one school (Georgiana Molloy Anglican School) teaching Japanese are now coordinating their own exchanges with a school outside Sugito now. Additionally, a provider local business has also established itself which provides student exchange programs on a fee for service basis. As with student exchanges, community exchanges do not generally attract high levels of interest with people often preferring to organise their own travel. The community do not always view Mayoral/civic exchanges as providing good value, noting they do have costs associated, and it would be expected that the community would receive a direct and tangible benefit from any activities supported by the Council, notwithstanding there is an intangible benefit with respect to the building of friendships and goodwill and the promotion of Busselton.

As outlined above if the Council chose this option additional internal resourcing would be required. The Council could consider establishing a formal Committee to oversee, drive and evaluate the relationship, but this would still require additional resourcing to support Committee meetings and work requests.

Another alternative could be to invite other community groups to work with or combine with BASSCA to ensure an appropriate number of committed volunteers are available to continue to deliver their obligations under the MOU with the City. This would need further discussion with BASSCA and other local community groups, and may require the Council to continue to offer financial support to whichever group takes it on to ensure they can operate effectively.

3. Discontinue the relationship

This option was raised as a possibility but was not supported by the Sugito representatives, and is not also supported by officers. The maintaining of global friendships and the recognition of different cultures and cultural respect are themes aligned to Council's strategic community plan.

Should the Council wish to discontinue the relationship then formal correspondence would need to be prepared and sent which cites Council's reasons and offering thanks and appreciation for the goodwill and friendship shared over almost 3 decades. Again, this is not recommended given the significance of this long established relationship developed over this time.

Statutory Environment

Not applicable.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

Financial Implications

In recent years the City has been providing BASSCA with \$4,500 per annum which they use to enable their operations as follows:

Insurance	\$2000 (approximately)
Accountant	\$600
Website Maintenance	\$200
Membership AJS	\$135
Promotion/Misc	\$615
School Holiday Library activities	\$500
LOTE School Awards	\$450
	\$4,500

In years where school exchanges have been run by BASSCA an additional \$8,000 has been allocated for this purpose.

In addition, the City has allocated additional specific funding in previous annual budgets to enable exchanges and associated activities, resulting in higher levels of expenditure in previous years.

Note: These values include contributions to BASSCA, but do not include the cost of staff time.

Prior to 2020, a dedicated Sister City Officer was employed to work 2 days per week (0.4FTE) to assist with delivery of relationship activities. This position has been broadened into a Public Relations Support Officer position

External Stakeholder Consultation

BASSCA

BASSCA has reported that they are experiencing some challenges in being able to deliver activities due to member availability and the President has advised she believes it is time to consider alternative models for coordination of activities.

Town of Sugito

Face to face discussions were held with the Mayor of Sugito and other Sugito representatives during the visit by the Mayor, CEO and BASSCA President in August 2024.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

While the Busselton-Sugito sister city relationship has delivered great value over many years in supporting Japanese cultural understanding as per its objectives, there is a risk that some members of the community may view the relationship to have run its course with no clear value currently being delivered in return for ratepayer-funded activities.

The officer recommendation services to mitigate the currently identified risk by ensuring that only activities that can demonstrate that they deliver value to the community are supported and funded.

Options

In line with Options 2, and 3 as detailed above in the Officer Comment section, as an alternative to the proposed recommendation the Council could also consider the following:

- Continue with the Busselton-Sugito Sister City Relationship in line with the previous pre-covid approach and endorse a new allocation of 0.5FTE in the City's budget to provide for a new staff position to enable the City to recommence regular exchange programs and associated activities.
- Cease the sister city relationship between Busselton and Sugito and write to thank all stakeholders, especially Sugito and BASSCA representatives, for their commitment to developing good relations through multiple activities over almost 3 decades.

CONCLUSION

To enable the relationship to continue, a more realistic approach needs to be taken. City staff and community volunteer resources are not currently available to work to enhance the relationship or resurrect the original schedule of exchanges and activities. Increased community ownership with the Mayoral office providing civic welcomes and formal relationship connections with the Mayor of Sugito provides an alternative model.

Given the changing priorities and current operating environment, it is appropriate to assess future proposals based on merit and community appetite to participate in activities, not just on tradition, and for the Council to be confident that any activities it supports will deliver value to the community.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Write to BASSCA to terminate the MOU to thank them for their dedication to the relationship over many years and advise of future grant funding opportunities which will be available should they or other local organisations wish to undertake activities in line with funding criteria.	September 2024
Write to the Mayor of Sugito to confirm Council's decision and to invite the Mayor to visit in 2026 for the 30 year anniversary.	October 2024
Plan and budget for activities for the 30 year anniversary (to be held in 2026 in Busselton)	Throughout 2025
30 year anniversary celebration to be held in Busselton	2026 – date TBC
Further review to be undertaken following the implementation of the new grant funding model and the 30 year anniversary celebrations to determine City of Busselton community appetite and interest.	2026/2027 financial year

15.2. Elected Member Information Bulletin

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Executive Assistant to Council - Katie Banks
Authorised By:	Chief Executive Officer - Tony Nottle
Nature of Decision:	Noting: The item is simply for information purposes and noting.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none">1. Council tender report August 2024 [15.2.1 - 2 pages]2. Current Running SAT Reviews [15.2.2 - 2 pages]3. Council Resolution Status Update [15.2.3 - 59 pages]4. Civil Litigation Report August 2024 (1) [15.2.4 - 1 page]

OFFICER RECOMMENDATION

That the items from the Elected Member Information Bulletin be noted*:

- Minutes of Committee meetings
- Minor Donations Program
- Current Active Tenders
- State Administrative Tribunal Reviews Update
- Council Resolution Status Update
- Civil Litigation Update

**Shall not be in any way read that the Council endorses or supports or agrees with the matter being 'noted'. In addition, this 'noting' form of communication does not excuse any party from any obligation or responsibility in relation to the matter/s being 'noted'. It is simply a recognition that the CEO has authorised the placing of the information (being 'noted') on the public Council agenda (as opposed to other media or not at all).*

EXECUTIVE SUMMARY

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each elected member, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

Any matter that is raised in this report as a result of incoming correspondence is to be dealt with as normal business correspondence but is presented in this bulletin for the information of the Council and the community.

INFORMATION BULLETIN

Minutes of Committee Meetings

Minutes of the following Committee meetings are to be noted as received:

Committee	Meeting Date	Minutes
Airport Advisory Committee	7 August 2024	Minutes
Airport Advisory Committee	21 August 2024	Minutes

Minor Donations Program – August 2024

The Council allocates an annual budget allowance to the Minor Donations Program. This is provided to enable eligible groups and individuals to receive sponsorship to assist them in the pursuit of endeavours that bring direct benefit to the broader community. Allocation of funds is delegated to the Chief Executive Officer, in accordance with the published guidelines and funding availability.

The Minor Donations Program reopened for applications in August 2024, following the Council’s adoption of the 2024/25 budget. 16 applications were received in August 2024 and are currently under assessment.

Current Active Tenders

The Tender update for August 2024 is provided at Attachment 1.

State Administrative Tribunal Reviews Update

The Current State Administrative Tribunal Reviews is at Attachment 2.

Council Resolution Status Update

The Council Resolution Status update is at Attachment 3.

Civil Litigation Update

The Civil Litigation Update is at Attachment 4.

16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

16.1. Notice of Motion - Reasons for voting against

MOTION

That the Council, in relation to LG Admin Regulation 11 (da), requires the Presiding Member to, where applicable, prior to the closing of the meeting, ensure each member submits their clearly written reason/s with name attached and that each member's written reasons be reproduced verbatim in the minutes save for grammatical error.

Should the CEO have any concerns as to the reason/s breaching any legislative or applicable policy instrument, the CEO shall seek the concurrence of the respective Presiding Member before publishing the unconfirmed minutes.

NOTICE OF MOTION

Cr Andrew Macnish has given notice that at the meeting on 18 September 2024, he will move the above motion.

REASONS

- The Council is responsible for confirming the accuracy of the minutes and assures itself of this when confirming them. This should satisfy those who's opinion it is that the Council should confirm its reason/s (even though it is not the Council that votes against but elected members individually). Departmental and WALGA opinions are merely that and do not outweigh the opinion of the Busselton Council (which is the only local government authority out of these entities). If the legislation meant for the Council to resolve the minuted reason/s, then it would specify such and it clearly does not.
- The Presiding Member of a Committee or Council meeting is responsible for minutes being kept. The keeping of minutes includes those minutes containing the reasons for voting against which can be many and varied, spoken to or not during the debate.
- The Regulation foresees more than one reason which is why the plural is used; 'reasons'.
- Minutes are a vital part of the governance of the City and thus a clear mechanism must ensure their completeness and accuracy whilst facilitating the transparency of an elected member's right to vote against.
- The proposed motion has an inbuilt safeguard to protect the CEO's interest.
- There can be no more accurate way than requiring each elected member to give the reason/s they solely own for voting against any officer or committee recommendation. It is a perfect accountability mechanism.
- The Regulation does not require the Council to establish nor minute its reason/s for voting against (as the Council doesn't vote). If each elected member had a different reason for voting against, then it would not be possible for the Council to obtain a majority of support for a reason or two.
- The practice of requiring each elected member voting against to write down their reason/s has been proven to work well at the City of Busselton in the past.

OFFICER COMMENT

Regulation 11(da) requires that *“written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration)”*.

The City’s current practice is for officers to draft a summary of the reasons (as noted by elected members during debate) and include this in the minutes as a notation to the resolution.

Following a request from Cr Andrew Macnish for the CEO to consider requiring each elected member to provide their reasons for making a decision (that is significantly different to the written recommendation), and for all individual elected member’s reasons to be published in full (verbatim) in the minutes, officers undertook a review of the latest operational guidance on best practice from the Department of Local Government, Sport and Cultural Industry’s (DLGSC), and the practice of peer local governments.

The DLGSC guidance recommends as follows:

- The record of the reason for a decision that is significantly different to a recommendation can be included in the decision motion or it can be a separate resolution.
- Capturing the reasons for the Council / Committee decision by resolution eliminates the possibility of ambiguity as the council or committee must vote on the motions, and the outcome in all such cases must be clear.
- Including reasons as a notation in the minutes (separate to the Council decision – by administrative summary or recording of individual elected member reasons) is the least recommended method of recording the reasons for a decision.

WALGA has advised that reasons are traditionally predicated on the mover of the motion explaining the alternate motion’s purpose, and that comments captured in the recording of the meeting create a sufficient record of proceedings that capture the reasons why a member does or does not support a motion.

Research into seven peer metro and regional Local Governments determined various methods are employed for capturing reasons:

- Displaying the mover’s written reasons as provided on screen and then amending ‘on the fly’ during the meeting, then including either with the motion or as a notation in the minutes.
- At a minimum, it was common practice for written reasons to be displayed on screen when the Council were considering a motion.
- None of the local governments looked at were publishing individual elected member reasons.

Having considered the research outcomes, officers recommend that the Council resolve on the reasons for decisions that are ‘significantly different from the relevant written recommendation’ after they have resolved on the alternative motion; that is by way of a second debate process.

While it is acknowledged that this will require an additional decision-making step, it is in line with DLGSC guidance on best practice and enables elected members to consider all arguments put forward in debate, before, as the Council, resolving on the reasons for the decision. Alternatively, a summary of the reasons provided by the mover of the alternative motion could be used, noting

however that there may be instances where this does not properly reflect the Council's decision for resolving on an alternative motion.

If the Council are of a mind to support Cr Andrew Macnish's proposal, officers note that this would be in effect a notation in the minutes.

16.2. Notice of Motion - Elected members only sessions (EMOs)

MOTION

That the Council

- Requests the CEO to schedule Elected Member Only (EMO) sessions every month on the second and fourth Wednesdays, other than when such is within recess or end of year shutdown periods, for a minimum of one and one quarter hours (75 mins) commencing at 12:15pm unless previously otherwise agreed by a majority of EMs. Where such agreement is secured, the CEO shall be informed ahead of time and shall schedule the EMO sessions accordingly.
- Resolves that EMO sessions shall be Chaired on a rotating basis with no Elected Member (EM) being forced to do so. The turn of those EMs who choose not to Chair will flow to the next EM on the list. The list of Chairing shall commence in the order of the least experienced EM down to the most in numbers of years served as an EM (career tally).
- Resolves that the Chair shall call for/collate EM discussion items prior to the session they are due to Chair and organise the session agenda.
- Resolves that the Chair shall be responsible for reporting to the CEO at the commencement of the next Councillor/Mayor/CEO session (CMC) any matters and their priority the Chair deems appropriate to report and seek CEO comment. Nothing shall prevent the Chair from taking or causing notes of the session to be taken to help relay matters to the CEO.
- Requests the CEO to include the above in any appropriate City governing instrument.

NOTICE OF MOTION

Cr Andrew Macnish has given notice that at the meeting on 18 September 2024 he will move the above motion.

REASONS

- Elected Members (EMs) are only too aware of their right to associate and discuss matters of importance to the good governing of the City. This should be encouraged and up until very recently, it was.
- Elected Member Only (EMO) sessions had become very fruitful of late under the initiative of the rotating Chair. This success should be continued and built upon. Skills in presiding, helping generate and presenting outcomes are necessary to help develop leadership (as is a requirement of the EM role). Nothing will be forced on any EM - only those who wish to participate in this form of development.
- EM initiatives, particularly those demonstrating improvements, should be supported by the Council and thus signal to the community it is responding to the Community Survey that was critical/poorly rated the Council Leadership.
- The proposed motion gives the CEO clear direction in scheduling Wednesday sessions but also allows for flexibility.
- The EM group has no designated leader* nor manager (EMs are not employees) under the LG Act nor has the EM group appointed such and must therefore be self-organising in being able to best facilitate the carrying out of their role (LGA s2.10). Whilst the Mayor is required to preside over meetings under the Act, sessions that are not such, for example; workshops,

briefings, EMOs, CMC, etc. are foreseen as being open to the EM group to determine the best particular meeting dynamic (and seek concurrence from the Council).

*Under the LG Act, the responsibility to provide leadership (and guidance) is equal between all elected members including the Mayor.

OFFICER COMMENT

The CEO currently convenes a range of briefing sessions and workshops with Elected Members for (as outlined in the Council Policy 'Meetings, Information Sessions and Decision Making Processes') the purpose of providing relevant information to elected members and allow the opportunity for elected members to:

- explore options and discuss ideas;
- discuss future agenda items and strategic direction;
- to be briefed on key ongoing projects and have input prior to the allocation of resources in taking forward reports to the Council;
- provide feedback and input in relation to decisions being made, or which may be made, by officers (under delegation, authorisation or similar, or 'acting through');
- discuss and resolve where possible grievances and concerns.

Implicit within the policy framework is that such sessions are inclusive of the CEO (and any nominated officer). It is the role of the CEO under Section 5.41 of the *Local Government Act 1995* (the Act) to advise the Council in relation to the functions of a local government under this Act and other written laws; and ensure that advice and information is available to the Council so that informed decisions can be made. While not all matters discussed at elected member only sessions may be related to the Council's decision making it is likely that some may be related to pending or future decisions, and it is important that the CEO is able to carry out his functions of providing advice and information. Further, where matters raised are more operational or administrative in nature, the CEO should also be present. It is noted that elected members only sessions held in recent months have moved into operational matters with outcomes being to follow up information as to why or what has been undertaken operationally. These matters should, if discussed at an elected member level, be done so with the CEO present.

If elected members believe however that elected member only sessions provide an additional constructive forum for elected members to discuss matters as outlined in the notice of motion, further parameters should be established as to how advice will be sought from the CEO (or relevant senior officer) to inform the discussion, or else the discussion may not be constructive. It is noted that elected member only sessions have been discontinued based on feedback from members that they were not constructively meeting the needs of elected members.

With respect to the proposal for a rotating Chair, the Department of Local Government, Sport and Cultural Industries has an operational guideline (# 5 – Council Forums) which relevantly states:

Authority for the Chair

Many councils have established a forum process without specifying how the forums should be chaired and what authority the chair is given to control proceedings. In some local governments, the CEO chairs the forums in certain circumstances. This latter approach is not supported because it confuses the roles and relationships established in the Act.

It is recommended that the mayor or president or, if appropriate, another elected member, chairs all forums that involve elected members. Properly managed forums rely on strength

and leadership from the chair. Therefore, a forum's chair should be supported by established rules similar to the standing orders that apply to formal meetings.

Elected members should consider the above advice when considering this notice of motion. From a practical viewpoint, the CEO having to liaise with up to 9 different elected members as a Chair for the session is not effective and lacks consistency. The Act provides a role for the Mayor and CEO to (respectively):

- liaise with the CEO on the local government's affairs and the performance of its functions; and
- liaise with the mayor or president on the local government's affairs and the performance of the local government's functions.

If the motion is supported by elected members, it is recommended that the motion is amended to remove reference to the specific timing of the second and fourth Wednesday each month, with elected members not always currently required on a fourth Wednesday.

17. URGENT BUSINESS

18. CONFIDENTIAL MATTERS

Nil

19. CLOSURE