



Shire of
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Agenda

Special Council Meeting to be held
on Thursday 11 February 2021

Commencing at 5.30 pm in Council Chambers

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Agenda

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS
2. RECORD OF ATTENDANCE
3. APOLOGIES & LEAVE OF ABSENCE
4. PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS
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7. CLOSURE OF MEETING

AGENDA NUMBER:	6.1
SUBJECT:	Development Application – Private Airstrip
LOCATION/ADDRESS:	Lot 2 on Diagram 70077 (No. 40) Rivergum Way, Darradup
NAME OF APPLICANT:	Dieter Ebeling - Whisperwind
FILE REFERENCE:	A 770
AUTHOR:	Steve Thompson (Consultant Planner)
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Edge Planning & Property receive payment for planning advice to the Shire and declare a Financial Interest (section 5.70 of the <i>Local Government Act 1995</i>)
DATE OF REPORT	8 February 2021
PREVIOUS MEETING REFERENCE:	None
ATTACHMENT:	6.1.1 - Location Map 6.1.2 - Original plans and information from applicant 6.1.3 - Submissions (1 st round of consultation) 6.1.4 - Updated plans and information from applicant 6.1.5 - Updated current airstrip alignment and application plans 6.1.6 - Submissions (2 nd round of consultation) 6.1.7 - Extract of planning framework 6.1.8 - Extract from <i>Planning and Development (Local Planning Scheme) Regulations 2015</i>

BACKGROUND:

The Shire has received a Development Application from Dieter Ebeling (Whisperwind) to construct a private airstrip, which can also be used as a bitumen driveway, at Lot 2 (No. 40), Rivergum Way, Darradup.

Relevant details relating to the site and the application include:

- The application site is shown in Attachment 6.1.1;
- The property is 40.8715 hectares in area, it contains a dwelling and some sheds;
- The land generally slopes towards the north with the lowest section on the northern boundary;
- Rivergum Way is unsealed;
- The majority of the site has been cleared of vegetation, while a portion near the centre and in the south eastern section contain native vegetation. There is also scattered mature vegetation in other parts of the site; and
- Lots to the east of the site are zoned ‘Special Rural’ and contain various dwellings and rural living uses. There are also dwellings to the west on Poison

Swamp Road. The remainder of the area is predominantly Department of Biodiversity, Conservation and Attractions (DBCA) managed land.

Description of proposed development

The applicant initially proposed the airstrip which was set back 42 metres from the eastern boundary of the site and proposed 365 flights per annum (refer to Attachment 6.1.2). Following a review of the initial round of consultation, the applicant has modified the proposal as outlined in Attachment 6.1.4 and Attachment 6.1.5. The details set out in Attachment 6.1.4 and the revised plans in Attachment 6.1.5 replace the original proposal and plans. The revised proposal and plans (western alignment) are those assessed in this report by Shire administration and the Council.

The development application now seeks development approval for a private airstrip in accordance with the plans shown in Attachment 6.1.4 and 6.1.5 (western alignment). In particular, the applicant proposes the following:

- The construction of a private airstrip that can also function as a vehicle driveway;
- The airstrip will be 900 metres long, 20 metres wide and will be bituminised. There will be a 20 metre grassed area on either side of the bitumen;
- The runway is now central in the property and setback 200 metres from the eastern boundary;
- The airstrip is aligned north/south on the property with take-off and approach generally over DBCA managed land;
- The property is adequately fenced providing secure access;
- A maximum of 120 take-offs and 120 landings per year;
- No night time take-offs or landings are proposed; and
- No commercial or recreational use is proposed.

The applicant confirms there is a need to provide engineering designs of the airstrip including drainage management design and setting out how run-off will be managed prior to construction.

Consultation (first round)

The Shire administration undertook its first round of consultation through inviting public comment on the Development Application for a period of 17 days by writing to 23 adjoining/nearby landowners. Attachment 6.1.3 sets out the submissions. In the first round of consultation, 17 submissions were received by the Shire. In summary:

- no submissions were supportive of the proposed development or raised no objections;
- 3 submissions raised issues; and
- 14 submissions objected to the private airstrip.

Various issues and objections were raised including:

- Noise and amenity;

- Environmental impacts;
- Clarifying the types of aircraft and numbers of flights;
- Safety;
- Potential commercial/recreation use;
- Bushfire risks; and
- Impacts on property values.

Consultation (second round)

The Shire consulted a second time and received 11 responses (see Attachment 6.1.6). This has revealed greater support to the revised proposal however overall a majority of submitters still either raise issues with or object to the proposal. Any additional submissions received in the coming days will be provided to Councillors prior to the Council meeting.

Planning framework

In summary:

- The property is zoned 'Agriculture' in the *Shire of Nannup Local Planning Scheme No. 3 (LPS3)* and zoned 'Rural' in the draft *Shire of Nannup Local Planning Scheme No. 4*;
- An airstrip (airfield) is not included in the zoning table of LPS3; and
- The property is located within a bushfire prone area as designated by the Fire and Emergency Services Commissioner.

An extract of the local planning framework is outlined in Attachment 6.1.7.

Attachment 6.1.8 is an extract from the *Planning and Development (Local Planning Schemes) Regulations 2015* which sets out matters to be considered by local government in assessing a Development Application.

COMMENT:

A) Overview

Following an assessment of the Development Application (the revised information in Attachment 6.1.4 and the westerly alignment in Attachment 6.1.5) against the planning framework, submissions and information provided by the applicant, the Development Application is considered to be conditionally suitable. It is accordingly recommended that Council conditionally approve this Development Application given:

- The number of take-offs and landings and the size of the proposed aircraft have been clarified. Importantly, the number of take-offs have been reduced from 365 per year to 120 per year along with a corresponding reduction in landings from 365 to 120 per year;
- The application does not conflict with LPS3 objectives;

- It is suggested the private airstrip should not detrimentally detract from the amenity of the local area including for noise, hours of operation, traffic, visual amenity, privacy, lighting and emissions;
- The revised proposal, now centrally located on the site, has setbacks of around 200 metres to the eastern boundary or around 220 metres to the closest off-site dwellings; and
- Development conditions can assist to reduce risks associated with the development.

While noting the above, the key issues with the application are outlined below. It is suggested that noise impacts and the potential resultant loss of amenity are the primary planning considerations when assessing the application.

B) Key issues

Noise & amenity

As outlined in Attachment 6.1.4, the applicant has:

- Supplied specifications on the aircraft to be used at the private airstrip which assists to better understand the noise output of the aircraft;
- Clarified the type and size of proposed aircraft to use the airstrip. The applicant requests approval to land aircraft that are classified as Light Aircraft under a Maximum Take Off Weight (MTOW) of under 5,700kg. As outlined in Attachment 6.1.4, the applicant has clarified the make and models of aircraft that are intended to land that fit within this classification;
- Provided information on legislation that regulates aircraft noise;
- Included acoustic expert advice on anticipated amenity impacts as a result of airstrip operations;
- Clarified details relating to regional local/regional flying; and
- Advised there is no proposal to perform/practice aerobatic activities from the property.

It is highlighted, at this stage, that no acoustic assessment has been prepared for the proposal on this site. The Council may determine that this is required prior to it assessing the Development Application.

The Shire administration acknowledges that there will be some noise and amenity impacts likely to be felt by surrounding residences as a result of the airstrip.

There is no State Government guiding separation distances for airstrips from sensitive land uses (such as dwellings). The local planning framework provides general guidance but not specific guidance to assist in guiding the determination of this Development Application.

To address the planning framework, including LPS3, the proposed private airstrip should not cause unacceptable noise impacts or loss of amenity to nearby residences. It is suggested that determining 'amenity' can be subjective and can be interpreted differently depending on an individual's viewpoints regarding environmental qualities.

This is evidenced by a combination of acceptance, support and opposition for the proposed airstrip.

It is suggested that the health, well-being, amenity and safety of local residents and the environment should be suitably protected from the impacts of noise, air emissions, odour and other impacts through appropriate management and adequate separation distances. It is suggested that:

- Provided reasonable conditions are attached to any approval, including limiting flight numbers, timing of take-offs and landings and the size of the aircraft, the private airstrip use could proceed without causing unacceptable noise impacts or loss of amenity for surrounding residences;
- The revised proposal is considered to have far lower impacts than the original proposal. This includes that noise impacts are also lessened due to take-offs and landings in daylight hours;
- There are a maximum of 120 take-offs and 120 landings per year; and
- The noise source is limited to day time hours, is short in duration and affected parties are provided with substantial respite from this intrusion.

Monitoring flight numbers

Some submitters have concerns that the Shire will be unable to monitor the additional flights for compliance if approved. A condition is proposed to any approval requiring the applicant to keep a logbook of all flight activity from the airstrip. It is understood any pilot using the airstrip is required by law to maintain a flight logbook.

Commercial activity

Some submitters are concerned that the airstrip will be used for commercial purposes, or that the use is a precursor to future commercial development (joy flights, skydiving). The applicant confirms the airstrip is for private use only.

Safety

It is acknowledged that there is the possibility of a crash incident. It is also acknowledged that the applicant would take every precaution to ensure the risk of incident is minimised. The risk of plane crash incidents is not sufficient grounds to recommend that the Development Application be refused.

Flora and fauna impacts

Most of the proposed airstrip is located on cleared land. The airstrip will result in some clearing of native vegetation. While noting that development should seek where possible to avoid adverse impacts on environmental assets, where avoidance is not possible, the adverse impacts should be minimised. Ideally, there is no net loss in biodiversity assets. To assist in mitigating impacts, the applicant has supported lodging a conservation covenant for an area of 2 hectares. The Council may also want the applicant to undertake additional planting of native vegetation in suitable locations.

The DBCA have been asked for their input relating to impacts (if any) on the quality of habitat and native fauna in the area. At the time of writing this report, the DBCA response had not been received.

It is suggested the proposed private airstrip is not likely to impact on native wildlife or domestic/stock animals any more than some 'as of right' land uses would such as farm machinery noise, motorbikes and plane overflights associated with aerial spraying. Wildlife moving throughout the area will have considerable respite from any take-off or landing noise with a maximum of 120 take-offs and 120 landings per year.

Impacts of water resources including the Blackwood River

The site adjoins the Blackwood River. There are accordingly concerns about the airstrip impacts on the Blackwood River, in particular from water runoff from the airstrip which may contain contaminants such as oils and fuels.

Subject to appropriate detailed stormwater designs and construction, the proposed airstrip is unlikely to detrimentally impact on surface water resources. The risk of runoff and contamination to the Blackwood River is considered manageable.

A condition is recommended requiring any fuel and oil storage associated with the airstrip use to be suitably and safely addressed to minimise risk of contamination.

Privacy

There is concern from some submitters regarding the loss of or intrusion on privacy by aircraft flying low over properties. Based on the revised airstrip alignment, the impacts on privacy are considered low.

During take-off and climb, it is suggested the pilot's primary focus is on instruments and flying the aircraft, not observing neighbouring properties. The altitude at which the planes fly, combined with the speeds at which the planes are travelling make particular details on neighbouring properties, including people, almost undetectable. For this reason, the impacts of privacy are likely to be negligible and has not been a substantial consideration during the assessment of this application.

Odour and emissions (excluding noise)

The use of the proposed airstrip will create modest levels of aircraft odour and emission impacts. Aircraft exhaust particles could settle on house roofs which then flow into rainwater tanks causing a health issue. It is suggested that it is unlikely that the exhaust from the aircraft would cause contamination of local water supplies however this may need to be monitored. An advice note is included in the Officer Recommendation regarding monitoring. There are risks/impacts from cars and trucks driving along the gravel roads in the area and other permitted rural uses involving machinery that could also pose contamination risks.

Fire risk

The applicant has not submitted a Bushfire Management Plan or a Bushfire Emergency Evacuation Plan. It is recommended a Bushfire Management Plan is prepared for the property.

Property devaluation

Some submitters are concerned the proposed airstrip will cause property valuations to fall. The potential for a development to devalue land is not a valid planning consideration. Notwithstanding this, the proposed use of the airstrip is not likely to have an unacceptable impact on amenity surrounding the subject site.

Use alternative airports

Some submitters suggest that the applicant should use established airports rather than this proposed new airstrip. Although there may be alternate locations to operate the proposed use, this is not sufficient grounds to recommend the application be refused, particularly considering the proposed development is not considered to conflict with LPS3. As discussed above, the Shire administration consider that the scale of the proposed use should not cause an unacceptable noise nuisance and loss of amenity to surrounding residents.

C) Conclusion and options

It is recommended that Council approve the Development Application subject to conditions. The Council could alternatively choose to defer making a decision on the matter and seek additional information or it may determine to refuse the Development Application.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005, Planning and Development (Local Planning Scheme) Regulations 2015, LPS3, along with Commonwealth legislation relating to aircraft use and safety including Air Navigation (Aircraft Noise) Regulations 2018.

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance.

POLICY IMPLICATIONS:

Local Planning Policy *LPP20 Developer and Subdivider Contributions* is a non-statutory document which is designed to provide guidance to assist the Council in its decision making. Accordingly, the Council is not bound by the policies but is required to have regard to the policies in determining the Development Application. Additionally,

there are various State Planning Policies which are relevant in assessing the Development Application including *SPP2 Environment and Natural Resources*, *SPP2.5 Rural Planning 2.5* or *SPP3.7 Planning in Bushfire Prone Areas*.

FINANCIAL IMPLICATIONS:

The applicant has a Right of Review to the State Administrative Tribunal on the Council's decision.

STRATEGIC IMPLICATIONS:

The proposed private airstrip is considered generally consistent with the aims of the endorsed *Shire of Nannup Local Planning Strategy* and LPS3.

The property is zoned 'Agriculture' in the *Shire of Nannup Local Planning Scheme No. 3*, zoned 'Rural' in the draft *Shire of Nannup Local Planning Scheme No. 4* and classified as 'Rural Residential' in the *Shire of Nannup Local Planning Strategy*.

With changing State Government requirements, and landowner preferences, there is no guarantee the property will be approved and rezoned to 'Rural Residential'. There is still a requirement for relevant planning, bushfire, environmental and servicing considerations to be appropriately addressed.

In terms of assessing the Development Application, the document which has the most 'weight' is the *Shire of Nannup Local Planning Scheme No. 3*.

The applicant complies with various components of the Local Planning Strategy, while other components can be mitigated through development conditions in the recommendation. The following sets out relevant extracts of the Local Planning Strategy:

2.2 Objectives

- d) assist to broaden the economic and employment base of the Shire through greater diversification and promoting a resilient and increasingly robust economy;*
- e) promote agricultural activity as the key economic and social driver for the Shire;*
- g) ii) attract and retain people and businesses;*

2.3 Aims of Strategy

The local government aims to:

- a) attract and retain people and businesses;*
- b) support and promote a resilient local economy;*
- c) make the most of economic development opportunities by capitalising on the Shire's competitive advantages;*

d) conserve land required for agricultural production and support opportunities for agricultural diversification and value adding;

s6) require appropriate buffers for hazard and amenity as determined by the appropriate authorities for those land uses. Buffer distances are guided by the standards recommended by the Environmental Protection Authority (EPA) unless appropriately justified by the proponent to the satisfaction of the local government;

There are no EPA buffer standards for airstrips

The local government will:

C12) require appropriate buffers for rivers, watercourses and wetlands in LPS4, which will be determined based on the values of the environmental assets and proposed land uses. As a guide, the development setback from rivers, watercourses and wetlands is 100 metres which can be reduced to 50 metres based on the proposed development and a consideration of existing soil, landform and vegetation conditions.

VOTING REQUIREMENTS:

Simple Majority.

RECOMMENDATION:

That Council approve the Development Application, set out in Attachment 6.1.5 (western 900 metre length alignment), for a private airstrip at Lot 2 on Diagram 70077 (No. 40), Rivergum Way, Darradup subject to the following conditions:

General

1. This approval shall expire if the development hereby approved has not been substantially commenced within a period of two (2) years from the date hereof, or within any extension of that time (requested in writing prior to the approval expiring) that may be granted by the local government. Where the Development Approval has lapsed no further development is to be carried out.
2. The development hereby approved must be carried out in accordance with the plans and documentation set out in Attachment 6.1.4 and in Attachment 6.1.5 (western alignment), addressing all conditions, or otherwise amended by the local government and shown on the approved plans and these shall not be altered and/or modified without the prior knowledge and written consent of the local government.

Aircraft operations

3. A maximum of 120 take-offs and 120 landings are permitted per year.
4. The applicant must, for the life of the development, maintain a flight logbook, which contains records of all flight movements to and from the approved airstrip, including visitor flights. Flight records must include the aircraft used, and the date in which the flight/s was carried out. At the request of the local government, the logbook must be made available to the local government for review.
5. Use of the airstrip is to Light Aircraft Classification with maximum take-off weight (MTOW) below 5,700 kilograms. Additionally, the airstrip is not used for commercial or recreational activities.
6. Operation of the private airstrip shall be restricted to daylight hours.
7. Any material likely to degrade water (e.g. fuels, oils, lubricants, solvents, coolants, degreasing agents etc.) must be stored within a bunded area, or an appropriately designed chemical storage container, suitable for preventing the escape of material into surface or underground water resources.
8. The airstrip and driveway are to be designed, constructed, sealed and drained prior to use of the airstrip **by a suitably qualified engineer to the satisfaction of the local government.**
9. Any lighting device shall be positioned and shielded so as not to cause any direct, reflected or incidental light beyond the property boundaries. Lighting should be designed in accordance with *AS 4282-2019 Control of the Obtrusive Effects of Outdoor Lighting*.
10. The use of the site must not adversely affect the amenity of the locality by reason of noise.

Stormwater drainage/water quality

11. Prior to commencement of any works, a Stormwater Management Plan shall be submitted for approval by the local government and thereafter implemented and maintained to the satisfaction of the local government. Amongst matters, the Plan should:
 - (a) Ensure that all stormwater from the airstrip and other impervious areas are collected, detained and suitably treated on site for the 1 in 1 year, 1 hour average recurrence interval (ARI) storm event;
 - (b) Address surface water management for larger 1 in 20 year and 1 in 50 year storm events to prevent stormwater causing soil erosion on the application site, on neighbouring properties and on public infrastructure; and
 - (c) Be designed in accordance with the *Stormwater Management Manual for Western Australia*.

12. Any aircraft wash down area/s is to be located so as to prevent the discharge of sediment, contaminants or wastewater to waterways or watercourses.
13. An emergency spill containment kit must be kept on site at all times and used when a spill occurs to prevent the escape of any contaminants off-site.

Managing fire risks

14. The applicant shall prepare and implement a Bushfire Management Plan to the satisfaction of the local government prior to the use of the airstrip.
15. The applicant is to register a notification on the Certificate of Title under Section 70A of the *Transfer of Land Act 1893* advising of the existence of a hazard and that a Bushfire Management Plan is in place for the property. A copy of the notification is to be provided to the local government prior to commencement of the use.
16. The development is to be provided with a source of water for fire-fighting purposes of not less than 50,000 litres. This may be satisfied by the provision of an accessible dam or tank. In the case of a tank supply, delivery of the water should be provided through a 100mm male Camlock fitting with a reducing adaptor to a 50mm male Camlock fitting which is chained to the valve to prevent removal away from the tank. The outlet from the tank water supply or the dam shall be located in an accessible position.
17. No flight take-off or landings are to occur on days where either a Total Fire Ban or a Harvest and Vehicle Movement Ban has been declared for the Shire of Nannup.

Environmental management

18. The applicant lodges a Conservation Covenant under the *Soil and Land Conservation Act 1945*, to the Soil Commissioner, prior to the commencement of site works. The applicant is to provide written evidence of the registration to the local government.
19. No native vegetation shall be removed in the construction of the private airstrip, unless permitted by a clearing licence or permit issued by the Department of Water and Environmental Regulation.

ADVICE

A) In relation to Condition 15, the notification is to state as follows:

"This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan."

- B) The Shire has no plans in the foreseeable future to seal Rivergum Way between Lot 2 (No. 40) Rivergum Way and Helyar Road.
- C) The property is entirely located in an area which has been declared as bushfire prone by the Fire and Emergency Services Commissioner. The applicant is advised to prepare and implement an Emergency Management and Evacuation Plan prior to occupation. The applicant should also take all practical steps to minimise the risk of bushfires and provide a fire fighting unit.
- D) The applicant is encouraged to prepare a Works Safety Plan prior to the commencement of operations which is then appropriately implemented.
- E) The applicant should retain appropriate Public Liability Insurance to cover the entire area the subject of this approval.
- F) The applicant is encouraged to work with nearby residents who may be concerned with aircraft emissions impacting water quality into their rainwater tanks. This could include financially contributing to an independent assessment of water quality in tanks prior to the airstrip use commencing and monitoring after two years of operations.
- G) If the applicant or owner is aggrieved by this determination, there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.