



# Agenda

Council Meeting to be held  
on Thursday 26 July 2018  
Commencing at 4.30pm

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# Agenda

1. **DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS**
2. **RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE**  
(previously approved)
3. **RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**
4. **PUBLIC QUESTION TIME**
5. **APPLICATIONS FOR LEAVE OF ABSENCE**

Cr Stevenson has applied in writing for Leave of Absence to be granted for the 23 August 2018 Ordinary meeting of Council.

6. **PETITIONS/DEPUTATIONS/PRESENTATIONS**

A deputation will be made by Matthew Fletcher; Urban Planner for Visionstream; in regard to Agenda Item 12.4.

Perks Road Residents' Representative – to be advised.

7. **DECLARATIONS OF INTEREST**

The Shire President will read out any declarations received relating to financial, proximity or impartiality interests and ask for any further declarations to be made.

Members should make any declarations at the start of the meeting but may declare an interest before the resolution of any agenda item.

**8. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

**8.1 Shire of Nannup July Ordinary Council Meeting**

That the Minutes of the Ordinary Council Meeting of the Shire of Nannup held in Council Chambers on 28 June 2018 be confirmed as a true and correct record.

**9. MINUTES OF COUNCIL COMMITTEES**

**9.1 Western Australian Local Government Association South West Zone**

That the Minutes of the Western Australian Local Government Association South West Zone meeting held 22 June 2018 be received.

**10. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

**11. REPORTS BY MEMBERS ATTENDING COMMITTEES**

**12. REPORTS OF OFFICERS**

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**13. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY  
DECISION OF MEETING**

**13.1 OFFICERS**

**13.2 ELECTED MEMBERS**

**14. MEETING CLOSED TO THE PUBLIC  
(Confidential Items)**

**14.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

**14.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE  
PUBLIC**

**15. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS  
BEEN GIVEN**

**16. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

**17. CLOSURE OF MEETING**

# **CEO DEPARTMENT**

AGENDA NUMBER:	12.1
SUBJECT:	Delegated Planning Decisions for June 2018
LOCATION/ADDRESS:	Various
NAME OF APPLICANT:	Various
FILE REFERENCE:	TPL18
AUTHOR:	Jane Buckland – Development Services Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	10 July 2018
PREVIOUS MEETING REFERENCE:	Nil
ATTACHMENT:	12.1.1 – Register of Delegated Development Approvals

## **BACKGROUND:**

To ensure the efficient and timely processing of planning related applications, Council delegates authority to the Chief Executive Officer to conditionally approve Application for Development Approval that meet the requirements of both Local Planning Scheme No.3 (LPS3) and adopted Council policy.

Delegated planning decisions are reported to Council on a monthly basis to ensure that Council has an appropriate level of oversight on the use of this delegation. A Register of Delegated Development Approvals, detailing those decisions made under delegated authority in June 2018 is presented in Attachment 12.1.1.

## **COMMENT:**

As shown in the attachment, each application has been advertised in accordance with LPS3 and Council's adopted Local Planning Policy *LPP5 Consultation* as detailed in the Policy Implications section of this report.

During June 2018, five (5) development applications were determined under delegated authority. The table below shows the number and value of development applications determined under both delegated authority and by Council for June 2018 compared to June 2017:

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	<b>June 2017</b>	<b>June 2018</b>
<b>Delegated Decisions</b>	2(\$289,752)	5 (\$91,000)
<b>Council Decisions</b>	Nil	1 (\$150,000)
<b>Total</b>	<b>2(\$289,752)</b>	<b>3 (\$241,000)</b>

**STATUTORY ENVIRONMENT:**

*Planning and Development Act 2005, Local Government Act 1995 and LPS3.*

Regulation 19 of the *Local Government (Administration) Regulations 1996* requires that a written record of each delegated decision is kept.

**POLICY IMPLICATIONS:**

Applications for Development Approval must be assessed against the requirements of LPS3 and Local Planning Policies adopted by Council. These Policies include Local Planning Policy *LPP5 Consultation* which details the level and scope of advertising required for Applications for Development Approval.

Each application processed under delegated authority has been processed and advertised, and has been determined to be consistent with the requirements of all adopted Local Planning Policies.

**FINANCIAL IMPLICATIONS:**

The required planning fees have been paid for all applications for Development Approval processed under delegated authority.

**STRATEGIC IMPLICATIONS:**

Nil.

**RECOMMENDATION:**

That Council receives the report on Delegated Development Approvals for June 2018 as per Attachment 12.1.1.

**VOTING REQUIREMENTS:**

Simple Majority

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AGENDA NUMBER:	12.2
SUBJECT:	Amendment No.20 to the Shire of Nannup Local Planning Scheme No. 3
LOCATION/ADDRESS:	Lot 3 (2731) on DP12565 Balingup-Nannup Road, Nannup
NAME OF APPLICANT:	Blackwood River Clinic
FILE REFERENCE:	TPL1/20
AUTHOR:	Jane Buckland – Development Services Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	12 July 2018
PREVIOUS MEETING REFERENCE:	23 November 2017
ATTACHMENTS:	12.2.1 – Documentation from applicant 12.2.2 – Proposed Amending Provisions 12.2.3 – Location Plan 12.2.4 – Current Special Use provisions – extract from Scheme 12.2.5 – Submissions 12.2.6 – Schedule of Submissions 12.2.7 – Bushfire Management Plan (May 2018)

**BACKGROUND:**

*A) Proposal*

The applicant seeks Council's adoption of a scheme amendment to modify the special provisions/conditions for Lot 3 (2731) Balingup-Nannup Road to facilitate the on-going operation of the Blackwood River Clinic and Sky Lakes Retreat.

As Council are aware, in November 2016 the then WA Minister for Mental Health announced that Abbotsford Private Hospital had been successful in securing 16 new residential rehabilitation treatment beds, to be located at the Blackwood River Clinic, as part of the \$14.9 million *Western Australian Meth Strategy 2016*. Dr Stephen Proud of the Blackwood River Clinic addressed Council at its meeting of 24<sup>th</sup> November 2016 to discuss how this announcement would affect the current operations at the clinic and at this time it was anticipated that the 16 beds would be made available from those already in use at the clinic.

Since the above announcement was made, the property on which Blackwood River Clinic and Sky Lakes Retreat are located has been sold and is now owned by Health Care Australia Pty Ltd. Both the landowner and the applicant have reviewed the current approvals and permitted uses for the property and are requesting an amendment to LPS3 to support the on-going operation of the Blackwood River Clinic and Sky Lakes Retreat and to provide sufficient flexibility to changing circumstances.

The Shire administration has received no indication that the landowner or applicant wishes to significantly alter the day-to-day operations of either the Blackwood River Clinic or Sky Lakes Retreat.

Details of the proposed amendment are provided in Attachment 12.2.1, while Attachment 12.2.2 sets out the proposed amending provisions.

*B) Site context and features*

The site:

- is located approximately 13 kilometres north east of the Nannup townsite (shown in Attachment 12.2.3);
- adjoins and is near rural land and State Forest;
- is 34.5 hectares in area;
- contains a number of buildings including the Blackwood River Clinic (day hospital), Sky Lakes Retreat (accommodation units), staff accommodation, sheds and various dams;
- is partially declared as a bushfire prone area; and
- is accessed via Balingup-Nannup Road.

*C) Planning Framework*

The site is zoned 'Special Use (SU12)' and is located within a 'Landscape Values Area' in the *Shire of Nannup Local Planning Scheme No.3 (LPS3)*.

Attachment 12.2.4 sets out the current Special Use provisions from LPS3. In summary, the zoning currently allows the operation of a hospital and medical centre with a maximum of 30 patients at any one time, a residential building with a maximum occupation of 20 persons and a caretakers dwelling, along with the potential for a single house, home office or home occupation, extensive agriculture, private recreation and rural pursuits.



Previously, Bushfire Management Plans have been prepared, updated and approved for the site.

*D) Council resolution*

At the Council meeting on 23 November 2017, the Council passed the following motion at minute No. 17213:

**“That Council:**

**1. Determines that the Amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, contained in Regulation 34, for the following reasons:**

- (a) The amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;**
- (b) The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and**
- (c) The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.**

**2. Agree to adopt an amendment to the *Shire of Nannup Local Planning Scheme No. 3*, pursuant to section 75 of the *Planning and Development Act 2005*, through the following:**

- 1. Deleting the provisions in Schedule 4 – Special Use Zones for Special Use ‘SU12’.**
- 2. Adding the following provisions in Schedule 4 – Special Use Zones for Special Use ‘SU12’:**

SU12	Lot 3 on Plan 12565 Balingup-Nannup Road, Nannup	<ul style="list-style-type: none"> <li>• Hospital and Medical Centre</li> <li>• Residential Building</li> <li>• Caretakers Dwelling</li> <li>• Consulting Rooms</li> <li>• Single Dwelling</li> <li>• Home Office</li> <li>• Home</li> </ul>	<ul style="list-style-type: none"> <li>1. All future development is subject to the requirement to gain Development Approval from the local government.</li> <li>2. All applicable ‘Special Uses’ shall be deemed to be ‘D’ uses pursuant to the Scheme.</li> <li>3. More than one Residential Building is permitted, in different parts of the site, subject to gaining Development Approval from the local government.</li> <li>4. Subject to the nature of the proposed development or use and its associated risk, the local government may require</li> </ul>
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		<p style="text-align: center;"><b>Occupation</b></p> <ul style="list-style-type: none"> <li>• Agriculture – Extensive</li> <li>• Recreation – Private</li> <li>• Rural Pursuit</li> </ul>	<p>the submission of an updated Bushfire Management Plan and/or a Bushfire Emergency Evacuation Plan to support a Development Application.</p> <p>5. Where a Bushfire Management Plan and/or Bushfire Emergency Evacuation Plan are required to be updated, implementation of the plan/s will be included as a condition of development approval.</p> <p>6. In order to conserve the natural beauty of the locality all trees shall be retained unless their removal is authorised by the local government.</p> <p>7. The local government shall not permit the construction of any building in a manner or of materials that would in the opinion of the local government destroy the amenity of the area or not blend in with the landscape.</p> <p>8. The local government will require as a condition of development approval that all habitable buildings shall be connected to a wastewater treatment system with an adequate phosphorus retention capacity as approved by the Department of Health and the local government. The base of the system or the modified irrigation area is to be above the highest known water table.</p> <p>9. Stormwater drainage shall be designed to the satisfaction of the local government.</p>
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3. Numbers the abovementioned Amendment as Number 20 to *Shire of Nannup Local Planning Scheme No. 3*.
4. Authorises the Shire President and the Chief Executive Officer to execute the Scheme Amendment No.20 documents.
5. Notes the Shire will refer Scheme Amendment No.20 to the Environmental Protection Authority for assessment pursuant to section 81 of the *Planning and Development Act 2005*. Should the Environmental Protection Authority advise that the amendment does not require assessment, advertise the amendment in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.”

*E) EPA decision and community/stakeholder consultation*

Following the Council resolution, the Environmental Protection Authority (EPA) determined that the scheme amendment should not be assessed via an environmental impact assessment. Further, the EPA determined that it is not necessary to provide any advice or recommendations on the proposed amendment. The EPA decision effectively gave its “environmental clearance” to Amendment 20.

Following the receipt of the EPA decision, the Shire met the requirements of the Planning and Development (Local Planning Schemes) Regulations 2015 through seeking public comment on Scheme Amendment No. 20 for a period of 42 days through:

- writing to adjoining/nearby neighbours along with relevant State Government departments, servicing agencies and other stakeholders;
- placing public notices in local papers;
- details being on the Shire’s website; and
- having information available at the Shire office.

*F) Submissions*

The Shire received 8 submissions on Scheme Amendment No.20 which are set out in Attachment 12.2.5 and summarised in the Schedule of Submissions in Attachment 12.2.6.

The submitters raised no objections. The only matters raised through submissions were as follows:

- The Department of Fire and Emergency Services (DFES) requested the updating of the Bushfire Management Plan (BMP) that was prepared a few years ago. In May 2018, at the request of DFES, an updated BMP was prepared by Smith Consulting (see Attachment 12.2.7). DFES recently advised that the BMP is a ‘compliant application’ and the DFES support Amendment No. 20. DFES also note the BMP has not included or referenced a Bushfire Emergency Evacuation Plan (BEEP) therefore policy measure 6.6.1 of *State Planning Policy 3.7 Planning in Bushfire Prone Areas* which addresses vulnerable land uses has not been demonstrated. DFES recommend that further consideration be given to the *Guidelines for Planning in Bushfire Prone Areas* Section 5.2.2 “Developing a Bushfire and Emergency Evacuation Plan’ when updating the BMP; and
- The Department of Water and Environmental Regulation (DWER) note that they support Amendment 20 on the basis of protecting the water resources

from polluting activities, where the main risk relates to hydrocarbons from the car parking entering the dam (and waterway) particularly during large storm events.

**COMMENT:**

Overview

The amendment is a standard amendment under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:

- The amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;
- The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and
- The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.

Following an assessment of the submissions against LPS3, the Local Planning Strategy and relevant Council and Western Australian Planning Commission (WAPC) policies and strategies, it is suggested that the scheme amendment is suitable for final adoption. The reasons for this include:

- the proposal is consistent with the planning framework of wide-ranging planning policies, strategies and plans;
- it reflects the range of existing development on the site and relevant LPS3 controls will be retained;
- future uses and development will require the submission of a Development Application and addressing relevant planning, environment, bushfire risk, servicing and landscape considerations;
- it will continue to support the on-going operation of the Blackwood River Clinic and Sky Lakes Retreat which will in turn enable the facility to continue boosting the local economy;
- no objections have been raised from the community or stakeholders; and
- it is consistent with the principles of orderly and proper planning.

It is accordingly recommended that Council resolves to support Scheme Amendment No.20 without further modifications as outlined in Attachment 12.2.2 to formally progress the process of amending LPS3.

Department of Fire and Emergency Services

The BMP, which was previously endorsed by the DFES, has recently been reviewed and updated and has been put in place for the property. Any new development which proposes additional guest or overnight accommodation may be considered a vulnerable land use as set out in the *Guidelines* as follows:

“Typically, vulnerable land uses are those where persons may be less able to respond in a bushfire emergency. These can be categorised as one or more of the following:

- land uses and associated infrastructure that are designed to accommodate groups of people with reduced physical or mental ability such as the elderly, children (under 18 years of age), and the sick or injured in dedicated facilities such as aged or assisted care, nursing homes, education centres, family day care centres, child care centres, hospitals and rehabilitation centres;
- facilities that, due to building or functional design, offer limited access or the number of people accommodated may present evacuation challenges, such as corrective institutions (prisons) and detention centres; and
- short stay accommodation or visitation uses that involve people who are unaware of their surroundings and who may require assistance or direction in the event of a bushfire, such as bed and breakfast, caravan park and camping ground, holiday house, holiday accommodation, home business, serviced (short stay) apartment, tourist development and workers’ accommodation.”

As noted above, all future development of the property will require the applicant to gain Development Approval from the Shire. Subject to the location of the proposed development, if a vulnerable land use is proposed, it is expected that the applicant will be required to review the previously endorsed BMP and/or prepare a Bushfire Attack Level (BAL) assessment.

The recommendation from DFES in regards to the BEEP can therefore also be addressed at the Development Application stage.

Department of Water and Environmental Regulation

Again, as noted above, all future development of the property will require the applicant to gain Development Approval from the Shire. The management of stormwater to prevent pollution of the dam and waterway can also be addressed at the Development Application stage.

Next Steps with the Scheme Amendment Process

Subject to the Council's decision, copies of the submissions and the Schedule of Submissions will be forwarded to the WAPC who will assess the scheme amendment request with the final decision made by the Minister for Planning.

Should the amendment be finally gazetted, the applicant will then be required to gain relevant approvals from the Shire.

**STATUTORY ENVIRONMENT:**

*Planning and Development Act 2005, Planning and Development (Local Planning Scheme) Regulations 2015 and LPS3.*

**POLICY IMPLICATIONS:**

State Planning Policy *SPP 3.7 Planning in Bushfire Prone Areas* and the WAPC's *Guidelines for Planning in Bushfire Prone Areas* are relevant to the scheme amendment request.

**FINANCIAL IMPLICATIONS:**

The applicant has paid the required scheme amendment fee in accordance with adopted 2017/18 Schedule of Fees and Charges.

**STRATEGIC IMPLICATIONS:**

Nil.

**RECOMMENDATION:**

That Council:

1. Agree to support a standard amendment to the *Shire of Nannup Local Planning Scheme No.3*, pursuant to section 75 of the *Planning and Development Act 2005* and Regulation 50 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, with no modifications to the previously prepared amendment documentation as outlined in Attachment 12.2.2.
2. Endorses the 'Local Government Recommendation' in the Schedule of Submissions as shown in Attachment 12.2.6.
3. Advise all agencies and individuals who lodged a submission that their comments were noted.
4. Forward a copy of all submissions as shown in Attachment 12.2.5 and the Schedule of Submissions as shown in Attachment 12.2.6 to the Western Australian Planning Commission for assessment and final approval by the Minister for Planning.

**VOTING REQUIREMENTS:**

Simple Majority

AGENDA NUMBER:	12.3
SUBJECT:	Proposed partial closure of the old East Nannup Road reserve adjoining Lots 11184 & 11185 Hayes Road, East Nannup
LOCATION/ADDRESS:	Lot 11184 Hayes Road, East Nannup
NAME OF APPLICANT:	Sharyn Gibellini
FILE REFERENCE:	A1727
AUTHOR:	Jane Buckland – Development Services Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	
DATE OF REPORT:	11 July 2018
PREVIOUS MEETING REFERENCE:	24 May 2018
ATTACHMENT:	12.3.1 - Correspondence and plan from applicant 12.3.2 - Location map 12.3.3 – Submissions

**BACKGROUND:**

An application has been made to permanently close a portion of the old East Nannup Road reserve which adjoins Lots 11184 and 11185 Hayes Road, East Nannup and once closed, for it to be amalgamated into Lot 11184 on Plan 204907. The applicant's request is outlined in Attachment 12.3.1.

The location of the road reserve is shown in Attachment 12.3.2. The area is approximately 12 kilometres southeast of the Nannup Townsite.

At its ordinary meeting on 24 May 2018, the Council passed the following motion at Minute No. 18084:

*“That Council:*

- 1. Agree to initiate a request for permanent partial road reserve closure action of the section of old East Nannup Road adjoining Lots 11184 and 11185 Hayes Road, East Nannup, under section 58 of the Land Administration Act 1997 subject to the closed partial road reserve being amalgamated into adjoining Lot 11184 on Plan 204907.*
- 2. Recommend that the owners of Lots 11184 & 11185 legally formalise access to the dam via easements and/or a deed.”*

In accordance with the Council resolution, the *Land Administration Act* and the *Land Administration Regulations*, Council administration advertised the proposed road closure for a period of 35 days by completing the following:



- writing to and inviting comment from adjoining/nearby landowners;
- writing to and inviting comment from relevant State Government and servicing authorities;
- placing a public notice in the Busselton-Dunsborough Times;
- placing details on the Shire website; and
- having information available at the Shire office.

Council received 3 submissions on the proposed closure which are set out in Attachment 12.3.3. All submissions raised no objections.

**COMMENT:**

As no objections were received, it is suggested that Council can now finalise its position on the closure. It is recommended that Council agree to a permanent partial closure of the road reserve shown in Attachment 12.3.1 given the superfluous road reserve has been in place since the realignment of East Nannup Road approximately 55 years ago. The land has been converted to pasture and by closing this section of road reserve and amalgamating it into Lot 11184, the historical issue of the existing dam being located in the road reserve could be resolved.

Subject to the Council's decision, the Minister for Lands will determine whether to permanently close the road reserve. Should the Minister agree and should associated valuation and other matters be acceptable to the applicant/landowner, the portion of the old East Nannup Road reserve will be amalgamated into the adjoining Lot 11184.

**STATUTORY ENVIRONMENT:**

The *Land Administration Act* and *Land Administration Regulations* require the Local Government to seek comment for at least 35 days. Council administration has met this requirement through writing to adjoining/nearby landowners, relevant servicing authorities and State Government agencies and inviting comments from the wider community through the public notice in a local paper.

Council now needs to formally resolve to finalise the closure and indemnify the Department of Planning, Lands and Heritage against any costs that may arise (survey documentation, stamp duty etc.). It is recommended that these costs should be borne by the applicant/landowner.

**POLICY IMPLICATIONS:**

Nil

**FINANCIAL IMPLICATIONS:**

Nil

**STRATEGIC IMPLICATIONS:**

Nil

**RECOMMENDATION:**

That Council:

1. Agree to permanently close the section of the old East Nannup Road reserve adjoining Lots 11184 and 11185 Hayes Road, East Nannup, as shown in Attachment 12.3.1.
2. Request the Minister for Lands to permanently close the portion of the old East Nannup Road reserve shown in Attachment 12.3.1 with the closed road reserve being amalgamated into Lot 11184.
3. Indemnifies the Department of Planning, Lands and Heritage against any costs in the process, with these costs being borne by the applicant/landowner.
4. Delegate authority to Council's Chief Executive Officer to progress matters with the Department of Planning, Lands and Heritage, other agencies and the applicant/landowner regarding the closure of the road reserves, including the signing and sealing of all documentation required.
5. Recommend that the owners of Lots 11184 & 11185 legally formalise access to the dam via easements and/or a deed.

**VOTING REQUIREMENTS:**

Simple Majority

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AGENDA NUMBER:	12.4
SUBJECT:	Proposed Telstra Telecommunications Infrastructure
LOCATION/ADDRESS:	Lot 906 Perks Road, Cundinup
NAME OF APPLICANT:	Visionstream
FILE REFERENCE:	A1756 & DEP22
AUTHOR:	Steve Thompson – Consultant Planner & Jane Buckland – Development Services Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Edge Planning & Property receive planning fees for advice to the Shire therefore declare a Financial Interest – Section 5.70 of the Local Government Act 1995
DATE OF REPORT:	17 July 2018
PREVIOUS MEETING REFERENCE:	Nil
ATTACHMENTS:	12.4.1 - Planning assessment report including development plans and Environmental EME Report from applicant 12.4.2 - Location map 12.4.3 - <i>State Planning Policy 5.2 Telecommunications Infrastructure</i> 12.4.4 - Submission 12.4.5 - Response from applicant to submissions 12.4.6 - Extract from <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> 12.4.7- Extract from <i>Making Good Planning Decisions (2017)</i>

**BACKGROUND:**

Proposal

The applicant seeks approval to construct Telstra telecommunications infrastructure at Lot 906 Perks Road, Cundinup to form part of the Telstra network. The proposed infrastructure was funded under Round 1 of the Australian Government's Mobile Black Spot Program.

The proposed infrastructure entails the following:

- installation of 1 lattice tower measuring 60m from natural ground level, set back approximately 40m from the western boundary and 32m from the southern boundary;
- a triangular headframe mounted on the tower at a height of approximately 58m;
- six (6) panel antennas mounted on the triangular headframe;
- two (2) parabolic antenna mounted on the tower at an elevation of approximately 44m;
- three (3) tower mounted amplifiers;
- a low impact equipment shelter that is not higher than 3m with a base area of not more than 7.5m<sup>2</sup>;
- installation of associated ancillary cabling and equipment; and
- installation of a new chain-link fence (14m x 14m) surrounding the compound, with a 3m wide access gate.

The proposed Telstra lease area comprises a 196m<sup>2</sup> fenced compound (14m x 14m).

Details submitted by the applicant are set out in Attachment 12.4.1. This provides extensive background information including the site selection process, the proposal, planning controls and site context. Appendix B shows the plans, while Appendix C sets out the Environmental Electromagnetic Energy (EME) Report.

#### Subject land and context

The site is located approximately 9.5km northeast of the Nannup townsite as shown in Attachment 12.4.2.

The property is 16.89ha in area, predominantly pasture with the remainder of the property covered in native vegetation.

The area is predominantly rural in nature, along with plantations and State Forest.

The nearest residences are approximately 250m to the southwest, 500m to the southeast and 800m to the west. There is short-term holiday accommodation located approximately 380m to the southeast.

#### Planning framework

The application is subject to various legislation, planning policies and strategies along with the *Shire of Nannup Local Planning Scheme No. 3* (LPS3). Some of these are listed under “Statutory Environment”.

The Western Australian Planning Commission's (WAPC) *State Planning Policy 5.2 Telecommunications Infrastructure* (SPP 5.2), which is the key guidance document, is set out in Attachment 12.4.3. SPP 5.2 acknowledges the importance of providing telecommunications services to the community through the rollout of new networks but seeks for these to be developed in a manner that balances other considerations including minimising visual impacts.

The subject site is zoned "Agriculture" in LPS3. The "Landscape Values Area" applies to a small portion of the site in the eastern section. The proposed telecommunications infrastructure is located outside of the Landscape Values Area.

The proposed development fits into the definition of "Telecommunications Infrastructure" which is defined in LPS3 as follows:

***telecommunications infrastructure*** means any part of the infrastructure of a telecommunications network and includes any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure used, or for use, in or in connection with a telecommunications network.

Telecommunications infrastructure is a "D" use in the Agriculture zone. This means that the use is not permitted unless the local government has exercised its discretion by granting development approval.

Relevant sections and clauses of LPS3 that relate to the application include:

- clause 1.6 – Aims of the Scheme which include to "assist employment and economic growth", "To promote the sustainable use of rural land for agricultural purposes whilst accommodating other rural activities" and "To safeguard and enhance the character and amenity of the built and natural environment of the Scheme Area";
- clause 3.2 – the objectives of the Agriculture Zone are "To provide for the sustainable use of land for a range of rural pursuits which are compatible with the capability of the land, whilst retaining the rural character and amenity of land within the zone"; and
- sub-clause 3.13.1 – includes objectives for the Agriculture Zone and a building setback of 20m from lot boundaries.

While noting the telecommunications infrastructure is located outside of the Landscape Values Area, sub-clause 5.2.2.5 of LPS3 contemplates telecommunications infrastructure in the Landscape Values Area.

The endorsed *Shire of Nannup Local Planning Strategy* (2007) makes no reference to telecommunications infrastructure, although there is guidance

associated with promoting economic development and retaining key landscapes. The draft *Shire of Nannup Local Planning Strategy* states the following;

**“6.1 Hard Infrastructure**

*Aim*

The aims are to:

- a) Seek the timely provision of infrastructure to service the demands of growing communities and to facilitate planned growth.

*Strategy*

- b) ensure that essential infrastructure is appropriately maintained and expanded to accommodate timely growth and development;
- f) seek increased investment locally in in high-speed communications infrastructure.”

Consultation

Council administration invited public comment on the Development Application for a 21 day period by writing to all landowners within a 2.0km radius of the proposed telecommunications infrastructure, placing details on Council’s website and having information at the administration office.

Council received 1 joint submission, signed by 9 landowners, on the Development Application which is set out in Attachment 12.4.4. In summary, the submission objects to the application as the telecommunications infrastructure will detrimentally affect the amenity of the area, it will detrimentally affect views in the area, it will harm businesses and branding, property values will be negatively affected and there are better alternative sites.

In accordance with standard practice, Council provided the applicant the submission in order to address concerns and issues where possible. Supplementary documentation provided by the applicant is set out in Attachment 12.4.5.

**COMMENT:**

Overview

Following assessment of the application against the planning framework, the submission, site characteristics and context and other available information, it is recommended that Council approve the Development Application subject to conditions. It is noted, for instance, that:

- the application is considered to be generally consistent with the planning framework including SPP 5.2, LPS3, the Council's Strategic Community Plan and the draft Local Planning Strategy;
- the site of the proposed telecommunications infrastructure is located outside of the Landscape Values Area in LPS3. Based on the location of the telecommunications infrastructure, the topography and features of the area, along with information set out in Attachment 12.4.4, the tower will not create a visual impact when viewed from Balingup-Nannup Road;
- while there are localised visual impacts, it is suggested they do not provide sound grounds for refusal based on the public benefits of the telecommunications infrastructure for enhancing safety, promoting communications and facilitating economic development. All towers have visual impacts in order to effectively operate and the applicant has provided measures to assist in reducing the impact;
- the development site is cleared and there are no environmental or cultural heritage impacts;
- the nearest residence is approximately 250 metres from the proposed telecommunications infrastructure;
- there are considerable constraints in identifying a suitable alternative site in the locality for reasons including zoning (telecommunications infrastructure is not permitted in the Agriculture Priority 2 zone, it is preferable to not locate telecommunications infrastructure in the Landscape Values Area, tenure (including State Forest), environmental and cultural sensitive locations and the availability and cost of utilities;
- the required mobile telecommunications service provided by this proposed facility is important to the Cundinup community and the wider district. The proposed telecommunications infrastructure will form part of the Telstra NextG mobile network and will deliver increased mobile services and high-speed wireless internet to Cundinup, Vasse Highway and surrounding areas; and
- it will provide an important public benefit including addressing safety, enhancing effective communication and supporting economic development.

In determining the Development Application, Council is required take into account relevant planning considerations set out in Attachment 12.4.6, along with SPP 5.2, LPS3, other documents, the submission received and information provided by the applicant. It is highlighted that Council has the discretion to refuse the Development Application, but it must give its reasons for doing so which are based on planning grounds.

While noting the above, some considerations with the Development Application include:

- the proposed telecommunications infrastructure will create localised visual impacts;
- there is no buffer standard between homes/other “sensitive” uses and telecommunications infrastructure;
- when determining telecommunications infrastructure applications, it is necessary to assess the impact on amenity against the overall public benefit of the infrastructure; and
- it is acknowledged that some people are concerned about the possible health effects of electromagnetic energy from mobile phone base stations. The Australian Communications and Media Authority requires all telecommunications providers to strictly adhere to Commonwealth legislation and associated regulations regarding mobile phone facilities and equipment. The submitted EME report states that the maximum calculated electromagnetic energy level from the site will be 0.22% of the public exposure limit which is substantially within the allowable limit under the standard.

#### Candidate sites

In accordance with the Communications Alliance Ltd *Industry Code C564:2017 - Mobile Phone Base Station Deployment*, the applicant advises that Telstra attempts to utilise, where possible, any existing infrastructure or co-location opportunities. There is however an identified lack of telecommunications facilities within the vicinity of the proposed installation, with the nearest existing facilities being more than 9km northwest and 7km northeast of the proposed facility in Cundinup. As such, there were no suitable co-location opportunities to provide the required radio frequency coverage objectives.

The applicant examined a range of possible sites in the locality as set out in Attachment 12.4.1 and Attachment 12.4.5. The applicant concluded that a new telecommunications infrastructure at Lot 906 Perks Rd would be the most appropriate solution to provide necessary mobile phone coverage (addressing safety and effective communication) to Cundinup, Vasse Highway and surrounding areas as part of the Federal Government’s mobile Black Spot Programme.

#### Visual impact

Visual impact is considered to be the key planning consideration with the application given the proposed telecommunications infrastructure is a significant structure with the tower 60m in height.



Attachment 12.4.5 sets out photo montages which shows the proposed telecommunications tower in relation to the existing landform, vegetation and development from regional roads.

The proposed telecommunications infrastructure is setback approximately 600m from Credence Ridge Road and Boundary Road, is located in open farmland and on the top of a hill. The tower will be clearly visible, in the location area, to both motorists and nearby residents located to the north, northwest, west and southwest of the proposed location and will be partially screened by native bush from motorists and residents to the south, southeast, east and northeast.

The site of the proposed telecommunications infrastructure is located outside of the Landscape Values Area in LPS3. Based on the location of the telecommunications infrastructure, the topography and features of the area, along with information in Attachment 12.4.4, the tower will not create a visual impact when viewed from Balingup-Nannup Road.

There is considerable case law relating to telecommunications infrastructure. For instance, in *Telstra Corp Ltd v Pine Rivers Shire Council [2001] QPELR 350 (Telstra)* where Newton DCJ said, at [48]:

“There is no doubt that the proposed [mobile phone] tower will be able to be seen from many points within the neighbouring locality. However, visibility is not the test and no-one has a right to preservation of a particular view, although interference with a view may have an effect on amenity ... In particular, there is no requirement for facilities such as those proposed to be located so that they cannot be seen. Indeed, the nature and operational requirements will ordinarily require them to be elevated structures visible to heights which exceed that of the existing vegetation. It must be remembered that the proposal is not something which is prohibited by the planning scheme. The facilities are a permissible form of development in the zone.”

It is also noted that the State Administrative Tribunal (SAT) have determined that visual amenity concerns cannot be elevated to a degree where they would deny the effective operation of the facility - *Telstra Corporation Limited and Shire of Murray [2009] WASAT 117*. In this and other cases, it was determined that visual amenity must be balanced against the need for improved telecommunications infrastructure in the district or area.

When considering the submissions, information from the applicant and the planning framework, it is suggested that the proposed telecommunications infrastructure on this site would not cause such an adverse visual impact to warrant refusal given:

- while the proposed tower will be visible in the local area, the planning framework does not require the tower to be invisible;
- height and visual impact should also have due regard to the technical operational needs of the structure. Towers are required to have a degree of functionality that does not unduly limit the facility's required technical operation. Without sufficient height the facility will not perform its function;
- the height of the proposed telecommunications infrastructure is considered to be the minimum required to achieve reasonable operational objectives;
- the site is not located on a tourist route;
- the site is not within a Landscape Values Area in LPS3;
- the application is generally consistent with the WAPC's *Visual Landscape Planning in WA Manual*; and
- the applicant has proposed design mitigation measures including its telecommunications infrastructure design and the telecommunications infrastructure will be unpainted (dull grey in colour) to reduce reflection.

While noting the surrounding landowners' objections and concerns, it is suggested there are not substantive grounds to strongly defend a refusal decision at SAT given the telecommunications infrastructure is located outside the Landscape Values Area in LPS3.

#### Submission opposing the Development Application

The joint submission opposing the Development Application raises various points. It is acknowledged that the telecommunications infrastructure, if approved and implemented, will change the character of the area. While noting this, a number of points raised in the submission are not planning considerations including land values (see Attachment 12.4.6 and Attachment 12.4.7).

The telecommunications infrastructure will result in the loss of a very small area of agricultural land, (196m<sup>2</sup> on land zoned Agriculture). This application is accordingly considered consistent with *SPP 2.5 Rural Planning*.

A number of the points raised by the Rowe Group are questioned given there is a need to assess the Development Application based on the site's zoning and the location of the telecommunications infrastructure on the application site. In various places, the Rowe Group want the local government to take on board the objectives of the nearby "Agriculture Priority 2" zoning and apply the Landscape Values Area requirements of LPS3 to a development site located outside of the Landscape Values Area. In determining the Development Application, the Council needs to apply relevant statutory requirements that relate to the location of the telecommunications infrastructure.

### Alternative sites

The notion of relocating the proposed telecommunications infrastructure to an alternative location within the area was raised by the submitter. As a response to these comments, the applicant advised that a number of sites were reviewed as part of the pre-application process. However, the applicant confirms Lot 906 Perks Road is the best site.

Much could be written about whether the telecommunications infrastructure could be located elsewhere. Based on the applicant's advice, there appears to be technical and other limitations for other alternative sites as set out in Attachments 12.4.1 and 12.4.5.

The fact that a proposed development could be located elsewhere, however, is not normally relevant to a Development Application before Council for determination, as applications relate to the subject land and must normally be determined with respect to that site.

In the case of *Telstra Corporation and City of Wanneroo [2017] WASAT 77 (Wanneroo)*, the SAT stated:

“The Tribunal considers that whether there might be other sites available is not determinative of this matter. While another site might be found, the essence of the matter before the Tribunal is whether the visual impact of the proposed facility on the site would be such that the development should be refused, notwithstanding the benefits it would bring to telecommunications in Tapping and Ashby.”

The applicant is not required to eliminate all alternative sites or demonstrate that the site chosen is the best available for the facility (although the applicant said this is the case in this instance). The proposed development site was deemed by the applicant to be the most suitable based on considerations such as optimal service quality, the availability and suitability of land, construction issues, topographical constraints, legislative constraints, environmental impacts, visual amenity, cost implications and a willing site provider. Alternative sites have been identified, however, they are not considered suitable by the applicant for reasons including there is inadequate coverage to the required areas.

The applicant has followed a site selection process consistent with SPP 5.2. The actual site selected is consistent with the policy requirements. Attempts have been made to minimise the visual impact while providing the required service.

### Council decision and next steps

Following a review of the planning framework and available information, Council administration recommends that the Development Application be conditionally

approved. Council is required to exercise its quasi-judicial and statutory function, with Council's decision being based on planning grounds. An extract of the State Government's *Making Good Planning Decisions* (2017) is set out in Attachment 12.4.7 to assist in Council's decision making.

Should Councillors consider that the Development Application should be refused, it would be appreciated if Councillors contacted the administration staff in advance of the Council meeting so suggested reasons of refusal can be drafted for Council consideration.

Should the applicant be aggrieved by Council's decision and seek a review of that decision through the SAT, there will be costs imposed on the Shire through defending Council's decision. Should the matter be considered by SAT, Council's decision will be subject to a high level of external scrutiny. In particular, decisions not based on sound planning principles will not be upheld by SAT.

#### **STATUTORY ENVIRONMENT:**

*Telecommunications Act 1997, Planning and Development Act 2005, Planning and Development (Local Planning Scheme) Regulations 2015, State Planning Strategy 2050, SPP 2.5 Rural Planning, SPP 3.7 Planning in Bushfire Prone Areas, SPP 5.2 Telecommunications Infrastructure, Telecommunications Code of Practice, Visual Landscape Planning in Western Australia Manual, LPS3, Shire of Nannup Local Planning Strategy (2007) and draft Shire of Nannup Local Planning Strategy.* The area proposed for the telecommunications infrastructure is classified as a Bush Fire Prone Area as set out at <https://maps.slip.wa.gov.au/landgate/bushfireprone/>.

#### **POLICY IMPLICATIONS:**

The Development Application has been assessed against the WAPC's SPP 5.2 which provides guiding principles for the assessment of telecommunications infrastructure. The Shire does not have a Local Planning Policy on telecommunications infrastructure.

#### **FINANCIAL IMPLICATIONS:**

The applicant has paid the Development Application fee. The applicant has a right of review to SAT following Council's decision. If this occurred, Council would have associated expenses. Given it is suggested there is limited scope for mediation, Council needs to consider whether it is prepared to financially back its decision including engaging professionals (such as a solicitor, expert witnesses e.g. landscape architect) to defend the decision at SAT. As an approximate guide,

Council may need to allocate in the order of \$20,000 to defend a decision to refuse the Development Application at SAT.

**STRATEGIC IMPLICATIONS:**

The proposal aligns with the *Shire of Nannup Strategic Community Plan 2017-2027*. In particular, Focus Point 3.3 which is to improve all forms of communication within the Shire by working with relevant agencies to improve and secure appropriate local radio and television coverage, increased mobile phone and internet coverage.

Having high quality telecommunications infrastructure is critical in developing and sustaining economic development in the district. It is recognised that modern telecommunications are essential for businesses and consumers and are critical for safety/emergency purposes.

**RECOMMENDATION:**

That Council approve the Development Application for the proposed Telstra telecommunications infrastructure at Lot 906 on Plan 69041 Perks Road, Cundinup as set out in Attachment 12.4.1 subject to the following conditions:

1. The development hereby approved must be carried out in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the local government.
2. This development approval shall lapse and be of no further effect if the development hereby permitted has not been substantially commenced within 36 months of the date hereof. Where the Development Approval has lapsed, no further development is to be carried out.
3. Any lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with *Australian Standard AS4282/1997*.

Advice

- A. The proponent is advised that this Development Approval is not a Building Permit. A Building Permit will be required prior to construction of the proposed development.
- B. All operations must be carried out in accordance with the separate requirements of the Australian Communications and Media Authority and Australian Radiation Protection and Nuclear Safety Agency pertaining (but not limited) to electromagnetic energy.
- C. The operator is encouraged to maintain a low-fuel area near the telecommunications infrastructure.
- D. 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.

**VOTING REQUIREMENTS:**

Simple Majority

AGENDA NUMBER:	12.5
SUBJECT:	Request for Shire of Nannup to Meet Dedication Costs (Poison Swamp Road)
LOCATION/ADDRESS:	Poison Swamp Road, Darradup
NAME OF APPLICANT:	Alan Boynton on behalf of R & S Bruce, N & A Hamilton, J Gouldney and I Jarzabek (owners of Lot 11864 Poison Swamp Road)
FILE REFERENCE:	ROA83
AUTHOR:	Jane Buckland – Development Services Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	16 July 2018
PREVIOUS MEETING REFERENCE:	27 April 2017 & 24 August 2017
ATTACHMENT:	12.5.1 – Email and letter from Alan Boynton 12.5.2 – Email from Department of Planning, Lands and Heritage

**BACKGROUND:**

Council administration has received a request from the applicant, Alan Boynton, in relation to the request to close a portion of unnamed road reserve and dedicate Poison Swamp Road, Darradup which was considered by Council at its meeting of 24<sup>th</sup> August 2017.

At the abovementioned meeting Council resolved the following at minute No.17154:

**“That Council:**

- 1. Endorse the Concept Plan in Attachment 12.1.1.**
- 2. Agrees to initiate permanent road reserve closure action, under section 58 of the Land Administration Act 1997, to close an unnamed road reserve which is amalgamated into the State Forest as set out in Attachment 12.1.1.**
- 3. Supports the road reserve dedication of Poison Swamp Road to provide legal and practical vehicular access to Lots 11864, 2042 and 2883 as set out in Attachment 12.1.1.**
- 4. Requests the Minister for Lands to support the above permanent road reserve closure and the associated road reserve dedication from a portion of the State Forest.**

5. Requires the owners of Lot 11864 to confirm in writing they will meet all costs associated with the road reserve dedication and closure processes and indemnify the Shire against any costs in the processes.
6. Notes that subject to point 5 being appropriately addressed by the owners of Lot 11864, to the satisfaction of the local government, the Shire of Nannup in-turn indemnifies the Department of Planning, Lands and Heritage against any costs in the processes, with these costs being borne by the owners of Lot 11864.
7. Delegates authority to the Shire's Chief Executive Officer to progress matters with the Department of Planning, Lands and Heritage, other agencies and the applicant/landowner regarding the closure of the road reserve and the dedication of the road reserve including the signing and sealing of all documentation required.
8. Requests the owners of Lots 2042 and 10622 to progress securing an easement to Lot 10622 prior to the dedication of Poison Swamp Road.
9. Will separately consider the extent of the owners of Lot 11864 needing to upgrade Poison Swamp Road and/or upgrade the Poison Swamp Road/Brockman Highway intersection through either a subdivision or strata subdivision application of Lot 11864 or prior to Poison Swamp Road being dedicated with the Shire.
10. Requests the Department of Biodiversity, Conservation and Attractions to consider the provision of an easement through the State Forest to Lot 3946 given this land parcel may in the future change from Unallocated Crown Land to a freehold lot or another form of land tenure."

The applicant has requested that Council meet the costs of the closure of the unnamed road reserve and the dedication of Poison Swamp Road as outlined in Attachment 12.5.1.

**COMMENT:**

As per Council's resolution above, the applicant was required to confirm in writing that they would meet all costs associated with the road reserve dedication and closure processes and indemnify Council against any costs in the processes before the formal request would be forwarded to the Department of Planning, Lands and Heritage (DPLH) for final approval.

This is consistent with Shire of Nannup *Local Planning Policy LPP15 Dedication of Road Access* which states in Policy Statement 1(b)(2) "all landowners that the proposed dedicated road will benefit, have agreed to pay all costs incurred during the dedication process."



On 24<sup>th</sup> May 2018 Mr Neville Hamilton and Mr Rick Bruce addressed Council to outline the history of Poison Swamp Road and to further request that Council meet the costs of the closure and dedication. Following receipt of the request from the applicant and prior to this meeting, Council administration had made enquiries to the DPLH to determine what costs would be involved in order to finalise the unnamed road reserve closure and dedication of Poison Swamp Road.

The DPLH provided a response on 28<sup>th</sup> June 2018 which indicated that there were no anticipated costs associated with the proposal as is shown in Attachment 12.5.2.

Council administration further clarified the information from DPLH in a telephone call to the Department's Land Surveying Coordinator on 29<sup>th</sup> June 2018 who confirmed as follows:

- In the case of the unnamed road reserve closure, the land is to be amalgamated into the surrounding State Forest. A survey would only be required if the closed reserve was to be acquired and amalgamated into freehold land.
- In the case of the road dedication, as the road is already constructed the reserve can be created using existing Crown Land surveys and aerial photography. There is no additional surveying required as the surrounding land is State Forest and not freehold land.

The Land Surveying Coordinator also advised that this situation is fairly unique and the above would not apply if Poison Swamp Road was not already constructed or if the proposed road reserve closure or dedication was adjacent to freehold land.

While administration notes there are no anticipated costs to progress the closure of the unnamed road reserve and dedication of Poison Swamp Road, it is suggested that if Council were to agree to the request from the applicant that an unacceptable precedent could be set for future requests whereby Council would be expected to accept financial responsibility.

It is therefore suggested that Council acknowledges that while there are no anticipated costs to finalise the unnamed road reserve closure and dedication of Poison Swamp Road, the applicant will still be required to confirm in writing that they will meet any costs associated with the road reserve dedication and closure processes and indemnify Council against any costs in the processes.

It is also suggested that Council should not pursue an upgrade to the intersection of Poison Swamp Road and Brockman Highway at this time, however should a conditional survey strata approval be issued in the future, a condition of the approval may require a minor upgrading of the intersection.

**STATUTORY ENVIRONMENT:**

*Land Administration Act and Land Administration Regulations.*

**POLICY IMPLICATIONS:**

*Local Planning Policy LPP13 Car Parking and Vehicular Access, LPP15 Dedication of Road Access and LPP20 Developer and Subdivider Contributions are non-statutory documents which are designed to provide guidance to assist the Council in its decision making.*

**FINANCIAL IMPLICATIONS:**

The applicant has paid the application fee in accordance with the Council's fees and charges. The owners of Lot 11864 are required to meet all costs associated with the road dedication and road closure processes including survey, land acquisition, State Government administration fees and associated survey strata subdivision fees.

**STRATEGIC IMPLICATIONS:**

Nil.

**RECOMMENDATION:**

That Council:

1. Acknowledge that there are no anticipated costs to finalise the unnamed road reserve closure and dedication of Poison Swamp Road.
2. Advise the applicant that they are required to confirm in writing that they will meet any costs associated with the road reserve dedication and closure processes and indemnify the Shire against any costs in the processes.
3. Advise the applicant that Council will not pursue an upgrade to the intersection of Poison Swamp Road and Brockman Highway at this time, however should a conditional survey strata approval be issued in the future, a condition of the approval may require a minor upgrading of the intersection.

**VOTING REQUIREMENTS:**

Simple Majority

AGENDA NUMBER:	12.6
SUBJECT:	Stop Puppy Farming
LOCATION/ADDRESS:	Shire of Nannup
NAME OF APPLICANT:	WALGA
FILE REFERENCE:	DEP 14
AUTHOR:	David Taylor – Chief Executive Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT	12 July 2018
ATTACHMENT:	12.6.1 – Stop Puppy Farming Local Government Consultation Paper

**BACKGROUND:**

The State Government has committed to introduce laws to”

- a) Stop puppy farming and the supply chains that this industry.
- b) Improve the health and welfare of dogs in Western Australia.
- c) Stop the overbreeding of dogs.

The Government has prepared a Local Government Consultation Paper, and has requested WALGA coordinate a sector response in alignment with the State Local Government Partnership Agreement.

WALGA, together with Local Government Professionals WA, are members of the Ministerial Working Group overseeing the Stop Puppy Farming initiative, and have promoted the view that the Local Government section should be the subject of a consultation process separate to the public consultation process.

The Stop Puppy Farming Local Government Consultation Paper is designed for Local Governments to consider and comment on the recommended actions, and proposed implementation process of the stop puppy farming proposals.

Local Government has a long-standing involvement in animal welfare, and has a majority interest in the introduction of legislative measures to reduce overbreeding which results in unwanted and abandoned dogs, and poor animal welfare standards often associated with unregulated breeding of dogs for profit.

The State Government aims to implement the following key elements of the Puppy Farming Policy:

- a) Mandatory de-sexing of dogs unless an exemption is requested for breeding purposes or for reason stated by a registered veterinarian.

- b) A centralised registration system to ensure every dog and puppy can be identified at the point of sale or adoption, including in advertisements for sale.
- c) The transition of pet shops into adoption centres that will only sell puppies and dogs from approved rescue organisations and animal shelters
- d) Mandatory standards for dog breeding, housing, husbandry, transport and sale.

**COMMENT:**

Local Government already has a long-standing involvement in animal welfare, and a majority interest in the introduction of legislation measures to address puppy farming and it is important that the Council provides input on this issue.

Shire staff have considered the State Government's proposals and completed the WALGA Local Government Consultation Paper (Attachment 1) for submission by the 1 August 2018 deadline.

**STATUTORY ENVIRONMENT:**

Nil – Currently

Potential for introduced legislative frameworks dependent on the results of the Consultation period.

**POLICY IMPLICATIONS:**

Nil

**FINANCIAL IMPLICATIONS:**

Nil

**STRATEGIC IMPLICATIONS:**

Nil

**RECOMMENDATION:**

That Council endorses the City's response to the State Government 'Stop Puppy farming' consultation paper as per Attachment 12.6.1.

**VOTING REQUIREMENTS:**

Simple Majority

AGENDA NUMBER:	12.7
SUBJECT:	Regional Waste Project
LOCATION/ADDRESS:	Shire of Nannup
NAME OF APPLICANT:	South West Regional Group of Councils
FILE REFERENCE:	HLT 8
AUTHOR:	David Taylor – Chief Executive Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT	17 July 2018

**BACKGROUND:**

The South West Regional Waste Group (SWRWG) is made up of the Local Governments within the South West Region of Western Australia all of which have met on a periodic basis for some time to address ongoing waste challenges in the region.

In June, the CEO and the Manager Infrastructure attended an officer meeting at the Shire of Capel to discuss regional waste and how to get the project restarted.

The group recommended a project officer be employed for a period of 12-months and that each constituent council support the initiative. This project officer will be hosted at the City of Busselton.

**COMMENT:**

The (SWRWG) was formed out of the Bunbury Wellington Group of Councils (BWGC) as a means of expanding the catchment and the retention of grant funds. The SWRWG identified a subregional waste site location in the Shire of Capel, and conducted a number of relevant preliminary site studies. A number of Capel residents became concerned and found issues with the proposed use forcing an enormous amount of pressure on the Shire of Capel resulting in the site being lost.

With the preferred site being lost, the group hoped to look for other opportunities, however around that same time the State Government elections saw cost reduction measures and this combined with the SWRWG having no clear project in site meant the funding was lost.

The previous focus for waste management was diversion from landfill via recycling initiatives. Recent changes in technology and the recycling market have

resulted in the need to put the waste to energy conversation back on the table for discussion along with the possibility of outsourcing waste disposal.

At the recent meeting of the SWRWG it was recognised that there was a need to identify all potential solutions available to the group and that a project officer should be employed for a 12-month period. The plan was to employ the officer in the 2018/19 with contributions from the South West Councils.

The Shire of Nannup, along with other local governments, already face significant issues with landfill and recycling arrangements and regional waste management is the only real long term solution based on individual costs being able to be reduced through economies of scale.

The Shire of Nannup through its 2018/19 budget deliberations has chosen to take back management of the Nannup Waste Facility in order to gain a better understanding of the waste situation in Nannup. The employment of a project officer to investigate regional waste options is timely with the Shire taking back the management of the Nannup Waste Facility.

**STATUTORY ENVIRONMENT:**

Nil

**POLICY IMPLICATIONS:**

Nil

**FINANCIAL IMPLICATIONS:**

One-off \$1,000 contribution within the 2018/19 budget.

**STRATEGIC IMPLICATIONS:**

Shire of Nannup Community Strategic Plan 2017-2027  
Our Natural Environment  
4.3 Out Sustainable Future

**RECOMMENDATION**

That Council;

1. Continue to participate in the South West Regional group of Councils investigation in to waste management solutions for the South West.
2. Provide a financial contribution of \$1,000 for the appointment of the Project Officer to undertake the required research of the waste that is to be managed throughout the South West.
3. Acknowledge that the project officer is to be hosted by the City of Busselton.

**VOTING REQUIREMENTS:**

Simple Majority

# **ECONOMIC & COMMUNITY DEVELOPMENT SERVICES**

AGENDA NUMBER:	12.8
SUBJECT:	Acceptance of Department of Local Government, Sport and Cultural Industries grant
LOCATION/ADDRESS:	Nannup Shire
NAME OF APPLICANT:	Shire of Nannup
FILE REFERENCE:	FNC60
AUTHOR:	Louise Stokes – Economic & Community Development Officer
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT	9 July 2018
ATTACHMENTS:	12.8.1 - Letter of Acknowledgement

## **BACKGROUND:**

Funding acknowledgement has been received of \$15,000 from the Department of Local Government, Sport and Cultural Industries through the Community Sport and Recreation Facilities fund for the renovation of the toilets and change rooms at the Recreation Centre. As this funding is over \$5,000, Council is required to accept the funding as per policy FNC6.

## **COMMENT:**

The renovation to the toilets and change rooms includes:

- Installing a ceiling into the change rooms and relocating the smoke detectors,
- Installing a ceiling fan into the change rooms,
- Re-tiling of the shower cubicles, and
- Painting of the bricks and floor.

The application requested funding support of \$18,862; however, this has been reduced to \$15,000. The total project value is estimated at \$66,600 which will require a Council cash contribution of \$51,600 from the Recreation Centre reserves. This cash contribution was included within the 2018/19 Budget for the lesser amount of \$50,000. With the decrease in funding there may be the need to increase this contribution by \$1,600.



**STATUTORY ENVIRONMENT:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**FINANCIAL IMPLICATIONS:**

A Reserve contribution of up to \$51,600 from the Recreation Centre Reserve Account.

**STRATEGIC IMPLICATIONS:**

Strategic Community Plan 2017 -2027

***3.1 Our Shire and Streetscape:***

*Keep the charm and fabric of our unique shire and upgrade the amenity*

**RECOMMENDATION:**

1. That Council accept the grant of \$15,000 from the Department of Local Government, Sport and Cultural Industries for the renovation of the toilets and change rooms at the Recreation Centre.
2. That Council accepts that an additional \$1,600 Reserve contribution may be required to cover the reduction in grant funding received.

**VOTING REQUIREMENTS:**

Simple Majority

# **FINANCE & ADMINISTRATION**

AGENDA NUMBER:	12.9
SUBJECT:	Request For Financial Assistance - Cleanaway
LOCATION/ADDRESS:	
NAME OF APPLICANT:	Cleanaway Pty Ltd
FILE REFERENCE:	HLT 8
AUTHOR:	Tracie Bishop – Manager Corporate Services
REPORTING OFFICER:	Tracie Bishop – Manager Corporate Services
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	19 July 2018
ATTACHMENTS:	12.9.1 - Letter from Cleanaway Pty Ltd dated 10 May 2018

## **BACKGROUND:**

Cleanaway Pty Ltd became Council's waste and recyclable contractor in 2016 as a result of purchasing Warren Blackwood Waste. From 2016 onwards there has remained an amicable business relationship between Council and Cleanaway.

Council currently has renegotiated a three-year contract with Cleanaway due for expiry on 30 June 2021 based on a Consumer Price Index increase per annum. This is significant in the current waste climate where costs are continuing to rise significantly.

Historically, Cleanaway have been in the waste removal industry for almost 30 years. Over this time significant commitments to waste have been made by Cleanaway including the recent construction of the largest and most advanced recycling facilities in Australia.

The decision to invest in the required infrastructure to support waste commitments was made based on historically, the ability of the company to have access to international markets to sell waste material.

## **COMMENT:**

Council received confirmation of current contract pricing from Cleanaway on 9 May 2018. Previous meetings with this organisation indicated that this increase was based on Nannup's waste management principles and the fact that overall Nannup was considered an easy local government in relation to waste enquiries and usage.

However, a further letter was received one day after this confirmation that raised concerns about the viability of the Chinese market in regards to recyclables and the impact that this current volatility was having on the Cleanaway's overall business model. The letter outlined that up until the time of writing, Cleanaway had attempted, as a short term measure, to absorb the costs associated with the withdrawal of the Chinese market but that this would not be a viable outcome in the long term. Cleanaway were therefore writing to ask for financial assistance to help with the overall increased costs. Financial assistance requested was in the form of a processing fee of \$30/tonne. For the Shire of Nannup this represents a cost of approximately \$3,000 for the 2018/19 financial year.

A meeting to discuss this request in more detail was held in June 2018 between the two parties, from this meeting it was clearly relayed that Council is under no obligation to provide this assistance. Cleanaway are aware that the contract for the upcoming period has been set. Therefore, Council needs to consider the following points before arriving at a decision:

1. The Chinese governments "National Sword" campaign was announced in July 2017. This was approximately 10 months prior to our renegotiations with Cleanaway.
2. Cleanaway Pty Ltd are a publicly listed company with shareholders.
3. Further, they are a commercial business venture that have been operating in the open market for a considerable period. While historically the market for recyclables did include the Chinese market, from a business perspective it is up to each individual entity to ensure that they have built into their business model a factor to cover the loss of any trading partners.
4. Is it realistic for a public company to expect a third party to cover market volatility on their behalf?
5. What repercussions should Council consider if the response to the request is received negatively?

From an officer perspective, after considering the points written above the response is that the profit as well as the risk should remain with Cleanaway. While the monetary consideration is not large, Council needs to remain mindful that financially this organisation has also had to make difficult decisions based on the current economic environment and any contribution will result in further financial constraint in other areas of Council's budget.

Consideration also needs to be made in regards to future negotiations with this company and what the impact would be if the volatility currently being experienced by Cleanaway resulted in their demise. While this is not something that Officers would like to see, ultimately this is the responsibility of the organisation itself. For all of these reasons, Officer recommendation would be that this request is not affirmed.

**STATUTORY ENVIRONMENT:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**FINANCIAL IMPLICATIONS:**

Budgetary increase of approximately \$3,000 to the 2018/19 Annual Budget.

**STRATEGIC IMPLICATIONS:**

Nil.

**RECOMMENDATION:**

That Council write to Cleanaway declining the financial assistance requested on the basis that the increase in costs is a business risk that should not be covered by customers of the business.

**VOTING REQUIREMENTS:**

Simple Majority

**Shire of Nannup  
Ordinary Council Meeting Agenda: 26 July 2018**

AGENDA NUMBER:	12.10
SUBJECT:	Monthly Accounts for Payment - June 2018
LOCATION/ADDRESS:	Nannup Shire
NAME OF APPLICANT:	N/A
FILE REFERENCE:	FNC 8
AUTHOR:	Robin Lorkiewicz –Corporate Services Officer
REPORTING OFFICER:	Tracie Bishop – Manager Corporate Services
DISCLOSURE OF INTEREST:	None
PREVIOUS MEETING REFERENCE:	None
DATE OF REPORT	17 July 2018
ATTACHMENT:	12.10.1 – Accounts for Payment – June 2018

**BACKGROUND:**

The Accounts for Payment for the Nannup Shire Municipal Account fund and Trust Account fund from 1 June 2018 to 30 June 2018 as detailed hereunder and noted on the attached schedule, are submitted to Council.

**COMMENT:**

If Councillors have questions about individual payments prior notice of these questions will enable officers to provide properly researched responses at the Council meeting.

There is currently one corporate credit card in use. A breakdown of this expenditure in the monthly financial report is required to comply with financial regulations. This breakdown is included within the attachments.

**Municipal Account**

Accounts paid by EFT	10606 – 10770	315,677.53
Accounts paid by cheque	20287 – 20298	3,709.01
Accounts paid by Direct Debit	DD10179.1	–
	DD10191.10	42,619.26
<i>Sub Total Municipal Account</i>		<u>\$362,005.80</u>

**Trust Account**

Accounts paid by EFT	10697 – 10698	1,742.26
Accounts Paid by cheque		0.00
<i>Sub Total Trust Account</i>		<u>\$1,742.26</u>
<b>Total Payments</b>		<u><b>\$363,748.06</b></u>

**STATUTORY ENVIRONMENT:**

LG (Financial Management) Regulation 13

**POLICY IMPLICATIONS:**

None.

**FINANCIAL IMPLICATIONS:**

As indicated in Schedule of Accounts for Payment.

**STRATEGIC IMPLICATIONS:**

None.

**RECOMMENDATION:**

That the List of Accounts for Payment for the Nannup Shire Municipal Account fund totalling \$363,748.06 1 June 2018 to 30 June 2018 in the attached schedule be endorsed.

**VOTING REQUIREMENTS:**

Simple Majority

**13. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**

**13.1 OFFICERS**

**13.2 ELECTED MEMBERS**

**14. MEETING CLOSED TO THE PUBLIC**  
(Confidential Items)

**14.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

**12.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC**

**15. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Cr Dean has given notice that the following motions be discussed at the July Ordinary Meeting of Council:

**15.1** That Council consult with the land owners who are in close proximity to Perks Road, Cundinup; as to the potential rezoning of their land into a tourism precinct, encompassing the major uses listed under our tourism table.

**15.2** This Council, in consultation with accommodation providers and other interested parties, develop an AirBnB Policy to be implemented in the 2019/20 financial year.

**16. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

**17. CLOSURE OF MEETING**



# Agenda Attachments

Item	Attach	Title
<b>8.1</b>		June 2018 Shire of Nannup Ordinary Council Meeting Minutes
<b>9.1</b>		Western Australian Local Government Association South West Zone 22 June 2018 Minutes
<b>12.1</b>	1	Register of Delegated Development Approvals
<b>12.2</b>	1	Documentation from applicant
	2	Proposed Amending Provisions
	3	Location Plan
	4	Current Special Use provisions – extract from Scheme
	5	Submissions
	6	Schedule of Submissions
	7	Bushfire Management Plan (May 2018)
<b>12.3</b>	1	Correspondence and plan from applicant
	2	Location map
	3	Submissions



**Shire of Nannup  
Ordinary Council Meeting Agenda: 26 July 2018**

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<b>12.4</b>	1	Planning assessment report including development plans and Environmental EME Report from applicant
	2	Location map
	3	<i>State Planning Policy 5.2 Telecommunications Infrastructure</i>
	4	Submission
	5	Response from applicant to submissions
	6	Extract from <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
	7	Extract from <i>Making Good Planning Decisions (2017)</i>
<b>12.5</b>	1	Email and letter from Alan Boynton
	2	Email from Department of Planning, Lands and Heritage
<b>12.6</b>	1	Stop Puppy Farming Local Government Consultation Paper
<b>12.8</b>	1	Letter of Acknowledgement
<b>12.9</b>	1	Letter from Cleanaway Pty Ltd dated 10 May 2018
<b>12.10</b>	1	Accounts for Payment – June 2018
<b>15.2</b>		Health Policy 4: Bed and Breakfast and Local Planning Policy 4: Bed and Breakfast