



MINUTES

Ordinary Council Meeting

21 February 2023

CONFIRMATION OF MINUTES

These Minutes have been CONFIRMED by Council as the official record for the Shire of Gingin's Ordinary Council Meeting held on 21 February 2023.



**Councillor C W Fewster
PRESIDENT**

Date of Confirmation: 21 March 2023

DISCLAIMER

Members of the public are advised that Council agendas, recommendations, minutes and resolutions are subject to confirmation by Council and therefore, prior to relying on them, one should refer to the subsequent meeting of Council with respect to their accuracy.

No responsibility whatsoever is implied or accepted by the Shire of Gingin for any act, omission or statement or intimation occurring during Council meetings or during formal/informal conversations with staff.

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Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

ACKNOWLEDGEMENT OF COUNTRY



The Shire of Gingin would like to acknowledge the Yued people who are the traditional custodians of this land. The Shire would like to pay respect to the Elders past, present and emerging of the Yued Nation and extend this respect to all Aboriginal people. The Shire also recognises the living culture of the Yued people and the unique contribution they have made to the Gingin region.

TABLE OF CONTENTS

1	DECLARATION OF OPENING	5
2	RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE	5
2.1	ATTENDANCE	5
2.2	APOLOGIES	5
2.3	LEAVE OF ABSENCE	5
3	DISCLOSURES OF INTEREST	5
4	PUBLIC QUESTION TIME	6
4.1	RESPONSES TO PUBLIC QUESTIONS PREVIOUSLY TAKEN ON NOTICE.....	6
4.2	PUBLIC QUESTIONS.....	6
5	PETITIONS.....	6
6	APPLICATIONS FOR LEAVE OF ABSENCE.....	6
7	CONFIRMATION OF MINUTES.....	6
8	ANNOUNCEMENTS BY THE PRESIDING MEMBER.....	6
9	UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS.....	7
10	QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN	7
11	REPORTS - OFFICE OF THE CEO	8
11.1	RENAMING OF NILGEN VOLUNTEER BUSH FIRE BRIGADE	8
12	REPORTS - CORPORATE AND COMMUNITY SERVICES.....	10
12.1	AMENDMENT OF THE 2022/23 SCHEDULE OF FEES AND CHARGES - GUILDERTON CARAVAN PARK CANCELLATION FEES	10
12.2	LIST OF PAID ACCOUNTS JANUARY 2023	13
12.3	MONTHLY FINANCIAL REPORT FOR THE PERIOD ENDING 31 JANUARY 2023	16
12.4	UPPER COASTAL SPORTING FACILITIES MASTERPLAN - STAGE 1 PRIORITIES	19
13	REPORTS - REGULATORY AND DEVELOPMENT SERVICES	24
13.1	PROPOSED SCHEME AMENDMENT NO. 23 - SECTION 76 SUBMISSION	24
13.2	AMENDMENT OF LOCAL PLANNING POLICY 2.1 – RESIDENTIAL OUTBUILDINGS	30
13.3	PROPOSED SUBDIVISION - WAPC 163013 LOT 9001 LANCELIN ROAD, LANCELIN.....	34
13.4	PROPOSED SUBDIVISION - LOT 1021 GINGIN BROOK ROAD, WOODRIDGE....	47
13.5	APPLICATION FOR DEVELOPMENT APPROVAL - PROPOSED WIND TURBINES (USE NOT LISTED) ON LOT 3910 (1289) NILGEN ROAD, NILGEN.....	54
13.6	APPLICATION FOR DEVELOPMENT APPROVAL - EXTRACTIVE INDUSTRY ON LOT M1899 TEATREE ROAD, LENNARD BROOK.....	63
13.7	APPLICATION FOR DEVELOPMENT APPROVAL - PROPOSED RECEPTION CENTRE ON LOT 24 (145) BARAMBA ROAD, KARAKIN	78

13.8	APPLICATION FOR DEVELOPMENT APPROVAL - PROPOSED EXPANSION OF EXISTING CARAVAN PARK (WILLOWBROOK) ON LOT 7 GINGIN BROOK ROAD, NEERGABBY	95
13.9	APPLICATION FOR AMENDED DEVELOPMENT APPROVAL PROPOSED OVERSIZE OUTBUILDING AT LOT 331 (3) HUBBARD STREET, LANCELIN	106
13.10	APPLICATION FOR DEVELOPMENT APPROVAL FAMILY DAYCARE AT LOT 5 (6) EDGAR STREET, GINGIN.....	111
13.11	APPLICATION FOR DEVELOPMENT APPROVAL - SINGLE HOUSE ADDITION (BALCONY) AT LOT 475 (9) CASSERLEY WAY, LANCELIN	118
13.12	APPLICATION FOR DEVELOPMENT APPROVAL - OVERSIZE ANCILLARY ACCOMMODATION AT 143 (860) OCEAN FARM DRIVE, NILGEN	123
13.13	APPLICATION FOR DEVELOPMENT APPROVAL - REPLACEMENT OF EXISTING TELECOMMUNICATION FACILITY ON LOT 7269 (1077) OLD LEDGE POINT ROAD, LANCELIN (RESERVE 28303).....	129
13.14	APPLICATION FOR AMENDED DEVELOPMENT APPROVAL - USE NOT LISTED (ELECTRIC VEHICLE CHARGING STATION) AND ASSOCIATED STRUCTURES ON ROCK WAY ROAD RESERVE (LIN 3441770), LANCELIN.....	136
14	REPORTS - OPERATIONS AND ASSETS	141
14.1	PROPOSED LANCELIN SKATE AND BMX PARK - STAGE TWO UPGRADE ON RESERVE 44490 (WANGAREE PARK) ON LOT 323 GINGIN ROAD, LANCELIN	141
15	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	144
16	COUNCILLORS' OFFICIAL REPORTS.....	144
16.1	GINGIN COMMUNITY RESOURCE CENTRE – PAYMENT OF ELECTRICITY COSTS	144
16.2	2023 SHIRE OF GINGIN AUSTRALIA DAY EVENT.....	144
16.3	ATTRACTING AND RETAINING VOLUNTEERS WORKSHOP – 18 FEBRUARY 2023	144
17	NEW BUSINESS OF AN URGENT NATURE.....	144
18	MATTERS FOR WHICH MEETING IS TO BE CLOSED TO THE PUBLIC	145
19	CLOSURE.....	145

ORDER OF BUSINESS

1 DECLARATION OF OPENING

The Deputy Shire President declared the meeting open at 2:59 pm and welcomed all in attendance.

2 RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

2.1 ATTENDANCE

Councillors – A R Vis (Deputy Shire President), L Balcombe, F J Johnson, R Kestel, F J Peczka, J K Rule, and E Sorensen.

Staff – A Cook (Chief Executive Officer), L Crichton (Executive Manager Corporate and Community Services), R Kelly (Executive Manager Regulatory and Development Services), V Crispe (Executive Manager Operations and Assets), K Bacon (Coordinator Strategic Planning & Projects), J Bayliss (Coordinator Statutory Planning) (from 3:18pm), N Jurmann (Statutory Planning Officer), L Burt (Coordinator Governance), and E Mackey (Governance Support Officer/Minute Officer).

Gallery – There were 22 members of the public present in the Gallery.

2.2 APOLOGIES

Cr C W Fewster (Shire President)

2.3 LEAVE OF ABSENCE

Nil

3 DISCLOSURES OF INTEREST

J Bayliss - Coordinator Statutory Planning

Item: 13.1 - Proposed Scheme Amendment No. 23 - Section 76 Submission

Interest: Proximity

Reason: I am an adjoining landowner.

Councillor Kestel

Item: 13.1 - Proposed Scheme Amendment No. 23 - Section 76 Submission

Interest: Proximity

Reason: My property shares a boundary with Lot 9501 Cheriton Road.

4 PUBLIC QUESTION TIME

4.1 RESPONSES TO PUBLIC QUESTIONS PREVIOUSLY TAKEN ON NOTICE

Nil

4.2 PUBLIC QUESTIONS

Nil

5 PETITIONS

Nil

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 CONFIRMATION OF MINUTES

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson **SECONDED:** Councillor Balcombe

That Council confirm the Minutes of the Ordinary Council Meeting held on 17 January 2023 and the Special Council Meeting held on 7 February 2023 as a true and accurate record.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

8 ANNOUNCEMENTS BY THE PRESIDING MEMBER

Deputations

Four deputations were heard by Council prior to the meeting commencement, the details of which are as follows:

Item 13.7 **Application for Development Approval - Proposed Reception Centre on Lot 24 (145) Baramba Road, Karakin**

Speaker/s: Ryan Djanegara - Developed Property

The Deputation was in support of the Officer's Recommendation.

Item 13.3 WAPC 163013 Lot 9001 Lancelin Road, Lancelin

Speaker/s: Rachel Chapman & Grant Wilkins

The Deputation was in support of the Officer's Recommendation.

Item 13.1 Proposed Scheme Amendment No. 23 - Section 76 Submission

Speaker/s: Courtney Bayliss

The Deputation was in opposition to the Officer's Recommendation.

Item 13.13 Application for Development Approval - Replacement of Existing Telecommunication Facility on Lot 7269 (1077) Old Ledge Point Road, Lancelin (Reserve 28303)

Speaker/s: Pat Shinnick - Catalyst Communication Rigging Pty Ltd

The Deputation was in support of the Officer's Recommendation.

9 UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

Nil

10 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

11 REPORTS - OFFICE OF THE CEO

11.1 RENAMING OF NILGEN VOLUNTEER BUSH FIRE BRIGADE

File	EMS/22
Author	Phil Barrett – Chief Bush Fire Control Officer/Community Emergency Services Manager
Reporting Officer	Aaron Cook - Chief Executive Officer
Refer	Nil
Appendices	Nil

DISCLOSURES OF INTEREST

Nil

PURPOSE

To change the name of the Nilgen Volunteer Bush Fire Brigade (Nilgen VBFB) to one that reflects both the history and the physical locality of the Brigade.

BACKGROUND

At the Bush Fire Advisory Committee (BFAC) meeting held on 21 December 2022 a report was presented to request that the Nilgen Volunteer Bush Fire Brigade be renamed.

This came about as a result of a vote taken at the Brigade's Annual General meeting, where it was determined that there was overwhelming support for renaming the Brigade to better reflect the area it services.

Historically, the Nilgen VBFB covered a much larger area at its inception and over time other Brigades have been formed to decrease the workload of this small rural brigade. Those brigades are made up of Gingin West, Beermullah, Red Gully and Ocean Farm.

The gazetted locality of Nilgen is located to the north of Lancelin and is represented by the Ocean Farm Volunteer Bush Fire Brigade and Lancelin Volunteer Fire and Rescue Service whereas the Nilgen VBFB is located on Baramba Road in the Shire locality of Karakin. Nilgen is a confusing misrepresentation of where the Brigade is physically located given the change in the number of gazetted locality names in the immediate vicinity (Wanerie, Cowalla, Orange Springs, Karakin).

COMMENT

The BFAC discussed the request and resolved that the Committee recommend to Council that the Nilgen Volunteer Bush Fire Brigade be renamed as the Cowalla Volunteer Bush Fire Brigade in order to better represent the Brigade's geographical locality and history as from 1 February 2023.

STATUTORY/LOCAL LAW IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	2. Connections & Wellbeing - Grow and Nurture Community Connectedness and Wellbeing
Strategic Objective	2.5 Community Capacity Building - Empower all ages to be culturally aware and involved in diverse community initiatives including volunteering, culture and the arts

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/COMMITTEE RECOMMENDATION

MOVED: Councillor Peczka **SECONDED:** Councillor Balcombe

That Council resolve that the Nilgen Volunteer Bush Fire Brigade be renamed as the Cowalla Volunteer Bush Fire Brigade to better represent the Brigade's geographical locality and history as from 1 February 2023.

CARRIED UNANIMOUSLY
7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

12 REPORTS - CORPORATE AND COMMUNITY SERVICES

12.1 AMENDMENT OF THE 2022/23 SCHEDULE OF FEES AND CHARGES - GUILDERTON CARAVAN PARK CANCELLATION FEES

File	CPT/5-2
Author	Bethwyn Innes - Executive Assistant to EMCCS
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	17 January 2023 - Item 17.1
Appendices	Nil

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider a recommendation from the Guilderton Caravan Park and Foreshore Development Advisory Committee meeting held on 7 February 2023 to amend the current 2022/23 Schedule of Fees and Charges to reflect the proposed amendments to the Guilderton Caravan Park Cancellation Fees.

BACKGROUND

At its meeting on 17 January 2023, the Guilderton Caravan Park and Foreshore Development Advisory Committee (GCPFDAC) resolved the following:

That the Committee submit an item for consideration as New Business of Urgent Nature to the Ordinary Council Meeting on 17 January 2023, recommending that Council inform the Guilderton Caravan Park Management Contractor, Belgravia Pro Pty Ltd, of the requirement to implement the following amendments to the current booking procedure effective immediately, noting that the current Cancellation Policy is to remain unchanged:

- 1. A deposit of one (1) night's tariff is payable at the time of booking; and*
- 2. The balance of the booking is payable thirty (30) days prior to the date of arrival.*

Belgravia's current Cancellation Policy is outlined below.

Cancellation Policy

Cancellation fees apply as follows:

15 days or more notice: full refund or reschedule

8 -14 days' notice: 75% refunded

2 - 7 days' notice: 50% refunded

24 hrs notice: no refund

This policy is reflected on Page 2 of the Shire's current 2022/23 Schedule of Fees and Charges.

COMMENT

Upon implementation of the amended booking procedure, Belgravia and Shire staff have been made aware that the current Cancellation Policy (and therefore the Shire's associated cancellation fees) do not effectively align with the new requirement for the balance of the booking being payable 30 days prior to the date of arrival. At present, there is a two-week period between when the balance of the booking is due and the current cancellation notice period in which guests may receive a full refund. Whilst this may be deemed unlikely to occur, it will increase the administrative load of Caravan Park staff and may not disincentivise guests from making unnecessary/multiple bookings.

To simplify the booking refund process and decrease the potential administrative load for Caravan Park staff, the GCPFDAC at its 7 February 2023 meeting considered and resolved the following amendments be presented to Council for adoption in the 2022/23 Schedule of Fees and Charges:

Cancellation Fees:

7 - 30 days' notice

One night charge

Less than 7 days' notice

Full booking charge (No refund)

STATUTORY/LOCAL LAW IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	1. Attractions & Economy - Actively Pursue Tourism and Economic Development
Strategic Objective	1.1 Investment Attraction - Foster relationships with key stakeholders to attract tourism/economic development initiatives that will contribute to the Shire's economy

VOTING REQUIREMENTS - ABSOLUTE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Sorensen **SECONDED:** Councillor Kestel

That Council agree to make the following amendments to the adopted 2022/23 Schedule of Fees and Charges:

*Guilderton Holiday Park
Cancellation Fees:*

*7 – 30 days' notice
Less than 7 days' notice*

*One night charge
Full booking charge (No refund)*

**CARRIED BY ABSOLUTE MAJORITY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

12.2 LIST OF PAID ACCOUNTS JANUARY 2023

File	FIN/25
Author	Tania Ladner – Accounts Payable / Administration Support Officer
Reporting Officer	Les Crichton - Executive Manager Corporate and Community Services
Refer	Nil
Appendices	Nil

DISCLOSURES OF INTEREST

Nil

PURPOSE

For Council to note the payments made in January 2023.

BACKGROUND

Council has delegated authority to the Chief Executive Officer (CEO) to exercise the power to make payments from the Municipal Fund (Delegation 1.1.13 Payments from the Municipal or Trust Funds). The CEO is required to present a list to Council of those payments made since the last list was submitted.

COMMENT

Accounts totalling \$2,180,530.98 were paid during the month of January 2023.

A detailed payment schedule has been provided to Councillors and can be made available to the public for viewing at the Shire's Gingin Administration Centre and Lancelin Office upon request. The schedule covers:

- | | |
|---|----------------|
| • Municipal Fund electronic funds transfers (EFT) | \$1,655,129.06 |
| • Municipal Fund cheques | \$452.00 |
| • Municipal Fund direct debits | \$524,949.92 |

Total Municipal Expenditure	\$2,180,530.98
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TOTAL EXPENDITURE	\$2,180,530.98
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All invoices have been verified, and all payments have been duly authorised in accordance with Council's procedures.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Government Act 1995
s.6.4 – Financial Report

Local Government (Financial Management) Regulations 1996
Reg. 13 – Payments from municipal fund or trust by CEO

Shire of Gingin Delegation Register – Delegation 1.1.13 Payments from the Municipal or Trust Funds

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Resource requirements are in accordance with existing budgetary allocations.

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	4. Excellence & Accountability - Deliver Quality Leadership and Business Expertise
Strategic Objective	4.4 Strategic & Sustainable Financial Planning - Undertake long-term resource planning and allocation in accordance with the Integrated Planning and Reporting Framework

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson **SECONDED:** Councillor Balcombe

That Council note all payments made by the Chief Executive Officer under Delegation 1.1.13 for January 2023 totaling \$2,180,530.98 as detailed in the schedule provided to Councillors comprising:

- | | |
|---|----------------|
| • Municipal Fund electronic funds transfers (EFT) | \$1,655,129.06 |
| • Municipal Fund cheques | \$452.00 |
| • Municipal Fund direct debits | \$524,949.92 |

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

12.3 MONTHLY FINANCIAL REPORT FOR THE PERIOD ENDING 31 JANUARY 2023

File	FIN/25
Author	Karina Leonhardt - Manager Corporate Services
Reporting Officer	Les Crichton - Executive Manager Corporate and Community Services
Refer	Nil
Appendices	1. Monthly Financials (January 23) - PROD 3217 [12.3.1 - 24 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To present for Council endorsement the Monthly Financial Report for the period ending 31 January 2023.

BACKGROUND

The Financial Reports are presented to Council in accordance with the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*.

COMMENT

The Monthly Financial Report for the period ending 31 January 2023 presents the financial performance of the Shire for the 2022/23 financial year and compares year-to-date expenditure and revenue against the corresponding year-to-date budget.

A break-up of the **\$713,928** variance in the Monthly Financial Report for the period ending 31 January 2023 is summarised across operations, investing and financing below, with a detailed explanation of variations within each area contained within the Appendix.

Under Budget

Operating Fund Surplus / Deficit	\$(491,730)
Operating Expenditure	\$537,724
Investing Activities – Revenue	\$(909,585)
Investing Activities – Expenditure	\$1,762,473
Financing Activities – Revenue	\$(524,000)

Over Budget

Operating Revenue	\$390,200
Financing Activities – Expenditure	\$(51,154)

As Council is aware, administration have commenced the half yearly review of the 2022/23 Budget, which will provide further analysis of Council's financial performance against that budgeted.

Investments

As required by Council Policy 3.2 Investments, details of Council's investments are provided within Note 2.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Government Act 1995

Part 6 – Financial Management

Division 3 – Reporting on activities and finance

Section 6.4 – Financial Report

Local Government (Financial Management) Regulations 1996

Part 4 – Financial Reports

Reg 34 – Financial activity statement required each month

Shire of Gingin Delegation Register – Delegation 1.1.10 Power to Invest and Manage Investments

POLICY IMPLICATIONS

Policy 3.2 – Investments

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	4. Excellence & Accountability - Deliver Quality Leadership and Business Expertise
Strategic Objective	4.2 Effective Governance - Apply systems of compliance which assists Council to make informed decisions within a transparent, accountable and principled environment

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Kestel **SECONDED:** Councillor Johnson

That Council endorse the Monthly Financial Report for the period ending 31 January 2023.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel,
Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

12.4 UPPER COASTAL SPORTING FACILITIES MASTERPLAN - STAGE 1 PRIORITIES

File	PRL/36
Author	Bethwyn Innes - Executive Assistant to EMCCS
Reporting Officer	Les Crichton - Executive Manager Corporate and Community Services
Refer	Nil
Appendices	Nil

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider a recommendation from the Upper Coastal Sporting Facilities Working Group (UCSFWG) to amend the Stage 1 priorities for the Upper Coastal Sporting Facilities Master Plan to reflect the Working Groups preferred interests.

BACKGROUND

At its Ordinary Meeting on 20 September 2022, Council resolved to re-establish the UCSFWG, adopt the associated Terms of Reference, appoint Crs Kestel, Peczka and Vis as Council representatives, and appoint Cr Kestel as the Chair of the Working Group.

The UCSFWG has held three meetings (9 November 2022, 21 December 2022 and 8 February 2023) to review the priorities for the Upper Coastal Sporting Facilities Master Plan.

At its meeting on 21 December 2022, the UCSFWG developed a revised schedule of priorities for Stage 1 of the Master Plan based on input from all clubs.

It was also agreed that –

- Priorities beyond those identified within Stage 1 be subject to assessment closer to completion of the Stage 1 projects;
- While not included within the Master Plan, Council be requested to review the timing of the installation of a path between Lancelin townsite and the Lancelin Sporting Complex within its footpath program priorities;
- Repairs to the January 2019 fire damage to the Lancelin Shooting range which has resulted to restricted access to the site, be followed up with DFES/Shire; and
- The Shire finalises identification of available land (if any) as potential sites for relocation of the Pegasus Shooting Club on or before 30 June 2023.

COMMENT

At its meeting on 8 February 2023, the UCSFWG met to finalise its recommendations to be submitted to Council on the Stage 1 priorities for the Upper Coastal Sporting Facilities Master Plan.

It also invited Grant Wilkins and Rachel Chapman from VIMG to provide an update on the Lancelin South Development.

In addition to providing a summary of VIMG and a copy of the development plan, they also responded to questions from the Working Group on the following –

- Any differences between the original development plan and that presented;
- Impacts of traffic and fire prone area requirements on the development;
- Timing and triggers for construction of developer contribution infrastructure (footpaths);
- Target market (retirees, young families, investors, visitor accommodation);
- Consideration of impact, if any, of Native Title claim on land adjacent to the development;
- Vision in relation to recreational facilities servicing the development; and
- Promotion channels.

Based on its previous deliberations, together with the update provided by VIMG, The UCSFWG resolved:

That the Working Group members recommend Council -

1. *Endorse the following changes to the Upper Coastal Sporting Facilities Master Plan Stage 1 from*

<i>Current Master Plan – Stage 1</i>
<i>Second multi-court (netball/basketball) – Lancelin</i>
<i>Plus, additional line marking to existing netball court</i>
<i>Sports lighting to outdoor courts (subject to power source)</i>
<i>Disabled access ramp (upper to mid-level)</i>
<i>Lighting to football oval – 3 No (subject to power source)</i>
<i>Resurfacing 3 existing courts (excludes fencing)</i>
<i>Lighting to 3 existing courts (subject to power source)</i>

to

<i>Revised Master Plan – Stage 1</i>
<i>Second multi-court (netball/basketball) – Lancelin</i>
<i>Inclusion of Lancelin Golf Club</i>
<i>Inclusion of Lancelin Bowling Club</i>
<i>Disabled access ramp (upper to mid-level) - Lancelin</i>
<i>Lighting to football oval – 3 No (subject to power source) - Lancelin</i>
<i>Synthetic Bowling Green – 10 Rink - Lancelin</i>
<i>Additional golf cart storage – Lancelin</i>
<i>Relocation of Pegasus Gun Club - Lancelin</i>

- 2. Review the timing of the installation of a path between Lancelin Townsite and the Lancelin Sporting Complex within its footpath program priorities.*
- 3. Finalise the identification of available land (if any) as potential sites for the relocation of the Pegasus Shooting Club on or before 30 June 2023.*
- 4. Include the Lancelin Sporting and Community Club in its consultation with the development of the Lancelin South as it relates to the provision of sporting facilities within and adjacent to the development area.*

STATUTORY/LOCAL LAW IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

While there is no immediate budget implication, as agreed during discussions on setting the Master Plan priorities, implementation of each will be dependent on securing one third contribution from each of the benefit club, Council, and external grant funders.

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	2. Connections & Wellbeing - Grow and Nurture Community Connectedness and Wellbeing
Strategic Objective	2.8 Services & Facilities - Provide cost effective services and facilities which meet the needs of the community

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/WORKING GROUP RECOMMENDATION

MOVED: Councillor Kestel **SECONDED:** Councillor Johnson

That Council:

1. Endorse the following changes to the Upper Coastal Sporting Facilities Master Plan Stage 1 from

Current Master Plan – Stage 1
Second multi-court (netball/basketball) – <i>Lancelin</i>
Plus, additional line marking to existing netball court
Sports lighting to outdoor courts (subject to power source)
Disabled access ramp (upper to mid-level)
Lighting to football oval – 3 No (subject to power source)
Resurfacing 3 existing courts (excludes fencing)
Lighting to 3 existing courts (subject to power source)

to

Revised Master Plan – Stage 1
Second multi-court (netball/basketball) – <i>Lancelin</i>
Inclusion of Lancelin Golf Club
Inclusion of Lancelin Bowling Club
Disabled access ramp (upper to mid-level) – <i>Lancelin</i>
Lighting to football oval – 3 No (subject to power source) - <i>Lancelin</i>
Synthetic Bowling Green – 10 Rink – <i>Lancelin</i>
Additional golf cart storage – <i>Lancelin</i>
Relocation of Pegasus Gun Club – <i>Lancelin</i>

2. Review the timing of the installation of a path between Lancelin Townsite and the Lancelin Sporting Complex within its footpath program priorities.
3. Finalise the identification of available land (if any) as potential sites for the relocation of the Pegasus Shooting Club on or before 30 June 2023.

4. Include the Lancelin Sporting and Community Club in its consultation with the development of the Lancelin South as it relates to the provision of sporting facilities within and adjacent to the development area.

CARRIED UNANIMOUSLY
7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13 REPORTS - REGULATORY AND DEVELOPMENT SERVICES

13.1 PROPOSED SCHEME AMENDMENT NO. 23 - SECTION 76 SUBMISSION

File	LND/136
Author	Kylie Bacon - Coordinator Strategic Planning & Projects
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Item 13.1 - 17 May 2022
Appendices	1. 160223 Section 76 Application [13.1.1 - 90 pages]

DISCLOSURES OF INTEREST

Councillor Kestel disclosed a proximity interest in Item 13.1 as his property shares a boundary with Lot 9501 Cheriton Road and left the meeting at 3:05pm.

J Bayliss (Coordinator Statutory Planning) disclosed a proximity interest in Item 13.1 prior to the meeting as he is an adjoining landowner. Mr Bayliss was not in attendance at the meeting at this time.

PURPOSE

For Council to provide direction in dealing with a Section 76 Submission received from the Minister of Planning with respects to the proposed Scheme Amendment No. 23 to the Shire of Gingin's Local Planning Scheme No. 9 (LPS 9).

BACKGROUND

On the 2 February 2023, the Shire received a Section 76 of the *Planning and Development Act 2005* (the Act) from the Minister of Planning, asserting that the Shire of Gingin had failed to adopt an amendment to its LPS 9 where it ought to have been adopted.

Section 76 of the Act provides the Minister to order a local government to prepare and submit for approval an amendment to a local planning scheme. However, prior to making a decision, the Minister has requested that the Department of Planning, Lands and Heritage (DPLH) investigate the matter.

Accordingly, the Department is seeking information or advice from the Shire regarding proposed Amendment 23 to LPS 9, which seeks to rezone a portion of Lot 9501 Cheriton Road, Gingin from General Rural to Rural Living.

The purpose of this report is for Council to provide a resolution to one of the three options below on how it would like to respond back to the Minister of Planning's office. The Minister's decision will occur after considering any input received from the Shire. The Shire has a deadline to provide a response back to the Planning Minister's office by 10 April 2023.

The Section 76 Application is contained in the Appendix.

COMMENT

In order for Council to respond to the Section 76, the following options are presented.

1. Reinforce Council's decision as per 17 May 2022 Council Resolution;
2. Reconsider the officer's recommendation as supported by the officer's report to the 17 May 2022 Ordinary Council Meeting; or
3. Engage a consultant to undertake an independent review and response to Council's decision dated 17 May 2022 and the circumstances surrounding the Section 76 application.

It should be noted that if option three is progressed and in the event the Minister directs the local government to initiate the amendment, the consultant will also be required to undertake the processing of the scheme amendment.

STATUTORY/LOCAL LAW IMPLICATIONS

Section 76 of *Planning and Development Act 2005*

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Gingin Local Planning Scheme No.9

Shire of Gingin Local Planning Strategy 2012

Gingin Townsite and Rural Surrounds Structure Plan State Planning Policy No. 2.5 –

Rural Planning State Planning Policy 3 – Urban Growth and Settlement

Government Sewerage Policy 2019

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Three quotes were sought regarding the planning consultant's fee. The scope of works was broken into two stages. Stage one is to provide costings on undertaking an independent review and response (for support or otherwise) to Council's decision dated 17 May 2022 (which was not to initiate the scheme amendment) and the circumstances surrounding the Section 76 application. Stage two, in the event the Ministers office instructs Council to initiate the scheme amendment, provide costings on processing the scheme amendment as a 'standard amendment' in accordance with the Regulations.

The following outlines the quotes received:

Consultant One

Stage One: \$10,000 (+ GST and disbursements). The fee proposal is to the point of lodgement of the written response to the Shire. Any further work after providing the written response would be undertaken at hourly rates or via some other agreed fee.

Stage Two: \$17,000 - \$20,000 (+ GST and disbursements)

At the time of writing the report, the other two consultants' quotes had not been received, however for the purposes of authorising a budget provision if required, it is recommended the first quote figures be applied.

As outlined above, in the event the Minister's office instructs Council to initiate the scheme amendment, Council will need to allocate (depending on timing) in either the 22/23 budget variation or 23/24 budget funds for a consultant to undertake Stage two.

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

OFFICER RECOMMENDATION

MOVED: Councillor Johnson

SECONDED: Councillor Balcombe

Councillor Vis foreshadowed her intention to move an Alternative Motion to support Council's previous decision on this matter should the motion under debate be lost.

That Council support option as outlined in the officer's report so a response can be given to the Planning Minister's officer regarding section 76 submission.

LOST
0/6

FOR: *Nil*

AGAINST: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Peczka, Councillor Sorensen and Councillor Vis*

COUNCIL RESOLUTION/ALTERNATIVE MOTION

MOVED: Councillor Vis **SECONDED:** Councillor Balcombe

That Council support its resolution of 17 May 2022 to refuse to initiate proposed Scheme Amendment No. 23 to Local Planning Scheme No. 9 for the following reasons:

1. Council formed the view that the proposed scheme amendment was inconsistent with the Local and State Planning framework for the following reasons:
 - a. The Gingin Townsite Strategy Map does not identify the subject land for Rural Living Purposes;
 - b. The proposal is viewed as being inconsistent with the objectives of the Local Planning Strategy, which outlines that the Shire ought to limit expansion of this form of development, and that an issue facing the Shire is the removal of agricultural land from production for non-rural uses, such as rural living developments;
 - c. The proposal is inconsistent with the Gingin Townsite and Rural Structure Plan which does not identify this land for Rural Living purposes, and is inconsistent with the Rural Living Scheme Amendments and Subdivision Guide Plans;
 - d. The proposal is inconsistent with the aims of Local Planning Scheme No. 9 which seeks to only support subdivision of rural land which is consistent with the preferred settlement strategy, which Council views as being the Gingin Townsite and Rural Structure Plan;
 - e. The proposal is inconsistent with the Gingin Regional Land Supply Assessment (2019) which outlines a clear position to limit expansion of Rural Living zoned land to areas identified under the Local Planning Strategy. This property is not identified under the appropriate mapping contained within the Local Planning Strategy, being the Gingin Townsite Strategy Map;

- f. The proposal is inconsistent with State Planning Policy 2.5 – Rural Planning which requires rural living development to form part of a settlement hierarchy as the subject land is not identified under the Local Planning Strategy or the Gingin Townsite Expansion and Rural Structure Plan and therefore does not form part of the settlement hierarchy;
 - g. The proposal is inconsistent with State Planning Policy 2.5 – Rural Planning Guidelines, as the Shire has ample land zoned Rural Living within proximity to the subject site that has not obtained a sufficient occupancy rate that warrants creation of additional land stock of the same zoning;
 - h. The proposal is inconsistent with State Planning Policy 3.0 – Urban Growth and Settlement that outlines planning for Rural Living zoned land should not be based on speculative demand, but rather on forecast estimates. The forecast estimates of the Gingin Regional Land Supply Assessment outlines that this form of development should be limited due to an already sufficient supply. There is no compelling reason to depart from this position, particularly given the stock of land scheduled to be released at Country Heights Estate and pending 99 lot subdivision in the townsite.
 - i. The proposal would result in isolation of Lot 380 Howes Lane from the rural locality that does not represent an orderly interface between Rural Living and General Rural land. The existing interface between the Marchmont Rural Living Estate and General Rural land is viewed as being adequate with no alteration to that interface being required.
2. The landowner has attempted to subdivide this portion of land previously and provide for a road reservation on a very similar alignment, which was not supported by Council. The landowner and the applicant should therefore have been aware that the Shire’s Local Planning Framework does not support fragmentation of rural land.
 3. Council is of the view that the proposed scheme amendment does not represent a matter of significance that warrants intervention from the Department of Planning or the Minister for Planning potentially ordering the Shire of Gingin to initiate the proposed amendment. Council should be able to interpret and administer its planning framework free from interference.
 4. Council is concerned that representations made to the Department of Planning and the Minister for Planning do not accurately reflect the circumstances and events under which Council determined this development.

CARRIED UNANIMOUSLY
6 / 0

**MINUTES
ORDINARY COUNCIL MEETING
21 FEBRUARY 2023**



FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Peczka,
Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

Reason for Alternative Motion

To provide, for the purposes of clarification, additional reasons and justifications for refusal of the proposed Scheme amendment.

Councillor Kestel returned to the meeting at 3:07pm and was advised of Council's decision.

13.2 AMENDMENT OF LOCAL PLANNING POLICY 2.1 – RESIDENTIAL OUTBUILDINGS

File	LND/57
Author	Kylie Bacon - Coordinator Strategic Planning & Projects
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Item 13.2 - 19 April 2022 Ordinary Council Meeting
Appendices	<ol style="list-style-type: none"> 1. Amended Draft LPP 2 1 Residential Outbuildings 150223 [13.2.1 - 4 pages] 2. Table Changes to Amended Draft LPP 2 1 Residential Outbuildings and Comments [13.2.2 - 9 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

For Council to consider a draft amendment to Local Planning Policy 2.1 Residential Outbuildings (LPP 2.1 or the Policy) for public comment.

BACKGROUND

Local Planning Policy 2.1 - Residential Outbuildings has been reviewed as part of the Shire's ongoing review and updating program. The review commenced in early 2022 and involved examining a few similar policies established by surrounding local governments.

On 15 April 2022, Council at its Ordinary Meeting resolved to publicly advertise its draft LPP 2.1. As part of the advertising process, the Policy was referred to the Department of Planning, Lands and Heritage (DPLH) for comment on the Policy's acceptability in respect to the Residential Design Codes (R-Codes). The main comment provided by DPLH was that the Policy was not clear in its intent and therefore provided some uncertainty.

By way of explanation, DPLH suggested that the Shire consider whether the Policy proposed to amend or replace the deemed-to-comply requirements of clause 5.4.3 Outbuildings of the R-Codes, or the Policy provisions were to guide assessment of development applications when being considered under the design principles of clause 5.4.3. Further too DPLH's comments, a peer review by an independent planning consultant was conducted to clarify points raised by the Department.

Attached as appendices to this report are the draft amended Policy and the tracked changed version of same.

COMMENT

The Policy was initially drafted as a response to the community's expectations for larger outbuildings on large residential lots in regional locations, not catered for under the R-Codes. The R-Codes essentially have been designed for a metropolitan urban context. In considering DPLH's and the consultant's comments and the need to facilitate planning efficiency as empowered through the deemed provisions, amendments to the draft Policy have been made.

The wording under the Policy, maximum standards, provided in the Policy Table (for floor area, wall height and overall height) relate to nominated lot sizes, with clear reference to amending the deemed-to-comply requirements of clause 5.4.3 Outbuildings. The amendments now provide clarity on how the Policy must be applied. All other aspects of the outbuilding development will still need to meet other policy standards and the R-Codes.

Amendments or replacements to the deemed-to-comply requirements under clause 5.4.3 are considered to be consistent with the relevant design principle which states:

Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.

Moving forward, should the amended draft be adopted by Council, the Policy will potentially allow for compliant outbuildings to be exempt from development approval as provided under the *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2, Part 7, clause 61(1) (the deemed provisions).

The exemptions for outbuilding development that meet with the new deemed-to-comply requirements, provide a benefit to the community by reducing application costs, procedures, time and ultimately improve value of properties. The exemptions will also provide benefits to the Administration by eliminating processing of applications that have relatively minor impact.

The Shire records indicate in the last 12 months (1 January 2022 to 31 December 2022), 23 Development Applications (DA) for outbuildings were received totalling a DA fee income of \$3,381.00. The Shire received these DA's because the outbuildings did not comply with the R-Codes deemed-to-comply requirements and required assessment under the design principles. The variations could have been for several different reasons, not limited to building size. The review of the records did not retrieve statistics for those large outbuildings that complied with all other aspects of the R-Codes. An in-depth review of the records may give a better representation on numbers and income of DA's that would potentially be exempt under the amended draft Policy.

In allowing this amended draft Policy, it is recommended that Council consider the benefits to the community and not just the loss of revenue as outbuildings compliant with the new deem-to-comply requirements will no longer require development approval. The Shire will most likely have a reduction in the amount of DA's received compared to previous years, particularly for those oversized outbuildings that comply with the other design elements of the Policy and the R-Codes. This does not mean that every outbuilding will be exempt from development approval. There are other factors (setbacks, open space etc.) that are taken into consideration when assessing an outbuilding, not just size of the lot and the floor area.

Where a development proposal seeks to erect an outbuilding greater than provided for in the Table outlined in the Policy, seeks to use reflective or recycled construction material, or seeks an assessment under the design principle of clause 5.4.3 of the R-Codes, a development approval will be required. The Shire may require additional assessment information that addresses matters such as, but not limited to, solar access and ventilation for adjoining sites, streetscape, visual amenity impacts and reflective glare assessments.

The Shire created the Policy to respond to community expectations and demand to facilitate larger outbuildings, considering lot size which is a consequence of our location. It is considered, the amended Policy now provides an orderly and proper planning approach to dealing with the inadequacy in the R-Codes, but provides efficiency to both the ratepayer and the Shire.

Community Consultation and Engagement

Should Council resolve to adopt amended the Policy for advertising purposes, public consultation will be undertaken for a period of not less than 21 days, in accordance with clauses 4 and 5 of the Deemed Provisions.

Public consultation will include:

- a. Placement of a public notice in a newspaper circulating in the Shire of Gingin;
- b. Publication of the public notice on the Shire's social media platforms;
- c. Placement of the public notice and a copy of the proposed amended Policy on the Shire's public webpage;
- d. Placement of a public notice on the public notice boards both at Gingin Administration Centre and Lancelin Offices; and
- e. Making a hard copy of the documentation available at the front counter of the Shire's Gingin Administration Centre and Lancelin Office.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development (Local Planning Scheme) Regulations 2015 Schedule 2 – Deemed Provisions for Local Planning Schemes.

State Planning Policy 7.3 Residential Design Codes, Volume 1

Local Planning Scheme No. 9 (LPS 9)

POLICY IMPLICATIONS

The review of this policy will ensure that it aligns with the Regulations and better meets the needs of the community.

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson **SECONDED:** Councillor Kestel

That Council:

1. Pursuant to Schedule 2, Part 2, Clause 5(1) of the *Planning and Development Local Planning Schemes) Regulations 2015*, adopt amended Local Planning Policy No. 2.1 - 'Residential Outbuildings' for the purpose of advertising for public consultation; and
2. Subject to no adverse submissions being received, resolve to proceed with amended Local Planning Policy No. 2.1 - 'Residential Outbuildings' without further modification.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

N Jurmman (Statutory Planning Officer) left the meeting at 3:09pm.

13.3 PROPOSED SUBDIVISION - WAPC 163013 LOT 9001 LANCELIN ROAD, LANCELIN

File	LND/634
Applicant	Taylor Burrell Barnett
Location	Lot 9001 Lancelin Road, Lancelin
Owner	VIMG WA PTY LTD
Zoning	Urban Development
WAPC No	163013
Author	Kylie Bacon - Coordinator Strategic Planning & Projects
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	17 January 2023 - Item 13.2
Appendices	<ol style="list-style-type: none"> 1. Zoning Residential Density & Residential Density Coding Plans-combined [13.3.1 - 2 pages] 2. Applicant's Subdivision Proposal [13.3.2 - 92 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider recommending conditional subdivision approval to the Western Australian Planning Commission (WAPC) for the proposed subdivision for Lot 9001 Lancelin Road, Lancelin (also known as Lancelin South).

BACKGROUND

The Shire is in receipt of a subdivision referral dated 10 November 2022, from the West Australian Planning Commission (WAPC), in respect of a proposed Plan of Subdivision for 66 lots on Lot 9001 Lancelin Road, Lancelin (Lancelin South). Lancelin South is located approximately 4km southeast of Lancelin and 6.5km north of Ledge Point and on the southern side of Lancelin Road, which is the sole entry route to the regional town of Lancelin.

The proposed subdivision is situated within the approved Lancelin South Stage One Outline Development Plan (ODP) and east of the Stage One subdivision (approved July 2011). The proposed subdivision represents Stage Two of the OPD and has been prepared to be generally in accordance with the ODP and the Residential Density Coding Plan (Coding Plan). The proposed subdivision consists of 66 lots, 67 including the balance lot of Lot 9001. The lot sizes range from 480m² to 901m², with a general Residential Density Coding of R20.

The ODP approved 20 June 2011 includes a Zoning and Residential Density Plan (ZRDP) which depicts Stage Two ranging from R20 to R40 (attached in the Appendix). Also included in the Appendix is a more detailed Residential Density Coding Plan which was previously approved as part of Stage One subdivision. This Coding Plan depicts the last row of lots on the eastern side where the zoning should be R25 to R30. The proposed subdivision is proposing R20 for the whole of Stage Two. Notwithstanding, the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, Part 4, clause 27(1) states the following with respect to Structure Plans/ODP's:

A decision-maker for an application for development approval or subdivision approval in an area that is covered by a structure plan that has been approved by the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application.

The applicant has submitted an R20 Coding Plan with the proposed subdivision, consistent with clause 4.1 of the ODP which states:

.....A specific density code will be designated in individual Residential Density Coding Plans which will be approved in conjunction with subdivision applications.

From the Shire's perspective, the zoning is still consistent with the OPD's Zoning and Residential Density Plan. The Shire would need to make sure, however, that higher density zoning was achieved throughout the later stages and where appropriate.

The Applicant's Subdivision Proposal for Stage Two is attached in Appendices.

COMMENT

Stakeholder Consultation

No advertising is required to be undertaken.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

Lancelin South area is zoned 'Future Development under the Shire of Gingin's Local Planning Scheme No. 9 (LPS 9). The area is subject to Lancelin South Stage One ODP which guides the subdivision and development of land part of Stage One for urban purposes. Development being undertaken within the Future Development Zone is to be consistent with the objectives of that zone which state:

- a) *Designate land considered to be generally suitable for future development and to prevent such land being used or developed in a manner which could prejudice its possible future use for planned infrastructure.*
- b) *Provide for sustainable development of land in an orderly manner with appropriate levels of physical infrastructure and human services; and*
- c) *Ensure the orderly development of the land, through the requirement for the preparation and endorsement of a Structure Plan in accordance with the provisions of Part 4 of the deemed provisions, as a pre-requisite to subdivision or development of the land.*

Given the proposed subdivision is the subject of the Lancelin South ODP, is considered to be generally in accordance with the ODP and the orderly and proper planning of the locality, it is considered that the proposal meets the objectives set out under the Future Development zone.

Lancelin South Stage One ODP

As outlined above, the Lancelin South Stage One ODP was endorsed by the WAPC in June 2011. The ODP provides the planning framework for 1000-2000 lots (depending on densities) over the 194 hectares of land. Again, this proposal before Council forms part of the Stage 2 of the estate, with Stage One already approved and constructed. For further information about the ODP, please refer to the Background section of this report.

Public Open Space (POS)

As detailed in clause 4.4, Part 1 of the Lancelin South ODP, each individual subdivision application must provide 10% Public Open Space (POS), with a minimum of 8% unrestricted POS and 2% as restricted POS (which can include drainage). In accordance with the WAPC's Liveable Neighbourhoods guidance, regularly inundated drainage areas and future road widenings (e.g. Realignment of Old Ledge Point Road approaching Lancelin Road) are to be deducted from the gross subdivisible area.

The proposed provision and placement of POS within the Stage 2 Lancelin South subdivision is consistent with the approved Lancelin South ODP. The approved Stage 1 subdivision supplied approximately 5,790m² of POS totaling 8.17% of the gross subdivisible area, resulting in a POS shortfall of 1.83% for the subdivision stage as per the Lancelin South ODP POS requirement.

The proposed Stage 2 subdivision intends to supply 8,800m² of POS (11.9% gross subdivisible area) and initiating the delivery of a portion of POS 1A as depicted in Figure 7 of the Lancelin South ODP. As depicted in Table 3 – POS Schedule of the applicant's report, the 1.9% POS surplus created by Stage 2 will ensure the percentage of credited POS provided will equate to 10% for both subdivision stages, therefore, consistent with the Lancelin South ODP.

Future subdivision stages are also obliged to demonstrate compliance with the ODP requirement for POS, ensuring the 10% provision is commensurate with the gross subdivisible area as the estate develops.

State Planning Policy 3.6 Infrastructure Contributions (SPP 3.6)

The original landowner and developer of Lancelin South, Mr. Matthews, and now the current landowner and developer, VIMG, have entered into a legally enforceable Development Deed with the Shire of Gingin for the provision of community facilities and contributions relating to the development of Lancelin South. The Deed was originally entered into at the time the land was being supported for rezoning by the Shire of Gingin and a Structure Plan was also supported.

The WAPC has had no part in the preparation or approval of the Deed but acknowledges that one exists and that it was prepared prior to *SPP 3.6 Infrastructure Contributions (SPP 3.6) (April 2021)*. SPP 3.6 outlines three different mechanisms for calculating and applying contributions for infrastructure generally, being through the subdivision and development process as standard conditions of approval; through Development Contribution Plans adopted under the Local Planning Scheme for the delivery of shared or community infrastructure; or through a voluntary Developer Agreement. The Lancelin South Development Deed falls into the category of a 'Developer Agreement' for the community infrastructure requirements, with all other standard infrastructure items required to be imposed as standard subdivision conditions.

As the WAPC has no role in the Development Deed and the Shire has not prepared and adopted a Development Contribution Plan in accordance with SPP 3.6, the WAPC will not impose any conditions of subdivision approval which relate to items in the Deed. These can only be enforced by the Shire. The WAPC will impose standard infrastructure contribution requirements as conditions of subdivision approval using its Model Subdivision Conditions Schedule (Dec 2022).

State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP 3.7)

The boundaries of Lancelin South, including Stage Two subdivision is located in a Bushfire Prone Area. As such, the proposal has submitted a Bushfire Management Plan (BMP) in accordance with SPP 3.7. The responsibilities for the implementation and management of the bushfire measures and compliance have been outlined in the BMP. No lot within Stage Two, once compliance and mitigation measures have been implemented, will exceed a Bushfire Attack Level (BAL) rating of 29.

In the event the proposal is recommended for conditional support to the WAPC, appropriate subdivision conditions have been included to ensure BMP compliance mechanisms are implemented.

Urban Water Management

A Local Water Management Strategy (LWMS) was prepared to accompany the Lancelin South Stage One ODP to facilitate future urban water management and implement recommendations for the approach of future subdivision. In the event of a favourable recommendation, it will be a requirement as a condition of subdivision approval, an urban water management plan is to be prepared and approved, in consultation with the Department of Water and Environmental Regulation, consistent with the approved Lancelin South Local Water Management Strategy.

Traffic Impact Statement

The Shire's Operations Department has reviewed the submitted Traffic Impact Statement (TIS) that was submitted with the subdivision proposal and provides the following comments. The review of the TIS has identified some shortcomings which the report will need to address in further stages of subdivision.

"Sufficient up-to-date traffic flow information is required to provide a picture of the current situation in the study area. It is important that the traffic flow data is appropriate for the level of assessment being undertaken and the type of land use development being assessed. For subdivision proposals, detailed peak period intersection turning movement data is required, including turning movements into peak heavy vehicle movements during lime sand carting.

Intersection turning movement counts. Where the development would generate levels of traffic in the highway peaks, this count should be in addition to the highway peak counts to provide a clear understanding of the intersection turning movements with respect to the number of heavy vehicles and high peak periods traffic movements that utilise this highway. The counts should also be classified by vehicle type. Usually two classifications, car/ light goods and heavy goods/buses, should be sufficient. Pedestrians and/or cyclists will also need to be included with the proposal of a footpath linking the subdivision to the Lancelin townsite in the future.

Note that the absolute number of crashes at an intersection or on a road is not necessarily an indication of the relative safety of that location but that the volume of traffic passing through the intersection, or along the road, should also be taken into consideration.

Time periods for analysis. The analysis in a TIA needs to focus on the peak periods. The peak periods should be identified on the basis of the 'worst case' combination of site-generated trips plus background trips. To determine this, two peak scenarios should be considered:

- *the peak period(s) for the surrounding roads; and*
- *the peak period(s) for the development.*

The operation of all site-access locations and all relevant intersections in the study area should be analysed for each time period in the assessment years with and without the proposed land use. This is a requirement for development applications and subdivisions.

However, this level of analysis is required for the major intersections (being the main entrance to the subdivision, Lancelin Road and Hamelin Ave with the proposed realignment of Old Ledge Point Road) where the land requirements of major intersections need to be accurately defined (for example, an intersection of two regional roads where the land requirements will need to be identified on the region or town planning scheme map).

All assumptions concerning lane configuration, geometry and use, pedestrian and cyclist activity, signal cycle length and phasing should be documented in a technical appendix. The sources of all information and assumptions should also be documented in the same part of the report as the information or assumption.

For each intersection, the overall volume/ capacity ratios (V/C) or degree of saturation, and level of service, should be documented in a table in the body of the report. More detailed results (and full calculations for manual analyses) for each intersection should be documented in the technical appendices. V/C (or degree of saturation), level of service, average delay and queue lengths should be documented for each traffic movement at each intersection. The information should be presented in tabular format allowing a ready comparison between the with- and without-development scenarios. A discussion of the results should be provided, including an assessment of the scale of impact on the intersection's operation and whether the development traffic can be accommodated under the existing layout or whether remedial measures should be considered.

Remedial measures, for priority intersections, lower average delay thresholds need to be adopted compared to signalised intersections. This is to counter the uncertainty for drivers on the side road (that is, giving way) in finding a suitable gap in the priority stream and how long they will have to wait. When priority flows are high, side road delay can be significant and there can be a high degree of uncertainty as to when a gap will become available. This can have safety implications, as drivers may accept smaller gaps in the main traffic stream than normally considered safe. The impact on mainstream traffic, that is, increased delay, needs to be considered in any proposal to change the existing form of control. The ability of pedestrians and cyclists to negotiate the intersection under increased traffic flows due to the development also needs to be considered."

Further to the above Shire's comments, the Applicant provided additional information regarding the TIS outlining *"the proposed subdivision seeks approval to create 66 residential lots, which is significantly below the Traffic Impact Assessment (TIA) threshold (100+ residential lots) as per the WAPC Transport Assessment Guidelines. Accordingly, a TIS was prepared in accordance with the WAPC Guidelines. Detailed traffic analysis is not required for a TIS. The turn warrant assessment Stantec undertook is considered adequate to determine the appropriate intersection form and SIDRA analysis is not required by the WAPC Guidelines.*

Accordingly, the Shire's suggestion that traffic counts be undertaken is not necessary for the current application but could be beneficial for future applications in order to update information from earlier TIAs prepared to support the structure plan. In this regard, we would be happy to update the TIA as part of a future subdivision application and undertake traffic counts at a suitable time later in the year, noting that lime sands traffic is seasonal so this restricts when counts could be undertaken".

The Shire accepts the above statement and as such accepts the TIS as submitted but for future Stages, will require the TIA to address the above points.

Transport Roads & Access

Hamelin Avenue and Lancelin Road Intersection:

The TIS has outlined the existing turning treatments at the intersection of Hamelin Avenue and Lancelin Road, were identified as being below current design standards, for the applicable turn treatments. However, goes on to state, these treatments are likely to operate satisfactorily in the short term but should be reconsidered as part of future subdivision stages, depending on the background and estimated traffic volumes and speeds at the time.

Notwithstanding, the TIS as submitted, confirms that the Hamelin Avenue access onto Lancelin Road will operate safely with the full build out of both the 66 lot proposed subdivision and the existing 52 lot subdivision to the west. Hamelin Avenue is a temporary access and in the short term can assist to evenly distribute the 95 trips in the peak hour (both stages) (based on the traffic data outlined in the submitted TIS), while separating access to heavy vehicles associated with lime sand mining activities on Old Ledge Point Road (OLPD). Vehicular access from Lancelin Road via Hamelin Avenue will be reconfigured until such time that access to OLPR from the subdivision (i.e., upgrading of OLPR and construction of the Kingfisher Drive intersection) will occur (which will not be required until after Stage 4). This requires realignment of OLPR and Lancelin Road intersection which takes into consideration the realignment of Hamelin Avenue.

Furthermore, Hamelin Avenue and Lancelin Road intersection was originally the only proposed access point for Stage One and proposed Stage Two of the estate. However, in the event Council supports the subdivision, a condition has been imposed for the construction of the intersection of Lancelin Road and Road 5. This additional access to and from the estate will take pressure off Hamelin Avenue intersection.

As part of the intersection upgrade, the intersection of two roads, local roads – the intersection of a local road (Road 5) and a Local Heavy Distributor road (Lancelin Road) a minimum of 8.5 meters visual truncation shall be provided. The area within the visual truncation excluding where the truncation area/s is required for the adequate manoeuvring of vehicles, shall be maintained clear of obstructions.

The intersection of an access local road (Road 5) with a heavy distributor road, a 8.5 meter truncation shall provide adequate sight lines and will accommodate the channelisation required on both roads. This will further provide the opportunity for future development depending on the increase traffic movements, widening, slip lanes and merging lanes.

All other road network will ensure that all lots are accessed via direct frontage to a dedicated road all of which have been designed to the specifications of Liveable Neighbourhoods, including widths, truncations and overall road lengths. Notwithstanding that in the event of a favourable recommendation, the appropriate engineering subdivision conditions pertaining to drainage, site works, transport, roads and access have been imposed to facilitate the development and will need to be undertaken to the satisfaction of the Shire.

Servicing

Lancelin South Pty Ltd, trading as Lancelin South Water, is a privately owned company responsible for the supply of water (potable, non-potable) and sewerage services to the Lancelin South development. Lancelin South Water's operating area under Water Services Licence (WL47) includes the Lancelin South estate and the Lancelin South commercial site. Together it also holds a Licence to Take Water (GWL176077(2)), issued by Department of Water and Environmental Regulation (DWER).

Summary

The proposed Stage Two subdivision consisting of 66 residential lots is considered to consistent with the Lancelin South ODP and key structural elements of the planning framework, including the orderly and proper planning of the locality.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Planning Scheme No. 9

Part 3 – Zones and the Use of Land

3.2 Objectives of the Zones

Part 4 – General Development Requirements

4.7 General Development Standards

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2- Deemed provisions for local planning schemes

Part 4 – Structure Plans

Clause 27 – Effect of a structure plan

Development (Local Planning Schemes) Regulations 2015

Schedule 2 - Deemed provisions for local planning schemes

Part 10 – Enforcement and administration

Clause 82 – Delegations by local government

WAPC Liveable Neighbourhoods

State Planning Policy 3.6 Infrastructure Contributions

WAPC Model Subdivision Conditions Schedule Dec 2022

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson

SECONDED: Councillor Sorensen

That Council advise the Western Australian Planning Commission (WAPC) that it supports the proposed WAPC 163013 Application for Freehold Subdivision of Lot 9001 Lancelin Road, Lancelin (Lancelin South) subject to the following conditions and advice notes:

1. Engineering drawings and specifications are to be submitted, approved, and works undertaken in accordance with the approved engineering drawings, specifications and approved plan of subdivision, for grading and/or stabilisation of the site to ensure that:
 - a. Lots can accommodate their intended use; and
 - b. Finished ground levels at the boundaries of the lot(s) the subject of this approval match or otherwise coordinate with the existing and/or proposed finished ground levels of the land abutting.

2. Prior to the commencement of subdivisional works, an urban water management plan is to be prepared and approved, in consultation with the Department of Water and Environmental Regulation, consistent with the approved Lancelin South Local Water Management Strategy. (Local Government);
3. Engineering drawings and specifications are to be submitted and approved and works undertaken in accordance with the approved engineering drawings and specifications and approved plan of subdivision, for the filling and/or draining of the land, including ensuring that stormwater is contained on-site, or appropriately treated and connected to the local drainage system. Engineering drawings and specifications are to be in accordance with an approved Urban Water Management Plan (UWMP) for the site, or where no UWMP exists, to the satisfaction of the Western Australian Planning Commission. (Local Government);
4. Prior to the commencement of subdivisional works, the landowner/applicant is to provide a pre-works geotechnical report certifying that the land is physically capable of development or advising how the land is to be remediated and compacted to ensure it is capable of development; and

In the event that remediation works are required, the landowner/applicant is to provide a post geotechnical report certifying that all subdivisional works have been carried out in accordance with the pre-works geotechnical report. (Local Government)

5. Drainage easements and reserves as may be required by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of the *Planning and Development Act 2005*. (Local Government).
6. Information is to be provided to demonstrate that the measures contained in the bushfire management plan Bushfire Safety Consulting Pty Ltd, dated 28 September 2022, version 2.0 that address the following:
 - a. Establish and maintain APZ standards within the site, including the balance lot as outlined in the bushfire management plan.
 - b. Install the public roads to standards outlined in the bushfire management plan.
 - c. Install hydrants as per a licensed water provider standard.
 - d. A notification, pursuant to Section 70A of the *Transfer of Land Act 1893*, is to be placed on the certificate(s) of title of the proposed lot(s) with a Bushfire Attack Level (BAL) rating of 12.5 or above, advising of the existence of a hazard or other factor.

Notice of this notification is to be included on the diagram or plan of survey (deposited plan). 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. Additional planning and building requirements may apply to development on this land”. (Western Australian Planning Commission/Local Government)

Have been implemented during subdivisional works. This information should include a notice of ‘Certification by Bushfire Consultant’.

7. Engineering drawings and specifications are to be submitted and approved, and subdivisional works undertaken for construction of roads in accordance with the approved plan of subdivision, engineering drawings and specifications to ensure that:
 - a. street lighting in accordance with dark sky principles is installed on all new subdivisional roads to the standards of the relevant licensed service provider and/or;
 - b. roads that have been designed to connect with existing or proposed roads abutting the subject land are coordinated so the road reserve location and width connect seamlessly; and/or
 - c. temporary turning areas are provided to those subdivisional roads that are subject to future extension; and/or
 - d. those lots not fronting an existing road are provided with frontage to a constructed road(s) connected by a constructed road(s) to the local road system and such road(s) are constructed and drained at the landowner/applicant’s cost.
8. Engineering drawings and specifications are to be submitted, approved, and subdivisional works undertaken in accordance with the approved plan of subdivision, engineering drawings and specifications, for the provision of shared paths through and connecting to the application area in accordance with the approved Lancelin South (Stage One) Outline Development Plan structure plan.

The approved shared paths are to be constructed by the landowner/applicant. (Local Government)
9. Satisfactory arrangements being made with the local government at the Applicant’s/Landowners’ expense of upgrading and/or construction of the intersection at Lancelin Road and Road 5 as shown on the plan dated 9th November 2022.

10. All local streets within the subdivision being truncated in accordance with the Western Australian Planning Commission's Liveable Neighbourhoods policy and DC 1.7 General Road Planning.
11. The applicant/owner preparing and implementing an Acoustic Report for the lots within the trigger distance as outlined in State Planning Policy 5.4 Road and Rail Noise.
12. The lot(s) if applicable, that have been identified in the Acoustic Report as being negatively impacted by excessive transport noise levels, will be required, at a minimum, require a notification, pursuant to section 165 of the *Planning and Development Act 2005*, to be placed on the certificate(s) of title of the proposed lot(s). Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:

"This lot is situated in the vicinity of a transport corridor (Limesand Heavy Haulage Routes) and is currently affected by transport noise. Additional planning and building noise requirements may apply to development on this land to achieve an acceptable level of noise reduction."

Advice Notes:

1. In regard to Conditions 1 – 5, the landowner/applicant and the local government are advised to refer to the Institute of Public Works Engineering Australasia Local Government Guidelines for Subdivisional Development (current edition). The guidelines set out the minimum best practice requirements recommended for subdivision construction and granting clearance of engineering conditions imposed.
2. In regard to Condition 2 has been imposed in accordance with Better Urban Water Management Guidelines (WAPC 2008). Further guidance on the contents of urban water management plans is provided in "Urban Water Management Plans: Guidelines for preparing and complying with subdivision conditions" (Published by the then Department of Water 2008).
3. In regard to Conditions 7 & 8 landowner/applicant is advised that to achieve the dark sky principles, new street lighting is to comply with a correlated colour temperature of 3,000 kelvins or less, shielded luminaires and in accordance with AS/NZS 4282:2019 – Control of the obtrusive effects of outdoor lighting.
4. In regard to Conditions 7 & 8, the landowner/applicant is advised that the road reserves, including the constructed carriageways, laneways, truncations, footpaths/dual use paths and car embayment's, are to be generally consistent with the approved plan of subdivision.

5. In regard to Condition 9 Main Roads Western Australia advises the landowner/application with regard to Lancelin Road:
- no earthworks are to encroach onto the road reserve;
 - no stormwater drainage is to be discharged onto the road reserve; and
 - the landowner/applicant shall make good any damage to the existing verge vegetation within the road reserve.

6. In regard to Condition 9, the upgrade is to be as per the Road Hierarchy for Western Australia, Movement of traffic within local areas and connect access roads to higher order distributor roads, design characteristics 60-100km non built-up area, controlled with minor Local Area traffic management.

7. In regard to Condition 9, the intersection does not include any works outside of construction of the intersection to provide access to Lancelin South (i.e. South of Lancelin Road). Whilst the subdivision plan shows the proposed ultimate design of the intersection to north of Lancelin Road, this is not proposed to be constructed as part of this application as no lots are being created north of Lancelin Road at this stage.

The intersection will require a 8.5 metre truncation to be provided at the junction of Lancelin Road and Road 5 where there will be a requirement for channelisation in the first instance. At the intersection of two local roads (whether sign posted or not) - this would permit the Council to accommodate the construction of traffic/engineering devices without additional property acquisition if required at some further date; at the same time, a truncation of this configuration would ensure that vehicles approaching the intersection have adequate sight lines for safe stopping sight distances.

8. In regard to Condition 12, the landowner/applicant is advised that if the Acoustic Report provides evidence for those lot(s) where the transport noise is within the acceptable limits (without the need for implementing noise reduction measures), then the Condition 12 will no longer need to be satisfied.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13.4 PROPOSED SUBDIVISION - LOT 1021 GINGIN BROOK ROAD, WOODRIDGE

Note: In the Agenda, the Background to the officer’s report originally included the following paragraph:

“The proposed subdivision seeks approval to create two green title lots, resulting in Lot 1 being 107 hectares in area and Lot 2 being 145.7 hectares in area. Prospective Lot 2 will contain the existing infrastructure referenced above while Lot 1 will be vacant.”

It was noted at the Council meeting that the lot sizes referenced in this paragraph were incorrect and were not consistent with the actual proposed lot sizes shown in Appendix 13.4.3. In addition, the final sentence of the paragraph was not relevant to this item, as there is currently no infrastructure existing on the parent lot.

The paragraph has therefore been amended to show the correct lot sizes, and the final sentence has been deleted.

File	LND/679
Applicant	Planning Solutions
Location	Lot 1021 (6398) Gingin Brook Road, Woodridge
Owner	Cheryl Dewar and Leslie Dewar
Zoning	General Rural
WAPC No	163092
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	21 March 2017 - Item 11.3.1 16 October 2018 - Item 11.3.2 19 February 2019 - Item 11.3.1 21 June 2022 – Item 13.2
Appendices	<ol style="list-style-type: none"> 1. Location Map - Lot 1021 (6398) Gingin Brook Road, Woodridge [13.4.1 - 1 page] 2. Aerial Map - Lot 1021 (6398) Gingin Brook Road, Woodridge [13.4.2 - 1 page] 3. Lot 1021 Gingin Brook Road, Woodridge - Plan [13.4.3 - 1 page] 4. Lot 1021 Gingin Brook Road, Woodridge - Report [13.4.4 - 15 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider a subdivision referral from the Western Australian Planning Commission (WAPC) to create two lots from Lot 1021 (6398) Gingin Brook Road, Woodridge.

BACKGROUND

The WAPC is the responsible authority for subdivision approvals in Western Australia. Subdivision applications are registered by the Department of Planning, Lands and Heritage (DPLH) and then referred to relevant State agencies and the local government for comment.

The subject land is currently vacant and is located at the intersection of Gingin Brook Road (GGBR) and Indian Ocean Drive (IOD), both major arterial roads. The land is 30.1 hectares in area.

Council at its Ordinary Meeting on 16 October 2018 approved an extractive industry (sand) on the eastern portion of the subject site, which is yet to commence production. Council at its Ordinary Meeting on 21 June 2022 resolved to approve a Roadhouse on the corner of GGBR and IOD, which is yet to commence construction.

The proposed subdivision seeks approval to create two green title lots, resulting in Lot 1 being 6.8866 hectares in area and Lot 2 being 23.2295 hectares in area.

A location plan and aerial imagery are provided (**see appendices**).

A copy of the subdivision plan and applicant's proposal are provided (**see appendices**).

COMMENT

Stakeholder Consultation

Not applicable.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

Local Planning Strategy (LPS)

The Shire's Local Planning Strategy (LPS) identifies the vision for the municipality, and longer-term directions for land use and development. The LPS also accounts for the rural areas of the municipality and plans for the land use, settlement pattern, management and development of these extensive non-urban areas. The LPS is largely implemented through Local Planning Scheme No. 9.

Section 2.3.6.2 of the LPS relates to rural areas and states the following:

Rural land is a finite resource in the Shire of Gingin and represents the only land available for diverse, sustainable rural activities and potential non-rural growth and development opportunities in the very long term. The ability of rural land to sustain its primary function and utility is threatened by instances where rural land is seen as a resource for subdivision.

There is a general presumption against subdivision of rural land in the Shire.

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject land is zoned General Rural under LPS 9, the objectives of which are to:

- a) *manage land use changes so that the specific local rural character of the zone is maintained or enhanced;*
- b) *encourage and protect broad acre agricultural activities such as grazing and more intensive agricultural activities such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use;*
- c) *maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage; and*
- d) *provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the General Rural zone.*

‘Clause 4.8.6 - General Rural Zone’ of LPS 9 states:

4.8.6.1 In the General Rural zone lot sizes shall comply with the following standards:

<i>Code</i>	<i>Minimum Lot Size</i>
<i>GR10</i>	<i>10 Hectare</i>
<i>GR20</i>	<i>20 Hectares</i>
<i>GR30</i>	<i>30 Hectares</i>
<i>GR40</i>	<i>40 Hectares</i>

UNCODED Further subdivision will not be supported unless it meets the exceptional circumstance requirements for subdivision under WAPC Development Control Policy 3.4.

Officer comment

The subject land is 'uncoded' general rural land, with the above clause outlining that any further subdivision will not be supported unless it meets the exceptional circumstance requirements under DCP 3.4.

State Planning Policy 2.5 – Rural Planning (SPP 2.5)

The purpose of this policy is to protect and preserve Western Australia's rural land assets due to the importance of their economic, natural resource, food production, environmental and landscape values. SPP 2.5, as provided at cl 3.3 (b), is to be used in tandem with DCP 3.4 in decision making on subdivision proposals for rural zoned land.

The officer intends to outline the relevant provisions of SPP 2.5 and DCP 3.4 and then provide commentary in relation to the proposed subdivision further in the report below.

SPP 2.5, as provided at cl 5.1, seeks to protect rural land and land uses by:

- (e) *creating new rural lots only in accordance with the circumstances under which rural subdivision is intended in Development Control Policy 3.4: Subdivision of rural land;*

Cl 6.5 'Subdivision' of SPP 2.5 states:

It is the view of the WAPC that there are sufficient, suitably sized and located rural lots to cater for intensive and emerging primary production land uses. Creation of new rural lots through ad hoc, unplanned subdivision will not be permitted.

In contemplating subdivision proposals on rural land, WAPC policy is:

- (a) *the creation of new or smaller rural lots will be by exception and in accordance with Development Control Policy 3.4: Subdivision of rural land;*
- (b) *the creation of new or smaller rural lots by exception may be provided for in other State Planning Policies and/or a local planning strategy or scheme;*
- (c) *no other planning instruments besides those listed at (a) or (b) can provide for the subdivision of rural land; and*

Development Control Policy 3.4 – Subdivision of Rural Land (DCP 3.4)

DCP 3.4 at cl 2 says that it is an operational policy to guide subdivision of rural land to achieve key objectives of SPP 2.5. Clause 6 of DCP 3.4 sets out the exceptional circumstances under which subdivision of rural land can be considered. This is an important section as it is afforded significant weight via clause 4.8.6.1 of LPS 9. The circumstances include:

- (e) *For other unusual or unanticipated purposes which, in the opinion of the WAPC, do not conflict with this and other relevant policies and are necessary to the public interest.*

Although the WAPC seeks to minimise the creation of new or smaller rural lots, there are some circumstances where subdivision may be appropriate in order to promote better land management and achieve environmental, cultural and/or social benefits.

Cl 6.2 of DCP states:

New lots for existing or proposed land uses such as recreation facilities, public utilities, rehabilitation of degraded land, extractive industries, or uses necessary to the rural use of the land such as abattoirs and processing works (including buffers), may be created through subdivision. The WAPC may approve subdivision for these purposes if a development approval has been granted, or where development of the intended land use has substantially commenced. Where appropriate the WAPC may preclude sensitive land uses on the new lot(s).

Officer comment

The subject land received development approval on 24 October 2018 for an Extractive Industry on the eastern portion of the property. Exemptions declared by the Minister for Planning during the State of Emergency Declaration due to Covid 19 extended the approval timeframes for current approvals by adding a further 2 years. As such, the approval lapsed on 24 October 2022. The subject land received development approval on 30 June 2022 for a Roadhouse positioned over the north-western portion of the site.

It could be argued that the approved Roadhouse development is sufficient to satisfy the exceptional circumstances of DCP 3.4. However, on the contrary, it could also be argued that a Roadhouse is not a rural use that warrants special consideration for subdivision of rural land. It would be preferable if the previously approved extractive industry was renewed over proposed Lot 2, to put the application of cl 6 beyond doubt and to avoid any undesirable precedent to be set.

The proposed subdivision would enable the respective developments to progress on standalone titles. Without securing standalone titles, it is anticipated that progression of the developments will not occur.

Subdivision of rural land under LPS 9 is by exception, only when relevant provisions of DCP 3.4 have been satisfied. The officer is of the view that cl 6.2 of DCP 3.4 is applicable, as the continuation/creation of an extractive industry is specifically mentioned as a relevant purpose and the presence of an approved Roadhouse over proposed Lot 1. Renewal of this approval should be forthcoming prior to clearance of land titles.

Summary

The officer is of the view that the proposed subdivision is generally consistent with DCP 3.4 and is capable of support without setting an undesirable precedent.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development Act 2005

Shire of Gingin Local Planning Strategy

Shire of Gingin Local Planning Scheme No. 9

POLICY IMPLICATIONS

State Planning Policy 2.5 – Rural Planning

State Planning Policy 3.7 - Planning in Bushfire Prone Areas (SPP 3.7)

Operational Policy 1.1 - Subdivision of Land (General Principles)

Development Control Policy 3.4 – Subdivision of Rural Land

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Balcombe

SECONDED: Councillor Johnson

That Council advise the Western Australian Planning Commission that the proposed subdivision of Lot 1021 Gingin Brook Road, Woodridge is supported subject to the following conditions:

1. Prior to subdivision clearance, the landowner is required to hold a valid development approval for an extractive industry over proposed Lot 2.

Advice Notes:

1. In relation to condition 1, without holding a valid development approval for an extractive industry, the Shire is of the view that the subdivision proposed does not satisfy the exceptional circumstances outlined under 'Development Control Policy 3.4 – Subdivision of Rural Land'.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

R Kelly (Executive Manager Development and Regulatory Services) left the meeting at 3:17pm.

13.5 APPLICATION FOR DEVELOPMENT APPROVAL - PROPOSED WIND TURBINES (USE NOT LISTED) ON LOT 3910 (1289) NILGEN ROAD, NILGEN

File	BLD/3006
Applicant	West Hill Farm Pty Ltd
Location	Lot 3910 (1289) Nilgen Road, Nilgen
Owner	BRSF Pty Ltd
Zoning	General Rural
WAPC No	NA
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Nil.
Appendices	<ol style="list-style-type: none"> 1. Aerial Map - Lot 3910 Nilgen Road, Nilgen [13.5.1 - 1 page] 2. Location Map - Lot 3910 Nilgen Road, Nilgen [13.5.2 - 1 page] 3. Applicants Proposal [13.5.3 - 100 pages] 4. Schedule of Submissions and Recommended Responses (1) [13.5.4 - 4 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for Wind Turbines (use not listed) on Lot 3910 (1289) Nilgen Road, Nilgen.

BACKGROUND

The subject land is 1123 hectares in area and is used for Agriculture Intensive (annual horticulture) purposes, namely the growing of carrots. The existing use is serviced via a privately owned power network with a single metre connection point into Western Power infrastructure. The proposed wind turbines will be connected into the existing privately owned power supply and is expected to reduce energy consumption by 40%. Any on selling of surplus power to WP is secondary to the primary intention of the wind turbines, being to supply power to the existing carrot farm.

The application comprises of the following:

- Six (6) wind turbines, each with a capacity of .6 mega watts
- Each turbine is made up of the following components:
 - Tower – 46 metres in height - Papyrus white colour

- Three (3) blades 20.5 metres in length – dove grey colour
- Rotor diameter of 44 metres
- Tip height of 68 metres
- Nacelle located on top of the tower to house a generator
- Upgrading of 2km farm tracks
- ~2km of new power cabling

The officer notes that in the context of approved wind farms throughout the state, the proposed development comparably modest in scale.

An aerial photograph and location plan are provided (**see appendices**).

The applicant's proposal is provided (**see appendices**).

COMMENT

Stakeholder Consultation

The application was advertised to surrounding landowners, published on the Shire's website and a development sign placed on the verge of the property for a period of 21 days in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*. No comments were received.

The application was also advertised to the following State agencies for a period of 42 days in accordance with clause 66 of the *Planning and Development (Local Planning Scheme) Regulations 2015*:

- Department of Water and Environmental Regulation (DWER);
- Department of Primary Industries and Regional Development (DPIRD);
- Department Fire and Emergency Services (DFES);
- Department of Biodiversity, Conservation and Attractions (DBCA);
- Department of Defence (DoD); and
- Western Power.

It should be noted that the application was not referred to Main Roads Western Australia (MRWA) for comment given the officer assumed vehicles associated with construction of the development would utilise local roads. The applicant has since advised that the intention is to access the site directly from Indian Ocean Drive. As such, a condition has been suggested to ensure the applicant liaises with MRWA prior to construction.

A copy of the Schedule of Submissions and Recommended Responses is provided (**see appendices**).

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject lot is zoned General Rural under LPS 9, the objectives of which are to:

- a) *Manage land use changes so that the specific local rural character of the zone is maintained or enhanced;*
- b) *Encourage and protect broad acre agricultural activities such as grazing and more intensive agricultural activities such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use;*
- c) *Maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage; and*
- d) *Provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the General Rural zone.*

The proposed development does not fit comfortably within a land use definition under LPS 9 and is therefore assessed as a 'use not listed'. Clause 3.4.2 outlines the process of dealing with land uses that are not listed in the Zoning Table as provided below:

"Clause 3.4.2

If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use category the local government may –

- a) *Determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
- b) *Determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of clause 9.4 in considering an application for planning approval; or*
- c) *Determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted."*

The officer is of the view that the use is generally consistent with the objectives of the zone and as such appropriate advertising was commenced as a use not listed in accordance with clause 3.4.2 (b) of LPS 9.

General Rural Development Standards

Setbacks

In accordance with Table 2 – Site Requirements of LPS 9, all development shall be set back a minimum 20 metres from all lot boundaries. The proposed facility satisfies the 20-metre setback requirement and is therefore compliant in this regard.

The remaining GR development standards are largely not applicable.

WAPC Position Statement: Renewable Energy Facilities (2021)

The policy identifies assessment measures to facilitate appropriate development of renewable energy facilities. Key assessment considerations are outlined below.

5.3.2 Environmental Impact

The development area is located on a cleared portion of the site and as such no vegetation is proposed to be removed. The applicant has outlined that bird strikes and subsequent bird deaths are unlikely to occur. There is expected to be negligible impact to ground-dwelling fauna. The officer notes that no state agency has advised otherwise, and the officer is therefore comfortable with the applicants rational.

DPIRD raise soil erosion as a potential environmental consideration, as a result of soil disturbance and water runoff creating erosion issues. This has been addressed via a recommended condition of approval. Environmental impacts are therefore viewed as being minimal.

5.3.3 Visual and Landscape Impact

The height of the wind turbines results in the development being viewable from a distance and traditional mechanisms such as screening and unable to alleviate those impacts. The separation distances to surrounding land uses will minimise visual prominence and views to the proposed development, however they will be viewable from the northern portion of Nilgen Road. The officer notes that this portion of the Shire has limited residents and limited vehicle usage, other than those servicing the carrot farms.

5.3.4 Noise Impact

During construction phase noise will be created from earthworks, vehicles deliveries and construction activities. It is also noted that the construction phase is temporary.

The proponent must comply with the requirements of the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997* in regard to noise for both the construction and operational phases of the proposed facility. Given the significant separation distances to nearby land uses, noise is not anticipated to be an issue.

5.3.5 Public and Aviation Safety

The height of the wind turbines is below the threshold that requires referral to the Civil Aviation Services Australia (CASA). This notwithstanding, it is suggested that the applicant consult with CASA to ensure that obstacle lighting or post construction coordinates of the tall structures are not required to be provided.

5.3.6 Heritage

The site has not been identified as having any heritage status.

5.3.7 Construction Impact

During construction, additional vehicles, construction equipment and construction personnel will be on-site. This will result in increased traffic using Indian Ocean Drive for a temporary period of time. It is anticipated that heavy/oversized loads may be required in which case the relevant permits will need to be obtained from MRWA. Operational traffic will be infrequent and on as needs basis.

State Planning Policy 2.5 – Rural Planning (SPP 2.5)

SPP 2.5 provides guidance for the development, protection and preservation of rural land. There is an increasing trend that renewable energy facilities are appropriately located in rural areas due to the availability of land. The proposal is viewed as being consistent with the guiding principles of SPP 2.5 as the proposed development is incidental to the primary use and is located on a cleared portion of the lot.

Section 5.5 of SPP 2.5 provides for rural zones to be promoted as flexible zones that cater for a diverse range of land uses. Section 5.1 and 5.5, in addition with the Renewable Energy Position Statement, infers that land uses such as the proposed development can coexist with traditional agricultural pursuits in the rural zone.

State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP 3.7)

SPP 3.7 provides a foundation for land use planning to address bushfire risk management. The subject lot is designated as being partially bushfire prone. The proposed development is classified as a high-risk land use as it is ‘power generating’ and therefore the applicant submitted a Bushfire Management Plan (BMP) prepared by Bushfire Prone Planning dated 16 August 2022.

The BMP was referred to DFES to review in the context of SPP 3.7 and the associated *Guidelines*. *DFES advise that further clarification is required within the BMP to demonstrate compliance with ‘Element 1 – Location’ and ‘Element 2 - Siting and Design’ of the Guidelines.* The officer has recommended a condition to ensure the BMP is revised in response to the concerns raised.

Planning and Development (Local Planning Scheme) Regulation 2015 (Deemed Provisions)

In accordance with Schedule 2, Part 9, Clause 67 of the deemed provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. In this instance, the following matters are considered to be relevant with the Officer comments outlined below:

- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*

Comment

As outlined above, the proposed development is proposed to co-exist with the existing carrot farm and surrounding farms. The development is viewed as being complementary and compatible with the surrounding rural locality.

- (za) The comments or submissions received from any authority consulted under clause 66;*

Appropriate conditions and advice notes have been recommended to reflect the comments received.

Summary

In view of the above assessment, the officer supports the development subject to conditions.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development Act 2005

Planning and Development (Local Planning Scheme) Regulations 2015

Environmental Protection (Noise) Regulations 1997

Local Planning Scheme No 9

POLICY IMPLICATIONS

State Planning Policy 2.5 - Rural Planning

Environmental Protection Authority Guidance for the Assessment of Environmental Factors; Separation Distances between Industrial and Sensitive Land Uses (June 2005)

WAPC Position Statement: Renewable Energy Facilities (2021)

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Peczka **SECONDED:** Councillor Johnson

That Council Grant Development Approval for Wind Turbines (use not listed) on Lot 3910 (1289) Nilgen Road, Nilgen subject to the following conditions:

1. The stamped plans and accompanying documentation, together with any requirements and annotations detailed thereon, are the plans approved as part of this application and shall form part of the development approval issued;
2. All works required to satisfy a condition of this approval are required to be installed/constructed and maintained in accordance with the approved plans and conditions of approval for the life of the development;
3. Prior to the commencement of siteworks, the Bushfire Management Plan prepared by Bushfire Prone Planning (version 1 dated 16 August 2022) shall be amended and submitted to the Shire of Gingin for approval, on advice from the Department of Fire and Emergency Services;
4. Prior to the commencement of the approved use, the approved Bushfire Management Plan shall be implemented and thereafter maintained at all times to the satisfaction of the Shire of Gingin;

5. Prior to the commencement of siteworks, a Surface Water Management Plan shall be submitted to the Shire of Gingin for approval, on advice from the Department of Primary Industries and Regional Development;
6. Prior to the commencement of the approved use, the approved Surface Water Management Plan shall be implemented and thereafter maintained at all times to the satisfaction of the Shire of Gingin;
7. Prior to the commencement of the approved use, a Decommissioning and Rehabilitation Plan (DRP) shall be submitted to the Shire of Gingin for approval, on advice from the Department of Primary Industries and Regional Development. At cessation of the development, the approved DRP is to be implemented to the satisfaction of the Shire of Gingin;
8. Prior to the commencement of the approved use, the landowner/applicant shall demonstrate to the Shire of Gingin that Main Roads Western Australia are satisfied with vehicle access arrangements from Indian Ocean Drive;
9. Prior to the commencement of site works, the landowner/applicant shall prepare and implement a Construction Management Plan (CMP) for the construction phase of the development to the satisfaction of the Shire of Gingin, that at a minimum:
 - i. Ensures site works, machinery and materials on the site do not generate unreasonable levels of noise, vibration, dust or waste products.
 - ii. Addresses transportation of materials to the project site Outlines the necessary written approvals/permits from Main Roads WA Heavy Vehicle Operations Branch.
10. The Shire of Gingin is to be notified in writing upon completion of the construction phase of the development, prior to the development becoming operational;
11. Prior to the commencement of the approved use, the landowner/applicant shall demonstrate to the Shire of Gingin that the development satisfies Air Services Australia, Royal Australian Air Force and the Civil Aviation Safety Authority conventions; and
12. The Applicant shall ensure the UHF transmission from Ocean Farms and surrounding land is not demised and shall immediately remedy any problems which may arise as a consequence of this development.

Advice Notes

- Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision, under Part 14 of the *Planning and Development Act 2005*;
- Note 2: If the development subject to this approval is not substantially commenced within a period of 2 years, the approval shall lapse and have no further effect;
- Note 3: Where an approval has so lapsed, no development may be carried out without further approval of the local government having first been sought and obtained;
- Note 4: Further to this approval, the applicant is required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011* and *Health Act 2016*, which are to be approved by the Shire of Gingin;
- Note 5: It is the landowner's responsibility to implement and maintain bushfire protection and mitigation measures on their property;
- Note 6: The development is required to comply with the *Environmental Protection (Noise) Regulations 1997*;
- Note 7: The proponent is advised to contact Western Power prior to the commencement of any works on site to ensure the protection of any Western Power assets/infrastructure in the area.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

B Kelly (Executive Manager Development and Regulatory Services) returned to the meeting at 3:18pm.

N Jurmann (Statutory Planning Officer) returned to the meeting at 3:18pm.

J Bayliss (Coordinator Statutory Planning) attended the meeting at 3:18pm.

13.6 APPLICATION FOR DEVELOPMENT APPROVAL - EXTRACTIVE INDUSTRY ON LOT M1899 TEATREE ROAD, LENNARD BROOK

Note: The report title for Item 13.6 originally appeared in the Agenda for the meeting as “Application for Development Approval – Extractive Industry on Lot 505 (M1448) Creighton Road, Lennard Brook”. However, as referenced throughout the Officer’s report and recommendation, the subject property is in fact Lot M1899 Teatree Road, Lennard Brook. The report title has therefore been amended to appear in the Minutes as “Application for Development Approval – Extractive Industry on Lot M1899 Teatree Road, Lennard Brook”.

File	BLD/3230
Applicant	Hatch Roberts Day
Location	Lot M1899 Teatree Road, Lennard Brook
Owner	Hanson Australia Pty Ltd
Zoning	General Rural
WAPC No	NA
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	20 February 2006 – Item 11.1.3 15 December 2009 – Item 11.3.8 20 November 2012 – Item 11.3.8 18 December 2012 – Item 11.3.7
Appendices	<ol style="list-style-type: none"> 1. Location Plan [13.6.1 - 1 page] 2. Aerial Plan [13.6.2 - 1 page] 3. Applicants Proposal [13.6.3 - 27 pages] 4. Further Information [13.6.4 - 20 pages] 5. Original lodgement package [13.6.5 - 107 pages] 6. Schedule of Submissions and Recommended Responses (2) [13.6.6 - 3 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for an Extractive Industry (sand) and an Extractive Industry Licence on Lot M1899 Teatree Road, Lennard Brook.

BACKGROUND

This development forms part of a group of sand quarries along Creighton Road and Teatree Road, Lennard Brook. The quarries are located within Lots 505, M1448 and M1899, with Lot 446 being used for access purposes. This application relates only to the development occurring on Lot M1899 (the most eastern of the lots and is known as the 'Lennard Road' quarry).

Hanson Construction Materials assumed operations from Rocla Quarry Products in 2016, the Creighton Road quarry operating since 1985. The Lennard Road quarry began operating in 2017.

The approval history for the Lennard Road quarry is outlined below:

- Initial development approval was lodged in 2008, however was held in abeyance until 2012 due to the Department of Environment and Conservation (DEC) refusing to issue a clearing permit. The applicant subsequently appealed the DEC refusal to the Minister for Environment.
- At the Ordinary Council Meeting on 15 December 2009, Council resolved to support the DEC in refusing to grant a clearing permit due to environmental concerns.
- On 8 March 2012, the Shire received correspondence from the DEC advising of its preparedness to issue a Clearing Permit for a reduced clearing area of 17.6 ha in lieu of the previous 29.7 ha, subject to conditions and Planning Approval being granted from the Shire.
- At the Ordinary Council Meeting on 20 November 2012 the development application was considered, however it was resolved to defer the application to enable greater information to be considered regarding potential upgrades to Creighton Road and rehabilitation of the land.
- At the Ordinary Council Meeting on 18 December 2012, Council resolved to approve the development subject to conditions, and also issue an Extractive Industry License (EIL).
 - The officer notes that the then Operator (Rocla) paid the Shire of Gingin a sum of \$154,000 as a contribution to the upgrading of Creighton Road to accommodate heavy vehicles associated with the collective developments.
 - Additional information in relation to rehabilitation works included confirmation that the draft clearing permit prohibits clearing to occur, unless the area will be actively mined within 3 months of clearing taking place, submission of a restoration plan and a Conservation Covenant being placed on the land title to maintain native vegetation to the satisfaction of the DEC.

- The determination notice was issued on 3 January 2013, with condition 2 limiting the term of the approval to a period of 10 years, thus expiring on 3 January 2023.
- On 7 February 2013, the DEC issued clearing permit (CP 2701) for 17.6 hectares, limited to a period of 10 years, thus expiring on 7 February 2023.
- The development involves screening operations which requires the proponent to obtain a Works Approval and Works License from the Department of Water and Environmental Regulation (DWER) under section 54 of the *Environmental Protection Act 1984 (EP Act)*. Licence L7356/1999/9 expired on 3 January 2023, however a renewal has been applied for.
- The property was assessed under the *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. Approval EPBC 2010/5620 was issued on 5 April 2013 and expires on 31 December 2032. The approval was transferred to the licence holder on 8 June 2016. The approved action is for the clearing of native vegetation and the extraction of sand.

It is noteworthy to outline that the proponent operates other sand quarries along Creighton Road, and as part of consideration of those quarries, Council at its Ordinary Meeting of 21 February 2006 resolved to request a financial contribution of \$140,000.00 (ex GST) for the upgrade of Creighton Road, which was agreed and paid.

The subject property is ~244 ha in area, with the development area being 17.6 ha in size. It is estimated that 750,000 tonnes of material is available within the development area, providing a development lifespan of between 5 – 8 years. The site began extraction activities in 2017, however material in stages 3 and 4 are yet to be exhausted.

The site gains access via Creighton Road with an unsealed internal road traversing through four (4) private landholdings, prior to accessing the subject property.

A general overview of the operation involves topsoil being stripped and directly transferred to an area already mined and recontoured to post-mining levels. If there is any remaining topsoil it is stockpiled for future usage. A layer of up to half a metre of overburden is then stripped to re-veil the underlying coarse white quartz sand. Suitable material is extracted from the working face with a front-end loader after removal of the topsoil for rehabilitation. Some products are blended and screened to conform to relevant specifications. A mobile screening unit is used to dry screen the extracted sand. The screened product is stockpiled on site prior to dispatch.

It should be noted that the planning framework has changed somewhat since the original development approval was issued. Extensions to development approvals should not be viewed as a fait accompli, and applications should demonstrate compliance with the current framework and contemporary planning conditions subsequently imposed.

A location plan and aerial photograph are provided (**see appendices**).

The applicant's proposal is provided (**see appendices**).

Additional Information lodged by the applicant is provided as (**see appendices**).

A copy of the original application that accompanied the approval issued in 2013, that is still applicable to this application is provided (**see appendices**).

COMMENT

Stakeholder Consultation

The application was advertised in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*. This included advertising to surrounding landowners within a one-kilometre radius of the development area, a development signs placed on the verge of Creighton Road/Cockram Road intersection and a notification on the Shire's website, all for a period of 28 days.

The Shire received no ratepayer submissions.

The application was also advertised to the following State agencies for a period of 42 days in accordance with clause 66 of the *Planning and Development (Local Planning Scheme) Regulations 2015*:

- Department of Water and Environmental Regulation (DWER);
- Department of Mines, Industry Regulation and Safety (DMIRS);
- Department of Planning, Lands and Heritage - Aboriginal Heritage Council;
- Department of Health (DoH);
- Department of Biodiversity, Conservation and Attractions (DBCA); and
- Department of Primary Industries and Regional Development (DPIRD).

The officer notes that no objections have been raised, however no clearing permit has been issued and DWER are awaiting additional information from the applicant.

A copy of the Schedule of Submissions and Recommended Responses is provided (**see appendices**).

PLANNING FRAMEWORK

Local Planning Strategy 2012 (the Strategy)

The Strategy notes the significance of the Shire's contribution to basic raw materials which service development within the region and to the metropolitan region.

Section 2.5.4 of the Strategy states the following:

The Shire of Gingin is under increasing pressure for extractive industry development as the resource base lessens in the metropolitan area and the urban development front moves northwards.

The availability of basic raw materials for extraction, particularly in areas adjacent to the coast, is enhanced by the containment of urban nodes and limitation on further rural residential development in proximity to the coastal margin. Protection and management of these resources should be in line with WAPC Statement of Planning Policy No 2.4 Basic Raw Materials.

This basic raw material deposit is not expressly identified under the Strategy. However, this does not preclude the Shire from considering the proposal as the Local Planning Scheme No.9 (LPS 9) contemplates the 'Extractive Industry' land use in the General Rural zone.

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject lot is zoned "General Rural (GR)" under LPS 9. The objectives of the GR zone are outlined below with officer comments given various submissions assert that the development does not in fact satisfy these objectives:

- a) *manage land use changes so that the specific local rural character of the zone is maintained or enhanced;*
- b) *encourage and protect broad acre agricultural activities such as grazing and more intensive agricultural activities such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use;*
- c) *maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage; and*
- d) *provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the General Rural zone.*

The locality generally consists of rural land with smaller lots adjacent to Lennard Brook which is situated to the north of the subject site. Various land parcels to the west are used for irrigated horticulture purposes, with landholding to the east consisting of large tracts of vegetated land.

The character of the area comprises an array of land uses (commercial and residential) of varying scales. The officer is of the view that the development may not 'enhance' the character of the locality, but appropriately managed will maintain the existing character of the locality.

Clearing of vegetation in the manner and location proposed could be viewed as being inconsistent with object c) of the GR zone. The officer is mindful that the State's primary environmental regulator, DWER, will consider the clearing component in greater detail. If clearing is refused, any subsequent development approval would be redundant.

An Extractive Industry is an "A" use within the General Rural zone, which means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the Deemed Provisions.

It should also be noted that an extractive industry is regulated under an Extractive Industry Licence (EIL) that is issued in accordance with the Shire of Gingin's *Extractive Industries Local Law 2004*, which sets out further operational requirements.

Setbacks

In accordance with 'Table 2 – Site Requirements' of LPS 9, all development shall be set back a minimum 20 metres from all lot boundaries. The proposed extraction area is set back from all lot boundaries adequately, however separation distances do apply which are addressed below.

4.8.10 Extractive Industries

- 4.8.10.1 Local government may consider applications for extractive industries in the General Rural zone where the sites have not been identified within an SCA under clause 5.4.*
- 4.8.10.2 In considering applications for extractive industries, local government will have regard for the zone objectives.*
- 4.8.10.3 Local government will also consider the potential impact of the extractive industry in regard to surrounding land uses (both existing and future) and may apply conditions to manage the potential impacts, such as noise, dust, odour and amenity.*

Comment:

The above provision outlines that resources not identified under the Strategy are still able to be utilised, subject to a planning assessment. The relevant considerations outlined under clause 4.8.10.3 above are duplicated under the Deemed Provisions.

Planning and Development (Local Planning Scheme) Regulations 2015 (Deemed Provisions)

In accordance with Schedule 2, Part 9, Clause 67 (2) of the Deemed Provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. In this instance, the following matters are considered to be relevant:

- (a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (c) Any approved state planning policy;*
- (d) Any environmental protection policy approved under the Environmental Protection Act 1986 section 31(d);*
- (f) Any policy of the state;*
- (m) The compatibility of the development with its setting, including –
 - (i) the compatibility of the development with the desired future character of its setting; and*
 - (ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;**
- (n) The amenity of the locality including the following:
 - (i) Environmental impacts of the development;*
 - (ii) The character of the locality;**
- (o) The likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;*
- (p) Whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
- (r) The suitability of the land for the development taking into account the possible risk to human health or safety;*
- (s) The adequacy of -
 - (i) The proposed means of access to and egress from the site; and*
 - (ii) Arrangements for the loading, unloading, manoeuvring and parking of vehicles;**

- (t) *The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (w) *The history of the site where the development is to be located;*
- (za) *The comments or submissions received from any authority consulted under clause 66;*

Various state planning policies and guidance statements are applicable to the development assessment as referenced below:

- State Planning Policy 2.5 - Rural Planning (SPP 2.5);
- State Planning Policy 2.4 - Basic Raw Materials (SPP 2.4);
- State Planning Policy 2.4 - Planning for Basic Raw Materials Guidelines (SPP 2.4 Guidelines)
- Guidance for the Assessment of Environmental Factors - Separation Distances between Industrial and Sensitive Land Uses No 3 (EPA Guidance Statement).

Rather than address each consideration referenced above separately, section 4 of 'SPP 2.4 – Guidelines' have been referenced below with corresponding officer comments, which subsequently addresses the suite of applicable planning considerations/documents referenced above.

- (a) *the avoidance or mitigation of conflicts and detrimental effects on existing and future sensitive land uses and agricultural land in the surrounding areas (that is, noise, dust, vibration, blasting and vehicular traffic);*

Officer comment:

Appendix 1 of the EPA Guidance Statement provides the separation distances for 'Extractive Industries – Sand' and outlines a buffer distance of between 300-500 metres depending on size and scale of the operation. This buffer excludes crushing/screening activities which are included as part of the development proposal and therefore the buffer distance is expanded to 1000 metres.

Sensitive land uses are defined as follows:

... land uses applied to places where people live or regularly spend time and which are therefore sensitive to emissions from industry. They include residences, hospitals and nursing homes, short stay accommodation, schools, child care facilities, shopping centres, playgrounds, and some public buildings. Some commercial and institutional land uses which require high levels of amenity or are sensitive to particular emissions may also be considered sensitive land uses.

Based on the separation distance between the proposed development and surrounding land uses, and that the development has been operational since 2017, the buffer distances provided are viewed as being adequate, noting acceptable management plans are in place.

- (b) having an effective consultation process with appropriate stakeholder engagement, including advertising as required;*

Officer comment:

The officer notes that no state agency has objected to development approval being issued. The officer anticipates that DWER will undertake a thorough environmental assessment to determine if an extension to clearing permit (CP 2701/5) is appropriate in the context of the applicable environmental regime.

- (c) prioritisation of proposals within SGS areas aligned with DMIRS GeoVIEW.WA mapping in Perth and Peel;*
- (d) if the resource is identified as a SGS area and/or local basic raw material demand;*
- (e) the quantity and quality of resource and scale and duration of extraction;*

Officer comment:

The mapping tool identifies a portion of the subject land as containing a significant geological supply of sand which appears to align with the development area. The duration of the development is unknown, however the officer notes that the original application advised that 750,000 tonnes of sand was available for excavation within the 17.6 ha, which will support operations for between 5-8 years. To enable sequential or transitional planning to occur, approval should be finite to allow this. If approval was forthcoming, it is suggested another 10-year time limit be applied, and the proponent would be encouraged to exhaust the resource within this period.

- (f) management of finished ground levels for BRM extraction and site rehabilitation to:
 - i. maintain appropriate horizontal separation between extraction, water supply infrastructure and any other engineering requirements;*
 - ii. avoid the exposure of groundwater and maintain the required vertical separation distances to groundwater for sequential land use;*
 - iii. protect ground water and surface water quality.**

Officer comment:

The separation distance between the pit floor and the water table is ~13 metres. After the completion of extraction activities, the natural surface of the land will be recontoured to reflect the existing topography and site surrounds.

- (g) *the site's potential for sequential land use and the ability to rehabilitate the land in a manner compatible with its long-term use as defined by the local planning scheme;*

Officer comment:

The sequential land use will involve revegetation of the land to its natural state (pre-excavation) to enable the environmental attributes of the landscape and the landscape amenity of the locality to return. It is anticipated that the balance of the subject land will be used for grazing purposes.

- (h) *the ability to stage the extraction operations to avoid conflicts with any adjacent sensitive land uses;*

Officer comment:

Extraction will progress to the east, away from sensitive land uses. No conflict in this regard is anticipated. It is also noted that excavation is to occur within 3 months of the clearing taking place, to enable topsoil and seed collection to be returned to the previously exhausted extraction area (earlier stage). This forms part of the previously endorsed Restoration Plan and it is anticipated that should the suit of approvals be forthcoming from the DWER, similar conditions will be imposed to that affect.

- (i) *the effect of the proposed extractive industry on any adjacent agricultural land;*

Officer comment:

Impact on nearby rural land is not anticipated.

- (j) *the availability and suitability of road access;*

Officer comment:

The officer notes that internal access roads traverse four separate properties, with access onto Creighton Road. The Shire has previously received a contribution for Creighton Road upgrades and no further contribution is suggested as part of this application. Internal access roads, unless needed to mitigate amenity impacts, are constructed at the operator's discretion. It is suggested that should approval be forthcoming, vehicles associated with the development be prohibited from using Lennard's Road as it is not in a condition suitable to accommodate the development.

- (k) *the effect of the proposed extractive industry on any native flora and fauna and general landscape values;*

Officer comment:

The DEC and the Department of Sustainability, Environment, Water, Population and Communities (SEWCP) reviewed the flora, fauna and vegetation information as part of the original submission and relevant approvals were issued. The officer anticipates that the DWER will undertake a diligent environmental assessment prior to approving a further clearing permit or works licence.

- (l) how all water resources will be protected during BRM extraction including a separation distance to the defined groundwater level plus other management measures to protect water resources during BRM extraction;*

Officer comment:

Lennard Brook, a Conservation Category wetland (CCW) is located in the north-east portion of the subject site, approximately 450m north-east of the extraction area. Groundwater levels are approximately 18m below the ground level, proving ample separation from the bottom of the pit floor and the water table.

- (m) potential impacts on fragmentation and connectivity of remnant vegetation;*

Officer comment:

It has previously been noted that clearing of native vegetation is required and has previously received a clearing permit to do so, after the Minister for Environment reviewed the matter back in the mid-2000s. Any extension to the clearing permit will be at the discretion of the DWER. The officer is mindful that clearing may fragment connectivity between large tracts of native vegetation to the south and east of the development area.

- (n) any requirements for an environmental offset;*

Officer comment:

As part of the original approval, the proponent negotiated an environmental offset with the DEC in collaboration with Kings Park Botanical Garden Parks Authority. This was to provide a net gain in Banksia Woodland vegetation and Carnaby Cockatoo habitat reinstatement. This has been documented and audited by the DEC. Should the DWER issue a clearing permit, it is anticipated similar arrangements would be imposed.

- (o) sites of cultural and historic significance on and near the land, having regard to how they are likely to be integrated with subsequent land uses; and*

Officer comment:

The DPLH – Aboriginal Heritage Council confirmed that a review of the Register of Places and Objects as well as the DPLH Aboriginal Heritage Database concluded that the ‘staged clearing areas’ intersects the public boundary of Aboriginal site ID 20008 (Gingin Brook Waggy Site) but not the actual boundary as administered by DPLH. As such, no approvals under the *Aboriginal Heritage Act 1972* are required for the development. No other sites of cultural and historic significance have been identified.

(p) location and stability of excavations, stockpiles and overburden dumps.

Officer comment:

The overburden is sequentially spread on previous stages as part of rehabilitation works. Stockpiling of extracted material occurs within the pit adjacent to mobile screening plant prior to loading trucks. It is somewhat unclear precisely where the stockpiling will occur, and as such a condition of approval has been suggested.

Shire of Gingin - Extractive Industries Local Law 2004 (as amended)

The Local Law guides the formal licensing of extractive industries throughout the Shire to monitor ongoing operational aspects of the use. The officer is of the view that, once revised management plans have been submitted as per suggested conditions of approval, an EIL can be issued.

Management plans would generally include dust, staging, noise, rehabilitation and traffic management. These components can be conveniently captured in a single Site Management Plan (SMP) for ease of reference.

Summary

The officer is of the view that the subject land can accommodate the proposed extractive industry, provided that appropriate planning conditions and management plans are in place to ensure off site impacts can be controlled in a manner that won't adversely affect the amenity of the locality and will uphold the objectives of the General Rural zone.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development (Local Planning Scheme) Regulations 2015
Schedule 2 – Deemed provisions for Local Planning Schemes

Local Planning Scheme No. 9
Shire of Gingin *Extractive Industries Local Law 2004 (as amended)*

POLICY IMPLICATIONS

State Planning Policy 2.4 – Basic Raw Materials

State Planning Policy 2.5 – Rural Planning

Environmental Protection Authority’s (EPA) Guidance Statement No. 3 – Separation Distances between Industrial and Sensitive Land Uses (Guidance Statement)

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Rule **SECONDED:** Councillor Kestel

That Council grant Development Approval for an Extractive Industry on Lot M1899 Teatree Road, Lennard Brook subject to the following conditions:

1. The development plans, including accompanying documentation (Extractive Industries licence application prepared by RDS – Revision 1 dated June 2012), together with any requirements, management plans and annotations detailed thereon, are the plans approved as part of this application and shall form part of the development approval issued;
2. All works required to satisfy a condition of this approval are required to be installed/constructed and maintained in accordance with the approved plans and conditions of approval for the life of the development;
3. This development approval is granted for a limited period and shall expire on 21 February 2033;
4. The approved extraction area is limited to 17.6 hectares as outlined on the approved plans;
5. The extraction depth is limited to a finished level of generally between 120 – 170m AHD from west to east, following the topography of the site, to the satisfaction of the Shire of Gingin. The extractive industry shall not at any time intercept the water table;

6. All traffic associated with the approved use are to use access from Creighton Road. Vehicles associated with the approved use are prohibited from using Lennard's Road;
7. Stockpiles shall be limited to a maximum of four in number, limited to a height of four metres from the pit floor ground level and located within the development area as indicated on the approved plans;
8. The approved development can only operate during the following times:

Monday – Saturday: 6:00am – 6:00pm.
No activities shall occur on public holidays.
9. Prior to removal of any further vegetation, the landowner/operator shall demonstrate to the Shire of Gingin that a clearing permit has been obtained the Department of Water and Environmental Regulation.

Advice Notes:

- Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision, under Part 14 of the *Planning and Development Act 2005*.
- Note 2: Where an approval has lapsed, no development may be carried out without further approval of the local government having first been sought and obtained.
- Note 3: The development requires an Extractive Industry License to be issued by the Shire of Gingin prior to extraction occurring and which will be subject to periodical renewal in accordance with the Shire's Extractive Industries Local Law 2004 (as amended).
- Note 4: Please be advised that the Shire of Gingin will not issue an Extractive Industry License should the annual (or as required) survey plan be inconsistent with the approved plans or accompanying documentation forming part of this approval, or if rehabilitation works are incomplete.
- Note 5: Once rehabilitation works have been finalised, the landowner/operator may apply to the Shire of Gingin for the rehabilitation bond to be returned.
- Note 6: Backfilling of the excavation pits with landfill is prohibited.
- Note 7: Please be advised that clearing of native vegetation is prohibited in Western Australia, unless the clearing is authorised by a clearing permit obtained from the Department of Water and Environmental Regulation or is of a kind that is exempt in accordance with Schedule 6 of the *Environmental Protection Act 1986* or the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

Note 8: Please be advised that the property may be re-rated to reflect the change in intensification and use approved as part of this application.

Note 9: If any interception of groundwater occurs, work shall cease and an advice notice provided to the Department of Water and Environmental Regulation within 48 hours, followed by agreed remedial action.

Note 10: The proponent is reminded of obligations under the *Aboriginal Heritage Act 1972* in relation to the discovery of unknown heritage places during excavations.

Note 11: Please be advised that the property may be rated to reflect the intensification and use approved as part of this application.

CARRIED UNANIMOUSLY
7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13.7 APPLICATION FOR DEVELOPMENT APPROVAL - PROPOSED RECEPTION CENTRE ON LOT 24 (145) BARAMBA ROAD, KARAKIN

File	BLD/7323
Applicant	Developed Property Pty Ltd
Location	Lot 24 (145) Baramba Road, Karakin
Owner	JCR Management
Zoning	General Rural
WAPC No	NA
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	18 October 2022 - Item 13.1
Appendices	<ol style="list-style-type: none"> 1. Location Plan [13.7.1 - 1 page] 2. Aerial Map_-_ Lot 24 145 Baramba Road Karakin O TAA Xga Y Bkikkh Y Vv S B 23 Q [13.7.2 - 1 page] 3. Planning Report - V 6 a (updated) [13.7.3 - 12 pages] 4. Operating Management Plan - V 6 [13.7.4 - 9 pages] 5. 1 Schedule of Submissions and Recommended Responses [13.7.5 - 10 pages] 6. 2 Schedule of Submissions and Recommended Responses [13.7.6 - 4 pages] 7. 3 Schedule of Submissions and Recommended Responses [13.7.7 - 4 pages] 8. Bushfire Management Plan [13.7.8 - 47 pages] 9. Bushfire Consultants response to DFES referral advice v 1.0 [13.7.9 - 9 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for a proposed Reception Centre on Lot 24 (145) Baramba Road, Karakin.

BACKGROUND

At its Ordinary Council Meeting on 18 October 2022, Council resolved to defer determination of this application to enable the applicant to amend their proposal to be consistent with the information provided during deputation presentations. The applicant has submitted a revised Planning Report and Operating Management Plan (see Appendices) that vary the earlier application as follows:

- Limit the operating times to clarify that operations will occur on Saturdays only;
- Reduce the times music can be played, being live music ceasing at 10pm with recorded music ceasing at 10:30pm. The event booking closes at 11pm, so the officer assumes guests will leave at this time;
- The applicant now seeks to host a maximum of 12 events over a 9-month period (March – November).
- Confirmation that the landowner is responsible for sourcing toilet facilities;
- Provided clarity on the sale and supply of alcohol.

The subject property is bound by Baramba Road to the north, Moore River to the south and general rural land to the east and west. The site has a total area of 15 hectares and currently contains a single house and two outbuildings, one of which is intended to be used as part of the reception centre.

The applicant seeks approval to develop a ‘Reception Centre’ which consists of hiring out the property for events (i.e. weddings).

It should be noted that since this application was lodged, it has undergone three rounds of public consultation due to community concerns raised and flaws with the original proposal and inconsistencies with verbal deputations.

The information provided as part of this report relates to the revised application and comprises of the following:

- The proposal seeks ‘temporary’ approval to operate as a reception centre for a period of two years;
- The venue will be hired out to any event organisers that are interested in using the site to host weddings;
- The use will cater for a maximum of 100 guests;
- The use is proposed to operate on a Saturday from 9.00 am to 11.00 pm;
- The venue will hold a maximum of 12 events over a 9-month period (specifically between March and November) in any calendar year. The venue is not available for hire in December, January and February;
- The venue will make provision for both live and recorded music to be played during the reception. Music will cease being played as specified in the table below:

Type of Music	Time
Live music	4:00pm – 10:00pm
Recorded music	4:00pm to 10:30pm

- The landowner intends to rent out the venue itself, with guests/event organisers being responsible for providing their own services in relation to catering;
- Catering will likely take the form of a food truck or the like; and
- Waste will be collected on site within rubbish bin bags that will be appropriately stored so as to not result in any odour or amenity issues to adjoining properties. The landowner will dispose of the accumulated waste at the Shire’s landfill sites in either Gingin, Seabird or Lancelin.

The development is proposed to primarily operate within the existing farm shed, which contains an upper floor balcony and skillion roof design. The shed will however be required to be retrofitted to comply with AS3959 (BAL-29) standards, which are formalised through a building permit.

The officer notes that the application does not seek to provide accommodation for up to 100 guests, as this is not permitted. It is therefore assumed that all guests will depart the property by vehicle, after the event operating hours.

Aerial imagery and a location plan are provided (**see appendices**).

The applicant’s revised proposal, including a revised ‘Operation Management Plan’ is provided (**see appendices**).

COMMENT

Stakeholder Consultation

The application was advertised to the surrounding landowners for a period of 28 days in accordance with clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This included providing letters to surrounding landowners and those that abut Baramba Road, a development sign being placed on the verge of the intersection between Baramba Road/Cowalla Road and a notification being placed on the Shire’s website.

As outlined above, this application has undergone three rounds of consultation.

The first round of consultation resulted in eight ratepayers’ submissions comprising six objections and two in support of the development.

The second round of consultation resulted in two objections being received.

The third round of consultation resulted in one objection, and a general comment interpreted as an objection.

The following table provides an overview of concerns raised during the consultation process and the officer's comments in response.

Issue Raised	Officer's comments
<p>Amenity Impacts</p> <ul style="list-style-type: none"> - Zoning - Noise - Traffic/road related 	<p>Noted.</p> <ol style="list-style-type: none"> 1. The officer is mindful that the land is zoned 'General Rural' and that submitters suggest that the likely impacts by way of noise, intensification of the land, and additional vehicle movements are not aligned with the tranquil lifestyle currently enjoyed within the locality. The officer generally concurs with the comments raised. 2. It is generally accepted that land uses that will cause noise impacts on adjoining properties that exceed the maximum noise permitted by the <i>Environmental Protection (Noise) Regulations 1997</i> are not acceptable in the context of development control. This is a difficult application to consider, given that the events will no doubt be heard by adjoining properties, and notwithstanding adherence to the Noise Regulations (although this has not been demonstrated), may result in an adverse impact on the amenity of neighbouring owners by way of noise. <p>Adherence to the Noise Regulations does not automatically equate to a suitability in a planning land use sense. The officer does have concerns that the development may create adverse noise/amenity impacts on the locality.</p>
<p>Road</p> <ul style="list-style-type: none"> - Dust - Safety - Standard 	<ol style="list-style-type: none"> 3. The applicant has provided parking for up to 65 vehicles. Baramba Road is unsealed. The officer does not anticipate that vehicle movements will be so significant that the current road configuration is inappropriate or unsafe.

The application was also advertised to the Department of Fire and Emergency Services (DFES) for a period of 42 days in accordance with clause 66 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

DFES outlined concerns in relation to the Bushfire Management Plan (BMP) lodged, with those comments subsequently being responded to by the Applicant's bushfire consultant.

A copy of the schedule of submission is provided (**see appendices**).

A copy of the Bushfire Management Plan (BMP) is provided (**see appendices**).

The Applicants Bushfire Consultants response to the comments from DFES is provided (**see appendices**).

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject lot is zoned General Rural (GR). The objectives of the zone are to:

- a) *manage land use changes so that the specific local rural character of the zone is maintained or enhanced;*
- b) *encourage and protect broad acre agricultural activities such as grazing and more intensive agricultural activities such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use;*
- c) *maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage; and*
- d) *provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the General Rural zone.*

Objective a) above is of particular relevance and will be addressed in the report below.

A 'Reception Centre' is defined as follows:

means premises used for functions on formal or ceremonial occasions but not for unhosted use for general entertainment purposes;

It is also relevant to outline that the 'Model Provisions' of the *Planning and Development (Local Planning Schemes) Regulations 2015* define a 'Reception Centre' as follows:

means premises used for hosted functions on formal or ceremonial occasions;

It should be noted that the definitions expressly state 'hosted' functions. This is a component of the development that has been revised, with a commitment from the landowner to be present onsite during events and responsible for sourcing portable toilet facilities.

A reception centre is an 'A' use in the General Rural zone which means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the Deemed Provisions. As outlined above, appropriate stakeholder consultation has been undertaken.

The assessment has been formulated around the objectives of the GR zone and clause 67 (matters to be considered) of the Deemed Provisions.

Planning and Development (Local Planning Schemes) Regulations 2015

In accordance with Schedule 2, Part 9, Clause 67 of the Deemed Provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. In this instance, the following matters are considered to be relevant to the proposal.

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (m) the compatibility of the development with its setting, including -*
 - (i) the compatibility of the development with the desired future character of its setting;*
 - (n) the amenity of the locality including the following -*
 - (ii) the character of the locality;*
 - (iii) social impacts of the development;*

The officer is of the view that it is also pertinent to outline objective a) of the GR zone as it is complementary to the above provisions:

- (a) manage land uses so that the specific local rural character of the zone is maintained or enhanced.*

Officer comment

The relevant objective requires the 'specific local rural character' to be maintained or enhanced.

The existing locality is defined from the intersection of Baramba Road and Cowalla Road to the east, extending to the termination of Baramba Road to the west. Land on the southern side extending to Nabaroo Road also consists of rural small holdings, with land to the north transitioning to larger broadacre farm landholdings.

The majority of surrounding properties contain a dwelling with no other associated use or intensification of the land, with some vacant properties.

Rural small holdings typically offer a rural lifestyle for residents. In this instance, as expressed by submitters, the quiet, idyllic rural lifestyle experienced within the locality was a specific drawcard for occupants, in some instances to specifically enjoy retirement.

The officer forms the view that the 'specific local rural character' comprises predominantly of rural lifestyle properties that offers a sense of privacy with limited commercial uses, and the amenity comprises of lifestyle rural properties for residential purposes that have limited exposure to traffic and intensified commercial land uses.

Given the character of the locality mentioned, the officer notes that a commercial/tourism development of this nature challenges the existing character/amenity of the area with the potential to create adverse impacts that detract and depart from the specific local rural character of the locality. The revised application may not impact this amenity on a weekly basis, however it may nevertheless do so on a more infrequent basis.

The officer therefore forms the view that the proposed development may not 'maintain' or 'enhance' the 'specific local rural character'.

The compatibility of the development within its setting is aligned with the officer's comments above in relation to the specific local rural character of the area. The desired future character is largely the same as it is currently, being rural smallholdings offering a rural lifestyle adjacent to the Moore River. It is not anticipated that the area will become further intensified or accommodate tourism related uses.

Amenity is defined under the Deemed Provisions as:

All those factors which combine to form the character of an area and include the present and likely future amenity.

The existing character and amenity of the locality are described above and give further weight to the officer's concerns in relation to consistency with the objectives of the zone, as the current amenity and character enjoyed by residents in the locality may likely be adversely impacted due to this development.

The development may have social impacts arising from increased vehicle and pedestrian activity by those departing the property after the event has formally finished, with all patrons required to leave to their respective accommodation. Notwithstanding that music may be turned off at 10:30pm and formalities ceasing at 11:00pm, the on-ground reality is that impacts will occur beyond the closing time due to patrons and caterers departing the site.

Noise

Noise impacts can also be described as amenity impacts.

The regulatory regime relating to noise control and management in Western Australia is established by the *Environmental Protection Act 1986* (EP Act) and, in particular, the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations).

The Noise Regulations set out the maximum permissible noise levels for land uses based on levels, frequency and matters such as impulsiveness and tonality. It is generally accepted that exceeding the maximum noise levels permitted by the Noise Regulations is not acceptable in the context of development control. There are also some examples where adherence to the Noise Regulations does not adequately ameliorate noise amenity impacts in a land use planning sense.

The proximity (~250m) of the development to surrounding dwellings, in the context of the rural lifestyle character of the area, requires the Council as decision-maker to have a high level of confidence that the development will not create adverse impacts.

The submission does contain a 'Noise Impact' section. However, this does not substantiate that the Noise Regulations can be adhered to, and even if this is the case, it may still be that the development is inappropriate within this setting.

The development introduces into Baramba Road a use comprising of a gathering of up to 100 people who must, of necessity, arrive and depart by car, at specific times including nighttime (after 11:00pm).

The proposed uses may have an impact on the existing amenity because the hours of use and the vehicle numbers attracted will be unusual in the locality. The development may have an undesirable impact and so be incompatible with maintaining the specific local character.

Deemed Provisions

- (q) *the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;*
- (r) *the suitability of the land for the development taking into account the possible risk to human health or safety;*

Officer comment

This consideration goes hand in hand with 'State Planning Policy 3.7 – Planning in Bushfire Prone Areas' (SPP 3.7) and the Department of Planning, Lands and Heritage's 'Position Statement: Tourism Land Uses in Bushfire Prone Area'.

SPP 3.7 provides a foundation for land use planning to address bushfire risk management, with the position statement providing further guidance in instances such as this. Tourism land uses are considered vulnerable land uses under SPP 3.7 and the preparation of a Bushfire Management Plan (BMP) and an Emergency Evacuation Plan (EEP) should be undertaken in accordance with the Guidelines for a vulnerable land use.

The applicant has submitted a BMP (see appendices).

It should be noted that the BMP outlines that a 'shelter onsite' is required due to inadequacies of the local road network to fulfil provisions of the Guidelines and DPLH position statement.

The BMP outlines:

The subject lot is serviced by Baramba Road, which offers a single direction of travel to the east for 1.37km before two-way access is available. Two-way access is reached at Cowalla Road, with continuous routes to the north and south to low threat areas. These routes abut extreme bushfire risk vegetation in the Moore River National Park and Namming Nature Reserve (Class A Forest) for a significant portion of their length. The road network does not meet the requirements of the Bushfire Protection Criteria outlined in the Guidelines or the Position Statement: Tourism land uses in bushfire prone areas WAPC November 2019.

The DPLH Position Statement requires a provision of two access routes where:

- *The proposal is within a residential built-out area; or*
- *The access route abuts moderate or low threat vegetation (i.e. bushfire hazard level as per the Guidelines), and*
- *Where it is demonstrated that secondary access (including an emergency access way) cannot be achieved, and*
- *The access route is not travelling towards vegetation with an extreme bushfire hazard level.*

The single access route of Baramba Road to Cowalla Road abuts low and moderate bushfire hazard level vegetation. However, the route does travel toward extreme bushfire hazard level vegetation (Class A Forest) within the Moore River National Park and Namming Nature Reserve. It could also be argued that the locality does not comprise of a 'residential built out area'.

As such, 'Clause 5.3 - Contingency Measures' of the position statement states:

This position statement recognises that for different landscape risk scenarios, a range of strategies including sheltering on-site, sheltering off-site (evacuation) and closure of facilities will need to be developed. The declaration of a total fire ban by the emergency services is an appropriate trigger for the activation of the EEP arrangements.

This is relevant as the BMP requires a 'shelter on-site' and potential closure of the facility during a total fire ban.

It should be noted that the existing 'shed' onsite, proposed to be used as part of the 'Reception Centre' is intended to be the shelter on-site location. This would require retrofitting the structure to a BAL-29 standard. It should be noted that an on-site shelter should be provided with sufficient space for the maximum number of employees and visitors that could be on-site at any given time. This has not been demonstrated.

The BMP also outlines that:

The business manager of the facility will be required to liaise with the Shire requesting approval to operate during the Prohibited Burning Period, designated within the Shire of Gingin Fire Break Order, annually or as agreed.

The reasoning for this restriction is as follows:

- Prohibited Burning Periods vary annually based on the weather conditions of that year, as rainfall and surface/near-surface moisture is the primary cause of lessening fire risk and intensity. Late or early rains may modify the Prohibited Burning Period. This increases confidence in the effectiveness of the restriction against changing climate conditions.*
- Total Fire Bans or Fire Danger Ratings are not known sufficiently in advance for bookings. The Prohibited Burning Period is set annually within the Shire of Gingin Fire Break Order and can thus be integrated into the annual booking period.*
- Where the facility is closed to events during the Prohibited Burning Period, it can be considered that the route does not travel towards or abut extreme bushfire hazard vegetation.*
- The extreme BHL rating of the Class A Forest to the east is due to the likelihood and intensity of bushfires which could occur in the vegetation but does not consider lessened fire weather conditions. Considering the vegetation only outside the Prohibited Burning Period, it is reasonable to consider the Class A Forest as having a BHL of moderate rather than extreme. Therefore, the route would not be travelling toward/through vegetation with an extreme BHL to comply with A2.1 of the Tourism Position Statement.*

This suggests that specific authorisation must be provided from the Shire to the event manager to operate during the Prohibited Burning Period. This scenario may result in weddings being cancelled with minimal notice, notwithstanding a burden being placed on the Shire's Community Emergency Services Manager/Chief Bush Fire Officer. The likelihood of this occurring due to the applicant's commitment to not operate during December, January and February is minor as the hazard level will no longer assume an extreme level of risk.

- (s) *the adequacy of –*
- (i) *the proposed means of access to and egress from the site; and*
 - (ii) *arrangements for the loading, unloading, manoeuvring and parking of vehicles;*

Officer comment

As noted above, the site is serviced via Baramba Road. The onsite vehicle maneuvering, and car parking area caters for up to 65 vehicles. The site has ample room to cater for the number of vehicles.

The officer does not anticipate that vehicle movements will damage Baramba Road. This notwithstanding, it may be inappropriate for up to 65 vehicles to depart the property at midnight on route to their accommodation, which is assumed to be in the nearest towns of Lancelin and Ledge Point.

- (y) *any submissions received on the application;*

Officer comment

The community submissions received during the advertising process outline concerns which generally have planning merit and have been afforded a degree of weight.

The officer is mindful that the amenity of the submitters, and their reasons for residing in the locality, are an important consideration and inform the officer's understanding of what the existing amenity and specific character of the locality entails.

Local Planning Policy 3.1 – Tourist Development in Rural Areas (LPP 3.1)

LPP 3.1 applies to the General Rural zone. The objective of the policy is to 'provide guidelines for the development of tourist facilities in General Rural areas to strengthen the economic base while enhancing the rural character of the area.'

The provisions of the Policy are listed below with officer comments.

3.1 Tourist developments in rural areas will be considered in either one of two categories:

- (a) *high impact proposals involving significant capital investment or having the potential to conflict with surrounding land uses; and*
- (b) *low impact proposals not involving significant capital investment and unlikely to conflict with adjoining land uses.*

Officer comment

The development could arguably fall under either category, as the officer has formed the view that there is potential for land use conflict. This notwithstanding, should the development have been proposed on a large GR property that would have no impact on anyone, it is likely to be classified as 'low impact'.

Given the above assessment, it may not be critical to establish in this instance.

Summary

The officer is mindful that the applicant/landowner has attempted to appease the community/Shire concerns by submitting revised information on several occasions and has gone to considerable expense to do so. The revisions have been targeted to reduce amenity impacts caused by the development and to resolve bushfire risks.

The officer is of the view that the revised development does reduce amenity impacts on the locality, however that residual amenity impacts may still exist, and the difficulty is whether or not those amenity impacts (although lessened) are appropriate in the context of the locality.

The GR zone consists of land of varying lot sizes, and larger lots are capable of containing potential impacts within the confines of the property. It is unknown whether this development is capable of doing so.

As expressed in the previous report, the following points do not favour support for the application:

- The 'specific local rural character' of the locality comprises rural smallholdings offering a rural lifestyle for residents. As expressed by submitters, the idyllic rural lifestyle offered within the locality was a specific drawcard for occupants and offers a sense of privacy. This development is likely to adversely impact that specific local rural character by way of noise, increased vehicle and pedestrian activity at night. The officer is of the view that the proposed development does not maintain or enhance the specific local rural character of the locality and is therefore inconsistent with the objectives of LPS 9 and various considerations under the Deemed Provisions.
- Noise (music, vehicles and pedestrians) may impact adjoining residents, particularly as patrons leave the property late at night. This may be an unacceptable amenity impact caused by the development.
- The submissions received during the advertising process generally oppose development on grounds that have planning merit. The officer is mindful that the amenity of the submitters and their reasons for residing in the locality are an important consideration.

The following points do favour support for the application:

- The use is capable of approval within the GR zone. The proposal has been revised to be 'temporary' and to apply for a limited period of 2 years. This 2-year period would provide the landowner/operators with an opportunity to demonstrate to residents and the Shire that adverse impacts will not arise, and if they did, an extension to the temporary approval would not be forthcoming at the time of renewal. Council may view this as a reasonable compromise and a basis to issue conditional approval.
- The primary bushfire risk has been ameliorated by the revised operating months.
- The revised application sets a maximum number of events, providing certainty to the frequency of the use, which subsequently reduces the frequency of amenity impacts.

On balance of the information above, the officer is of the view that the development is capable of being supported on a temporary basis.

It would however be a reasonable for Council to form the view that the development is not in fact capable of being supported, in which case reasons for refusal are outlined below:

1. *The development is inconsistent with objective (a) of Clause 3.2.7 of Local Planning Scheme No. 9 as the development will not maintain or enhance the specific local rural character of the locality.*
2. *The development is inconsistent with Clause 67 (2) (m) and (m) (i) of the Deemed Provisions, as the development is not viewed as being compatible within its setting.*
3. *The development is inconsistent with Clause 67 (2) (n) of the Deemed Provisions, as the development is viewed as having adverse amenity impacts on the locality.*

Advice Notes

Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision under Part 14 of the Planning and Development Act 2005.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 9

POLICY IMPLICATIONS

State Planning Policy 3.7 – Bushfire Prone Areas

Position Statement: Tourism Land Uses in Bushfire Prone Area

Local Planning Policy 3.1 – Tourist Development in Rural Areas

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

OFFICER RECOMMENDATION

MOVED: Councillor Kestel SECONDED: Councillor Balcombe

Councillor Rule foreshadowed his intention to move an Alternative Motion to refuse the development should the motion under debate be lost.

That Council grant Development Approval for a Reception Centre on Lot 24 (145) Baramba Road, Karakin subject to the following conditions:

1. The development plans, including accompanying documentation (Planning Report and Operational Management Plan – version 6) prepared by developed property, together with any requirements, and annotations detailed thereon, are the plans and documents approved as part of this application and shall form part of the development approval issued;
2. This approval is granted for a limited period of 2 years and shall expire on 21 February 2025;
3. This approval is granted for use of the property as a reception centre, specifically for hosted wedding events only;
4. This approved use is only permitted to host up to 12 events over a nine-month period between March and November. The development is prohibited from operating between December – February;

5. Prior to the commencement of the approved use, the existing 'reception centre' is required to be retrofitted to AS3959 construction standards for a BAL-29 rating;
6. Prior to the commencement of the approved use, a Bushfire Emergency Evacuation Plan (BEEP) shall be submitted to and approved by the Shire of Gingin and on advice from the Department of Fire and Emergency Services (DFES);
7. Prior to the commencement of the approved use, the Bushfire Management Plan (control version B dated 7 November 2019) shall be amended to the satisfaction of the Shire of Gingin and on advice from the Department of Fire and Emergency Services (DFES). The approved BMP shall be implemented thereafter;
8. Prior to the commencement of the approved use, the Applicant/Owner shall execute and provide to the Shire of Gingin a notification pursuant to Section 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers as follows:

Bushfire Prone Area – This lot is located within a bushfire prone area and is subject to a Bushfire Management Plan and Bushfire Emergency Evacuation Plan (BEEP). Additional planning and building requirements may apply to development on this land.

9. Any external lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Shire of Gingin;
10. The operator is required to keep up to date records of event and patron numbers which shall provide the Shire of Gingin with a copy of such records within 14 days upon written request;
11. Overnight caravan accommodation and/or camping by guests is prohibited.

ADVICE NOTES:

Note 1: If you are aggrieved by the conditions of this approval you have the right to request that the State Administrative Tribunal (SAT) review the decision, under Part 14 of the *Planning and Development Act 2005*.

Note 2: Where an approval has so lapsed, no development may be carried out without further approval of the local government having first been sought and obtained.

Note 3: The Bushfire Management Plan is to be amended to address the comments made by the Department of Fire and Emergency Services and reflect the current version of the Guidelines;

- Note 4: All noise from the operation and associated equipment is required to comply with the *Environmental Protection (Noise) Regulations 1997*;
- Note 5: The development is to have access to a sufficient supply of potable water that is of the quality specified under the *Australian Drinking Water Quality Guidelines 2004*;
- Note 6: It is the landowner's responsibility to implement and maintain bushfire protection and mitigation measures on their property.

LOST
1 / 6

FOR: *Councillor Sorensen*

AGAINST: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka and Councillor Vis*

COUNCIL RESOLUTION/ALTERNATIVE MOTION

MOVED: Councillor Rule **SECONDED:** Councillor Peczka

That Council refuse Development Approval for a Reception Centre on Lot 24 (145) Baramba Road, Karakin for the following reasons:

1. The development is inconsistent with objective (a) of Clause 3.2.7 of Local Planning Scheme No. 9 as the development will not maintain or enhance the specific local rural character of the locality.
2. The development is inconsistent with Clause 67 (2) (m) and (m) (i) of the Deemed Provisions, as the development is not viewed as being compatible within its setting.
3. The development is inconsistent with Clause 67 (2) (n) of the Deemed Provisions, as the development is viewed as having adverse amenity impacts on the locality.

Advice Notes:

Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision under Part 14 of the Planning and Development Act 2005.

CARRIED
6 / 1

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka and Councillor Vis*

AGAINST: *Councillor Sorensen*

Reason for Alternative Motion

As detailed in the motion, the proposed development is inconsistent with objective (a) of Clause 3.2.7 of Local Planning Scheme No. 9 and Clauses 67(2)(m) and (m)(i) and 67(2)(n) of the Deemed Provisions.

13.8 APPLICATION FOR DEVELOPMENT APPROVAL - PROPOSED EXPANSION OF EXISTING CARAVAN PARK (WILLOWBROOK) ON LOT 7 GINGIN BROOK ROAD, NEERGABBY

File	BLD/1293
Applicant	Burgess Design Group
Location	Lot 7 Gingin Brook Road, Neergabby
Owner	Willowbrook Caravan Park Pty Ltd
Zoning	General Rural (GR20)
WAPC No	NA
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	19 April 2005 - Item 10.3.2 20 December 2016 – Item 11.3.4 17 January 2017 - Item 11.3.1 15 September 2020 - Item 11.3.4
Appendices	<ol style="list-style-type: none"> 1. Aerial Map - Lot 7 (1679) Gingin Brook Road, Neergabby [13.8.1 - 1 page] 2. Location Map - Lot 7 (1679) Gingin Brook Road, Neergabby [13.8.2 - 1 page] 3. Applicant's Proposal - Willowbrook Farm Caravan Park [13.8.3 - 217 pages] 4. Schedule of Submissions and Recommended Responses [13.8.4 - 6 pages] 5. Applicants Response to the Schedule of Submissions [13.8.5 - 6 pages] 6. Bushfire Prone Planning - Response to DFES Comments [13.8.6 - 5 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for an expansion to the existing Caravan Park (Willowbrook Farm) on Lot 7 Gingin Brook Road, Neergabby.

BACKGROUND

The subject lot is 16 hectares in area with frontage and primary access to Gingin Brook Road. The land has secondary access to Harris Road on its southern boundary. The land accommodates the Willowbrook Farm Caravan Park on the northern portion of the site.

Quinn Brook is located ~ 53m southwest of the development area and flows in a north-westerly direction to the Gingin Brook, located approximately 300m west of the Site.

The proposal has been considered by Council on various occasions with the most recent decision (15 September 2020) supporting the expansion subject to various conditions and on the basis that the proponent resolve outstanding bushfire considerations.

Progression of the development has been limited largely due to the proponent attempting to secure an adequate potable water supply to meet licencing requirements under the *Caravan and Camping Grounds Act 1995*. An adequate supply has now been secured and as such it is anticipated that the development will progress accordingly.

The development is generally consistent with previous approvals, noting some minor alterations in response to the evolving bushfire risk management policy framework and previous changes required by Council. This report seeks to deal with updated information lodged in support of the development and does not seek to duplicate earlier assessments.

The development comprises of the following:

- 96 additional caravan sites (153 total including the 57 existing sites);
- 4 x 4-berth short-stay units;
- 2 new ablution blocks;
- A new camp kitchen;
- A new manager's office;
- A new recreation area;
- Landscaping and fencing; and
- Access paths.

Minor changes to the previous approval include a 27m setback provided to the eastern boundary to maximise separation to the adjoining property. An internal fence is also proposed to prevent patron access to the property boundary. Short-stay units are shown in the north-east portion of the site, generally consistent with previous approvals. Minor changes to the configuration have been made to accommodate the turning circles for access ways as specified in the *Guidelines for Planning in Bushfire Prone Areas*. A new manager's office is proposed near the entry of the facility, which will provide a more visible and legible point of contact for arrivals and provide a dedicated space for administrative work away from the manager's house.

A Location Plan and aerial plan are provided (**see appendices**).

A copy of the Applicant's Proposal is provided (**see appendices**).

COMMENT

Stakeholder Consultation

The application was advertised in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*. This included advertising to surrounding landowners a development signs placed on the verge of the property and a notification on the Shire's website and social media page, all for a period of 21 days.

The Shire received 1 submission objecting to the development.

The application was also advertised to the following State agencies for a period of 42 days in accordance with clause 66 of the *Planning and Development (Local Planning Scheme) Regulations 2015*:

- Department of Water and Environmental Regulation (DWER);
- Department of Health (DoH);
- Department of Biodiversity, Conservation and Attractions (DBCA); and
- Department of Fire and Emergency Services (DFES).

The comments received from State agencies raised areas for clarification, however no objections were received.

A copy of the Schedule of Submissions and Recommended Responses, including correspondence from State agencies, is provided (**see appendices**).

The applicant has provided a response to the Schedule of Submissions (**see appendices**).

It should be noted that the development has undergone five phases of consultation, being the initial Scheme Amendment, the initial development application and three subsequent development applications/renewals.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject lot is zoned General Rural (GR20) under LPS 9). The objectives of the General Rural zone are to:

- manage land use changes so that the specific local rural character of the zone is maintained or enhanced;*
- encourage and protect broad acre agricultural activities such as grazing and more intensive agricultural activities such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use;*

- (c) *maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage; and*
- (d) *provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the General Rural zone.*

Amendment No. 6 was approved by the Minister for Planning on 24 September 2014 to insert 'Additional Use 21' (AU 21) into Schedule 2 of LPS9 as outlined below:

No.	Description of Land	Additional Use	Conditions
21	Lot 7 (1679) Gingin Brook Road, Neergabby	Caravan Park Restaurant Shop (incidental to and located within caravan park)	<p><i>i. Development to be generally in accordance with the development approval issued by Council 9 August 2005 or a subsequent development approval issued by Council;</i></p> <p><i>ii. Any future development is not permitted unless Council has exercised its discretion by granting planning approval;</i></p> <p><i>iii. Notice of a development application must be served on adjoining owners and occupiers in accordance with Clause 9.4.3(a) and referred to the Department of Water and the Department of Health;</i></p> <p><i>iv. In considering a development application, Council will have a particular regard to potential amenity impacts on land use conflicts with neighbouring properties; and any potential on Quin Brook from sewerage [sic], drainage and internal access arrangement.</i></p>

By virtue of the scheme amendment being processed and development approval having previously been issued, use of the site as a 'Caravan Park' and a subsequent expansion have previously been considered as being appropriate.

The officer is of the view that the revised development is consistent with the provisions of AU 21.

State Planning Policy 3.7 – Planning in Bushfire Prone Areas

The subject site is located within a designated bushfire prone area and as such requires assessment under SPP 3.7. The proposal is classified as a ‘Vulnerable Land Use’ under SPP 3.7 which is defined as:

A land use where persons may be less able to respond in a bushfire emergency.

Clause 5.5 of the Guidelines for Planning in Bushfire Prone Areas provides examples of what constitutes a vulnerable land use and states:

Tourism or recreational land uses which involve visitors who are unfamiliar with the surroundings and/or where they present evacuation challenges.

Tourism land uses are considered vulnerable land uses where they involve visitors who are unfamiliar with the surroundings and/or where they present evacuation challenges. The preparation of a BMP to demonstrate compliance with the acceptable solutions in Element 5 and an Emergency Evacuation Plan (EEP) should be undertaken. Protection of life is the priority for tourism land uses. The protection of structures associated with the development, is at the discretion of the landowner/ developer.

The BMP and Emergency Evacuation Plan (EEP) lodged as part of the application have responded to comments previously raised by DFES. This notwithstanding, DFES have requested further clarification and revisions as outlined as part of their response to consultation on this application. The applicant’s bushfire consultant responded to DFES comments (**see appendices**) which the officer generally concurs with. It is noted that the fittings outlined within the BMP should be amended to reflect a manifold with a 50mm male and 50mm female stainless steel Camlock Fittings to cater for both Volunteer Bushfire appliances and Fire and Rescue appliances (they use different size hose fittings). These further changes can be captured as part of a condition of approval.

The officer has requested an amended site plan that includes a secondary access/egress route (for emergency use only) to the northern corner of the subject lot and demonstrates linking internal driveways (from Bay 68 to Bay 78 and Bay 132 to Bay 153). This provides connection throughout the site, an additional emergency exit point and avoids cul-de-sac design roads that may hinder an evacuation.

The officer notes that previously it was conditioned that a row of mature eucalypts along the eastern boundary require removal to increase separation distances from bushfire prone vegetation located on adjoining land and the development area. Within the subsequently cleared area, it was then conditioned that landscaping be reinstated to mitigate noise and visual amenity impacts and was to be maintained in a low threat state.

The applicant seeks to retain the mature eucalypts as they are viewed as contributing to the landscape character of the site. Bushfire Prone Planning indicate that the trees can be retained if a managed grassland understory is provided, and low branches are lopped. Foreground screening abutting the eastern boundary, with the firebreak offset to suit is then proposed. This may provide a more comprehensive screening solution to mitigate amenity impacts, noting that height limitations for landscaping within asset protection zones would otherwise limit that effect.

The officer notes that on one hand, removal of vegetation is preferable to reduce bushfire risks. On the other hand, introduction of vegetation to create a barrier between properties is beneficial to mitigate amenity impacts. The option proposed by the applicant, to retain mature trees (subject to understory removal) and planting of shrubs (lower canopy) in a 3-metre strip adjacent to the boundary is viewed as a reasonable compromise that balances the two elements being considered.

Water Supply

Under the *Caravan Parks and Camping Grounds Regulations 1997* a licensed caravan park must provide at least 300 litres of potable water per site, per day.

Willowbrook Caravan Park Pty Ltd holds a license (160606) to abstract 34,384kL of water from the superficial aquifer, which is sufficient to fulfil the necessary requirements. The Licence lists 'caravan park purposes' and 'domestic use' in its authorised activities. The operator is required to ensure that the water supply meets potable water quality as specified under the *Australian Drinking Water Quality Guidelines 2011*.

Government Sewerage Policy (GSP)

The previous approval conditioned the lodgement of a Site and Soil Evaluation (SSE) prior to site works commencing to determine the suitability of onsite wastewater disposal. The applicant lodged an SSE prepared by 360 Environmental (Revision 3 – dated 1 November 2022) as part of this submission.

The property is in a sewerage sensitive area. The GSP requires a Secondary Treatment System (STS) to treat wastewater to an acceptable discharge quality. The SSE outlines that treated effluent can be disposed of on-site using surface irrigation or via leach drains and that a sufficient land application area (LAA) is available. It is preferable that treated wastewater be used to irrigate turf and landscaped areas, however due to the property's proximity to the Quin Brook and the need to provide a 100 m buffer between the waterway and the effluent disposal areas, it is still somewhat unknown if drip irrigation is the preferred option. The final size and location of the wastewater management system and effluent disposal areas may change subject to detailed design. It may therefore be revealed during detailed design that leach drains are the preferred option to dispose of the treated wastewater.

The officer notes that the disposal system, upon finalisation of detailed design, will require a formal application to the Shire of Gingin's Environmental Health Section for assessment who will forward the application to the DoH for assessment and approval. Comments received from the DoH confirm this process and raise no objection to development approval being forthcoming.

Summary

The officer is of the view that the subject site can accommodate the proposed expansion to the Willowbrook Farm Caravan Park subject to conditions.

The wording of the conditions imposed as part of this recommendation vary those previously considered by Council, however in essence have the same affect.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development Act 2005
Local Planning Scheme No. 9

Part 3 Zones and the use of the land
3.2 Objectives of the zones
3.2.7 General Rural zone

Part 4 General Development Requirements
4.5 Variations to site and development standards and requirements
4.7 General Development Standards

Schedule 2 – Additional Uses

Wheatbelt Regional Planning and Infrastructure Framework

Shire of Gingin Local Planning Strategy (2012)

Caravan and Camping Grounds Act 1995

Caravan and Camping Grounds Regulations 1997

POLICY IMPLICATIONS

State Planning Policy 2.9 - Water Resources

State Planning Policy 2.5 - Rural Planning

State Planning Policy 3.7 - Planning in Bushfire Prone Areas

Local Planning Policy No. 1.4 - Foreshore Reserves along Water Courses

West Australian Planning Commission (WAPC) Planning Bulletin No. 49 - Caravan Parks

West Australian Planning Commission (WAPC) Planning Bulletin No. 63 Policy for Dealing with Potential Conflicts between Residential Subdivision and Market Gardens in East Wanneroo

Department of Health (DoH) - Guidelines for Separation of Agricultural and Residential Land Uses (August 2012) (DoH Guidelines)

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson **SECONDED:** Councillor Sorensen

That Council Grant Development Approval for an expansion to the existing Caravan Park (Willowbrook Farm) on Lot 7 Gingin Brook Road, Neergabby subject to the following conditions:

1. Prior to the commencement of site works, the applicant/landowner shall prepare and submit to the Shire of Gingin for approval, a revised Site Plan providing a secondary access/egress route (for emergency use only) to the northern corner of the subject lot and demonstrate linking internal driveways (from Bay 68 to Bay 78 and Bay 132 to Bay 153);
2. The approved development plans, accompanying documentation, together with any requirements and annotations detailed thereon, are the plans approved as part of this application and shall form part of the development approval issued;

3. All works required to satisfy a condition of this approval are required to be installed/constructed and maintained in accordance with the approved plans and conditions of approval for the life of the development;
4. Prior to the commencement of site works, the applicant/landowner shall prepare and submit to the Shire of Gingin for approval, engineering plans for an upgrade of the existing crossover and driveway to a sealed standard;
5. Prior to the commencement of the approved use, the existing crossover and driveway shall be upgraded and installed as detailed in the approved engineering plans to the satisfaction of the Shire of Gingin. The crossover shall be maintained in good condition thereafter to the satisfaction of the Shire of Gingin;
6. Prior to the commencement of the approved use, the landowner/applicant shall demonstrate to the Shire of Gingin that stormwater and drainage associated with the development is adequately retained and will not impact on the Quinn Brook;
7. Prior to the commencement of the approved use, the landowner/applicant shall demonstrate to the Shire of Gingin that a disability vehicle access bay(s) have been provided;
8. Prior to the commencement of the approved use, the landowner/applicant shall demonstrate to the Shire of Gingin that the potable water supply meets the Australian Drinking Water Guidelines;
9. Prior to the commencement of the approved use, the landowner/applicant shall demonstrate to the Shire of Gingin that signage has been installed on Gingin Brook Road alerting road users that they may be approaching towing vehicles entering/existing the property. All signage and works required to fulfil this condition are at the expense of the landowner/applicant;
10. Prior to the commencement of siteworks, the Bushfire Management Plan, Emergency Evacuation Plan and Bushfire Risk Assessment shall be amended to the satisfaction of the Shire of Gingin, in consultation with the Department of Fire and Emergency Services;
11. Prior to the commencement of the approved use, the Bushfire Management Plan, Emergency Evacuation Plan and Bushfire Risk Assessment shall be implemented and thereafter maintained at all times to the satisfaction of the Shire of Gingin;
12. Prior to the commencement of the approved use, the landowner/applicant shall execute and provide to the Shire of Gingin a notification pursuant to Section 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers in the following form:

Registered proprietors and prospective purchasers of the land described above are notified that the use and enjoyment of the land is affected by the following factors:

- i. The land is located in a Rural area and may be impacted by primary production.*
 - ii. This land is within a bushfire prone area and is subject to a Bushfire Management Plan, Emergency Evacuation Plan and Bushfire Risk Assessment. Additional planning and building requirements may apply to development on this land.*
13. Prior to the commencement of site works, a Landscaping Plan shall be submitted to and approved by the Shire of Gingin. The Landscaping Plan is to provide screening along a portion of the eastern property boundary and is limited to a width of 3 metres as depicted on the approved plans;
 14. Prior to the commencement of the approved use, the landscaping as detailed in the Landscaping Plan shall be implemented and thereafter maintained to the satisfaction of the Shire of Gingin;
 15. Prior to the commencement of the approved use, internal rural fencing depicted on the approved plans shall be installed to the satisfaction of the Shire of Gingin;
 16. Prior to the commencement of site works, a Noise Management Plan shall be submitted to and approved by the Shire of Gingin;
 17. The approved Noise Management Plan shall be implemented thereafter for the life of the development;
- Onsite accommodation facilities (including caravan and camping sites and holiday units) are not to be used for permanent residential purposes;
19. The operator is required to keep legible and up to date guest register, which at a minimum indicates the length of stay for patrons.
 20. Prior to the commencement of the approved use, interpretative signage is to be installed to alert patrons to the existing gravesites located on the property, in consultation with and to the satisfaction of the Shire of Gingin.

Advice Notes

- Note 1: Further to this approval, the Applicant will be required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011*, the *Building Regulations 2012* and the *Health Act 1911* and Regulations made thereunder, which are to be approved by the Shire of Gingin.

- Note 2: Relevant portions of the development (camp kitchen etc.) are to comply with the provisions of the *Food Act 2008* and related codes, regulations and guidelines.
- Note 3: All public access related facilities (shearing shed, ablutions etc.) are to comply with the provisions of the *Public Health Act 2016*, related regulations and guidelines.
- Note 4: The development is required to comply with the *Caravan and Camping Grounds Act 1995* and the *Caravan Parks and Camping Grounds Regulations 1997*.
- Note 5: In relation to the upgrade of the existing crossover, the applicant is to liaise with the Shire's Operations and Assets Department in relation to the applicable standard and type of warning signage to be installed along Gingin Brook Road. A crossover application is to be made to the Operations and Assets Department in the form which can be found on the Shire's website at the following link: <https://www.gingn.wa.gov.au/services/operations.aspx>.
- Note 6: In relation to preparation of a Noise Management Plan, the landowner/applicant is to liaise with the Shire's Environmental Health Section. The development is required to comply with the *Environmental Protection (Noise) Regulations 1997*.
- Note 7: The Applicant is reminded that this Development Approval is not to be interpreted as an approval to extract and use groundwater supplies, nor does it imply that the Shire of Gingin has knowledge in relation to availability of groundwater supplies.
- Note 8: Clearing of native vegetation in Western Australia is prohibited, unless the clearing is authorised by a clearing permit obtained from the DWER or is a kind that is exempt in accordance with Schedule 6 of the *Environmental Protection Act 1986* or *Environmental Protection Regulations 2004*. The landowner/applicant should contact DWER's Native Vegetation Branch in relation to any clearing activities.
- Note 9: The coupling fitting identified within the Bushfire Management Plan is to be amended to incorporate a manifold with a 50mm male and 50mm female Stainless steel Camlock Fittings.

CARRIED UNANIMOUSLY
7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

K Bacon (Coordinator Strategic Planning) left the meeting at 3:23pm.

13.9 APPLICATION FOR AMENDED DEVELOPMENT APPROVAL PROPOSED OVERSIZE OUTBUILDING AT LOT 331 (3) HUBBARD STREET, LANCELIN

File	BLD/7187
Applicant	Mike Scott
Location	Lot 331 (3) Hubbard Street, Lancelin
Owner	Mike Scott
Zoning	Residential 12.5/20
WAPC No	Nil
Author	Natasha Jurmann - Statutory Planning Officer
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	17 January 2023 - Item 13.3
Appendices	<ol style="list-style-type: none"> 1. Aerial Map - Lot 331 (3) Hubbard Street, Lancelin [13.9.1 - 1 page] 2. Location Map - Lot 331 (3) Hubbard Street, Lancelin [13.9.2 - 1 page] 3. Applicants proposal [13.9.3 - 5 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for an oversized and over height outbuilding on Lot 331 (3) Hubbard Street, Lancelin.

BACKGROUND

The subject lot is 594m² in area and the outbuilding is proposed to go behind the existing single dwelling. The property was formerly Lot 1 (16A) Wedge Avenue and was 993m² in area prior to the recent change in the titling. As part of the strata subdivision, no change in the dwelling area, size or appearance has occurred and the existing structure sits across two lots.

The application was previously approved by Council at its Ordinary Meeting on 18 January 2023 and the proposed amendment would mean that the outbuilding is to be setback 1m in lieu of the originally approved 1.5m the Western Boundary. The proposed amendment seeks variations to Clause 5.1.3 – Outbuildings of the Residential Design Codes of Western Australia (R-Codes) with regard to lot boundary setback in addition to the previously approved variations for height and size.

A location plan, aerial map and copy of the applicant's proposal are provided as appendices.

COMMENT

Stakeholder Consultation

The application was advertised to potentially impacted landowners by the applicant in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*. The neighbour has noted that they have no issues with the development, and this has been confirmed verbally to the report author by the neighbour.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject land is zoned Residential R12.5/20 under LPS 9, the objectives of which are to:

- a) *Provide for a range of housing types and encourage a high standard of residential development;*
- b) *Maintain and enhance the residential character and amenity of the zone;*
- c) *Limit non-residential activities to those of which the predominant function is to service the local residential neighbourhood and for self-employment or creative activities, provided such activities have no detrimental effect on the residential amenity; and*
- d) *Ensure that the density of development takes cognisance of the availability of reticulated sewerage, the effluent disposal characteristics of the land and other environmental factors.*

Clause 5.2.2 states:

Unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Design Codes is to conform to the provision of those codes.

The relevant objective of the Residential zone under LPS 9 in this instance is deemed to be:

- b) *Maintain and enhance the residential character and amenity of the zone.*

It is the officer's opinion that the proposal does satisfy this objective as the outbuilding is to be adjacent to a similar size outbuilding and therefore will not have an impact on the ability of the adjoining landowners to receive sunlight or ventilation to their property.

State Planning Policy 7.3 - Residential Design Codes volume 1

The R-Codes provide a comprehensive basis for the control of residential development throughout Western Australia. When a development does not meet with the deemed-to-comply provisions, the application is assessed against the associated design principles to determine whether the variation is acceptable.

The R-Codes define an 'Outbuilding' as:

An enclosed non-habitable structure that is detached from any dwelling.

The deemed-to-comply provisions of the R-Codes relating to building setbacks stipulate that a wall height of 3.6 metres requires a setback of 1.1 meters the applicant is proposing 1m.

Given the proposal does not satisfy the deemed-to-comply provisions, the application is assessed against the associated 'Design Principle' which states:

- *Reduce impacts of building bulk on adjoining properties;*
- *Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

Officer Comment

The proposed 10cm reduction in setback from the required 1.1m is unlikely to result in any additional bulk from the adjoining landowners property as they also have a large shed abutting the proposed shed location. They also have significant foliage in this area minimising any other impacts to this area of their property.

Conclusion

In summary, the proposal seeks a reduction in setback from the previously approved 1.5m to 1m which is a reduction of 10cm on the distance required by the R-Codes. The proposed reduction is unlikely to have an impact on the neighbouring property owners amenity and therefore the officer has no objections.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development (Local Planning Scheme) Regulations 2015
Schedule 2 – Deemed Provisions for Local Planning Schemes

Local Planning Scheme No. 9

POLICY IMPLICATIONS

State Planning Policy 3.1 – Residential Design Codes of Western Australia

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Balcombe

SECONDED: Councillor Johnson

That Council grant Development Approval for a proposed over height and oversized outbuilding on Lot 331 (3) Hubbard Street, Lancelin subject to the following conditions:

1. The land use and development shall be undertaken in accordance with the approved plans and specifications, including the directions written in red ink by the Shire, unless otherwise conditioned in this approval;
2. This approval is for an outbuilding only as indicated on the approved plans;
3. The finished floor level of the outbuilding must be set at the existing average natural ground level to the satisfaction of the Shire of Gingin;
4. The outbuilding is not to be used for human habitation or any other industrial or commercial use;
5. The approved outbuilding is to be constructed with a consistent colour scheme; and
6. Stormwater from all roofed and paved areas shall be collected and contained onsite to the satisfaction of the Shire of Gingin.

ADVICE NOTES:

- Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision, under Part 14 of the *Planning and Development Act 2005*.
- Note 2: Where an approval has lapsed, no development may be carried out without further approval of the local government having first been sought and obtained.
- Note 3: Further to this approval, the applicant is required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011* and *Public Health Act 2016*, which are to be approved by the Shire of Gingin.
- Note 4: It is recommended that cadastral lot boundaries be established by a suitably qualified land surveyor to ensure that all development is carried out within the subject allotment.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13.10 APPLICATION FOR DEVELOPMENT APPROVAL FAMILY DAYCARE AT LOT 5 (6) EDGAR STREET, GINGIN

File	BLD/7568
Applicant	Jessica & Rodney Retallack
Location	6 Edgar Street, Gingin
Owner	Jessica & Rodney Retallack
Zoning	R10
WAPC No	Nil
Author	Natasha Jurmann – Statutory Planning Officer
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Nil
Appendices	<ol style="list-style-type: none"> 1. Location Map - Lot 5 (6) Edgar Street, Gingin [13.10.1 - 1 page] 2. Aerial Map - Lot 5 (6) Edgar Street, Gingin [13.10.2 - 1 page] 3. Applicants proposal part 1 [13.10.3 - 8 pages] 4. Applicants proposal part 2 [13.10.4 - 1 page]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for a proposed additional use (family day care) to operate from the existing Single House on Lot 5 (6) Edgar Street, Gingin.

BACKGROUND

The subject lot is developed for residential purposes with the proposed family day care to operate from a portion of the existing dwelling (two rooms and the rear patio) with the proponent also supplying food for the children. The proposal does not include any works to be undertaken on the lot.

The applicant is a qualified family day care provider with the relevant licensing of the family day care to be issued by Garden Play Family Day Care Services. The family day care is proposed to operate Monday to Thursday (excluding public holidays) between the hours of 7am to 4pm for a maximum of seven children. In any such case this cannot be exceeded as the applicant is only licensed to care for seven children.

A location plan, aerial map and a copy of the applicant’s proposal are attached as appendices.

COMMENT

Stakeholder Consultation

The application was advertised to surrounding landowners for a period of 14 days in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*.

The Shire received no comments during the advertising period.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject land is zoned Residential under LPS 9, the objectives of which are to:

- a) *Provide for a range of housing types and encourage a high standard of residential development;*
- b) *Maintain and enhance the residential character and amenity of the zone;*
- c) *Limit non-residential activities to those of which the predominant function is to service the local residential neighbourhood and for self-employment or creative activities, provided such activities have no detrimental effect on the residential amenity; and*
- d) *Ensure that the density of development takes cognisance of the availability of reticulated sewerage, the effluent disposal characteristics of the land and other environmental factors.*

The use class 'Family Day Care' is defined under LPS 9 as:

Premises used to provide family day care within the meaning of the Community Services (Child Care) Regulations 1988.

It should be noted that the *Community Services (Child Care) Regulations 1988* define a family day care as:

Child care service provided to a child in a private dwelling in a family or domestic environment.

The use class 'Family Day Care' is a 'D - discretionary' use in the Residential zone. This means that the use is not permitted unless the local government has exercised its discretion by granting development approval.

In relation to objective c) under the Residential zone, the land use proposal does not remove the predominant function of the residential dwelling and creates a service to the local residential neighbourhood and self-employment for the landowner. For the majority of the operation hours the land use be consistent with the environment experienced in a family dwelling with four children which is not considered to be excessive in the zone.

The applicant has provided details of their current child care service license restricting the maximum number of children to be cared for within the confines of the proposal (seven children). While the officer acknowledges there are a multitude of provisions and requirements under separate legislation, this is enforced by the Department of Education.

Zone Specific Development Standards

Clause 4.8 of LPS 9 relates to zone specific development standards, with clause 4.8.1 relating to the 'residential' zone. The applicable clause is provided below.

4.8.1.1 In the Residential zone lot sizes shall be in accordance with the Residential Design Code Densities indicated on the Scheme Map.

The Residential Design Codes (R-Codes) provide design elements to uphold the visual and social amenity of residential areas throughout the state. In this instance the proposed land use does not include any works components.

Clause 4.7 – Car Parking

There are however some elements to consider, specifically car parking and vehicular access given the proposed use increases the number of people accessing the property daily, as such increasing vehicle movements from the existing levels. In considering a suitable provision of car parking, reference is made to the requirement of a Child Care Premises under clause 4.7.2, Table 3 of LPS 9.

Table 3 – Parking Requirements

Use/Development	Minimum number of car parking spaces required	Proposed
Child Care Premises	1 per staff member plus 1 per 8 children	2 in the driveway

The applicant advises that one staff member and up to seven children will be present at any one time and therefore based on the above table (rounding up from seven to eight) the development is to provide two car parking bays. This provision of car parking applies to a much more intensive land use however is deemed appropriate to enforce onsite provision of car parking.

As noted in the proponent's application there is space for vehicular movement and parking on the subject lot's driveway and an existing crossover, driveway and vehicle manoeuvring area. There is a carport for the vehicles associated with the single house which does not form part of this area. The access and existing vehicle movement area is deemed sufficient when considering a requirement for two car parking spaces.

Planning and Development (Local Planning Scheme) Regulations 2015 (Deemed Provisions)

In accordance with Schedule 2, Part 9, Clause 67 of the Deemed Provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application.

Consideration has been given to the following matters outlined in the Deemed Provisions with officer comments:

The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area

Officer comment:

As outlined within the preceding assessment, the proposal is consistent with the provisions of LPS 9.

the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;

Officer comment:

While the proposal is for a commercial business, the aspect of the business is to provide family day care services to a maximum of seven children with family day care only possible to be provided in a home (residential) environment.

the adequacy of –

(i) the proposed means of access to and egress from the site; and

(ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;

Officer comment:

The subject site has an existing unsealed crossover and driveway with a carport to the middle of the lot for the storing of the residents' vehicles.

The proponent has provided an illustration of the vehicle access, manoeuvring and parking area formalised via a gravel treatment. This is deemed to be sufficient in minimising dust and catering for the number of vehicles accessing/egressing the lot subject to the additional land use.

Conclusion

In summary, the proposed family day care is an anticipated land use in a residential area when provided at the proposed scale. The proposal is consistent with LPS 9 and the R-Codes. As such, conditional support is recommended.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Planning Scheme No. 9
Planning and Development (Local Planning Scheme) Regulations 2015
Schedule 2 – Deemed Provisions for Local Planning Schemes

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Balcombe SECONDED: Councillor Johnson

That Council grant Development Approval for a proposed additional use (family day care) on Lot 5 (6) Edgar Street, Gingin subject to the following conditions:

1. The land use and development shall be in accordance with the approved plans (including any amendments marked in RED) unless otherwise conditioned by this approval;
2. This Approval is for a 'Family Day Care' only as indicated on the approved plans;
3. There are to be no more than seven children being cared for onsite at any given time;
4. The approved operating hours are as follows:

Monday – Friday: 7:00am – 5:30pm

Advice Notes

- Note 1: If you are aggrieved with the conditions of this approval you have the right to request that the State Administrative Tribunal (SAT) review the decision under Part 14 of the *Planning and Development Act 2005*;
- Note 2: If the development subject to this approval is not substantially commenced within a period of 2 years, the approval shall lapse and have no further effect;
- Note 3: This approval is not a building permit or an approval under any law other than the *Planning and Development Act 2005*. It is the responsibility of the applicant/owner to obtain any other necessary approvals, consent and/or licences required under any other law, and to commence and carry out development in accordance with all relevant laws;
- Note 4: Further to this approval, the applicant may be required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011* and *Public Health Act 2016*, which are to be approved by the Shire of Gingin;
- Note 5: Please be advised that the owner/operator has a responsibility to ensure noise levels are compliant with the *Environmental Protection (Noise) Regulations 1997*;

Note 6: This approval does not authorise the display of advertising signage for the approved land use;

Note 7: Please note that non-compliance with the conditions of a development approval constitutes an offence under the *Planning and Development Act 2005*, to which penalties do apply;

Note 8: Where the use is found to be causing a nuisance then Council may revoke the approval granted. Following revocation, no person shall continue to operate the land use unless approval to do so is subsequently granted by the Council;

Note 9: Where the preparation and handling of food is proposed, the owner/applicant is required to obtain approval from the Shire's Environmental Health Section and comply with the relevant legislation; and

Note 10: All cars associated with the development are to be parked lawfully within the applicant/owners driveway. No parking across footpaths is to be permitted.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

**13.11 APPLICATION FOR DEVELOPMENT APPROVAL - SINGLE HOUSE ADDITION
(BALCONY) AT LOT 475 (9) CASSERLEY WAY, LANCELIN**

File	BLD/7576
Applicant	Michael Coleman
Location	9 Casserley Way, Lancelin
Owner	Michael and Fay Coleman
Zoning	Residential 12.5/20
WAPC No	Nil
Author	Natasha Jurmann – Statutory Planning Officer
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Nil
Appendices	<ol style="list-style-type: none"> 1. Location Map - Lot 475 (9) Casserley Way, Lancelin [13.11.1 - 1 page] 2. Aerial Map - Lot 475 (9) Casserley Way, Lancelin [13.11.2 - 1 page] 3. Applicants proposal [13.11.3 - 3 pages] 4. Schedule of Submissions and Recommended Responses [13.11.4 - 1 page]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for a Balcony at Lot 475 (9) Casserley Way, Lancelin.

BACKGROUND

The subject lot is 809m² and currently contains a two-storey dwelling and an outbuilding. The application proposes a balcony on the upper floor of the dwelling 2.99m from the Northern boundary in lieu of 7.5m.

The application originally proposed no screening to the northern or Southern boundary, but the applicant has indicated that they are happy to place screening if needed.

A location plan, aerial map and a copy of the applicant's proposal are attached as appendices.

COMMENT

Stakeholder Consultation

The application was advertised to surrounding landowners for a period of 14 days in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*.

The Shire received two objections during the advertising period.

The first objection was from the neighbour to the North with respect to the reduced visual privacy setback and the ratepayer requested a privacy screen be installed. Upon discussing this with the applicant they were amicable with the idea and a condition has been recommended.

The other submission was from the south and related to privacy and the whole balcony in general. Whilst the privacy aspect is a valid concern and will be controlled with a condition, the objection to the balcony itself is non-valid as it is an as of right structure.

A table of submissions and recommended responses have been included as appendices.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The property is zoned 'Residential 12.5/20' and the applicable aims of the residential zone include;

- a) *provide for a range of housing types and encourage a high standard of residential development;*
- b) *maintain and enhance the residential character and amenity of the zone;*

Officer Comment

The proposed development will give the owners of the property additional outdoor living space with it being attached to the open plan living/dining room.

Balconies are an expected addition/feature of a coastal property with many people appreciating the sea breeze in these areas. In addition to this the bulk and scale are considered to be appropriate for the area.

SPP7.3 – Residential Design Codes (R-Codes)

The R-Codes require that all unenclosed outdoor active habitable spaces (balconies) be setback 7.5m from the boundary in areas coded less than R50 or are provided with visual screening.

Officer Comment

In this instance the applicant proposes a minimum setback of 3m to the northern boundary. The applicant has indicated that they are happy to screen the northern boundary and intend to place a wind break on the southern boundary.

Planning and Development (Local Planning Scheme) Regulations 2015 (Deemed Provisions)

In accordance with Schedule 2, Part 9, Clause 67 of the Deemed Provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. Consideration has been given to the following matters outlined in the Deemed Provisions with officer comments:

The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;

Officer comment

As outlined within the preceding assessment, the proposal is consistent with the provisions of LPS 9.

the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;

Officer comment

As outlined above, the proposal is consistent with the anticipated height, bulk, scale, orientation and appearance of the development with no negative impacts anticipated.

Summary

To conclude the proposal is for a mostly compliant balcony, with the exception to some variations for visual privacy setback provisions. The impacts to visual privacy will be mitigated via a condition to screen the areas indicated in red on the plans by the officer.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Planning Scheme No. 9
Planning and Development (Local Planning Scheme) Regulations 2015
Schedule 2 – Deemed Provisions for Local Planning Schemes

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Peczka **SECONDED:** Councillor Sorensen

That Council grant Development Approval for a proposed Single House Addition (Balcony) on Lot 475 (9) Casserley Way, Lancelin subject to the following conditions:

1. The land use and development shall be in accordance with the approved plans (including any amendments marked in RED) unless otherwise conditioned by this approval;
2. This Approval is for a Single House Addition (Balcony) only as indicated on the approved plans;
3. Prior to use of the development, the balcony shall be provided with permanent privacy screens to a minimum height of 1.6m from the finished floor level in the locations depicted in red ink by the Shire and to the specifications of R-Codes;
4. All water from roofed or paved areas is to be managed within the subject lot to the satisfaction of the Shire of Gingin.

Advice Notes

Note 1: If you are aggrieved with the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision under Part 14 of the *Planning and Development Act 2005*;

Note 2: If the development subject to this approval is not substantially commenced within a period of 2 years, the approval shall lapse and have no further effect;

Note 3: This approval is not a building permit or an approval under any law other than the *Planning and Development Act 2005*. It is the responsibility of the applicant/owner to obtain any other necessary approvals, consent and/or licences required under any other law, and to commence and carry out development in accordance with all relevant laws;

Note 4: Further to this approval, the applicant may be required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011* and *Public Health Act 2016*, which are to be approved by the Shire of Gingin;

Note 5: Please note that non-compliance with the conditions of a development approval constitutes an offence under the *Planning and Development Act 2005*, to which penalties do apply.

CARRIED UNANIMOUSLY
7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13.12 APPLICATION FOR DEVELOPMENT APPROVAL - OVERSIZE ANCILLARY ACCOMMODATION AT 143 (860) OCEAN FARM DRIVE, NILGEN

File	BLD/7566
Applicant	Kyrone Simmonds
Location	860 Ocean Farm Drive, Nilgen
Owner	Kyrone Simmonds and Family
Zoning	Rural Living 2
WAPC No	Nil
Author	Natasha Jurmann – Statutory Planning Officer
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Nil
Appendices	<ol style="list-style-type: none"> 1. Aerial Map - Lot 143 (860) Ocean Farm Drive, Nilgen [13.12.1 - 1 page] 2. Location Map - Lot 143 (860) Ocean Farm Drive, Nilgen [13.12.2 - 1 page] 3. Applicants proposal [13.12.3 - 6 pages] 4. BAL Certificate - 860 Ocean Farm Drive [13.12.4 - 1 page] 5. BAL Report - 860 Ocean Farm Drive [13.12.5 - 8 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for ancillary accommodation at Lot 143 (860) Ocean Farm Drive, Nilgen.

BACKGROUND

The subject lot is 29,523m² in area and contains a single house. The proposed ancillary accommodation has a floor area of 117.30 m² in lieu of 100m² as required under Local Planning Policy 1.7 – Ancillary Accommodation.

A location plan with aerial imagery and the applicant's proposal are provided as **Appendices**.

COMMENT

Stakeholder Consultation

The application was not advertised, as the increase in floor area was not viewed as having any impact to surrounding property owners due to the setbacks provided.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject lot is zoned Rural Living under LPS 9, the objectives of which are to:

- a) *protect the rural environment and landscape;*
- b) *accommodate single dwellings at very low densities on individual allotments beyond the urban areas;*
- c) *restrict and limit the removal of natural vegetation and encourage revegetation where appropriate;*
- d) *prevent threats to the amenity of the zone and impacts on wildlife and native vegetation caused by the grazing of livestock;*
- e) *avoid increased fire risk to life and property through inappropriately located and designed land use, subdivision and development; and*
- f) *provide for a suitable level of physical and community infrastructure.*

The proposed Ancillary Accommodation is located in close proximity to the existing single dwelling and is to provide housing for the existing residents son and two granddaughters. The proposed ancillary accommodation is approximately 1/3 the size of the primary residence and appropriately located so as not to cause any amenity issues to the adjoining neighbours.

Local Planning Policy 1.7 – Ancillary Accommodation (LPP 1.7)

LPP 1.7 states that:

Ancillary Accommodation shall have the same meaning as “ancillary dwelling” as defined in Appendix 1 of the Residential Design Codes.

While provisions for ancillary dwellings are contained within the R-Codes, LPP 1.7 was created to provide for larger ancillary dwellings on larger residential and rural lots where grouped dwelling development is not possible.

The objectives of LPP 1.7 are:

- 1. To provide for a range of criteria that will distinguish an ancillary accommodation from independent additional dwellings in the Shire of Gingin.*
- 2. To provide for a form of housing that does not compromise the amenity and character of the locality.*

The provisions of LPP 1.7 relate to scale, use and design as follows:

- 2.1 An ancillary accommodation shall be associated with a Single House, which either exists or will be developed concurrently on the property.*

Officer comment

The subject site contains an existing single house and the proposed ancillary accommodation is unlikely to compromise the character of the locality.

- 2.3 The plot ratio area of any ancillary accommodation shall not exceed 70m² except on lots greater than 4,000m² in area where the plot ratio area of any ancillary accommodation may be up to 100m².*

Officer comment

The proposal contains an overall habitable floor area of 117.4m². The subject lot is 29,523m², therefore the larger plot ratio is applied. The floor area does not comply with the required 100m² but the officer notes that the proposed structure is on a lot that is substantially larger than the 4,000m² that is allowed for in the policy and therefore the additional 17.4 square meters is unlikely to have an impact on the amenity of the adjoining landowners.

Overall comment

The proposal is inconsistent with the general policy provisions and therefore requires Council discretion in order to be approved. As the proposal does not meet the provisions of LPP 1.7, there is scope for Council to refuse the development, but the officer is of the view that it should be supported.

Planning and Development (Local Planning Scheme) Regulations 2015 (Deemed Provisions)

In accordance with Schedule 2, Part 9, Clause 67 of the Deemed Provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. In this instance, the following matter is considered to be relevant:

(m) the compatibility of the development with its setting.

Officer Comment

The proposed ancillary accommodation is unlikely to be visible from the road due to the significant setback of the structures and the proximity to the existing dwelling will ensure that it does not impact on the adjoining properties.

Summary

As outlined in the officer's report, the development is consistent with the definition of Ancillary Accommodation. The officer's recommended approach is to approve the development subject to conditions.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 9

POLICY IMPLICATIONS

State Planning Policy 7.3 – Residential Design Codes, Volume 1

Local Planning Policy 1.5 – Transportable Buildings

Local Planning Policy 1.7 – Ancillary Accommodation

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson SECONDED: Councillor Balcombe

That Council grant Development Approval for a proposed ancillary accommodation at Lot 143 (860) Ocean Farm Drive, Nilgen subject to the following conditions:

1. The land use and development shall be undertaken in accordance with the approved plans unless conditioned otherwise in this approval;
2. The colours, design and materials of the ancillary accommodation shall complement those of the existing single house where practicable;
3. Stormwater from all roofed and paved areas shall be collected and contained onsite to the satisfaction of the Shire of Gingin;
4. The Bushfire Attack Level (BAL) rating for the Single House is to comply with the BAL- 19 outlined in the Bushfire Attack Level Report prepared by MR Mulching Dated 1 November 2022.
5. Prior to occupation of the Single House the Applicant/Owner shall execute and provide to the Shire of Gingin a notification pursuant to Section 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers as follows:

Bushfire Prone Area – This lot is located in a bushfire prone area. Additional planning and building requirements may apply to development on this land.

Advice Notes:

- Note 1. If you are aggrieved by the conditions of this approval you have the right to request that the State Administrative Tribunal (SAT) review the decision, under Part 14 of the *Planning and Development Act 2005*.
- Note 2. If the development subject to this approval is not substantially commenced within a period of 2 years, the approval shall lapse and have no further effect.
- Note 3. Where an approval has so lapsed, no development may be carried out without further approval of the local government having first been sought and obtained.
- Note 4. Further to this approval, the applicant is required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011* and *Health Act 2016*, which are to be approved by the Shire of Gingin.

- Note 5. It is recommended that cadastral lot boundaries be established by a suitably qualified land surveyor to ensure that all development is carried out within the subject allotment.
- Note 6. With respect to the condition relating to design/colour, it is noted that repainting the ancillary accommodation to complement/match the single house will generally suffice. It is recommended that the Shire's Planning Department be consulted prior to making commitments to clear this condition.
- Note 7. In the event the as constructed setbacks vary from those indicated on the approved plans, then the applicant/landowner may be held responsible for formalising the actual setback dimensions.

**CARRIED UNANIMOUSLY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13.13 APPLICATION FOR DEVELOPMENT APPROVAL - REPLACEMENT OF EXISTING TELECOMMUNICATION FACILITY ON LOT 7269 (1077) OLD LEDGE POINT ROAD, LANCELIN (RESERVE 28303)

File	BLD/4143
Applicant	Amplitel Pty Ltd
Location	Lot 7269 (1077) Old Ledge Point Road, Lancelin (reserve 28303)
Owner	Shire of Gingin via Management Order
Zoning	Parks and Recreation
WAPC No	Nil
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Nil
Appendices	<ol style="list-style-type: none"> 1. Location Map [13.13.1 - 1 page] 2. Aerial Map [13.13.2 - 1 page] 3. Amplitel_ Lancelin Reserve Planning Report Jan 23 Final issue [13.13.3 - 52 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Development Approval for a proposed Telecommunications Facility on Lot 7269 (1077) Old Ledge Point Road, Lancelin (reserve 28303).

BACKGROUND

The subject site is located immediately south of the Lancelin Sporting Complex buildings and is primarily used for recreational purposes. The site currently contains an existing 60.5m high lattice telecommunication tower, that pending the outcome of this application will be removed.

A summary of the proposed development is as follows:

- Installation of a new 50m concrete monopole;
- Installation of a Telstra headframe and antennas at 50m;
- Installation of the Vodafone headframe and antennas at 45.5m;
- Installation of a bird's nest platform at the top of the monopole at a maximum overall height of 51.7m;
- Ancillary works including the reticulation of cabling, feeders, amplifiers and radio units and works within the existing equipment shelters;

- A new compound fence encompassing a consolidated lease area of 280.15m² (reduced from 1350.3m²);
- Following installation of the new pole and configuration of equipment, removal of the existing 60.5m metre guyed mast.

The proposed development will replace the existing guyed mast which accommodates the existing Telstra and Vodafone equipment. The proposed replacement tower will accommodate the immediate and future coverage and capacity requirements of the Telstra and Vodafone networks.

A copy of the Applicant's Proposal is provided (**see appendices**).

COMMENT

Stakeholder Consultation

The application was not advertised. No landowners were identified as likely being impacted by this development nor will it adversely affect the recreation grounds/community groups.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject land is zoned 'Local Reserve' (Parks and Recreation) under LPS 9 and is managed by the Shire of Gingin.

The use and development of local reserves is controlled under Part 2 of the Scheme which states:

2.5 Use and Development of Local Reserves

2.5.1. A person must not -

- a) use a Local Reserve; or*
- b) commence or carry out development on a Local Reserve, without first having obtained development approval under Part 7 of the deemed provisions.*

2.5.2. In determining an application for development approval the local government is to have due regard to

- a) the matters set out in clause 67 of the deemed provisions; and*
- b) the ultimate purpose intended for the Reserve.*

2.5.3. In the case of land reserved for the purposes of a public authority, the local government is to consult with that authority before determining an application for development approval.

LPS 9 does not prescribe any objectives for the 'Parks and Recreation' reserve, and therefore it is appropriate to consider the objectives prescribed to the reserve type in the model provisions (*Planning and Development (Local Planning Schemes) Regulations 2015*). The model provisions do not explicitly reference 'Parks and Recreation' as a reserve, but do outline the following respective objectives for 'Public Open Space' and 'Recreational':

- *To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.*
- *Public Purposes which specifically provide for a range of public recreational facilities.*

The development of telecommunications facility involves a public benefit, noting that the proposed tower seeks to replace an existing tower with modernised technology.

Planning and Development (Local Planning Scheme) Regulations 2015 (the Regulations)

The Regulations are subsidiary legislation created under the *Planning and Development Act 2005* that include 'Deemed Provisions' which apply to every local planning scheme throughout the State.

In accordance with Schedule 2, Part 9, Clause 67 of the Deemed Provisions, the local government is to have due regard to a range of matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. In this instance, the following matters are considered to be relevant:

- c) *Any approved State Planning Policy*

State Planning Policy 5.2 – Telecommunications Infrastructure (SPP 5.2)

SPP 5.2 contains the following provisions for Council to consider:

5.1 Visual impacts

For telecommunications infrastructure to be effective, structures are generally located prominently, at high points in the landscape or on top of buildings, where they are more likely to be visible to the public.

The planning authority may exercise discretion in addressing the visual impacts of telecommunications infrastructure. Visual impacts of an infrastructure development proposal should be assessed by applying the following set of policy measures to guide the location, siting and design of the structure.

- 5.1.1 - The benefit of improved telecommunications services should be balanced with the visual impact on the surrounding area.*

- i. Assessment of the visual impact of development proposals for telecommunications infrastructure should be made on a case-by-case basis;*
- ii. Telecommunications infrastructure should be sited and designed to minimise visual impact and whenever possible:
 - a. Be located where it will not be prominently visible from significant viewing locations such as scenic routes, lookouts and recreation sites;*
 - b. Be located to avoid detracting from a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land;*
 - c. Not be located on sites where environmental, cultural heritage, social and visual landscape values maybe compromised; and*
 - d. Display design features, including scale, materials, external colours and finishes that are sympathetic to the surrounding landscape;**
- iii. In addition to the existing exemptions under the Telecommunications Act, Local Governments should consider exempting telecommunications infrastructure from the requirement for development approval where:
 - a. The infrastructure has a maximum height of 30 metres from finished ground level;*
 - b. The proposal complies with the policy measures outlined in this policy; and*
 - c. The proponent has undertaken notification of the proposal in a similar manner to 'low impact facilities' as defined and set out in the Mobile Phone Base Station Deployment Industry Code (C564:2011);**
- iv. Telecommunications infrastructure should be located where it will facilitate continuous network coverage and/or improved telecommunications services to the community; and*
- v. Telecommunications infrastructure should be co-located and whenever possible:
 - a. Cable and lines should be located within an existing underground conduit or duct; and*
 - b. Overhead lines and towers should be co-located with existing infrastructure and/or within existing infrastructure corridors and/or mounted on existing or proposed buildings.**

Officer Comment:

Particular consideration is afforded to balancing visual impacts and locating infrastructure to ensure optimum network coverage. The main visual consideration relates to the pole itself, with the incidental infrastructure at the base of the pole being largely uncontentious.

The applicant has provided justification in relation to the visual prominence of the pole in its context, and rather than the officer paraphrase, the wording is outlined below:

The proposed replacement facility will not alter the use of the site and will introduce a slimline monopole structure which will integrate well on the site and within the surrounding environment.

The existing guyed mast structure and existing adjoining lattice tower are visible from numerous locations within the local catchment. The proposed location for the replacement facility is within the existing footprint of the existing guyed mast lease area and will result in a consolidation of the land use by reducing the current footprint of the lease area by approximately 80%. A slimline monopole design has been utilised at this location in place of a guyed mast or lattice tower design in order to minimise any potentially adverse visual effects. This slimline design creates a minimal profile in the landscape, significantly reducing the bulk of the facility. The monopole is proposed to be finished in a recessive colour in order to blend the facility into the sky so it is not a dominant feature. The proposed replacement facility will not result in any negative visual impact on the locality and is considered to be an improved visual solution which will also result in the improved function and use of surrounding land.

To view the entirety of the applicant justification, section 6.3 of the Applicant's proposal refers. The officer concurs with the summary provided, and forms the view that the proposed infrastructure, although it will be visible, will not significantly depart from the visual amenity created by the existing infrastructure.

Given the topography of the land and the height of the monopole, it is inevitable that the telecommunications infrastructure will be visible from the surrounding locality.

- j) *in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;*

Officer comment:

As noted above, the objective of the reserve is not listed in LPS 9, however under the interpretation of the model provisions the development does not impinge on the Lancelin Sporting Complex.

Summary

In summary, the application is recommended to be supported on the basis that the subject site is deemed to be a suitable location to achieve the required coverage with limited impacts on the amenity of the locality. The proposal is viewed as satisfying LPS 9 and the relevant planning framework.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Planning Scheme No. 9

Telecommunications Act 1997

Telecommunications (Low Impact Facilities) Determination 1997 (Commonwealth)

POLICY IMPLICATIONS

State Planning Policy 5.2 – Telecommunications Infrastructure

BUDGET IMPLICATIONS

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	3. Planning & Sustainability - Plan for Future Generations
Strategic Objective	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson **SECONDED:** Councillor Peczka

That Council grant Development Approval for the proposed Telecommunications Facility on Lot 7269 (1077) Old Ledge Point Road, Lancelin (Reserve 28303) subject to the following conditions:

1. The land use and development shall be in accordance with the approved plans (including any amendments marked in red) and accompanying documentation unless otherwise conditioned by this approval;
2. This Approval is for a Telecommunication Facility only;

3. As constructed details must be provided to Air Services Australia in accordance with the requirements of the Department of Defence; and
4. Prior to operation of the development, the applicant shall demonstrate to the Shire of Gingin that as constructed details have been provided to Air Services Australia, Royal Australian Air Force and the Civil Aviation Safety Authority and adheres to their respective conventions.

Advice Notes

- Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision under Part 14 of the *Planning and Development Act 2005*;
- Note 2: If the development subject to this approval is not substantially commenced within a period of two years, the approval shall lapse and have no further effect;
- Note 3: Where an approval has so lapsed, no development may be carried out without further approval of the local government having first been sought and obtained;
- Note 4: Further to this approval, the applicant is required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011* and *Health Act 2016*, which are to be approved by the Shire of Gingin;
- Note 5: The proposed tower will need to comply with any Air Services Australia / Department of Defence regulations in relation to tall structure requirements;
- Note 6: Given the telecommunications infrastructure is a 'tall structure', you may be required to provide Civil Air Services Australia (CASA) 'as constructed' details for aviation safety. This may also include the installation of obstacle lighting to indicate the presence of the mast at night. Please contact CASA for further information;
- Note 7: Please liaise with the Shire's Governance Section in relation to any lease amendments that may arise as a result of this development.

CARRIED UNANIMOUSLY
7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

13.14 APPLICATION FOR AMENDED DEVELOPMENT APPROVAL - USE NOT LISTED (ELECTRIC VEHICLE CHARGING STATION) AND ASSOCIATED STRUCTURES ON ROCK WAY ROAD RESERVE (LIN 3441770), LANCELIN

File	BLD/6873
Applicant	Tesla
Location	Rock Way Road Reserve
Owner	Crown
Zoning	Reserve - Road
WAPC No	Nil
Author	James Bayliss – Coordinator Statutory Planning
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	16 November 2021 - Item 11.1 21 December 2021 - Item 11.3 19 April 2022 – Item 13.12
Appendices	<ol style="list-style-type: none"> 1. Location Map - Lot 323 Gingin Road, Lancelin [13.14.1 - 1 page] 2. Aerial Map - Lot 323 Gingin Road, Lancelin [13.14.2 - 1 page] 3. Applicants Proposal [13.14.3 - 2 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider an Application for Amended Development Approval for a Use Not Listed (Electric Vehicle (EV) Charging Station) and associated structures on Rock Way Road Reserve (LIN 3441770), Lancelin.

BACKGROUND

At its meetings on 16 November 2021 and 21 December 2021, Council considered proposals from Tesla Motors Australia and Synergy for the establishment of EV charging stations along Rock Way in Lancelin. Council resolved to approve the Rock Way location and to undertake a disposition of property by way of lease to each provider in the form of a License Agreement. At its meetings on 19 April 2022, Council resolved to approve the EV charging station subject to conditions.

Through Tesla’s detailed design phase, it is preferred that the supercharger cabinet be relocated from a parking bay to a site adjacent to the distribution board. As a result, Tesla only requires 3 car parking bays instead of 4 bays as originally approved.

The development area is located at the southern end of the Lancelin Plaza as it transitions into Wangaree Park. The road reserve contains 15 parking bays which includes a universally accessible bay and an existing EV charger installed by the Shire of Gingin.

The development comprises of three supercharger charging posts and associated infrastructure, now across three parking bays within the existing car park on Rock Way for use by compatible EVs.

It should be noted that the transformer, switchboard and uni-pillar servicing the development will be installed by and belong to Western Power (WP) as a network asset. The preferred transformer location, agreed by all parties through pre-lodgement consultation, is on the north-eastern portion of the road reserve that has been cleared of vegetation.

Power supply to the Applicant's charging posts will be supplied directly from Western Power's low-voltage switchboard to the Applicant's main switchboard (i.e. a private asset) which, due to the load requirements, needs to be adjoining the substation.

The transformer and switchboard will encompass an area of 3.5m x 5m and the height will be approximately 1.4m.

When considering the holistic EV charging development (i.e. both Synergy and Tesla's applications), 7 of the existing 15 car bays will no longer be available for public car parking.

An aerial photograph and location plan are provided (**see Appendices**).

The applicant has provided a cover letter and revised Plans in support of the development (**see appendices**).

COMMENT

Stakeholder Consultation

This application has not been advertised. The officer notes that the former applications were advertised as a 'Use Not Listed' in accordance with clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*. The amendment is viewed as minor and does not generate further consultation requirements.

It should be noted that Council has previously resolved to approve the Rock Way location and to undertake a disposition of property by way of lease to each provider and a public notice of the disposition was undertaken in accordance with s.3.58 of the *Local Government Act 1995*.

The dispositions of property were advertised in The West Australian newspaper, on the Shire's public website and Facebook page and official noticeboards at the Gingin Administration Centre, Lancelin Office/Public Library and Gingin Public Library on 20 November 2021. Submissions in response to the advertised dispositions of property were considered by Council at its meeting on 21 December 2021.

PLANNING FRAMEWORK

Local Planning Scheme No. 9 (LPS 9) Planning Assessment

The subject land is zoned 'Local Reserve' (Local Road) under LPS 9 and is managed by the Shire of Gingin.

The use and development of local reserves is controlled under Part 2 of the Scheme. In determining an application for development approval, the local government is to have due regard to clause 2.5.2 which states that the following must be taken into consideration:

- a) *The matters set out in Clause 67 of the deemed provisions; and*
- b) *The ultimate purpose intended for the Reserve.*

Clause 3.4.2 of LPS 9 states:

3.4.2 If a person proposed to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use category the local government may:

- a) *Determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
- b) *Determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 9.4 in considering an application for planning approval; or*
- c) *Determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.*

Clause 3.4.2 therefore contemplates development that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type or class of activity of any other use category.

Council has previously determined that the development is appropriately classified as 'Use Not Listed (Electric Vehicle Charging Station)' and is consistent with the intent of the reserve. The amended application simply relocates the supercharger cabinet from a parking bay to a site adjacent to the distribution board. This does not appear to interfere with the separate EV station proposed by Synergy.

Summary

In view of the above, the amended development is supported subject to conditions.

STATUTORY/LOCAL LAW IMPLICATIONS

Planning and Development (Local Planning Scheme) Regulations 2015

Local Planning Scheme No. 9

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	1. Attractions & Economy - Actively Pursue Tourism and Economic Development
Strategic Objective	1.1 Investment Attraction - Foster relationships with key stakeholders to attract tourism/economic development initiatives that will contribute to the Shire's economy

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Johnson **SECONDED:** Councillor Sorensen

That Council Grant amended development approval for a Use Not Listed (Electric Vehicle (EV) Charging Station) and associated structures on Rock Way Road Reserve (LIN 3441770), Lancelin subject to the following conditions:

1. The land use and development shall be undertaken generally in accordance with the approved plans and specifications, including any directions written in red ink by the Shire, unless otherwise conditioned in this approval;
2. This approval is for a 'Use Not Listed (Electric Vehicle Charging Station)' and associated structures only as indicated on the approved plans;
3. Prior to installation of the development, a License Agreement shall be entered into with the Shire of Gingin. The applicant/operator shall be responsible for all costs associated with preparation of the License Agreement (including all drafts);

4. The structures associated with the approved development shall be maintained in good condition to the satisfaction of the Shire of Gingin;
5. Prior to operation of the development, any damage to public infrastructure (i.e. footpaths, kerbing, turf) as a result of construction works shall be repaired by the operator, at their expense, to the satisfaction of the Shire of Gingin;
6. Within 3 months of cessation of the development or in the event the License Agreement lapses, the structures associated with the development shall be decommissioned and removed by the operator at their expense. The operator shall rehabilitate the site to pre-development condition commensurate with the rest of the property as per the terms of the License Agreement, to the satisfaction of the Shire of Gingin; and
7. Prior to installation of the development, a schedule of colours and materials of the associated structures and car bay marking shall be submitted to and approved by the Shire of Gingin.

Advice Notes

- Note 1: If you are aggrieved by the conditions of this approval, you have the right to request that the State Administrative Tribunal (SAT) review the decision, under Part 14 of the *Planning and Development Act 2005*.
- Note 2: If the development subject to this approval is not substantially commenced within a period of two years, the approval shall lapse and have no further effect.
- Note 3: Where an approval has so lapsed, no development may be carried out without further approval of the local government having first been sought and obtained.
- Note 4: Further to this approval, the applicant may be required to submit working drawings and specifications to comply with the requirements of the *Building Act 2011*, which are to be approved by the Shire of Gingin.
- Note 5: The operation will be required to comply with the *Environmental Protection (Noise) Regulations 1997*.
- Note 6: In relation to removal of the associated structures, the development area is to be rehabilitated to pre-development condition.

CARRIED UNANIMOUSLY

7 / 0

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

14 REPORTS - OPERATIONS AND ASSETS

14.1 PROPOSED LANCELIN SKATE AND BMX PARK - STAGE TWO UPGRADE ON RESERVE 44490 (WANGAREE PARK) ON LOT 323 GINGIN ROAD, LANCELIN

File	BLD/6873
Author	Danica Todd – Operation Support Officer
Reporting Officer	Vanessa Crispe - Executive Manager Operations and Assets
Refer	16 November 2021 – Item 12.6
Appendices	1. APPENDIX 1 LS P- D 03- Eng drawings [14.1.1 - 9 pages]

DISCLOSURES OF INTEREST

Nil

PURPOSE

To consider reinitiating the Stage 2 upgrade to the Lancelin Skate and BMX Park on Lot 323 (Reserve 44490) Gingin Road, Lancelin.

BACKGROUND

In May 2017, the Stage 1 upgrade of the West Bank Feature, Jump Box, Jump Box Pimple, Grind Box, Pump Track and Retaining Wall was started. It was approved with \$126,000 funding from the Community Development Grants Program, administered by the Department of Infrastructure and Regional Development. The total cost of the project was \$123,180 (ex GST) and the work was awarded to the contractor Three Chillies through a quotation process conducted by the Shire of Gingin.

Stage two of the project was approved by Council in the 20/21 Budget with an allocation of \$218,200. \$168,200 was to be funded by the Australian Government's Local Road and Community Infrastructure Program (LRCIP) with \$50,000 funded by Municipal Funds. A Request for Quotation (RFQ) were sought through the WALGA preferred supplier platform however with COVID and limited contractors, and responses were received, the project was deferred and not included in 2021/22 Budget.

At its Ordinary Meeting on 16 November 2021, Council resolved to reallocate the \$168,200 LRCIP funding to the Mimegarra Road renewal project and transferred \$168,200 of Municipal Funds for this work to its Recreation Reserve for use when the Skate Park could be completed.

COMMENT

Due to the recent increase in availability of contractors to undertake this work, it is proposed an RFQ process be initiated and an allocation be re-instated within the 2022/23 Budget.

An updated cost estimates based on the design previously approved (refer attachment) indicates an allocation provision of \$400,000.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Government Act 1995

s.3.57 Tenders for providing goods and services

Local Government (Functions and General) Regulations 1996

Reg.11 – When tenders have to be publicly invited

POLICY IMPLICATIONS

Policy 3.9 Purchasing and Ordering of Goods

Policy 3.10 Purchasing

BUDGET IMPLICATIONS

Should Council agree, it is proposed that the necessary funds would be sourced from the Recreation Reserve and LRCIP funding as detailed below.

Account	Description	Current Budget	Revised Budget	Surplus/ Deficit
PC1198	Lancelin Skate Park Stage 2	0	(400,000)	(400,000)
151103810	Transfer from Recreation Development Reserve	0	168,200	168,200
LCRI	LCRIP Grant Funding	0	231,800	231,800
Change to surplus				0

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2022-2032

Aspiration	4. Excellence & Accountability - Deliver Quality Leadership and Business Expertise
Strategic Objective	4.1 Management of Assets - Maintain civic buildings, sporting facilities, public places, plant and road and cycleway/pathways based on asset management plans and identified priorities

VOTING REQUIREMENTS - ABSOLUTE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Balcombe **SECONDED:** Councillor Kestel

That Council:

1. Approve Stage Two to the Lancelin Skate and BMX Park on Lot 323 (Reserve 44490) Gingin Road, Lancelin; and
2. Amend the 2022/23 Adopted Budget as follows:

Account	Description	Current Budget	Revised Budget	Surplus/ Deficit
PC1198	Lancelin Skate Park Stage 2	0	400,000	400,000
151103810	Transfer from Recreation Development Reserve	0	168,200	168,200
LCRI	LCRIP Grant Funding	0	231,800	231,800
Change to closing surplus				0

**CARRIED BY ABSOLUTE MAJORITY
7 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Kestel, Councillor Peczka, Councillor Sorensen and Councillor Vis*

AGAINST: *Nil*

15 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

16 COUNCILLORS' OFFICIAL REPORTS

16.1 GINGIN COMMUNITY RESOURCE CENTRE – PAYMENT OF ELECTRICITY COSTS

File:	GOV/20-1; ECO/17
Councillor:	L Balcombe
Report Date:	21 February 2023

I attended the February meeting of the Gingin CRC. The CRC requested a meeting with the Shire's Executive Manager Corporate and Community Services to discuss their electricity invoices and the payment split between the Gingin Medical Centre and the CRC.

The Executive Manager Corporate and Community Services subsequently met with the CRC's Executive Committee to discuss this matter.

16.2 2023 SHIRE OF GINGIN AUSTRALIA DAY EVENT

File:	GOV/20-1
Councillor:	F Peczka
Report Date:	21 February 2023

I attended the Australia Day event at Neergabby on 26 January 2023. There was a great turnout for this event.

16.3 ATTRACTING AND RETAINING VOLUNTEERS WORKSHOP – 18 FEBRUARY 2023

File:	GOV/20-1
Councillor:	F Peczka
Report Date:	21 February 2023

I would like to offer my belated apologies for the Attracting and Retaining Volunteers Workshop held in Lancelin on Saturday, 18 February 2023. Unfortunately I had a prior family engagement in Perth on Friday.

17 NEW BUSINESS OF AN URGENT NATURE

Nil

18 MATTERS FOR WHICH MEETING IS TO BE CLOSED TO THE PUBLIC

Nil

19 CLOSURE

There being no further business, the Deputy Shire President declared the meeting closed at 3:30 pm.

The next Ordinary Council Meeting will be held in Council Chambers at the Shire of Gingin Administration Centre, 7 Brockman Street, Gingin on 21 March 2023, commencing at 3pm.