



MINUTES

COUNCIL MEETING

26 OCTOBER 2023

TABLE OF CONTENTS

1.	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS:.....	4
2.	ANNOUNCEMENTS BY THE PRESIDENT:	4
3.	ATTENDANCE:	4
4.	DECLARATIONS OF INTEREST:	5
5.	PUBLIC QUESTION TIME:.....	5
6.	PRESENTATIONS:.....	6
7.	CONFIRMATION OF MINUTES:	7
8.	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN: Nil.....	7
9.	COUNCIL OFFICERS' REPORTS:.....	7
29308	9.1.1 Request to Provide Undertakings for Shire of Manjimup Bush Fire Brigades Local Law 2023	9
29309	9.2.1 Proposed Council Meeting Dates for 2024	13
29310	9.3.1 Council Financial Payments for September 2023.....	20
29311	9.3.2 Monthly Statement of Financial Activity - August 2023	23
29312	9.5.3 Delegated Decisions for September 2023	26
29313	9.5.7 Proposed Outbuilding at Lot 2084 (87) Dingup Road, Dingup	29
29314	9.5.9 Application for Retrospective Approval of a Shipping Container at Lot 288 (19) Swarbrick Street, Walpole.....	35
29315	9.5.10 Retrospective Approval for the Keeping of Cats at Lot 26 (2) Burton Close, Walpole	40
29316	9.7.1 Proposed Appointment of Fire Control Officers for the 2023/2024 Bush Fire Season	47
29317	9.13.1 Quarterly Report July to September 2023 - Works and Services.....	49
29318	9.16.1 Unconfirmed Minutes of the Manjimup Heritage Park Advisory Committee Meeting Held on 19 September 2023.....	51
29319	9.16.2 Informal Meeting Notes of the Northcliffe Town Activation Advisory Committee Meeting held 18 September 2023.....	54
29320	9.16.3 Unconfirmed Minutes of Walpole Town Activation Advisory Committee Meeting held 26 September 2023	56
29321	9.5.1 Application for Retrospective Approval for Rural Workers Accommodation, Grouped Dwellings, Industry - Rural, Agriculture Extensive and Proposed Additional Rural Workers Accommodation at Lot 100 (122) Etherington Road, Beedelup.....	59
29324	9.5.2 Request for Nomination of Development Assessment Panel Representatives	76
29325	9.5.4 Proposed Variation to Provisions of Local Planning Scheme No. 4 to Keep a Cat at Lot 29 (90) Jacksonii Avenue, Walpole.....	81

29327	9.5.5	Application for Retrospective Approval for a Trench and Ponds at Lot 201 (1655) Perup Road, Perup	88
29328	9.5.6	Proposed Extension to the Existing Fitness Studio at Lot 173, 11 Rose Street, Manjimup	99
29329	9.5.8	Proposed Change of Use Warehouse to Use Not Listed (Fitness Centre) at Lot 2 (31) Giblett Street, Manjimup.....	107
29330	9.9.1	Proposed Review of Policy 3.1.3 Community Funds Allocation.....	113
10.		LATE REPORTS: Nil.	118
11.		QUESTIONS FROM MEMBERS:	118
12.		MOTIONS FOR CONSIDERATION AT THE FOLLOWING MEETING:	118
13.		NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING: Nil.....	118
14.		APPLICATIONS FOR LEAVE OF ABSENCE: Nil.....	118
15.		CLOSURE:	118

SHIRE OF MANJIMUP

Minutes of the Ordinary Meeting of Council held in the Council Chamber,
Thursday, 26 October 2023.

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS:

The Shire President declared the meeting open at 5.30pm and made the Acknowledgement to Country.

“We acknowledge the Aboriginal people as the traditional owners of our land.”

2. ANNOUNCEMENTS BY THE PRESIDENT:

The Shire President made the following announcements.

- I was honoured to go to the Rotary Dinner last night and speak with the Rotarians.
- I attended the Warren Blackwood Alliance of Councils Tourism Advisory Group meeting.
- I attended a meeting of the Manjimup Chamber of Commerce.
- I would like to announce the resignation of the Director Development and Regulation, currently the Interim Chief Executive Officer. We acknowledge the hard work and dedication that he has put into our organisation and he will be duly missed.

3. ATTENDANCE:

PRESENT:

Councillors

Cr D Buegge (Shire President)
Cr J Darin
Cr W De Campo
Cr W Eiby
Cr S Miolin
Cr P Omodei
Cr M Ventris
Cr J Willcox
Cr C Winfield

Staff

Mr Brian Robinson (Interim Chief Executive Officer)
Mr Greg Lockwood (Director Business)
Ms Evy Apeldoorn (Acting Director Community Services)
Mr Peter Krispyn (Acting Director Development & Regulation)
Mr Michael Leers (Director Works & Services)
Ms Gaye Burridge (Corporate Administration Officer)
Mr Jason Giadresco (Senior Governance Officer)

Gallery

Ross Craig
 Suzanne Miles
 Ethel Hunt
 Laurie Hunt
 Paul Daniels

David Giblett
 Nancy Giblett
 Brad Wren
 Jocelyn Baister
 Jeffery Hull

3.1 Apologies: Nil.

3.2 Leave Of Absence: Nil.

4. DECLARATIONS OF INTEREST:

The Interim Chief Executive Officer advised that he has received 3 Declarations of Interest from Councillor Darin, two Financial Interests for Items 9.5.6 and 9.5.8 and an Impartiality Interest in Item 9.5.5.

Councillor Darin advised that she has a Financial Interests in Item 9.5.6 as she has an ongoing Financial Contract as a paying member of the fitness studio and Item 9.5.8 as she has an ongoing Financial Contract as a paying member of the fitness centre at their current location. Councillor Darin also declared an Impartiality Interest in Item 9.5.5 as the proponent's wife is a friend and campaign partner in the 2023 Local Government Elections.

5. PUBLIC QUESTION TIME:

5.1 Response to public questions taken on notice: Nil.

5.2 Public Question Time

5.2.1 Suzanne Miles, 1655 Perup Road, Perup. Item 9.5.5 Application for Retrospective Approval for a Trench and Ponds at Lot 201 (1655) Perup Road, Perup.

- I would like to give a bit more background on our retrospective application.
- We purchased the property in 2020 and we made no alterations to the site in 2021 or 2022.
- We wanted to learn more about the property and determine improvements that could be made to assist heavy waterlogging, land impactions and biodiversity.
- Shire officers Jason and Todd came out to the property along with Nicholas Hort from Department of Water, to attend both my property and my neighbours property.
- I'd like to note the fact that our neighbour does not currently have a water licence, we do.
- The Department of Water is happy to approve the ponds. Documentation states the existing ponds do not need to be removed.
- It is just the drain that is in discussion, however this is not necessarily taken into account by the Shire.
- The Department of Water has suggested an alternative, which is to retag the trench.

- Both the Shire and Department of Water believe our neighbour and the previous owners of our property prior to 2020 have altered the landscape.
- Our neighbour, according to Department of Water, has previously altered the landscape and watercourse.
- Emails between ourselves and the Shire officers have stated that neither the Department of Water nor the Shire's Local Planning Scheme have the ability to ask our neighbour to correct the alterations.
- My concern is, how is it that these alterations to the land have been done by our neighbour and there are no repercussions and yet we are being penalised.
- The main reasons are to clean out our drainage and support the biodiversity of the property, cleaning up the creek line.

5.2.2 Jeffery Hull, 1609 Perup Road, Perup.

- With regard to the water licence, that is currently in the process of being done.
- In response to earthworks that we have done, drainage work, I have no idea what any of that is about. I have done nothing of the sort in the 10 years I have been on that property as in drainage work.
- In response to the planning approval at 1655 Perup Road, we totally oppose all works within 10 metres of the boundary on northern drain and all works within the creek line within 20 metres of where it enters our property.
- The works that have already been carried out on our neighbours property, the water runoff that will not be coming our way and the block being dry for long periods of time due to not receiving the natural sheeting of water and the creek line being cutoff completely.
- There is a trench approximately 20 metres long and anything up to 1200mm deep and as close as 500mil from the boundary fence line.
- That is where we travel and move our machinery and because the block is so wet in the lower part where the creek line does travel into our property and the drain being so close that fence line will collapse in a period of time.
- We have tried to discuss with Mr Miles but he was not interested.
- I would like to invite anyone who would like to, to come and have a look to see the damage it has already created.
- We had two good rain events. One was between 70 – 75mil of rain over a 12 to 24 hour period, and we ended up with approximately 50 – 100mm of sediment in our place from that event. Then about 2 months ago we had another good rain event and we ended up with approximately 150mm of sediment in our property.

6. PRESENTATIONS:

6.1 Petitions: Nil.

6.2 Presentations:

6.2.1 The Interim Chief Executive Officer and Community Emergency Service Manager were honoured to attend a Department Fire and Emergency Services presentation last Friday where the Shire was awarded a Volunteer Employer Recognition Award. The award was presented to the Shire President.

6.3 Deputations: Nil.

6.4 Delegates' reports: Nil.

6.5 Conference reports: Nil.

7. CONFIRMATION OF MINUTES:

MOVED: De Campo, W SECONDED: Miolin, S

29306

That the Minutes of the Ordinary Meeting of the Council held on 28 September 2023 and the Minutes of the Special Meeting held on 24 October 2023 be confirmed.

CARRIED: 9/0

For: Cr D Buegge, Cr J Darin, Cr W De Campo, Cr W Eiby, Cr S Miolin, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

8. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN: Nil.

9. COUNCIL OFFICERS' REPORTS:

MOVED: Eiby, W SECONDED: DeCampo, W

29307

"That Council adopt the recommendations contained in the Council Officers and Committee Reports on pages 1 – 105 of the Agenda with the exception of:

9.5.1	Application for Retrospective Approval for Rural Workers Accommodation, Grouped Dwellings, Industry - Rural, Agriculture Extensive and Proposed Additional Rural Workers Accommodation at Lot 100 (122) Etherington Road, Beedelup
9.5.2	Request for Nomination of Development Assessment Panel Representatives
9.5.4	Proposed Variation to Provisions of Local Planning Scheme No. 4 to Keep a Cat at Lot 29 (90) Jacksonii Avenue, Walpole
9.5.5	Application for Retrospective Approval for a Trench and Ponds at Lot 201 (1655) Perup Road, Perup
9.5.6	Proposed Extension to the Existing Fitness Studio at Lot 173, 11 Rose Street, Manjimup
9.5.8	Proposed Change of Use Warehouse to Use Not Listed (Fitness Centre) at Lot 2 (31) Giblett Street, Manjimup

9.9.1	Proposed Review of Policy 3.1.3 Community Funds Allocation
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CARRIED: 9/0

For: Cr D Buegge, Cr J Darin, Cr W De Campo, Cr W Eiby, Cr S Miolin, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

Items passed by En Bloc Resolution

- 9.1.1 Request to Provide Undertakings for Shire of Manjimup Bush Fire Brigades Local Law 2023
- 9.2.1 Proposed Council Meeting Dates for 2024
- 9.3.1 Council Financial Payments for September 2023
- 9.3.2 Monthly Statement of Financial Activity - August 2023
- 9.5.3 Delegated Decisions for September 2023
- 9.5.7 Proposed Outbuilding at Lot 2084 (87) Dingup Road, Dingup
- 9.5.9 Application for Retrospective Approval of a Shipping Container at Lot 288 (19) Swarbrick Street, Walpole
- 9.5.10 Retrospective Approval for the Keeping of Cats at Lot 26 (2) Burton Close, Walpole
- 9.7.1 Proposed Appointment of Fire Control Officers for the 2023/2024 Bush Fire Season
- 9.13.1 Quarterly Report July to September 2023 - Works and Services
- 9.16.1 Unconfirmed Minutes of the Manjimup Heritage Park Advisory Committee Meeting Held on 19 September 2023
- 9.16.2 Informal Meeting Notes of the Northcliffe Town Activation Advisory Committee Meeting held 18 September 2023
- 9.16.3 Unconfirmed Minutes of Walpole Town Activation Advisory Committee Meeting held 26 September 2023

9.1.1 Request to Provide Undertakings for Shire of Manjimup Bush Fire Brigades Local Law 2023

PROPONENT	Joint Standing Committee on Delegated Legislation
OWNER	N/A
LOCATION / ADDRESS:	All of Shire
WARD:	All Wards
ZONE:	N/A
DIRECTORATE:	Office of CEO
FILE REFERENCE:	F200202
LEGISLATION:	<i>Local Government Act 1995, Bush Fire Act 1954</i>
AUTHOR:	Jason Giadresco
DATE OF REPORT:	12 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

At its Ordinary Meeting held 17 August 2023, Council determined (Resolution 29241) to adopt the Shire of Manjimup Bush Fire Brigades Local Law 2023 (the Local Law). A copy of the gazetted Local Law and its Explanatory Memorandum was forwarded to the Joint Standing Committee on Delegated Legislation (the Committee) on 6 September 2023.

Council has since received correspondence from the Committee. The content of the Committee's letter is considered confidential, and the Committee has requested that the letter not be included in this Council agenda item. A copy of the correspondence from the Committee will be provided to Councillors under separate cover.

Upon the Committee's review of the Local Law and Explanatory Memoranda on 11 October 2023, it was identified the Local Law requires amendment to one clause of the Local Law that will need to be corrected prior to the Local Law being supported by the Committee.

The purpose of this report is for Council to consider the correspondence received and provide the Committee with a letter of undertaking with regard to amending the Local Law.

PUBLIC CONSULTATION UNDERTAKEN:

Nil. Public consultation on correspondence received from the Committee is not required.

COMMENT (Includes Options):

For the benefit of Councillors, an 'undertaking' is a commitment made by local governments, government departments or agencies to the Committee that certain actions will be completed within a certain time frame.

The requesting of undertakings relating to Instruments (i.e. Local Laws) from local governments, departments and agencies is a serious matter. The Committee allows Instruments to pass unimpeded into law subject to the

commitment that the relevant local government, department or agency will abide by the undertakings they give.

The Committee accepts undertakings provided on the following terms:

- all consequential amendments arising from the undertakings will be made;
- offending clauses will not be enforced in a manner contrary to the undertakings given;
- the undertakings will be completed within six months of the date the local government, department or agency's letter provides the undertakings;
- where the instrument is made publicly available, whether in hard copy or electronic form, it be accompanied by a copy of the undertakings; and
- in the case of a local government, it will provide a copy of the minutes of the meeting at which the relevant council resolves to provide the undertakings.

Committee comments

Concisely, the Committee has questioned the Shire's legal ability to regulate through the Local Law, drawing attention to the fact that the document does not adequately address Section 62(1) of the *Bush Fires Act 1954* (the Act). The opinion of the Committee is that this section describes that when a local government intends to regulate its bush fire brigades, it must do so through a Local Law and not by any other means. Making reference to management of bush fire control officers through the Act is not satisfactory and must instead be described in the Local Law. Specifically, the Committee is instructing that clause 9 of the Local Law "Appointment, employment, payment, dismissal and duties of bush fire control officers" be removed and additional clauses added to bring the Local Law into consistency with Section 62(1) of the Act, suggesting use of the provisions of the Model Bush Fire Brigades Local Law 2023.

There appears to be acceptance from the Committee that it has been inconsistent with its previous treatment of this type of Local Law, noting that it did not ask the Shire of Williams (whose Local Law the Shire of Manjimup's is based on) to make undertakings as it was deliberating the interpretation of Section 62(1) at the time.

To this end the Committee has provided a recommended suggested set of undertakings to address the above discussed:

"The Council of the Shire of Manjimup resolves to undertake to the Joint Standing Committee on Delegated Legislation that:

1. Within six months, amend the local law by deleting clause 9 and inserting clauses dealing with the matters set out in section 62(1)(a) of the Act.
2. Not enforce the local law to the contrary before it is amended in accordance with undertaking

3. Ensure all consequential amendments arising from the undertaking will be made.
4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.”

Shire officers recommend that Council accept the undertakings as suggested by the Committee above, with minor modifications to ensure clarity of intent.

Alternative Option

Alternatively, Council may choose to seek legal advice and contest the Committee’s standing. But given the advice of the Committee, this is not recommended, as it will likely cost Council more financially than allowing the Local Law to be amended or repealed and then going through the Local Law process again.

Conclusion

Once Council has issued its response to the Committee, it will await its response and will perhaps need to consider this matter further. However, in the event the Committee accepts the undertakings as provided by Council in the Officer Recommendation below, a further report will be presented to Council presenting an amendment to the Local Law in accordance with clause 3.12 of the *Local Government Act 1995* and the undertaking provided by the Committee.

STATUTORY ENVIRONMENT:

Local Government Act 1995, Bush Fire Act 1954.

POLICY / STRATEGIC IMPLICATIONS:

Nil.

ORGANISATIONAL RISK MANAGEMENT:

Failure to provide an undertaking for the amendments and request to repeal identified by the Joint Standing Committee on Delegated Legislation will place Council in non-compliance with the Committee’s direction and may result in the Local Law being disallowed by State Parliament.

FINANCIAL IMPLICATIONS:

Cost for the amendment of the Shire’s Local Law will be covered in the Shire’s Adopted Budget for 2023/24.

Should Council choose to challenge the Committee’s undertakings, it would be expected that a greater expense would be incurred instead of complying with the Committee’s request.

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council, with regard to the Shire of Manjimup Bush Fire Brigades Local Law 2023, resolves to undertake to the Joint Standing Committee on Delegated Legislation that:

1. Within six months, amend the Bush Fire Brigades Local Law 2023 by deleting clause 9 and inserting clauses dealing with the matters set out in section 62(1)(a) of the *Bush Fire Act 1954*;
2. Not enforce the Bush Fire Brigades Local Law 2023 to the contrary before it is amended in accordance with undertaking;
3. Ensure all consequential amendments arising from the undertaking will be made; and
4. Where the Bush Fire Brigades Local Law 2023 is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29308

That Council, with regard to the Shire of Manjimup Bush Fire Brigades Local Law 2023, resolves to undertake to the Joint Standing Committee on Delegated Legislation that:

1. Within six months, amend the Bush Fire Brigades Local Law 2023 by deleting clause 9 and inserting clauses dealing with the matters set out in section 62(1)(a) of the *Bush Fire Act 1954*;
2. Not enforce the Bush Fire Brigades Local Law 2023 to the contrary before it is amended in accordance with undertaking;
3. Ensure all consequential amendments arising from the undertaking will be made; and
4. Where the Bush Fire Brigades Local Law 2023 is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.

ADOPTED BY EN BLOC RESOLUTION: 9/0

9.2.1 Proposed Council Meeting Dates for 2024

PROPONENT	Shire of Manjimup
OWNER	N/A
LOCATION / ADDRESS:	Whole of Shire
WARD:	N/A
ZONE:	N/A
DIRECTORATE:	Business Directorate
FILE REFERENCE:	F170041
LEGISLATION:	<i>Local Government Act 1995</i>
AUTHOR:	Gaye Burrridge/Brian Robinson
DATE OF REPORT:	11 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

In accordance with past practice and to conform to the advertising requirements of the *Local Government Act 1995*, Council is required to determine dates for the Ordinary Council Meetings to be held in 2024.

The Shire of Manjimup Council Meetings have been held on Thursday evenings over a three week cycle since June 2008. Minor variations to the three week period have occurred each year due to the timing of public holiday periods such as Easter and the Western Australian Local Government Association annual convention.

For the 2023 calendar year a total of 17 Ordinary Council meetings were held. Where individual public holidays fell within the agenda period, Shire Officers had less than 15 working days between meetings.

Council is requested to consider approving a revised meeting schedule for Ordinary Meetings to be held during 2024.

PUBLIC CONSULTATION UNDERTAKEN:

Nil, however the Shires Chief Executive Officer Elect has been consulted. It is the Chief Executive Officer Elect's preference for meetings to be held monthly.

COMMENT (Includes Options):

As detailed in the Statutory Environment Section overleaf, there is a legislated requirement for Council meetings to be held not more than three months apart. Any greater frequency of meetings is at the sole discretion of the individual Local Government.

Within Western Australia local governments operate using a range of meeting approaches, with the majority of Local Government's in Western Australia holding Ordinary Council meetings on a monthly basis (i.e. 12 meetings per year). Some local governments choose not to hold meetings in January, resulting in a total of 11 Ordinary Council Meetings per year. Special meetings are held on an as needs basis.

Current Shire System

As detailed in the background section of this agenda item, the Shire of Manjimup has held Ordinary Council Meetings on the basis of a three weekly cycle since June 2008. Whilst such an approach minimises the turn around for agenda items, particularly those which Council may resolve to defer, this results in additional pressure on Shire Officers with tight turn around periods.

The following is a summary of a typical meeting cycle:

Week 1

- Shire Officers enact Council decisions from the previous Thursday, with the majority of correspondence, including approvals issued on Monday/Tuesday;
- All Shire Officers to have all agenda items in draft form by Friday close of business.

Week 2

- Managers have until Monday 12pm to authorise the agenda items;
- Draft agenda's are printed on Monday afternoon and supplied to the Senior Management Team and Senior Governance Officer. Proof Reading of the agenda must be completed prior to start of business on Tuesday;
- SMT along with the Senior Governance Officer formally review the agenda starting at 8:30am Tuesday;
- SMT members then communicate and co-ordinate required modifications/corrections, which must be completed by 12pm on Wednesday;
- Wednesday afternoon the Senior Governance Officer and CEO complete a second proof read of the agenda, with corrections undertaken that afternoon;
- The agenda is sent to production Wednesday afternoon/Thursday morning;
- Advice of the Council meeting is forwarded to applicants and those who may have lodged submissions; and
- The finalised document being distributed to Elected Members and published on the Shire website prior to close of business on Friday;

Week 3

- Shire President has meeting with Chief Executive Officer to discuss agenda;
- Wednesday morning Senior Management Team Meeting held, where amongst other things potential issues to be raised at the Council meeting are identified;
- Thursday – Informal Briefing Session and Council meeting held; and
- Friday – relevant Shire Officers briefed on meeting outcomes, draft minutes produced and proof read by Senior Governance Officer and CEO. Minutes generally published Friday Afternoon.

Week 4

- Shire Officers enact Council decisions from the previous Thursday, with the majority of correspondence, including approvals issued on Monday/Tuesday; and

- Shire Officers to have agenda items in draft form by Friday close of business.

Issues with Three weekly Cycle

Time dedicated to agenda production

On a three weekly meeting cycle, there are a total of 15 working days between meetings. For those officers more heavily involved in producing, proof reading and agenda production, work on the agenda can occupy a significant portion of 10 of those 15 days.

The time available for agenda production is reduced where individual public holidays occur, or where there are periods of personal (i.e. sick or parental) or annual leave involved.

Lack of Time for Other Matters

The amount of time involved in agenda and minute production significantly impacts and requirements to enact decisions of Council as required under clause 5.4.1(c) of the *Local Government Act 1995*, limits the ability for relevant officers to:

- Conduct day to day management and other business related tasks;
- Complete strategic tasks and/or project management;
- Be proactive in terms of continuous improvement; and
- Manage the numerous advisory committee meetings and their outcomes.

Preparation of Items resulting from Deferral or Notice of Motion

Where Council resolves to either defer a matter (i.e pending further information) or pass a notice of motion, officers generally have one week to prepare the item for the next meeting. This restricts the ability to conduct research, liaise with or obtain further information from applicants.

Such circumstances further restrict the ability for Officers to deal with matters not relating to the agenda.

Proposed Schedule

It is proposed that the number of Ordinary meetings to be held is reduced from 17 meetings to 14 meetings. The proposed meeting dates are generally based on a four weekly cycle, with a reduced number of meetings being to be spaced three weeks apart as reflected within the table below:

Council Meeting Dates for 2024		Locations
Thursday	18 January	Manjimup
Thursday	15 February	Manjimup
Thursday	14 March	Northcliffe
Thursday	11 April	Manjimup
Thursday	2 May	Manjimup
Thursday	23 May	Pemberton
Thursday	13 June	Manjimup

Thursday	11 July	Manjimup
Thursday	1 August	Manjimup
Thursday	22 August	Manjimup
Thursday	12 September	Walpole
Thursday	10 October	Manjimup
Thursday	7 November	Manjimup
Thursday	5 December	Manjimup

The above schedule retains a higher frequency of meetings during periods associated with budget preparation and adoption.

Impact on Size of Agenda

On average there are some 320 agenda items produced by officers per year. This increases in years where local government elections are held to allow for appointments to committees and advisory bodies as was dealt with in the Special Council Meeting held on 24 October.

With 17 meetings held, an average of 18-19 items are prepared for Council consideration. In the event that Council supports the proposed schedule, it is anticipated that an average of 22-23 items will be contained in each agenda.

Given that Council deals with items by exception and the majority of Council meetings are generally finalised within one hour, the likely increase in the number of agenda items is considered minor. There is therefore not likely to be a significant impact on Councillor time.

Late Items and Special Council Meetings

In the event that matters arising cannot wait for the next Ordinary Council Meeting, there is the ability for Shire Officers to deal with matters through preparation of late items, or where absolutely necessary Special Council meetings to be called, such as the meeting held on 24 October this year.

Outer Town Meetings

The trial to hold outer town Council meetings in three consecutive meetings in early 2022 is considered to have been successful. The approach meant that it was not necessary to set up the audio equipment in the Council chamber between outer town meetings.

However, with the revised legislation requiring Council meetings to be live streamed, coming into effect in January 2024, new audio and recording equipment has been installed within the Council Chamber. This means that the original equipment is now available for outer town meetings.

It is therefore recommended that Council return to spacing out meetings in the outer towns over the year.

Conclusion

The proposed meeting schedule for 2024 will improve efficiency, providing officers more time to prepare agenda items for Council consideration. It will also increase the availability of officers to perform other roles such as

delegated matters and response to issues raised by Councillors during Informal Briefing Sessions.

STATUTORY ENVIRONMENT:

In accordance with the *Local Government Act 1995*, Council is required to formally adopt and advertise the meeting schedule for the year. Section 5.3 of the *Local Government Act 1995* requires Council to hold ordinary meetings not more than three months apart.

POLICY / STRATEGIC IMPLICATIONS:

The change in meeting frequency to based around a four weekly cycle will require Council Policy 1.1.1 Council Meeting System to be updated to reflect the frequency change and brought to Council for approval. The holding of Council meetings in each town at least once a year is supported in the Shire of Manjimup's Corporate Business Plan.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

A reduction in the number of Council meetings will result in direct savings in that:

- a) Three less agenda's will be produced, reducing production costs; and
- b) Three less meals and associated beverages being required.

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: The practice of holding Council meetings in the outer towns affords all residents the opportunity to conveniently engage with their Councillors and allows Councillors greater appreciation of issues and attributes of those wards.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. Adopt the following Council meeting date schedule for 2024 including outer town meetings; and

Council Meeting Dates for 2024		Locations
Thursday	18 January	Manjimup
Thursday	15 February	Manjimup
Thursday	14 March	Northcliffe
Thursday	11 April	Manjimup
Thursday	2 May	Manjimup

Thursday	23 May	Pemberton
Thursday	13 June	Manjimup
Thursday	11 July	Manjimup
Thursday	8 August	Manjimup
Thursday	22 August	Manjimup
Thursday	12 September	Walpole
Thursday	10 October	Manjimup
Thursday	7 November	Manjimup
Thursday	5 December	Manjimup

2. Give public notice of the 2024 Ordinary Council Meeting schedule as contained at point 1 above in accordance with the provisions of the *Local Government Act 1995*.
3. Adopt the change to a four weekly meeting schedule and bring a report to Council in the future reflecting this amendment to the Council meeting schedule in Council Policy 1.1.1.

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29309

That Council:

1. Adopt the following Council meeting date schedule for 2024 including outer town meetings; and

Council Meeting Dates for 2024		Locations
Thursday	18 January	Manjimup
Thursday	15 February	Manjimup
Thursday	14 March	Northcliffe
Thursday	11 April	Manjimup
Thursday	2 May	Manjimup
Thursday	23 May	Pemberton
Thursday	13 June	Manjimup
Thursday	11 July	Manjimup
Thursday	8 August	Manjimup
Thursday	22 August	Manjimup
Thursday	12 September	Walpole
Thursday	10 October	Manjimup
Thursday	7 November	Manjimup
Thursday	5 December	Manjimup

2. Give public notice of the 2024 Ordinary Council Meeting schedule as contained at point 1 above in accordance with the provisions of the *Local Government Act 1995*.
3. Adopt the change to a four weekly meeting schedule and bring a

report to Council in the future reflecting this amendment to the Council meeting schedule in Council Policy 1.1.1.

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT

9.3.1 Council Financial Payments for September 2023

PROPONENT	Shire of Manjimup
OWNER	N/A
LOCATION / ADDRESS:	Whole of Shire
WARD:	ALL
ZONE:	Whole of Shire
DIRECTORATE:	Business
FILE REFERENCE:	F160967
LEGISLATION:	<i>Local Government (Financial Management) Regulations 1996</i>
AUTHOR:	Judy Sutton
DATE OF REPORT:	9 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

It is a statutory requirement for a list of payments from the Municipal and Trust Funds to be presented to Council and included in the minutes.

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

Accounts for payment totalling \$1,005,808.44 for the month of September 2023 are listed below and in the attachment. Corporate Card transactions for August 2023 are detailed below.

ATTACHMENT: 9.3.1(1)

Vouchers for the expenditure are available for inspection at the Council Meeting of 26 October 2023.

Fund	Vouchers	Amount
Municipal	95409 – 95423	\$9,867.33
Trust Fund	-	\$0.00
Total Cheques for Month of September 2023		\$9,867.33

Electronic Funds Transfer (EFT) expenditure batch reports are available for inspection at the Council Meeting of 26 October 2023.

Fund	Batch	Amount
Municipal EFT	285 – 288	\$945,689.25
Direct Debit		\$50,251.86
Total Electronic Payments for Month of September 2023		\$995,941.11

Total Payments – September 2023	\$1,005,808.44
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**Corporate Credit Card transactions 21 August 2023 – 20 September 2023
(paid 2 October 2023) – Municipal Account**

WO.46.1101	Star Link Australia Internet Subscription for Windy Harbour	\$139.00
WO.6.1317	LGIS - Getting Back to Work workshop	\$165.50
WO.6.1317	LGIS - Getting Back to Work Workshop Credit Workshop cancelled	\$165.00cr
WO.1500.1544	Rawlinson Cost Management - Rawlinson Construction Cost Guide 2023	\$350.00
WO.4.1221	Adobe systems - ongoing monthly subscription - Creative Cloud app 12/9 to 11/10/23	\$79.99
WO.680.1133	Westnet - wallib@westnet.com.au 1/9/23 to 1/10/23. \$89.95	\$169.94
WO.98.1410	Westnet - mjpses@westnet.com.au 1/9/23 to 1/10/23 - \$79.99	
WO.573.1035	Gallery Hotel - Accommodation SB - C Blee	\$300.00
WO.571.1317	Aged Care Industry Assoc - online training - wounds	\$254.70
WO.571.1317	Aged Care Industry Assoc - online training - wounds zoom not accessible – credit.	\$248.00cr
WO.13.1294	PDQ - ongoing subscription - PDQ Connection	\$309.22
WO.575.1340	Survey Monkey - annual subscription renewal	\$852.84
WO.571.1346	Zoleo - reoccurring monthly debit for MHCC communications system	\$32.00
WO.687.1317	WALGA - roadside Vegetation Management Event.	\$99.50
WO.688.1317	Department of Mines - Renewal High risk licence.	\$44.00
WO.765.1052	Donnybrook Bee Supplies - Bee suit & gloves - Dangerous trees	\$170.00
WO.571.1101	Seton Australia - 15 pair scissors & freight - J Foreman	\$140.86
WO.15.1317	WALGA - Roadside Vegetation Workshop - T Ridley	\$199.00
WO.571.1101	Victoria Sewing Supply - Rubber tip scissors	\$22.50
WO.687.1317	City of Bunbury - parking for Training - M Leers	\$10.00
WO.573.1035	Alpha Medical Solutions - catheter strap - J Foreman	\$95.50
WO.665.1101	Go Daddy manjimupheritagepark.au - \$21.94	\$43.89
WO.571.1101	Go Daddy manjimuphomeandcommunitycare.au - \$21.95	
WO.665.1101	Go Daddy - manjimupheritagepark.com	\$69.94
WO.7.1101	Go Daddy - manjimup.au	\$21.95
WO.665.1101	Go Daddy - manjimupheritagepark.com.au	\$43.89
Total Credit Card Payments for September 2023		\$3,201.22

STATUTORY ENVIRONMENT:

Local Government (Financial Management) Regulations 1996, regulations (12) and (13).

POLICY / STRATEGIC IMPLICATIONS:

Nil.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

As stated.

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS:

SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council note the September 2023 accounts for payment totalling \$1,005,808.44 as detailed within Attachment: 9.3.1(1) and the Corporate Credit Card transactions for September 2023 totalling \$3,201.22.

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29310

That Council note the September 2023 accounts for payment totalling \$1,005,808.44 as detailed within Attachment: 9.3.1(1) and the Corporate Credit Card transactions for September 2023 totalling \$3,201.22.

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.3.2 Monthly Statement of Financial Activity - August 2023**

PROPONENT	Shire of Manjimup
OWNER	Whole Shire
LOCATION / ADDRESS:	Whole Shire
WARD:	Whole Shire
ZONE:	N/A
DIRECTORATE:	Business
FILE REFERENCE:	F160188
LEGISLATION:	<i>Local Government Act 1995; Local Government (Financial Management Regulations) 1996</i>
AUTHOR:	Greg Lockwood
DATE OF REPORT:	13 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

The *Local Government (Financial Management) Regulations 1996* require monthly Statement of Financial Activity reports to be prepared and presented to Council, containing the following information;

- Annual budget estimates;
- Estimates to end of month;
- Actual expenditure;
- Actual income;
- Material variances; and
- Net current assets.

The Statement of Financial Activity report for the period to 31 August 2023 is attached. The report is summarised by Type with operating comments identifying departments with a reportable variance.

ATTACHMENT: 9.3.2 (1)

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

The financial performance for the Shire of Manjimup to the 31 August 2023 is a projected loss of \$11,849, due to a reduction in the Shire's annual Financial Assistance Grant.

The start to the 2023/24 financial year has been quiet, which has been due mainly to the end of August adoption of the 2023/24 Shire of Manjimup budget. Until the budget is adopted and rate income begins to be received, staff are generally restricted to non-discretionary operational expenditure or grant expenditure only.

In September 2023 Shire officers received advice from the Department of Local Government, Sport and Cultural Industries (DLGSCI) of an overpayment in the 2023/24 Financial Assistance Grant (FAG) allocations. Correspondence advised Shire officers that a miscalculation had occurred, and the Shire of Manjimup received \$145,143 too much and this overpayment will be deducted from next year's FAG payment.

Based on the original "Final" advice from DLGSCI the total FAG has been fully allocated. As the Shire is in receipt of the funding, the 2023/24 budget will not be affected, and it is important to note that projects that utilised the additional funds were one off projects and a 2024/25 budget adjustment to remove the \$145,143 overpayment can be achieved without affecting ongoing services.

The 2024/25 budget will have a cash funding shortfall of \$145,143. To ameliorate this issue, it is proposed to use Interest Received to cover the shortfall. Interest Received has a conservative budget and to the end of August 2023 is \$81,455 ahead of budget. It is proposed that any additional funding from Interest Received remains unallocated and carried forward into the 2024/25 budget to cover the short payment.

Other than the aforementioned grants, no other major discrepancies have come to light in the first two months after adopting the 2023/24 budget, and with appropriate adjustments for the grant shortfalls, and with sound financial management going forward by all departments, Council should be in a neutral or minor surplus position at the 30 June 2024.

STATUTORY ENVIRONMENT:

Section 6.8 of the *Local Government Act 1995* and *Financial Management Regulation 34*.

POLICY / STRATEGIC IMPLICATIONS:

Nil.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

As described in above summary.

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council receive the Monthly Statement of Financial Activity Report for August 2023 as per Attachment: 9.3.2(1).

COUNCIL RESOLUTION:

MOVED: Eiby, W SECONDED: De Campo, W

29311

That Council receive the Monthly Statement of Financial Activity Report for August 2023 as per Attachment: 9.3.2(1).

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.5.3 Delegated Decisions for September 2023**

PROPONENT	Shire of Manjimup
OWNER	Various
LOCATION / ADDRESS:	Various
WARD:	Various
ZONE:	Various
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	F170085
LEGISLATION:	<i>Planning and Development Act 2005</i> <i>Local Government Act 1995</i>
AUTHOR:	Jocelyn Baister
DATE OF REPORT:	4 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

In order to ensure the efficient and timely processing of planning related applications, Council delegates authority to the Chief Executive Officer to conditionally approve applications for Development Approval that meet the requirements of both Local Planning Scheme No 4 (the Scheme) and adopted Planning Policy.

Delegated planning decisions are reported to Council on a monthly basis to ensure that Council has an appropriate level of oversight on the use of this delegation. A register of Delegated Development Approvals, detailing those decisions made under delegated authority in September 2023 is attached.

ATTACHMENT: 9.5.3 (1)

PUBLIC CONSULTATION UNDERTAKEN:

Where required applications were advertised in accordance with the Scheme and Council's adopted Local Planning Policy as detailed in the Policy/Strategic Implications section below.

COMMENT (Includes Options):

During September 2023, eight (8) development applications were determined under delegated authority. Table 1 shows the number and value of development applications determined under both delegated authority and by Council for September 2023 compared to September 2022:

Table 1: Planning Decisions Made September 2022 and 2023

	September 2022	September 2023
Delegated Decisions	15 (\$766,758)	8 (\$1,073,620)
Council Decisions	9 (\$3,020,362)	1 (\$350,000)
Total	24 (\$3,787,120)	9 (\$1,423,620)

Table 2 compares the Year-To-Date statistics for delegated authority and Council decisions for 2023-24 compared to the previous Financial Year:

Table 2: Planning Decisions Made Year-To-Date 2022-23 and 2023-24

	YTD 2022-23	YTD 2023-24
Delegated Decisions	36 (\$1,979,646)	25 (\$2,853,461)
Council Decisions	24 (\$4,321,104)	6 (\$2,030,000)
Total	60 (\$6,300,750)	31 (\$4,883,461)

Whilst the number of applications determined has decreased in comparison to those of last Financial Year, it should be noted that the value and the level of complexity of applications have increased, as has the number required to be publically advertised.

STATUTORY ENVIRONMENT:

The Scheme is a Local Planning Scheme, made in accordance with the *Planning and Development Act 2005* and associated regulations. Part 8 of the Scheme states that prior planning approval is required for all developments (including land use), except those developments identified within Part 8.4 as being Permitted Development.

In accordance with Part 11.3 of the Scheme, Council has delegated a number of planning powers to the Chief Executive Officer. These powers have been on-delegated by the Chief Executive Officer to other staff in accordance with clause 11.3.3 of Local Planning Scheme No 4.

Clause 11.3.5 of the Scheme requires that a delegation under the Scheme is consistent with sections 5.45 and 5.46 of the *Local Government Act 1995* and the regulations referred to in clause 5.46 of that Act. Regulation 19 of the *Local Government (Administration) Regulations 1996* requires that a written record of each delegated decision be kept.

POLICY / STRATEGIC IMPLICATIONS:

Applications for Development Approval must be assessed against requirements of the Scheme and Local Planning Policies that have been adopted in accordance with Part 2 of the Scheme. These Policies include Local Planning Policy LPS4 6.1.2 *Advertising of Planning Proposals*, which details the level and scope of advertising required for Applications for Development Approval.

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

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

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

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council receives the report on Delegated Development Approvals for September 2023 as shown at Attachment: 9.5.3 (1)

COUNCIL RESOLUTION:

MOVED: Eiby, W SECONDED: De Campo, W

29312

That Council receives the report on Delegated Development Approvals for September 2023 as shown at Attachment: 9.5.3 (1)

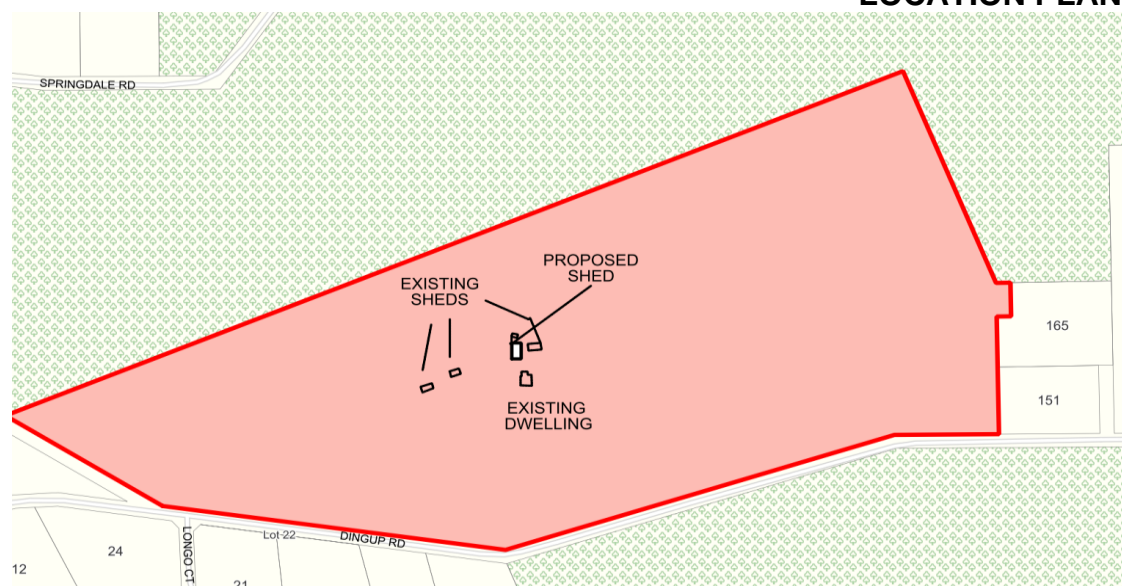
ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.5.7 Proposed Outbuilding at Lot 2084 (87) Dingup Road, Dingup**

PROPONENT	Sheds West Direct
OWNER	BL Nicol
LOCATION / ADDRESS:	Lot 2084 (87) Dingup Road, Dingup
WARD:	Rural
ZONE:	Rural Residential
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	DA23/111; P55612
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Kaylene Roberts
DATE OF REPORT:	10 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Council is in receipt of a development application for an outbuilding, on a property with a Rural Residential zoning, which if approved will result in the total area of outbuildings on the property being 751m² which is significantly greater than the Scheme provisions for that zoning. The proposed height will also result in the outbuilding being greater than the local planning policy height provisions. The proposed outbuilding is to be setback 270m from Dingup Road and 195m from State Forest. A location plan is shown attached.

LOCATION PLAN

The subject property has an area of 53.96 hectares and contains a dwelling, four sheds, five water tanks, two dams as well as an orchard and a seed potato crop.

The applicant has had previous Council approval to undertake the planting of seed potatoes on the subject land under the land use definition of rural pursuit.

The application is proposing the construction of a 12m wide by 20m long (240m²) outbuilding in a cleared area adjacent to two existing structures. The proposed machinery shed will have a maximum height (apex) of 6.06m and a 5m wall height. The outbuilding is to be steel framed and metal clad, with a Zincalume finish. The outbuilding will house machinery and other farm equipment used in association with the horticultural activities on the property. A copy of the proposed development plans are attached.

ATTACHMENT: 9.5.7 (1)

Given that the proposed cumulative Gross Floor Area (GFA) of the combined outbuildings located on the property exceeds the maximum permitted floor area specified in the Scheme and the height is in excess of the local planning policy for the current zoning of Rural Residential, the application must be determined by Council.

PUBLIC CONSULTATION UNDERTAKEN:

The application was advertised in accordance with Clause 9.6 of the Shire of Manjimup Local Planning Scheme No. 4 (the Scheme) for a 21 day period to the adjoining landowners and 42 days to the Department of Biodiversity, Conservation and Attractions (DBCA) with submissions closing on 21 September 2023. No comments were received during this time.

COMMENT (Includes Options):

The provisions of the Local Planning Scheme No.4 (the Scheme) include the subject land within the Rural Residential Zone. The objective of the Rural Residential Zone is to *“provide for low density residential development in a rural setting consistent and compatible with adjacent land use activity, landscape and the environmental attributes of the land.”*

Outbuilding Size

Clause 5.36.3.9 of the Scheme specifies that, unless otherwise agreed by the local government the maximum permitted floor areas of outbuildings within the Rural Residential Zone is 200m². The maximum floor area nominated above is the total gross floor area of all outbuildings on the lot excluding garages, carports or other structures that are substantially attached to the dwelling.

If approved, the total floor area of outbuildings on the property would be approximately 751m². Approval to the application therefore requires a variation of standards under clause 5.5 *Variations to Site and Development Standards and Requirements*.

Variation of Standards

In accordance with clause 5.5 of the Scheme, Council may approve an application for outbuildings in excess of that prescribed by the Scheme. Such approval may be granted with or without conditions.

Where in the opinion of the local government a variation is likely to affect any owners or occupiers adjoining the site, or in the general locality, clause 5.5.2 requires that those parties are consulted. In this case, all adjoining

landowners have been notified of the proposal and provided 42 days in which to comment. No objections or comments were received.

The power exercised by clause 5.5 may be exercised where the local government is satisfied that approval would be appropriate having regard to the criteria of clause 10.2 and the non-compliance will not have an adverse impact on the occupiers or users of the development or the inhabitants of the locality.

Matters to be Considered

In determining applications for development approval under the Scheme, clause 10.2 requires that various matters are considered, including, but not limited to:

- (x) *the compatibility of a use or development with its setting including the potential impact on the use and enjoyment of adjacent and nearby land and taking into consideration any Special Control Area; and*
- (xvi) *the relationship of the proposal to development on adjoining land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.*

Assessment of the proposal against the criteria identified under clause 10.2 of the Scheme has identified that the proposed use is compatible with the current horticultural uses on the property. As the new outbuilding is to be located behind the existing dwelling, it is anticipated that there will be little or no impact on the amenity of the area.

Typically, Rural Residential zoned properties have a maximum area of 4 hectares, the subject property is over 53 hectares. Consideration of the impact the proposal would have in relation to the area of the property is that this proposal would have little or no impact to the amenity of the area and would meet the requirements of the Scheme.

The property is also the subject of a Scheme Amendment to rezone the property from Rural Residential to Priority Agriculture. Under the Priority Agriculture zoning there are no restrictions for gross floor areas for outbuildings, therefore there would be no need for planning approval as long as the outbuilding is setback in accordance with the requirements of the zone of which it would be.

The Scheme Amendment was granted final approval by Council at its Ordinary Meeting on 28 September 2023. The Amendment documentation is in the process of being referred to the Western Australian Planning Commission ready for the Minister's final approval.

Local Planning Policy 6.1.3 Outbuildings (the Policy)

The purpose of the Policy, as it relates to Rural Residential zoned land, is to provide acceptable development provisions for domestic outbuildings which are proposed to exceed the maximum size prescribed by the Scheme.

The Policy provides the following deemed-to-comply provisions that are proposed to be varied by this application:

- Collectively do not exceed 300m²;
- Do not exceed a wall height of 4m; and
- Do not exceed a ridge height of 5m.

A variation of up to 15% of the outbuilding area and/or heights set above may be approved by the local government following referral to neighbours for comment. In this regard the proposed Outbuilding is:

- 66% larger in floor area;
- 25% greater wall height; and
- 21% greater in ridge height.

Given the proposal is seeking approval for a variation greater than that provided for in the Policy as acceptable, the application requires a 'judgement of merit' assessment. The Policy sets the following as a design principle:

"Outbuildings that do not detract from the streetscape or the visual amenity of the residents or neighbouring properties," to guide judgment of merit assessments. In this regard, the proposal is to be located a significant distance from the street and was referred to the surrounding neighbours where no comments were received.

Conclusion

The machinery shed will serve to prolong the life of the farm machinery and items ancillary to the horticultural production on the property, by offering protection from the elements, nor is it expected to have an impact upon the amenity of the neighbouring landowners and the streetscape of Dingup Road.

Additionally, as the property is the subject of an impending Scheme Amendment to change the zoning and as this proposal would not require development approval under the new zoning it is considered appropriate to recommend conditional approval.

STATUTORY ENVIRONMENT:

Shire of Manjimup Local Planning Scheme No.4 and *Planning and Development Act 2005*.

POLICY / STRATEGIC IMPLICATIONS:

Nil.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

The appropriate development application fee has been paid by the applicant.

SUSTAINABILITY:Environmental: Nil.Economic: Nil.Social: Nil.**VOTING REQUIREMENTS: SIMPLE MAJORITY****OFFICER RECOMMENDATION:**

That Council in accordance with clause 5.5 and Part 10 of Shire of Manjimup Local Planning Scheme No.4 grant planning approval to the application to construct an Outbuilding on Lot 2084 (87) Dingup Road, Manjimup (Application TP106/2023) subject to the following conditions:

- a. The development hereby approved must be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup;

Reference	Document Title	Date Received
1.	Site Plan	28 August 2023
2.	Shed Plan	28 August 2023

- b. The outbuilding being used for rural purposes, storage, garaging of vehicles or other approved purposes associated with the property, excluding human habitation or commercial practices; and
- c. The proposed development shall be clad or coloured to complement either the surroundings in which it is located or adjoining developments to the satisfaction of the Shire of Manjimup.

Advice to the Applicant:

- a. This development approval is NOT a building permit. A building permit must be formally applied for and obtained from Building Services BEFORE the commencement of any site and/or development works.

COUNCIL RESOLUTION:**MOVED:** Eiby, W**SECONDED:** De Campo, W**29313**

That Council in accordance with clause 5.5 and Part 10 of Shire of Manjimup Local Planning Scheme No.4 grant planning approval to the application to construct an Outbuilding on Lot 2084 (87) Dingup Road, Manjimup (Application TP106/2023) subject to the following conditions:

- a. The development hereby approved must be carried out generally in accordance with the plans and specifications submitted with the

application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup;

Reference	Document Title	Date Received
1.	Site Plan	28 August 2023
2.	Shed Plan	28 August 2023

- b. The outbuilding being used for rural purposes, storage, garaging of vehicles or other approved purposes associated with the property, excluding human habitation or commercial practices; and
- c. The proposed development shall be clad or coloured to complement either the surroundings in which it is located or adjoining developments to the satisfaction of the Shire of Manjimup.

Advice to the Applicant:

- a. This development approval is NOT a building permit. A building permit must be formally applied for and obtained from Building Services BEFORE the commencement of any site and/or development works.

ADOPTED BY EN BLOC RESOLUTION: 9/0

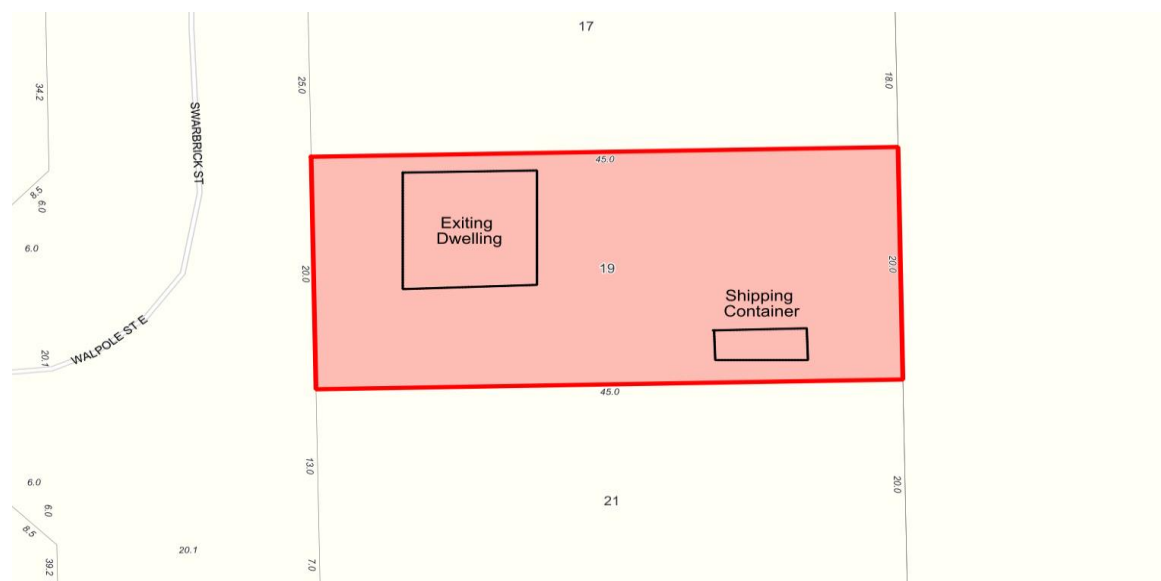
ATTACHMENT

9.5.9 Application for Retrospective Approval of a Shipping Container at Lot 288 (19) Swarbrick Street, Walpole

PROPONENT	Ms S C Dawson
OWNER	Ms S C Dawson
LOCATION / ADDRESS:	Lot 288 (19) Swarbrick Street, Walpole
WARD:	Rural
ZONE:	Residential R20
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	DA23/125; P52310
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Kaylene Roberts
DATE OF REPORT:	11 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Council is requested to consider a retrospective application for a Shipping Container at Lot 288 (19) Swarbrick Street, Walpole. The subject property contains a dwelling and is located in the eastern part of Walpole. A location plan is shown below.



The application is for a 5.89m long by 2.35m wide with a height of 2.39m shipping container which has already been located on the eastern side of the subject property. The applicant has proposed to shield the container from the street through the planting of a climbing Wisteria and has proposed to paint the container satin black to complement the surrounds.

The landowner originally submitted a development application for a single shipping container and then proceeded to place the shipping container on the subject property prior to the application being determined, as such the application is now retrospective. A copy of the plans are attached.

ATTACHMENT: 9.5.9 (1)

As Shire officers do not have the delegated authority to determine retrospective applications, the application is now required to be considered by Council.

PUBLIC CONSULTATION UNDERTAKEN:

The application was advertised in accordance with clause 9.6 of the Scheme for a 21-day period to the adjoining landowners. No submissions were received.

COMMENT (Includes Options):

The provisions of the Shire of Manjimup's Local Planning Scheme No. 4 (the Scheme) include the subject land within the Residential Zone with an applicable density of R20.

To guide Council on the determination of this application, the following comments are offered:

Proposed Shipping Container

A domestic outbuilding which is defined by State Planning Policy 7.3 – Residential Design Codes Volume 1 (the R-Codes) as '*Enclosed non-habitable structure that is detached from any dwelling.*'. Outbuildings within Residential Zones are required to comply with the requirements prescribed by both the Scheme and Policy.

For the purposes of assessment, Local Planning Policy 6.1.3 Outbuildings (the Policy) states that a shipping container is to be considered a domestic outbuilding where it is made to meet the deemed to comply provisions of the Policy. An assessment against the policy is provided below.

Matters to be Considered

In determining an application for Development Approval, the local government is required to have regard to various matters as outlined in Clause 10.2 of the Scheme. These matters include, but are not limited to:-

- (i) *the aims and provisions of the Scheme and any other relevant local Planning Scheme operating in the district;*
- (xv) *the preservation of the amenity of the locality; and*
- (xvi) *the relationship of the proposal to development on adjoining land or other land in the locality, including but not limited to, likely effect of the height, bulk, scale, orientation and appearance of the proposal.'*

Local Planning Policy 6.1.3 – Outbuildings

The shipping container meets the deemed-to-comply provisions however, prior planning approval was required prior to the placement of the shipping container.

Site Visit

Following the original application, a site visit was undertaken by Shire staff to assess the proposed location. It was found that shipping container was already located on site.

The Shire then contacted the applicant with regards to the shipping container already being on site and the applicant stated in an email that it was a misjudgement / misunderstanding on behalf of both the landowners. A copy of the email is attached. As a result, the application was then deemed to be retrospective.

ATTACHMENT: 9.5.9(2)

Conclusion

The shipping container has been located to the rear of the subject property in line with the adjoining landowners outbuilding and no objections were received in response to the public consultation. Additionally, it is considered that approval would have been granted to the original application as it is considered compliant with the Policy and the Scheme. Therefore, the proposal is recommended for conditional approval.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005 and Shire of Manjimup Local Planning Scheme No. 4.

POLICY / STRATEGIC IMPLICATIONS:

Compliance with Local Planning Policy LPS4 6.1.3 *Outbuildings* as discussed above.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

The development application fee including the penalty fee for retrospective approval has been paid by the applicant.

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS:

SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council in accordance with Part 10 of the Shire of Manjimup Local Planning Scheme No. 4 grants retrospective planning approval to the proposed Shipping Container at Lot 288 (19) Swarbrick Street, Walpole (Application TP116/2023) subject to the following conditions:

- The development hereby approved must be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup:**

Reference	Document Title	Date Received
1.	Site Plan	25 August 2023

2.	Photo of Shipping Container	25 August 2023
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2. The approved shed/outbuilding is not to be used for Human Habitation or any other purpose other than a domestic outbuilding, unless further approval from the Shire of Manjimup is obtained;
3. The shipping container must not have any refrigeration or air conditioning components;
4. The shipping container must be coloured to complement the existing buildings within one month from this approval;
5. The shipping container must be screened, so it is not readily visible from the street or road; and
6. All stormwater drainage run off is to be retained on the subject property or to be provided with stormwater drainage connections to the drainage system in the area at the developers cost to the satisfaction of the Shire of Manjimup.

Advice to the Applicant:

- a. This development approval is NOT a building approval. A building approval certificate must be formally applied for and obtained from Building Services; and
- b. To contact the Shire of Manjimup's Technical Services Department with regards to access.

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29314

That Council in accordance with Part 10 of the Shire of Manjimup Local Planning Scheme No. 4 grants retrospective planning approval to the proposed Shipping Container at Lot 288 (19) Swarbrick Street, Walpole (Application TP116/2023) subject to the following conditions:

1. The development hereby approved must be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup:

Reference	Document Title	Date Received
1.	Site Plan	25 August 2023
2.	Photo of Shipping Container	25 August 2023

2. The approved shed/outbuilding is not to be used for Human Habitation or any other purpose other than a domestic outbuilding, unless further approval from the Shire of Manjimup is obtained;
3. The shipping container must not have any refrigeration or air conditioning components;

4. The shipping container must be coloured to complement the existing buildings within one month from this approval;
5. The shipping container must be screened, so it is not readily visible from the street or road; and
6. All stormwater drainage run off is to be retained on the subject property or to be provided with stormwater drainage connections to the drainage system in the area at the developers cost to the satisfaction of the Shire of Manjimup.

Advice to the Applicant:

- a. This development approval is NOT a building approval. A building approval certificate must be formally applied for and obtained from Building Services; and
- b. To contact the Shire of Manjimup's Technical Services Department with regards to access.

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT

9.5.10 Retrospective Approval for the Keeping of Cats at Lot 26 (2) Burton Close, Walpole

PROPONENT	Ms J M Dyer
OWNER	Ms E J Muller
LOCATION / ADDRESS:	Lot 26 (2) Burton Close, Walpole
WARD:	Rural
ZONE:	Residential R10
DIRECTORATE:	Statutory Services
FILE REFERENCE:	DA 23/96 P55171 TP 105/2023
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Karleha Brown
DATE OF REPORT:	12 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Council is in receipt of an retrospective application to vary the provisions of Local Planning Scheme No. 4 (the Scheme) to enable the applicant to keep two cats. The subject property, located at Lot 26 (2) on the corner of Burton Close and Karri Street, Walpole, is 1,000m² and consists of a Dwelling and Outbuilding. A location plan is provided below.



The applicant's, who are tenants are seeking retrospective approval to keep two cats at the subject property, details of the application are summarised below:

- The cats are to be kept inside or within the external purpose-built cat enclosure located against the side of the house at all times;
- Food and cat litter are located inside the house;

- The doors of the dwelling are closed at all times and measures are put into place to ensure that the cats do not escape when there are visitors; and
- Both cats, one female and one male are both over 12 years in age.

The current landowners have owned the property since 2021. In June of that year the current occupiers were accepted as tenants with a pet bond for their two cats. The tenants have stated that at the time of tenancy they were not informed that cats were prohibited within the Boronia Ridge Estate, and due to the acceptance of their application stating that they had two pet cats and the receipt of their pet bond they were led to assume it was permitted.

Council at the meeting held 27 July 2023 waived the penalty fee associated with a retrospective application. The application has now been appropriately advertised and is now presented to Council for consideration. Information submitted with the application is provided attached.

ATTACHMENT: 9.5.10 (1)

Due to the retrospective nature of the application and the conflict with the *Shire of Manjimup Cat Local Law 2021*, Council is being requested to consider and determine the application.

PUBLIC CONSULTATION UNDERTAKEN:

The application was referred to adjoining neighbours for a period of 21 days. The proposal was also referred to the Department of Biodiversity Conservation and Attractions (DBCA) for a period of 42 days. Two comments were received from the adjoining neighbours during the consultation period.

The submissions opposed the ability for the applicant to keep their cats as the submitters had rehomed and/or put down their cat to abide with the Boronia Ridge requirements when they moved to the Estate.

DBCA advised that it had no objection to the proposal, providing the owners ensure the cat enclosure is secure and maintained to reduce the risk of escaping cats. All submission are attached.

ATTACHMENT: 9.5.10 (2)

COMMENT (Includes Options):

The Scheme designates the subject property as zoned Residential with an applicable density of R10. Clause 2.7 enables the local government the power to make planning precinct statements to guide development, rezoning or subdivision within a planning precinct.

The subject property is located within the Boronia Ridge Residential Estate Planning Precinct and therefore the associated provision applicable to this application is as follows:

- (xiv) *No domestic cat or cats (felis catus) shall be kept or be caused to be kept on the land.*

It is Shire Officers understanding that the provision was included at the request of State agencies due to the environmentally sensitive area dedication and to ensure the protection of native fauna.

The Scheme amendment to Town Planning Scheme No. 2 was processed in the mid-1990's when it was more common for cats to roam freely and have a significant impact on the local wildlife. With the introduction of outdoor cat enclosures, cat owners can have the certainty that their cat not only will be protected from predators, but the local wildlife will also be protected.

Relaxation of Standards

In accordance with clause 5.5 of the Scheme, the local government may approve an application for planning approval, despite the application not complying with the standard or requirement prescribed under the Scheme. However, prior to relaxing a standard, the local government must be satisfied that:

- "i) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
- ii) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality."*

In determining an application for planning approval, Clause 10.2 of the Scheme requires that various matters are taken into account, including but not limited to:

- (i) the aims and provisions of the Scheme and any other relevant Local Planning Scheme operating within the Scheme area;*
- (v) any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State;*
- (viii) the content and objective of Planning Precinct Statements set out in Schedule 8 of this Scheme;*
- (x) the compatibility of a use or development with its setting including the potential impact on the use and enjoyment of adjacent and nearby land and taking into consideration any Special Control Area;*
- (xiii) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment; and*
- (xv) the preservation of the amenity of the locality;*

To assist Council in determining the application, the following comments are offered in respect of the matters to be considered:

Setbacks

The proposed cat enclosure achieves compliance with the development standards for the Residential Zone and is permitted development, aligning with the definition of an incidental structure (domestic animal enclosure) under clause 8.4 of the Scheme.

Boronia Ridge Planning Precinct Statement

As mentioned above, Schedule 8 contains the requirement that restricts the keeping of cats within the planning precinct area. Prior planning approval is required to vary this requirement.

Retrospective Approval

In accordance with clause 8.6 of the Scheme, the local authority may grant approval to a development notwithstanding that the development has already commenced. In this case, the keeping of cats has been occurring for some time and it has only been brought to the attention of the Shire with the introduction of the requirements to register domestic cat ownership.

Preservation of Environment and Amenity

The native flora and fauna within the Boronia Ridge Estate and greater Walpole areas are important aspects which add to the amenity of the area. It is the opinion of Shire Officers that receiving an application to keep cats does not diminish the importance of the protection of flora and fauna. By keeping cats indoors or within outdoor enclosures, the risk of cats roaming and harming the native fauna is reduced, if not mitigated.

Submissions Received

Two submissions were received from members of the public. Both submissions either objected to the proposal or were not in support of the variation to allow cats in areas prohibited under the local law.

In response to the submissions received, it is recommended that conditions be included in any approval granted by Council ensuring that the cat is managed in a way as to only be kept indoors or within an outdoor enclosure. Should the land owner and or occupier fail to comply with the conditions of approval, the approval can then be revoked and the land owners and or occupier penalised.

Shire of Manjimup Cat Local Law 2021 (Cat Local Law)

When preparing the Cat Local Law, Shire Rangers referred to the Scheme provisions which restrict cats within certain areas, either in Schedule 2 for Rural Residential Zoned areas or Schedule 8 for Boronia Ridge Planning Precinct and defined Cat Prohibited Areas.

Whilst there is flexibility in the Scheme to vary requirements, there is no ability for a landowner or occupier to obtain a permit under the Cat Local Law to keep a cat within Prohibited Areas.

Clause 1.9 of the Scheme provides guidance to the local government when a provision of the Scheme is inconsistent with a local law, the provision of the Scheme prevails. Therefore, the ability of the Shire to vary requirements of the Scheme through clause 5.5 means that a planning approval for that variation would prevail over the requirements of the local law.

However, to ensure that there is a transparent determination, it is recommended that Council resolve to not take action for a breach of the requirements of the Cat Local Law.

Ongoing Future Approach

This application seeks approval for two out of the five (5) cats registered on three properties in areas now defined as Cat Prohibited Areas. As addressed in other reports this is due to the gap in time between the Cat Local Law coming into effect and the requirement to register cat ownership with the Shire.

To ensure that no more cats are approved within prohibited areas, Shire Officers are recommending that all cats being registered after the introduction of the Cat Local Law, must not be registered to a property listed within a Cat Prohibited Area, and that no further variations to the Scheme are supported.

Conclusion

In assessing this application consideration was had to:

- the applicants not being made aware of the restrictions upon entering into their lease;
- the current residential housing crisis and the likely effect on the ability of the tenant to relocate; and
- An administration error where landowners were able to register cats in areas which were later defined as Cat Prohibited Areas.

To provide a fair and reasonable resolution to the considerations above, an application for planning approval to vary the requirements of the Scheme is supported and approval is recommended.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005, Local Planning Scheme No. 4 and Shire of Manjimup Cat Local Law 2021.

POLICY / STRATEGIC IMPLICATIONS:

Support of the application will assist in the delivery of the following Strategies under the Shire of Manjimup Strategic Community Plan 2021-31:

- A1.** *Support initiatives that protect and nurture biodiversity and endemic species;*
- A8.** *Effectively use development and land policies to protect and rehabilitate the environment whilst balancing the needs of the community*
- B10.** *Ensure the regulatory environment is easy to navigate and development, business and industry-friendly.*

ORGANISATIONAL RISK MANAGEMENT:

Appropriate conditions are required to be imposed to ensure the intent of the Scheme provisions are achieved.

FINANCIAL IMPLICATIONS:

At the meeting held 27 July 2023, Council resolved to waive the penalty imposed on the retrospective penalty of this application. The penalty fee is two times the standard application fee.

The applicant paid the required standard fee as per the 2022/2023 Fees and Charges Schedule.

SUSTAINABILITY:

Environmental: Keeping cats indoors or in an outdoor enclosure should reduce if not mitigate impact on native fauna.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. In accordance with clause 5.5 and Part 10 of Local Planning Scheme No. 4 grant approval for the keeping of two cats at Lot 26 (2) Burton Close, Walpole, application TP105/2023 in accordance with the details submitted, subject to the following conditions:

- a. The development hereby approved is to be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup;

Reference	Document Title	Date Received
1.	Management Details	26 June 2023

- b. The cats to be kept at Lot 26 (2) Burton Close, Walpole, be confined to indoors and or contained within a suitable outdoor enclosure or restrained at all times, to the satisfaction of the Shire of Manjimup;
- c. The cat enclosure is to be kept secure and maintained to prevent the escaping of cats; and
- d. This approval to keep cats only relates to the cats currently being kept at the subject property as listed below and is not transferrable to other Cat Prohibited Areas or other cats:

Breed	Age	Microchip	Sterilised	Sex	Registration
Domestic Short Hair	11	941000026718709	Yes	Female	930/2025
Domestic Short Hair	12	941000026718710	Yes	Male	931/2025

2. Note that the Shire of Manjimup will not take action against the applicants for the breach against the Shire of Manjimup's Cat Local Law 2021 for keeping cats within a Cat Prohibited Area.

COUNCIL RESOLUTION:**MOVED: Eiby, W****SECONDED: De Campo, W****29315****That Council:**

1. In accordance with clause 5.5 and Part 10 of Local Planning Scheme No. 4 grant approval for the keeping of two cats at Lot 26 (2) Burton Close, Walpole, application TP105/2023 in accordance with the details submitted, subject to the following conditions:

- a. The development hereby approved is to be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup;

Reference	Document Title	Date Received
1.	Management Details	26 June 2023

- b. The cats to be kept at Lot 26 (2) Burton Close, Walpole, be confined to indoors and or contained within a suitable outdoor enclosure or restrained at all times, to the satisfaction of the Shire of Manjimup;
- c. The cat enclosure is to be kept secure and maintained to prevent the escaping of cats; and
- d. This approval to keep cats only relates to the cats currently being kept at the subject property as listed below and is not transferrable to other Cat Prohibited Areas or other cats:

Breed	Age	Microchip	Sterilised	Sex	Registration
Domestic Short Hair	11	941000026718709	Yes	Female	930/2025
Domestic Short Hair	12	941000026718710	Yes	Male	931/2025

2. Note that the Shire of Manjimup will not take action against the applicants for the breach against the Shire of Manjimup's Cat Local Law 2021 for keeping cats within a Cat Prohibited Area.

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.7.1 Proposed Appointment of Fire Control Officers for the 2023/2024 Bush Fire Season**

PROPONENT	Shire of Manjimup
OWNER	Shire of Manjimup
LOCATION / ADDRESS:	Whole of Shire
WARD:	All
ZONE:	All
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	F160156
LEGISLATION:	<i>Bush Fires Act 1954</i>
AUTHOR:	Todd Ridley
DATE OF REPORT:	9 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Pursuant to Section 38 of the *Bush Fires Act 1954*, Council may appoint Fire Control Officers for the purpose of extinguishing / prevention of bushfires and the issuing of “permits to burn” during the Restricted and Prohibited Burning Periods.

The purpose of this agenda item is to seek Council endorsement of the Shire’s Fire Control Officers for the 2023/2024 bushfire season.

PUBLIC CONSULTATION UNDERTAKEN:

Nil

COMMENT (Includes Options):

Each year Bush Fire Brigades are requested to nominate a Fire Control Officer for their Brigade area. All relevant Bush Fire Brigades have been consulted and have provided the requested nominations, which are shown attached.

ATTACHMENT: 9.7.1 (1)

As all persons shown in the Attachment have completed the training requirements outlined in the *Shire of Manjimup Bush Fire Brigade Operational Procedures 2022-2027*, it is recommended that Council endorse the nominations.

STATUTORY ENVIRONMENT:

Section 38 of the *Bush Fires Act 1954* permits local governments to appoint Fire Control Officers.

POLICY / STRATEGIC IMPLICATIONS:

Appointment of the Fire Control Officers as proposed is consistent with the *Shire of Manjimup Bush Fire Brigade Operational Procedures 2022–2027*, which sets requirements for appointment of Fire Control Officers.

ORGANISATIONAL RISK MANAGEMENT:

Council's endorsement of the appointment of the Fire Control Officers is required prior to the commencement of the annual bushfire season and is essential to minimise the risk to life, property, environment and the organisation.

FINANCIAL IMPLICATIONS:

Nil.

SUSTAINABILITY:

Environmental: Fire has the potential to decimate the natural and built environment if preventative and operational bushfire strategies are not adequate.

Economic: The economic consequences of fire can be devastating. Fire has the ability to destroy entire agriculture areas with the potential to ruin the livelihood of many people.

Social: The social consequences of fire can also be devastating. Whilst it may be argued that a major fire can bring a community together, in addition to the social benefits of camaraderie forged in individual Bush Fire Brigades, the social consequences of destructive fire far outweigh any positive impacts.

VOTING REQUIREMENTS:

SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council appoint the persons listed in Attachment 9.7.1 (1) as Fire Control Officers for their nominated areas within the Shire of Manjimup until 31 October 2024.

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29316

That Council appoint the persons listed in Attachment 9.7.1 (1) as Fire Control Officers for their nominated areas within the Shire of Manjimup until 31 October 2024.

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.13.1 Quarterly Report July to September 2023 - Works and Services**

PROPONENT	Shire of Manjimup
OWNER	Shire of Manjimup
LOCATION / ADDRESS:	Shire of Manjimup
WARD:	All
ZONE:	NA
DIRECTORATE:	Works and Services
FILE REFERENCE:	F160966
LEGISLATION:	<i>Local Government Act 1995</i>
AUTHOR:	Michael Leers
DATE OF REPORT:	6 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

A report outlining activities for the quarter ending 30 September 2023 for the Works and Services Directorate is attached.

ATTACHMENT: 9.13.1 (1)

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

The report outlines progress on key activities undertaken by the Works and Services Directorate during the reporting period. The purpose of the report is to inform Councillors and provide an opportunity to respond to any queries arising on those activities.

STATUTORY ENVIRONMENT:

Local Government Act 1995.

POLICY / STRATEGIC IMPLICATIONS:

Nil.

ORGANISATIONAL RISK MANAGEMENT:

There is a medium risk with insignificant consequence to the organisation when not regularly reporting the directorate's progress to Council.

FINANCIAL IMPLICATIONS:

Nil.

SUSTAINABILITY:

Environmental: Nil.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council receive the July to September 2023 Quarterly Report – Works and Services as contained in Attachment: 9.13.1(1).

COUNCIL RESOLUTION:

MOVED: Eiby, W SECONDED: De Campo, W

29317

That Council receive the July to September 2023 Quarterly Report – Works and Services as contained in Attachment: 9.13.1(1).

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.16.1 Unconfirmed Minutes of the Manjimup Heritage Park Advisory Committee Meeting Held on 19 September 2023**

PROPONENT	Shire of Manjimup
OWNER	Shire of Manjimup
LOCATION / ADDRESS:	Reserve 26199 (Manjimup Heritage Park) Ward, Giblett and Edwards Streets, Manjimup
WARD:	Central
ZONE:	Parks and Recreation
DIRECTORATE:	Community Services
FILE REFERENCE:	F170453
LEGISLATION:	<i>Local Government Act 1995</i>
AUTHOR:	Georgia Schipp
DATE OF REPORT:	5 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

The Manjimup Heritage Park Advisory Committee is an Advisory Committee of Council formed under the provisions of the *Local Government Act 1995*. The functions of the Committee outlined in the current Terms of Reference for the Advisory Committee are:

1. To provide advice to Council on the orderly development, maintenance and promotion of the Manjimup Heritage Park;
2. Undertake voluntary work at the Manjimup Heritage Park;
3. To support delegate opportunities to represent the Heritage Park, specifically the heritage precinct, on external bodies; and
4. To assist, advise and participate in the Manjimup Heritage Park activation.

The purpose of this agenda item is to receive the unconfirmed minutes of the meeting held on the 19 September 2023 as attached.

ATTACHMENT: 9.16.1 (1)

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

There are two recommendations arising from this meeting, one has been dealt with administratively and the other one was considered by Council at the Special Meeting held 24 October 2023.

Committee Recommendation	Officer Recommendation
That the minutes of the meeting held on 19 September 2023 be confirmed with an amendment to general business so it reads “collection offer” instead of “collection officer”.	Supported and dealt with administratively.
To accept the resignation of Rhiannon Evans as proxy representative of the Manjimup Historical Society.	Supported and dealt with by Council at the Special Meeting held 24 October 2023.

It is acknowledged there was a typographical error in the minutes of the previous meeting that has been corrected.

STATUTORY ENVIRONMENT:

Local Government Act 1995.

POLICY / STRATEGIC IMPLICATIONS:

The Terms of Reference, actions and activities of the Heritage Park Advisory Committee are consistent with the following strategies and directions identified in the Shire of Manjimup Strategic Community Plan 2021-2031:

- C2. Support volunteer community groups, encourage participation (particularly in the areas of emergency management) and acknowledge contributions to the community;
- C18. Create, support and promote a broad range sporting, recreational and social opportunities that are accessible and inclusive for all ages and abilities;
- C20. Facilitate, develop and promote a broad range of cultural and art capabilities, facilities, events and achievements;
- C22. Document and conserve local historical records, stories and artefacts and make them available for everyone to study and enjoy;
- C23. Work with stakeholders to preserve and share local Indigenous tradition and culture, including identified sites of significance;
- D5. Develop and maintain community infrastructure to a service-level that meets the community’s needs;
- D8. Develop town centres to showcase their unique characters and encourage vibrant, mixed-use commercial and public spaces; and
- D10. Provide for public parks and playgrounds that are accessible and attractive with well-maintained amenities and equipment.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

Nil.

SUSTAINABILITY:

Environmental: The Manjimup Heritage Park educational activities contributes to the flora, fauna and environmental awareness of visitors and community members.

Economic: The Manjimup Heritage Park is a visitor destination / attraction is a key contributor to the region's visitor economy.

Social: The preservation, conservation and interpretation of heritage and history is critical for ensuring future generations have an understanding as to how the modern world has evolved. It is important for future generations to have access to the region's heritage and historical information and the sense of place that such knowledge offers. The Park space proper is a significant community hub and visitor destination for the region.

VOTING REQUIREMENTS: SIMPLE MAJORITY**OFFICER RECOMMENDATION:**

That Council accept the unconfirmed minutes of the Manjimup Heritage Park Advisory Committee held on the 19 September 2023 as shown in Attachment 9.16.1(1).

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29318

That Council accept the unconfirmed minutes of the Manjimup Heritage Park Advisory Committee held on the 19 September 2023 as shown in Attachment : 9.16.1(1).

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.16.2 Informal Meeting Notes of the Northcliffe Town Activation Advisory Committee Meeting held 18 September 2023**

PROPONENT	Shire of Manjimup
OWNER	Shire of Manjimup
LOCATION / ADDRESS:	Northcliffe
WARD:	Rural
ZONE:	N/A
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	F170455
LEGISLATION:	<i>Local Government Act 2005</i>
AUTHOR:	Kaylene Roberts
DATE OF REPORT:	6 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

The Northcliffe Town Activation Advisory Committee is an Advisory Committee of Council, formed in accordance with Part 5 of the *Local Government Act 1995*. In accordance with the adopted Terms of Reference, the functions of the Committee are:

1. *Identification of opportunities for space activation within Northcliffe townsite;*
2. *Liaison with other relevant community groups and/or service agencies over potential art and cultural projects;*
3. *Assisting the Shire of Manjimup officers in drafting design guidelines to guide future developments within the Town Centre;*
4. *Assist in co-ordinating community participation; and*
5. *Communicate and inform the local community about activities of the Committee.*

The informal meeting notes of the Northcliffe Advisory Committee meeting held on 18 September 2023. A copy of the informal minutes relating to that meeting are shown attached.

ATTACHMENT: 9.16.2 (1)

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

As the Committee did not achieve a quorum of six (6) as noted on the Terms of Reference, there are no recommendations to present to Council.

STATUTORY ENVIRONMENT:

The Committee is an Advisory Committee formed by Council in accordance with the *Local Government Act 1995*. The Committee members are bound by the Terms of Reference and the Shire's Standing Orders.

POLICY / STRATEGIC IMPLICATIONS:

The Northcliffe Town Activation Advisory Committee provides the Shire of Manjimup with a local input into planning or improvement works and space activation within the Northcliffe townsite.

Revitalisation of the Northcliffe Town Centre will ensure that the town is accessible, attractive and inviting whilst maintaining its unique character, consistent with Community Goal 4.45 and identified in the Shire's Strategic Community Plan 2021 – 2031.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

Nil.

SUSTAINABILITY:

Environmental: The Committee assists the Shire in identifying future improvement works and opportunities for space activation within the town.

Economic: By addressing opportunities for space activation within the town centre, operation of the committee ensures opportunities for economic development area maximised and that local businesses will benefit.

Social: In accordance with the terms of reference, a key element of the committee's role is to ensure community involvement in future development programs.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council receive the informal meeting notes of the Northcliffe Town Activation Advisory Committee meeting held 18 September 2023, as shown at Attachment: 9.16.2 (1).

COUNCIL RESOLUTION:

MOVED: Eiby, W SECONDED: De Campo, W

29319

That Council receive the informal meeting notes of the Northcliffe Town Activation Advisory Committee meeting held 18 September 2023, as shown at Attachment: 9.16.2 (1).

ADOPTED BY EN BLOC RESOLUTION: 9/0

ATTACHMENT**9.16.3 Unconfirmed Minutes of Walpole Town Activation Advisory Committee Meeting held 26 September 2023**

PROPONENT	Walpole Town Activation Advisory Committee
OWNER	N/A
LOCATION / ADDRESS:	Walpole Town Centre
WARD:	Rural
ZONE:	N/A
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	F170457
LEGISLATION:	<i>Local Government Act 1995</i>
AUTHOR:	Kaylene Roberts
DATE OF REPORT:	9 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

The Walpole Town Activation Advisory Committee is an Advisory Committee of Council, formed in accordance with Part 5 of the *Local Government Act 1995*. In accordance with the adopted Terms of Reference, the functions of the Committee are:

- 1. Identification of opportunities for space activation within Walpole Townsite;*
- 2. Liaison with other relevant community groups and / or service agencies over potential art or cultural projects;*
- 3. Assisting the Shire of Manjimup officers in drafting design guidelines to guide future developments with the Town Centre Precincts;*
- 4. Assist in co-ordinating community participation;*
- 5. Communicate and inform the local community about activities of the Committee; and*
- 6. Provide advice on Tourism and Marketing campaigns relating to the Walpole Community.*

The latest meeting of the Walpole Town Activation Advisory Committee was held on 26 September 2023. A copy of the unconfirmed minutes relating to that meeting are shown attached.

ATTACHMENT: 9.16.3 (1)

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

As reflected within Attachment: 9.16.3(1), whilst many matters were considered and discussed by the committee, no formal resolutions were passed. Accordingly, there are no formal recommendations for Council to consider.

STATUTORY ENVIRONMENT:

The committee is an Advisory Committee formed by Council in accordance with the *Local Government Act 1995*. Committee members are bound by the Terms of Reference and the Shire's Standing Orders.

POLICY / STRATEGIC IMPLICATIONS:

The Walpole Town Activation Advisory Committee provides the Shire of Manjimup a way of obtaining local input into planning for improvement works and space activation within the Walpole Townsite.

The committee has helped to advise Council pertaining to identified budgeted projects within the Walpole Town centre. It has also helped to improve the town through improvements to accessibility and making the town more attractive and inviting whilst managing its unique character, consistent with the Community Goal 4.4 as identified in the Shire's Strategic Community Plan 2021 – 2031.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

Nil.

Environmental: The Committee assists the Shire in identifying future improvement works and opportunities for space activation within the town.

Economic: By addressing opportunities for space activation within the town centre, operation of the committee ensures opportunities for economic development are maximised and that local businesses will benefit.

Social: In accordance with the terms of reference, a key element of the committee's role is to ensure community involvement in future development programs.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council receive and note the unconfirmed Minutes of the Walpole Town Activation Advisory Committee being held on 26 September 2023 as shown at Attachment 9.16.3 (1).

COUNCIL RESOLUTION:

MOVED: Eiby, W

SECONDED: De Campo, W

29320

That Council receive and note the unconfirmed Minutes of the Walpole Town Activation Advisory Committee being held on 26 September 2023 as shown at Attachment 9.16.3 (1).

ADOPTED BY EN BLOC RESOLUTION: 9/0

Deputy Shire President Miolin and the Acting Director Development and Regulation left the Chamber at 6.20pm with the permission of Presiding Member.

ATTACHMENT

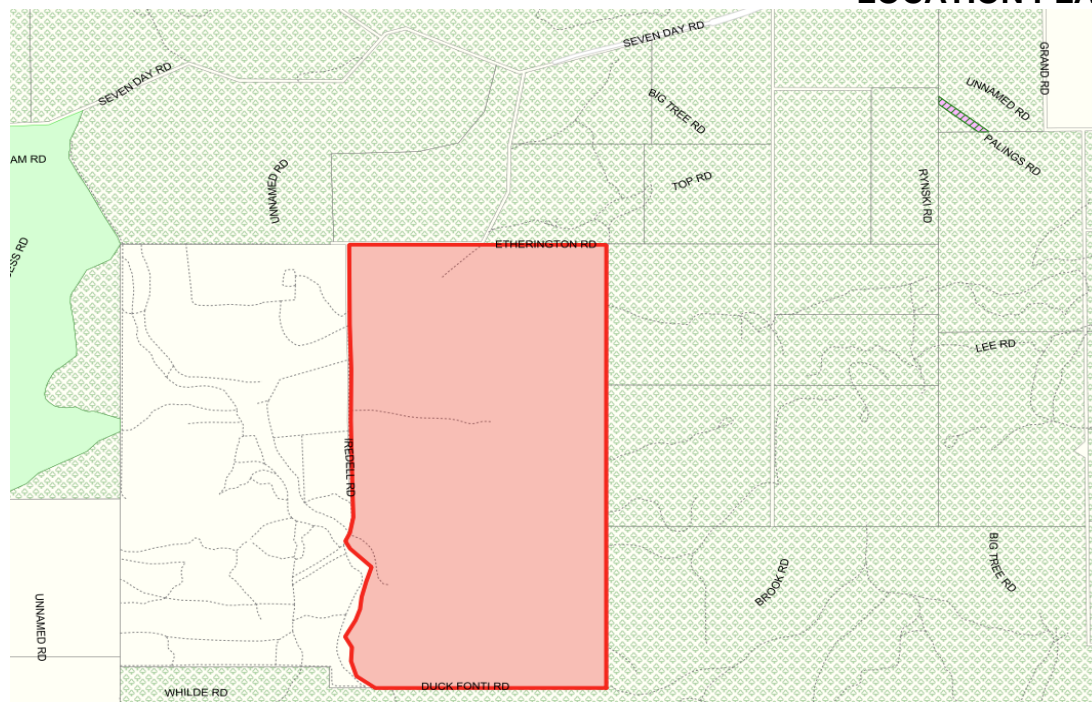
9.5.1 Application for Retrospective Approval for Rural Workers Accommodation, Grouped Dwellings, Industry - Rural, Agriculture Extensive and Proposed Additional Rural Workers Accommodation at Lot 100 (122) Etherington Road, Beedelup

PROPONENT OWNER	Harley Dykstra Pty Ltd Mecca Holdings Pty Ltd & Red Moon Property Holdings Pty Ltd
LOCATION / ADDRESS:	Lot 100 (122) Etherington Road, Beedelup
WARD:	Rural
ZONE:	Priority Agriculture
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	DA23/76 P58097
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Jocelyn Baister
DATE OF REPORT:	2 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Lot 100 Etherington Road, Beedelup is 430.5 hectares in area and is located to the south of Seven Day Road. The property is surrounded by State Forest to the north, south and east. A similar sized parcel of land is located to the west. Development of the property is associated with the establishment of an orchard. A location plan is provided below.

LOCATION PLAN



In 2021 an audit of aerial imagery identified that a substantial level of development/building work had occurred on the property despite no approvals being sought. Shire Officers initially contacted the landowner in June 2021 with correspondence identifying building works that may have been undertaken at the property without the necessary approvals being obtained.

A site meeting was subsequently held with a representative from the company, where following an explanation of the severity of the suspected offences under Planning, Building and Health legislation, a verbal apology was offered. The landowner has since engaged Tecon Building Surveyors and Harley Dykstra to assist in the legitimising of the unauthorised works.

As a result the applicant is now seeking retrospective planning approval for:

- Expansion of land used for Agriculture – Intensive;
- (T, S, R) intensification of Industry – Rural to legitimise the additional floor area;
- (D) a 5,142m² machinery shed;
- (P) Office building including tearoom and ablutions;
- (O) 58.85m² Chemical store shed;
- (N) 336.34m² Storage shed;
- (F) 709.698m² Workshop including office, ablutions and laundry (previously machinery shed);
- (A, J) two dwellings for permanent staff accommodation;
- (J1) a four bed transportable with ensuites (donga); and
- (E) an increase from Rural Workers Accommodation housing 12 to 36 seasonal workers.

The applicant is also seeking approval for additional Rural Workers Accommodation to house an extra 14 seasonal workers to a total of 50, which have been placed on site and plumbed in without any approval. A copy of the proposal and plans are attached.

ATTACHMENT: 9.5.1 (1)

This report was initially prepared for the Ordinary Council meeting of the 7 September 2023, however was withdrawn from the Agenda at the request of the landowner. Subsequently, Shire Officers met with the applicant, landowner and the landowner's legal representative on site to discuss the proposal. As a result of the onsite meeting, the report has been slightly altered to reflect flexibility around the permanent dwellings on the property.

PUBLIC CONSULTATION UNDERTAKEN:

In July 2023, the application was advertised in accordance with Clause 9.6 of the Local Planning Scheme No 4 (the Scheme) for a 42-day period. A notice was placed on the Shire's website, in the local paper, a sign was placed on site and advice of the application was forwarded to the Ward Councillors. The application was also forwarded to the Department of Water and Environmental Regulation (DWER), the Department of Biodiversity Conservation and Attractions (DBCA) and the Department of Fire and Emergency Services (DFES).

Submissions closed on the 9 August 2023. DBCA had no objections to the proposal however provided advice related to ongoing fire management practices. DWER advised that the proposal has the potential for impact on the environment and water resources.

The proposal was referred to DFES as Shire Officers had a differing opinion to the applicant with regards to the vulnerable land use association and the seasonal workers accommodation. DFES advised that modification to the Bushfire Management Plan (BMP) was required and that the workers brought to the site may not be familiar with the location and therefore may be less able to respond during an emergency and Council should consider this when determining if the users of the property are “Vulnerable”.

Copies of the submissions are provided attached whilst their content is addressed in the Comment section below.

ATTACHMENT: 9.5.1 (2)

COMMENT (Includes Options):

The subject property is zoned Priority Agriculture by the Scheme. In addition, the land is located within Special Control Area 1 – Lefroy Brook Catchment Area. The purpose of the zone as outlined in Clause 4.2 of the Scheme is to provide for intensive agricultural and horticultural production where water resources exist, while the objectives encourage value adding opportunities to agricultural products at the source.

In accordance with clause 6.1.5 of the Scheme all development is prohibited without prior approval of the local government, including land use and any development listed in clause 8.4 Permitted Development.

Non-compliance

A review of Shire records indicates that the approvals were previously obtained for six permanent dwellings (for staff) and one short stay accommodation building and an Industry–Rural (Cool Store) of 4,620m². Plans submitted in 1992 and 1995 indicated existing ‘single men’s quarters/pickers accommodation’.

Through examination of aerial photography and inspection of the site, Shire Officers have identified the following development has occurred without the required prior approval(s):

- a dwelling and shed located 25m to the south of Etherington Road, which do not have any record of approval from planning, building or health legislations;
- an additional transportable dwelling and four room donga within the staff accommodation cluster which do not have any approvals from planning, building and health;
- a 5,142m² building being used for a Machinery Workshop and Store inclusive of office, tearoom and separate ablutions that do not have planning, building or health approvals;
- an unknown number of rural workers accommodation that do not have planning, building or health approvals (including a patio structure over the buildings that does not have building approval);

- three permanent dwellings in the cluster that have received planning approval do not have building permits;
- a main office that does not have planning, building or health approvals; and
- an Industry-Rural (Cool Store shed) that has been expanded to approximately 6,000m².

It should be noted that the seven (7) previously authorised dwellings have no planning compliance issues.

Matters to be Considered

In determining an application for planning approval, Clause 10.2 of the Scheme requires that various matters are taken into account, including but not limited to:

- “(i) the aims and provisions of the Scheme and any other relevant Local Planning Scheme operating within the Scheme area”; and*
- “(x) the compatibility of a use or development with its setting including the potential impact on the use and enjoyment of adjacent and nearby land and taking into consideration any Special Control Area.”*

To guide Council in its determination of the application the following comments are offered:

Land Use Classifications

The expansion of the Agriculture – Intensive (orchards) including the main office, workshop is consistent with the land use definition being – *“premises used for trade or commercial purposes, including outbuildings and earthworks, association with the following:*

- a) The production of grapes, vegetable, flowers, exotic or native plants, or fruit or nuts;*
- b) The establishment and operation of plant or fruit nurseries, and*
- c) The development of land for irrigation fodder production or irrigation pasture (including turf farms).”*

The expansion to the existing Cool Store facility and construction of the structure used for Machinery Workshop are consistent with the land use classification of ‘Industry – Rural’, being either *“an industry handling, treating, processing or packing rural products; or a workshop servicing plant or equipment used for rural purposes”*.

The two unauthorised dwellings for permanent staff and their respective families and a four room donga, in addition to the six dwellings that have already approval, are consistent with the definition for Dwelling – Grouped being – *“a dwelling (a building or portion of a building being used, adapted or designed or intended to be used for the purpose of human habitation on a permanent basis) that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above or below another.”*

The addition of accommodation to house seasonal workers is consistent with the definition for Rural Workers Accommodation meaning – *“a building located on a rural landholding which is used for short stay, sleeping quarters for seasonal, temporary or migratory workers working on that landholding and is to be incidental to the agricultural use of that land.”*

Land Use Permissibility

The table below summarises the land use permissibility of each of the uses mentioned above.

Agriculture – Intensive (orchards)	P
Industry – Rural	A
Dwelling – Grouped	X
Rural Workers Accommodation	A

Agriculture – Intensive (orchards) is a ‘P’ use with the Priority Agriculture Zone. That is it is a use that *“is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.”*

An Industry – Rural and Rural Workers Accommodation are both an ‘A’ use within the Priority Agricultural Zone. That is, they are uses that are *“not permitted unless the local government has exercised its discretion by granting approval after giving special notice in accordance with Clause 9.6.”* As detailed in the public consultation section above, advertising of the application has been completed.

A Dwelling – Grouped is an ‘X’ use within the Priority Agriculture Zone meaning it is a use that is not permitted by the Scheme. As mentioned in the background section, the Shire has on record seven (7) dwellings on the property prior to the introduction of the current Scheme provisions.

There are currently eight (8) permanent dwellings on the property occupied by staff and their families, one other was approved to change to short stay accommodation and is used by the owner on occasion. Of the eight dwellings there are two that have no approvals at all. For the remainder of the report the assessment will focus on the two unauthorised dwellings labelled A and J on the Site Plan.

Consistency with Zoning

The proposed expansion to the Industry – Rural and the Agriculture – Intensive is considered to meet the objectives of the zone as it allows for the intensive horticultural activities where water resources exist and provides for the storage of produce within close proximity to the growing of produce, reducing the negative impacts of transport

Development Requirements of the Scheme

In accordance with clause 5.34.2.4(a) of the Scheme, with the exception of a single dwelling, where the proposed development is for non-agricultural purposes, the local government shall require a 100 metre setback from existing agricultural land uses on adjoining land. The dwellings on the property

cannot achieve the required 100 metre separation to agricultural activities, with the closest being at 25 metres to the orchard operations.

Notwithstanding the 100m requirement, in accordance with clause 5.34.2.4(b) a lesser setback may be approved *“where the applicant can demonstrate to the satisfaction of the local government that land use conflicts may be ameliorated by appropriate management design or buffer planting.”* Management of this is within the control of the landowner and appropriate measures could be put in place to ameliorate land use conflicts.

During conversations with the landowner onsite, Shire Officer's were advised that as the workers were not residing in the dwellings during the day, the impacts from the agricultural activities were not an issue. Shire Officers consider this statement to not take into account other members of their family who may not be employed at the property, when the inhabitants might be unfit for work or on leave from work and staying home. Unlike other industries which have accommodation onsite, these dwellings are permanent accommodation for the staff, without another home to go to when they are not working.

Given the subject premises are already in existence, should Council approve the additional dwellings, it is recommended that the landowner be required to ensure the tenants are made aware that the dwellings are located within a priority agricultural area and may therefore be subject to impacts associated with rural activities.

Additional Dwellings (Grouped)

Clause 5.34.2.6 enables the local government to approve up to two dwellings, including any approved caretakers dwelling where the need for that accommodation is justified. However, clause 5.34.2.6 (iv) states regardless of other provisions of the Scheme, the local government *“will not support 3 or more dwellings on any title/lot regardless of the dwelling type (dwelling, ancillary accommodation, caretakers dwelling, rural workers accommodation)”*

The nine (9) dwellings plus Rural Workers Accommodation far exceeds the number considered acceptable under the Scheme provisions. Seven (7) of the dwellings are existing and part of previous approvals.

Shire Officers attended the property and gained a greater understanding of the use of the permanent dwellings, the onsite manager advised that not all the dwellings were occupied. Therefore, should the two unauthorised dwellings be refused, no immediate impact to the operations of the business is anticipated.

It should be noted that the two dwellings which have no approvals may only be approved through a relaxation of Scheme standards/requirements.

Rural Workers Accommodation

Clause 5.34.2.7 of the Scheme states that where a property has been developed for agricultural purposes, 'Rural Worker's Accommodation' is permitted provided it can be demonstrated to the satisfaction of the local

government that a demand exists. As detailed in the background section above, the subject land is developed with a substantial orchard and associated dams. The property contains at least four different types of produce, extending the harvesting period from October to May each year. As the harvesting hours are Monday to Friday from 7am to 4pm and the property is in a somewhat isolated location, the landowner has the preference to provide accommodation onsite to the seasonal workforce. Additional permanent locally based casual staff are used during harvest.

The provisions of the Scheme currently restrict the occupation of 'Rural Workers Accommodation' to short stay, meaning that no person may occupy the accommodation for a period of more than 3 months within any 12-month period. In order to remove the 3 month limitation Council initiated Amendment No. 29 in December 2022 to reflect farm crop diversification and longer harvesting/growing seasons. The amendment has recently been referred to the Environmental Protection Authority and the Department of Planning Lands and Heritage, however as it is considered a Basic Amendment it will not require advertising for public comment.

Parking Requirements

Although Industry-Rural is not listed as a use in Table 2: Car Parking Requirements, it is reasonable to assume that the parking requirements would be similar to Industry – General being 1 car bay per 100m². With the addition of 1,380m² of floor space at the Cool Store, the additional parking requirements would be 14 bays.

In accordance with clause 5.17.9 of the Scheme, except as otherwise approved by Council, all parking bays and the associated accessways are required to be constructed with a sealed drained surface comprising bitumen seal, concrete, brick paving or pea-gravel seal on a compacted gravel base with satisfactory:

- (i) Drainage to a sump and connected to the local governments main drain system;
- (ii) Surface lines being marked out to show the manner in which the parking is to be used; and
- (iii) Landscaping where large parking areas are involved to effectively screen the paved area from view from the street and within the parking area to provide shade.

In this case, access to the main development is provided by a bitumen seal and some parking is available on concrete aprons associated with the main Cool Store, the balance of the parking and associated accessways are constructed of pea gravel. Although formalisation of the parking and line marking is recommended in accordance with the Scheme, given the size of the property, the fact the majority of the land consists of orchard and there is no drainage systems in the area, formal drainage systems and landscaping are not recommended.

The Industry – Rural Machinery Workshop, normally attract a requirement for 50 car parking bays, however it was evident on site that parking is occurring ad-hoc and within the building itself.

Despite the demands for parking bays calculated above, it is Shire Officer's opinion that the only bays that require formalisation is those associated with the site office, labelled P on the site plan. All other parking demands at the property is generated by employees and managed according to the use of the buildings.

Relaxation of Standards

In accordance with Clause 5.5 of the Scheme, the local government may approve an application for planning approval, despite the application not complying with the standard or requirement prescribed under the Scheme. However, prior to relaxing a standard, the local government must be satisfied that:

- "i) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
- ii) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality."*

In this case, the following elements of the application may only be approved through a relaxation of standard: with regards to

- the setback to agricultural activities;
- the number of dwellings permitted; and
- the increased time for occupancy within the Rural Workers Accommodation.

The intent of these standards is to limit the potential for agricultural activities to impact on the health and amenity of residents, whom which might normally not be aware of or anticipate the impacts.

Housing Considerations

As detailed within section entitled Additional Dwellings above, clause 5.34.2.6 (iv) of the Scheme states that regardless of other Scheme provisions, the local government *"will not support 3 or more dwellings on any title/lot regardless of the dwelling type."*

In support of the retrospective application for an additional two dwellings the applicant has advised as follows:

"The orchard employs permanent workers, with these staff offered onsite accommodation due to the lack of housing available nearby and to incentivise the move to a rural area. Specifically, dwelling A houses the orchard manager with J & L housing general workers.

Without these housing options onsite, it would be significantly more difficult to find employees. As such, these dwellings are necessary in order to effectively carry out the orchard operations."

Limiting the number of dwellings on a Priority Agriculture zoned property is consistent with the need to avoid land use conflict or the introduction of uses that may restrict agricultural activities undertaken on either the property on which the development is located, or adjacent land. As mentioned previously

none of the staff accommodation dwellings achieve a 100m separation distance to the agricultural activities and approval to additional dwellings may put those residents at risk of impact from noise, odour, dust or spray drift.

Despite the existing approved permanent staff dwellings on the property, an application for nine dwellings on a property zoned Priority Agriculture is not supported by Shire Officers due to the legal precedent that this would create under the current Scheme. In order to provide flexibility to the landowner, as long as the development achieves compliance with the development standards of the Scheme, it is recommended that approval be granted to no more than seven (7) permanent dwellings. Two dwellings are recommended not be included in the retrospective approval and a condition relating to the removal of these buildings from the property within 90 days is included. Unless an application is received with 90 days for the relocation of the four-room donga the refusal and removal of this building from the property is also recommended.

Shire Officers are fully supportive of the increase to the Rural Workers Accommodation, subject to the compliance with other legislation and bushfire requirements, given the temporary habitation of the occupiers and the fact the occupiers would be employees only.

Bushfire Prone Area

The property is located within a 'bushfire prone' area as declared by the Commissioner for Fire and Emergency Services. The applicant has had a Bushfire Attack Level (BAL) assessment undertaken by an accredited Assessor which has identified that there are multiple buildings located within a BAL Flame Zone (FZ). The BAL assessor has identified that all buildings can achieve a BAL 29 with the implementation of an appropriate Asset Protection Zone (APZ). The APZ will be achieved with a combination of a managed/removed vegetation within an area offset from the habitable building and hazard reduction in accordance with the Shire of Manjimup's Annual Fire Break and Hazard Reduction Notice.

Where the removal or modification to onsite native vegetation is required, detailed flora and fauna assessments and applications for clearing permits will be required. It is recommended that the Bushfire Management Plan (BMP) implementation schedule be conditioned to be adhered to as part of any conditions of approval.

State Government Agency Submissions

As mentioned previously submissions were received from DBCA, DWER and DFES. Comments from DFES indicate that it has concerns regarding the emergency evacuation plan and the emergency access to the property. It is recommended that the BMP be updated in response to the DFES comments, to the satisfaction of the Shire.

DWER Submission

DWER has advised that it has identified that the proposal has the potential for impact on the environment and water resources in respect to:

- the effluent disposal, potential nutrient and pathogen impacts, separation to groundwater;
- machinery wash down and chemical storage; and
- clearing of native vegetation.

Shire Officers have reviewed the advice from DWER with regards to the Public Drinking Water Source Area and native vegetation clearing and have included in the Officer Recommendation, conditions and advice regarding:

- Aerobic Treatment Units for effluent disposal and upgrade of existing systems with 100m separation to waterways and 2m separation to ground water;
- Bunding shall be installed to ensure stormwater from the machinery washdown area does not enter the water ways or the dam and a vegetated buffer from the washdown area to sensitive water resources is established; and
- An emergency response plan is to be prepared to handle potential contaminant spills and high-risk activities such as mechanical repairs be undertaken on an impervious hardstand surface.

Following site inspections, Shire Officers are of the opinion that the existing effluent disposal systems on the property do not comply with the above requirement and new/replacement effluent disposal system(s) are required. An applicable advice note has been included in the recommendation in this regard.

It is also recommended that the applicant/operator be advised of the requirements for permits and licenses under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* and the *Country Areas Water Supply Act 1947*.

Health and Building Requirements

Majority of the development that has occurred without planning approval has also occurred without approvals required pursuant to the current *Building Act 2011*, former *Local Government (Miscellaneous Provisions) Act 1960*, the *Health (Miscellaneous Provisions) Act 2016* and former *Health Act 1911*. A summary of the records on file that the Shire has is provided attached.

ATTACHMENT: 9.5.1(3)

The following examples are provided to Council in order to highlight the severity of the non-compliance with applicable legislation:

- a) It is suspected that there are up to 15 or more on-site effluent disposal systems on-site. According to Council records there are three on-site effluent disposal (septic systems) approved on-site, although it would be plausible that Shire records may not extend through the periods when the systems were installed;
- b) numerous dwellings, sheds, offices, 5000m²+ machinery shed and the extension to the Cool Store building do not have either a building licence or permit issued nor have there been any occupancy permits granted for the use of any Class 2-9 buildings. These could be considered multiple offences under the *Building Act 2011*.

The proposed development will need to meet the health and building requirements to be considered fully compliant. An advice note in regard to these aspects will be included on any approval granted by Council.

Retrospective Application

A decision to grant retrospective approval does not prevent the local government from taking action for a breach of the Scheme requirement for prior approval to be granted.

Legal Action

In accordance with the provisions of the *Planning and Development Act 2005*, a modified penalty may be issued 'in lieu' of a formal prosecution for a breach of the Scheme. In this case, given the significant level of development undertaken without prior approval, the use of a modified penalty is not considered appropriate, and it is believed that legal action is a more appropriate deterrent for this extensive breach of the Scheme.

In addition to the provisions noted above the *Building Act 2011* also contains provisions which relate to the undertaking of building work without a building permit. The penalties associated with offences under this act can include imprisonment if found guilty of a third offence.

Shire Officers will be in contact with the Department of Health regarding the unauthorised septic systems at the property and working with that agency in any action it chooses to take.

Given the severity of, and the number of offences that have been committed in terms of planning, building and health legislation a further report will be presented to Council at the next available meeting regarding the potential commencement of legal action.

Conclusion

Significant development has been undertaken without approvals. Although majority of the development is acceptable as being incidental to the ongoing operations of a commercial orchard, the environmental impacts have not been considered and mitigated. Whilst it is recommended that most of the development is retrospectively approved, two of the staff accommodation dwellings and associated four bedroom transportable are recommended for refusal.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005 and the Local Planning Scheme No 4.

As mentioned in the Comment section above, significant offences are believed to have occurred and a further report will be presented to Council with regards to legal action.

POLICY / STRATEGIC IMPLICATIONS:

The expansion to Industry-Rural, Rural Outbuildings and Rural Workers Accommodation will assist the Shire in achieving Goals and Strategies of the Strategic Community Plan 2021-2031 being:

Community Goals

- 2.2 Existing core industries, such as agriculture and timber, are resilient, innovative and sustainable;
- 2.4 Industry and development is not hindered by excessive or complex regulations.

Strategies

- B4. Support sustainable agricultural expansion, value-adding and downstream processing, research and development, culinary and agri-tourism, land protections, and continued support for the Southern Forests Food Council.
- B12. Provide development opportunities and support local small businesses to thrive.
- B5. Collaborate with other stakeholders to develop a transient and seasonal worker strategy to balance their safety, accommodation and employment needs with the needs and aspirations of the residential community.

ORGANISATIONAL RISK MANAGEMENT:

The Shire of Manjimup has been working with the landowner for a number of years in order to legitimise all the unauthorised development across the property. By processing the development application, the Shire is upholding its regulatory function and setting a precedence to deter future unauthorised developments.

FINANCIAL IMPLICATIONS:

The required retrospective application fee has been paid by the applicant.

SUSTAINABILITY:

Environmental: Environmental considerations have been identified as part of the DWER submission.

Economic: The application if approved, will allow the agricultural activity on the lot to operate in a more efficient manner.

Social: Nil.

VOTING REQUIREMENTS:

SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. In accordance with Clause 8.6 and Part 10 of Shire of Manjimup Local Planning Scheme No.4, grants retrospective planning approval for:
 - the extension to Agriculture – Intensive;
 - Industry – Rural (Cool Store);
 - additional (24) Rural Workers accommodation;
 - Workshops;
 - Office; and
 - Machinery Shed

as well as grant approval for additional accommodation for up to 50 Rural Workers in total at Lot 100 (122) Etherington Road, Beedelup (Application TP 84/2023) in accordance with the plans and specifications attached at Attachment 9.5.1 (1) and subject to the following conditions:

- a) The development permitted shall be carried out generally in accordance with the plans and specifications as listed below:

Reference	Document Title	Date Received
22902-B	Planning Report	22 June 2023
22902-01	Existing Site Plan	22 June 2023
A002	Building L – Mario's House	22 June 2023
A002	Building P – Office Plan	22 June 2023
A004	Building P – Office Elevations	22 June 2023
A002	Buildings T, S, R, Q Shed Plan 1	22 June 2023
A003	Buildings T, S, R, Q Shed Plan 2	22 June 2023
A004	Buildings T, S, R, Q Shed Elevations	22 June 2023
A003	Building D – Shed Elevations	22 June 2023
A002	Building D – Shed Plan	22 June 2023
A002	Building E – Workers Accommodation Plan	22 June 2023
A003	Building E – Workers Accommodation Shelter	22 June 2023
A002	Building F - Workshop	22 June 2023
A004	Building F – Workshop Elevations	22 June 2023
A002	Building A – Marks House	22 June 2023
A002	Building J – John's House Plan	22 June 2023

- b) Notwithstanding Condition a) above, no additional permanent dwellings are permitted to be located and used on the property, subject to compliance with development standards and to the satisfaction of the Shire of Manjimup. In this regard within 90 days of this determination two of the dwellings currently located at the property are to be removed;
- c) Unless otherwise approved an adequate supply of potable water through the provision of not less than 1 water tank is to be provided per permanent dwelling which is to have a storage capacity of not less than 135,000 litres located in a position so as to be accessible as a source of water for fire fighting;

- d) An adequate potable water supply based on 159 litres of water per day per person shall be supplied for the consumption by the Rural Workers Accommodation;
- e) Unless otherwise approved by the Shire of Manjimup, this approval is limited to the accommodation of a maximum of 50 persons at any one time, each being rural casual workers employed in rural activities undertaken by the landowner;
- f) A minimum of 1 accessible car bay shall be maintained on site at all times in accordance with the Australian Standard 2890.6-2009, and connected to a continuous path to the main entrance of the Office labelled Building P. The design and signage of the bay(s) and the path(s) are to be in accordance with the Australian Standard 1428.1-2009;
- g) Prior to the issue of any building approvals relating to the now existing development and proposed new facilities, a management plan must be provided detailing the intended treatment of wastewater including storm water. Estimated volumes and details of evaporative dams and drains or other storage for wastewater must be provided and all stormwater retained on the subject property to the satisfaction of the Shire of Manjimup;
- h) All waste materials and by-products of vehicle wash-down areas on the subject property must be contained on site and directed to a suitable waste treatment facility (eg. triple-interceptor) to the satisfaction of the Shire of Manjimup;
- i) An emergency response plan shall be prepared, guided by the Department of Water Environmental Regulation's "Water Quality Protection Note 10 – Contaminant spills - Emergency Response Plan" and implemented for the life of the development associated with the machinery washdown and servicing areas;
- j) The use hereby approved must not create community safety concerns, or otherwise adversely affect the amenity of the subject locality by reason of (or the appearance or emission of) smoke, fumes, noise, vibration, odour, vapour, dust, waste water, waste products or other pollutants to the satisfaction of the Shire of Manjimup;
- k) The applicant must implement all of the recommendations contained in the Bushfire Management Plan prepared by *Bushfire Prone Planning* dated 18 August 2022 and approved by the Shire of Manjimup for the duration of the development;
- l) The Bushfire Management Plan referred to in condition l above, shall be reviewed having regards of comments received from the Department of Fire and Emergency Services, to the satisfaction of the Shire of Manjimup;
- m) The Asset Protection Zone (APZ) must be established within 90 days of this determination and the property thereafter

maintained in accordance with the Bushfire Management Plan as approved by the Shire of Manjimup;

- n) A Section 70A Notification pursuant to the *Transfer of Land Act 1893* (or as amended) must be placed on the titles of all lots, at the full cost of the applicant, alerting landowners to the existence of the approved Bushfire Fire Management Plan and advising landowners of their obligations in respect to the use and ongoing management of the land; and**
- o) Firebreaks and low fuel zones are to be installed and maintained to the satisfaction of the Shire of Manjimup around all boundaries and buildings on the subject property, in accordance with the requirements of the Annual Firebreak and Fuel Hazard Reduction Notice endorsed by Shire of Manjimup.**

Advice to Applicant

- i. This Development approval is NOT considered building approval. Required building approvals must be formally applied for and obtained from the Shire of Manjimup for all unauthorised buildings;**
- ii. The approved development must comply with all relevant provisions of the *Health (Miscellaneous Provisions) Act 2016* and the *Building Act 2011*;**
- iii. With regards to Condition h) to mitigate the risk of chemicals to the Public Drinking Water Source Area:**
 - a. fuel and chemical tanks should be managed in accordance with WQPN 56 – Tanks for fuel and chemical storage near sensitive water resources (Dec 2018), adopting measures such as but not limited to ensuring tank storage to 5000L or less, bunding and storage over impervious hardstand surfaces;**
 - b. handling and use of chemicals and fuels should be in accordance with WQPN no. 65: Toxic and hazardous substances (April 2015), and following Australian Standards as appropriate;**
 - c. high risk activities such as but not limited to mechanical repairs should occur over an impervious hardstand surface, away from waterways, drainage lines and waterbodies, where spills can be fully contained consistent with WQPN 10;**
 - d. control measures such as, but not limited to bunding be in place to ensure stormwater from the machinery washdown area and other potentially contaminating activities do not enter drainage lines, waterways or the dam;**
 - e. where appropriate, wash down areas and associated drainage facilities should have a minimum vegetated separation distance from water bodies as described in our**

WQPN 6 Vegetated buffers to sensitive water resources (Feb 2006); and

- f. stormwater management be consistent with Department of Water and Environmental Regulation's WQPN 68 – Mechanical equipment wash down (September 2013).**
- iv. The proponent is advised to liaise with the Shire of Manjimup Environmental Health Services section to determine the suitability of existing wastewater system based on condition and current/future wastewater volumes;**
- v. Prior to lodging an application for building approvals, certain conditions of planning approval may need to be satisfied in order for an amended Bushfire Attack Level (BAL) assessment to be lodged as part of the building permit. This may involve clearing and other measures to downgrade the BAL rating. Prior to the use or occupation of the development, the Asset Protection Zone (APZ) must be established, and the property thereafter maintained in accordance with the Bushfire Management Plan as approved by the Shire of Manjimup;**
- vi. Where clearing of land is involved in any proposed development, the approval of the Department of Water and Environmental Regulation may be required under the provisions of the *Environmental Protection Act 1986* and the *Country Areas Water Supply Act 1947*; and**
- vii. The Department of Biodiversity Conservation and Attractions advises that the property may be affected by the following activities that occur in the adjoining State Forest Reserve:**
 - a) prescribed burning for the enhancement and conservation of biodiversity values and/or fire hazard reduction purposes;**
 - b) application of herbicides and other chemicals for weed and plant disease control;**
 - c) feral animal control; and**
 - d) road construction and maintenance.**
- 2. Refuse the four room transportable labelled J1 on the site plan shown at attachment 9.5.1 (1) for the following reasons:**
 - a) The building does not provide the minimum facilities to be classified as a dwelling and it is located within a cluster of permanent dwellings; and**
 - b) Support of additional accommodation, which does not form part of the Rural Workers Accommodation precinct could set an undesirable precedence for accommodation in the Priority Agricultural Zone;**
- 3. Note that a Direction Notice requiring the removal of Building J1 and two of the dwellings from the property, will be issued by the Shire of Manjimup.**

COUNCIL RESOLUTION:**MOVED: Darin, J SECONDED: De Campo, W****29321****That Council defer Item 9.5.1 to the ordinary meeting 7 December 2023, pending a workshop with Council on the item.****MOTION LOST 2/7****FOR**Cr J Darin
Cr W DeCampo**AGAINST**Cr D Buegge
Cr W Eiby
Cr S Miolin
Cr P Omodei
Cr M Ventris
Cr J Willcox
Cr C Winfield**ALTERNATIVE MOTION****MOVED: Omodei, P SECONDED: Miolin, S****That Council defer this Item to the Ordinary Meeting 16 November 2023.****MOTION CARRIED 5/3****FOR**Cr D Buegge
Cr J Darin
Cr W DeCampo
Cr P Omodei
Cr J Willcox**AGAINST**Cr W Eiby
Cr M Ventris
Cr C Winfield

SUSPENSION OF STANDING ORDERS:

MOVED: Eiby, W **SECONDED:** Darin, J

29322

That Council suspend Standing Orders.

CARRIED: 8/0

For: Cr D Buegge, Cr J Darin, Cr W De Campo, Cr W Eiby, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

Standing Orders were suspended at 6.27pm.

RESUMPTION OF STANDING ORDERS:

MOVED: DeCampo, W **SECONDED:** Darin, J

29323

That Council resume Standing Orders.

CARRIED: 8/0

For: Cr D Buegge, Cr J Darin, Cr W De Campo, Cr W Eiby, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

Standing Orders were resumed at 6.28pm.

ATTACHMENT

9.5.2 Request for Nomination of Development Assessment Panel Representatives

PROPONENT	Department of Planning, Lands and Heritage
OWNER	N/A
LOCATION / ADDRESS:	Whole of Shire
WARD:	N/A
ZONE:	N/A
DIRECTORATE:	Development & Regulation
FILE REFERENCE:	F160464
LEGISLATION:	<i>Planning and Development (Development Assessment Panels) Regulations 2011</i>
AUTHOR:	Brian Robinson
DATE OF REPORT:	2 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Development Assessment Panels (DAP's) were established in Western Australia following the introduction of the *Planning and Development (Development Assessment Panel) Regulations 2011*. The panels, which comprise two (2) local government members and three (3) specialist members, were established with the aim of ensuring that significant planning proposals are determined in a consistent manner, based on technical advice.

DAP matters within the Shire of Manjimup are determined by the Regional Joint Development Assessment Panel (Regional JDAP).

At its Ordinary Meeting held on 21 October 2021, Council resolved to nominate the following elected members as representatives on the Regional JDAP, with terms expiring on 26 January 2024:

- a) Cr Omodei and Cr Taylor as local members to the South West Joint Development Assessment Panel; and*
- b) Cr Eiby and Cr Lawrence as first and second alternates respectively for those Councillors nominated in Point No 1 above.*

It should be noted that the State Government has subsequently modified the DAP system and abolished the South West JDAP. In its place a Regional JDAP was established which presides over all local authorities outside of the Perth Metropolitan Area, including the Shire of Manjimup.

With Local Government Elections scheduled for 21 October 2023, the Director General has forwarded correspondence to all local governments requesting nominations for the upcoming term expiring on 26 February 2026. A copy of the correspondence received is shown attached.

ATTACHMENT: 9.5.2(1)

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

Larger more complex land use/development proposals, whether rural or urban based, are often controversial within a community. This can lead to applications being determined on a political basis with local opposition becoming a primary factor in the decision-making process.

As outlined in the background section of this agenda item, the purpose of DAP's is to ensure that these larger proposals are determined in a consistent manner, based on technical advice. In accordance with Part 2 – Clause 5 of the Regulations, applications seeking approval to a development (outside of the City of Perth), having a value of more than \$10 million must be referred to and determined by a DAP.

Notwithstanding the above, in accordance with Part 2 – Clause 6 of the Regulations, an applicant for a development which exceeds \$2 million may elect to have any application for development determined through the DAP

process. A determination of an application by a DAP committee qualifies as a determination made under Local Planning Scheme No 4.

Local Government Members on a DAP are provided by the Local Authority in which the application is situated. Appointed Councillors will be required to undertake DAP training before they may participate in the DAP process.

In terms of meeting frequency, DAP meetings are held on an 'as required' basis. No applications were received requiring the convening of a DAP during the previous term.

STATUTORY ENVIRONMENT:

The statutory basis for Development Assessment Panels (DAP's) is provided by Part 11A of the *Planning & Development Act 2005* (the Act). Whilst the provisions of the Act describe the establishment and function of DAP's, clause 171D of the Act permits the Governor to make regulations prescribing the constitution, procedure and conduct of DAP's.

As prescribed by the DAP Regulations, only elected local government Councillors may sit as either local members or alternates. In addition to the two nominated DAP representatives, alternates are required. Given this should a nominated Councillor not continue as an Elected Member after an election, or resign mid-term, their DAP membership will cease and transfer to one of the alternate local members.

The DAP Regulations outline that all DAP member nominations are ultimately considered by and determined by the Hon Minister for Planning.

POLICY / STRATEGIC IMPLICATIONS:

Inclusion of two elected members as Local Representatives on the Development Assessment Panel ensures that local comment and/or considerations are taken into account when determining significant applications for development approval.

ORGANISATIONAL RISK MANAGEMENT:

Should no representatives from the Shire be appointed to the Development Assessment Panel, there is a risk that members from another local authority will sit on the DAP and the Shire will not be adequately represented during any associated DAP process.

FINANCIAL IMPLICATIONS:

Any costs associated with the DAP Councillor training that are to be borne by Council (i.e. accommodation) will be wholly contained within the adopted annual budget.

In accordance with Schedule 2 of the regulations, the following fees are payable to DAP members:

Member	Meeting to Determine Application	Meeting to amend or cancel decision	Attending State Administrative Tribunal
Presiding Member	\$500	\$100	\$500
Other Members	\$400	\$50	\$400

In addition to the above, an amount of \$400 is payable to all members for training.

SUSTAINABILITY:

Environmental: Nil.

Economic: Shire representatives must undergo appropriate training as soon as possible to ensure that the assessment of an application by the Joint Development Assessment Panel can be undertaken without delay.

Social: Participation in Development Assessment Panels ensures that the views of elected members from the Shire are considered when significant development proposals are to be determined through the DAP process.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

- 1. In accordance with Regulation 28 of the Planning and Development (Development Assessment Panels) Regulations 2011 make the following nominations for the term 27 January 2024 to 26 January 2026:**
 - a. Cr _____ and Cr _____ as local members to the Regional Development Assessment Panel; and**
 - b. Cr _____ and Cr _____ as first and second alternates respectively for those Councillors nominated in Point No 1 (a) above;**
- 2. Direct the elected members nominated in Point 1 above to undertake Development Assessment Panel Training as required by the *Planning and Development (Development Assessment Panels) Regulations 2011*; and**
- 3. Advise the Department of Planning Lands and Heritage of Council's resolution accordingly.**

COUNCIL RESOLUTION:**MOVED: De Campo, W SECONDED: Eiby, W****29324****That Council:**

1. In accordance with Regulation 28 of the Planning and Development (Development Assessment Panels) Regulations 2011 make the following nominations for the term 27 January 2024 to 26 January 2026:
 - a. Cr Wendy Eiby and Cr Jennifer Willcox as local members to the Regional Development Assessment Panel; and
 - b. Cr Cliff Winfield and Cr Donelle Buegge as first and second alternates respectively for those Councillors nominated in Point No 1 (a) above;
2. Direct the elected members nominated in Point 1 above to undertake Development Assessment Panel Training as required by the *Planning and Development (Development Assessment Panels) Regulations 2011*; and
3. Advise the Department of Planning Lands and Heritage of Council's resolution accordingly.

CARRIED: 8/0

For: Cr D Buegge, Cr J Darin, Cr W De Campo, Cr W Eiby, Cr P Omodei, Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

ATTACHMENT**9.5.4 Proposed Variation to Provisions of Local Planning Scheme No. 4 to Keep a Cat at Lot 29 (90) Jacksonii Avenue, Walpole**

PROPONENT	Mr G J Potter
OWNER	Mr G J & Mrs D J Potter
LOCATION / ADDRESS:	Lot 29 (90) Jacksonii Avenue, Walpole
WARD:	Rural
ZONE:	Rural Residential
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	DA23/93 P51902
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Jocelyn Baister
DATE OF REPORT:	5 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Council is in receipt of an application to vary the provisions of Local Planning Scheme No. 4 (the Scheme) to enable the applicant to keep a cat in a cat prohibited area. The subject property, located at Lot 29 (90) Jacksonii Avenue, Walpole, is 2.2ha and consists of a Dwelling and Outbuilding. The land owners have owned and resided at the property since 2020. A location plan is provided below.

LOCATION PLAN

The applicant is seeking approval to keep a cat at the property. The cat had previously been registered to the property under the *Cat Act 2011* through an administrative error, however after being found to be wandering off the property the administrative error was identified. Subsequently the landowner's were ordered to remove the cat and were prosecuted under the *Planning and*

Development Act 2015 and the *Cat Act 2011*. The cat has been transferred out of the Shire and the landowners are seeking permission to allow the cat to return. Details of the application are summarised below:

- The cat, when or if permitted to return will live at the above mentioned residence inside the house. The downstairs bedrooms and laundry will not be opened for said cat;
- The applicant will be allocating upstairs sitting area for food, water and biscuits always and a wet meal once a day;
- A litter tray will be in an alfresco area, which there is two, one upstairs, one downstairs;
- Alfresco area provides a semi outdoors area which the breeze blows through shade cloth blinds;
- The applicant's house is escape proof for the cat and will be managed with the practice of entry and exit via the laundry. The laundry has an internal door and a door to the outside. Similar to that of sally port or an airlock system. The front door of the house is key locked and won't be used in the event of guests and visitors, there are a few combinations of isolating areas inside the home without risk of a visitor compromising the management plan; and
- Applicants are always home with the cat.

Information submitted with the application is provided attached.

ATTACHMENT: 9.5.4 (1)

Due to the objections received during consultation, Council is being requested to consider and determine the application.

PUBLIC CONSULTATION UNDERTAKEN:

The application was referred to adjoining neighbours for a period of 21 days. The proposal was also referred to the Department of Biodiversity Conservation and Attractions (DBCA) for a period of 42 days. Six objections and comments were received from adjoining neighbours and the wider Walpole area during the consultation period. A Schedule of submissions and copies of the individual submissions are provided attached.

ATTACHMENT: 9.5.4 (2)

COMMENT (Includes Options):

The Scheme designates the subject property as zoned Rural Residential Area 8 (RR8). Schedule 2 of the Scheme sets special provisions as they relate to RR8. The provision as it relates to this application is as follows:

1. *In order to protect the natural environment and the integrity of the adjacent Walpole – Nornalup National Park the following animals will not be kept:*
 - a. *Cats*
 - b. *Pigs*
 - c. *Goats.*

It is Shire Officer's understanding that the provision was included by the State agencies due to the environmentally sensitive area dedication and to ensure the protection of native fauna.

The Scheme amendment to Town Planning Scheme No. 2 was processed in the mid-1990's when it was more common for cats to roam freely and have a significant impact on the local wildlife. With the introduction of outdoor cat enclosures, cat owners can have the certainty that their cat not only will be protected from predators, but the local wildlife will also be protected.

Relaxation of Standards

In accordance with clause 5.5 of the Scheme, the local government may approve an application for planning approval, despite the application not complying with the standard or requirement prescribed under the Scheme. However, prior to relaxing a standard, the local government must be satisfied that:

- "i) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
- ii) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality."*

In determining an application for planning approval, Clause 10.2 of the Scheme requires that various matters are taken into account, including but not limited to:

- (i) the aims and provisions of the Scheme and any other relevant Local Planning Scheme operating within the Scheme area;*
- (x) the compatibility of a use or development with its setting including the potential impact on the use and enjoyment of adjacent and nearby land and taking into consideration any Special Control Area;*
- (xiii) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment; and*
- (xv) the preservation of the amenity of the locality.*

To assist Council in determining the application, the following comments are offered in respect of the matters to be considered:

Preservation of Environment and Amenity

The native flora and fauna within the Walpole area are important aspects which add to the amenity. It is the opinion of Shire Officers that receiving an application to keep cats does not diminish the importance of the protection of flora and fauna. By keeping cats indoors or within outdoor enclosures, the risk of cats roaming and harming the native fauna is reduced, if not mitigated. DBCA did not object to the proposal.

Submissions Received

Six submissions were received from members of the public, two submissions were received from outside of the consultation area and two were from the same neighbouring property. All submissions either objected to the proposal or were not in support of the variation to allow cats in areas prohibited under the local law.

In response to the submissions received, it is recommended that conditions be included in any approval granted by Council ensuring that the cat is

managed in a way as to only be kept indoors or within an outdoor enclosure. Should the land owner fail to comply with the conditions of approval, then the approval can be revoked and the land owners penalised.

Shire of Manjimup Cat Local Law 2021 (Cat Local Law)

When preparing the Cat Local Law, Shire Rangers referred to the Scheme provisions which restrict cats within certain areas, either in Schedule 2 for Rural Residential Zoned areas or Schedule 8 for Boronia Ridge Planning Precinct and defined Cat Prohibited Areas.

Whilst there is flexibility in the Scheme to vary requirements, there is no ability for a landowner or occupier to obtain a permit under the Cat Local Law to keep a cat within Prohibited Areas.

Clause 1.9 of the Scheme provides guidance to the local government when a provision of the Scheme is inconsistent with a local law, the provision of the Scheme prevails. Therefore, the ability of the Shire to vary requirements of the Scheme through clause 5.5 means that a planning approval for that variation would prevail over the requirements of the local law.

Ongoing Future Approach

It is assumed there was gap in time between the Cat Local Law coming into effect and the requirement to register cat ownership with the Shire. As such there were approximately five (5) cats registered on three properties in areas now defined as Cat Prohibited Areas.

Shire Officers are aware and are in receipt of similar applications for two other properties where cats are being kept, that are within Prohibited Areas.

To ensure that no more cats are approved within prohibited areas, Shire Officers are recommending that all cats being registered after the introduction of the Cat Local Law, must not be registered to a property listed within a Cat Prohibited Area, and that no further variations to the Scheme are supported.

The third and final application for approval to keep a cat in a prohibited area is presented to Council at item 9.5.10.

Conclusion

It is acknowledged that there was a period of time when landowners had been allowed to register cats in areas which were later defined as Cat Prohibited Areas. To provide a fair and reasonable resolution to the conflict, an application for planning approval to vary the requirements of the Scheme is supported and approval is recommended.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005, Local Planning Scheme No. 4 and Shire of Manjimup Cat Local Law 2021.

POLICY / STRATEGIC IMPLICATIONS:

Support of the application will assist in the delivery of the following Strategies under the Shire of Manjimup Strategic Community Plan 2021-31:

- A1. Support initiatives that protect and nurture biodiversity and endemic species;*
- A8. Effectively use development and land policies to protect and rehabilitate the environment whilst balancing the needs of the community*
- B10. Ensure the regulatory environment is easy to navigate and development, business and industry-friendly.*

ORGANISATIONAL RISK MANAGEMENT:

Appropriate conditions are required to be imposed to ensure the intent of the Scheme provisions are achieved.

FINANCIAL IMPLICATIONS:

Nil.

SUSTAINABILITY:

Environmental: Keeping cats indoors or in an outdoor enclosure should reduce if not mitigate impact on native fauna.

Economic: Nil.

Social: Nil.

VOTING REQUIREMENTS:

SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. In accordance with clause 5.5 and Part 10 of Local Planning Scheme No. 4 grant approval for the keeping of a cat at Lot 29 (90) Jacksonii Avenue, Walpole application TP2023/93 in accordance with the plans and information submitted, subject to the following conditions:

- a. The development hereby approved is to be carried out generally in accordance with the details submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup;

Reference	Document Title	Date Received
1.	Management Details	28 August 2023

- b. The cat is to be kept at Lot 29 (90) Jacksonii Avenue, Walpole, is to be confined to indoors and or contained within a suitable outdoor enclosure or restrained at all times, to the satisfaction of the Shire of Manjimup;
- c. Any cat enclosure is to be kept secure and maintained to prevent the escaping of a cat; and

- d. This approval to a keep cat only relates to the cat listed below and is not transferrable to other Cat Prohibited Areas or other cats:

Breed	Age	Microchip	Sterilised	Sex	Registration
Domestic Short Hair	6	953010001239026	Yes	Male	194

2. Note that the Shire of Manjimup will not take further action against the applicant for the breach against the Shire of Manjimup's Cat Local Law 2021 Amendment for the keeping of a cat within a Cat Prohibited Area, on the basis that Registration within the Shire of Manjimup has been granted.

COUNCIL RESOLUTION:

MOVED: De Campo, W SECONDED: Eiby, W

29325

That Council:

1. In accordance with clause 5.5 and Part 10 of Local Planning Scheme No. 4 grant approval for the keeping of a cat at Lot 29 (90) Jacksonii Avenue, Walpole application TP2023/93 in accordance with the plans and information submitted, subject to the following conditions:

- a. The development hereby approved is to be carried out generally in accordance with the details submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup;

Reference	Document Title	Date Received
1.	Management Details	28 August 2023

- b. The cat is to be kept at Lot 29 (90) Jacksonii Avenue, Walpole, is to be confined to indoors and or contained within a suitable outdoor enclosure or restrained at all times, to the satisfaction of the Shire of Manjimup;
- c. Any cat enclosure is to be kept secure and maintained to prevent the escaping of a cat; and
- d. This approval to a keep cat only relates to the cat listed below and is not transferrable to other Cat Prohibited Areas or other cats:

Breed	Age	Microchip	Sterilised	Sex	Registration
Domestic Short Hair	6	953010001239026	Yes	Male	194

2. Note that the Shire of Manjimup will not take further action against the applicant for the breach against the Shire of Manjimup's Cat Local Law 2021 Amendment for the keeping of a cat within a Cat Prohibited Area, on the basis that Registration within the Shire of Manjimup has been granted.

FOR

Cr J Darin
Cr W DeCampo

AGAINST

Cr D Buegge
Cr W Eiby
Cr S Miolin
Cr P Omodei
Cr M Ventris
Cr J Willcox
Cr C Winfield

MOTION LOST 2/7

ALTERNATIVE RECOMMENDATION:

MOVED: Ventris, M

That Council does not grant approval to keep cats at Lot 29 Jacksonii Avenue, Walpole.

Councillor Ventris withdrew the above recommendation prior to it being seconded.

REVISED ALTERNATIVE RECOMMENDATION:

MOVED: Ventris, M SECONDED: Eiby, W

29326

Defer the matter to the next meeting for Officers' to prepare a recommendation to refuse.

CARRIED: 8/0

For: Cr D Buegge, Cr J Darin, Cr W De Campo, Cr W Eiby, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

Councillor Darin declared an Impartiality Interest in this Item as the proponent's wife is a friend and campaign partner in the 2023 Local Government Elections. Councillor Darin declared that she would consider this matter on its merits and vote accordingly.

ATTACHMENT

9.5.5 Application for Retrospective Approval for a Trench and Ponds at Lot 201 (1655) Perup Road, Perup

PROPONENT	Mr N C Miles
OWNER	WA Rural Enterprises Pty Ltd
LOCATION / ADDRESS:	Lot 201, (1655) Perup Road, Perup
WARD:	Rural
ZONE:	General Agriculture
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	57653 TP 83/2023 DA 23/86
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Karleha Brown
DATE OF REPORT:	5 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

An application has been received for retrospective approval of drains and constructed ponds/soaks and for two additional proposed ponds/soaks on Lot 201 (1655) Perup Road, Perup. Where the works fall within the definition of development, prior approval should have been sought due to reduction of setbacks to the property boundary, this is discussed further in the report.

The subject property is 40.08ha and is located adjacent to State Forest, approximately 16km east of the Manjimup townsite on Perup Road. The land is predominantly pasture and contains one dwelling along with several outbuildings, dams and rainwater tanks. A location plan providing the location of the development on the property is shown below and a design overlay is shown overleaf.

LOCATION PLAN





The applicant is seeking retrospective planning approval for drainage works carried out along the western boundary of their subject property including the construction of a series of drains and ponds to direct and slow down the flow of the water on the subject property. These works are in conjunction with proposed works to recontour the property to improve their arable land for intensive agricultural purposes.

A copy of the description of the proposed works and a development plans of the works are attached.

ATTACHMENT: 9.5.5 (1)

Details submitted with the application are summarised in the table below.

V Drain	<ul style="list-style-type: none"> • 350m long drain; • parallel to the property boundary; • setback between 3.5m to 4.2m; • approximately 2.8m wide; and • approximately 500mm deep. <p>The purpose is to direct water away from a future 3.5 acre orchard.</p>
Spoon Drain	<ul style="list-style-type: none"> • 60m long; • 2.8m wide; and • 0.9m deep. <p>The purposes is to move larger bodies of water in a slower motion to the water course in attempt to replicate a creekline.</p>
Trench (Dam 5)	<ul style="list-style-type: none"> • 35m long; • parallel to the western boundary south of the spoon drain and west of the existing dam; • approximately 0.8m to 1m deep; and • setback approximately 0.5m to 0.7m. <p>The purpose of this drain is to capture overflow water between the ponds and the property boundary.</p>

The existing and proposed ponds are located off the constructed Trench Drain that runs parallel to the existing boundary. The purpose of the ponds are to

hold and slow the turbidity of the water on the subject property. The applicant states the intent of the proposed ponds is to encourage better drainage, water catchment and reliable annual water levels.

Ponds – Constructed and Unauthorised

Pond 1 (Dam 1)	located 45m east of the property boundary; approximately 16m wide; 12m long; and 0.5m deep. The pond is located within a corner of the spoon drain that runs east west toward north of the existing dam. The applicant propose to increase the size of this pond to allow a greater capacity, taking the pressure off the ponds located along the western boundary.
Pond 2 (Dam 2)	constructed off the trench drain; 11m wide; 8m long; and 1.5m deep. This pond is located at the lowest point of the subject area and as shown in the photos where the water pools over the boundary into the adjoining property. The purpose is to hold water run off, as it overflows the water is redirected through the trench drain to additional ponds.

The proposed two ponds are located where there is a greater rock formation on the property.

Pond 3 (Dam 3)	Partially constructed. proposed to be 15m wide; 30m long; and 0.5 to 1m deep.
Pond 4 (Dam 4)	Not constructed. proposed to be located at the corner of the trench drain, as it angles into the property toward the base of the existing dam; proposed to be 15m wide; and 0.5m to 1m deep.

It should be noted that applicant had proposed a fifth pond, that was advertised to the adjoining landowner and Government agencies. The applicant has since withdrawn the proposed fifth pond from the application.

The application is required to be presented to Council for determination due to its retrospective nature and the variation to required setback distance to the property boundary.

PUBLIC CONSULTATION UNDERTAKEN:

The proposal was advertised in accordance with clause 9.6 of the Shire of Manjimup's Local Planning Scheme No. 4 (the Scheme) to the adjoining landowners for a period of 21 days and to the Department of Biodiversity Conservation and Attractions (DBCA) and Department of Environment and Regulation (DWER) for a 42-day period.

In response, DBCA advised that they had no objection or comment on the proposal. DWER provided advice in regard to the impact the proposed works have created to existing northern and southern creek lines that carry the flow of water in an east west direction and highlighted the unavailability for additional water allocations to be considered on the subject property.

One submission was received from an adjoining landowner. A copy of the submissions are attached and discussed in the comment section below.

ATTACHMENT: 9.5.5 (2)

COMMENT (Includes Options):

The subject land is zoned General Agriculture by the provisions of the Scheme.

Zoning Purpose

The purpose of the General Agriculture zone is to provide for the sustainable use of rural land which primarily accommodates a range of rural pursuits compatible with the capability of the land and which retains the rural character and amenity of the locality.

Consistent with the purpose, an objective for the zone relevant to this application is to support appropriate non-rural uses where they are compatible with adjoining nearby rural uses, environmental attributes, and landscape to compliment the primary production use of the land where a site contains remnant vegetation.

Definition of Development

Clause 8.2.3(ii) of the Scheme, specifically excludes any excavation of land which changes the natural contours of the land, within the Priority and General Agricultural zones from the definition of development. Therefore unless the works at the subject property fall within the definition of a Dam, prior planning approval is not required.

Definition of a Dam

As defined by the Scheme a Dam:

“means any man-made structure or excavation designed and constructed to intercept, accumulate and impound water flowing across, through or under any land and includes an offstream dam, an on-stream dam, a gully-wall dam, a turkey-nest dam, an excavated soak and any structure, excavation or other device designed to act either solely or partly as a nutrient stripping basin but does not include ornamental ponds or other water features associated with landscaping and garden.”

Given the above definitions it is considered that a drain, whilst being a human-made structure that intercepts and concentrates the movement of water, does not hold, accumulate or impound the water. Therefore the V drain and the Spoon Drain which do not hold water do not meet the definition of a dam, are exempt from requiring planning approval under the Scheme and are not considered further in this report.

For the purposes of this report, the ponds and trench are considered dams under the definition of the Scheme, requiring a 20m setback distance to property boundaries. As the works have been carried out along the boundary, they have not attained the minimum setback the Scheme requires, prior planning approval was required.

Matters to be Considered

In determining an application for planning approval, the local government is required to have regard to various matters as outlined within clause 10.2 of the Scheme. These matters include, but are not limited to:

- (i) *the aims and provisions of the Scheme and any other relevant Local Planning Scheme operating in the district;*
- (xiv) *whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bushfire or any other risk;*
- (xv) *the preservation of the amenity of the locality; and*
- (xxvi) *any relevant submissions received on the application.*

The following comments are provided to assist Council in determining the application.

Exempted Development

In accordance with clause 8.4 of the Scheme, dams located within the Priority Agriculture and General Agriculture zones are exempt from requiring planning approval where the lower edge of the dam wall, and any other part of the dam including the stored water is further than 20m from the boundaries of the subject land.

Setbacks

In accordance with the provisions of the Scheme, dams are to be setback 20m from all boundaries unless otherwise approved. As demonstrated above the trench and ponds vary in distance from the property boundary but are all less than the required 20m setback distance.

The trench is setback approximately 0.5m to 0.7m from the boundary. Dam 2 and proposed Dams 3 and 4, connect to the trench. This section of the trench and in particular Dam 2 is in the lowest part of the property intersecting with the existing northern creek line. The lack of separation to the boundary and the fact that in winter the area has a high concentration of water, has caused the water to flood across the boundary.

Given the proposed setbacks, approval to the proposed development may only be granted through a relaxation of the setback requirements.

Relaxation of Standards

In accordance with clause 5.5 of the Scheme, the local government may approve an application for planning approval, despite the application not complying with the standard or requirement prescribed under the Scheme.

However, prior to relaxing a standard, the local government must be satisfied that:

- “i) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
- ii) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.”*

In this case, a relaxation to the boundary has been assessed against Local Planning Policy 6.1.22 – Dams (the Policy) to determine if it is consistent with the requirements of clause 10.2, and the likely impact of an approval on either the subject land or adjacent property.

Policy Assessment

The application has been assessed against the provisions of the Policy. Given the nature of this proposal, the ponds were collectively considered to ascertain their risk, i.e. the minimum setback distance, the maximum depth and volume.

The risk assessment indicates that the Dam would be considered a low risk given the Dam has been designed by the owner in conjunction with an experienced contractor.

Risk Category	Score
Construction Type (Soak/Catchment Pond)	1
Volume 10-100ML (22ML)	2
Wall Height 0-5m (1.5m)	1
Dam Wall Design (designed by experienced contractor)	1
Infrastructure Downstream (other dams/ no infrastructure)	3
Overflow Infrastructure (Dam by-pass & overflow by others)	1
TOTAL	9

In accordance with provision 6.2 of the Policy, Dams that score less than 10 when assessed against the risk matrix are considered low risk.

As outlined in the Policy it is recommended that advice notes be included on any approval relating to a low-risk Dam, advising landowners that:

- The landowner is responsible for the structural integrity of the Dam construction; and
- It is recommended that the proposed structure be certified by an appropriately qualified contractor or engineer.

Submissions

Neighbour Submission

The adjoining landowner has raised concerns as to the impact the constructed drains and pond/soaks have caused to the east-west flow of water, that enters into their property, impacting their pasture they rely on for their cattle stud. They also raised concern to the lack of separation of the drain to their property boundary. The close location of the drain has caused concern to the

foundation of their property, as the water has eroded the soil near their boundary and constructed fence line.

The setback distance of 0.5m to 0.7m for the trench (dam 5) is not considered a sufficient distance to ensure that the development does not impact the adjoining property. It is noted that the applicant has stated that the reduced setback distance has occurred due to the rocky terrain in that area. However, with the use of appropriate machinery it is thought by Shire Officers that a greater setback could have been achieved.

DWER Submission

DWER provided the following advice;

1	The ponds are not supported. It is considered that the ponds increase the water storage volumes at the subject property and therefore cannot be supported on the basis the Wilgarup River surface water resource is fully allocated and there is potential impact to downstream uses by reducing the flows/ slowing of natural water flow.
2.	It is advised that works be undertake to redirect the water toward the southern trench away from the western sump to allow the water flow to connect to the northern creek line that flows east west across the subject properties.
3.	To assist in the proposed rehabilitation of the site and to minimise erosion, reference to Water Note 29 – Long-term management of riparian vegetation is provided.

In light of the advice from DWER a redesign of the drains and ponds is required to allow water to flow along the northern creek line and not be redirected to the pre-existing western sump.

Northern Creek line

The northern creek line runs east-west across the property into the adjoining property and intersects approximately where Dam 2 is located. As demonstrated in the photos, it is clear that this is the lowest point of the subject area and the water during winter is concentrated in this location.

DWER advise that the water flow is to continue along this creek line and the drains are to be designed to ensure that this creek line is maintained.

This will ensure that the adjoining neighbours water flow is not impacted upon.

Setback Distance to Neighbouring property

The reduced setback distance of the trench drains and ponds are considered to negatively affect the adjoining landowner.

The trench and ponds however are only setback 0.5m off the boundary at the closest distance. The area where the water has flooded over the property boundary is where the northern creek line naturally flows over the land. The fence line at this point is constructed over the natural creek line without reinforcement to protect its integrity.

Collection of Water

From advice from DWER the ponds do not need to be removed but the proposal to direct flow of water toward the existing western sump (not part of this application) is not supported. It is recommended by DWER that this western sump be bypassed entirely, and it filled in or broken so it cannot retain water. As the western sump is exempt from planning approval and is not included in this application the proponent will be advised to contact DWER in this regard.

DWER have also advised that the landowner does not have an availability to be allocated any additional water licences under the *Rights in Water and Irrigation Act 1914* (RIWI Act 1914) on this property. The ponds were designed to be overflow points to slow down the turbidity of water, however long term would enable the landowner to retain additional water on the property.

Sediment Control

The high rainfall and large amount of run off on this property has caused erosion to occur as a result of these works. DWER have provided some advice on how to overcome and manage this matter. It is considered that over time as the ground stabilises the transfer of sediment downstream will be reduced.

Conclusion

Considering the above, it is recommended that Council refuse the ponds and trench that run between the western property boundary and the existing dam as currently proposed. This is due to the inability for the landowner to be provided with an additional water allocation under the RIWI Act, and as the trench and ponds were setback only 0.5m to the property boundary resulting in an impact to the neighbouring property. As a result of this the applicant will be required to remove the constructed Dams.

Section 218 of the *Planning and Development Act 2005* and clause 10.3 of the Scheme provides the ability for Council to refuse the retrospective dams application. Justification for the refusal is that the current construction and design of the drains and ponds cannot reasonably exist without impacting on the exiting amenity of the neighbouring property.

It is advised that the flow of water from the V Drain is to be channelled toward the existing dam and toward the northern creek line as per DWER's recommendation.

Given, the proposed setbacks and limitations on water allocations it is recommended that a new application be prepared for approval of the spoon drains and ponds with an appropriate setback, with a design that directs all water to the northern creek line.

STATUTORY ENVIRONMENT:

Local Government Act 1995, Planning and Development Act 2005 and Shire of Manjimup Local Planning Scheme No 4.

POLICY / STRATEGIC IMPLICATIONS:

As outlined above, the application has been assessed against Local Planning Policy 6.1.22 – Dams.

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

The required application fee has been paid in accordance with the Schedule of Fees and Charges as adopted within 2022/23 Annual Budget.

SUSTAINABILITY:

Environmental: The proposal was referred to the relevant State agency responsible for environmental impact assessment with no recommendations.

Economic: Adequately draining and establishing additional water storage will assist towards the ability of the applicant to intensively farm their property.

Social: Nil

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. Refuse to grant approval to the application for retrospective approval of Dams, the proposed modifications and a new Dam at Lot 201 (1655) Perup Road, Perup in accordance with Part 10 of Local Planning Scheme No. 4 for to the following reasons:
 - a) The drain and ponds are setback at 0.5m to the property boundary causing a negative impact to the adjoining landowner; and
 - b) Approval for the reduced setback of the unauthorised ponds with a setback of less than five (5) metres would set an undesirable precedence.
2. Note that the landowner will be requested to remove the unauthorised Dams and reinstate the natural ground levels within 60 days, through the issuing a direction notice under the *Planning and Development Act 2005*.

Advice to Applicant

- a) The applicant is encouraged to contact the Department of Water and Environmental Regulation to discuss the current water licence allocation with regards to the existing western sump located on the subject property; and
- b) The applicant is encouraged to submit a new development application which achieves an acceptable setback to the adjoining property, without causing a negative impact.

COUNCIL RESOLUTION:**MOVED: DeCampo, W SECONDED: Eiby, W****29327****That Council:**

1. Grant approval to the application for retrospective approval of dams. The proposed modification and a new dam at Lot 201 (1655) Perup Road, Perup in accordance with Part 10, of the Local Planning Scheme No. 4 subject to the compliance of the following conditions of approval:

- a) The development hereby approved must be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup:

Reference	Document Title	Date Received
1.	Application for Development Approval	19 June 2023
1.	Additional Information Relating to Dams Application form.	4 August 2023
3.	Annotated Plans 1 to 4	25 August 2023

- b) Water from the dams hereby approved are prohibited to accumulate across property boundaries; and
- c) Water not being retained within the dams and other infrastructure hereby approved is to be returned to the identified watercourse traversing the land prior to leaving the property, or other arrangements as may be approved by the Shire of Manjimup.

Advice Note:

- i) The applicants is advised that the Shire's Development Approval should not be construed as a approval being granted by Department of Water and Environmental Regulation. It is strongly recommended that the landowner liaise directly with that Department over any permits or other licenses that may be required.

MOTION CARRIED 5/3**FOR**

Cr D Buegge
 Cr J Darin
 Cr W DeCampo
 Cr W Eiby
 Cr M Ventris

AGAINST

Cr P Omodei
 Cr J Willcox
 Cr C Winfield

Reason for Change:

Contour drains are a normal part of draining and land care practices that farmers use to improve pasture. The contour drains were existing in the main part and only have been cleaned out.

Councillor Darin declared a Financial Interest in this Item as she has an ongoing financial contract as a paying member of the fitness studio. Councillor Darin did not speak or vote on the matter and left the Chamber at 6.53pm.

ATTACHMENT

9.5.6 Proposed Extension to the Existing Fitness Studio at Lot 173, 11 Rose Street, Manjimup

PROPONENT	Veens Design Group
OWNER	STTUC Enterprises Pty Ltd
LOCATION / ADDRESS:	Lot 173, 11 Rose Street, Manjimup
WARD:	Urban
ZONE:	Town Centre
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	DA23/121 52128
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Karleha Brown
DATE OF REPORT:	5 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

Council is in receipt of an application to extend an existing Use Not Listed (Personal Fitness Studio) at Lot 173 (11) Rose Street, Manjimup. The property consists of a 342.84m² building, toilets to the rear, a covered outdoor area and nine parking spaces along the southern boundary and landscaping. A location plan is shown below.

LOCATION PLAN



The subject property was initially approved as a Personal Fitness Studio in 2011 through a change of use from a Shop, with an allocation of seven angled parking spaces.

In 2016 Council resolved to grant conditional approval for a Caretaker's Dwelling at the rear of the property and Commercial Building Extension

(Resolution 26575), with the approved site plan showing 13 right angled parking spaces, however did not proceed and has now lapsed.

In August 2018, conditional approval was granted under delegation for the creation of an external courtyard, with an area of approximately 136m² and a free-standing shelter for outdoor fitness activities. Based on previous decisions of Council, the number of parking spaces was reduced by two having regard to the fact that two on street parking bays are located abutting the site. One of the deleted bays was to be converted to a bicycle parking space.

In May 2022, Council resolved to conditionally approve a two storey extension to the rear of the existing building. The extension generated a shortfall of four (4) car parking spaces. Council resolved that the shortfall be either paid through cash in lieu as per Scheme requirements or be provided through the availability of reciprocal rights to share an alternative car parking facility. The application however did not proceed and the new owners have now proposed an alternative extension.

The current proposal seeks to also extend to the rear, with a 172m² single storey extension. The extension proposes to remove the existing toilets and undercover area and fully enclose the current space, providing a new ablution facility and approximately 145m² of fitness studio floor area. The subject proposal is able to provide the allocation of 10 carparking bays.

Copies of the plans submitted for development approval are attached.

ATTACHMENT: 9.5.6 (1)

Council is requested to consider the application as the proposal is for an extension to a "Use not Listed" and there is a proposed variation to the on-site parking requirements.

PUBLIC CONSULTATION UNDERTAKEN:

The application was advertised in accordance with Clause 9.6 of the Shire of Manjimup Local Planning Scheme No.4 (the Scheme) for a 21 day period to all adjoining landowners, the Ward Councillor and a notice in the newspaper. No submissions were received as a result of the advertising period.

COMMENT (Includes Options):

The provisions of the Scheme include the subject land within the Town Centre Zone. The purpose of the Town Centre Zone is to provide for the establishment and ongoing development of nodes of diverse commercial, professional, tourist, entertainment, residential and community activities to service the population of the surrounding area.

In determining an application for planning approval, Clause 10.2 of the Scheme requires that various matters are taken into account, including but not limited to:-

- “(i) the aims and provisions of the Scheme and any other relevant Local Planning Scheme operating within the Scheme area;*
- (vii) the content and objective of Planning Precinct Statements set out in Schedule 8 of this Scheme;*
- (xv) the preservation of the amenity of the locality;*
- (xvii) whether the proposed means of vehicular access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;*
- (xxvi) any relevant submissions received on the application.”*

To guide Council in its determination of the application the following comments are offered:

Setback Requirements

Development in the Town Centre zone is generally permitted to provide for nil setbacks to all boundaries, providing allowance is made in regard to access, car parking, circulation of traffic, safety, servicing, loading and unloading, stormwater drainage and landscaping. The proposed extension complies with the requirement above by proposing a nil setback to the northern (side) and western (rear) boundaries. The existing parking and landscaping are not being altered.

Amenity

Given the location of the property and the surrounding residential neighbours, consideration should be given to any potential impact on the amenity of the area, especially due to noise. The business currently operates with 24/7 access to members.

It is considered that by using the proposed concrete tilt-up panels on the boundary to form the extension will help attenuate the noise that may have been emanating from the outdoor fitness to the neighbouring properties, therefore reducing any current impacts on the amenity of the area.

Car Parking

In 2018, the approval for the current outside exercise area included a relaxation of on-site parking requirements.

In 2022, an approval which was not fulfilled, proposed a car parking shortfall for four (4) car parking bays. The shortfall was resolved by Council to be either addressed with a cash in lieu contribution or reciprocal rights agreement with an existing off site car park. Following the approval being granted, Warren Valley Community Church (WVCC) agreed to allow the Fitness Studio customers to park in their car park during peak times in the early morning and late afternoon from Monday to Friday.

The current application is proposing an additional gross floor area of 146m² (excluding the new ablution facility). As a Personal Fitness Studio is not a use listed in the Scheme, the Scheme does not identify any specific carpark requirements for the use. Given this, as prescribed by clause 5.17.2 of the

Scheme, the local government shall determine in each case the number of spaces to be provided on the land having due regard to the:

- (i) nature of the proposed development;
- (ii) number of employees or others likely to be employed or engaged in the use of the land;
- (iii) anticipated demand for visitor parking; and
- (iv) orderly, proper and sustainable planning of the area.

The additional floor area will create an additional parking demand of five parking spaces, using a car parking ratio of 1 bay per 30m², being the same as similar uses within the Scheme. The floor area ratio is being used in this instance, as the fitness studio caters for classes as well as individual attendances by members. A minimum of additional five (5) parking spaces would therefore normally be required on-site, given that 10 bays are provided on site. Approval to the application may therefore only be granted through a relaxation of the requirement for car parking spaces to be on-site under clause 5.5.1 of the Scheme, or payment of cash-in-lieu under clause 5.17.11 of the Scheme.

Relaxation of Standards

In accordance with clause 5.5.1 of the Scheme, where a development does not comply with a standard or requirement prescribed by the Scheme, the local government may approve the application, despite this non-compliance. As stated in clause 5.5.3 of the Scheme, *“the power conferred by this clause may only be granted if the local government is satisfied that:*

- (i) *Approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
- (ii) *The non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality of the likely future development of the locality.”*

In terms of parking, it is common practice within the Shire to take into account on street parking bays immediately abutting a development when considering applications seeking a relaxation of the on-site parking requirements.

It is anticipated that following development of land to the north and Harvey Norman on the corner of Rose and Ipsen Street, the demand for street parking in the area will increase. A relaxation of parking on the basis of other street parking in the area is therefore not recommended.

Cash in Lieu

In accordance with Clause 5.17.11 of the Scheme where an applicant can satisfy the local government that the minimum car parking requirements cannot be provided on the site, a cash payment can be accepted in lieu of the provision of parking.

Reciprocal Rights – Parking

As an alternative to Cash-in-lieu, clause 5.17.8 of the Scheme specifies that where an applicant can demonstrate other off-site parking facilities that are

available to be shared, the local government may approve a development with less than the required number of parking bays.

As mentioned above the applicant has previously obtained an agreement with WVCC to allow their customers to utilise their car park. A similar agreement is recommended to be entered into again, to satisfy the carparking shortfall to satisfy the carparking shortfall of this application.

Conclusion

The proposed development is consistent with the requirements under the Scheme, with the exception of on-site parking.

To ensure that Scheme requirements relating to parking are addressed, it is recommended that the applicant arrange a formal reciprocal use agreement over other off-street parking in the area to the satisfaction of Council.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005 and the Shire of Manjimup's Local Planning Scheme No. 4.

POLICY / STRATEGIC IMPLICATIONS:

By granting approval to the proposed use, Council will assist in the delivery of the following Strategies under the Shire of Manjimup Strategic Community Plan 2021-2031:

- B9. Encourage and support initiatives to encourage extended service provision and activate town centres*
- B12. Provide development opportunities and support local small businesses to thrive.*

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

The required application fee has been paid in accordance with the Shires Schedule of Fees and Charges as adopted for the 2023/ 2024 annual budget.

SUSTAINABILITY:

Environmental: The proposed extension is not considered to generate an environmental impact to the amenity of the area.

Economic: The expansion of the fitness centre will allow better use of the subject property, increasing the utilisation of the building and benefiting the Manjimup economy.

Social: The additional space provided by the proposed extension will allow the fitness studio to provide a better facility to the Manjimup community.

VOTING REQUIREMENTS: SIMPLE MAJORITY**OFFICER RECOMMENDATION:**

That Council in accordance with clause 5.5 and Part 10 of Local Planning Scheme No.4 grant planning approval to the application to construct an extension to an existing Use Not Listed (Personal Fitness Studio) at Lot 173 (11) Rose Street, Manjimup application (TP116/2023) in accordance with the plans and specifications shown at attachment 9.5.6 (1) and subject to the following conditions:

- a) The development hereby approved is to be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup.

Reference	Document Title	Date Received
1	Development Plan	21 August 2023

- b) Prior to the lodgement of an application for a building permit for the building extension hereby approved, the applicant is to either:
- (i) Pay cash-in-lieu for five parking bays in accordance with Local Planning Scheme No 4; or
 - (ii) Establish through formal agreement with adjacent landowners to the satisfaction of Council, reciprocal rights of access to utilise their parking areas outside of normal business hours.
- c) Prior to lodging an application for a building permit, the applicant must submit and have approved by the Shire of Manjimup, and thereafter implement to the satisfaction of the Shire of Manjimup, a construction management plan addressing the following matters:
- i) How materials and equipment will be delivered and removed from the site;
 - ii) How materials and equipment will be stored on the site;
 - iii) Parking arrangements for contractors;
 - iv) Construction waste disposal strategy and location of waste disposal bins;
 - v) Details of cranes, large trucks or similar equipment which may block public thoroughfares during construction; and
 - vi) How risks of nuisance, wind and/or water borne erosion and sedimentation will be minimised during and after the works;
- d) All stormwater and drainage runoff is to be retained on the subject property or to be provided with stormwater drainage connections to the drainage system in the area at the proponents cost to the satisfaction to the Shire of Manjimup.

Advice to applicant:

- i. This development approval is NOT a building permit. A certified building permit for the change of use must be formally presented to and approved by Building Services to formalise the development;
- ii. Further to condition b), with respect to any reciprocal rights relating to parking, the proponent, and/or the owners of the land, are required to enter into a deed of agreement (prepared and executed at the cost of the proponent) with, and to the satisfaction of the Shire of Manjimup, to guarantee the provision of a reciprocal 'right of carriageway/access' for vehicular and/pedestrian movements between the properties concerned – together with drainage and car parking requirements (where applicable). The agreement must be executed by the applicant before the development is occupied; and
- iii. The development the subject of this planning approval, is required to comply with the Shire of Manjimup's Health Local Laws 2020.

COUNCIL RESOLUTION:

MOVED: DeCampo, W SECONDED: Eiby, W

29328

That Council in accordance with clause 5.5 and Part 10 of Local Planning Scheme No.4 grant planning approval to the application to construct an extension to an existing Use Not Listed (Personal Fitness Studio) at Lot 173 (11) Rose Street, Manjimup application (TP116/2023) in accordance with the plans and specifications shown at attachment 9.5.6 (1) and subject to the following conditions:

- a) The development hereby approved is to be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup.

Reference	Document Title	Date Received
1	Development Plan	21 August 2023

- b) Prior to the lodgement of an application for a building permit for the building extension hereby approved, the applicant is to either:
 - (i) Pay cash-in-lieu for five parking bays in accordance with Local Planning Scheme No 4; or
 - (ii) Establish through formal agreement with adjacent landowners to the satisfaction of Council, reciprocal rights of access to utilise their parking areas outside of normal business hours.

- c) Prior to lodging an application for a building permit, the applicant must submit and have approved by the Shire of Manjimup, and thereafter implement to the satisfaction of the Shire of Manjimup, a construction management plan addressing the following matters:
- i) How materials and equipment will be delivered and removed from the site;
 - ii) How materials and equipment will be stored on the site;
 - iii) Parking arrangements for contractors;
 - iv) Construction waste disposal strategy and location of waste disposal bins;
 - v) Details of cranes, large trucks or similar equipment which may block public thoroughfares during construction; and
 - vi) How risks of nuisance, wind and/or water borne erosion and sedimentation will be minimised during and after the works;
- d) All stormwater and drainage runoff is to be retained on the subject property or to be provided with stormwater drainage connections to the drainage system in the area at the proponents cost to the satisfaction to the Shire of Manjimup.

Advice to applicant:

- i. This development approval is NOT a building permit. A certified building permit for the change of use must be formally presented to and approved by Building Services to formalise the development;
- ii. Further to condition b), with respect to any reciprocal rights relating to parking, the proponent, and/or the owners of the land, are required to enter into a deed of agreement (prepared and executed at the cost of the proponent) with, and to the satisfaction of the Shire of Manjimup, to guarantee the provision of a reciprocal 'right of carriageway/access' for vehicular and/pedestrian movements between the properties concerned – together with drainage and car parking requirements (where applicable). The agreement must be executed by the applicant before the development is occupied; and
- iii. The development the subject of this planning approval, is required to comply with the Shire of Manjimup's Health Local Laws 2020.

CARRIED: 7/0

For: Cr D Buegge, Cr W De Campo, Cr W Eiby, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

Councillor Darin returned to the Chamber at 6.54pm.

Councillor Darin declared a Financial Interest in this Item as she has an ongoing financial contract as a paying member of the fitness centre at their current location. Councillor Darin did not speak or vote on the matter and left the Chamber at 6.54pm

ATTACHMENT

9.5.8 Proposed Change of Use Warehouse to Use Not Listed (Fitness Centre) at Lot 2 (31) Giblett Street, Manjimup

PROPONENT	Ms B L Serafini
OWNER	Happy Felix Manjimup Pty Ltd
LOCATION / ADDRESS:	Lot 2 (31) Giblett Street, Manjimup
WARD:	Urban
ZONE:	Town Centre
DIRECTORATE:	Development and Regulation
FILE REFERENCE:	DA23/124 P50871
LEGISLATION:	<i>Planning and Development Act 2005</i>
AUTHOR:	Jocelyn Baister
DATE OF REPORT:	10 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

The subject property is a 7,752m² property located on the southern side of Ipsen Street between Giblett Street and Rose Street in the Manjimup Central Business District. As shown on the location plan below, the property is developed with two primary buildings, which are generally described as follows:

- A building located on the corner of Ipsen and Giblett Streets housing Mitre 10/Retravisio showrooms; and
- A building located on the corner of Ipsen and Rose Streets which consists of a primary tenancy (Harvey Norman), a retail tenancy of 279.8m² facing Ipsen Street and an area of approximately 252m² facing the internal carpark that was approved in 2022 as a Warehouse for Harvey Norman.

LOCATION PLAN



Approval is now being sought to utilise half of the area approved for the Harvey Norman Warehouse for the purposes of a Pilates Studio. The business is an existing business and is seeking to relocate from 5 Pritchard Street, Manjimup. Details submitted with the application are as follows:

- Operating Hours:
 - Monday to Saturday
 - 6am to 10:30am and 3:30pm to 6:30pm
- Four Pilates instructors and one maintenance staff;
- Classes of up to 10 students;
- Signage to the awnings and window.

The application is referred to Council for determination as the proposed Fitness Centre constitutes a 'Use Not Listed' and a copy of the floor plan and signage details for the application provided attached.

ATTACHMENT: 9.5.8 (1)

PUBLIC CONSULTATION UNDERTAKEN:

The application was advertised in accordance with Clause 9.6 of the Local Planning Scheme No. 4 (the Scheme) for a 21-day period to adjoining land owners, a notice was placed on the Shire's website and in the local newspaper. Correspondence was also sent to the Ward Councillors. Submissions closed on 11 October 2023. No submissions were received.

COMMENT (Includes Options):

In determining an application for planning approval, Clause 10.2 of the Scheme requires that various matters are considered, including but not limited to:

- “(i) the aims and provisions of the Scheme and any other relevant Local Planning Scheme operating within the Scheme area;*
- (vii) the content and objective of Planning Precinct Statements set out in Schedule 8 of this Scheme;*
- (xviii) whether the proposed means of vehicular access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles; and*
- (xxvi) any relevant submissions received on the application.”*

To assist Council in determining the application, the following comments are offered:

Land Use Classification

In the opinion of Shire Officers, the 'Fitness Centre' land use cannot reasonably be determined as falling within a defined use class/category within the Scheme.

As per Clause 4.20.2 of the Scheme, where a person proposes to carry out a use on any land that is not specifically mentioned in the zoning table (Table 1) or cannot be reasonably determined as falling within a use class/category, Council may:

- i) Determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*

- ii) Determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 9.6 in considering an application for planning approval; or***
iii) Determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

In this instance Shire Officers determined that the land use can be considered consistent with the objectives of the Town Centre Zone in accordance with subclause (ii) as stated above and have advertised the proposal in accordance with Clause 9.6 of the Scheme.

Council, in accordance with Clause 4.20.2 of the Scheme is now required to determine if the proposed use is consistent with the objectives of the zone.

Consistency with Zoning

The subject property is zoned Town Centre by the Scheme and is located within Manjimup Precinct 1A – Town Centre MP1A. The purpose of the zone as outlined in Clause 4.2 is to provide for the establishment and ongoing development of nodes of diverse commercial, professional, tourist, entertainment, residential and community activities to service the populations of surrounding areas.

Landowners in sub-precinct MP1A are generally encouraged to develop a combination of a wide range of uses and to include opportunities for combined residential and commercial or office uses. The proposed land use is consistent with the purpose of the zone and sub-precinct by providing a commercial activity.

Land Use Permissibility

As the Fitness Centre cannot reasonably be determined as falling within a defined use class/category the application was advertised following the procedures of Clause 9.6.

Given that the proposal relates to an existing development, the only relevant considerations relate to car parking and any change to the external appearance including signage.

Parking Requirements

As detailed within the background section of this report, the subject land is developed with two separate buildings. The previous land use for Shop 4 and 5 was a Warehouse with a floor area of 132m². The car parking requirements for a Warehouse is one space per 100m² resulting in a car parking requirement of two spaces (rounded up). There are 45 parking spaces available onsite for use by all the businesses and 10 on street bays immediately alongside the property.

In accordance with clause 5.32.2.5 of the Scheme, when an application for a change of use is being considered for existing premises within the Town Centre Zone, the application of relevant development standards may be varied. This is provided that the change of use does not involve any additions to the building and the impact of the new use is considered consistent with the previous activity.

As Fitness Centre is not a use listed in the Scheme, the Scheme does not identify any specific carpark requirements for the use. Given this, as prescribed by clause 5.17.2 of the Scheme, the local government shall determine in each case the number of spaces to be provided on the land having due regard to the:

- (i) nature of the proposed development;
- (ii) number of employees or others likely to be employed or engaged in the use of the land;
- (iii) anticipated demand for visitor parking; and
- (iv) orderly, proper and sustainable planning of the area.

On the basis that the Fitness Centre will cater for a maximum of 10 students, together with one teacher, it is anticipated that a maximum of 11 people will occupy the premises at any one time. As such using a car parking ratio of 1 bay per four persons, being the same as similar uses within the Scheme, a total of 3 parking bays would normally be required, similar to the demand of the existing Warehouse.

Given the fitness classes will be operating during the morning and evening, it is anticipated that the bays available within the subject property will be able to be shared with the other land uses operating with different peak business times. It is also anticipated that patrons will 'cluster shop' before or after classes.

Conclusion

The proposed land use is consistent with the zone and the applicants are proposing a land use that will have alternative peak times to the other land uses at the property. The application is therefore recommended for approval.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005 and the Shire of Manjimup's Local Planning Scheme No. 4.

POLICY / STRATEGIC IMPLICATIONS:

By granting approval to the proposed use, Council will assist in the delivery of the following Strategies under the Shire of Manjimup Strategic Community Plan 2021-2031:

- B9. Encourage and support initiatives to encourage extended service provision and activate town centres.*
- B12. Provide development opportunities and support local small businesses to thrive.*

ORGANISATIONAL RISK MANAGEMENT:

Nil.

FINANCIAL IMPLICATIONS:

The required application fee has been paid in accordance with the Shires Schedule of Fees and Charges as adopted for the 2023-24 annual budget.

SUSTAINABILITY:

Environmental: Nil.

Economic: Approval of the application will result in a commercial activity operating in an appropriate premises and provide a rental income to the landowner.

Social: Approval of the application will provide opportunities for members of the public to actively engage in physical, group activities.

VOTING REQUIREMENTS: SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council in accordance with Part 10 of Shire of Manjimup Local Planning Scheme No.4 grant development approval for the Change of Use from Warehouse to Use not Listed (Fitness Centre) and Signage at Lot 2 (31) Giblett Street, Manjimup (Application TP2023/117) as attached at 9.5.8 (1) and subject to the following conditions:

1. The development hereby approved is to be carried out generally in accordance with the plans and specifications submitted with the application and these shall not be altered and/or modified without the prior knowledge and written consent of the Shire of Manjimup.

Reference	Document Title	Date Received
1	Floor plan	25 August 2023
2	Description of Use	25 August 2023
3	Signage Details	25 August 2023

2. The signs the subject of this approval shall be kept clean, free from unsightly matter and in good condition and presentation at all times.

Advice to applicant:

- i. This development approval is NOT a building permit. A certified building permit for the change of use must be formally presented to and approved by Building Services to formalise the development; and
- ii. With regards to Condition 2), the applicant is advised that additional signs may be subject to further approval from the Shire of Manjimup.

COUNCIL RESOLUTION:

MOVED: DeCampo, W SECONDED: Eiby, W

29329

That Council in accordance with Part 10 of Shire of Manjimup Local Planning Scheme No.4 grant development approval for the Change of Use from Warehouse to Use not Listed (Fitness Centre) and Signage at Lot 2 (31) Giblett Street, Manjimup (Application TP2023/117) as attached at 9.5.8 (1) and subject to the following conditions:

1. The development hereby approved is to be carried out generally in accordance with the plans and specifications submitted with the

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Advice to applicant:

- i. This development approval is NOT a building permit. A certified building permit for the change of use must be formally presented to and approved by Building Services to formalise the development; and
- ii. With regards to Condition 2), the applicant is advised that additional signs may be subject to further approval from the Shire of Manjimup.

CARRIED: 7/0

For: Cr D Buegge, Cr W De Campo, Cr W Eiby, Cr P Omodei; Cr M Ventris; Cr J Willcox; Cr C Winfield.

Against: Nil.

Councillor Darin returned to the Chamber at 6.55pm.

ATTACHMENT APPENDIX

9.9.1 Proposed Review of Policy 3.1.3 Community Funds Allocation

PROPONENT	Shire of Manjimup
OWNER	Shire of Manjimup
LOCATION / ADDRESS:	N/A
WARD:	N/A
ZONE:	N/A
DIRECTORATE:	Community Services
FILE REFERENCE:	F160252
LEGISLATION:	<i>Local Government Act 1995</i>
AUTHOR:	Emily O'Neil; Kelsie Brown
DATE OF REPORT:	5 October 2023
DECLARATION OF INTEREST:	Nil

BACKGROUND:

A query has been received from the Pemberton Sports Club (PSC), successful recipient of a 2023/24 Community Fund Youth Grant for \$6,000, in regards to eligible expenditure of the grant funds. The PSC queried whether they could utilise grant funding for items including room hire fees (e.g. for the basketball courts and kitchen within the Pemberton Sports Complex), as well as cleaning costs and utilities (electricity and water).

In April 2006, Council formalised their position in relation to the annual allocation of funds to support the activity of community groups through the endorsement of Policy 3.1.3 Community Funds Allocation (the Policy). The Policy objectives are to provide guidance to Council, Officers, and the community by consistent and transparent allocation of funds across the four categories being: general community groups and projects, financial hardship, youth, and events. The Policy was recently reviewed and adopted by Council on 9 February 2023 with a copy of the existing Policy is appended.

APPENDIX: 9.9.1(A)

The purpose of this report is for Council to consider the:

1. Query of the PSC in regards to eligible grant expenditure of Youth Grants; and
2. Subsequently review and amend the Policy to ensure clarity of eligible expenditure for future Youth Grant applications.

PUBLIC CONSULTATION UNDERTAKEN:

Nil.

COMMENT (Includes Options):

Youth Grants

Council provides annual support to youth programs and chaplaincy services across the Shire of Manjimup through the Community Funds Program.

Category 3 Community Youth Groups & Chaplaincy encompasses two subcategories being:

- Category 3A: Support a youth (development) program (e.g. youth group or facilitated development program) in each town; and
- Category 3B: Support youth chaplaincy.

The allocation of community funds occurs annually by formal application. The application process is often competitive, with the annual amount requested by community groups exceeding the amount of funds available. Final allocation of funds is awarded by Council based on applications with the highest merit and greatest benefit to the Shire of Manjimup residents and ratepayers.

Council's intent of Youth Grants (Cat. 3A) is to assist community groups to deliver youth programs by contributing to costs of youth workers and costs directly associated with the running of youth activities. To date no requests from Youth Grant applicants have been received to utilise grant funding outside of this intent. As such there is no precedence for these funds to be used for internal costs allocations, including room hire fees and utility charges for venue owned/managed by the grant applicant.

Review of Policy

Following the query from the PSC regarding proposed expenditure eligibility, it became evident that the current Policy does not provide detailed guidelines in regards to youth program expenditure. As such it was identified that the Policy requires a review to provide clear information on what the funding can be utilised for in relation to the delivery of a youth group and/or program. To ensure the local youth receive maximum benefit of the funds allocated by Council, it has been identified that further clarification on the guidelines is required including eligible/ineligible expenditure of grant funds, and in-kind contributions expected from applicants.

A comparative investigation into other Local Governments' and youth organisations' practices was conducted. Commonalities between documents regarding expenditure inclusions and exclusions were compiled and analysed. Based on this analysis the Policy is proposed to be amended with the following inclusions to Category 3A of the Policy:

- Eligible Expenditure
- Ineligible Expenditure
- In-kind contributions

Eligible Expenditure

The following expenditure is eligible if directly relating to the scheduled youth program activities and/ or the delivery of the youth group/program:

- Staffing costs (wages/salary) for group/program delivery;
- Printing and copying of advertising material;
- Program materials (e.g., consumables, (art) supplies, and stationery) directly relating to scheduled youth program activities and/ or the delivery of the youth group/program;
- Catering costs (food and non-alcoholic beverages) for attending youth

- at group/program; and
- External venue and equipment hire for isolated/one-off occasions (e.g. excursions or location-specific activities), when provided in addition to a standard course of delivery for youth groups and/or programs.

Ineligible Expenditure

- Activities failing to demonstrate benefit to youth residing in the Shire of Manjimup;
- Purchasing of gifts, significant prizes, trophies, or awards;
- Applicant facility costs (including but not limited to rent, electricity, insurance, water, rates, maintenance, equipment hire, and venue use);
- Applicant's general or grant administration costs;
- Staffing costs outside of identified youth worker delivery of youth group/program;
- Capital works, infrastructure, or equipment for the applicant or applicant affiliates;
- Ongoing use of external activities incurring operational costs for the purpose of youth group/program delivery;
- Commercial or for-profit activities; and
- Retrospective or deficit funding.

In-kind contributions

It is an expectation that in-kind contribution of youth group/program venue and grant administration are included in all 3A applications (provided by applicant or an alternative funding source). This expectation is in line with the guidelines of the vast majority of local, state, and federal grant programs.

The proposed amended Policy is attached.

ATTACHMENT: 9.9.1 (1)

Recommendations

In conclusion, the following recommendations are proposed to Council:

1. To guide future applications and to provide clarity on the above matters, it is recommended that the Policy be amended. The above mentioned inclusions are suggested to be made to the Policy, stipulating the expenditure guidelines for community groups delivering a youth group/program with support from the Shire's Community Fund Program.
2. That a response is provided to the PSC regarding the eligible and ineligible expenditure of grant funds as clarified in the amended Policy.

The proposed amendments to the Policy support the Policy objectives by:

- Providing clear guidelines to community groups within the Shire of Manjimup in their application for community funds;
- Ensuring that funds allocated to applications are used to the greatest possible benefit for Shire of Manjimup youth; and
- Providing clear guidelines for staff in the administration of the Community Fund Program.

STATUTORY ENVIRONMENT:

Local Government Act 1995.

POLICY/STRATEGIC IMPLICATIONS:

The Community Funds program is supported by the following strategic documents:

- Shire of Manjimup Corporate Business Plan 2023-2027:
C5. Actively engage children and young people to better understand and encourage services and initiatives that respond to their needs and aspirations.
- Shire of Manjimup Youth Strategic Plan 2013 – 2023:
3.3.2 Provide financial assistance for youth development programs and projects to relevant groups through the Council Community Funds Allocation.

ORGANISATIONAL RISK MANAGEMENT:

The intent of this Policy is to provide clarity, consistency and transparency to the community and applicants for the youth program funding, as well as to officers when administering the Community Funds program and preparing reports with recommendations to assist Council in their decision-making process, thus controlling organisational risk.

FINANCIAL IMPLICATIONS:

Nil.

SUSTAINABILITY:

Environmental: Nil.

Economic: This Policy guides the allocation of Council funds to a variety of community groups, projects, and events which in turn supports opportunity for those recipients to improve their economic sustainability.

Social: By supporting the development of youth groups and/or programs that maximise the benefit to youth, this Policy promotes improved social opportunities for young community members across the Shire.

VOTING REQUIREMENTS:

SIMPLE MAJORITY

OFFICER RECOMMENDATION:

That Council:

1. Adopt amended Policy 3.1.3 Community Funds Allocation as per Attachment: 9.9.1(1); and
2. Request the Interim Chief Executive Office to advise the Pemberton Sports Club that grant expenditure is to be in accordance with the amended Policy.

COUNCIL RESOLUTION:

MOVED: DeCampo, W SECONDED: Darin, J

29330

That Council:

- 1. Adopt amended Policy 3.1.3 Community Funds Allocation as per Attachment: 9.9.1(1); and**
- 2. Request the Interim Chief Executive Office to advise the Pemberton Sports Club that grant expenditure is to be in accordance with the amended Policy.**

MOTION CARRIED 7/1

FOR

Cr D Buegge
Cr J Darin
Cr W DeCampo
Cr W Eiby
Cr M Ventris
Cr J Willcox
Cr C Winfield

AGAINST

Cr P Omodei

10. LATE REPORTS: Nil.**11. QUESTIONS FROM MEMBERS:**

11.1 Response to questions from members taken on notice: Nil.

11.2 Questions from members.

11.2.1 Question from Councillor De Campo:

1. How many planning or condition changes, if have been given approval under delegated authority, from the point of proposal of the hotel campsite to today?
2. Have the proponents, in any formal or informal way, had contact with any Shire staff to potentially open the facility early and incomplete?

12. MOTIONS FOR CONSIDERATION AT THE FOLLOWING MEETING:

Moved by Councillor Omodei:

Given the ongoing threat of asbestos, the unstable nature of the primary building on Reserve 16354, Lot 556 Brockman Street, Pemberton and the amount of disused material on Reserve 16354, the Acting Chief Executive Officer be requested to:

- a) Issue a demolition order under section in accordance with Division 5 of the Building Act 2011;
- b) Require the removal of disused material from the site in order to reduce the potential of future fires on site, utilising relevant legislation; and
- c) Forward correspondence to the State Government, including the Premier's Office expressing disappointment that no further remediation works have been undertaken on-site since the primary response to the structural fire on 8 December 2022 and urging immediate action on the matter to remove any future threat to the Pemberton community.

13. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING: Nil.**14. APPLICATIONS FOR LEAVE OF ABSENCE: Nil.****15. CLOSURE:**

There being no further business to discuss the Shire President thanked those in attendance and closed the meeting at 7.15pm.

SIGNED:.....DATE:

Donelle Buegge

Shire President