

## SHIRE OF BROOME

### ORDINARY COUNCIL MEETING 2 MARCH 2004

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**9. REPORTS OF OFFICERS**

**9.1. LEADERSHIP AND GOVERNANCE**

**OUTCOME**

**Demonstrate leadership, which is proactive, open and accountable and that encourages community consultation and participation.**

**9.1.1 COMMON SEAL REPORT**

<b>DATE</b>	<b>DETAILS</b>
30 January 2004	Local Laws relating to Parking & Use of Vehicles 2003
2 February 2004	Trading Outdoor Dining & Street Entertainment Local Law 2003
3 February 2004	Notification Under Section 70A Ancillary Accommodation: Lot 199 (No. 1) Egret Way Djugun
6 February 2004	Contract Documents between Shire of Broome and Jetridge Holdings – Internal Sewerage Roebuck Bay Caravan Park
10 February 2004	Withdrawal of Caveat #H926914 Lot 997 Lullfitz Drive, Cable Beach
16 February 2004	Notification Under Section 70A Lot 3 on Diagram 54405 Denham Road, Coconut Wells, Broome
19 February 2004	Notification Under Section 70A Lot 77 on Plan 21780

**REPORT RECOMMENDATION**

*That Council endorse the action of the Shire President and the Chief Executive Officer affixing the Common Seal to the documents listed above.*

**Moved:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

**FOR:**  
**AGAINST:**

**9.1.2 MONTHLY FINANCIAL REPORT**

**REPORT RECOMMENDATION**

*That Council adopt the monthly report to the end of January 2004.*

**Moved:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

**FOR:**  
**AGAINST:**

[Attachment: 6 pages](#)

### 9.1.3 LOCAL GOVERNMENT PROPERTY AND PUBLIC PLACES LOCAL LAW 2003 – PROPOSED AMENDMENT

**LOCATION/ADDRESS:** N/A  
**APPLICANT:** N/A  
**FILE:** BYL11  
**RESPONSIBLE OFFICER:** Manager Health Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 11 February 2004

**SUMMARY:** Request from Police for the Shire to consider to include in the Local Government Property and Public Places Local Law 2003 a clause to allow the confiscation of alcohol where it is being consumed illegally on local government property or in a public place. It is recommended the Shire include such a clause.

#### BACKGROUND

Council adopted the Local Government Property and Public Places Local Law 2003 at the October 2003 Ordinary Meeting of Council.

The original draft of this local law, which was presented to Council on March 12th, 2002, included the following clause:

##### “Substance Seizure

Where a person is on a local government property or a public place and an authorised person reasonably suspects that a person has breached this local law, the authorised person may seize from that person for testing any substance which the authorised person considers may be liquor in an unsealed container or a drug the use or possession of which drug is prohibited under a written law.

Where a person fails to surrender to an authorised person any substance requested by an authorised person in accordance with subclause (1), that person commits an offence.”

Councillors made a submission requesting that this clause be removed. The submission read as follows:

“Police powers – not required or recommended for our staff. Increases risk to staff.”

All submissions received relating to the local law were forwarded to the Shire Solicitors for comment and their comments on this issue are outlined below.

“Once again the provision derives from the original draft.

Clause 4.1(1)(a) makes it an offence to consume liquor on any local government property or public place without approval of clause 4.6(a) to (c) originally made it an offence for a person to sell or supply liquor without an appropriate licence, be under the influence of liquor without an appropriate approval or be under the influence of a prohibited drug on local government property. Subclauses (a) to (c) of clause 4.6 have since been removed.

Clause 13.1(1) was intended to enable an authorised person to seize substances in order to prove allegations under those provisions. It is, however, a difficult area and questions could be raised as to whether a local government can give authorised officers the power

to seize such substances, and, given that such officers do not have the resources and training of the Police, whether it is sensible to give them such powers.

Clause 13.3(1)(a) permits an authorised person to direct any person on local government property or in a public space to stop doing anything which is contrary to the Local Law and 13.3(2) makes it an offence not to comply with such a direction. In our view, this is adequate to enforce clause 4.1(1)(a), if the Shire prosecutes the person for not complying with a direction under clause 13.3(2) rather than attempts to prosecute for the consumption of the liquor, which might require more proof. We recommend, however, altering clause 13.3(1)(a) slightly to include after 'which' and before 'is' in the first line '*the authorised person considers on reasonable grounds*'. This will reduce the requirement to prove that the person was doing something contrary to the local law to proving only that the authorised officer had reasonable grounds for considering that this was the case. In our view, witnessing a person consuming a substance from a container labelled in a way that indicated that it contained liquor would be reasonable cause to give such a direction."

The definition of an "Authorised Person" in the local law reads as follows:

1. Means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law; and
2. Means any member of the Western Australian Police Force;

## **COMMENT**

A request has been received from the Police for Council to consider having this clause or a similar clause enabling confiscation of alcohol put back in the local law.

The reason for requesting this is that the Police do not have power to confiscate alcohol and in many instances where people are consuming alcohol it is not appropriate to issue an infringement or to put the matter through the Courts. Simply being able to confiscate the alcohol would solve the problem.

The comments by the Solicitors on the original clause are valid based on the way the clause was drafted i.e. "for testing any substance which the authorised person considers may be liquor in an unsealed container".

However, other local governments have local laws that simply provide for the confiscation of alcohol by authorised persons.

Given the obvious problems of alcohol being consumed around Broome and the desire of the Shire to have the Police assist in addressing these issues it is essential the Shire help the Police to help us in every way possible. By agreeing with their request, we will assist in achieving this.

Before time is spent on researching alternative wording for any amendment, indication is sought as to whether or not Council agrees that a clause should be included allowing for the confiscation of alcohol when people are found consuming it illegally in a public place or on local government property.

Should Council agree to the amendment, the Manager Health Services will investigate some alternative wordings and submit them to Council for endorsement and adoption.

**CONSULTATION**

Broome Police

**STATUTORY ENVIRONMENT**

Local Government Act, 1995

Local Government Property and Public Places Local Law, 2003

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

*That Council agrees to consider:*

1. *A suitable amendment to the Local Government Property and Public Places Local Law, 2003 to include a provision for the confiscation of alcohol from persons found consuming it in a public place or on local government property, and*
2. *A draft proposal be submitted to the Council for approval.*

**Moved:** **Seconded:**

**FOR:**  
**AGAINST:**

**9.1.4 CENTENARY OF LOCAL GOVERNMENT**

<b>LOCATION/ADDRESS:</b>	N/A
<b>APPLICANT:</b>	N/A
<b>FILE:</b>	ADM.01
<b>RESPONSIBLE OFFICER:</b>	Acting Chief Executive Officer
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	10 February 2004

**SUMMARY:** To advise Council of the municipal history of the Shire of Broome, determine when the Centenary of Local Government should be celebrated and suitable events or activities to mark the occasion.

## BACKGROUND

There is some conjecture as to exactly when the Centenary Of Local Government in Broome is. Following is information relating to the Shire of Broome's Municipal History:

- Broome Roads Board District  
15 November 1901 - 24 July 1908  
Listed in the Government Gazetted of 15 November 1901 – defines boundaries of Broome Roads District under the *Roads Act 1888* (now repealed). These boundaries were similar, but different to the current boundaries of the Shire of Broome.

The Government Gazette of 24 July 1908 shows the Broome Road District abolished and incorporated into the West Kimberley road District under the *Roads Act 1902*.

- Broome Municipal District  
30 September 1904 - 13 December 1918  
Listed in the Government Gazette of 30 September 1904, boundaries of the Municipal District defined under the *Municipal Institutions Act 1900* (now repealed). The boundaries of the municipal district would generally be the boundaries of the Broome townsite.

The Government Gazette of 13 December 1918 abolishes the Broome Municipal District and incorporates it into the West Kimberley Road District as from 31 December 1918 under the *Municipal Corporations Act 1906* and the *Roads District Act 1911* (both now repealed).

- Broome Road District  
20 December 1918 - 23 June 1961  
The Government Gazette of 20 December 1918 shows the boundaries of the Broome Road District created by an excision from Derby West Kimberley Road District as from 1 January 1919 under the *Roads Act 1911*.

Government Gazette of 5 December 1919 shows the boundaries of Broome Road District redefined under the *Roads Act 1911*.

The boundaries of 1919 have remained

- Shire of Broome  
23 June 1961  
Government Gazette of 23 June 1961 shows the Broome Road Board becomes the Shire of Broome from 1 July 1961 under the *Local Government Act 1960* (now repealed) and continues under the *Local Government Act 1995*.

As can be seen, there are overlaps between the gazettal of local government cover the entire Broome area and the Broome townsite. This coupled with the excision of areas to be joined with the Derby West Kimberley and the lack of maps showing exact boundaries adds to the confusion.

## COMMENT

Discussions with representatives from the Department of Local Government indicate that the Centenary of Local Government in Broome could be either 2001 from when the first local government was established or 2004 being 100 years of continuous local government. They have been unable to provide a firm decision on this matter.

As the Shire did not mark the centenary of the establishment of the local government in 2001, it is suggested that the centenary of continuous local government in Broome be celebrated in 2004.

It is suggested that a Working Group of Staff and Councillors be formed to determine suitable activities to mark this event, which could occur in the latter part of this year.

**CONSULTATION**

Discussions have been held with the Department of Local Government and Regional Development on this matter

**STATUTORY ENVIRONMENT**

Local Government Act, 1995

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

No budget allocations have been made for the centenary of local government celebrations and these would need to be considered as part of the 2004/2005 budget process

**STRATEGIC IMPLICATIONS**

The Shire of Broome Strategic Action Plan 2003 – 2008 Leadership and Governance Goal Area Strategy 1.1 seeks to "promote community awareness, involvement and civic pride through effective public relations, communications, functions and activities", through the identification of new opportunities to promote Council's activities

**VOTING REQUIREMENTS**

Simple Majority

<b><u>REPORT RECOMMENDATION</u></b>	
<b><i>That Council agrees to the "Celebration of 100 Years of Local Government in Broome" in 2004 and a Working Group of Cr ....., Cr ..... and Cr ..... and the Chief Executive Officer, the Community Relations Officer and ..... be formed to determine suitable events and/or activities to mark this event, with a report being presented to Council before the 2004/2005 budget deliberations.</i></b>	
<b>Moved:</b>	<b>Seconded:</b>
	<b>FOR:</b>
	<b>AGAINST:</b>

**9.1.5 PURCHASE OF CARPET FOR BRAC**

<b>LOCATION/ADDRESS:</b>	Broome Recreation & Aquatic Centre
<b>APPLICANT:</b>	North West Expo
<b>FILE:</b>	ADM50
<b>RESPONSIBLE OFFICER:</b>	Manager Corporate Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	19th February 2004

**SUMMARY:** Request from the North West Expo Committee for Council to make provision in the 2004/05 budget for carpet at BRAC for events.

**BACKGROUND**

The North West Expo has been investigating funding opportunities through the above program for infrastructure development that would benefit not only the Expo but the broader Broome community.

One idea has emerged from discussions with D.O.T.A.R.S. is the purchase of a hard wearing, removable modular type of carpet surface for the stadium of the Broome Recreation and Aquatic Centre that could be utilised by a range of future events staged at the stadium as a way of protecting the existing surface.

For this year's Expo, carpet squares are being hired at a cost of \$11,000, to cover the entire stadium area. Expo had investigated rolls of carpet (at around \$16,000) however they have proved unsuitable due to adhesion requirements that would leave a residue on the floor. They have also investigated the cost to purchase the type of commercial carpet squares used by equipment hire companies and have been quoted approximately \$60,000 which is not within Expo's budgetary consideration.

Expo suggest that there is an opportunity for the Shire of Broome, Expo and D.O.T.A.R.S to partner the purchase of the carpet squares in a cost sharing situation. The cost split suggested is \$27,500 each from the Shire of Broome and D.O.T.A.R.S and \$5,000 from Expo. This cost split would be acceptable to D.O.T.A.R.S.

The Expo Committee is seeking Council's consideration of the above proposal as a budgetary item for the next financial year.

**COMMENT**

Whilst the idea seeks to leverage funds from the Shire of Broome the purchase is not supported for the following reasons:

1. The expenditure is unplanned (the BRAC has a 5 year plan regarding major equipment purchases, replacement and repairs)
2. The recovery of the cost would take a number of years. Council should note that the \$10,000 income from this years Expo was set to cover staff costs and losses of other sources of revenue and the additional benefit to the Shire is not yet quantifiable.
3. The BRAC is a purpose built *sporting* complex and funds should be directed towards sporting activities. Note that a significant amount of funding will be required for capital works of Stage 2. With plans in the not too distant future for Civic Centre upgrades and an Arts Centre it is likely that other functions such as Worn Art will not be held at BRAC and the Shire may find itself with an asset that is under utilised.

Should Council wish to support the inclusion, the Manager Corporate Services suggests that only an amount of \$5,000 be provided and that the Expo seek alternative funding or consider a self supporting loan.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Nil

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Additional unplanned expenditure

**STRATEGIC IMPLICATIONS**

None applicable

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

*That Council thanks the NW Expo Committee for their initiative but advise that the Shire is unable to support the contribution, as there are greater demands in other service areas for capital funding.*

**Moved:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

**FOR:** \_\_\_\_\_  
**AGAINST:** \_\_\_\_\_

**9.1.6 UPDATE ON THE HYPE PROGRAM**

<b>LOCATION/ADDRESS:</b>	Dakas Park and Surrounds
<b>APPLICANT:</b>	N/A
<b>FILE:</b>	TBA
<b>RESPONSIBLE OFFICER:</b>	Manager Corporate Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	19th February 2004

**SUMMARY:** Update on the progress of the HYPE program and submission for continued internal administrative and management support.

## BACKGROUND

Last year a number of concerns were raised by members of the community regarding the anti social behaviour of youth in the vicinity of the Dakas Park area. A number of meetings were held with relevant government agencies, community organisations and residents from which a collaborative approach was formulated, incorporating a number of strategies. One of those strategies was the Helping Young People Engage program proposed by Dr James Jarvis.

The program proposal was presented to Council on 5<sup>th</sup> November. The submission from Dr Jarvis recommended that:

1. The Shire enable the employment of the HYPE workers via offering contracts based on a selection criteria to be provided from other successful HYPE locations
2. The Shire provide an account/cost centre for where HYPE based funding and revenue is sourced that will be used to pay salaries and other project related expenses as agreed to by the participants of the Debrief
3. The Shire provide a representative to the Debrief at all times, which will include a proxy for the regular participant
4. Any other recommendations to be discussed with the Shire on an ongoing basis

Council subsequently resolved:

1. *That \$15,000.00 be provided to initiate a HYPE project in Broome and that the expenditure be authorised as it is not contained in the current budget.*
2. *That staff liaise with Carol Martin MLA to identify and secure other sources of funding.*
3. *That the Department of Community Development provide staff with relevant criteria for inclusion in position descriptions for HYPE workers.*
4. *That a Councillor(s) be nominated to attend regular meetings of the project management group.*
5. *That a report be provided in three months, or sooner depending on the rate of expenditure of the authorised funding.*

The Helping Young People Engage program commenced in December last year and this report provides a brief to Council on the outcomes to date and seeks to extend in kind support.

## COMMENT

Firstly a formal review involving quantitative and qualitative research and analysis commenced on 19<sup>th</sup> February. The HYPE Briefing Group were fortunate enough to engage the services of a student from Notre Dame University under the guidance of Assistant Dean John Bucknall and surveys of residents and youth in the area will be undertaken as part of the review. This will take up to 13 weeks to complete.

The information provided in this report is therefore sourced from HYPE worker feedback sheets, minutes of the HYPE Debrief Group and reports from stakeholder agencies.

The effectiveness of the HYPE program should be measured against its objectives. The objectives of the HYPE program follow along with the outcomes to date based on the above source data.

- o *To improve safety and security for young people and the wider community in public space.*

Outcome: The HYPE workers engaged with a number of residents and a large amount of young people. The workers have identified:

Youth on the streets between the hours of 9pm and 12pm as young as eight years old;  
Youth suffering the effects of drug abuse;  
Youth not under the care or control of a parent or guardian;  
Youth at risk from domestic violence or abuse;  
Youth at risk from teenage pregnancies;  
Youth participating in anti social behaviour including vandalism and arson.

The HYPE workers have had some success in modifying behaviours of a number of young people who, over the short period of time have developed a rapport built on trust and respect. They have been able to act as a conduit between the youth and support agencies.

The HYPE workers have also identified:

Suspicious activities;  
Causes of anti social behaviour which are not necessarily youth related;  
Areas of risk due to poor lighting

The HYPE debrief has provided valuable feedback for the respective agencies who have undertaken affirmative action as a result of the information.

Recent feedback from the workers suggests that residents who previously stayed inside their homes are now sitting back on their verandas.

- o *To promote the participation and inclusion of young people in public space.*

Outcome: The HYPE workers have run a number of BBQs at various locations including Dakas Park, Burrdekin Drop in Centre and PCYC. Up to 40 young people have been in attendance and the Dakas Park BBQ involved a number of residents.

- o *To promote "youth friendly" management of public space.*

Outcome: The HYPE Debrief group has identified lighting as an issue at Dakas Park and the amount of rubbish as being a temptation to potential firebugs. Correspondence has been sent to the Shire regarding this issue.

- o *To build respect and communication between young people, community, local businesses and Police*

Outcome: The extent of achievement of this outcome will be apparent once surveys are complete. The Hype workers have convinced many of the youth not to run away from Police and that they have nothing to fear. The local shopping centre has now become a meeting point between HYPE workers and the youth.

- o *To reduce levels of anti social behaviour in public space.*

Outcome: Reports from the Police indicate the number of contacts/incidents has taken an unprecedented drop not seen for over eight years. This will be quantified in the formal review

- o *To reduce damage to public and private facilities and infrastructure.*

Outcome: In the early days of the program and number of youth were participating in lighting spot fires, throwing rocks at Police vehicles and at private residences. Reports indicate that on all three fronts the number of incidents has decreased but again the formal review will quantify this.

- o *To reduce the number of young people entering the justice system.*

Outcome: This is a long-term objective of HYPE and is not measurable in the short term. Representatives from the Department of Justice have been participating in the HYPE debrief meetings.

- o *To link young people to agencies, information and resources.*

Outcome: In its short period of operation the effectiveness of the program in meeting this objective has been the most significant achievement to date. This has been assisted by the Department of Community Development (DCD) providing an Aboriginal Youth Liaison Officer to assist HYPE workers in the field. The program has particularly assisted the DCD to identify youth at risk and provide support. The BBQs have been successful in introducing organisations such as Burdekin and PCYC to young people.

- o *To develop partnerships and understanding between agencies and organisations.*

Outcome: The level of cooperation between the key agencies of Police, DCD and Local Government has been unprecedented. Each organisation has brought key services to the program and shared information, which has contributed to the outcomes mentioned above. A number of other organisations including the Department of Crime Prevention, the Department of Indigenous Affairs, and the State Member for Kimberley and Minister for Community Development are also taking an interest in the program.

Of course with any program such as this, there are negative outcomes. The main one for each agency would be the degree of in kind support required to keep the program running. The extent will be quantified in the formal review however from the Shire of Broome's perspective, financial, human resource and administrative support has easily reached 5 hours per week. Given this support is from both middle and senior management it would be worth \$400 - \$500.

The HYPE program faces two major challenges over the next few months, the recruitment and retaining of suitable HYPE workers and securing of ongoing funding. The latest recruitment saw the appointment of a further 4 workers but with natural attrition rates, only 8 are now currently employed. A \$15,000 grant has been approved from the Drug and Alcohol Prevention Office, and grant applications are currently pending for Department of Justice and Office of Crime Prevention. There may also be some assistance from the Department of Indigenous Affairs.

The financial operations to date are as follows:

Description	Current Budget	YTD Actual
20-Feb-04		
HYPE Program reported as at...		
HYPE - Operating Grant (Shire of Broome)	\$15,000	\$15,000
HYPE - Operating Grant (Office of Drug & Alcohol Prevention)	\$15,000	\$0
HYPE - Operating Grant (Dept Crime Prevention)	\$0	\$0

HYPE - Operating Grant (Dept of Justice)	\$0	\$0
Donations & Contribs Received No Gst - Hype	\$0	\$2,400
Sundry Income - Hype	\$0	\$0
	<u>\$30,000</u>	<u>\$17,400</u>
Salaries - Hype	\$25,100	\$21,959
Hype On Costs	3000	\$2,723
Hype Activities Expenditure	1200	\$1,150
Hype Phone Expenditure	500	\$260
Hype Fuel Expenditure	200	\$45
Hype Stationary Expenditure	0	\$0
	<u>\$30,000</u>	<u>\$26,137</u>
	<u>\$0</u>	<u>-\$8,737</u>

Where to from here? The Debrief Group are examining increasing the area to incorporate a section of Anne Street and the Broome Cemetery. Approaches are also being made to the Shopping Centres with the intention of securing funding to provide HYPE workers at the centres.

Investigations of a home base for HYPE are also underway and the principles of HYPE are being considered as a model for other services such as Kullari patrol.

## CONSULTATION

HYPE workers and support agencies

## STATUTORY ENVIRONMENT

Nil

## POLICY IMPLICATIONS

Nil

## FINANCIAL IMPLICATIONS

Up to \$500 per week management and administration support. Should the program continue over the medium term then there will be additional and ongoing workload on staff and staff resources may need to be reviewed.

## STRATEGIC IMPLICATIONS

Promote social development in co-operation with other government and non-government agencies. Liaise with social support service providers to ensure that facilities are commensurate with the needs of the community.

## VOTING REQUIREMENTS

Simple Majority

**REPORT RECOMMENDATION**

1. ***That Council continue to support the HYPE program for a further 3 months by approving internal management and administrative support by existing Shire Staff.***
2. ***The level of administration and management of resources required to support the programme be reviewed in the 2004/05 budget.***

**Moved:****Seconded:****FOR:****AGAINST:****9.1.7 VENUE HIRE BROOME RECREATION & AQUATIC CENTRE**

**LOCATION/ADDRESS:** Broome Recreation & Aquatic Centre  
**APPLICANT:** Rotary Club of Broome  
**FILE:** ADM50  
**RESPONSIBLE OFFICER:** Manager Corporate Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 17th February 2004

**SUMMARY:** A request has been received from the Broome Rotary Club for waiver of BRAC fees. It is recommended no waiver be granted.

**BACKGROUND**

A request has been received from the Rotary Club of Broome for free venue hire for the Pentathlon event.

The event was successfully run last year with the following revenues and direct costs:

Sales – Alcohol	\$1,203
Sales – Food	\$ 616
Less: Cost of goods sold	\$ 700
	<b>\$1,119</b>
Staff Costs	\$ 380
Occasional Licence	\$ 25
	<b>\$ 405</b>

The cost of venue hire is \$180 (8 tennis courts for 3 hours)

The Rotary Club are also proposing that this year food by way of a sausage sizzle be provided free for the participants but spectators pay. The costs are of course recouped through profit on sales of alcohol.

**COMMENT**

This concept could be expanded to cover Sporting Clubs wind up functions or larger functions such as Worn Art. There may also be a case for sporting clubs seek the same arrangement for their normal weekly hire. In essence these type of requests which involve the waiver of charges in lieu of food and beverage profits require the Shire of Broome to underwrite the event. Whilst it is reasonably foreseeable that the Shire of Broome will receive revenues well in excess of its costs and waiver of fees, there is a possibility that an event may not be well supported and costs may not be covered.

The Manager Corporate Services considered the issue of underwriting an event; what type of organisations such an arrangement would apply to; the potential to generate revenues in excess of hire fees from bar profits; and the arrangements of similar venues in Broome (eg Mangrove Hotel).

The outcome is that the Manager Corporate Services believes that Council should not entertain the waiving of fees but may consider separate arrangements to return funds to an organisation by way of a sundry donation or a percentage of bar profits. Any arrangement for the latter method would require careful development of a policy and considered in context of the overall operations of BRAC.

As such the Manager Corporate Services recommendation is that no waiver of fee be granted.

### **CONSULTATION**

Nil

### **STATUTORY ENVIRONMENT**

Local Government Act, 1995

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

No reduction in revenue from hire fees

### **STRATEGIC IMPLICATIONS**

Maintain ongoing support for recreational activities, sporting groups and cultural initiatives to achieve beneficial outcomes for the entire community.

### **VOTING REQUIREMENTS**

Simple Majority

#### **REPORT RECOMMENDATION**

- 1. No waiver of fee be granted in relation to BRAC facilities unless it is specifically contained within policy (refer 2.1.5 Venue Hire)***
- 2. That the Chief Executive Officer be requested to investigate profit sharing arrangements within the context of the Shires Sport and Recreation strategic plan***
- 3. That the Rotary Club be advised that they may like to write to the CEO seeking a sundry donation under the Shire of Broome's Sundry Donation Policy.***

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

**9.1.8 CHU CHUU'S EARLY EDUCATION CENTRE – EXTENSION OF LEASE**

<b>LOCATION/ADDRESS:</b>	RES.1640
<b>APPLICANT:</b>	K & B Armstrong
<b>FILE:</b>	RES.1640
<b>RESPONSIBLE OFFICER:</b>	Acting Chief Executive Officer
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	19 February 2004

**SUMMARY:** To advise Council of procedural requirements and national competition policy implications of their previous decision regarding Chu Chuu's Early Education Centre and to seek direction on Council's position on childcare subsidy.

**BACKGROUND**

At the Ordinary Meeting of Council held 16 December 2004, the following was resolved:

1. "That Council delegate authority to the Chief Executive Officer to negotiate incremental increases to 25%, 50% and 75% of market value respectively over the three year option for Chu Chuu's Early Education Centre. Such increases to be indexed to CPI annually.
2. That Council agree to two further options of four (4) years and three years (3) respectively subject to the successful negotiation of the increase in rental to reflect the above.
3. That Market Rental Valuation be carried out prior to each further extension of the lease (ie four years and three years respectively) with rental being set at 75% of market rental valuation and indexed to CPI annually.
4. That should any request for assignment of lease be made that Council fully ensure that any proposed assignee continues to provide similar service levels and that they have the financial ability to meet their obligations."

As indicated in the report presented to Council at its Ordinary Meeting held on 16 December 2003, the Chief Executive Officer had some concerns with regard to National Competition Policy principles and as such, the Council's decision was referred to the Shire's Solicitors for advice.

The following advice has now been received from McLeods:

1. "Regardless of the position under NCP it is recommended that Council be advised of the:
  - a. requirement under r11 (da) of the Regulations to record its reasons for any decision it makes which differs significantly from a recommendation made by an employee or a committee; and
  - b. requirement under s3.58(3)(b) of the Act to record its reasons for any decision made after considering submissions in response to advertising a proposed disposal of property under s3.58(3) of the Act.
2. In regard to NCP, under cl 7 of the Competition Principles Agreement ("the CPA") local governments are obligated to apply the principles of the CPA. Those principles include 'competitive neutrality' the objective of which is to eliminate 'resource allocation distortions arising out of the public ownership of entities engaged in significant business activities...'. The other principles under CPA are structural reform of public monopolies and legislation review, which are not relevant to this advice.

3. How the principle of competitive neutrality is to be applied by local governments is set out in the 'Local Government Clause 7 Competition Policy Statement' ("the Statement"). The Statement requires a local government to 'undertake an open and transparent cost-benefit analysis to determine whether it is appropriate to apply the competitive neutrality principles to their business activities'. The analysis is to include qualitative costs and benefits such as social costs and benefits.
4. In our opinion, in this situation the principle of competitive neutrality, as stated in the Statement, leaves it open to Council to choose to subsidise the rent for the Centre if it believes there is a social benefit in doing so which outweighs the affect the subsidy might have on competitive neutrality. However, if Council wishes to make such a decision it will not be complying with the requirements of the Statement if it does not do so openly and transparently. This means, in our view, the Council needs to be able to demonstrate that it has weighted both the quantitative and the qualitative costs and benefits in subsidising the rent. Doing so might include considering factors such as the risk that the Centre will close without the subsidy and the social impact if that were to occur, and the impact of fee increases on the users of the Centre weighed against factors such as the impact of the subsidy on any other provider of childcare in the area, and the costs to the wider community of providing the subsidy for the benefit of the users of the childcare service. The decision to be reaches is essentially one that can only be made by value judgements and it is our opinion that Council will have complied with the requirements of the Statement if it conscientiously undertakes the kind of analysis we have referred to and has a record of having done so detailing the matters it considers and the reasons for its conclusions.
5. Our recommendation is, therefore, that Council reconsider this matter so that it can determine reasons for its decision in accordance with the Act, the Regulations and to meet the requirement of the Statement.
6. An option that could be considered, if Council maintain its position on subsidising the Centre, is to amend the lease to provide for a market rent and to subsidise that rent through a "contra" grant while the current lessee is the lessee. This would provide the opportunity to review the position if the lease is assigned and Council might, or might not, choose to continue the subsidy to a different lessee. If Council chooses this option it would need to be careful that it has supportable reasons for why it might be appropriate to subsidise the current lessee and any decision it might make not to subsidise a future lessee."

## COMMENT

During the consultation with the Shire's solicitors, Kerry and Ben Armstrong wrote to the Shire, indicating their wish to exercise the option in their lease for an additional three years.

Based on the information provided by McLeods, Council's desire to ensure that the Chu Chuu's Early Education Centre continues to provide this service to the community of Broome and the implications of the National Competition Policy principles on the current resolution, it is felt that this resolution should be rescinded and the following issues addressed individually:

- Lease term for Chu Chuus Early Education Centre  
Information provided by Mr and Mrs Armstrong's indicated that for them to ensure the long term viability of this service, they require an additional lease term of seven (7) years, over and above the current option of three (3) years. Council has resolved to agree to this request, following the disposal process in accordance with Section 3.58 of

the Local Government Act in two further options of four (4) years and three (3) years respectively.

There are no legal implications with this proposal.

- Rental valuation for Chu Chuus Early Education Centre  
The Officer recommendation was to achieve 'market rental' for the area occupied by Chu Chuus Early Education Centre, over the three year existing option.

Council resolved to increase rental to 25%, 50% and 75% of market rental, with the Shire subsidising the rental over the property for the term of the existing option and the additional options as requested.

As indicated in the legal advice provided by McLeods, this has National Competition Policy implications and should Council wish to pursue this option, then it would need to provide a report, detailing that the social benefits of subsidising one business over another outweighs any disadvantage to the business not receiving the subsidy. This would be an exhaustive process and not considered to be the best course of action and may not achieve the objectives of Council.

- 'Contra Grant' or Rental Subsidy  
Advice from McLeods indicates that a 'contra grant' could be offered to the Lessee rather than a rental subsidy that forms part of the lease. This is a preferred course of action, however, the Council should be aware that any grants would need to be available to all providers of similar service and that criteria would need to be set to ensure that grants were offered on an equitable basis and any decisions to provide or not to provide a grant could be justified.
- Objectives  
In conjunction with the above point, Council clearly needs to determine what is it is hoping to achieve through the subsidy of the rental for the Chu Chuu's Early Education Centre.

The Chief Executive Officer envisages that the following objectives in relation to long day care services in Broome may apply:

1. Ensuring the continuation of long day care services to the Broome community. The closure of this type of service would have detrimental social impacts on the community.
2. That the provision of these services remains affordable to the majority of the community.
3. Ensuring the quality of long day care services in Broome.

The current proposal of providing subsidised rental to one service provider, with out any criteria of guidelines does not ensure the above objectives are met. It is considered to be more appropriate to look at providing grants, subject to criteria to ensure the above objectives are met.

- Responsibility  
The final point is that Council should note the boundaries of responsibility between Commonwealth and Local Government responsibility. The Commonwealth are responsible for the cost of affordable childcare and the Department of Family and Community services regularly provides reports to the Government on the fees charged for each type of service. The Commonwealth Government then formulates policy on childcare subsidy, which has led to the childcare benefit scheme.

The Commonwealth also have responsibility for the supply of services and it is a Commonwealth policy change that resulted in Chu Chuus coming under the auspice of the Shire of Broome. (I refer to previous reports regarding the withdrawal of Community Long Daycare Centre Assistance Grants). The Commonwealths view is that open competition will take care of supply and that its role is in the regulation of price for the service through Government subsidies.

Of course in practice, Commonwealth policy does not always take into account the demographics of a location such as Broome with its young and transitional population and high cost of living. Council may then have a legitimate role in assisting with the childcare service provision but at the same time should be lobbying the Commonwealth to take into account such peculiarities.

## **CONSULTATION**

In accordance with Section 3.58 of the Local Government Act 1995, the proposal to extend the lease and increase the rental to market value was advertised and submissions were included in the report to the Ordinary Meeting of Council held 16 December 2003.

Following Council's resolution, further advice was sought from Council's Solicitors.

## **STATUTORY ENVIRONMENT**

Local Government Act, 1995

Local Government (Administration) Regulations, 1996

## **POLICY IMPLICATIONS**

No specific policy at this time however the development of new policies maybe appropriate.

## **FINANCIAL IMPLICATIONS**

The amount of any subsidy granted by Council will need to be included in future budgets

## **STRATEGIC IMPLICATIONS**

The Economic Prosperity area of the Shire of Broome Strategic Action Plan 2003 – 2008 seeks to support existing local business and create the environment for expansion

## **VOTING REQUIREMENTS**

Absolute Majority

**As the motion proposes to rescind a previous motion it needs the support of three Councillors, as per section 10 Local Government (Administration) Regulations 1996, prior to consideration by Council.**

**REPORT RECOMMENDATION**

**That the resolution to item 9.1.10 – Chu Chuu's Early Education Centre – Extension of Lease – from the Ordinary Meeting held 16 December 2003, as follows:**

- 1. "That Council delegate authority to the Chief Executive Officer to negotiate incremental increases to 25%, 50% and 75% of market value respectively over the three year option for Chu Chuu's Early Education Centre. Such increases to be indexed to CPI annually.**
- 2. That Council agree to two further options of four (4) years and three years (3) respectively subject to the successful negotiation of the increase in rental to reflect the above.**
- 3. That Market Rental Valuation be carried out prior to each further extension of the lease (ie four years and three years respectively) with rental being set at 75% of market rental valuation and indexed to CPI annually.**
- 4. That should any request for assignment of lease be made that Council fully ensure that any proposed assignee continues to provide similar service levels and that they have the financial ability to meet their obligations."**

**be revoked, and replaced with:**

- 1. That Council agree to further options of four (4) years and three (3) years respectively in addition to the existing term and option associated with the lease to K & B Armstrong for the area known as the Chu Chuus Early Education Centre on portion of Reserve 1640.**
- 2. That Council delegate authority to the Chief Executive Officer to negotiate incremental increases of 33.3%, 66.6% and 100% of market rental respectively over the three year option for the Chu Chuu's early education centre.**
- 3. That Council agree to the additional 7 year term pending the successful negotiation of the increase in rental to market value over the three year option, including market rental valuations every three (3) years and indexed to CPI annually.**

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

## 9.2. UNIQUE HERITAGE AND ENVIRONMENT

### OUTCOME

**Conserve and enhance the natural features, built environment and cultural heritage of our unique municipality.**

#### 9.2.1 APPLICATION FOR PLANNING APPROVAL - PROPOSED INDUSTRIAL DEVELOPMENT - LOT 6 NO. 14 MINILYA ROAD DJUGUN

<b>LOCATION/ADDRESS:</b>	Lot 6 No. 14 Minilya Road Djugun
<b>APPLICANT:</b>	Harold Norman & Maureen Tracey
<b>FILE:</b>	MIN-2/14
<b>RESPONSIBLE OFFICER:</b>	Manager Planning Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	16 February 2004

**SUMMARY:** An application for planning approval has been received for a caretaker's residence, warehouse, light industry, showroom and office on Lot 6 No. 14 Minilya Road Djugun.

The application is referred to Council for consideration as a relaxation of car parking and setback requirements is sought and the lot is less than the minimum accepted lot size for a caretaker's dwelling.

This report recommends conditional approval.

### BACKGROUND

An application has been received for the following:

- An 88sqm extension to an existing shed on site.
- The use of the front of the existing shed for a showroom and office.
- The use of the balance of the existing shed and the extension for light industry.
- The construction of a new 210sqm shed for storage/warehouse use.
- The construction of an upper floor caretaker's residence of approximately 54sqm with separate access from the carpark.
- The provision of a total of 12 car parking bays onsite.

### COMMENT

The proposed uses of "Industry- Light" and "Warehouse" are permitted 'P' uses within the Light and Service Industry zone. The proposed "Caretaker's Dwelling", "Showroom" and incidental "Office" uses are discretionary 'D' uses.

The proposal largely complies with the requirements of Town Planning Scheme No. 4 and Shire policies with the exception of a few matters, as discussed below.

#### Car Parking

Car Parking Policy 4.1.8 requires the following car parking for the development:

Use	Car Parking Requirement	Area	Bays Required
Light Industry	1 bay per 50sqm	232sqm	4.64
Warehouse	1 bay per 50sqm	210sqm	4.2
Showroom	1 bay per 50sqm	40sqm	0.8
Office	1 bay per 30sqm	40sqm	1.33
Caretaker's Dwelling	2 car bays	N/A	2
<b>TOTAL</b>			<b>12.97 (13)</b>

The proposal involves the provision of 12 carparking bays, one less than that required above. This is considered to be a minor deviation to the policy and is supported. The requirement of 1 car parking bay per 50sqm for a warehouse (storage) is considered to be onerous given that a warehouse without an office is generally largely un-staffed or only lightly staffed and that there is a separate car parking calculation for office components of a development. In the case of the proposed development, the warehouse alone generates the need for 4.2 carparking bays, whereas the reality is likely to be that of a maximum of one vehicle and one truck onsite specifically for the warehouse component of the development at any one time.

#### Servicing

The development provides for a loading bay, paved bin store area and sufficient manoeuvring areas for trucks and other vehicles likely to service the site. The only issue is in relation to the bin store area, which should be designed to allow for at least two standard commercial skip bins accessible by a Kimberley Waste truck. It is considered that the current design allows for this, with some clarification on the plans required, with collection achievable through either car bay no. 11 or 12 at pickup times.

#### Setbacks

Town Planning Scheme No. 4 requires at least one setback (side or rear) of a building to be six metres "...to provide for adequate areas to incorporate service areas, storage, parking, manoeuvring and/or access ways."

The proposal involves the following variations:

- The existing shed with proposed extension with a side setback of three metres and rear setback of 4 metres.
- Proposed new shed with a three metre rear setback and nil side setback.

As previously discussed, it is considered that adequate provision for service areas, storage, parking and manoeuvring has been incorporated into the design of the development. Further, the proposed reduced setbacks provide a better utilisation of the land and allow for greater areas of manoeuvring and access than if the new building and building extension were setback the required distances.

#### Caretaker's Dwelling

Industrial Buildings, Caretaker's Dwellings and Attached Offices Policy 4.1.2 states that:

- “9. Lots zoned ‘Light and Service Industry’ with areas less than 2,000sqm shall only be considered for a caretakers (sic.) dwelling component as part of the development of the site shall (sic.) be determined by Full Council.”

As the subject site has an area of 1602sqm, Council consideration of the proposed caretaker's dwelling is required.

The plans submitted demonstrate that the site can adequately function as an industrial property with sufficient space to accommodate a caretaker's dwelling, without being at the expense of the ‘core’ use of the site. The caretaker's dwelling is also smaller in size than most caretakers' dwellings and proposed and is less than the 100sqm maximum. Accordingly, the construction of a caretaker's dwelling on site in the context of the overall development is supported.

## **CONSULTATION**

Not applicable

## **STATUTORY ENVIRONMENT**

Town Planning Scheme No. 4

## **POLICY IMPLICATIONS**

Industrial Buildings, Caretaker's Dwellings and Attached Offices Policy 4.1.2  
Car Parking Policy 4.1.8

## **FINANCIAL IMPLICATIONS**

Nil

## **STRATEGIC IMPLICATIONS**

Nil

## **VOTING REQUIREMENTS**

Simple Majority

### **REPORT RECOMMENDATION**

***That the application for Planning Approval dated 24 November 2003 (2003/281) made by Harold & Maureen Tracey for a proposed caretaker's residence, warehouse, light industry, showroom and office on Lot 6 No. 14 Minilya Road Djugun be APPROVED subject to the following conditions:***

- 1. Development must be carried out strictly in accordance with the plans stamped received dated 6 January 2004 and 13 February 2004 submitted with the application as approved by the Shire.***
- 2. No storage or display of goods outside any building on site, in public access areas.***
- 3. The office space within the development being directly related, and incidental, to the predominant approved use. NOTE: The office is to be used for on site administrative purposes of the predominant use and not for other off site purposes.***
- 4. The proposed or existing shed and extension shall not be used for any temporary or permanent residential occupation.***

5. **The caretaker's dwelling shall only be occupied by the owner/operator of an approved industrial or other business on the site, and immediate family members of the owner/operator.**
6. **The existing unapproved caretaker's residence within the front of the existing shed shall cease immediately following the completion of the new caretaker's residence.**
7. **The "paved bin area" at the rear of the site shall be sufficient size to cater for a minimum of two (2) standard commercial skip bins.**
8. **Material storage areas/refuse areas to be built and screened in accordance with the approved plan to the satisfaction of the Shire. NOTE: Building requirements to be addressed at building stage.**
9. **The lodging of detailed landscape plans, to the satisfaction of the Shire, for the development site and the adjoining road verge(s) with the Building Licence Application. For the purpose of this condition a detailed landscaping plan shall be drawn to a scale of 1:100 and show the following:**
  - (a) **the location and type of existing and proposed trees and shrubs within the carpark area.**
  - (b) **any lawns to be established.**
  - (c) **any natural landscape areas to be retained; and**
  - (d) **those areas to be reticulated or irrigated.**
10. **Landscaping and reticulation to be established in accordance with the approved plans prior to the development first being occupied and thereafter maintained to the satisfaction of the Shire.**
11. **All visitor parking must be on-site and not at all within the road reserve.**
12. **Should the development be staged temporary landscaping and fencing must be installed prior to the development being occupied to the satisfaction of the Shire.**
13. **All proposed signs associated with the development, including signs painted on the building, shall comply with the Shire's Signs Local Laws and be the subject of a separate application and approved prior to erection or painting.**
14. **All vehicle crossovers being designed and constructed (sealed, brick paving, bitumen, concrete) to the Shire's standard crossover specification with a 6m minimum width.**
15. **Vehicle parking, manoeuvring and circulation areas to be constructed and sealed with brick paving, bitumen or concrete and drained in accordance with approved plans within 30 days of the practical completion or occupation of the development (whichever is the sooner). Detailed engineering plans identifying pavement details (existing, finished levels and pavement type) and drainage details to be submitted and approved by the Chief Executive Officer at Building Licence application stage and prior to the commencement of development.**
16. **Drainage and/or cut/fill of the site to be carried out in accordance with the approved plan. The existing site levels and finished design levels of all of the proposed development, including levels on top of the kerb at the crossover, are to be shown on the Building Licence application and prior to commencement of development.**
17. **A stormwater drainage system is to be provided in accordance with the Shire of Broome's standard specification prior to the development being first occupied and thereafter maintained to the satisfaction of the Shire. The proposed stormwater drainage system is to be shown on the Building Licence application and be approved by the Chief Executive Officer prior to the commencement of development.**

**Note 1: All stormwater runoff to be disposed of either on site or into a legal point of discharge (Shire drain, road or other approved location).**

**Note 2: All drainage systems shall be designed to include water sensitive design principles and to maximize on site water retention.**
18. **All required parking bays being line marked and signed in accordance with the Traffic Code WA 2001 and AS 2890 (off street parking) except standard bay sizes to be 2.7m x 5.5m and disabled bays to be 3.2m x 5.5m within one month of the practical completion or occupation of the development (whichever is the sooner).**

19. *The applicant is to comply with the Health (Treatment of Sewage and disposal of Effluent and liquid Waste) Regulations 1974.*
20. *Prior to commencing any work on the site, the applicant shall obtain a Building Licence from the Shire. Such application shall include, with the working drawings:*
  - (a) Structural Engineers Certification in accordance with the requirements of the Building Code of Australia; and*
  - (b) Formal comment from Fire and Emergency Services Western Australia.*
21. *The development shall be designed in accordance with AS1428.1 - 1993 Design for Access and Mobility. Part 1 - General requirements for Access - Buildings.*
22. *On completion of construction, all excess articles, equipment, rubbish and materials shall be removed from the site, adjoining road reserve and adjacent land and these areas are to be left in an orderly and tidy condition.*

**ADVICE NOTES:**

*The following notes are general information notes, and are merely advisory in nature. They are not conditions of this approval. They have been included to provide some guidance as to other matters which may need to be addressed in respect of the development. They do not set out all of the matters which will need to be addressed under separate approval processes whether administered by the Shire or another authority. The applicant will need to ensure that all approval processes have been satisfied.*

- 1. Any additional development/use, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire.*
- 2. The minimum floor level to be 400mm for residential buildings and 200mm for commercial/industrial buildings above natural ground level.*
- 3. Applications for septic tanks and effluent disposal systems are to be submitted to and approved by the Shire's Health Department prior to the issue of a Building Licence.*

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 5 pages](#)

**9.2.2 POLICY REVIEW - BUILDING SERVICES**

<b>LOCATION/ADDRESS:</b>	N/A
<b>APPLICANT:</b>	N/A
<b>FILE:</b>	
<b>RESPONSIBLE OFFICER:</b>	Manager of Building Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	18th February 2004

**SUMMARY:** Building Policies 5.1.1, 5.1.2 and 5.1.4 are due for review in February 2004 in accordance with Council's adopted schedule of policy review.

Policy 5.1.2 (Building Licence Duration) is recommended to be adopted without change and Policies 5.1.1 (Building Licence Fees) and 5.1.4 (Fences Within The Town Site of Broome) are recommended to be adopted with minor changes.

**BACKGROUND**

In accordance with Council's schedule for the annual review of policies, Building Policies 5.1.1 (Building Licence Fees), 5.1.2 (Building Licence Duration) and 5.1.4 (Fences Within The Town Site of Broome) are due for review in February 2004 and accordingly are presented to Council for consideration.

**COMMENT**

Policies 5.1.1 and 5.1.4 have been slightly amended. Policy 5.1.1 (Building Licence Fees) refers to the Manager of Building Services in several paragraphs and it is believed that these should be replaced with the " Chief Executive Officer" as that is the officer to whom Council can issue delegation.

Policy 5.1.4 (Fencing Within The Townsite of Broome) has had several minor changes made to it. There has been a definition of "Breezeway Fencing" included and a reference that fencing should be of " Breezeway" construction and that the Shire strongly supports the erection of breezeway fencing to facilitate the flow of cooling breezes between properties.

The allowable type of fencing has been altered to include brushwood style of fencing and to allow painted zincalume.

The "Old Broome Precinct" component has been changed to reference the Broome Housing Strategy.

The word " Council" has been deleted and replaced with " Shire" where appropriate.

**CONSULTATION**

Building and Planning Officers

**STATUTORY ENVIRONMENT**

Town Planning and Development Act, 1928

Local Government Act, 1995

Local Government (Miscellaneous Provisions) Act, 1960

**POLICY IMPLICATIONS**

Policies reviewed in accordance with Council's requirements

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

***That Council adopt the attached Building Policies 5.1.1 (Building Licence Fees), 5.1.2 (Building Licence Duration) and 5.1.4 (Fences Within The Townsite of Broome).***

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 8 pages](#)

**9.2.3 BUILDING WORKS CONSTRUCTED WITHOUT A BUILDING LICENCE**

<b>LOCATION/ADDRESS:</b>	Lot 285 Broome Road Via 12 Mile
<b>APPLICANT:</b>	Clayton Thomas
<b>FILE:</b>	BRO – 1/Lt285 (R244848)
<b>RESPONSIBLE OFFICER:</b>	Manager of Building Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	18 <sup>th</sup> February 2004

**SUMMARY:** The Shire recently received a request for a final inspection for a Bed & Breakfast at the abovementioned property. A search for the appropriate approvals revealed that whilst a building file with appropriate plans had been submitted to the Shire in 2001, no building Licence had ever been granted, as the required fees were never paid.

This report recommends that Council issue a letter of acknowledgement for the works.

**BACKGROUND**

The Shire issued a planning consent on 21<sup>st</sup> November 2001 (2001/044) for a Bed and Breakfast at Lot 285 Broome Road via 12 Mile.

At that time a building licence application, together with the necessary plans and structural designs were submitted. However as no fees were paid, a building licence was never issued. This was not revealed until a recent request for a final inspection of the building works was made. The Building Licence application had been filed away and appears to have been forgotten as a result of staff changes.

**COMMENT**

A recent inspection of the building works revealed that they had been generally carried out in accordance with the plans and specifications submitted with the building application and that the development was ready for occupation.

As the Shire is not able to issue retrospective building approval and the works are considered satisfactory it is felt that a letter of acknowledgement in the format of schedule 1 of Policy 5.1.3 is appropriate rather than going through a Section 401 notice under the Local Government (Miscellaneous Provisions) Act, 1960.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Local Government (Miscellaneous Provisions) Act, 1960

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

*That Council acknowledge the building works related to the bed and breakfast at Lot 285 Broome Rd via 12 Mile, carried out by MR Clayton Thomas without a Building Licence and authorise the Chief Executive officer to issue a letter of acknowledgement, in the format outlined in Schedule 1 of Policy 5.1.3, for the works.*

**Moved:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_ **FOR:** \_\_\_\_\_  
**AGAINST:** \_\_\_\_\_

**9.2.4 APPLICATION FOR PLANNING APPROVAL – PROPOSED RENOVATIONS FOR LORD MAC’S RESTAURANT INVOLVING KITCHEN UPGRADE, EXISTING INTERNAL BAR UPGRADE, NEW COCKTAIL BAR, OUTDOOR PIZZERIA PAVILLON AND RAISED TIMBER DECKING = LOT 501 (NO.28) CABLE BEACH ROAD, BROOME**

**LOCATION/ADDRESS:** Lot 501 (No28) Cable Beach Road, Broome  
**APPLICANT:** Hawaiian Management Group  
**FILE:** CAB 1/28  
**RESPONSIBLE OFFICER:** Manager Planning Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 16 February 2004

**SUMMARY:** An application for planning approval has been received from the Hawaiian Management Group for proposed renovations for the ‘Lord Mac’s’ restaurant involving kitchen upgrade, existing internal bar upgrade, new cocktail bar, outdoor pizzeria/pizza pavilion and raised timber decking on lot 501 (No.28) Cable Beach Road, Broome.

Whilst the proposed development is a permitted use as of right, the site is listed on the Shire of Broome’s Municipal Inventory of Heritage Places and as such requires Council approval, as the Chief Executive Officer does not have delegation to deal with such applications.

This report recommends conditional approval.

## BACKGROUND

The subject lot is zoned "Tourist" under the provisions of Town Planning Scheme No.4 (1999) and is currently developed and operated as a tourist resort.

The proposed development is classified as 'tourist development' and is a permitted use under the provisions of the scheme subject to complying with the relevant development standards.

In accordance with clause 7.1.1 of the Scheme, Council has established and adopted a Municipal Inventory of Heritages Places (MIH). Furthermore the Council has adopted planning services Policy 4.1.11 – Municipal Heritage Inventory – Development of Listed Places, which provides guidelines for the processing and assessment of applications for planning approval for development on listed sites.

The following information is an excerpt for the adopted MIH in relation to this site:

### HISTORICAL BACKGROUND

Cable Beach Club was built for Robert Alistair (Lord) McAlpine. Lord McAlpine had arrived by accident in Broome in the early 1980s on a redirected flight. He liked the town so much he became a major investor and developer, restoring buildings and constructing the resort. Cable Beach Club was built to provide accommodation to high international standards to complement the motel and caravan park accommodation already available in Broome. The bungalow style rooms were designed to reflect Broome's long multicultural history.

### STATEMENT OF SIGNIFICANCE

Cable Beach Club represents the beginning of Broome as a tourist destination of an international standard. The Bali Hai caravan park had a long association with tourism on the site. Cable Beach Club is of significance as a place of memories and experiences associated with a holiday in Broome.

### MANAGEMENT CATEGORY

**Category 3:** A place of some cultural heritage significance to Shire of Broome  
**Implications:** No constraints  
**Recommend:** Encourage retention of the place and document if that not possible

### COMMENT

The proposed renovations involve the following works:

- Upgrade existing function and main kitchens
- Upgrade/ convert existing internal bar to breakfast cooking area
- Delete Buffet area
- Add new cocktail bar in internal seating area of existing restaurant
- Add new pizza/pasta food preparation pavilion
- Replace existing paved area by extending the existing timber decking

#### Kitchen Upgrades

Both kitchens require to be upgraded and hence need to comply with the Health Act. The potential for these renovations to impact on the visual heritage character of the site is limited as they are not open areas to the public and as the requirements are controlled by the Health Act and associated regulations it will be difficult for approval not to be given.

### Cocktail Bar

The new cocktail bar is designed as part of furniture and is located internally to form an island. Its location at mid-point will greatly reduce waiting time. This bar in length is 1.0m more than current internal bar that will be decommissioned and converted to provide the breakfast cooking facility. The design of the new cocktail bar will be in keeping with the existing fabric and theme and will give the finished appearance of being integrated into the existing facility.

### Pizza/Pasta Pavilion and new Decking

The existing timber decking is to be extended and rearranged to provide a continuous useable space between the existing Sunset Terrace/Bar area and the existing paved area, which in its current configuration provides barriers of balustrade and landscaping which restricts flow, service and a sense of belonging. The merging of these two areas will occur via a series of wide timber steps and the current southwest paved courtyard being replaced with a raised timber deck with the end result being to create a boardwalk linking all the facilities.

The proposed new pizza/pasta pavilion is to be located on the new area of raised timber decking and the pavilion's architectural design is similar to the pavilion located by the family swimming pool located in the centre of the resort to ensure that it is in keeping with the overall architectural theme of the resort.

### Seating capacity of the Restaurant

The current capacity of the restaurant is as follows:

Internal restaurant capacity is 54 and it is proposed that this be reduced to 42 to allow for the renovations. External capacity (verandah) is 92 and it is proposed that this will not change. Sunset Terrace capacity is 100 and it is proposed that this will not change

The proposed renovations and additions will not increase the capacity of the floor area of the restaurant and as such there is no additional requirement for carparking.

Overall it is considered that the proposed renovations are in accordance with the scheme provisions, planning services policy 4.1.11 and can therefore be approved subject to standard conditions

## **CONSULTATION**

Nil

## **STATUTORY ENVIRONMENT**

Town Planning and development Act 1928, as amended  
Town Planning Scheme No.4 1999, as amended

## **POLICY IMPLICATIONS**

Planning Services Policy 4.1.11

## **FINANCIAL IMPLICATIONS**

Nil

## **STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

***That the application for Planning Approval dated 29/01/2004 (2004/06) made by Hawaiian Management Group for proposed renovations to 'Lord Mac's' restaurant involving kitchen upgrade, existing internal bar upgrade, new cocktail bar, outdoor pizzeria/pasta pavilion and raised timber decking on lot 501 (No.28) Cable Beach Road, Broome. be APPROVED subject to the following conditions:***

- 1. Development must be carried out strictly in accordance with the plans stamped received dated 29 January 2004 submitted with the application as approved by the Shire.***
- 2. Prior to commencing any work on the site, the applicant shall obtain a Building Licence from the Shire. Such application shall include, with the working drawings:***
  - (a) Structural Engineers Certification in accordance with the requirements of the Building Code of Australia; and / or***
  - (b) Formal comment from Fire and Emergency Services Western Australia***
  - (c) Site classification in accordance with AS2870***
- 3. The lodging of detailed landscape plans, to the satisfaction of the Shire, for the development area with the Building Licence Application. For the purpose of this condition a detailed landscaping plan shall be drawn to a scale of 1:100 and show the following:***
  - (a) the location and type of existing and proposed trees and shrubs within the area subject of this application/approval***
  - (b) any lawns to be established***
  - (c) any natural landscape areas to be retained; and***
  - (d) those areas to be reticulated or irrigated***
- 4. The roof pitch for the new pizza/pasta pavilion to be a minimum of 26 degrees.***
- 5. The materials and finishes of the proposed walls and roof structure of the pizza/pasta pavilion shall complement the existing building on the subject land in relation to style and colour.***
- 6. All proposed signs associated with the development, including signs painted on the building, shall comply with the Shire's Signs Local Laws and be the subject of a separate application and approved prior to erection or painting.***
- 7. Connection to the Hon Minister's sewer.***
- 8. The building being registered as a Public Building under the Health (Public Buildings) Regulations 1992.***
- 9. A suitably screened refuse bin storage area is to be provided in accordance with Councils Health Local Laws prior to the development first being occupied. The location of the enclosure is to be marked on the plans submitted for a Building Licence and is to be approved by the Shire's Health Department.***
- 10. Any roof mounted or freestanding plant or equipment such as air conditioning units, satellite dishes or radio masts to be located and screened so as not to be visible from beyond the boundaries of the development site.***

**ADVICE NOTES**

***The following notes are general information notes, and are merely advisory in nature. They are not conditions of this approval. They have been included to provide some guidance as to other matters which may need to be addressed in respect of the development. They do not set out all of the matters which will need to be addressed under separate approval processes whether administered by the Shire or another authority. The applicant will need to ensure that all approval processes have been satisfied***

1. Any re-painting or re-facing of any sign, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire of Broome.
2. You are reminded that this is a Planning Approval only and does not obviate the responsibility of the developer to comply with all relevant building, health and engineering requirements. In this regard your particular attention is drawn to:
  - (a) Health (Food Hygiene) Regulations 1993
  - (b) Occupational Health, Safety & Welfare Regs
  - (c) Health (Public Buildings) Regulations 1992
  - (d) Health (Public Swimming Pools) Regulations 1964
3. This development has been defined as a public building and shall comply with the provisions in the Health Act 1911 relating to a public building and the public building regulations. An application to construct, extend or alter a public building is to be submitted with the building licence application.
4. If an Aboriginal Site, as defined in the Aboriginal Heritage Act 1974, might be on the land, then the owner of the land may commit an offence against that Act where there proves to be an Aboriginal Site on the land and an approval under Section 18 that Act is not obtained in respect of the proposed development. The grant of this planning approval is not a clearance that there are no Aboriginal Sites on the land nor an approval under Section 18 of the Act in the event that there is an Aboriginal Site on the land. The owner will need to make its own enquiries and application to the Department of Indigenous Affairs.
5. Any additional development/use, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire of Broome.

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 7 pages](#)

**9.2.5 PROPOSED COMMERCIAL DEVELOPMENT - STOCK AND STATION AGENT DEPOT - LOT 12 (No 1) ARCHER STREET MINYIRR - INTERNATIONAL LIVESTOCK EXPORT PTY LTD**

**LOCATION/ADDRESS:** Lot 12 (No 1) Archer Street Minyirr  
**APPLICANT:** International Livestock Exports Pty Ltd  
 (Lessee - Landmark Operations Limited)  
**FILE:** ARC-1/1  
**RESPONSIBLE OFFICER:** Manager Planning Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 18 February 2004

**SUMMARY:** An application for planning approval has been received for a Stock and Station Agents Depot on Lot 12 (No1) Archer Street Minyirr. The proposed use is considered to be a use not listed in the Zoning Table under Town Planning Scheme No4 (TPS4) but is considered to be compatible with the aims and intent of the Industry Zone and is able to be treated as a permitted use. It is proposed to install partitions and ceilings in an existing building and to extend service area. Some works will be required to car parking, access and landscaping to comply with the Shire's policies.

It is recommended that Council determine that the use be treated as a permitted use in accordance with clause 4.3.2 of TPS4 and that the application be approved subject to conditions relating to Building Licence, storage of goods, no access for road trains, paving of parking and access ways, and landscaping.

## BACKGROUND

### Site and Existing Development

Lot 12 (No 1) Archer Street is located on the corner of Archer Street and Port Drive. It is 3414 square metres in area and included in the Industry Zone under TPS4. The site contains three buildings, an industrial shed and a caretaker's residence on the western side and an industrial building on the eastern (Port Drive) end. There are associated carparking areas in three separate locations and an extensive road base vehicle manoeuvring area with two crossovers to Archer Street

This proposal is for the existing premises to be used for storage sale and distribution of a range of merchandise for pastoral use. The merchandise includes pallets of wire, star pickets, water tanks troughs and associated plumbing, poly pipe, farm machinery (eg cattle crushes) stock yards, stock feed, agricultural chemicals, fertiliser. Distribution is to be generally by semi-trailer and is associated with the operation of the port, and cattle yards.

It is proposed to establish an office for administration of the operation, use the shed for storage and establish a display area for animal health products, tools, rural clothing, and saddlery.

There are outstanding conditions relating to parking, access and cross overs from application for an industrial shed showroom and office approved in 1998.

## COMMENT

Considering the nature of the proposed use there are three possible use classes that could be used to describe it. These are Showroom, Warehouse, or Transport Depot.

Showroom is defined in TPS4 as:

**Showroom** means any building or part of a building used or intended for use for the purpose of displaying or offering for sale by wholesale or retail, automotive spare parts, carpets, large electrical appliances, furniture, hardware or goods of a bulky nature.

This definition covers the aspects of displaying or offering for sale by retail, but not all of the goods intended to be dealt with fall within those listed or covered under the description *goods of a bulky nature*. The goods not falling within the definition include tools rural clothing and saddlery. This definition also does not recognise the special nature of this proposal regarding the nature of its transportation needs to be able to accommodate semitrailers.

Warehouse is defined in TPS4 as:

**Warehouse** means any land or buildings wherein goods are stored and may be offered for sale by wholesale only.

This definition covers storage and sale of goods but is too restrictive in that it is limited to the sale by wholesale (for on sale to end-user or consumer) and also does not recognise the transport requirements of the proposal.

Transport Depot is defined in TPS4 as:

**Transport depot** means any land or buildings used for the garaging or parking of motor vehicles used or intended to be used for carrying goods or persons, or for the transfer of goods or persons from one motor vehicle to another of such motor vehicle and includes maintenance, management and repair of the vehicles used, but not of other vehicles.

This definition would enable recognition of the nature of the transport to be used but does not include any provision for the storage, display and sale of goods.

It is considered that none of these definitions adequately accommodate the proposed use and it is therefore necessary to examine other provisions of TPS4. The Scheme provides for situations such as this with the following clauses:

- 4.3.2 *In determining an application for planning approval, if a proposed use of the subject land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of any other use in the Zoning Table, the Council may:*
- (a) Determine that the use is consistent with the objectives and purposes of the relevant zone involved in the application, and therefore may be treated as a permitted use; or*
  - (b) Treat the use as a use not listed if the Council considers that the use may be regarded as consistent with the objectives and purposes of the zone in which it is proposed and thereafter follow the procedures in relation to a use not listed set out hereafter; or*
  - (c) Determine that the use is not consistent with the objectives and purposes of the particular zone in which case the use is to be treated as a use, which is not permitted in that zone.*
- 4.3.3 *If the Council determines in connection with an application for planning approval that a use may be treated as a use not listed, the Council may permit the use provided that the application is advertised in accordance with the provisions of clause 9.4 before the final consideration and determination of the application.*

The subject site is included in the Industry Zone under TPS4. The Industry Zone is intended to:

*... Provide for manufacturing industry, the storage and distribution of goods and associated uses, which by the nature of their operations should be separate from residential areas.*

The objectives in relation to this Zone under the scheme are to:

*... Encourage large storage and transport related land uses, noxious, hazardous and port related industry and other land uses which require large land parcels and/or separation from other land uses for health, safety or environmental reasons; and*

It is considered that the proposed use is consistent with the aims and objectives of the Industry Zone as it involves the storage and distribution of goods and that the transport related aspects in particular should be separate from residential areas and closely associated with the port and cattle yard activities. If Council agrees that this is the case, the application can be treated as a permitted use.

If Council is not convinced that the proposed use is consistent with the aims and objectives of the Industry Zone but only that it may be consistent, then the application will be required to be advertised for comment prior to determination.

#### Conclusion

The proposed use is not fully included within the terms of any of the use classes listed on the Zoning Table and can therefore be treated as a use not listed in accordance with 4.3.2 of TPS4. The proposed use, particularly its transport requirements, is considered to be consistent with the aims and objectives of the Industry Zone thereby enabling it to be treated as a permitted use.

### Development Issues

It is proposed to make some internal changes to the eastern building to create offices and a lunchroom. A Building Licence will be required for this work.

The various components of the proposal generate a requirement for 12 car-parking bays under the Car Parking Policy and the proposal makes provision for 12 bays.

The proposal initially stated that it needed to accommodate semitrailers and road trains but the access arrangements are such that triple road trains could not manoeuvre onto the property. This matter was discussed with the applicants who advise that it is only intended that semi trailers (single only) be accommodated. Some work will be required to bring the parking and access areas up to the standard required by the policy so detailed plans need to be submitted for approval prior to commencement of development.

The applicant also advises that changes are proposed to the landscaping so detailed landscape plans will be required for approval prior to commencement of development.

### CONSULTATION

Nil

### STATUTORY ENVIRONMENT

Town Planning Scheme No4

### POLICY IMPLICATIONS

Nil

### FINANCIAL IMPLICATIONS

Nil

### STRATEGIC IMPLICATIONS

Nil

### VOTING REQUIREMENTS

Simple Majority

### **REPORT RECOMMENDATION**

- A** *That Council in accordance with clause 4.3.2 of Town Planning Scheme No4 having regard for the nature of the proposed Stock and Station Agent Depot use proposed by International Livestock Exports Pty Ltd the proposed use is determined to be treated as a permitted use because it cannot reasonably be determined as falling within the type class or genus of any use in the Zoning Table and is consistent with the objectives and purposes of the Industry Zone;*
- B** *That the application for Planning Approval dated 10/02/2004 (2004/14) made by the International Livestock Export Pty Ltd for proposed stock and station agent depot on Lot 12 (1) Archer Street, Minyirr be APPROVED subject to the following conditions:*

1. **Development must be carried out strictly in accordance with the plans stamped received dated 10 February 2004 submitted with the application as approved by the Shire.**
2. **Prior to commencing any work on the site, the applicant shall obtain a Building Licence from the Shire. Such application shall include, with the working drawings:**
  - (a) **Structural Engineers Certification in accordance with the requirements of the Building Code of Australia; and / or**
  - (b) **Formal comment from Fire and Emergency Services Western Australia delete part (b) where applicable).**
3. **No storage or display of goods outside any building on site without the prior approval of the Shire**
4. **No road trains to be permitted on site.**
5. **Vehicle parking, manoeuvring and circulation areas to be constructed and sealed with brick paving, bitumen or concrete and drained in accordance with approved plans. Detailed plans identifying pavement details (existing, finished levels and pavement type) traffic circulation and drainage details to be submitted and approved by the Shire prior to the issue of a building licence or commencement of development.**
6. **Additional front boundary landscaping to a minimum depth of three (3) metres being installed in accordance with clause 4.16.2.2 of Town Planning Scheme No4 to the satisfaction of the Shire. NOTE: The Plan shall be lodged with the Application for Building Licence and shall show the location and type of existing and proposed trees and shrubs, lawns and existing natural landscaped areas to be retained.**
7. **All vehicle crossovers being designed and constructed (sealed, brick paving, bitumen, concrete) to the Shire's standard crossover specification.**

#### **ADVICE NOTES**

**The following notes are general information notes, and are merely advisory in nature. They are not conditions of this approval. They have been included to provide some guidance as to other matters which may need to be addressed in respect of the development. They do not set out all of the matters which will need to be addressed under separate approval processes whether administered by the Shire or another authority. The applicant will need to ensure that all approval processes have been satisfied:**

1. **Any re-painting or re-facing of any sign, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire of Broome.**
2. **Any additional development/use, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire of Broome.**

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 1 page](#)

**9.2.6 ACCEPTANCE OF MANAGEMENT ORDERS AND PROPOSED NEW DELEGATION - BROOME LOT 360 No 20 KAPANG DRIVE CABLE BEACH - RESERVE FOR RECREATION - BROOME LOT 3136 No 22 MARITANA WAY CABLE BEACH - RESERVE FOR RECREATION AND DRAINAGE**

**LOCATION/ADDRESS:** No 20 Kapang Drive Cable Beach  
No 22 Maritana Way Cable Beach

**APPLICANT:** Department for Planning and Infrastructure

**FILE:** KAP-1/20 MAR-3/LT 3136 110347 117303

**RESPONSIBLE OFFICER:** Manager Planning Services

**DISCLOSURE OF ANY INTEREST:** Nil

**DATE OF REPORT:** 6 February 2004

**SUMMARY:** Lot 360 (No 20) Kapang Drive Cable Beach and Lot 3136 (No 22) Maritana Way Cable Beach have been identified and created as reserves in the Sunset Park subdivision. The Department for Planning and Infrastructure (DPI) requests advice that the Shire of Broome will accept management Orders for the two lots before creating the titles.

This is a standard part of the subdivision procedure and it is considered appropriate for the Chief Executive Officer to have delegated authority to advise the DPI on this matter in relation to land for recreation drainage or other local purpose.

It is recommended that:

- 1 The DPI be advised that the Shire of Broome is willing to accept Management Orders for the two lots; and,
- 2 The Chief Executive Officer be granted delegated authority to respond to such requests in the future.

## **BACKGROUND**

Lot 360 (No 20) Kapang Drive Cable Beach and Lot 3136 (No 22) Maritana Way Cable Beach were both identified as reserves at the subdivision stage of Sunset Park. Lot 360 is 689 square metres in area and abuts Broome Lot 3079 to form a linkage from Kapang Drive to Sayonara Road and was identified as a reserve for recreation. Lot 3136 is 909 square metres in area adjacent to the existing open space and was identified as a reserve for recreation and drainage.

## **COMMENT**

The DPI advises that these lots have been created with certificate of title in the name of the State of Western Australia. The next step is for the lots to be revested and reserved for the purposes identified. Before proceeding further the DPI requests advice as to whether the Shire of Broome will accept Management Orders for the lots.

It is not considered that accepting the Management Orders will create any problems.

## **CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Nil

**POLICY IMPLICATIONS**

It is standard procedure through the subdivision process for reserves to be created and management orders made for these reserves in the name of the Shire of Broome. Council will have considered the location and purpose of the reserves at the subdivision stage. It is considered appropriate for the Chief Executive Officer to have delegated authority to advise the DPI that the Shire of Broome is willing to accept Management Orders for land identified and given up during subdivision for recreation, drainage or other local public purpose.

**FINANCIAL IMPLICATIONS**

The Shire of Broome will be responsible for the ongoing maintenance costs of these lots for recreation and drainage purposes

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

- 1) ***That the Department for Planning and Infrastructure be advised that the Shire of Broome is willing to accept Management Orders for Broome Lot 360 (No 20) Kapang Drive Cable Beach for Recreation and for Broome Lot 3136 (No 22) Maritana Way Cable Beach for Recreation and Drainage; and***
- 2) ***That the Chief Executive Officer be granted delegated authority to advise the Department for Planning and Infrastructure that the Shire of Broome is willing to accept Management Orders for land identified and given up during subdivision for recreation, drainage or other local public purpose.***

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 2 pages](#)

**9.2.7 APPLICATION FOR PLANNING CONSENT - PROPOSED OVERSIZE RURAL SHED AND SHORT TERM RESIDENTIAL ACCOMMODATION - LOT 41 (No 60) LULLFITZ DRIVE BILINGURR**

**LOCATION/ADDRESS:** Lot 41 (No 60) Lullfitz Drive Bilingurr  
**APPLICANT:** W and C Minshull  
**FILE:** LUL-1/60  
**RESPONSIBLE OFFICER:** Manager Planning Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 18 February 2004

**SUMMARY:** An application for planning consent has been received for an oversize (237 square metres) rural shed and short term residential accommodation on Lot 41 (No 60) Lullfitz Drive Bilingurr by RM Drafting on behalf of W and C Minshull. Under Planning Services Policy 4.1.7 - Non-Residential Sheds in Rural Living, Rural Agriculture and General Rural Zones, sheds greater than 100 square metres in area are required to be referred to Council for consideration.

It is recommended the application be refused, as there is no approved rural pursuit for the land and the submission does not justify the exercise of Council's discretion relating to the size of the proposed shed.

**BACKGROUND**

Lot 41 Lullfitz Drive has an area of 1.047 hectares and is included in the Rural Living Zone under Town Planning Scheme No4. Lot 41 was subdivided in 2001, it contains an existing ablution block intended for demolition, a windmill and pump but no approved use at this stage.

It is proposed to construct a 300 square metre metal clad rural shed with 60 square metres of temporary accommodation included. The shed is proposed to have a wall height of 5 metres and a ridge height of 6.17 metres. The temporary residential accommodation is proposed across the end of the shed with a four metre wide veranda. The shed is to be located approximately 112 metres from the Lullfitz Drive and 37 metres from Sands Street, and 10 and 13.5 metres from the side boundaries. It is to be accessed by a gravel driveway and includes parking for one car. The temporary residence contains two bedrooms, a bath/laundry and a kitchen/dining room.

It is the applicant's intention to develop a primary residence in the future and at that stage to convert the temporary residence to workers' quarters.

RM Drafting Services on behalf of the applicant state that the shed will be used for the:

- processing and storage of mangoes grown on the property;
- processing and storage of mangoes grown on another property;
- storage of vehicles and equipment used in the rural pursuit of the property; and,
- storage of private vehicles.

**COMMENT**

The Planning Service Policy 4.1.7 which relates to Non-Residential Sheds in Rural Living, Rural Agriculture and General Rural Zones provides for adequate storage areas for non-residential developments within these rural zones.

The development of a non-residential shed in a Rural Living, Rural Agriculture and General Rural zone is permitted provided a Planning Application is submitted and such application meets the following requirements:

- *Shed height does not exceed the Town Planning Scheme height limit of 10m.*
- *Shed to be screened to/from the street.*
- *Use of the sheds are associated with the approved use of the site or have a separate use approval.*
- *The combined floor area of all sheds is limited to a maximum of 100m<sup>2</sup> in the Rural Living zone.*
- *Minimum setback from the street 10m in the Rural Agriculture zone and 20m in the General Rural and Rural Living zones.*
- *Minimum side and rear setback 10m, taking into consideration the amenity of adjoining properties.*
- *All sheds are not to have separate shower, laundry or kitchen facilities.*
- *No business shall be conducted from a shed without Council approval.*

The policy provides for delegation of approval where all conditions are satisfied. In this instance referral to Council is required because the application does not satisfy three aspects of the policy – the proposed shed is greater than 100 square metres in area, there is no approved use of the site to which the shed can relate, and the proposal would create a shed with separate shower, laundry and kitchen facilities.

The processing and storage of mangoes is defined as a Rural Industry and is only permitted where it relates to an approved Rural Pursuit on the subject lot. The residential accommodation is proposed to be temporary until a main residence is completed at which time the applicant proposes it would be converted to staff accommodation. There are two concerns with this proposal. Firstly, there is no timetable in place so an approval would create a dwelling in a rural shed. And secondly, even with a main residence, staff accommodation would not be in accordance with policy as there is no approved rural pursuit relating to the site.

With regard to the size of the shed, the policy reflects TPS4, which provides:

*4.23.2.5. One shed of a maximum of 100m<sup>2</sup> in floor area is permitted on a lot.*

*4.23.2.6. An increase in the floor area of the shed and the number of sheds per lot may be approved at Council's discretion. When considering such an application, the Council shall have regard for; the approved land use on site and the demand for the shed, and the use of the proposed shed/s and any existing sheds, and the impact of increased floor area and an increase in the number of sheds on the amenity of the site and locality, and the objective and policies of the Rural Living zone.*

The location of the shed at the Sands Street end of the property may impact on the amenity of the locality even though it is set back 37 metres. The other issue is whether the increased size of the shed is justified given there is no approved rural pursuit on this land.

This proposal is for a floor area of 237 square metres. The request for the larger area is justified with the following reasons provided by the applicant:

*The proposed shed is:*

- *Situated well with-in minimum street setbacks of the property and will therefore be well screened from the street.*
- *To have a ridge height of 6.17m well under the 10m height restriction.*
- *There are also several examples of sheds on neighbouring properties within the Rural Living Zone which appear to be of similar floor area.*

These reasons do not provide a justification for an increase over the 100 square metres provided for in TPS4 and do not address the requirement for an approved rural pursuit.

Council may advise the applicant that it would be prepared to consider a similar application including a proposal for a rural pursuit, a mechanism for satisfying council's policy prohibiting ablution facilities in rural sheds, and providing a more substantial justification for the size of the shed or providing for a shed with a ground area of around 150 square metres. For this alternative, a new application or significant additional information is required.

## **CONSULTATION**

Nil

## **STATUTORY ENVIRONMENT**

Town Planning Scheme No.4

## **POLICY IMPLICATIONS**

Planning Services Policy 4.1.7

## **FINANCIAL IMPLICATIONS**

Nil

## **STRATEGIC IMPLICATIONS**

Nil

## **VOTING REQUIREMENTS**

Simple Majority

### **REPORT RECOMMENDATION**

***That Council refuse the application for planning consent for a 237 square metre rural shed and temporary residence on Lot 41 (No 60) Lullfitz Drive Bilingurr from W and C Minshull because:***

- 1 there is no approved rural pursuit for the lot;***
- 2 the proposal does not comply with Planning Services Policy 4.1.7;***
- 3 considering the objectives of the Rural Living Zone particularly relating to small scale rural pursuits, it does not consider a suitable case has been made to support the use of discretion to approve a shed in excess of 100 square metres.***

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 3 pages](#)

**9.2.8 APPLICATION FOR PLANNING CONSENT - PROPOSED OVERSIZE RURAL SHED - LOT 5 (No 50) LULLFITZ DRIVE BILINGURR**

<b>LOCATION/ADDRESS:</b>	Lot 5 (No 50) Lullfitz Drive Bilingurr
<b>APPLICANT:</b>	Adrian Johnston
<b>FILE:</b>	LUL-1/50
<b>RESPONSIBLE OFFICER:</b>	Manager Planning Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	18 February 2004

**SUMMARY:** An application for planning consent has been received for an oversize (288 square metres) rural shed on Lot 5 (No 50) Lullfitz Drive Bilingurr by RM Drafting on behalf of A Johnston. Under Planning Service Policy 4.1.7 - Non-Residential Sheds in Rural Living, Rural Agriculture and General Rural Zones, sheds greater than 100 square metres in area are required to be referred to Council for consideration.

It is recommended the application be refused, as the submission does not justify the exercise of Council's discretion.

**BACKGROUND**

Lot 5 Lullfitz Drive has an area of 1 hectare and is included in the Rural Living Zone under Town Planning Scheme No4. It contains mango trees and a single residence approved in 2001.

It is proposed to construct a 192 square metre metal clad rural shed (16 metres by 12 metres) with a 96 square metre mezzanine floor. The shed is proposed to have a wall height of 6 metres and a ridge height of 6.9 metres. The shed is to be located at the rear of the property approximately 150 metres from the road, 17 metres from the rear boundary and 10 metres from the other boundaries. It is to be accessed by an extension of the gravel driveway and includes parking for three cars. There are no amenities indicated in the shed which has areas indicated for processing and loading and a store on the mezzanine level.

RM Drafting Services on behalf of the applicant state that the shed will be used for the processing and storage of mangoes grown on the property and for the storage of vehicles and equipment used in the rural pursuit of the property.

Lot 5 was subdivided in 2000 from a larger lot that appears to have been a mango plantation and contains approximately 60 mature trees.

**COMMENT**

Planning Services Policy 4.1.7 which relates to Non-Residential Sheds in Rural Living, Rural Agriculture and General Rural Zones provides for adequate storage areas for non-residential developments within these rural zones.

The development of a non-residential shed in a Rural Living, Rural Agriculture and General Rural zone is permitted provided a Planning Application is submitted and such application meets the following requirements:

- o *Shed height does not exceed the Town Planning Scheme height limit of 10m.*
- o *Shed to be screened to/from the street.*

- o *Use of the sheds are associated with the approved use of the site or have a separate use approval.*
- o *The combined floor area of all sheds is limited to a maximum of 100m<sup>2</sup> in the Rural Living zone.*
- o *Minimum setback from the street 10m in the Rural Agriculture zone and 20m in the General Rural and Rural Living zones.*
- o *Minimum side and rear setback 10m, taking into consideration the amenity of adjoining properties.*
- o *All sheds are not to have separate shower, laundry or kitchen facilities.*
- o *No business shall be conducted from a shed without Council approval.*

The policy provides for delegation of approval where all conditions are satisfied. In this instance referral to Council is required because the application does not satisfy two aspects of the policy – the proposed shed is greater than 100 square metres in area and there is no approved use of the site to which the shed can relate. While there is not an approved use for this particular lot, it is evident it is portion of what was previously a larger mango plantation so the issue of approved use is not considered to be a problem.

The other issue relates to the size of the shed. The policy reflects TPS4, which provides:

*4.23.2.5. One shed of a maximum of 100m<sup>2</sup> in floor area is permitted on a lot.*

*4.23.2.6. An increase in the floor area of the shed and the number of sheds per lot may be approved at Council's discretion. When considering such an application, the Council shall have regard for; the approved land use on site and the demand for the shed, and the use of the proposed shed/s and any existing sheds, and the impact of increased floor area and an increase in the number of sheds on the amenity of the site and locality, and the objective and policies of the Rural Living zone.*

The location of the shed at the rear of the lot minimises any impact the proposal may have on the amenity of the site and the locality. The issue revolves around whether the increased size of the shed is justified by the use given the scale of activity able to be achieved on this lot and the objectives of the zone. The objective of the zone is to provide for small scale rural pursuits.

This proposal is for a combined (192 square metres plus 96 square metres mezzanine) floor area of 288 square metres. The request for the increase in floor area is justified with the following reasons provided by the applicant:

*The proposed shed is:*

- *Situated to the rear of the property and will therefore be well screened from the street.*
- *To have a ridge height of 7m well under the 10m height restriction.*
- *To have a floor area within the Rural Agriculture Zone floor area limit of 200sq/m.*

The concept of using a mezzanine floor to obtain additional floor area is supported as it increases floor area without increasing building bulk. Even after discounting for the mezzanine floor however, there does not seem to be any justification provided for an increase over the 100 square metres provided for in TPS4.

Council may consider a shed of this size in the Rural Living Zone is justified by the reasons set out in the application. Should that be the case, Council may exercise its discretion and approve the application subject to appropriate standard conditions.

Alternatively, Council may advise the applicant that it would be prepared to consider a similar application providing a more substantial justification for the size of the shed or providing for a shed with a ground area of around 150 square metres. For this alternative, a new application or significant additional information is required.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Town Planning Scheme No.4

**POLICY IMPLICATIONS**

Planning Service Policy 4.1.7

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

<p><b><u>REPORT RECOMMENDATION</u></b></p> <p><b><i>That the application for Planning Approval (2004/09) for a 192 square metre rural shed on Lot 5 (No 50) Lullfitz Drive Bilingurr from A Johnston be refused on the following basis:</i></b></p> <p><b><i>1. after taking into consideration the size of the lot and the objectives of the Rural Living Zone particularly relating to small scale rural pursuits, it does not consider a suitable case has been made to support the use of discretion to approve a shed in excess of 100 square metres.</i></b></p> <p><b>Moved:</b> _____</p> <p><b>Seconded:</b> _____</p> <p><b>FOR:</b> _____</p> <p><b>AGAINST:</b> _____</p>
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[Attachment: 4 pages](#)

**9.2.9 APPLICATION FOR PLANNING APPROVAL - PROPOSED TOURIST DEVELOPMENT - LOT 9  
CNR MILLINGTON ROAD & COUCAL (LULLFITZ) DRIVE, CABLE BEACH**

<b>LOCATION/ADDRESS:</b>	Lot 9 Cnr Millington Road and Coucal (Lullfitz Drive), Cable Beach
<b>APPLICANT:</b>	Westchance Holdings Pty Ltd
<b>FILE:</b>	MIL-2/15
<b>RESPONSIBLE OFFICER:</b>	Manager Planning Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	19 February 2004

**SUMMARY:** An application for Planning Approval has been received for a tourist development (Frangipani Resort) - 46 one bedroom units, 8 chalets (16 separate units), and a managers residence on Lot 9 Cnr Millington Road and Coucal (Lullfitz) Drive Cable Beach.

The application is referred to Council for consideration, as a number of matters require Council consideration.

This report recommends conditional approval.

**BACKGROUND**

Council considered an application for Planning Approval in June 2002 for a staged tourist/residential development on lots 5,1,6 and 987 Millington Road and granted Planning Approval subject to standard conditions.

The tourist element of this approval has been altered to allow for a larger number of units to be accommodated on the site and subsequently a new application for planning approval was required.

Subsequently an application for Planning Approval has been submitted for a tourist development comprising the following:

- 46 one bedroom units (including three units designed for use by disabled persons);
- 8 chalets split into two units each – one self contained one bedroom unit and one self contained two bedroom unit. These units are connected to also be able to operate as combined family units.
- A reception building and manager's residence with attached storeroom.
- Car parking for 77 vehicles.
- 7 boat parking bays.
- Bicycle racks.
- Swimming pool.
- Two areas containing gazebos and BBQs.

The proposal involves a 1.837ha area of land within the south eastern corner of Lot 9. The subject portion of Lot 9 is the subject of an approved survey strata lot for tourist development. The survey strata is subject to a number of conditions and issues (including drainage) that have not yet been resolved and accordingly, the survey strata lot has not yet been created.

## COMMENT

The proposed tourist development largely complies with Town Planning Scheme No. 4, the Cable Beach Development Plan, and Shire policies. There are a number of issues, however, in relation to these documents that require further consideration, which are dealt with below.

### Tourist Use

Town Planning Scheme No. 4 (TPS No. 4) states:

#### "4.17.2.4

- (a) *The predominant use of the site remains for short stay tourist and holiday accommodation.*
- (b) *In determining the predominant use of the site, Council will have regard for:*
- *provision of resort style facilities;*
  - *residential amenity;*
  - *management structure of the development; and*
  - *Council's Tourist and Holiday Accommodation Policy."*

The proposal provides very basic resort facilities in the form of a swimming pool and BBQ/gazebo areas. It is important to note that through the strata subdivision of Lot 9, the swimming pool and BBQ areas are required to be able to be utilised by the residents of the balance of the development. The development, therefore, does not provide any exclusive resort facilities.

Although it is considered that a resort that may cater for 62 separate units (up to 116 adults plus children) would potentially provide some additional small scale resort facilities such as a pool café/bar and/or day spa for example, the applicant has responded to this issue in the correspondence dated 21 January 2004, included in the agenda.

### Drainage

The subject lot (including the proposed portion of the site for tourist development) has been the subject of detailed discussions between the landowner and Shire. The land owner has so far been unable to design the drainage of the site to meet Shire requirements and this remains a significant issue that could delay any development, or impact on the eventual design and layout of the proposed tourist development.

The applicant has been advised that the resolution of the drainage issue is required as a prerequisite to the commencement of any development on the site and that if the resolution of the drainage issue results in the requirement to redesign the tourist development then this may require the lodgement of a fresh application for Planning Approval.

The applicant has accepted this situation but chosen to proceed with the consideration of the Planning Application prior to the resolution of the drainage issue as they are confident that resolution of drainage will not require the redesign of the resort. A condition of approval in relation to the resolution of the drainage issue prior to the commencement of development is recommended, in addition to an advice note that should the redesign of the resort be required then a fresh application for Planning Approval may be required.

The Shire of Broome drainage consultant is currently addressing these issues in conjunction with the overall Cable Beach precinct drainage plan.

### Carports

The carports proposed within the Millington Road street setback area are not supported. Although the setback of the carports may be averaged to comply with the R40 setback requirements, the visual impact of these structures fronting Millington Road is not considered appropriate in the context of the Shire's aims and objectives for Millington Road through the Cable Beach Development Plan and the draft Tourist Accommodation Developments policy that completes a public advertising procedure on 27 February 2004.

The draft policy states:

*"The provision of carparking on those lots fronting Millington and Sanctuary Road is to be designed and located at rear of the properties with the development being orientated to face the public domain/street."*

Although this policy has not yet been finally adopted by Council, the principal of not visually focussing on the car parking fronting Millington Road is considered appropriate to enforce for this application. It is recommended that a condition of approval requires the deletion of these structures and that trees be installed in islands between at least every three car parking bays (allows each row of six bays to be separated).

### Design, Materials and Finishes

In relation to the Cable Beach Development Plan adopted by Council, there are a number of elements of the design of the buildings proposed within the resort that do not comply, namely:

- a) Colours should be dull rust-red, green, white or natural finished timber.
- b) Materials and construction to meet certain criteria.
- c) Built open spaces are to be semi-enclosed.
- d) Verandahs or at least sheltered eaves should continue around all four sides of the buildings.
- e) Verandah columns to be 'slender posts' (min. diameter of 125mm).
- f) Windows are required to be predominantly of vertical orientation.

The proposal does not fully comply with the above elements, as detailed on the plans submitted, however there are no objections to the design proposed and accordingly, it is not considered that the applicant be required to amend the plans. The applicant's response to this issue is discussed in their correspondence, as included in this agenda.

### Vehicular Access

The applicant proposes a security gate at the main entrance to the resort. As unimpeded access to the site is required for guests arriving, for buses and for visitors, it is not appropriate for a security gate to be installed in the location proposed. It is therefore recommended that a condition of approval address this issue. Should the applicant seek to install a security gate further into the site (beyond the reception and front parking areas, then there would be no objection to this.

### Pedestrian Access

Conditions of approval are recommended to require the construction of the pedestrian footpaths within the site detailed on the application. A standard 2m wide dual use path is also required between the main entrance to the site and connecting through to the existing Shire footpath in the vicinity of Cable Beach Caravan Park. This will provide a suitable connection between the subject site and the balance of the Cable Beach tourist node and beach access for guests. This is particularly important given that only limited resort facilities are provided on site and the applicant expects guests to utilise existing facilities (restaurants, shops and recreational) within the Cable Beach area.

**CONSULTATION**

Not applicable

**STATUTORY ENVIRONMENT**

Town Planning Scheme No. 4

**POLICY IMPLICATIONS**

Strata Title of Holiday Accommodation and Tourist Development policy 4.1.10

Draft Tourist Accommodation Developments policy 4.1.10

Car Parking policy 4.1.8

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Cable Beach Development Plan

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

***That the application for Planning Approval dated 30 October 2003 (2003/242) made by Westchance Holdings Pty Ltd for a tourist development (Frangipani Resort) - 46 single units, 8 chalets (16 separate units) and a manager's residence on Lot 9 Cnr Millington Road and Coucal (Lullfitz) Drive, Cable Beach, be APPROVED subject to the following conditions:***

- 1. Development must be carried out strictly in accordance with the plans stamped received dated 30 October 2003, 4 February 2004 and 13 February 2004 submitted with the application as approved by the Shire.***
- 2. All Tourist facilities, amenities and service areas (including swimming pool, open space areas, loop road, boat bays, bus and guest drop-off area, bin store area, loading bay etc.) to be constructed as part of the first stage of development, if the development is to be staged.***
- 3. The subject portion of the parent lot 9 shall at all times contain at least 60% (by number) of the total number of separate occupancies across the land the subject of the strata approval.***
- 4. The lodging of detailed landscape plans, to the satisfaction of the Shire, for the development site and the adjoining road verges with the Building Licence Application and prior to the commencement of development. For the purpose of this condition a detailed landscaping plan shall be drawn to a scale of 1:100 and show the following:***
  - (a) the location and type of existing and proposed trees and shrubs within the carpark area.***
  - (b) any lawns to be established***
  - (c) any natural landscape areas to be retained; and***
  - (d) those areas to be reticulated or irrigated***

5. **Landscaping and reticulation to be established in accordance with the approved plans prior to the development first being occupied and thereafter maintained to the satisfaction of the Shire.**
6. **Should the development be staged temporary landscaping and fencing must be installed prior to the development being occupied to the satisfaction of the Shire. All required landscaping within the road reserve and the 3m front setback of the two street frontages shall be installed as part of the first stage of development and prior to the occupation of any part of the development.**
7. **The provision of a dual use pedestrian/cycle path from the main entrance to the development site, and connecting through to the existing Shire footpath in the vicinity of Cable Beach Caravan Park. Details of the proposed location and design of the dual use path shall be provided at Building Licence application stage and prior to the commencement of development, to the satisfaction of the Chief Executive Officer.**
8. **All onsite and off site car parking, public access areas and footpaths to be appropriately lit with all floodlighting being designed in accordance with the Australian Standards for the Control of Obtrusive Effects of Outdoor Lighting (AS4282) and shall be where possible internally directed not to overspill into nearby lots.**
9. **Any roof mounted or freestanding plant or equipment such as air conditioning units, satellite dishes or radio masts to be located and screened so as not to be visible from beyond the boundaries of the development site.**
10. **No security gates or similar are to be installed at the main entrance to the resort to enable buses, service vehicles, guests and visitors to access the site unimpeded.**
11. **All fencing being installed in accordance with the Shire's Fencing Policy prior to the occupation of the development.**
12. **Permanent and direct unimpeded public access shall be provided between the development's facilities and amenities (swimming pool and BBQ areas) and the adjacent Public Open Space/Common Property of the balance of the strata titled development of Lot 9**
13. **Any fencing constructed between the subject development site and the public open space/common property for the strata development on parent lot 9 shall be 'visually permeable', as defined in the Residential Design Codes of WA 2002, and shall be of no greater height than 1.2m. The swimming pool and surrounds shall be designed so as to be clearly visible from the public open space/common property and shall function as, and clearly appear to the public to function as part of the communal facilities available to all tourists and residents of the strata titled development (both short and long stay) on parent lot 9.**
14. **This approval supersedes any previous planning approval granted for the site and relating to the same development, unless by express stipulation or by necessary implication the Shire indicates otherwise. Development under any previous approval shall be terminated before development is commenced or carried on under this approval.**
15. **All proposed signs associated with the development, including signs painted on the building, shall comply with the Shire's Signs Local Laws and be the subject of a separate application and approved prior to erection or painting.**
16. **The applicant/developer shall enter into a formal agreement with the Shire of Broome prior to the clearance of the strata title in accordance with Clause 6.4.1 of the Shire's Strata Title Policy.**
17. **No part of the land the subject of this approval may be used for residential purposes. If any strata lot comprising part of the resort is vacant, then a registered proprietor and his spouse, and family may occupy the lot. The occupancy of a lot in accordance with the preceding provision may only be in accordance with the deed of agreement and including any management agreement in force from, time to time and in any event shall not exceed a period of three months in any twelve month calendar period.**

18. **The developer, and his successor in title to the parcel comprising the strata plan and any manager of the parcel pursuant to the contract shall ensure that each prospective purchaser is supplied with a copy of the contract prior to settlement. The developer or his successor in title or manager of the parcel shall maintain a register which shall be produced on request by the Shire, to confirm that each and every purchaser of any interest in any land on the parcel has been provided with a copy of that contract.**
19. **Separate clothes drying facilities to be provided for each unit and for the Manager's Dwelling. Such clothes drying facilities shall be screened from view from adjacent lots, any public streets and any public open space or common property.**
20. **All visitor parking must be on-site and not at all within the road reserve.**
21. **A minimum provision of 13 dedicated car parking bays being clearly sign marked for visitor parking in close proximity to the office/reception/entrance to the site.**
22. **The provision of bicycle racks to accommodate at least 6 bicycles adjacent to the swimming pool area, and directly accessible from the adjoining public open space/common property, and at least 4 bicycles adjacent to the reception.**
23. **All vehicle crossovers being designed and constructed (sealed, brick paving, bitumen, concrete) to the Shire's standard crossover specification.**
24. **Vehicle parking, manoeuvring and circulation areas to be constructed and sealed with brick paving, bitumen or concrete and drained in accordance with approved plans. Detailed engineering plans identifying pavement details (existing, finished levels and pavement type) and drainage details to be submitted and approved by the Chief Executive Officer at building licence application stage and prior to the commencement of any development.**
25. **A deed of agreement is to be prepared and executed at the owner's cost between the owner and the Shire prior to the development first being occupied, under which the owner agrees to maintain the verge landscaping and to permit the Shire to lodge a caveat against the Certificate of Title to the land to secure the performance of that maintenance obligation.**
26. **A stormwater drainage system is to be provided in accordance with the Shire of Broome's standard specification prior to the development being first occupied and thereafter maintained to the satisfaction of the Shire. The proposed stormwater drainage system is to be detailed at Building Licence application stage and prior to the commencement of development, and approved by the Chief Executive Officer. No development shall commence until the drainage design for the whole of Lot 9 has been approved by the Chief Executive Officer.  
Note 1: All stormwater runoff to be disposed of either on site or into a legal point of discharged (Council drain, road or other approved location).  
Note 2: All drainage systems shall be designed to include water sensitive design principles and to maximize on site water retention.**
27. **All required parking bays being line marked and signed in accordance with the Traffic Code WA 2001 and AS 2890 (off street parking) except standard bay sizes to be 2.7m x 5.5m and disabled bays to be 3.2m x 5.5m within one month of the development being first occupied. Note: The car parking bays under carports or adjacent to any other physical barrier will require widening to 3m.**
28. **The provision of street lighting for Millington Road and Coucal Street (Lullfitz Drive) to Shire specifications. Details of the proposed location and design of the proposed street lighting shall be provided to the satisfaction of the Chief Executive Officer at Building Licence application stage and prior to the commencement of any development.**
29. **One (1) disabled car-parking bay located convenient to the building entrance and with a minimum width of 3.2 metres, to be provided plus provision for disabled access and facilities in accordance with the Australian Standard for Design for Access and Mobility (AS 1428.1).**
30. **Connection to the Hon Minister's sewer.**

31. **Registration of the premises as a Lodging House under the Shire's Health Local Laws.**
32. **Swimming Pool to be approved by the Executive Director Public Health.**
33. **A suitably screened refuse bin storage area is to be provided in accordance with the Shire's Health Local Laws and to cater for commercial skip bins for the development. Plans shall be submitted at Building Licence Application stage and prior to the commencement of any development for a suitably located and screened facility to cater for the whole development. Such facility shall be accessible by Kimberley Waste trucks and shall be to the satisfaction of the Chief Executive Officer. Standard 'sulo' type waste bins shall not be provided onsite as these would require collection from the road verge, which is not acceptable in the subject location.**
34. **Prior to commencing any work on the site, the applicant shall obtain a Building Licence from the Shire. Such application shall include, with the working drawings:**
  - (a) **Structural Engineers Certification in accordance with the requirements of the Building Code of Australia;**
  - (b) **Formal comment from Fire and Emergency Services Western Australia delete part (b) where applicable).**
  - (c) **Site classification in accordance with AS2870.**
35. **The development shall be designed in accordance with AS1428.1 - 1993 Design for Access and Mobility. Part 1 - General requirements for Access - Buildings.**

**Note: Areas to address within the amended working drawings for submission with the Building Licence application shall include:**

  - **Revised toilet layout**
  - **Increased width of door openings**
  - **Provision of ramps with maximum grade 1:14**
36. **On completion of construction, all excess articles, equipment, rubbish and materials shall be removed from the site, adjoining road reserve and adjacent land and these areas are to be left in an orderly and tidy condition.**
37. **This approval is not to be construed as an approval for the erection of fencing on the site. Where fencing is to be erected, the owner/applicant must submit a plan(s) for any proposed walls or fencing on street boundaries or fronting a public street. These plans may be submitted as part of the plans and specifications submitted for a building licence for the development.**
38. **A dedicated loading bay shall be provided adjacent to the reception store/receival area. Such loading bay shall be separate to the two car parking bays for the Manager's Residence and shall not impede vehicular flow or temporary bus/guest parking in front of the reception area.**
39. **The provision of an internal pedestrian path network to be completed prior to the occupation of the development. Detailed drawings of the proposed pedestrian path network shall be provided at working drawing stage and prior to the commencement of any development to the satisfaction of the Chief Executive Officer**
40. **The provision of laundry facilities within each separate unit and within each unit capable of being occupied separately.**
41. **An exclusive staff car parking area shall be provided onsite and shall be suitably located and signed so as to not interfere with guest parking. Details of the proposed location and extent of the staff car parking area shall be provided on detailed drawings at Building Licence application stage and prior to the commencement of any development, to the satisfaction of the Chief Executive Officer.**
42. **A minimum of seven boat parking spaces shall be provided. The location and size of the boat bays shall be detailed at Building Licence application stage and prior to the commencement of development, to the satisfaction of the Chief Executive Officer.**
43. **The land owner/developer shall enter into a formal legal agreement with the Shire of Broome(at no cost to the Shire) prior to the issue of Strata Title approval undertaking to:**
  - (i) **Establish and operate a management system which ensures the development is run as a holiday resort.**

- (ii) **The management system to be an annexure to the formal agreement with the Shire and be approved by the Shire and the Australian Securities and Investment Commission (ASIC) if appropriate.**
- (iii) **The management system will incorporate the provision of those features and facilities which identify the development as a resort, eg. common or uniform furnishings to all units and a common maintenance, gardening and cleaning service.**
- (iv) **The management system will be achieved via a management agreement and the body corporate by-laws established between the developer and purchasers of the units and to embody the following specific provisions:**
  - **A requirement by way of a deed of agreement that the purchasers of units shall allow their units to be rented out, by the resort manager and/or their agents, to the general tourist sector (minimum 60% (70%) short stay) and (maximum 40% (30%) long stay / permanent residents) when not in occupancy themselves.**
  - **The deed of agreement to be an annexure to the formal agreement with the Shire.**
  - **The purchasers of the units shall receive a financial return from the rental of their units less outgoings for matters such as booking fees, managers fees, laundry service, electricity charges, cleaning service, body corporate fees, maintenance and replacement of furniture etc. These financial matters would be resolved and agreed upon between the developer and the purchasers.**
- (v) **Agree to amend and expand the Strata Title Company By-laws as set out in Schedule 1 of the Strata Titles Act 1985 to incorporate any requirements determined necessary by the Shire.**
- (vi) **Agree to carry out the development in accordance with approved plans, specifications and all conditions of approval in all respects to the satisfaction of the Shire.**
- (vii) **Agree to develop facilities, managers accommodation and amenity buildings as part of the first stage of any staged development. The number of units to be built in the first stage to be determined by the Shire. Upon completion of a first stage to the Shire's satisfaction, a Strata Plan may be registered. The Shire shall, however, require the lodgement of a Caveat on all vacant Strata Lots, which will not be removed until each unit and associated services has been developed.**
- (viii) **Agree to ensure that before any person becomes the registered proprietor of any Strata Lot, that:**
  - **The By-laws (referred to in point (d)) as endorsed by the Shire have been adopted by the Body Corporate.**
  - **Such unanimous and other resolutions as may be required under the Strata Titles Act have been adopted by the Strata Company so that the whole of the development may be completed and the developer is able to comply with the provisions of the legal agreement with the Shire.**
  - **The Strata Lot is fully serviced and fit for occupation to the satisfaction of the Shire unless the development has been completed to the Shire's satisfaction.**
  - **The applicant/developer shall agree not to transfer, mortgage, charge, assign or encumber the land or any Strata Lot without the written consent of the Shire and without first having obtained from the person securing an interest in the land their agreement to abide by the provisions of the agreement with the Shire.**

- 44. The land owner/developer shall enter into a legal agreement with the Shire of Broome (at no cost to the Shire), which contains the following:**
- (a) Management system to be put in place (annexure to agreement).**
  - (b) Strata Company By-laws to be put in place (annexure to agreement).**
  - (c) Agreement to carry out development in accordance with approvals.**
  - (d) Agreement to provide amenities as part of Stage One.**
  - (e) Putting in place of relevant body corporate resolutions to ensure the management system and by-laws work.**

**(f) Restrictions on sale of development.**

**(g) Imposition of Caveats to secure performance on vacant lots and which should also be applied to any existing building or site which does not have appropriate planning conditions which**

**(i) control occupancy: and**

**(ii) require prospective purchasers to be advised of the agreement/contract**

**45. The deletion of the three carports fronting Millington Road and the provision of an island containing a tree at least every three bays (to break up every six bays).**

**ADVICE NOTES:**

**The following notes are general information notes, and are merely advisory in nature. They are not conditions of this approval. They have been included to provide some guidance as to other matters which may need to be addressed in respect of the development. They do not set out all of the matters which will need to be addressed under separate approval processes whether administered by the Shire or another authority. The applicant will need to ensure that all approval processes have been satisfied.**

- 1. Any additional development/use, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire.**
- 2. The minimum floor level of buildings to be 400mm above natural ground level.**
- 3. You are reminded that this is a Planning Approval only and does not obviate the responsibility of the developer to comply with all relevant building, health and engineering requirements. In this regard your particular attention is drawn to:**
  - (a) Health (Food Hygiene) Regulations 1993**
  - (b) Occupational Health, Safety & Welfare Regs**
  - (c) Health (Public Buildings) Regulations 1992**
  - (d) Health (Public Swimming Pools) Regulations 1964**
- 4. Plans of this development are required to be submitted to the WA Fire Brigades Board for assessment.**
- 5. The swimming pool and enclosures such as fencing and gates being constructed to Australian Standard 1926.1.**
- 6. Compliance with the Building Code of Australia provisions for access and facilities for people with disabilities may not discharge an owner or developer's liability under the Commonwealth Disability Discrimination Act (DDA). The Human Rights and Equal Opportunities Commission has developed guidelines to assist owners and developers in designing developments, which may satisfy the requirements of the DDA. Copies of the guidelines may be obtained from the Disabilities Services Commission, 53 Ord Street, West Perth, telephone 9426 9200.**
- 7. This application has been assessed in isolation of any considered or approved subdivision (including strata subdivision) of the parent lot 9. The applicant is accordingly advised that any design of the subdivision or conditions relating thereto that are impacted upon by this development may adversely impact on the ability of the subdivision to proceed and are the applicant's responsibility.**
- 8. The applicant has been advised and accepted that this development cannot proceed until drainage issues relating to the whole of lot 9 are satisfactorily resolved. Should any changes to this plan be required in order to resolve drainage or any other matters then the applicant may be required to lodge a fresh application for Planning Approval for the development. This is a significant issue and the applicant is advised not to enter into any marketing or financial dealings in relation to this development until such time as the drainage issue is resolved to the Shire's satisfaction.**

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

### 9.2.10 NON COMPLIANCE WITH THE PROVISIONS OF TOWN PLANNING SCHEME NO 4 AND CURRENT APPROVAL GRANTED - LOT 2928 NO. 2 TACK CLOSE CABLE BEACH

<b>LOCATION/ADDRESS:</b>	Lot 2928 No. 2 Tack Close Cable Beach
<b>APPLICANT:</b>	Richard Lewis on behalf of Thomas Vinnicombe
<b>FILE:</b>	TAC-1/2
<b>RESPONSIBLE OFFICER:</b>	Manager Planning Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	2 February 2004

**SUMMARY:** This report outlines the non compliance issues in relation to the operations of a Home Business at lot 2928 (No.2) Tack Close and recommends that Council advise the applicant/owner to curtail the activity to comply with the Home Occupation approval issued in 1999 within 14 days of the councils resolution or the matter will be referred to the Shire of Broome's solicitors for commencement of the appropriate action to ensure compliance.

## BACKGROUND

### 1999

On 6 May 1999, Thomas Vinnicombe submitted a Planning Application under then Town Planning Scheme No. 2 for a 'Home Occupation' (consulting engineer and legal services) on the subject site. In correspondence submitted with the application, it was stated:

*"We believe that the proposed business is a home occupation in accordance with the scheme because the business will not:*

1. *Employ in its operation person's (sic) other than those normally resident on the premises.*
2. *Operate outside the hours of 8.00am and 6.00pm.*
3. *Occupy an area of the premises greater than 20 square metres.*
4. *Attract any vehicular traffic which, in our opinion, is excessive. Any traffic created will be on a casual basis.*
5. *Cause to be parked on the road carriageway or verges any vehicle other than on a casual basis.*
6. *Cause any nuisance, including noise or the emission of dust or noxious fumes, which is, in our opinion detrimental to the amenity of the area.*
7. *Require the provision of any essential service or services of a greater capacity than normally required in a residential zone.*
8. *Require the outdoor storage of materials or supplies.*

*We believe the following facts are relevant and ask that they be considered in assessing this application:*

1. *Our business will involve the provision of professional advice (legal and engineering) with the bulk of client contact being by mail or telephone. From time to time clients will need to attend the premises, however the small number of visits anticipated will not attract more than the normal residential volume of traffic into the street.*
2. *No vehicles are directly associated with the business other than our two privately owned passenger vehicle. These are parked in the existing double carport. There is ample parking on the site outside the carports on the existing 6m wide paved driveway for casual client parking.*

3. *The business will not generate any noise from vehicles or equipment which could disrupt neighbours (sic), and nor will safety be threatened by traffic or otherwise.*
4. *The appearance of the premises will not be different from a standard residential premise. The appearance of the existing residence will not be altered in any way as a consequence of the proposed home occupation.*
5. *The business will not affect the services to adjacent premises.*
6. *The business will not involve the retail sale of goods.*
7. *No approval from any relevant government authority (other than Council) is required for the proposed operations."*

On 12 May 1999, Planning Approval was granted for a 'Home Occupation Office' subject to the following conditions:

1. *Compliance with Council's Signage requirements for Home Occupation.*
2. *A maximum of 20sqm to be used for the Home Occupation Office.*
3. *All vehicles associated with the business to be parked on the lot.*
4. *Any additional development/use, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of Council.*

In July 1999 Council received its first complaint about the extent of business operations at the subject premises and it was stated that up to 10 vehicles had been parked on the road and verge at one time and vehicles were generating safety concerns.

## **2003**

On 6 February 2003 the Shire corresponded with the landowners, advising them that they were in breach of Town Planning Scheme No. 4 by virtue of the fact that the business(es) was no longer being operated by a resident of the property (as the owner/operators had since relocated to a different residential address).

On 1 April 2003 another complaint was received in relation to problems being caused by the operation of two businesses from the subject property. The complainant stated that staff vehicles had been moved from Tack Close and were now being parked on a vacant lot on Reid Road. The complainant also advised that he had calculated seven people working from the subject property at one time.

Correspondence between the Shire and the landowners resulted in some measures being taken to reduce the amount of car parking in Tack Close and the advice from the landowners that Mr Richard Lewis is now residing at the premises and operating Kimberley Structural Consulting Engineers. The landowners, however, have failed to provide adequate information in relation to whether the Solicitor's business is still being operated from the premises and how many staff are actually employed at the premises.

The Shire's correspondence to the landowners also resulted in the submission of a Planning Application for a 'Home Business' and correspondence stating:

*"Should you find it necessary to refer the matter to Council we request that you bring the following to Council's attention:*

1. *It is our intention to relocate to new offices in McPherson St as soon as construction is complete.*
2. *Planning approval for new offices has been sought and granted.*
3. *We remain committed to minimizing any detrimental effect that the business activities may have on the residential amenity of the neighbours.*
4. *We have not been informed of any detrimental effect on residential amenity.*
5. *Determination of a Home Business application is pending."*

Council considered the application at its meeting held on the 9 September 2003 and resolved;

*The application for Planning Approval dated 16/04/2003 (2003/80) made by RICHARD LEWIS ON BEHALF OF THOMAS VINNICOMBE for a Home Business (Kimberley Structural Consulting Engineers) on Lot 2928 No. 2 TACK CLOSE CABLE BEACH be REFUSED for the following reasons:*

1. *The proposal is inconsistent with the definition of 'Home Business' in Town Planning Scheme No. 4 in that:*
  - i. *The proposed operation of the Home Business is considered to prejudicially affect the amenity of the neighbourhood;*
  - ii. *The extent and location of car parking areas required for the Home Business may detract from the residential appearance of the dwelling;*
  - iii. *The number and frequency of vehicles likely to attend the premises is likely to result in traffic conflicts.*
  - iv. *There is likely to be a substantial increase in the amount of vehicular traffic in the vicinity.*
2. *The proposal is considered not to be consistent with the aims of Town Planning Scheme No.4 for the Residential zoning in that the operation and intensity of the Home Business is of a scale that will have detrimental impact on the amenity of the surrounding residential area as evidenced by the objections received during the advertising period.*
3. *The proposal does not comply with Council's Home Business Policy 4.1.5 as it is considered that the proposal will injuriously affect the amenity of the neighbourhood and this has been evidenced by its current operation outside of the provisions of the Scheme because:*
  - i. *The proposal does not reflect the existing nature and intensity of operations and the applicant has not demonstrated that the businesses can or will be brought into compliance with the definition of 'Home Business' under Town Planning Scheme No 4.*
  - ii. *Insufficient information has been submitted to determine if one business or two separate businesses are proposed, and in the event of a second business continuing to operate from the premises, the operation of the second business would be in direct breach of the Scheme's definition of a 'Home Business' in that no employee or operator of that business is confirmed to be a resident of the premises."*

Correspondence was sent to the applicant on the 11 September 2003 advising the Councils resolution.

The appeal period ended on the 11 November 2003 and the applicant did not appeal the Council decision.

In early November 2003, the previous CEO advised the Compliance Officer that he had met with the applicant and directed the Compliance Officer to take no further action in relation to the matter as the applicant/owner had given him an undertaking that the office development in Coughlan Street would be finalised by the end of January 2004 and that the Chief Executive Officer would be handling this matter.

The applicant approached the Manager Planning Services in mid December 2003 seeking advice in relation to this matter as the building was not going to be finalised by the end of January 2004 as indicated.

The Manager Planning Services prepared a memo in relation to the matter and forwarded to the CEO in early January 2004.

**COMMENT**

Given the action taken by the previous Chief Executive Officer, the Acting Chief Executive Officer has not dealt with the matter until after the end of January 2004. The applicant continues to operate the home business from the premises, which is in breach of the town-planning scheme.

Council has an obligation to enforce the scheme provisions and ensure compliance.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Town Planning & Development Act  
Town Planning Scheme No. 4

**POLICY IMPLICATIONS**

Home Business Policy 4.1.5  
Car Parking Policy 4.1.8

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

*That the owner be advised that the current business operations at 2 Tack Close are not consistent with the previous approval granted for a home occupation and therefore if the business operations are not curtailed to the extent required under the previous approval within 14 days of this resolution then the CEO is authorised to initiate action by way of prosecution for a breach of the provisions of Town Planning Scheme No. 4.*

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

**9.2.11 APPLICATION FOR PLANNING APPROVAL - PROPOSED LIGHT INDUSTRIAL WORKSHOP, STORAGE AND DISPLAY AREAS AND CARETAKER'S DWELLING - LOT 14 (No 32) MINILYA ROAD BROOME**

**LOCATION/ADDRESS:** Lot 14 (No 32) Minilya Road Broome  
**APPLICANT:** MA Smith and SS Mukerjie - M Smith Paving Contractors  
**FILE:** MIN-2/32  
**RESPONSIBLE OFFICER:** Manager Planning Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 23 February 2004

**SUMMARY:** An application for planning approval has been received for a light industrial workshop, storage and display areas and caretakers dwelling on Lot 14 (No 32) Minilya Road. The application complies with Town Planning Scheme No4 and policy requirements except for the limit on incidental residential development associated with caretaker's dwelling.

It is recommended that Council relax policy requirements in this instance and approve the application subject to standard conditions.

**BACKGROUND**

An application for planning approval has been received for a light industrial workshop, storage and display areas and caretakers dwelling on Lot 14 (No 32) Minilya Road. The subject land has an area of 2025 square metres and is included in the Light and Service Industry Zone under Town Planning Scheme No4.

The workshop includes an office, amenities area and mezzanine storage. The caretaker dwelling is proposed to be 100 square metres attached to the workshop and includes a verandah and undercover parking. Storage areas are proposed along the eastern boundary towards the front of the lot and at the rear of the lot behind the workshop and caretakers dwelling.

**COMMENT**

The application addresses all TPS4 and policy requirements except for the total area of the lot set aside for residential purposes. Planning Services Policy 4.1.2 Industrial Buildings, Caretaker's Dwellings and Attached Offices, limits the area to be included to an area equal to that of the industrial buildings on the site or 10 percent of the area of the lot which ever is the lesser.

In this instance the proposed dwelling, verandah and undercover parking occupy an area of 226 square metres which is larger than the proposed workshop (216 square metres not counting the mezzanine) and 10 percent of the site area ( $2,025 / 10 = 202.5$  square metres). The site plan does not delineate other areas for residential purposes but it is difficult to imagine the areas between the caretakers dwelling and the western and northern boundaries will be used for industrial storage purposes.

The applicant has been specifically requested to indicate the area to be used for residential purposes and to provide justification for this area to exceed that set out in the policy but has not provided any delineation. The justification provided is:

*The reason this area adds up to more than the dedicated area is simply to maintain vehicular access around the perimeter of the block which we feel is sensible for not only our needs but that of future business which may operate from this premises and for storage of excess stock and machinery. Also due to the equipment used, to move stock around, ie Front End Loader and 5 Tonne Isuzu truck, we feel the placement of the building in this position will allow us enough manoeuvrability for the equipment.*

It is considered that it would be inappropriate to locate the building any closer to the rear (northern) boundary as that would limit the manoeuvring area behind the building. Council may decide to grant approval to this application notwithstanding the area to be used for residential purposes exceeds the limits set out in Planning Services Policy.

Overall it is considered in the development is in accordance with the scheme and relevant policies and can therefore be approved subject to standard conditions.

### **CONSULTATION**

Nil

### **STATUTORY ENVIRONMENT**

Town Planning Scheme No.4

### **POLICY IMPLICATIONS**

Policy 4.1.2 Industrial Buildings, Caretaker's Dwellings and Attached Offices  
Approval involves the relaxation of the limit placed on the area devoted to incidental residential development associated with caretaker's dwelling on industrial lots

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

Nil

### **VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

- A** that Council having due regard for the provisions and objectives of its Local Planning Policy 4.1.2 relating to Industrial buildings, Caretakers Dwellings and Attached Offices relax the limit on the area devoted to incidental residential development associated with caretakers dwelling for this application;
- B** that the application made by MA Smith and SS Mukerjie for planning approval (2003/229) for proposed light industrial workshop, storage and display areas and caretaker's dwelling on Lot 14 (No 32) Minilya Road, Broome be APPROVED subject to the following conditions:
1. Development must be carried out strictly in accordance with the plans stamped received dated 22 January 2004 submitted with the application as approved by the Shire
  2. Prior to commencing any work on the site, the applicant shall obtain a Building Licence from the Shire. Such application shall include, with the working drawings:
    - (a) Structural Engineers Certification in accordance with the requirements of the Building Code of Australia; and / or
    - (b) Formal comment from Fire and Emergency Services Western Australia delete part (b) where applicable).
  3. The lodging of detailed landscape plans, to the satisfaction of the Shire, for the development site and the adjoining road verge(s) with the Building Licence Application. For the purpose of this condition a detailed landscaping plan shall be drawn to a scale of 1:100 and show the following:
    - (a) the location and type of existing and proposed trees and shrubs within the carpark area.
    - (b) any lawns to be established
    - (c) any natural landscape areas to be retained; and
    - (d) those areas to be reticulated or irrigated
  4. All vehicle crossovers being designed and constructed (sealed, brick paving, bitumen, concrete) to the Shire's standard 6 metre crossover specification
  5. Vehicle parking, manoeuvring and circulation areas to be constructed and sealed with brick paving, bitumen or concrete and drained in accordance with approved plans. Detailed engineering plans identifying pavement details (existing, finished levels and pavement type) and drainage details to be submitted and approved by the Shire prior to the issue of a building licence
  6. Drainage and/or cut/fill of the site to be carried out in accordance with the approved plan. The existing site levels and finished design levels of all of the proposed development, including levels on top of the kerb at the crossover, are to be shown on the Building License submission
  7. All required parking bays being line marked and signed in accordance with the Traffic Code WA 2001 and AS 2890 (off street parking) except standard bay sizes to be 2.7m x 5.5m and disabled bays to be 3.2m x 5.5m within one month of the development being first occupied
  8. The applicant is to comply with the Health (Treatment of Sewage and disposal of Effluent and liquid Waste) Regulations
  9. The development shall be designed in accordance with AS1428.1 - 1993 Design for Access and Mobility. Part 1 - General requirements for Access - Buildings.
  10. The area used for incidental residential development be contained to the area between the proposed caretaker's residence and the northern and western boundaries of the lot.
- Note: Areas to address within the amended working drawings for submission with the Building Licence application shall include:
- Revised toilet layout

- **Increased width of door openings**
  - **Provision of ramps with maximum grade 1:14.**
- 11. The caretaker's dwelling is not to be occupied until the construction of the industrial shed is completed and the industrial land use has been established on the site**

**ADVICE NOTES**

**The following notes are general information notes, and are merely advisory in nature. They are not conditions of this approval. They have been included to provide some guidance as to other matters which may need to be addressed in respect of the development. They do not set out all of the matters which will need to be addressed under separate approval processes whether administered by the Shire or another authority. The applicant will need to ensure that all approval processes have been satisfied**

- A Any additional development/use, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval of the Shire of Broome.**
- B The minimum floor level to be 400mm for residential buildings and 200mm for commercial/industrial buildings above natural ground level or as shown on the approved plan**
- C Applications for septic tanks and effluent disposal systems are to be submitted to and approved by the Shire's Health Department prior to the issue of a Building Licence**
- D Plans of this development are required to be submitted to the WA Fire Brigades Board for assessment**

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 3 pages](#)

**9.3. ECONOMIC PROSPERITY**

**OUTCOME**

**Create an environment which encourages, promotes and facilitates sustainable business development, fosters investment opportunities and complements the unique lifestyle of the Shire.**

No Agenda Items

**9.4. SOCIAL SUPPORT AND DEVELOPMENT**

**OUTCOME**

**Facilitate opportunity for quality social and community development in health, leisure, education and human services which supports individual and community well being.**

No Agenda Items

**9.5. ASSETS AND INFRASTRUCTURE****OUTCOME**

**Provide Sustainable Assets and Infrastructure, which are functional and aesthetically appropriate.**

**9.5.1 CONTRACT 04/01 CONSTRUCTION OF BRICK PAVED AREAS – CHINATOWN STAGE 1**

<b>LOCATION/ADDRESS:</b>	Chinatown –Stage 1
<b>APPLICANT:</b>	N/A
<b>FILE:</b>	Contract 04/01
<b>RESPONSIBLE OFFICER:</b>	Manager Engineering Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	15 February 2004

**SUMMARY:** Consideration of tenders as received for Schedule of Rates Contract 04/01 – Construction of Brick Paved areas – Chinatown Stage 1, with a recommendation to accept the lowest tender offered.

**BACKGROUND**

The Shire normally calls for tenders for paving each July/August, however as there was very little paving proposed in the 2003/04 budget, the brick paving contract was put on hold. Now that the Chinatown project is proceeding, a project specific contract was drawn up, as the total expenditure will be in excess of \$50,000. The work involves the relaying of used pindan pavers, combined with new "header" brick pavers, as per the Concept Plan adopted at the last Council meeting. The final area to be laid in 2003/04 depends on the tender accepted, however it is noted that both tenders are well in excess of the estimated costs. The Manager Engineering Services is currently looking at which footpath areas in Stage 1 can be deferred until 2004/05 and which areas need to be carried out now, with the kerb and hotmix asphalt works. Some path areas will need to be deferred to match the budget available.

**COMMENT**

Two (2) tenders were received (refer attached schedule) are well above the estimated costs, and reflect that paving costs in Broome have always been much higher than Perth. The existing pavers were proposed to be removed by Shire staff, and be stacked on site for use by the contractor however a separate rate was included in the Contract for this work and the lowest cost option will be used. All new bricks will also be supplied by the Shire onsite ready for the contractor.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Local Government Act, 1995

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Tender amounts are in excess of budget for project, which cannot be increased, therefore the area of work will have to be reduced to meet the budget.

**STRATEGIC IMPLICATIONS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

*That the lowest tender of Mick Smith Paving be accepted for contract 04/01 – Construction of brick paved areas – Chinatown – Stage 1 and the extent of works to be undertaken be reduced to meet the estimated budget.*

**Moved:** **Seconded:**

**FOR:**  
**AGAINST:**

[Attachment: 1 page](#)

**9.5.2 TOWN BANNER STRUCTURE**

<b>LOCATION/ADDRESS:</b>	Broome Highway, Broome
<b>APPLICANT:</b>	N/A
<b>FILE:</b>	BRO-1/GEN
<b>RESPONSIBLE OFFICER:</b>	Manager Engineering Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	16 February 2004

**SUMMARY:** Reconsideration of the replacement of the Town Banner poles on Broome Highway, with a recommendation to construct the new structure at the existing location.

**BACKGROUND**

At the 25 November 2003 Ordinary Council Meeting, Council agreed to an allocation of funds to provide a new Banner Structure, due to the collapse of one of the main supporting poles to the existing structure, on Broome Highway, adjacent to Male Oval. Council indicated that the location of any replacement structure was to come back to Council for a decision.

**COMMENT**

Any new structure will have to comply with clearances to the Highway (as per the attached sketch) and already has Main Roads WA approval for replacement.

The existing site is the preferred Manager Engineering Services' option for a new one, as it captures most of the Broome traffic flows and yet is not a traffic distraction or hazard as such. There are limited sites that the structure could be placed at, the main ones are:

- (i) Existing Site – Preferred and while this section of road will be a dual carriageway at some future date, the structure could be reused over one of the carriageways, when the new alignment is fixed. This site can be seen by most traffic entering Chinatown, and all traffic from the Highway. It can be positioned to be clear of the services and is out of the Airport OLS zone.
- (ii) Short Street – Cannot be located here, due to Airport OLS and would not capture all traffic.
- (iii) Napier Terrace – Existing oval and powerlines plus future carparks next to Male Oval preclude use of this site.
- (iv) Broome Highway – Could be suitable, but would need to be past Roebuck Estate to avoid the Airport OLS and future Broome Road diversion, would not be visible for most of town traffic.
- (v) Frederick Street – The only narrow section of road considered suitable would be just west of Herbert Street, next to the Airport. This would capture most traffic and is the staff's second preference site.
- (vi) Other – No other site is considered suitable and which has maximum exposure.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Local Government Act, 1995  
Main Road Act

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

2003/04 Budget allocation \$10,000

**STRATEGIC IMPLICATIONS**

Promote all major events in Broome

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

***That the new Town Banner structure be located on the Broome Highway, between Napier Terrace and Short Street, within proximity to the existing structure.***

**Moved:** **Seconded:** **FOR:**

**AGAINST:**

**9.5.3 CONTRACT 04/02 SUPPLY & LAYING OF HOT ASPHALT ROAD SURFACING – CHINATOWN STAGE 1**

**LOCATION/ADDRESS:** Chinatown – Stage 1  
**APPLICANT:** N/A  
**FILE:** Contract 04/02  
**RESPONSIBLE OFFICER:** Manager Engineering Services  
**DISCLOSURE OF ANY INTEREST:** Nil  
**DATE OF REPORT:** 15 February 2004

**SUMMARY:** Consideration of tenders as received for Schedule of Rates Contract - 04/02 Supply & Laying of hot asphalt road surfacing – Chinatown Stage 1, with a recommendation to accept the lowest tender of Boral Asphalt.

**BACKGROUND**

This contract is not a normally used contract by the Shire and a complete new contract specification had to be formulated for the Chinatown project. While other road surfacing materials could be used (aggregate seal, slurry seal etc). None of those traditional methods are considered to match the performance and life of hot asphalt (hotmix). Most of the Chinatown streets are uneven in surface, have poor surface textures and low spots (that collect water), all of which can be addressed with hotmix to give a smooth, homogenous layer.

Traditionally the cost of hotmix has been very high, plus past jobs have had to be worked around the availability of the contractors to be in the area. Newer equipment, more competition and a reasonably sized job all now combine to make the price attractive for Chinatown. Hotmix also allows the use of different colours to denote pedestrian crossings, as proposed.

**COMMENT**

Three normal tenders and one alternative were received for the contract, all in proximity to the estimated costs (Refer attached schedule). There has been some doubt as to the suitability of the local crushed rock (ex Kimberley Quarries) for hardness and porosity, therefore all tenderers were requested to submit prices for both Kimberley Quarry Sandstone and Port Hedland Granite. One of the tenders qualify their use of the Kimberley Quarry material, as shown in the schedule and further information was sought from all tenderers on whether the supplied product meets Australian Standards, plus what guarantees would be offered for the work.

It is proposed to still carry out the entire Stage 1 area, based on the tender prices received.

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

Local Government Act, 1995

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Tender prices are within the allocated road budget for 2003/04

**STRATEGIC IMPLICATIONS**

The successful use of hotmix on this project could see a change in the Engineering specification for all subdivisional roadworks in Broome, if it is shown to be cost effective and the road life is extended.

**VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

***That the lowest tender of Boral Asphalt be accepted for the Schedule Of Rates Contract 04/02 – Supply and laying of hot asphalt road surfacing – Chinatown Stage 1.***

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

[Attachment: 2 pages](#)

**9.5.4 SAVANNAH WAY INFORMATION BAY**

<b>LOCATION/ADDRESS:</b>	Broome Highway
<b>APPLICANT:</b>	West Australian Tourism Commission
<b>FILE:</b>	BRO-1/GEN
<b>RESPONSIBLE OFFICER:</b>	Manager Engineering Services
<b>DISCLOSURE OF ANY INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	16 February 2004

**SUMMARY:** Further consideration of the siting of a new information bay on the Broome Highway for the Savannah Way concept, plus general visitor use, with a recommendation to locate it approximately 1.5km east of the Broome – Cape Leveque Road, on the south side of the Highway.

**BACKGROUND**

The Savannah Way concept was fully detailed at the 20 January 2004 Ordinary Council Meeting, with Council resolving to:

1. Support the Savannah Way concept in principle.
2. Support the construction of a "Getaway/Information Bay" on the Broome Highway, just outside of Broome, and that an initial amounts of \$5000 be made available from the 2003/04 budget, with subsequent amounts to be determined annually at each budget.

3. Apply for any suitable grants for the Getaway/Information Bay if requested and subject to any matching funds being included in the Shire's ongoing budgets.
4. Provide Engineering Department "in-kind" expertise and support for the planning, design and construction of the "Getaway/Information Bay" as required.
5. Identify and provide names of any Aboriginal Communities or organisations within the Shire that may be able to provide information on suitable aboriginal stories or sites that they wish to have interpreted.

## **COMMENT**

Informal discussions with Councillors has indicated a desire to seek further comment from the main tourist organisations in regard to the actual site, with an item to come back to Council. Letters were sent to the Broome Visitor Centre, Chamber of Commerce, WA Tourism Commission and with a request to respond with their preferred site by the 18<sup>th</sup> February 2004. Two responses were received, one from the WA Tourism Commission with their preference for the site to be 1.5km east of the Broome – Cape Leveque Road, on the north side of the road, but would be happy with a site on the south side also.

A second response was received from the Kimberley Tourism Association supporting the Manager Engineering Services' recommendation.

Unless other responses are received with different options by the Council Meeting date, that is the preferred site of the Manager Engineering Services.

## **CONSULTATION**

Letters to main tourist organisations

## **STATUTORY ENVIRONMENT**

Local Government Act, 1995

## **POLICY IMPLICATIONS**

May require a policy for ongoing operation of the site in regard to the types of other signage that would be allowed there

## **FINANCIAL IMPLICATIONS**

\$5000 approved on 20<sup>th</sup> January 2004, subsequent costs to go through annual budget processes

## **STRATEGIC IMPLICATIONS**

Potential to increase visitor numbers in the longer term

## **VOTING REQUIREMENTS**

Simple Majority

**REPORT RECOMMENDATION**

*That the site for the proposed Visitor Information Bay be on the Broome Highway approximately 1.5km east of the Broome – Cape Leveque Road intersection, on the south side of the road.*

**Moved:**

**Seconded:**

**FOR:**

**AGAINST:**

**10. REPORTS OF COMMITTEES**

Nil

**11. NOTICES OF MOTION****11.1 FAILURE TO COMPLY WITH CONDITIONS OF PREVIOUS PLANNING APPROVALS – MANGROVE HOTEL**

Cr A C Griffiths has submitted the following Notice of Motion-

That Council:

Rescind Points 1 and 4 of the motion pertaining to Item 9.2.7 on pages 60-65 on the Abbreviated Minutes, passed at the Ordinary Council Meeting held on 16 December 2003.

Point 1 being:

“Refer the matter to its legal representatives, McLeod and Associates, for the initiation of legal action by way of prosecution or notice under Section 10 of Town Planning and Development Act for failure to comply with conditions of previous planning approvals in relation to cash in lieu payments for parking”

To be replaced with:

1. Council seek legal advice as to their powers to negotiate an acceptable settlement and if those powers exist consider an offer of settlement made by the owners of the Mangrove Hotel. Should advice be received that Council does not have the power to negotiate a settlement or that a settlement cannot be negotiated then legal action is to be considered by Council at the Ordinary Council Meeting to be held on the 23 March 2004.
4. “Delete”

This motion to rescind is supported by the following Councillors in accordance with Section 10 Local Government (Administration) Regulations 1996.

- Cr Allan Griffiths, Cr Allen Grosse and Cr Graeme Campbell

**Cr A C Griffiths Comments**

There is sufficient information available to indicate that there is no sense of certainty in the Shire of Broome's claims if it was to be determined in a Court. Such information includes but is not limited to the following:

The are that was enclosed and that the parking requirement was a condition of was an area that required construction of a roof and was an existing food and beverage service seating area that was enclosed to add to the comfort of patrons. It did not create additional customer capacity.

It is alleged and can be somewhat substantiated by correspondence and witness statements that the matter was believed to have been resolved after a meeting between the owners of the Mangrove Hotel and the Shire President and Chief Executive Officer and the owners of the Mangrove Hotel received no further incorrect invoices from the Shire for the claimed outstanding amount until more recent times.

It is highly likely that the cost of legal action will be significant should the owners of the Mangrove and the Shire of Broome not be able to reach a satisfactory settlement as the owners of the Mangrove have expressed in writing their intention to vigorously defend any action and they have the capacity to do so. The cost of such legal action could well be in excess of the amount sought to be recovered even after the costs are awarded at taxed rates.

It is modern sound and accepted commercial practice to attempt to negotiate a settlement before proceeding to Court"

#### **Chief Executive Officer Comments**

The Council has previously considered the matter following advice from its solicitors, McLeods. Action has commenced in regard to the decision made by the Council at its meeting on the 16 December 2003.

McLeods have written to the Mangrove Hotel (via their architects) on the 11 February 2004. A copy of the letter sent to the Mangrove Hotel by McLeods has been provided to Councillors under a separate cover. The Chief Executive Officer has subsequently received a letter from the Mangrove Hotel and referred the same to McLeods for consideration. It is suggested that the Council consider the advice from McLeods when received prior to taking any action on this matter and the present position be maintained.

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

#### **13. MATTERS BEHIND CLOSED DOORS**

#### **14. MEETING CLOSURE**