



MISSION AND VALUES OF COUNCIL

"A Sustainable Community that is inclusive, attractive, healthy and pleasant to live in, that uses our land so as to preserve our history and environment, respects the rights and equality of our citizens and manages our future growth wisely."

AGENDA

FOR THE

ORDINARY MEETING OF COUNCIL

25 November 2010

OUR MISSION

"To provide a quality range of affordable and sustainable services to our community with a strong commitment to customer focus so that our citizens and visitors enjoy a quality lifestyle."

CORE VALUES OF THE SHIRE

The core values that underpin the achievement of the mission will be based on a strong customer service focus and a positive attitude:

Communication

Respect

Integrity

Transparency

Courtesy

DISCLAIMER

The purpose of Council Meetings is to discuss, and where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting.

Persons should be aware that the provisions of the Local Government Act 1995 (Section 5.25 (e)) establish procedures for revocation or rescission of a Council decision. No person should rely on the decisions made by Council until formal advice of the Council decision is received by that person. The Shire of Broome expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of Council, or any advice or information provided by a Member or Officer, or the content of any discussion occurring, during the course of the Council meeting.

SHIRE OF BROOME

ORDINARY COUNCIL MEETING
25 NOVEMBER 2010

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NOTICE OF MEETING

Dear Council Member,

The next Ordinary Meeting of the Shire of Broome will be held on Thursday 25 November 2010, in the Council Chambers, Corner Weld and Haas Streets, Broome, commencing at 5.00pm.

Regards

A handwritten signature in black ink, appearing to read 'K R Donohoe', written in a cursive style.

K R DONOHOE
Chief Executive Officer

1. OFFICIAL OPENING

2. ATTENDANCE AND APOLOGIES

Attendance

Leave of Absence

Apologies

Officers

Public Gallery

3. DECLARATIONS OF FINANCIAL INTEREST

Councillor	Item No	Page No	Item	Nature of Interest

4. PUBLIC QUESTION TIME

Ms Gaye Wotherspoon submitted the following question which was taken on notice, at the Ordinary Council Meeting of 28 October 2010. The question and response follow:

Question - Gaye Wotherspoon: "Can Council please advise, what studies, if any, have the State Government and Woodside done, in relation to the impact and consequences if a gas hub were to be built at Prices Point and a major cyclone were to cross the Dampier Peninsula coast. Surely it is madness to even think of erecting a gas hub in a major cyclone risk location."

Answer -Director Development Services: There is awareness of the cyclone issue and there have been a number of gas and other resource related facilities constructed along the cyclone prone north-west coast. Design requirements take into account wind and surge data. Recently an announcement was made of a proposed joint study by University WA and Woodside into the impact of cyclones on drilling rigs.

* * *

The following question submitted by Nik Wevers was taken on notice at the Ordinary Council Meeting of 28 October 20190. The question and response follow:

Question 1 – Ms Nik Wevers: "When will Council consider and debate the recently issued Notices of Intention to Take Land by the Minister for Lands for compulsory acquisition of land around James Price Point? When Council makes any formal decisions in relation to this, will the Shire of Broome consult the people of Broome and especially Traditional Owners and Native Title Claimants for that area and other affected areas in the Shire of Broome prior to responding to the Notices? (Given the previous response to my questions on this issue 'Answer – Director Development Services: 'Council has not considered whether to respond to this Notice so no formal decisions have been made. The decision of whether to respond or not and whether to consult or not would be decisions that would have to be made by the Council.')"

Answer 1 – Chief Executive Officer: *This matter has been forwarded to appropriate State agencies for a reply.*

* * *

The following questions submitted by Kevin Smith were taken on notice at the 28 October 2010 Ordinary Council Meeting. A summary of the questions, with responses are shown below:

“My questions are about Peak Oil, defined in a September 2010 Policy Brief for the Australia Institute as ‘the proposition that there is a finite supply of oil in the earth and, at some point, it will no longer be possible to increase production in response to rising demand. Indeed, the supply of oil will plateau and begin to fall.

There is no mention of Peak Oil or its effects in the Draft Local Planning Strategy for the Shire of Broome approved at the Ordinary Meeting of Council on September 30, 2010.

Question 1: - Kevin Smith: *“What studies, research, analysis or consultants on Peak Oil did the Shire refer to when preparing the Draft Local Planning Strategy?”*

Answer 1 – Director Development Services: *The concept of Peak Oil has been discussed in various venues for a number of decades but there are still different opinions as to the timing, rate of impact and effects of the predicted phenomenon. It is a complicated issue and if it is to be addressed by a local authority it needs to be addressed within a predetermined Commonwealth and State framework. At this stage there is no Commonwealth or State framework and therefore it is not logical for the Shire to try and address this in isolation.*

Question 2 – Kevin Smith: *“What evidence from those studies, research, analysis or consultants leads the Shire to conclude that Peak Oil does not merit consideration in a draft Local Planning Strategy with ‘an outlook of 10-15 years (Page 11)’?”*

Answer 2 – Director Development Services: *Consideration has not been given to Peak Oil in the draft Local Planning Strategy. In the absence of direction from the Commonwealth and State Governments on this issue it is considered preferable not to try and address it until such direction has been provided.*

Question 3 – Kevin Smith: *“On Page 10 of the Draft Local Planning Strategy it states that ‘the preparation of a Local Planning Strategy allows local government to recognise significant issues that will affect future growth within their jurisdiction, and to prepare and plan for that growth for the benefit of all constituents through a Local Planning Scheme.’ Given this, and the potentially enormous impacts of Peak Oil on a Shire as large and remote as Broome, will the Shire commit to including consideration of and mitigation of the effects of Peak Oil in the final Local Planning Strategy?”*

Answer 3 – Director Development Services: *In the absence of direction from the Commonwealth and State Governments on this issue it is considered preferable not to try and address it until such direction has been provided.*

* * *

David Dureau submitted a number of questions, two of which were taken on notice at the 28 October 2010 Ordinary Council Meeting. The questions and responses follow:

Question 1 – David Dureau: “Worley Parsons Master Plan report July 2010 page 100 dot point 2 (see enclosure):

- a. (answered at meeting)
- b. Will the Broome Shire Council seek to be included in the master plan under point 8. “Recommendations (for further investigation)” on page 99 (enclosed) to ensure our community interests are at the table with those of the Traditional Owners etc?”

Answer – Director Development Services: Advice provided at this stage is that the Master Plan for the Kimberley Liquid Natural Gas Precinct will be included in the Dampier Peninsula Plan for inclusion in the Shire of Broome Local Planning Strategy. The Shire has sought to be included in the planning process but it is not a Shire decision.

Question 2 – David Dureau: “Does the James Price Point gas hub oblong envelope along the coast 30 kilometres inland, which will include within it 3 lots totalling 3,500 hectares for the present port development to be compulsory acquired by the WA Government:

- a. Will Broome Shire Council retain all its powers as the responsible Local Government authority for this project? If not, please clarify?
- b. (Answered at meeting)

Answer – Director Development Services: The information in the preamble to your question does not reconcile with the Notice of Compulsory Acquisition but the Shire has not been advised of any plans or intention to remove any of the Shire’s powers as the responsible local authority for this area.

* * *

5. CONFIRMATION OF MINUTES

Moved:

Seconded:

That the Minutes of the Ordinary Meeting of Council held on 28 October 2010 be confirmed as a true and accurate record of that meeting subject to the following change of date to Council Resolution in item 9.3.11:

That Council:

- 1. Approves the retrospective application for planning approval 2008/128 dated 12 August 2008 for an Automatic Hydro Meteorological Weather Station on Lot 297 Dampier Peninsula, Djarindjin-Lombadina Airport subject to the following condition:
 - Development must be carried out in accordance with the plans stamped received and ~~dated 8 August 2008~~ 11 August 2008 submitted with the application as approved by Council.

**FOR:
AGAINST:**

Moved:

Seconded:

That the Minutes of the Special Electors Meeting of Council held on 1 November 2010 be received.

**FOR:
AGAINST:**

(Note: Resolutions carried at this Special Electors Meeting to be dealt with at a Special Meeting of Council – date to be set).

6. ANNOUNCEMENTS BY PRESIDENT WITHOUT DISCUSSION

7. PETITIONS

8. MATTERS FOR WHICH MEETING MAY BE CLOSED

9.

REPORTS

OF

OFFICERS

9.1

LEADERSHIP / GOVERNANCE

AND

ORGANISATION



OUTCOME

*To provide open, transparent and good governance
to the community.*

9.1.1 DELEGATION FOR LOCAL GOVERNMENT (UNIFORM REGULATIONS) PROVISIONS

LOCATION/ ADDRESS:	Shire of Broome
APPLICANT:	N/A
FILE:	ARE02
AUTHOR:	Director Corporate and Community Services
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Chief Executive Officer
DISCLOSURE OF ANY INTEREST:	Nil
DATE OF REPORT:	12 November 2010

SUMMARY: To grant delegated Authority to the Chief Executive Officer in order to implement the provisions of the Local Government (Uniform Provisions) Regulations 1996.

BACKGROUNDPrevious Considerations

Nil

COMMENT

In examining the current list of delegations it is apparent that there is a further delegation to the Chief Executive Officer required in order to be able to provide efficient governance under the Provisions of the Local Government Uniform Provisions Regulations 1996 by the Shire of Broome.

CONSULTATION

Nil

STATUTORY ENVIRONMENT*Local Government Act 1995**5.42. Delegation of some powers and duties to CEO*

(1) A local government may delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*

** Absolute majority required.*

(2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

[Section 5.42 amended by No. 1 of 1998 s. 13.]

5.43. Limits on delegations to CEO's

A local government cannot delegate to a CEO any of the following powers or duties —

(a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;

(b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;

(c) appointing an auditor;

(d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;

- (e) *any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;*
- (f) *borrowing money on behalf of the local government;*
- (g) *hearing or determining an objection of a kind referred to in section 9.5;*
- (h) *any power or duty that requires the approval of the Minister or the Governor;*
or
- (i) *such other powers or duties as may be prescribed.*

[Section 5.43 amended by No. 49 of 2004 s. 16(3) and 47.]

5.44. *CEO may delegate powers and duties to other employees*

- (1) *A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —*
 - (a) *the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and*
 - (b) *the exercise of that power or the discharge of that duty by the CEO's delegate, are subject to any conditions imposed by the local government on its delegation to the CEO.*
- (4) *Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.*
- (5) *In subsections (3) and (4) —*
"conditions" includes qualifications, limitations or exceptions.

[Section 5.44 amended by No. 1 of 1998 s. 14(1).]

POLICY IMPLICATIONS

Policy Manual Section 9 Delegations of Authority - new delegation.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

People

Actively contribute to well-being and safety and support community initiative.

Place

Ensure the Shire's infrastructure and assets are strategically planned and managed.

Prosperity

Build the Shire's organisational capacity to service the needs of a growing community.

Support business and economic development.

VOTING REQUIREMENTS

Absolute Majority

REPORT RECOMMENDATION

That Council delegates authority to the Chief Executive Officer to give consent, permission and/or approval required under the Local Government (Uniform Provisions) Regulations 1996.

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 2 pages](#)

9.1.2 TENDER FOR CAPACITY AUDIT ("CONFIDENTIAL" ITEM)

LOCATION/ ADDRESS: Whole of Shire
APPLICANT: N/A
FILE: ECJ02
AUTHOR: Director of Corporate & Community Services
CONTRIBUTOR/S: Nil
RESPONSIBLE OFFICER: Chief Executive Officer
DISCLOSURE OF ANY INTEREST: Nil
DATE OF REPORT: 10 November 2010

SUMMARY: The Shire of Broome appointed the Western Australian Local Government Association (WALGA) Tender Bureau Service to manage the tender process, evaluate tenders and recommend a successful tenderer to carry out a Capacity Audit for the Shire.

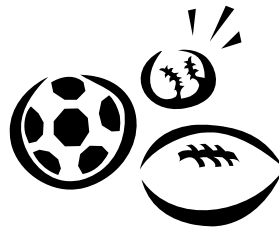
A copy of the WALGA Tender Bureau Service's confidential tender evaluation document, with recommendation, is attached (Attachment 2) for Council consideration.

(Confidential Attachment: 54 pages: To Councillors & Directors only)

9.2

CORPORATE AND COMMUNITY

SERVICES



OUTCOME

*To facilitate the social wellbeing and development
of the community.*

9.2.1 ACCOUNTS FOR PAYMENT - OCTOBER 2010

LOCATION/ ADDRESS: N/A
APPLICANT: N/A
FILE: FRE02
AUTHOR: Creditors Officer
CONTRIBUTOR/S: Nil
RESPONSIBLE OFFICER: Director Corporate & Community Services
DISCLOSURE OF ANY INTEREST: N/A
DATE OF REPORT: 25 November 2010

SUMMARY: List of payments made under delegated authority during the month of October 2010.

BACKGROUNDPrevious Considerations

Nil

COMMENT

The CEO has been delegated the power to make payments from the Municipal and Trust funds in accordance with budget allocations.

The Shire provides payments facilities to suppliers be either cheque or electronic funds transfer (EFT).

Attached is a list of all payments made under delegation during the preceding month of operation.

Please note that included in the cheque payments for October is \$2,300,000 in term deposit investment transactions

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Local Government (Financial Management) Regulations 1996

13. *Lists of accounts*

(1) *If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared —*

- (a) the payee's name;*
- (b) the amount of the payment;*
- (c) the date of the payment; and*
- (d) sufficient information to identify the transaction.*

(3) *A list prepared under sub regulation (1) is to be —*

- (a) presented to the council at the next ordinary meeting of the council after the list is prepared; and*
- (b) recorded in the minutes of that meeting.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

List of payments made in accordance with budget and delegated authority.

STRATEGIC IMPLICATIONS

Place

Ensure the Shire's infrastructure and assets are strategically planned and managed.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That accounts paid under delegated authority for October 2010 as attached, covering Municipal Cheque Vouchers 53084-53220 totalling \$2,528,704.03 EFT Vouchers 11479-11793 totalling \$1,995,759.55 and Trust Cheque Vouchers 3196-3207 totalling \$16,910.70, be recorded as paid. The total of all expenditure for October 2010 is \$4,451,374.28.

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 15 pages](#)

9.2.2 OCTOBER 2010 MONTHLY FINANCIAL ACTIVITY REPORT

LOCATION/ ADDRESS: N/A
APPLICANT: N/A
FILE: FRE 02
AUTHOR: Senior Finance Officer
CONTRIBUTOR/S: Manager Finance Services
RESPONSIBLE OFFICER: Director Corporate and Community Services
DISCLOSURE OF ANY INTEREST: Nil
DATE OF REPORT: 4 November 2010

SUMMARY: Monthly Financial Activity Report of the Shire's operations for the month of October 2010. The final result from 2009-2010 is yet to be determined and with budget forecast changes to date, the predicted end of year forecast is a predicted deficit of \$35K.

BACKGROUNDPrevious Considerations

Nil except where associated with a previous ordinary council meeting as identified.

COMMENT

The following are the key indicators of the year to-date budget position:

Budget Year elapsed	33%
Total Operating Expenditure	30%
Total Operating Revenue	74%
Total Capital Expenditure	10%
Total Sale of Assets Revenue	4%
Total Capital Revenue	44%

Committed expenditure as percentage of forecast budget:

Parks & Ovals Infrastructure	30%
Drainage Infrastructure	53%
Transport Infrastructure	18%

The forecast position of a nil result represents a 0.14% variance when viewed in proportion to operating revenue excluding grants and contributions for assets and profit on sale of assets.

The predicted end of year position as at 31 October 2010 is a \$35K deficit. The estimated brought forward surplus of \$888K from the 2009-2010 year is still subject to further end of year adjustments and can only be used for general guidance at this time.

More detailed explanations of variances are contained in the notes to the monthly statement of financial activity. The commentary will identify variations to year-to-date budget positions, or variations that may require consideration for amended forecast.

All forecasts are included as a comparison to original budget in monthly reports.

FORECASTS

General Purpose Funding

Rates

A budget forecast change was required this month for an \$11K increase in budgeted operating revenue for rates instalment interest received, being a greater adoption of instalment options.

The net result of this budget forecast will increase the predicted end of year surplus by \$11K.

Housing

Staff Housing

The following changes to budget forecasts were required:

- \$33K increase in budgeted operating expenditure for 4 Mostyn Place rent expense, being new staff housing lease
- \$33K increase in budgeted operating revenue for 4 Mostyn Place rent income, being new staff housing lease
- \$15K increase in budgeted operating expenditure for Unit 153, 1 Lullfitz Drive rent expense, being new staff housing lease
- \$15K increase in budgeted operating revenue for Unit 153, 1 Lullfitz Drive rent income, being new staff housing lease
- \$16K increase in budgeted operating expenditure for Unit 8, 1 Saville Street rent expense, being new staff housing lease
- \$16K increase in budgeted operating revenue for Unit 8, 1 Saville Street rent income, being new staff housing lease
- \$19.5K increase in budgeted operating expenditure for Unit 154, 1 Lullfitz Drive rent expense, being new staff housing lease
- \$19.5K increase in budgeted operating revenue for Unit 154, 1 Lullfitz Drive rent income, being new staff housing lease

The net result of these budget forecasts will be nil.

Other Property and Services

Corporate Governance and Support

The following changes to budget forecasts were required:

- \$11K increase in budgeted operating expenditure for salary and related expense for Corporate Services Directorate being overlap of Director positions.
- \$45K increase in budgeted operating expenditure for consultants expense being carried forward Financial Sustainability Systems Review from 2009/10, paid in September 2010.

The net result of this budget forecast will increase the predicted end of year deficit by \$56K.

CONSULTATION

Internal Staff

STATUTORY ENVIRONMENT

Local Government Act 1995

6.4. Financial report

- 1) *A local government is to prepare an annual financial report for the preceding financial year and such other financial reports as are prescribed.*
- 2) *The financial report is to —*
 - a) *be prepared and presented in the manner and form prescribed; and*
 - b) *contain the prescribed information.*
- 3) *By 30 September following each financial year or such extended time as the Minister allows, a local government is to submit to its auditor —*
 - a) *the accounts of the local government, balanced up to the last day of the preceding financial year; and*
 - b) *the annual financial report of the local government for the preceding financial year.*

6.8. Expenditure from municipal fund not included in annual budget

- 1) *A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —*
 - a) *is incurred in a financial year before the adoption of the annual budget by the local government;*
 - b) *is authorised in advance by resolution*;* or
 - c) *is authorised in advance by the mayor or president in an emergency.*
 - (1a) *In subsection (1) —*

“additional purpose” means a purpose for which no expenditure estimate is included in the local government’s annual budget.
 - 2) *Where expenditure has been incurred by a local government —*
 - a) *pursuant to subsection (1)(a), it is to be included in the annual budget for that financial year; and*
 - b) *pursuant to subsection (1)(c), it is to be reported to the next ordinary meeting of the council.*
- * Absolute majority required.*

Financial Management Regulations

33A. Review of budget

- (1) *Between 1 January and 31 March in each financial year a local government is to carry out a review of its annual budget for that year.*
- (2A) *The review of an annual budget for a financial year must —*
 - (a) *consider the local government’s financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year; and*
 - (b) *consider the local government’s financial position as at the date of the review; and*
 - (c) *review the outcomes for the end of that financial year that are forecast in the budget.*
- (2) *Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the council.*

- (3) *A council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts of the review or any recommendations made in the review.*

**Absolute majority required.*

- (4) *Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department.*

34. Financial activity statement report — s. 6.4

1A) In this regulation —

“committed assets” means revenue unspent but set aside under the annual budget for a specific purpose.

- 1) A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —*
- a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);*
 - b) budget estimates to the end of the month to which the statement relates;*
 - c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
 - d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - e) the net current assets at the end of the month to which the statement relates.*
- 2) Each statement of financial activity is to be accompanied by documents containing —*
- a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*
 - b) an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - c) such other supporting information as is considered relevant by the local government.*
- 3) The information in a statement of financial activity may be shown —*
- a) according to nature and type classification;*
 - b) by program; or*
 - c) by business unit.*
- 4) A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be —*
- a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
 - b) recorded in the minutes of the meeting at which it is presented.*
- 5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

These are detailed above and in the attachment.

STRATEGIC IMPLICATIONS**People**

Effectively engage with our community by providing information and provide open, transparent and good governance to the community.

Place

Achieve positive long-term economic, social and environmental benefits.

Prosperity

Build the Shire's organisational capacity to service the needs of a growing community.

VOTING REQUIREMENTS

Absolute Majority

REPORT RECOMMENDATION

That Council:

1. *Adopts the Monthly Financial Activity Report for the period ended 31 October 2010.*
2. *Notes the year-end forecasts compared to the original budget.*
3. *Adopts budget amendments to the following general ledger account/jobs:*
 - a. *Increase of \$33K in GL account 95107 – "4 Mostyn Place – Rent Exp Staff Housing" being new staff housing lease.*
 - b. *Increase of \$33K in GL account 95407 – "4 Mostyn Place – Rent Rec'd User Chg Staff Housing" being new staff housing lease.*
 - c. *Increase of \$15K in GL account 95110 – "Unit 153, 1 Lullfitz Drive – Rent Exp Staff Housing" being new staff housing lease.*
 - d. *Increase of \$15K in GL account 95410 – "Unit 153, 1 Lullfitz Drive – Rent Rec'd User Chg Staff Housing" being new staff housing lease.*
 - e. *Increase of \$16K in GL account 95111 – "Unit 8, 1 Saville Street – Rent Exp Staff Housing" being new staff housing lease.*
 - f. *Increase of \$15K in GL account 95411 – "Unit 8, 1 Saville Street – Rent Rec'd User Chg Staff Housing" being new staff housing lease.*
 - g. *Increase of \$19.5K in GL account 95112 – "Unit 154, 1 Lullfitz Drive – Rent Exp Staff Housing" being new staff housing lease.*
 - h. *Increase of \$19.5K in GL account 95412 – "Unit 154, 1 Lullfitz Drive – Rent Rec'd User Chg Staff Housing" being new staff housing lease.*

Moved:

Seconded:

(Absolute Majority Required)

FOR:

AGAINST:

9.2.3 BROOME CIVIC CENTRE REDEVELOPMENT - GRANT AGREEMENT WITH DEPARTMENT OF CULTURE AND THE ARTS

LOCATION/ ADDRESS:	N/A
APPLICANT:	N/A
FILE:	CSP001.12
AUTHOR:	Senior Special Projects Officer
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Corporate & Community Services
DISCLOSURE OF ANY INTEREST:	N/A
DATE OF REPORT:	5 November 2010

SUMMARY: The proposed Grant Agreement between the Department of Culture and the Arts (DCA) and the Shire of Broome for provision of funding towards the redevelopment of the Broome Civic Centre as a Multipurpose Arts and Community Venue is presented for Council's consideration. This report recommends Council endorse the terms of the proposed Grant Agreement and authorise the Shire President and Chief Executive Officer to engross the final document.

BACKGROUND

Previous Considerations

OCM 25 September 2008 - Item 9.2.1
 SCM 23 February 2009 – Item 9.2.2
 SCM 24 April 2009 – Item 9.2.1
 SCM 13 October 2009 – Item 9.2.1
 SCM 22 December 2009 – Item 11.1
 SCM 7 May 2010 – Item 9.2.1

Staff and representatives of DCA have been working for some time to finalise the proposed Grant Agreement for provision of funding by the State to the Shire to assist in the redevelopment of the Broome Civic Centre as a performing arts facility.

Previous considerations by Council in 2009 resulted in the resolution to vary the manner in which the funding was to be utilised, including partial allocation to an outdoor venue at Male Oval. During his visit to Broome on 9 December 2009, Council met with Minister for Planning, Culture and the Arts, Hon. John Day. During discussions pertaining to the funding for the facility, the Minister broadly confirmed that the adherence to the indoor venue concept for which the funding was originally allocated would be preferred. As such, his agreement to the previously proposed variation involving an outdoor venue appeared doubtful, and this was echoed in discussions with relevant DCA staff.

At its meeting of 22 December 2009 Council resolved to revert to the original concept of using the grant funding to redevelop the Civic Centre site only, rather than pursuing an additional venue option at Male Oval.

At its meeting of 7 May 2010 Council adopted the concept design for the proposed redevelopment and the Shire advised DCA of its decision on 11 May 2010.

On 18 June 2010, the Shire's Senior Special Projects Officer and architectural consultant, Murray Johns of Christou Design Group (formerly James Christou & Partners Architects) met with representatives of DCA and presented details of the proposed concept design.

On 1 July 2010 DCA wrote to the Shire's Chief Executive Officer (CEO) advising that in recognition of the progress of the project, the grant funds will be carried over to the 2010/2011 financial year.

On 19 July 2010, following discussions between Shire staff (including the CEO and Shire President) and a DCA representative on 9 July 2010, DCA wrote to the Shire acknowledging the efforts made by the Shire in preparation of the design documentation. However, DCA also advised that the following conditions would be necessary in order to progress the Grant Agreement:

1. Structural work to the floor of the main auditorium to be undertaken as part of the proposed works to enable future opportunity for retractable/racked seating.
2. The final and official name of the venue should not reference performing arts.

At the meeting of 9 July 2010, DCA were advised that the Shire would be putting any further project works on hold pending resolution of the proposed conditions given the potential impact on project costs and the design brief.

DCA advised that the above conditions were considered essential for the future flexibility of the building from a performing arts perspective and to manage professional artistic expectations of venue capability for touring groups.

The CEO responded to DCA on 16 August 2010 advising that additional funds were not available in the 2010/2011 budget to undertake the structural work to the floor. The CEO also noted that if this condition was imposed there would be no alternative other than to recommend Council discontinue the entire project and consider more cost effective measures for the upgrade of the Civic Centre.

The CEO proposed an alternative solution which requires the Shire to consider the issue of retractable / racked seating as part of its long term financial planning / budget processes, subject to funding availability. In doing so, the CEO advised the Shire would be able to proceed with the project as currently briefed and the Department (DCA) would be provided with confidence that the flooring issue will be addressed once financially practicable.

In agreement with the second condition proposed by DCA, the CEO also confirmed that a suitable alternative name which does not reference performing arts would be chosen for the official name of the venue.

On 2 September 2010 the Acting Deputy Director General of DCA agreed to the proposal put forward by the Shire's CEO and advised that a clause would be inserted in the Grant Agreement noting the requirement for the Shire to consider the flooring issue and further noting that the Grant Agreement will not be acquitted until the issue is resolved.

Following receipt of DCA's agreement, the project architect, Christou Design Group, were advised to recommence work.

COMMENT

The attached draft Grant Agreement represents the culmination of negotiations between Shire and DCA staff and includes Special Conditions which are consistent with the aforementioned proposed alternative solution put forward by the Shire's CEO on 16 August 2010.

A full copy of the draft Grant Agreement is located at [Attachment 1](#) and the key aspects of this agreement are summarised below:

Project Name

The project is proposed to be known as the *"Broome Multipurpose Arts and Community Venue"*.

This is a departure from the previous name of *"Broome Performing Arts Centre"* however aligns with the requirements of Special Condition No. 2 (see below and attached) which requires that the project name does not reference "performing" arts. It is also considered to more accurately reflect the design intent for the proposed facility, being a flexible venue that can accommodate a range of uses not limited purely to performing arts.

The proposed name is for the purpose of the design and construction phases. It is anticipated that an official name for the venue will be selected prior to completion of construction.

Grant Amount (Item 2 – Schedule)

The grant allocation from DCA will be \$4,843,597.00, plus GST.

Milestone Payments (Item 8 – Schedule)

The grant funds will be paid according to the milestone payment schedule at Item 8 of the attached Grant agreement.

There will be six (6) milestone payments throughout the course of the project. 75% (Milestones 1 – 4) of the grant funds are scheduled to be paid between execution of the Funding Agreement and the commencement of construction. For the remaining funds, 20% (Milestone 5) will be paid following Practical Completion and the final 5% (Milestone 6) will be paid to the Shire following completion of the Final Acquittal Report.

The proposed milestone payment schedule, in addition to Council's own budget allocation of upto \$3,200,000, is considered to be a suitable and manageable outcome to enable Council to meet anticipated costs throughout the remainder of the project.

Special Conditions (Item 13 – Schedule)

As discussed, Special Conditions are proposed which require the Shire to consider structural work to the floor of the main auditorium in its long term planning and to consider an appropriate name for the venue. These conditions are restated as follows:

- 1. The Shire is to consider structural work to the floor of the main auditorium to enable future opportunity for retractable/racked seating as part of its long term planning / budgeting processes subject to funding availability.*
- 2. The Agreement will not be formally acquitted until evidence of the Shire's consideration of structural work to the floor as part of its long term planning has been submitted and accepted by the State.*

3. *In order to manage expectations of professional touring companies and to reflect the capabilities of the venue, the final and official name for the venue should not reference performing arts.*

The Special Conditions are consistent with the previous agreement reach by Shire and DCA staff in September 2010.

Project Plan (Annexure A)

The Project Plan attached at Annexure A to the Grant Agreement has been prepared by Christou Design Group, the project architect, and provides an estimated timeline for completion of the Project Works. Important dates to be noted are as follows:

- 31 January 2011 – Tender Package and Pre-Tender Cost Estimate completed.
- 15 February 2011 to 21 March 2011 – Tender Advertising Period (5 weeks).
- 5 May 2011 – Construction Period commences.
- 14 March 2012 – Construction Period finishes (45 weeks – to be verified at tender stage)

The milestone payments in Item 8 of the Schedule have been established to align with key dates on the project plan.

Other Matters

The following requirements of the proposed Grant Agreement should also be noted:

- Clause 2.2 'Reporting Requirements' – the Shire is required to provide DCA quarterly updates on the progress of the project and an updated draft Project Plan. This is considered by staff to be a reasonable requirement.
- Clause 2.9 'Variations' – Any variations to the Project Works or departures from the Project Plan need to be notified and approved by DCA. DCA advised that this is standard practice for their grant agreements of this type. Given the amount of funding attributed by DCA to the project staff is of the opinion that this is a reasonable requirement. DCA would not be liable for any additional costs associated with a variation to the project unless such a variation is initiated by the State.
- Clause 4.1 'Acknowledgements' – This clause includes a requirement for the Shire to formally acknowledge the financial and other support of the DCA / State, invite representatives of the State to attend any opening ceremony and display DCA signage at events relating to the Project or Project Works. Given the State's financial contribution to the project, this is considered to be an acceptable requirement.

In consideration of the above, the proposed Grant Agreement is recommended for endorsement by Council.

CONSULTATION

Department of Culture and the Arts

STATUTORY ENVIRONMENT

Local Government Act 1995

5.23. Meetings generally open to public

- (1) *Subject to subsection (2), the following are to be open to members of the public —*
 - (a) *all council meetings; and*
 - (b) *all meetings of any committee to which a local government power or duty has been delegated.*
- (2) *If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —*
 - (a) *a matter affecting an employee or employees;*
 - (b) *the personal affairs of any person;*
 - (c) *a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;*
 - (d) *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;*
 - (e) *a matter that if disclosed, would reveal —*
 - (i) *a trade secret;*
 - (ii) *information that has a commercial value to a person; or*
 - (iii) *information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government;*
 - (f) *a matter that if disclosed, could be reasonably expected to —*
 - (i) *impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;*
 - (ii) *endanger the security of the local government's property; or*
 - (iii) *prejudice the maintenance or enforcement of a lawful measure for protecting public safety;*
 - (g) *information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971; and*
 - (h) *such other matters as may be prescribed.*
- (3) *A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.*

9.49A. Execution of documents

- (1) *A document is duly executed by a local government if —*
 - (a) *the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or*
 - (b) *it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.*
- (2) *The common seal of a local government is not to be affixed to any document except as authorised by the local government.*
- (3) *The common seal of the local government is to be affixed to a document in the presence of —*
 - (a) *the mayor or president; and*
 - (b) *the chief executive officer or a senior employee authorised by the chief executive officer, each of whom is to sign the document to attest that the common seal was so affixed.*
- (4) *A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.*

- (5) *A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.*
- (6) *A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.*
- (7) *When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.*

[Section 9.49A inserted by No. 17 of 2009 s. 43.]

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The table below outlines funding sources for the capital and lifecycle costs.

Funding Source: Broome Multipurpose Arts and Community Venue

Funding Type	Capital or Start Up Expense	Life Cycle Costs (Annual)		Funding Details (eg RLCIP)	Account Number
		Cost \$	*Cost Type		
Grant	\$4,843,597			DCA	116484
Reserve					
Budget	\$3,200,000			Loan	116502
TOTAL	\$8,043,597				
*Cost Type – Asset: New, Upgrade, Renewal, Maintenance, Operating. Service: Start up and Operating					

STRATEGIC IMPLICATIONS

Place

Engage with the community and other agencies to provide land use planning that protects and enhances the natural and built environment to support a quality lifestyle and the local economy.

Ensure the Shire’s infrastructure and assets are strategically planned and managed.

Prosperity

Partner with other agencies to ensure affordable and equitable services and infrastructure.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council:

1. *Adopts the terms of the proposed Grant Agreement with the Department of Culture and the Arts for redevelopment of the Broome Civic Centre as a Multipurpose Arts and Community Venue.*
2. *Authorises the Shire President and Chief Executive Officer to engross the final document and apply the Common Seal of the Shire of Broome thereon.*

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 26 pages](#)

9.2.4 RATES AND LANDFILL LEVY EXEMPTION - AUSTRALIAN BROADCASTING CORPORATION

LOCATION/ ADDRESS:	Lot 72 (23) Taiji Road & Lot 32 (23) Hamersley Street
APPLICANT:	Australian Broadcasting Corporation
FILE:	TAI - 1/23, HAM - 1/23
AUTHOR:	Senior Rates Officer
CONTRIBUTOR/S:	Manager Finance Services
RESPONSIBLE OFFICER:	Director Corporate & Community Services
DISCLOSURE OF ANY INTEREST:	N/A
DATE OF REPORT:	20 October 2010

SUMMARY: To consider rates & landfill levy exemption for properties owned by the Australian Broadcasting Corporation at Lot 72 (23) Taiji Road & Lot 32 (23) Hamersley Street.

BACKGROUND

Application for Rates & Landfill Levy Exemption

We have received advice via email from the Australian Broadcasting Corporation (ABC) requesting rates, landfill levy & emergency services levy exemption in terms of the Australian Broadcasting Corporation Act 1983 S71(1) and the Local Government Act 1995 S26 (2), (j) for two properties:

- Lot 73 (23) Taiji Road purchased 09 June 1989, currently rated residential.
- Lot 32 (23) Hamersley Street purchased 29 January 2009, currently rated commercial for vacant land. Building works are currently underway for the purpose of ABC administration centre.

COMMENT

The Australian Broadcasting Corporation Act 1983 S71(1) states:

- *The Corporation is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.*

The Local Government Act 1995 S26 (2) states:

- *The following land is not rateable land*
- *land which is exempt from rates under any other written law*

Rates

Legal opinion has been sought from McLeods Barristers & Solicitors requesting advice whether local government rates could be considered taxation in terms of the Australian Broadcasting Corporation Act 1983 S71(1). This advice has been supported by the State Solicitors Office. McLeod's opinion concludes:

- *"that the ABC is not liable to pay rates in respect of the land it owns."*

Landfill Levy

The State Solicitors Office advises that the landfill levy is a rate or tax rather than a fee for service and thus, subject to the Australian Broadcasting Corporation Act 1983 S71(1).

Emergency Services Levy

The Shire collects the Emergency Services Levy (ESL) via rate notice on behalf of the Fire and Emergency Services Authority of Western Australia (FESA).

FESA has obtained legal opinion that the ESL is considered to be a tax and therefore the ABC is not liable to pay it by virtue of section 71 of the ABC Act.

Summary

Staff conclude that Lot 73 (23) Taiji Road is exempt from rates and landfill levy in terms of the Australian Broadcasting Corporation Act 1983 S71(1) in conjunction with the Local Government Act 1995 S6.26 (2) (j).

Staff conclude that Lot 32 (23) Hamersley Street is exempt from rates and landfill levy in terms of the Australian Broadcasting Corporation Act 1983 S71(1) in conjunction with the Local Government Act 1995 S6.26 (2) (j).

CONSULTATION

McLeods Barristers & Solicitors

State Solicitors Office - via Department of Local Government

STATUTORY ENVIRONMENT

Local Government Act 1995 - Sect 6.26

6.26 *Rateable land*

(1) *Except as provided in this section all land within a district is rateable land.*

(2) *The following land is not rateable land —*

(a) *land which is the property of the Crown and —*

(i) *is being used or held for a public purpose; or*

(ii) *is unoccupied, except —*

(I) *where any person is, under paragraph (e) of the definition of owner in [section 1.4](#), the owner of the land other than by reason of that person being the holder of a prospecting licence held under the [Mining Act 1978](#) in respect of land the area of which does not exceed 10 hectares or a miscellaneous licence held under that Act; or*

(II) *where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of owner in [section 1.4](#) occupies or makes use of the land;*

(b) *land in the district of a local government while it is owned by the local government and is used for the purposes of that local government other than for purposes of a trading undertaking (as that term is defined in and for the purpose of [section 3.59](#)) of the local government;*

(c) *land in a district while it is owned by a regional local government and is used for the purposes of that regional local government other than for the purposes of a trading undertaking (as that term is defined in and for the purpose of [section 3.59](#)) of the regional local government;*

(d) *land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of*

- religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood;*
- (e) land used exclusively by a religious body as a school for the religious instruction of children;*
- (f) land used exclusively as a non-government school within the meaning of the [School Education Act 1999](#) ;*
- (g) land used exclusively for charitable purposes;*
- (h) and vested in trustees for agricultural or horticultural show purposes;*
- (i) land owned by Co-operative Bulk Handling Limited or leased from the Crown or a statutory authority (within the meaning of that term in the [Financial Management Act 2006](#)) by that company and used solely for the storage of grain where that company has agreed in writing to make a contribution to the local government;*
- (j) land which is exempt from rates under any other written law; and*
- (k) land which is declared by the Minister to be exempt from rates.*
- (3) If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that company or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.*
- (4) The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.*
- (5) Notice of any declaration made under subsection (4) is to be published in the Gazette.*
- (6) Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.*

AUSTRALIAN BROADCASTING CORPORATION ACT 1983 - SECT 71

Taxation

- (1) The Corporation is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Lot 73 (23) Taiji Road – 2010/2011 rates \$1,625.33 plus landfill levy \$40.00

Lot 32 (23) Hamersley Street – 2010/2011 rates \$2,642.60, 2009/2010 back-rates \$814.32 plus landfill levy \$40.00.

Total \$5,162.25 claim, plus a recurring loss of rates approx \$5,575+ annually.

STRATEGIC IMPLICATIONS

Prosperity

Build the Shire's organisational capacity to service the needs of a growing community.

VOTING REQUIREMENTS

Absolute Majority

REPORT RECOMMENDATION*That Council:*

1. *Notes the exemption of Australian Broadcasting Corporation from rates and landfill levy for properties:*
 - *Lot 73 (23) Taiji Road, Cable Beach*
 - *Lot 32 (23) Hamersley Street, Broome in accordance with the Australian Broadcasting Corporation Act 1983 Section 71(1)*

2. *Writes off 2009/2010 backrates, 2010/2011 rates and landfill levy for:*
 - *Lot 72 (23) Taiji Road, Cable Beach: \$1,665.33 plus interest*
 - *Lot 32 (23) Hamersley Street, Broome: \$3,496.92 plus interest*

Moved:***Seconded:******FOR:
AGAINST:******(Absolute Majority required)***

(Confidential Attachment: 14 pages – To Councillors & Directors only)

9.2.5 BROOME ENTRY STATEMENT – PUBLIC ART PROJECT

LOCATION/ ADDRESS:	N/A
APPLICANT:	N/A
FILE:	RCS06
AUTHOR:	Director Corporate Community Services
CONTRIBUTOR/S:	Manager Community Development Event and Sponsorship Coordinator
RESPONSIBLE OFFICER:	Director Corporate & Community Services
DISCLOSURE OF ANY INTEREST:	N/A
DATE OF REPORT:	9 November 2010

SUMMARY: It is proposed to develop a Broome Entry Statement as a public art project in 2011. Entry Statements are commonly used throughout Australia as a clear marker of a town boundary, a 'welcome to' message for those visiting the town and a reflection of the character, spirit and culture of the region. An opportunity exists, as part of the current Community Plan and subsequent Public Art consultation forums, to investigate the feasibility, design and concept of an entry statement to Broome. The development of a public art project, rather than a standard 'welcome to Broome' sign, will allow for community support and involvement as well as partnership funding through community arts programs and tourism initiatives.

BACKGROUND

The Shire of Broome is currently undertaking public consultation as part of the Broome Community Plan development process, being conducted by Community Development Department and Sport and Recreation. It is recognised that Broome does not currently have a public art program, and it is intended that through public consultation processes, potential projects and locations will be determined for future arts projects.

There is an identified lack of a formal Entry Statement into Broome. Traditionally, the entry statement into a major regional centre aims to achieve more than a simple 'welcome to' message, but rather reflects the culture, aspiration and spirit of the region.

COMMENT

As part of the upcoming Broome Community Plan consultation process, the concept of the entry statement including; location, design and cultural themes will be explored. Consultation feedback will then inform a design brief as part of an expression of interest process to be held in early 2011.

Proposed designs for the Broome Entry Statement will then be presented to council in mid 2011 for consideration with construction completed in early 2012.

CONSULTATION

Public input into the concept, design and location of a Broome Entry Statement will be sought as part of the development of the Shire of Broome Community Plan. In particular, consultation sessions planned for December 2010 will focus specifically on public art and the 'character and spirit' of Broome. The consultation provides the perfect opportunity to source constructive community feedback on the development and concept of the entry statement.

STATUTORY ENVIRONMENT

Local Government Act 1960

Local Laws Relating to Signs, Hoardings and Bill Posting

4.1.2 *Reserves Under the Care and Control of Council*

4.12.1 *Unless otherwise approved pursuant to these Local Laws or approved by Council, a sign or advertising device shall not be permitted to be erected or maintained on road reserves or other reserves under the care and control of Council.*

4.12.2 *The Council may grant approval for the erection of any sign or advertising device on road reserves or other reserves under the care and control of Council and impose any conditions or enter into any such contract or agreement with the owner of the licensee of the sign or advertising device as it sees fit to ensure the proper control and maintenance of any such sign or advertising device.*

Main Roads Act 1930

33B *Control of advertisements*

(1) *The Governor may, on the recommendation of the Commissioner, make regulations for controlling and prohibiting the erection or construction of hoardings or other advertising structures, and to enforce the removal of hoardings and other advertising structures, on or in the vicinity of highways, main roads, and sections or part of a road subject to control of access, and for restricting, preventing or controlling the exhibition of advertisements and for the removal of advertisements on or in the vicinity of highways, main roads, and sections or part of a road subject to control of access where such hoardings or other advertising structures are considered to be hazardous to traffic safety or are aesthetically objectionable and in the case of such hoardings or other advertising structures erected on private property where the property owner refuses either to remove the sign or transfer it to another site acceptable to the Commissioner.*

POLICY IMPLICATIONS

4.1.13 Signage and Advertising

Any proposed entry statement will be required to comply with the Shire of Broome policy.

FINANCIAL IMPLICATIONS

External funding will be sought for the design and construction of the proposed entry statement. In particular, grant funding from Country Arts WA and tourism related grants will be sought. There may be a requirement for some budget allocation based on availability of appropriate funding.

Ongoing management and maintenance costs will be borne by the Shire of Broome. Any concept designs will need to factor in the ongoing commitment of the Shire.

Management of the public consultation and concept design phase of the project will be by the Shire of Broome, appropriate funding will be requested as part of normal budget submissions for the 2011/12 financial year.

STRATEGIC IMPLICATIONS

People

Effectively engage with our community by encouraging participation and providing information.

Place

Engage with the community and other agencies to provide land use planning that protects and enhances the natural and built environment to support a quality lifestyle and the local economy.

Build partnerships with the community and other agencies to recognise, protect and enhance the natural environment and cultural heritage.

Ensure the Shire’s infrastructure and assets are strategically planned and managed.

Prosperity

Support business and economic development.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council:

1. *Supports the concept of a Broome Entry Statement as a public art work to be designed and constructed in 2011, subject to budget considerations.*
2. *Recommends that the Broome Entry Statement be considered as part of public consultation under the Community Plan (specifically the Public Art Sub-Plan) in December 2010.*

Moved:

Seconded:

FOR:

AGAINST:

9.2.6 TOWN BEACH KIOSK – REQUEST FOR COUNCIL RECONSIDERATION TO RENEW LEASE

LOCATION/ ADDRESS:	Portion of Reserve 17132 – Town Beach Kiosk
APPLICANT:	Bruce and Anne Chamberlain
FILE:	LSS.034 & Res 17132
AUTHOR:	Director Corporate & Community Services
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Corporate & Community Services
DISCLOSURE OF ANY INTEREST:	Nil
DATE OF REPORT:	16 November 2010

SUMMARY: Correspondence has been received from Bruce and Anne Chamberlain (the current lessees of the Town Beach Kiosk) requesting Council to reconsider its decision of the Ordinary Council Meeting held 28 October 2010 to lease the Town Beach Kiosk by way of a public tender.

BACKGROUNDPrevious Considerations

OCM 16 October 1990 – Item 3.2
 SCM 11 December 1990 – only item
 SCM 8 May 1997 – Item 4
 OCM 23 March 2004 – Item 9.1.5
 OCM 21 December 2004 – Item 9.1.7
 SCM 25 August 2005 – Item 9.4.1
 OCM 18 September 2005 – Changes to SCM 25 August 2005
 OCM 3 November 2005 – Item 9.4.3
 OCM 17 December 2008 – Item 9.4.7
 OCM 28 October 2010 – Item 9.2.6

At the Ordinary Council Meeting held on 28 October 2010, Council resolved as follows:

“That Council determines that:

- 1. The lease area be in accordance with the current lease agreement (café and paved shaded area – Attachment 1), and to include the additional lawn area to the east of the existing building (Attachment 2), subject to the access being maintained at all times for public use.*
- 2. The lease be the subject of a public tender process to be delegated to WALGA for the conducting of the tender process.*
- 3. WALGA prepares the terms of reference for the tender and tender process and submit to Council for approval.*
- 4. The terms of reference include that only the area specified in Attachment 1 and 2 can be utilised by the successful tenderer for the purposes of the associated services approved under the lease. Any leakage of business activities outside the boundaries will be considered a breach of the lease conditions.*
- 5. The current lessees be offered an interim 6 month lease period, in accordance with the terms and conditions of the existing lease agreement, while the tender process is carried out.”*

The reason for Council arriving at the aforementioned decision is that " *the inclusion of the lawn area to the east of the existing building is a substantial change to the leased area thus the request to go to tender*".

COMMENT

The following email dated 11 November 2010 was received from Bruce and Anne Chamberlain:

"We wish to seek your advice on the re-submission for the lease renewal of the Town Beach Café.

As we understand it was rejected on the basis that the grassed area east of the Café was such a significant change to the lease that the Council thought it should be re-tendered. Therefore we would like to ask if it is acceptable to resubmit our request for renewal of the lease without the grassed area in question and in accordance with Section 3.58.

It was never our deliberate intention to operate outside of these guidelines and the tables, chairs and umbrellas have since been removed and will not be placed back on the lawn area. The advantage of the tables was never an income based idea it was simply a carry on from previous café owners and something which added to the ambience and charm of the area.

We have worked very hard and invested substantially to create a relaxed and enjoyable café experience providing good food and service and indeed have just been voted "Best Breakfast in Brome" by the people of Broome and awarded by Spirit Radio for our efforts. The feedback from tourists (Australia wide) and the residents of Broome has been well beyond our expectations and extremely gratifying."

Whilst Council resolved at the OCM 28 October 2010 to include the additional lawned area in any new lease agreement as the area is being utilised by the current lessee, the Chamberlains have indicated in their email that they would like the lease area to remain in accordance with the current lease agreement and have restricted their operations accordingly. As such they have requested Council to renew their lease in accordance with Section 3.58 (3) and (4) of the Local Government Act 1995.

CONSULTATION

Bruce Chamberlain

STATUTORY ENVIRONMENT

Local Government Act 1995

- 5.25. *Regulations about council and committee meetings and committees*
- (1) *Without limiting the generality of section 9.59, regulations may make provision in relation to —*
- (e) *the circumstances and manner in which a decision made at a council or a committee meeting may be revoked or changed (which may differ from the manner in which the decision was made);*

Local Government (Administration) Regulations 1996

10. *Revoking or changing decisions made at council or committee meetings — s. 5.25(1)(e)*
- (1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*
- (a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority;*
or
(b) in any other case, by at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.
- (1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (2) *If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —*
- (a) *in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or*
(b) in any other case, by an absolute majority.
- (3) *This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.*

Local Government Act 1995

3.58. *Disposing of property*

- (1) *In this section —*
dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;
property includes the whole or any part of the interest of a local government in property, but does not include money.
- (2) *Except as stated in this section, a local government can only dispose of property to —*
- (a) *the highest bidder at public auction; or*
(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.
- (3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*
- (a) *it gives local public notice of the proposed disposition —*
(i) describing the property concerned; and
(ii) giving details of the proposed disposition; and
(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;
and
(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*
- (a) *the names of all other parties concerned; and*
(b) the consideration to be received by the local government for the disposition; and
(c) the market value of the disposition —

- (i) *as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*
 - (ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*
- (5) *This section does not apply to —*
- (a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*
 - (b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*
 - (c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
 - (d) *any other disposition that is excluded by regulations from the application of this section.*

Land Administration Act 1997

18. *Various transactions relating to Crown land to be approved by Minister*
- (1) *A person must not without authorisation under subsection (7) assign, sell, transfer or otherwise deal with interests in Crown land or create or grant an interest in Crown land.*
- (2) *A person must not without authorisation under subsection (7) —*
- (a) *grant a lease or licence under this Act, or a licence under the Local Government Act 1995, in respect of Crown land in a managed reserve; or*
 - (b) *being the holder of such a lease or licence, grant a sublease or sublicense in respect of the whole or any part of that Crown land.*
- (3) *A person must not without authorisation under subsection (7) mortgage a lease of Crown land.*
- (4) *A lessee of Crown land must not without authorisation under subsection (7) sell, transfer or otherwise dispose of the lease in whole or in part.*
- (5) *The Minister may, before giving approval under this section, in writing require —*
- (a) *an applicant for that approval to furnish the Minister with such information concerning the transaction for which that approval is sought as the Minister specifies in that requirement; and*
 - (b) *information furnished in compliance with a requirement under paragraph (a) to be verified by statutory declaration.*
- (6) *An act done in contravention of subsection (1), (2), (3) or (4) is void.*
- (7) *A person or lessee may make a transaction under subsection (1), (2), (3) or (4) —*
- (a) *with the prior approval in writing of the Minister; or*
 - (b) *if the transaction is made in circumstances, and in accordance with any condition, prescribed for the purposes of this paragraph.*
- (8) *This section does not apply to a transaction relating to an interest in Crown land if —*
- (a) *that land is set aside under, dedicated or vested for the purposes of an Act other than this Act, and the transaction is authorised under that Act;*
 - (b) *that interest may be created, granted, transferred or otherwise dealt with under an Act other than —*
 - (i) *this Act; or*
 - (ii) *a prescribed Act;*
 - (c) *an agreement, ratified or approved by another Act, has the effect that consent to the transaction was not required under section 143 of the repealed Act; or*
 - (d) *the transaction is a lease, sublease or licence and the approval of the Minister is not required under section 46(3b).*

*Local Government Act 1995 – Shire of Broome Standing Orders Local Law 2003**Part 19 – Common Seal**19.1 The Council's Common Seal*

(2) The Common Seal of the Shire may only be used on the authority of the Council given either generally or specifically and every document to which the seal is affixed must be signed by the President and the CEO or a senior employee authorised by him or her.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Council's 2010/11 budget allows for a rental income of \$59,000. This figure was based on the current rental plus a 3.5 percent increase.

Whilst the market rental valuation has indicated a reduced rental of \$51,000 it is recommended that Council lease the premises for no less than the existing amount of \$57,073.52.

Should Council approve the additional area this would provide additional income of between \$3,150 and \$6,300. This is based on \$50 - \$100 per square metre x 63 square metres.

STRATEGIC IMPLICATIONS**People**

Effectively engage with our community by encouraging participation and providing information.

Actively contribute to well-being and safety and support community initiative.

Place

Engage with the community and other agencies to provide land use planning that protects and enhances the natural and built environment to support a quality lifestyle and the local economy.

Ensure the Shire's infrastructure and assets are strategically planned and managed.

Prosperity

Support business and economic development.

VOTING REQUIREMENTS

Absolute Majority required if Council is to rescind its previous motion of 28 October 2010.

REPORT RECOMMENDATION

That Council:

1. *Reaffirms its decision of the Ordinary Council Meeting held 28 October 2010.*
2. *Informs Mr & Mrs Chamberlain that they have the opportunity to submit a tender for the lease of the premises through the public tender process.*

Moved:

Seconded:

FOR:

AGAINST:

9.3

DEVELOPMENT

SERVICES



OUTCOME

To pursue sustainable development that will protect and enhance the Shire's unique heritage and environment and facilitate increased employment.

9.3.1 PROPOSED AMENDMENT - JANUBURU (SIX SEASONS) DEVELOPMENT PLAN

LOCATION/ ADDRESS:	Januburu (Six Seasons) Estate Reid Road
APPLICANT:	Urban & Rural Perspectives on behalf of LandCorp
FILE:	PLA 38
AUTHOR:	Planning Officer
CONTRIBUTOR/S:	Manager Planning Services
RESPONSIBLE OFFICER:	Director Development Services
DISCLOSURE OF ANY INTEREST:	Nil
DATE RECIEVED:	14 September 2010

SUMMARY: An application has been submitted by Urban and Rural Perspectives, on behalf of LandCorp to amend the Development Plan for the Januburu (Six Seasons) Estate by changing the current residential density coding (R-coding) applicable to Lot 598 (No 11) Conkerberry Road & Lot 629 (No.39) Conkerberry Road, Cable Beach from R 17.5 to R30.

This report recommends that Council adopt the amendment to the Januburu Development Plan for the purpose of seeking public comment.

BACKGROUNDPrevious Considerations

OCM 19 December 2000 – Item 4.1
 OCM 20 February 2001 – Item 9.1.7
 OCM 20 March 2001 – Item 9.1.5
 OCM 18 January 2005 – Item 9.3.6
 OCM 22 March 2005 – Item 9.3.2
 OCM 12 April 2005 – Item 9.3.2
 OCM 24 May 2005 – Item 9.3.5
 OCM 15 February 2007 – Item 9.3.1
 OCM 7 June 2007 – Item 9.3.4
 OCM 5 July 2007 – Item 9.3.7
 OCM 25 October 2007 – Item 9.3.1

History

Council on 25 October 2007 resolved as follows:
 That Council adopts the revised Januburu Development Plan dated 25 July 2007.

Site and Surrounds

The Januburu, Six Seasons Estate is located between Reid Road to the east, and Gubinge Road to the west. Construction works have been largely completed for stages one to three (north of the Environmental and Cultural Corridor (ECC)) with a number of new buildings under construction within stage four (south of the ECC).

Description of the Proposal

Lots 598 (1127m²) and 629 (1053m²) are located on Conkerberry Road on the southern part of the recently created Januburu Six Seasons Residential Estate. Under the terms of

the approved Januburu Development Plan (JDP) both lots have been assigned a R Coding of R 17.5. As such each lot may only accommodate the development of one (1) single dwelling.

If the proposed amendment to the development plan is approved it would allow the construction of three dwelling units on each of the lots.

Planning Provisions

Clause 4.25 of the Shire of Broome Town Planning Scheme (TPS4) sets out the requirements for amending an approved Development Plan, this includes public advertising. Once advertised the Development Plan will be returned to Council for consideration and referral to the Western Australian Planning Commission for adoption.

COMMENT

The Local Housing Strategy 2009 identified the need to provide a diversity of housing types. Action 2A states the following *"Urge developers/subdividers to review the subdivision patterns and R-Codings of existing undeveloped subdivisions and where appropriate provide for additional medium density residential development."*

Lots 598 & 629 are located approximately 550 metres from the BP Reid Road Shopping Centre and are within 250m of a Neighbourhood Park which also function as a Local Park. In terms of the shires policy on open space residential lots should be a minimum of 300 m away from a Local Park and 400m away from a Neighbourhood Park. Both lots comply with this requirement.

The purpose of the proposed amendment to the 'Januburu (Six Seasons) Development Plan' is to enable Grouped Dwellings to be constructed. For this to occur Lot 598 and Lot 629 require the R-Coding to be changed from R17.5 to R30. This requires Figure 11 of the JDP be amended to show the R-coding as R30. The proposal is consistent with the strategic land use planning direction of current JDP, which identifies numerous lots within the immediate locality as having a residential density coding of R30, R40 & R50 and is supported.

Figure 11 JDP, the primary source of advice regarding the development intent, does not show individual lot numbers for lots within the Residential zone. This makes it difficult for both Shire officers and intending purchasers to locate properties and provide advice/understand development requirements. The plan also needs to be amended to show lot numbers.

It is recommended that Council supports the proposed amendment subject to the Figure 11 being amended to show lot numbers for all properties earmarked for residential development.

Attachment 1: Amended Januburu Development Plan.

CONSULTATION

The proposal is to be advertised in accordance with the Town Planning Scheme No.4 for 42 days.

STATUTORY ENVIRONMENT

Planning and Development Act 2005

Shire of Broome Town Planning Scheme No. 4

4.25 *Development Zone*4.25.1 *Aims and Objectives*

4.25.1.1 *The aim of the zone is to provide for general urban development including residential, commercial and/or tourist development or rural development in accordance with a Development Plan prepared under this Scheme.*

4.25.3 *Development Plan*

4.25.3.1 *A Development Plan shall address the following;*

- (a) the topography and vegetation of the area and distinctive features;*
- (b) the existing major road system;*
- (c) the location and width of proposed roads;*
- (d) the location of pedestrian and bicycle routes;*
- (e) the approximate location and area of the recreation and open space areas proposed;*
- (f) the population, lot layout and the location of appropriate "Residential Planning Code" densities;*
- (g) all existing and proposed land uses;*
- (h) provision for water supply, sewerage, drainage and public utilities;*
- (i) the development proposed, the method of carrying out the development and the projected times of completion of each stage of development;*
- (j) community facilities and commercial centres;*
- (k) consideration of Aboriginal heritage and cultural sites and matters and how these aspects are incorporated into the development plan;*
- (l) Environmental Cultural Corridors within the area and/or the allocation of land for conservation purposes in the area;*
- (m) environmental protection consideration and pollution prevention measures; and*
- (n) Such other matter or information as is required by Council.*

4.25.3.2 *When a Development Plan has been prepared to the satisfaction of Council, the Council shall:*

- (a) notify in writing all servicing authorities and each owner of land affected by the Plan; and*
- (b) advertise for public comment the existence of the plan; and*
- (c) invite each landowner, the public, service agencies and all affected Government Authorities to make a submission to Council regarding any aspect of the Plan.*

4.25.3.3 *The Council shall specify a time within which submissions will be received, but the time shall not be less than 28 days from the date of notification described in Clause 4.25.3.2.*

4.25.3.4 *That Council shall consider any submissions made under Clauses 4.25.3.2 and 4.25.3.3 and may reject, amend or adopt the Development Plan after consideration of such submissions.*

4.25.3.5 *The Council shall:*

- (a) *subsequently forward the Development Plan to the Western Australian Planning Commission together with a precis of, and the Council's decision in relation to, each submission received in respect of the Plan; and*
 - (b) *request the Commission to adopt the Plan submitted as the basis for approval of subdivision applications and development within the area covered by the Plan.*
- 4.25.3.6 *Where Council does not forward a response to the Western Australian Planning Commission within three months from the closure of the public advertising period, the Development Plan is deemed to be refused and appeal rights, in accordance with clause 4.25.3.8 exist for the applicant.*
- 4.25.3.7 *Any departure from or alteration to the Development Plan may, subject to the approval of the Western Australian Planning Commission, be permitted if the Council considers that the proposed departure or alteration will not prejudice the progressive subdivision and development of the area the subject of the plan.*
- 4.25.3.8 *Without limiting the generality of other provisions for appeals herein, an applicant aggrieved by a decision of the Council in respect of a decision made under clauses 4.25.3.4, 4.25.3.5, 4.25.3.6, 4.25.3.7 and/or 4.25.3.9 under the Scheme may appeal in accordance with Part V of the Act and the rules and regulations made pursuant to the Act.*
- 4.25.3.9 *Following adoption of a Development Plan, required under the provisions of Clause 4.25.2, by the Western Australian Planning Commission, Council may approve development and/or support subdivision consistent with the adopted plan, and thereafter will implement Scheme amendments to rezone the land to other Scheme zones in accordance with the Development Plan*
- 4.25.4 *Development Plan Guidelines for Precincts - The Scheme Report - Local Planning Strategy outlines guidelines for the preparation of Development Plans for specific precincts within the Development Zone.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The proponent is responsible for costs incurred in the Development Plan process. There are some requirements for Council to upgrade road works.

STRATEGIC IMPLICATIONS

Place

Engage with the community and other agencies to provide land use planning that protects and enhances the natural and built environment to support a quality lifestyle and the local economy.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council

1. *Adopts the amended Januburu (Six Seasons) Development Plan, dated 9 September, with the Rcode of Lot 598 (No 11) and Lot 629 (No.39) Conkerberry Road, Cable Beach changed from R17.5 to R30 for the purpose of public comment for a period of 42 days.*
2. *Requests that the Development Plan also be updated to show the lot numbers on all lots earmarked for residential development.*

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 2 pages](#)

Further confidential information was provided to Councillors and Directors - Records Reference 1100608-52727.

9.3.2 PROPOSED AMENDMENT NO 36 - TOWN PLANNING SCHEME NO 4 - RECODE THE RESIDENTIAL AREA GENERALLY BOUNDED BY FREDERICK STREET, D'ANTOINE STREET, PRYOR DRIVE, PIGGOT WAY, GUY STREET, PEMBROKE ROAD, DICKSON DRIVE, DORA STREET, ROBERT STREET, HERBERT STEET, ANNE STREET, PUERTOLLANO PLACE, PLACANICA PLACE, MATSUMOTO STREET, STRACKE COVE, TANG STREET AND LYONS STREET BROOME FROM 'R10/20' and 'R15' TO 'R30'

LOCATION/ ADDRESS: The residential area generally bounded by Frederick Street, D'Antoine Street, Pryor Drive, Piggot Way, Guy Street, Pembroke Road, Dickson Drive, Dora Street, Robert Street, Herbert Street, Anne Street, Puertollano Place, Placanica Place, Matsumoto Street, Stracke Cove, Tang Street and Lyons Street, Broome

APPLICANT: Shire of Broome

FILE: TPS4/36

AUTHOR: Planning Officer

CONTRIBUTOR/S: Manager Planning Services

RESPONSIBLE OFFICER: Director Development Services

DISCLOSURE OF ANY INTEREST: Nil

DATE OF REPORT: 28 September 2010

SUMMARY: The Local Housing Strategy endorsed by Council on 19 February 2009 has identified the area bounded generally by Frederick Street, D'Antoine Street, Pryor Drive, Piggot Way, Guy Street, Pembroke Road, Dickson Drive, Dora Street, Robert Street, Herbert Street, Anne Street, Puertollano Place, Placanica Place, Matsumoto Street, Stracke Cove, Tang Street and Lyons Street, as being suitable for rezoning from 'Residential R10/20' and 'Residential R15' to 'Residential R30'

This report recommends Council adopts the amendment without modification.

BACKGROUND

Previous Considerations

July 2004 - Council workshop
 OCM 1 August 2006 – Item 9.3.3
 SCM 15 August 2006 – Item 9.3.1
 OCM 21 December 2006 – Item 9.3.12
 OCM 18 January 2007 – Item 7
 OCM 15 March 2007 – Item 9.3.5
 OCM 11 April 2007 – Item 9.3.7
 OCM 16 April 2009 – Item 9.3.1

History

Council resolved at its meeting on the 16 April 2009 that:

- Pursuant to Section 75 of the Planning and Development Act 2005, amends the Shire of Broome Town Planning Scheme No 4 to recode all the residential land as generally bounded by Frederick Street, D'Antoine Street, Pryor Drive,*

Piggott Way, Guy Street, Pembroke Road, Dickson Drive, Dora Street, Robert Street, Herbert Street, Anne Street, Puerto llano Place, Placanica Place, Matsumoto Street, Stracke Cove, Tang Street, Lyons Street, Broome from R10/20 and R15 Code to R30 Code.

2. *Authorises the Shire President and Chief Executive Officer to engross the amendment documents.*
3. *Directs the Chief Executive Officer to ensure the Group Housing Design Guidelines are progressed and advertised at the same time as the amendment. "*

Attachment 1 – Location Plan

Attachment 2 – Existing R-Coding

Description of the Proposal

The area involved is all the residential area bounded by Frederick Street, D'Antoine Street, Pryor Drive, Piggott Way, Guy Street, Pembroke Road, Dickson Drive, Dora Street, Robert Street, Herbert Street, Anne Street, Puertollano Place, Placanica Place, Matsumoto Street, Stracke Cove, Tang Street, Lyons Street, Broome. Currently much of this area is developed with single storey residential dwellings on lots that vary from 1000 to 2000sqms.

The Post War development area to the west of Herbert Street, is predominantly coded R10/20 (effectively R20 as it is already sewered), with a section of R15 between Anne, Guy and Dora Streets and some individual land parcels coded R30, R40 and R50.

The Precinct comprises a combination of grid and cul-de-sac pattern residential layout. The housing stock essentially consists of single storey fibro-cement or brick veneer buildings, with some infill unit development.

The subject area is bounded to the north by residential and reserves (public purposes/parks/recreation), to the west by reserves (public purposes) and light & service industry, to the south by a 'Development' zone, residential and reserves (public purposes). To the east is residential, predominantly R10.

It is proposed to apply the R30 coding to all residential lots within the area as described excepting properties already coded R30 or higher. The R30 coding as set out in the Residential Design Codes specifies a minimum (average) site area of 300sm per dwelling. This means that on a lot that is 1000sms in area three (3) dwellings could be considered provided all elements of the Residential Design Codes are addressed.

Planning Context

A Scheme Amendment is required to be advertised for public comment and submissions prior to its consideration and adoption by both Council and the Western Australian Planning Commission. The periods of public display is specified as being a minimum 42 days.

Scheme Amendment 36 was originally advertised from 17 June 2010 to 29 July 2010 and letters sent out to all affected landowners. It was established that there was a problem with the mail out to affected land owners and subsequently letters were reissued and the submission period was extended to Friday 3 September 2010 (78 days).

The scheme amendment was advertised in the local news paper on 17 June 2010 and again on 11 August 2010. Notices, explaining the proposal, process to be followed and how submissions could be lodged were posted on the Shire noticeboard, website and in the Shire newsletter of 24 June 2010.

Fifty seven submissions were received including two late submissions and are summarised in the Schedule of Submissions attached.

Attachment 3 – Schedule of Submissions

COMMENT

The Shire of Broome *Local Housing Strategy 2009* (The Strategy) adopted by Council in 2009 sets out the key principles for housing as diversity, affordability, sustainability and heritage/character. It recognises the Council is constrained in what it can do to influence the immediate supply of housing and so The Strategy focuses on the areas that the Shire of Broome has the power and tools to influence. The Strategy has eight objectives and a range of associated delivery actions. The following relate to this amendment:

Objective 2 – Provide for a diverse range of housing types.

Actions 2C - Recode the residential areas south of Anne Street/ west of Herbert Street and between Kennedy Court and Anne Street to 'Residential R30'.

Objective 3 - Provide for a diverse residential population.

Actions 3F - Provide for a range of dwelling types to suit a diverse population and including a range of 1 and 2 bedroom dwellings, attached and semi detached dwellings.

Local Housing Strategy Map – identifies this area as 'Rezone R30'

The scheme amendment process requires that all landowners (affected and adjoining) and State Agencies be advised of the proposal. This was commenced 17 June 2010. After it was established that the initial mail out had not been comprehensive the submission period was extended from 17 June 2010 to 3 September 2010 and the mail out was rechecked and redone. In addition to the letters sent to affected landowners the advertising process also included notices on the Shire noticeboard, webpage and notices placed in the Broome Advertiser - the local newspaper and the Shire news letter.

Fifty seven submissions were received (including two received after the advertising period had closed).

- Telstra, Department of Regional Development and Lands, Water Corporation and Department of Water all advised they had no objections.
- Twelve people who do not own properties in the affected area made submissions – two of these requested that properties outside the designated area be recoded.
- Of the remaining 45 submissions a number of people were identified owning two or more properties as such multiple submissions made by the same owner were considered as one. This reduced the total submissions to 40.
- The majority of the 40 submissions raised issues that opposed the proposed rezoning. In summary the matters raised (in order of priority) were:
 - Social issues, antisocial behaviour, crowded residences, loss of social fabric
 - Lack of infrastructure, roads, utilities, services and or pedestrian links

- Increased density will result in housing forms that do not accommodate the Broome lifestyle or climate – no gardens, lack of privacy, noise from neighbours and air conditioners
- Density increase should not occur in just this one area – density increased should be also accommodated in other areas of Broome or should be addressed in Broome North
- There is a lack of open space to accommodate increase population needs
- Increased density will result in loss of environment, verges, trees and shady areas
- This part of Broome has been forgotten and neglected
- Further planning needs to be done before any decision to increase density can be made

Antisocial behaviour, crowded residences, a fragile social fabric. While there is no direct connection between higher density and antisocial behaviour it is recognised there are issues in some areas that need to be addressed. The Ann Street Project (ASP) being managed by Mamabulanjin Aboriginal Corporation is in the process of engaging with residents, undertaking physical improvements and developing a community sense of place and ownership may go some way to reducing some of the social issues.

Lack of infrastructure, roads, utilities, pedestrian links. The infrastructure within the area, roads, drains, water, sewerage and electricity are adequate and can accommodate the proposed increase in dwelling density. Informal pedestrian connections were established through private property and as a result of development these are no longer available. There are however established pathways along Tang and Anne Street for people to use to access different parts of Broome.

Broome lifestyle and climate not accommodated in new development. Council as part of its decision on 16 April 2009 to initiate the scheme amendment directed that the Shire make progress to finalise the draft Medium Density Guidelines/Group Housing Design Guidelines. Since then seminal work has been done through the Broome North project that provides considerable direction on what the key elements are for housing in Broome (reference – Broome North Housing Guide). The Shire is determined to take advantage of the new information and is working towards the preparation of a Regional Variation to the R-Codes. It is anticipated the draft of this work will be completed by early 2011. The key element will be to ensure all residential buildings are designed in a way that accommodates the Broome lifestyle and is responsive to the Broome climate.

Density Increases to occur in other areas of Broome. The LHS identified a package of initiatives to facilitate the delivery of a variety of housing forms. Density increase is not only occurring in one area, Roebuck Estate, Januburu and Broome North have all identified a range of medium density sites. The LHS has recognised the need to investigate the Old Broome area, this will be done when resources are available.

Lack of Open space. The provision of open space is determined at the time of the original subdivision. Residential lots in this area are within range of some form of open space. While the R30 coding applies to the whole area it will be up to the individual landowner to determine whether or not to redevelop – possibly half of the lots will take advantage of the increase in density. Overall it is unlikely that there will be substantial short-term increase to the existing population as any new units are likely to have one or two occupants.

Loss of environment verges and trees. Any landowner has the right to plant, retain or remove vegetation on their property and some owners of large lots have chosen to reduce vegetation coverage for a variety of reasons. The Shire is now encouraging landowners to take responsibility for the adjoining road verge to their property, a practice

commonly adopted in metropolitan areas. It is understood the Ann Street Project is seeking to re-landscape a number of verges – should residents be interested in undertaking similar works the Shire is able to provide advice on suitable finishes and plants.

This part of Broome is forgotten/ more planning should be done. The Shire has a process of programming maintenance work, residents are able to report curbs or footpaths that require fixing and these are included in the maintenance program. It is unclear what further planning needs to be done before any decision to increase density can be made.

It is widely recognised there is a shortage of housing within Broome and that the relatively low density applied through Town Planning Scheme No 4 has resulted in Broome's housing stock being dominated by single storey detached dwellings (mostly three and four bedroom). In contrast, there are very few medium density developments in the town, and consequently there is little variety and choice in housing. This trend is considered to be at variance with more 'global' demographic changes affecting the town, including smaller household formation and an aging population. It is also out of step with demand for public housing, Government (GEHA) housing, and for more transient worker accommodation.

Although the Council has little influence over the factors leading to the demand for more housing it can, through the Town Planning Scheme, affect supply by increasing opportunities for residential development. This form of action is a reasoned response which may affect change within Broome's housing sector. While the Broome North project will result in a new greenfield development coming on line in late 2011 this proposed amendment will also contribute to the provision of a wider range of housing.

Increasing the coding over the described area from R10/20 and R15 to the R30 density code is accordance with the endorsed Local Housing Strategy 2009, it is recommended that Council adopts Scheme Amendment 36 without modification.

CONSULTATION

In accordance with the Town Planning Regulations (1967), the proposed Scheme Amendment was advertised for a total of 78 days and 57 submissions were received, of which two were late submissions.

The amendment was originally advertised from 17 June 2010 to 29 July 2010 and letters sent out to all affected landowners. However when it was established there was a problem with the mail out the letters were reissued and the submission period was extended to Friday 3 September 2010.

The scheme amendment was advertised in the local news paper on 17 June 2010 and again on 11 August 2010. Notices, explaining the proposal, process to be followed and how submissions could be lodged were posted on the Shire noticeboard, website and in the Shire newsletter of 24 June 2010.

STATUTORY ENVIRONMENT

Planning and Development Act 2005

Town Planning Regulations 1967

Local Housing Strategy February 2009

Shire of Broome Town Planning Scheme No 4 – Clause 4.13 (Residential Zone)

The following is an extract from the Residential Design Code Table 1 showing the different requirements for the existing and the proposed density coding.

Existing Codes

R-Code	Dwelling type	Min site area per dwelling Sq metre	Min lot area/ rear Battleaxe sq metre	Max plot ratio	Min frontage (m)	Open Space			Minimum setbacks (m)		
						Min total(% of site)	Min communal	Min/ door living	Primary street	Secondary street	Other /Rear
R10	Single house or grouped dwelling	Min 875 Av 1000	925	-	20	60	-	-	7.5	3	*/6
	Multiple dwelling	1000	-	-	20	-	-	-	7.5	3	*/6
R20	Single house or grouped dwelling	Min 440 Av 500	540	-	10	50	-	30	6	1.5	*
	Multiple dwelling	500	-	-	20	-	-	-	6	1.5	*
R15	Single house or grouped dwelling	Min 580 Av 666	655	-	12	50	-	-	6	1.5	*/6
	Multiple dwelling	666	-	-	20	-	-	-	6	1.5	*/6
Proposed Medium Density Codes											
R 30	Single house or grouped dwelling	Min 270 Av 300	420	-	-	45	-	24	4	1.5	*
	Multiple dwelling	Min 333	-	-	20	-	-	-	4	1.5	*

**Indicates that the building setback is based on wall length, wall height and major openings – further tables and charts provide clarification*

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

People

Effectively engage with our community by encouraging participation and providing information.

Place

Engage with the community and other agencies to provide land use planning that protects and enhances the natural and built environment to support a quality lifestyle and the local economy.

Prosperity

Build the Shire’s organisational capacity to service the needs of a growing community.

Partner with other agencies to ensure affordable and equitable services and infrastructure.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council:

1. *Having considered the submissions received during the advertising period adopts the recommendations listed against each submission in the Schedule of Submissions attached to this report.*
2. *Pursuant to Section 75 of the Planning and Development Act 2005 adopts Amendment No 36 without modification by amending the Shire of Broome Town Planning Scheme No. 4 to recode all the residential land as generally bounded by Frederick Street, D'Antoine Street, Pryor Drive, Piggott Way, Guy Street, Pembroke Road, Dickson Drive, Dora Street, Robert Street, Herbert Street, Anne Street, Puertollano Place, Placanica Place, Matsumoto Street, Stracke Cove, Tang Street, Lyons Street, Broome from R10/20 and R15 Code to R30 Code.*
3. *Authorises the Shire President and Chief Executive Officer to engross the amendment document.*

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 16 pages](#)

9.3.3 APPLICATION FOR PLANNING APPROVAL - TOURIST DEVELOPMENT - LOT 1 (NO 7) SANCTUARY ROAD, CABLE BEACH

LOCATION/ ADDRESS: Lot 1 Sanctuary Road Cable Beach
APPLICANT: Mr F Margarita for Quest Broome Sanctuary Drive Pty Ltd
FILE: SAN-3/7
AUTHOR: Planning Officer
CONTRIBUTOR/S: Manager Planning Services
RESPONSIBLE OFFICER: Director Development Services
DISCLOSURE OF ANY INTEREST: Nil
DATE RECIEVED: 6 July 2010

SUMMARY: An application for planning approval has been lodged for a Tourist Development on Lot 1 (No.7) Sanctuary Road, Cable Beach.

This report has been referred to Council as the proposed development does not meet all the requirements of the Shire of Broome Town Planning Scheme No. 4, Cable Beach Development Plan – Architectural Design Guidelines and Local Planning Policy 4.1.10. Tourist Accommodation Developments (Excluding Caravan Parks).

This report recommends approval.

BACKGROUND

Previous Considerations

OCM 17 December 1996 – Item 8.10
 OCM 21 December 2006 – Item 9.3.5
 OCM 21 January 2010 – Item 9.3.3
 OCM 18 February 2010 – Item 9.3.4

Site and Surrounds

The site has an area of 0.4 hectares and is located on Sanctuary Road Cable Beach approximately fifty (50) metres west of the roundabout at the intersection of Kapang Drive and Sanctuary Road. The Broome Sanctuary Resort borders the site to the north. To the east and west, the adjoining properties are vacant. The land is undeveloped and relatively flat and has been cleared of natural vegetation.

History

21 December 2006 - Council approved an application to develop a tourist resort on the original Lot 1(1.3168ha) Sanctuary Road which consisted of 40 short stay units and twelve long stay units. A manager's residence, café and reception area were also proposed.

16 February 2010 WAPC (ref 140037) approved the subdivision of the property into two portions measuring 0.9168 hectares and 0.4 hectares. The subdivision was approved contrary to the provisions of the Town Planning Scheme of a minimum area required for a lot of 1 Ha. It was also against the advice of the Shire forwarded to WAPC on 5 August 2009.

On 30 August 2007 Item 9.3.2 Council refused a development application on No 16 Sanctuary Road on the basis that the proposal did not provide a 3 metre landscaping strip, had a large building footprint, had a building bulk that prevented the circulation of breezes and had no provision for the parking of boats and caravans. In DR/331 of 2007 the State Administrative Tribunal (SAT) 15 July 2008 (ref: 2008 WASAT 163) subsequently made the following comments:

Building Footprint - It is accepted that the recommended footprint of 15 metres by 20 metres contained in the Architectural Design Guidelines in Appendix A of the CBP are not mandatory and are provided primarily as a guide and in any event are not to be applied inflexibly.

*Plot Ratio - The Shire held that the PR was 1.13, the applicant held that the PR was 0.88. While SAT did not make a determination as to the actual figure SAT did state (referring to the Local Planning Policy 4.1.10. Tourist Accommodation Developments (Excluding Caravan Parks)) that the *tribunal is certainly not satisfied that the applicant has provided the facilities necessary to obtain the full 20% concession.**

Building Bulk and Scale - 'the applicant has not satisfied the Tribunal that the bulk and scale of the development will not adversely impact the amenity of the adjoining neighbours particularly in respect of the circulation of breezes which in the Broome climate is important.

In summary -

Para 93 The Tribunal finds that the development demonstrates an inadequate outcome in balancing the competing demands and in its present form it is considered the building footprints are excessive and the development exceeds the recommended plot ratio by too large a margin.

Para 94 The Tribunal does acknowledge the need for additional tourist accommodation in Broome, however that of itself is not a reason to allow the development, particularly when sufficient landscaping, breezeways and a built form in keeping with the Broome style is not what is offered by the present proposal .

Attachment 1 (Locality Plan)

Description of the Proposal

The applicant proposes to develop a tourist development on the site that consists of two buildings. The buildings being one, two and three stories are arranged in more or less a straight line running north south along the central portion of the site with access and parking along the eastern portion and landscaping/gardens and pools (private and public) along the western portion of the site. The buildings would have a maximum ridge height of 13.7 metres with a wall height of 9.6 meters and have a 4 metre separation (wall to wall).

The plans submitted list there being 22 units, on closer review there are 24 units (see explanation below in the Long Stay Accommodation description). Plans as submitted show the following:

Building to the North - Long Stay Accommodation (LSA) (7 units):

- 3 three bedroom single storey units
- 2 'double keyed' four bedroom double storey units
 - ground floor unit - separate entrance, living, kitchen, bathroom, one bedroom, laundry and outdoor living area
 - first floor unit – separate entrance, living, kitchen, bathroom, three bedrooms, laundry and outside verandah
- 8 car parking bays
 - 1 for each 3 bedroom single storey unit (total 3 bays)
 - 2 for each 'double keyed' unit (total 4 bays)
 - 1 bay for visitors.

Building to the South - Short Stay Accommodation (SSA) (17 units):

- Building height is three stories with a ridge height of 13.7m plans show 13.27 and a wall height of 9.6m
- A total of 17 SSA units consisting of:
 - 6 SSA units which are single keyed
 - 11 SSA units which can be dual keyed to provide 22 SSA rooms/units
- A reception area to the front is single storey
- Enclosed bin storage service area
- There is a swimming pool set in landscaped gardens
- A front landscaped garden also provides a compensation basin for stormwater drainage
- 22 car parking bays are located along the eastern boundary and extend into the area in front of the LSA Units
- One bus set down area close to the main entry of the building
- A service bay is provided along the eastern boundary of the site to the rear of the SSA Block A

The proponent has indicated on the plans that the development would occur in two stages:

- Stage one – LSA Block B
- Stage two – SSA Block A

Attachment 2 – Ground Floor plan SSA Block A

- 1/7 Artists Impression street elevations
- 2/7 Site plan
- 3/7 Ground Floor Plan showing parking and landscaping – (excludes details of SSA Block A)
- 4/7 First Floor plan SSA and LSA, Second Floor Plan SSA and Roof Plan
- 5/7 Parking and Landscaping Plan and Vehicle Maneuvering Plan
- 6/7 Floor plans SSA and LSA units
- 7/7 Cantilevered car parking shade structure

Justification

The proponent has, through Peter Webb Associates, provided the following justification for the development in its current form. This is summarized below:

- Shire Officers indicated over several discussions from May to late June 2010 that the proposal was acceptable.
- That where the Draft Cable Beach Architectural Design Guidelines (DCBDP ADGs) are inconsistent with TPS 4 the scheme provisions prevail (clause 2.3.2).

- The DCBDP ADG states that buildings should have a footprint 20m x 15m. The proposed development has a footprint of 37m x 17m. Council has approved a number of developments in the Cable Beach Tourist Precinct that do not comply with the provision. These are set out in the table below.
- The DCBDP ADGs require a separation of 8.75 m. The purpose of this separation is intended to reduce the impact of the building bulk and allow for breeze circulation to adjoining properties. A set of drawings has been provided that describe the proposed development and how breezes will work. It is argued that this shows the design provides comprehensive opportunities for prevailing breezes to move around, over and between the buildings in a way which will minimise its impact. The table also provides evidence that there are other examples of a reduced separation between the buildings.

Resort Name	Approved Building Footprints	Approved Building Gaps
Sanctuary Drive Resort	77m x 22.5m, 51m x 23m, 42m x 16m	3.29m, 3.35m, 3.065m, 4.0m
Palm Grove Resort, Murray Road	36 x 17m, 31m x 29m x 30m, 50m x 40m.	space between buildings - 1.8m, 4m+4.5m
Seashells Resort, Stage 2	35 x 19m	3.5m
Cable Beach Club, Stage 2	72m, 63m, 60m, 36m, 31m, 30m	4.0m, 5.0m, 6.0m, 7.2m

- The proponents will provide a landscaped cantilevered structure along the side boundary which will have a canopy of at least three meters. (see Attachment 2 page 7/7). This will provide shade for cars, provide a visual screen, direct cooling breezes and provide a more aesthetic view along the driveway from Sanctuary Road.
- The bus bay has been moved to provide for more landscaping within street frontage.
- The proponent will require any SSA guests or LSA residents to store boat/trailers off-site.
- While there is no requirement under TPS4 for proponents to provide motorcycle or bike parking notwithstanding this they acknowledge that there is a need for such a facility and have included an area for bike parking on site.

Attachment 3 Breeze flows

Planning Provisions

This land is zoned 'Tourist' under the Shire's Town Planning Scheme (TPS4). Tourist Development is a permitted use in the zone.

The following additional general development requirements of TPS4 are relevant to this proposal:

- Clause 4.17. Tourist Zone - Council may approve a combination of tourist and permanent accommodation, subject to Council Policy.
- Clause 5.9 - Buildings within the 'Tourist Zone' shall have a maximum wall height of 10 metres and a maximum ridge height of 14 metres.

- Clause 5.10 - Architecture - The style of the building must match the 'Broome style' of architecture, which reflects a low scale of building bulk and has regard to local climatic conditions and traditional architecture. Features of this style include pitched roof, collar bond wall etc.
- Cable Beach Development Plan (CBDP).
- Draft Architectural Design Guidelines (DCBDP ADGs).
- Local Planning Policy 4.1.10 - Tourist Accommodation Developments (Excluding Caravan Parks) within the Tourist Zone (LPP4.1.10) – which requires LSA units should be a maximum of 40% of the total development at any time.
- Local Planning Policy 4.1.8 – Car Parking (LPP4.1.8).

COMMENT

The concepts as discussed with the proponent from May to June were of a general nature and in no way precluded the requirement to undertake a complete technical assessment once a development application was lodged.

The application received on the 6 of July 2010 generally complied with the requirements of the TPS4 and LPP4.1.10 but did not comply with all the requirements of the DCBAD ADGs. Subsequently the proponent was advised by Shire officers of the following:

- the LSA units indicated as two storeys could not be considered as one unit as each level is self contained and can be keyed either separately or as one unit and on this basis the development was considered to contain 24 units.
- There was an under provision of Boat Bays for the proposed development.
- Under provision of landscaping along the road and eastern boundary of the proposed development.
- Separation distances between the two building envelopes are too narrow to allow for proper breeze flow.

A covering report from Peter Webb and Associates responded to the matters of concern and new plans and were received 14 October 2010. The development has been assessed against the following criteria.

Matter As shown in proposed development	Provisions	Comment
<p>Density (LSA - only)</p> <p>7 units provided</p>	<p><u>TPS4 and LPP 4.1.10</u> With R40, and with that portion of site having an area of 1740sqm - 8 units permitted.</p> <p><u>DCBDP ADGs</u> N/A</p>	<p>Development complies</p> <p>N/A</p>
<p>Plot Ratio (applies to whole site)</p> <p>Plot ratio (PR) is 0.62</p> <p>The Plot ratio is calculated by dividing the total floor area by the site area i.e. 2480sqm divided by 4000sqm</p>	<p><u>TPS4 and LPP 4.1.10</u> Requires PR of 0.60 Bonus of 20 % can apply if a range of facilities are provided within the SSA.</p> <p><u>DCBDP ADGs</u> N/A</p>	<p>Complies as provision of swimming pool warrants apportioning a small bonus</p> <p>N/A</p>

Matter As shown in proposed development	Provisions	Comment
<p>SSA predominant use. 7 LSA + 17SSA = 24 units</p> <p>20% long stay 80% short stay</p> <p>Staging proposed to develop LSA first</p>	<p><u>TPS4 and LPP 4.1.10</u> 60% - 40% at all times.</p> <p><u>DCBDP ADGs</u> 60% -40%</p>	<p>Complies subject to staging being changed to ensure at any time LSA is a maximum of 40% and predominate land use being tourist related at all times</p> <p>Development complies</p>
<p>Building height Total - 13.7m Wall - 9.6 m Three storeys</p>	<p><u>TPS4 Clause 5.9 and LPP 4.1.10</u> Building Height - 14m Wall 10m</p> <p><u>DCBDP ADGs</u> Max Height 10 metres and 2 storeys</p>	<p>Development complies</p> <p>Development does not comply with the scheme provisions apply.</p>
<p>Separation LSA and SSA Share common driveway. Parking and manoeuvring area SSA 'overlaps' with LSA SSA and LSA in separate buildings</p>	<p><u>TPS4 and LPP 4.1.10</u> Must be separated so LSA does not impact negatively on SSA and vis versa</p> <p><u>DCBDP ADGs</u> N/A</p>	<p>Development complies with separate buildings and private areas. Common access way provided and parking manoeuvring area overlaps slightly. This is not considered to be an issue.</p> <p>N/A</p>
<p>Building appearance Pitched roof, colourbond. Verandah railings</p>	<p><u>TPS4 and LPP 4.1.10</u> Material and style etc</p> <p><u>DCBDP ADGs</u> Material and style</p>	<p>Development complies</p> <p>Development complies</p>
<p>Roof pitch Between 26- 46 degrees</p>	<p><u>TPS4 and LPP 4.1.10</u> N/A</p> <p><u>DCBDP ADGs</u> Roof pitch 26-45 degrees</p>	<p>N/A</p> <p>Development complies</p>
<p>Building footprint Building footprints</p> <ul style="list-style-type: none"> • 48m x 18m • 40m x 25m 	<p><u>TPS4 and LPP 4.1.10</u> N/A</p> <p><u>DCBDP ADGs</u> Max 20m x 15m</p>	<p>N/A</p> <p>Development does not comply. Building mass will be discussed below.</p>

Matter	Provisions	Comment
<p>As shown in proposed development</p> <p>Space between buildings Provided 4 m</p>	<p><u>TPS4 and LPP 4.1.10</u> N/A</p> <p><u>DCBDP ADGs.</u> Required distance 8.75m</p>	<p>N/A</p> <p>Development does not comply. Space between buildings will be discussed below.</p>
<p>Open Space Provided 69 %</p>	<p><u>TPS4 and LPP 4.1.10</u> 45% of site is to be 'open space' 20% of site to be available for passive recreation</p> <p><u>DCBDP ADGs.</u> N/A</p>	<p>Development complies</p> <p>N/A</p>
<p>Landscaping 52% of front boundary has min 3.6-metre area. West boundary contains planting and swimming pools East boundary provides planting strip 850mm Rear boundary - 50% car parking area</p>	<p><u>TPS4 and LPP 4.1.10</u> 3 metres along front boundary and within 1m side setback area</p> <p><u>DCBDP ADGs.</u> N/A</p>	<p>Development complies.</p> <p>N/A</p>
<p>Parking 30 car bays and 1 bus bay and 1 service bay 1 bay allocated to a bicycle parking area.</p>	<p><u>TPS4 and LPP 4.1.10</u> 7 LSA</p> <ul style="list-style-type: none"> • 5x 3bdrm units @ 2 bays per unit = 10 bays. • 2x1bdrm units @ 1 per unit = 2 bays. • Total required = 12 bays <p>28 SSA</p> <ul style="list-style-type: none"> • 28 units @ 1 for every 2 units = 14 bays • Visitor 1 for every 5 units = 5 bays required • Total required = 20 bays <p>Total car parking required = 31 bays</p> <p>No requirement motorcycle/bikes</p> <p>Boat bays = 3 required.</p>	<p>Does not comply - 30 car bays provided</p> <p>1 parking bay has been allocated to the parking of bikes and motorcycles.</p> <p>Provision will be put in place for the storage of</p>

Matter As shown in proposed development	Provisions	Comment
	Bus Bay and Service Bay required. <u>DCBDP ADGs.</u> N/A	boats at other off-site facilities. Bus Bay and Service Bay provided. N/A
Street setback – 3.6 m provided.	<u>TPS4 and LPP 4.1.10</u> 3m required <u>DCBDP ADGs</u> N/A	Development complies N/A

As noted from the above table the proposed development:

- Does comply in relation to density, plot ratio, building height, separation of LSA and SSA, building appearance, roof pitch, open space, landscaping and street setback.
- Does not comply in relation to SSA as predominate use at all time of development, building footprint, plot ratio, space between buildings and car parking

The Council can either:

1. Approve the application or
2. Refuse the application

The proponent has indicated with the submission of the most recent plans that they intend to develop the LSA in Stage One. This is contrary to LPP 4.1.0 and can be addressed through a condition of development.

The building footprint and space between buildings while not in accordance with the DCBDP ADGs is when considered against the SAT decision (ref DR 331 of 2007) not a factor that is to be applied inflexibly. The proponent has also provided evidence that the proposed building footprint will provide adequate opportunity for breeze flow. It should be noted that the Millington Road Development Plan as approved by Council did not contain such a provision.

The plot ratio while it exceeds the specified plot ratio by 3.4% is considered reasonable given the proposed development has provided a swimming pool.

The outstanding matter relates to the provision of car parking bays. The development requires 31 car parking bays the proponent has provided 30 and an area for motorcycle and bicycle parking. And additional car parking bay can be accommodated on site in a way that does not reduce the landscaping areas and can be addressed through a condition of development.

The application is recommended for approval.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Planning and Development Act 2005
Shire of Broome Town Planning Scheme No 4

4.17 Tourist Zone

4.17.1 Aims and Objectives

4.17.1.1 The aim of the zone is to provide primarily for tourist development and associated uses, including retail and service facilities where such facilities are an integral part of the development and are of a scale appropriate to the needs of the development.

4.17.1.2 Council's objectives will therefore be to; (a) ensure that short stay tourist and holiday accommodation are the predominant land uses in this zone; and (b) encourage a range of recreational activities and accommodation styles within the Tourist zone; and (c) have regard to the Local Planning Strategy and refer to the relevant policy when considering applications for development of self contained tourist accommodation and/or strata titled accommodation within the Tourist zone; and (d) ensure that development conforms with any plan or strategy endorsed by the Council and the Commission; and (e) require a Development Plan to be undertaken for particular land parcels, if in the opinion of Council the preparation of a Development Plan is required prior to the approval of the subdivision and/or development of any land within the Tourist Zone.

4.17.2 Site and Development Requirements

4.17.2.1 In considering retail land use and development proposals within the "Tourist" zone, the Council shall have regard to the Broome Local Commercial Strategy.

4.17.2.2 In considering proposals for tourist development within the "Tourist" zone, the Council shall refer to the relevant policy.

4.17.2.3 Council will not support the subdivision of land in this zone to create lots less than 1 Ha in area other than for commercial/retail purposes in accordance with the Broome Local Commercial Strategy and prior to considering subdivision or strata titling of land for tourist accommodation purposes, Council may require the preparation and adoption of a development plan. Council may support proposals to strata title existing tourist and residential accommodation;

4.17.2.4 Council may approve a combination of tourist accommodation and permanent residential accommodation on the same site provided that it complies with the following. 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.

c) Where tourist development and permanent residential accommodation are developed on the same site, the protection of residential amenity through careful design of both

facilities and accommodation on the site shall occur in order to minimise disturbance and conflicts between land uses.

- 4.17.2.5. Setbacks for all development within the Tourist zone shall have regard to the R40 Residential Design Codes, with the exception of Neighbourhood Centres which shall have regard to the Broome Local Commercial Strategy.
- 4.17.2.6. Landscaping for all development within the Tourist zone shall be provided and maintained abutting the boundary of all street frontages to a minimum depth of 3 metres from the boundary, and within side setback areas.
- 4.17.2.7. Car parking areas shall be landscaped to provide shade and screening of vehicles.
- 4.17.2.8. Landscaping for tourist development and residential development shall have regard to the Residential Design Codes requirements for open space, in addition to the landscaping abutting the front boundary and car park areas as outlined above.
- 4.17.2.9. Car parking for residential or tourist land uses, which are within a site which comprise a mixed land use/development, shall be located in an area which is separate from any car parking for commercial land uses, and exclusively used for the residential or tourist land use.
- 4.17.2.10. Bus bay provisions for tour buses shall be provided on site, or in close proximity to the subject tourist development, motel, hotel or other tourist accommodation.
- 4.17.2.11. Community Living development will not be supported by Council unless a Community Layout Plan is prepared in accordance with Clause 4.24.3.
- 4.17.2.12. Council may require the preparation of a Development Plan in accordance with Clause 4.25.3.1 prior to the approval of any land within the following precincts: (a) Lot 833 situated east of Lullfitz Drive; or
(b) vacant crown land bounded by Murray Road, Gubinge Road and Cable Beach Road West. (c) The Lullfitz Precinct being all the land between Sanctuary Road in the south, Lullfitz Drive in the east and the Cable Beach Coastal Park in the north and west.

4.17.3 Development Plan Requirements

- 4.17.3.1. All land use and development within the Cable Beach Tourist Node shall be prepared with due regard to any plan or strategy endorsed by the Council and the Commission.
- 4.17.3.2. A Development Plan shall have regard to the provisions of clause 4.25.3
- 4.17.4 Development Plan Guidelines for Precincts the Scheme Report - Local Planning Strategy outlines guidelines for the preparation of Development Plans for specific precincts within the Tourist zone.

Local Planning Policy 4.1.10. Tourist Accommodation Developments (Excluding Caravan Parks) within the tourist zone

3. Specific Development Requirements

(a) Short Stay Accommodation - Design, Density, Plot Ratio, Setbacks & Height Limits:

- Short Stay accommodation shall be separated from long stay and permanent residential accommodation, clustered, scattered or otherwise, so not to impact on the privacy of long stay and permanent residents, particularly where the development site adjoins residential zoned land.

- The development standards of the R40 Code of the Residential Design Codes shall be applied with regard to plot ratio, site cover and setbacks. The height controls contained in TPS4 shall apply.
 - A plot ratio or dwelling bonus of up to 20% may be granted where a developer provides the following facilities:
 - meeting /conference room/s:
 - recreational facilities such as swimming pool/s, tennis court/s, games room/s, a gymnasium and a sauna
 - food and beverage facilities.
 - Each Short Stay holiday unit or apartment shall contain at least a living area and bathroom. If kitchen, laundry and clothes drying areas are not provided for each unit / apartment, facilities of this nature shall be provided in a common area of the development.
 - Developments that adjoining residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.
- (b) Long Stay & Permanent Residents Accommodation – Design Density, Plot Ratio, Setbacks and Height Limits:
- (c) Long Stay and Permanent Residential development shall be separated from short stay accommodation, so not to impact negatively on short stay holidaymakers.
- A maximum density of one unit per 220m² for grouped dwellings and 250 m² for multiple dwellings (R40) of site area will apply in addition to a minimum site area of 200m² per unit in accordance with the provisions of the Residential Design Codes 2002
 - Council shall not consider a plot ratio or dwelling bonus for either long stay or permanent residential development.
 - Each unit or apartment for long stay or permanent residents is to be self-contained. Council's interpretation of self-contained is an accommodation unit with a kitchen, bathroom, storeroom, laundry, clothes drying area and separate sleeping and living areas.
 - Any unit within the development that is designated as an apartment for long stay or permanent residents shall be wholly self-contained and shall strictly comply with the provisions of the Residential Design Codes 2002 and requirements of the BCA in every aspect and no dispensations will be granted.
 - Developments that adjoining residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.
 - Any unit within the development that is designated, as an apartment for long stay or permanent residents shall be designed to allow for easy conversion to tourist use in the future.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS:

Nil

STRATEGIC IMPLICATIONS

Place

Engage with the community and other agencies to provide land use planning that protects and enhances the natural and built environment to support a quality lifestyle and the local economy.

Prosperity

Build the Shire's organisational capacity to service the needs of a growing community.
Support business and economic development.

Partner with other agencies to ensure affordable and equitable services and infrastructure.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council approves application for planning approval 2010/87 for a Tourist Development at Lot 1 (No.7) Sanctuary Road, Cable Beach submitted by QBSD Pty Ltd, subject to the following conditions:

- 1. Development must be carried out strictly in accordance with the plans stamped received dated 14 October 2010 (as amended to accommodate car parking) submitted with the application as approved by the Shire.*
- 2. The Tourist Development consists of twenty eight (28) short stay accommodation units and 7 long stay accommodation units.*
- 3. At all times the predominate use of the site shall be tourist related. Development of any residential component can not occur unless it is constructed as part of a tourist development and/or there being substantial tourist development already existing on site.*
- 4. The long stay accommodation units must always be less than 40% of the total development on the site.*
- 5. A minimum of thirty one (31) car parking bays must be provided for the development.*
- 6. Provision is to be made for the parking of motorcycles and bicycles.*
- 7. A mechanism approved by the Shire is to be put in place that provides off-site storage for boats and trailers.*
- 8. Prior to occupation of the development, areas set aside for parked vehicles and access lanes including main entry access to the complex, as shown on the approved plans, must:*
 - a. Give consideration to pedestrian movements and connections to road infrastructure.*
 - b. Be constructed to the satisfaction of the Shire*
 - c. Be properly formed to appropriate levels.*
 - d. Be surfaced with an all-weather seal coat to the satisfaction of the Shire.*

- e. *Be drained and maintained to the satisfaction of the Shire.*
 - f. *Be line-marked to indicate each car bay and all access lanes to the satisfaction of the Shire, in accordance with the Building Code of Australia and AS 1428.1 - 2001 Design for Access and Mobility, Part 1 - General Requirements for Access Buildings.*
 - g. *Car parking bays must be line marked with car bays being at a minimum width of 2.7m x 5.5m and accessible bays being a minimum width of 3.2m x 5.5m and be kept available for these purposes at all times.*
9. *Prior to any construction or works beginning on-site or within the road reserve, a Landscaping Plan must be submitted to and approved by the Shire, for all areas on site and within the abutting road reserve(s). For the purpose of this condition, a detailed Landscaping Plan must be drawn to an appropriate scale and show the following:*
 - a. *The location and type of existing and proposed trees and shrubs.*
 - b. *Any lawns to be established.*
 - c. *Any natural landscape areas to be retained.*
 - d. *Those areas to be reticulated or irrigated.*
10. *Landscaping of the site and within the verge must be in accordance with the approved Landscaping Plan and must be completed prior to occupation of the development and then maintained to the satisfaction of the Shire.*
11. *Outdoor lighting must be appropriately designed, shielded and located, to the satisfaction of the Shire, to prevent any light spill and adverse effects on nearby or adjoining land.*
12. *The proponent must pay cash contribution towards the installation, upgrade or additional public street lighting at the property in line with Shire Policy. Payment must be made prior to occupation of the development.*
13. *The proponent must provide cash contribution for the construction of a footpath on the adjacent Road Reserve in line with the Shire policy. Payment must be made prior to occupation of the development.*
14. *The proponent must enter into a Deed of Agreement with the Shire, that includes the development is established and operated as a holiday resort and that appropriate on-site management arrangements are put in place.*
15. *A storm water drainage system is to be provided in accordance with the Shire of Broome guidelines and specification for the design and construction of a stormwater drainage systems, the system shall be designed and documented by a practising Civil Engineer to the satisfaction of the Shire and will be allowed to input post development 71 l/s of flow at a 1:50 storm event (equal to the predevelopment flow) into the ultimate proposed Sanctuary Road Drainage Scheme. Compensation will be required on site between post and pre development and initial flows from the site will be allowed to overflow into the street until such time that the downstream system is constructed.*
16. *The proponent must pay in accordance with 'The Sanctuary Road Contributory Headwork's Drainage Scheme, associated costs and proportional headwork's charges -11th October 2010' a total amount of proportional headwork's charge of \$47,167.48 Exc GST. A rebate of \$28,526.45 Exc GST is provided for the developer installing as part of their development verge works all drainage*

infrastructure associated with the scheme across the lots frontage, therefore:

- a. Prior to issue of Building Licence an amount of \$18,641.03 plus GST shall be paid to the Shire as a proportional Headwork's Charge.*
- b. Prior to issue of the Certificate of Classification for the development all drainage infrastructure as per the concept design must be installed to the satisfaction of the Shire of Broome. The final detailed design drawings and specifications for this drain will be provided to the developer by the Shire of Broome.*

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 10 pages](#)

9.3.4 WITHDRAWAL OF CAVEAT – LOT 3 & 6 (UNIT 3 & 6) HAMERSLEY STREET BROOME

LOCATION/ ADDRESS: Lot 3 & 6 (Unit 3 & 6) Hamersley Street Broome
APPLICANT: Beaudale Pty Ltd
FILE: HAM-1/49-3 HAM-1/49-6
AUTHOR: Manager Planning Services
CONTRIBUTOR/S: Nil
RESPONSIBLE OFFICER: Director Development Services
DISCLOSURE OF ANY INTEREST: Nil
DATE OF REPORT: 15 November 2010

SUMMARY: The landowner has requested the caveat be removed from the title temporarily.

This report recommends authorisation for the engrossment of the documents.

BACKGROUNDPrevious Considerations

The Shire has received through McLeods an urgent request by the registered proprietor to withdraw the Shire's Caveat I906028 from the above two lots to permit the registration of a new mortgage over those lots.

COMMENT

The Planning Approval 2001/098 for the construction of 12 single bedrooms multiple dwelling Units (Catalina's) had as a condition of approval:

10. The owner(s) entering into a legal agreement with Council with regard to the following

- *Reconstruction and ongoing maintenance of the sea wall*
- *Planting and maintenance of landscaping as required north/south/east and west of the property off-site*
- *Public Liability Insurance*

As part of that agreement a caveat has been lodged on all property titles.

It is recommended Council:

- 1. Authorises the Shire President and Chief Executive Officer to engross the necessary documentation to remove the caveat from the title of Lot 3 & 6 Hamersley Street.*
- 2. Advises McLeods that the caveats be replaced following settlement.*

CONSULTATION

Advertising not required.

STATUTORY ENVIRONMENT

Local Government Act 1995

*Shire of Broome Standing Orders Local Law 2003**Part 19 - Common Seal**19.1 The Council's Common Seal*

- (1) *The CEO is to have charge of the common seal of the Shire, and is responsible for the safe custody and proper use of it.*
- (2) *The common seal of the Shire may only be used on the authority of the Council given either generally or specifically and every document to which the seal is affixed must be signed by the President and the CEO or a senior employee authorised by him or her.*
- (3) *The common seal of the Shire is to be affixed to any local law which is made by the Shire.*
- (4) *The CEO is to record in a register each date on which the common seal of the Shire was affixed to a document, the nature of the document, and the parties to any agreement to which the common seal was affixed.*
- (5) *Any person who uses the common seal of the local government or a replica thereof without authority commits an offence.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Costs associated with the removal and replacement of the caveat are borne by the owners

STRATEGIC IMPLICATIONS**Place**

Ensure the Shire's infrastructure and assets are strategically planned and managed.

Prosperity

Support business and economic development.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council:

1. *Authorises the Shire President and Chief Executive Officer to engross the necessary documentation to remove the absolute caveat from the title of Lot 3 & 6 Hamersley Street.*

2. *Advise McLeods that the caveats are to be replaced on settlement.*

Moved:

Seconded:

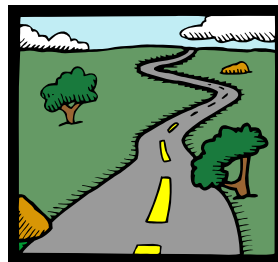
FOR:

AGAINST:

9.4

ENGINEERING

SERVICES



OUTCOME

The provision and maintenance of sustainable infrastructure to service the changing needs of the community.

9.4.1 CONTRACT 10/09 SUPPLY AND LAYING OF HOT ASPHALT ROAD SURFACING IN BROOME

LOCATION/ ADDRESS: (7) Sites, Various locations
APPLICANT: N/A
FILE: Contract 10/09
AUTHOR: Manager of Asset & Design
CONTRIBUTOR/S: Nil
RESPONSIBLE OFFICER: Director of Engineering Services
DISCLOSURE OF ANY INTEREST: Nil
DATE OF REPORT: 9 November 2010

SUMMARY: This report considers tenders as received for the supply and laying of hot asphalt in various locations throughout Broome, and seeks adoption of the recommendation contained in the confidential tender evaluation report.

BACKGROUND

Previous Considerations

N/A

COMMENT

This contract is a schedule of rates contract for the supply and laying of hot asphalt road surfacing throughout various locations in Broome Town site.

The work comprises the following sections:

Job No.	Site No.	Description
121552	1	Guy / Herbert Street roundabout full overlay (Renewal Expenditure)
121534	2	Guy / Dora Street roundabout full overlay (Renewal Expenditure)
121115	3	Sanctuary / Cable Beach Road West Roundabout full overlay (Capital Expenditure)
121549	4	Napier Terrace / Hamersley Street segment to fit in with previous MRWA asphalt (Renewal Expenditure)
121555	5	Hamersley / Frederick Street roundabout segments to fit in with previous MRWA asphalt. (Renewal Expenditure)
125001	6	Dampier Terrace Car park full overlay (Capital Expenditure)
121655	7	Frederick Street / Cable Beach Road East Roundabout full overlay (Capital Expenditure)

The last asphalt program carried out by the Shire was in 2007 associated with the final stage of the Chinatown redevelopment. Asphalt surfacing provides superior wear, strength and surface texture finish over ordinary two coat seals and is particularly successful when used on high traffic intersection situations.

CONSULTATION

N/A

STATUTORY ENVIRONMENT

Local Government Act 1995

Section 1.8 Statewide public notice

Where under this Act Statewide public notice of a matter is required to be given, section 1.7 applies except that the newspaper referred to in section 1.7(1)(a) is required to circulate generally throughout the State.

Section 3.57 Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply good or services.*
- (2) Regulations may make provision about tenders*

Local Government (Functions and General) Regulations 1996

*Section 5 R14 & R15*14. *Requirements for publicly inviting tenders*

- (1) When regulation 11(1), 12 or 13 requires tenders to be publicly invited, Statewide public notice of the invitation is to be given.*
- (2) If the CEO has, under regulation 23(4), prepared a list of acceptable tenderers, instead of giving Statewide public notice the CEO is required to give notice of the invitation to each acceptable tenderer listed.*
- (2a) If a local government —*
 - (a) is required to invite a tender; or*
 - (b) not being required to invite a tender, decides to invite a tender, the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.*
- (3) The notice, whether under subregulation (1) or (2), is required to include —*
 - (a) a brief description of the goods or services required;*
 - (b) particulars identifying a person from whom more detailed information as to tendering may be obtained;*
 - (c) information as to where and how tenders may be submitted; and*
 - (d) the date and time after which tenders cannot be submitted.*
- (4) In subregulation (3)(b) a reference to detailed information includes a reference to —*
 - (a) such information as the local government decides should be disclosed to those interested in submitting a tender;*
 - (b) detailed specifications of the goods or services required;*
 - (c) the criteria for deciding which tender should be accepted;*
 - (d) whether or not the local government has decided to submit a tender; and*
 - (e) whether or not the CEO has decided to allow tenders to be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.*
- (5) After a notice has been given under subregulation (1) or (2), a local government may vary the information referred to in subregulation (3) by taking reasonable steps to give each person who has sought copies of the tender documents or each acceptable tenderer, as the case may be, notice of the variation.*

[Regulation 14 amended in Gazette 29 Jun 2001 p. 3130.]

15. *Minimum time to be allowed for submitting tenders*

- (1) If the notice is published in the newspaper as part of giving Statewide public notice, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is first published in the newspaper as part of giving Statewide public notice.*

- (2) *If the notice is given to a person listed as an acceptable tenderer, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is given.*

Local Government Act 1996

Clause 2.4 The Local Government (Functions and General) Regulations 1996, Part 4, Division 2, regulation 18, paragraph (2)

- (1) A tender that is submitted at a place, and within the time, specified in the invitation for tenders but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender.

POLICY IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

All seven sites have been costed and allowed for in the 2010/2011 budget. Sites (6) & (7) The Dampier Terrace car park project and the Cable Beach East Roundabout are fully covered in their individual Capital budgets. The remaining sites (1-5) have estimates that either fall below or above the tendered rates. It is however estimated at this stage that the final total amount for these sites will still fall within total combined budget amount. The net result of this should not affect the predicted end of year budget forecast. Final reallocations if required between individual accounts will be the subject of a further item after the program has been completed

STRATEGIC IMPLICATIONS

People

Effectively engage with our community by encouraging participation and providing information.

Place

Ensure the Shire's infrastructure and assets are strategically planned and managed.

Prosperity

Support business and economic development.

Partner with other agencies to ensure affordable and equitable services and infrastructure.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council adopts the recommendations as contained in the Confidential Tender Assessment Report for Contract 10/09 Supply and Laying of Hot Asphalt Road Surfacing In Broome.

Moved:

Seconded:

FOR:

AGAINST:

(Confidential Attachment: 7 pages – To Councillors & Directors only)

9.4.2 DISPOSAL OF ASSETS POLICY – SECOND REPORT

LOCATION/ ADDRESS:	N/A
APPLICANT:	N/A
FILE:	ADM35
AUTHOR:	Director Engineering Services
CONTRIBUTOR/S:	Nil
RESPONSIBLE OFFICER:	Director Engineering Services
DISCLOSURE OF ANY INTEREST:	N/A
DATE OF REPORT:	10 November 2010

SUMMARY: This report informs Council of the response to an advertisement seeking public comment on a proposed policy for disposal of assets and recommends adoption of the policy.

BACKGROUND

At the Ordinary Council Meeting held on 2 September 2010, it was resolved:-

“That Council:

- 1. Endorses the draft “Asset Disposal” Policy for the purpose of being advertised in the local newspaper for public comment ;*
- 2. Requests that the draft policy and any public comments be brought back to the November Council meeting for further consideration;*
- 3. Delegates the authority to determine all requests for Disposal of assets in accordance with the Policy to the Chief Executive Officer; and*
- 4. Requests a Business Operating procedure be developed to support the policy”.*

The report that went to Council on 2 September 2010 was prepared due to occasional requests from Shire staff, employees and from members of the public to purchase apparently disused items owned by the Shire. Each time this occurred, staff spent time identifying the requirements for such disposal under the Act and regulations and it was identified as being more cost effective to create a policy to guide decision making in such circumstances.

The draft new Policy is proposed at Attachment “B” entitled “Disposal of Assets Policy”.

This policy sets out the required activities to dispose of different classes of assets.

COMMENT

An advertisement was placed in the Broome Advertiser on 16 September 2010 (Attachment A). Submissions were invited to be submitted by 28 October 2010. No submissions were received.

The proposed Policy is represented at Attachment “B” entitled “Disposal of Assets Policy”.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

Local Government Act 1995

3.58. *Disposing of property*

- (1) *In this section —*
“dispose” includes to sell, lease, or otherwise dispose of, whether absolutely or not;
“property” includes the whole or any part of the interest of a local government in property, but does not include money.
 - (2) *Except as stated in this section, a local government can only dispose of property to —*
 - (a) *the highest bidder at public auction; or*
 - (b) *the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*
 - (3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*
 - (a) *it gives local public notice of the proposed disposition —*
 - i) *describing the property concerned;*
 - ii) *giving details of the proposed disposition; and*
 - iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*
 - (b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*
 - (4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*
 - (a) *the names of all other parties concerned;*
 - (b) *the consideration to be received by the local government for the disposition; and*
 - (c) *the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.*
 - (5) *This section does not apply to —*
 - (a) *a disposition of land under section 29 or 29B of the Public Works Act 1902;*
 - (b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59;*
 - (c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
 - (d) *any other disposition that is excluded by regulations from the application of this section.*
30. *Dispositions of property to which section 3.58 of Act does not apply*
- (1) *A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.*
 - (2) *A disposition of land is an exempt disposition if —*
 - (a) *the land is disposed of to an owner of adjoining land (in this paragraph called “the transferee”) and —*
 - (i) *its market value is less than \$5 000; and*
 - (ii) *the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;*
 - (b) *the land is disposed of to a body, whether incorporated or not —*

- (i) *the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*
- (ii) *the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*
- (c) *the land is disposed of to —*
 - (i) *the Crown in right of the State or the Commonwealth;*
 - (ii) *a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth; or*
 - (iii) *another local government or a regional local government;*
- (d) *it is the leasing of land to an employee of the local government for use as the employee's residence;*
- (e) *it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land;*
- (f) *it is the leasing of land to a "medical practitioner" (as defined in section 3 of the Medical Act 1894) to be used for carrying on his or her medical practice; or*
- (g) *it is the leasing of residential property to a person.*
- (2a) *A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been —*
 - (a) *put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government;*
 - (b) *the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or*
 - (c) *the subject of Statewide public notice under section 3.59(4), and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —*
 - (i) *the names of all other parties concerned;*
 - (ii) *the consideration to be received by the local government for the disposition; and*
 - (iii) *the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.*
- (2b) *Details (see section 3.58(4) of the Act) of a disposition of property under subregulation (2a) must be made available for public inspection for at least 12 months from the initial auction or tender, as the case requires.*
- (3) *A disposition of property other than land is an exempt disposition if —*
 - (a) *its market value is less than \$20000; or*
 - (b) *it is disposed of as part of the consideration for other property that the local government is acquiring for a consideration the total value of which is not more, or worth more, than \$50000.*

POLICY IMPLICATIONS

This is a proposed new policy.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Place

Ensure the Shire's infrastructure and assets are strategically planned and managed.

Prosperity

Support business and economic development.

VOTING REQUIREMENTS

Simple Majority

REPORT RECOMMENDATION

That Council adopts the "Disposal of Assets Policy".

Moved:

Seconded:

FOR:

AGAINST:

[Attachment: 7 pages](#)

10.

REPORTS

OF

COMMITTEES

11. NOTICES OF MOTION

12. LATE ITEMS

13. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

14. MATTERS BEHIND CLOSED DOORS

15. MEETING CLOSURE