

SHIRE OF MOORA
MINUTES OF THE ORDINARY MEETING OF COUNCIL
HELD IN THE COUNCIL CHAMBERS, MOORA
11 DECEMBER 2019

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* Separate Attachments

- 9.1.1 *List of Payments Authorised Under Delegation 1.31*
- 9.1.2 *Statement of Financial Activity for Period Ended 30 November 2019*
- 9.1.6 *RFT 04/19 Preparation of Local Planning Strategy tender document*

4. PUBLIC QUESTION TIMETopsy DeVries – Moora Lifestyle Village

Questioned when the display home at the Lifestyle Village will be finalised.

CEO advised it is anticipated by January, early February 2020.

Mrs DeVries also mentioned there was a large heap of dirt next to Unit 10 which was dug from the site of the new Spec home and requested that it be removed.

CEO advised he would arrange for it to be taken away.

Lloyd Baugh – Development Application

Mr Baugh spoke in support of the development application of Mr Wally Kerkhoff and requested Council to consider the matter favourably.

Mr Baugh left at 5.37pm

5. PETITIONS AND PRESENTATIONS

Nil

6. APPLICATIONS FOR LEAVE OF ABSENCE

The CEO advised a written request for leave of absence had been received from Cr Denise Clydesdale-Gebert for the meetings of Council to be held during the period 1 - 29 February 2020 as she will be overseas.

COUNCIL RESOLUTION

165/19 Moved Cr Bellamy, seconded Cr Thomas that leave of absence be granted to Cr Denise Clydesdale-Gebert for the meetings of Council to be held during the period 1 - 29 February 2020.

CARRIED 8/0

7. ANNOUNCEMENTS BY THE PRESIDING MEMBER

The following Council associated engagements were attended;

Cr Seymour, Shire President

22/11 Avon-Midland Zone meeting, Dalwallinu

27/11 CBH deputation to Council

4/12 WALGA State Council meeting, Perth

6/12 Moora Chamber of Commerce Christmas sundowner

9/12 Future Education & Training Strategy Community Consultation, MPAC

Cr Clydesdale-Gebert

6/12 Moora Chamber of Commerce Christmas sundowner

Cr Lefroy, Deputy President

- 22/10 WALGA Councillor Training - Integrated Strategic Planning, Perth
- 28/10 Innovations Central Midlands board meeting and AGM
- 30/10 LotteryWest grants information session
- 11/11 Wreath laying for Remembrance Day
- 19/11 WALGA Councillor Training - Dealing with Conflict session, Perth
- 21/11 WALGA webinar - Chairing meetings
- 22/11 Avon-Midland Zone meeting, Dalwallinu
- 27/11 CBH deputation to Council
- 6/12 St Joseph's award night – presenting award on behalf of Council
- 9/12 Future Education & Training Strategy Community Consultation, MPAC

Cr Thomas

- 21/11 Moora Frail Aged Lodge committee mtg
- 6/12 Moora Chamber of Commerce Christmas sundowner

Cr Hamilton

- 27/11 CBH deputation to Council
- 28/11 Wildflower Country AGM, Teleconference
- 21/11 Moora Frail aged lodge committee mtg
- 26/11 Education liaison meeting
- 27/11 CBH meeting Miling
- 27/11 Moora community resource centre meeting
- 28/11 Wildflower country AGM meeting
- 28/11 Shooting Stars meeting at CMSHS Fran Heinz
- 2/12 Attended CMSHS School Council open board meeting
- 3/12 Undertook Shire Scholarship interviews at Central Midlands SHS (Yr 7 to 8)
- 6/12 Moora Chamber of Commerce Christmas sundowner
- 9/12 Primed meeting at Central Midlands SHS
- 9/12 Future Education & Training Strategy Community Consultation, MPAC
- 10/12 Education liaison committee meeting

CEO left the meeting at 5.40pm and returned at 5.43pm

Cr Bellamy

- 26/11 Education Liaison Group meeting, Moora
- 26/11 Moora Chamber of Commerce meeting
- 27/11 CBH deputation to Council
- 28/11 Shooting Stars meeting at CMSHS Fran Heinz
- 28/11 Wildflower Country AGM, Teleconference
- 3/12 Undertook Shire Scholarship interviews at Central Midlands SHS (Yr 7 to 8)
- 9/12 Primed meeting at Central Midlands SHS
- 9/12 Future Education & Training Strategy Community Consultation, MPAC
- 10/12 Education Liaison Group meeting, Moora
- 11/12 Meeting with CESM Nic Parry re Bushfire Advisory Committee

8. CONFIRMATION OF MINUTES**8.1 ORDINARY COUNCIL MEETING - 20 NOVEMBER 2019****COUNCIL RESOLUTION**

166/19 Moved Cr Clydesdale-Gebert, seconded Cr Lefroy that the Minutes of the Ordinary Meeting of Council held on 20 November 2019 be confirmed as a true and correct record of the meeting.

CARRIED 8/0

9. REPORTS OF OFFICERS**9.1 GOVERNANCE AND CORPORATE SERVICES****9.1.1 LIST OF PAYMENTS AUTHORISED UNDER DELEGATION 1.31**

REPORT DATE: 4 December 2019

OFFICER DISCLOSURE OF INTEREST: Nil

AUTHOR: David Trevaskis, Deputy Chief Executive Officer

SCHEDULE PREPARED BY: Alida Fitzpatrick, Finance Officer

ATTACHMENTS: Accounts Paid Under Delegated Authority

PURPOSE OF REPORT

Payments have been made under delegated authority and a listing of these payments is attached for Council to note and endorse.

BACKGROUND

At the December 2005 Ordinary Meeting of Council resolution 276/2005 delegated the authority of payments from Municipal and Trust Funds to the Chief Executive Officer.

COMMENT

Accounts Paid under delegated authority are periodically presented to Council.

POLICY REQUIREMENTS

Delegation 1.31 – Payments from Municipal and Trust Funds.

LEGISLATIVE REQUIREMENTS:

Local Government Act 1995 - Section 6.10

Local Government (Financial Management) Regulations 1996 – Regulations 12 & 13.

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

SUSTAINABILITY IMPLICATIONS➤ **Environment**

There are no known significant environmental implications associated with this proposal.

- **Economic**
There are no known significant economic implications associated with this proposal.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

Payments are in accordance with the adopted budget.

VOTING REQUIREMENTS

Simple Majority Required

COUNCIL RESOLUTION

167/19 Moved Cr Holliday, seconded Cr Bellamy that Council notes and endorses the Payments from the Municipal and Trust Funds made under delegation 1.31

Municipal Fund	Cheques 62430 to 62432	\$25,214.26
	EFT 22357 to 22545	\$598,938.07
	Credit Card 03/10/19 to 03/11/19	\$3,009.02
	Direct Debits 12942.1 to 12977.11	\$64,224.84
	Net Pays – PPE 12/11/19	\$101,368.56
	Net Pays – PPE 26/11/19	\$119,359.80
Trust Fund	Cheques 5513 to 5523	\$3,903.68
Total		<u>\$916,018.23</u>

CARRIED 8/0

9.1.2 STATEMENT OF FINANCIAL ACTIVITY FOR PERIOD ENDED 30 NOVEMBER 2019

REPORT DATE: 6 December 2019

OFFICER DISCLOSURE OF INTEREST: Nil

PREVIOUS MEETING REFERENCES: Nil

AUTHOR: David Trevaskis, Deputy Chief Executive Officer

ATTACHMENTS: Statement of Financial Activity for the Period Ended 30 November 2019.

PURPOSE OF REPORT:

To note and receive the Statement of Financial Activity for the period ended 30 November 2019.

BACKGROUND:

Council is provided with monthly financial reports to enable monitoring of revenues and expenditures against the adopted budget.

COMMENT:

The Statement of Financial Activity for the Period Ended is provided as a separate attachment in Program format.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

Local Government Act 1995, Section 6.4

Local Government (Financial Management) Regulations 1996, Clause 34

STRATEGIC IMPLICATIONS:

Monitoring of actual revenues and expenditures against the adopted budget assists Council in being informed as to the financial health of the organisation.

SUSTAINABILITY IMPLICATIONS:➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS:

Year to date income and expenditure is provided by program to enable comparison to 2019/20 adopted budget.

VOTING REQUIREMENTS

Simple Majority Required

COUNCIL RESOLUTION

168/19 Moved Cr Hamilton, seconded Cr Bellamy that Council notes and receives the Statement of Financial Activity for the period ended 30 November 2019.

CARRIED 8/0

9.1.3 OFFER TO PURCHASE LOT 11 GREAT NORTHERN HIGHWAY, BINDI BINDI

FILE REFERENCE: PA/972

REPORT DATE: 11 November 2019

APPLICANTS/PROPONENT: Stephen Butcher

OFFICER DISCLOSURE OF INTEREST: Nil

PREVIOUS MEETING REFERENCES: 20/2/19 (10/19)

AUTHOR: David Trevaskis, Deputy Chief Executive Officer

ATTACHMENTS: Nil

PURPOSE OF REPORT:

To consider an offer to purchase Lot 11 Great Northern Highway (the "Property") for \$3,000.

BACKGROUND:

The Property was listed for Sale in March 2019 with Central Midlands Realty. It is a vacant block situated within the town site of Bindi Bindi and zoned Rural Townsite. The Property

area size is 1012m². The Property is not serviced by water or electricity, nor is there a water pipe or transmission line that runs past the property.

COMMENT:

As per Section 3.58(3) of the LGA, if Council wishes to accept the offer, it must give local public notice of the proposed disposition inviting public submissions for no less than two weeks. The notice will include details of the property concerned, names of all parties concerned, the consideration to be received and the market value of the property as ascertained by a valuation carried out and declared by resolution of the Shire.

There are challenges receiving a meaningful and reliable valuation for vacant lots in Bindi Bindi. An Independent Valuation can be expensive, \$2,000-\$2,500, and the contracted Valuers, usually not from Moora, may only have little knowledge of the local market and would rely on a very small sample base for their assessment due to low sale volumes in the area. For this reason, a market estimate was provided by Central Midlands Realty based on their experience in the Shire. This estimate was \$5,000 for the Property.

Considering that no other offers have been made to date it is recommended that the disposition of the Property for \$3,000 be advertised which will allow Council to accept the offer of sale after the two-week public notice period.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

Section 3.58(3) Local Government Act 1995

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 submission 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 submission made to it before the date specified in the notice and, if its decision is made by the council or committee, the decision and the reason for it are recorded in the minutes of the meeting at which the decision was made.

3.58(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 of not more than 6 months before the proposed disposition; or
 - (ii) as declared by a resolution of the local government on the basis the 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.

STRATEGIC IMPLICATIONS:

Outcome 4.1 of the Shire Community Plan refers to 'A Strong and diversified economic base'. The sale and provision of commercial land is a strategic strategy of the Shire as detailed in strategy 4.1.4.

SUSTAINABILITY IMPLICATIONS:

- **Environment**
There are no known significant environmental implications associated with this proposal.
- **Economic**
Providing serviced industrial lots for sale will help promote the growth of existing business or the establishment of new business operations in Moora.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS:

The Shire will receive unbudgeted proceeds of \$3,000 (less sale costs) from the sale of the Property in addition to annual rates.

VOTING REQUIREMENTS

Simple Majority Required

RECOMMENDATION

That before agreeing to the disposition of Lot 11 Great Northern Highway, Bindi Bindi of title Volume 1180 Folio 492 the subject of Diagram D19287, as per section 3.58(3) of the Local Government Act 1995 the Shire of Moora give local public notice of the proposed disposition for \$3,000 to Stephen Butcher inviting public submissions for no less than two-weeks.

**** Agenda Item withdrawn due to offer from applicant/proponent being withdrawn.**

9.1.4 AUTHORITY TO SELL – LGA AUCTIONS 13 DECEMBER 2019

Cr Seymour declared a financial and proximity interest as he owns the adjoining property and left the meeting at 5.50pm

Deputy President, Cr Lefroy assumed the chair.

FILE REFERENCE: PA/869 & PA/915

REPORT DATE: 6 December 2019

APPLICANT/PROPONENT: Nil

OFFICER DISCLOSURE OF INTEREST: Nil

PREVIOUS MEETING REFERENCES: 19/9/18 (112/18) and 15/8/18 (97/18)

AUTHOR: David Trevaskis, Deputy Chief Executive Officer

ATTACHMENTS: Nil

PURPOSE OF REPORT:

For Council to authorise the Chief Executive Officer, Alan Leeson and / or the Deputy Chief Executive Officer, David Trevaskis to enter into contracts for sale for the property listed below.

BACKGROUND:

Under section 6.64 of the *Local Government Act 1995 (WA)*, as rates and service charges have been owing for a period of at least 3 years the Shire of Moora has taken possession of, and is to offer for sale by public auction, the following properties:

Description of land and lot or location number	Lot 66
Plan or Diagram Number	Deposited Plan 162816
Title Reference	Volume 1318 Folio 136
Area	1,061m ²
Street	Lot 66 York Street, Watheroo
Description of improvement, if any	House
Name of Owner	Frank Steven Osborne
Names of other persons appearing to have an estate or interest	Chequecash Pty Ltd
Rates/service charges outstanding	\$11,903.84
Other charges due on the land	Legal Charges - \$7,364.17 Emergency Services Levy - \$504.00 Emergency Services Levy Interest – \$178.68 Administration Fees - \$58.00

Description of land and lot or location number	Lot 50, portion of Melbourne Location 931
Plan or Diagram Number	Diagram 14172
Title Reference	Volume 1142 Folio 348
Area	1060m ²
Street	Lot 50 Ferguson Street, Miling
Description of improvement, if any	Vacant Land
Name of Owner	Miling Community Advancement Association Incorporated of Miling
Names of other persons appearing to have an estate or interest	N/A
Rates/service charges outstanding	\$7,397.76
Other charges due on the land	Legal Charges - \$2,359.45 Emergency Services Levy - \$822.00 Emergency Services Levy Interest – \$276.95

LEGISLATIVE REQUIREMENTS:

9.49A of the *Local Government Act 1995 (WA)*

STRATEGIC IMPLICATIONS:

To ensure the effective and efficient provision of corporate and administrative services including the collection of rates and service charges.

SUSTAINABILITY IMPLICATIONS:➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS:

The sale of this land will potentially equate to a decrease in the level of outstanding rates of \$30,864.85 including all rates, service charges, legal charges, ESL and penalty interest owed on the property.

VOTING REQUIREMENTS

Simple Majority Required

COUNCIL RESOLUTION

169/19 Moved Cr Hamilton, seconded Cr Holliday that pursuant to section 9.49A of the Local Government Act 1995 (WA), Council resolves to authorise David Trevaskis and / or Alan Leeson either jointly or severally to enter into, perform, execute and carry out on behalf of the Shire of Moora any contracts and / or auction particulars and conditions of sale of freehold property Lot 66 York Street, Watheroo and Lot 50 Ferguson Street, Miling as they think fit, and to rescind or vary any contracts as and when they think fit.

CARRIED 7/0

Cr Seymour re-entered the meeting and resumed the Chair at 5.52pm

9.1.5 **RE-VEST LAND TO THE CROWN**

FILE REFERENCE: PA/6140

REPORT DATE: 6 December 2019

APPLICANTS/PROPONENT: Shire of Moora

OFFICER DISCLOSURE OF INTEREST: Nil

PREVIOUS MEETING REFERENCES: 15/4/15 (40/15)

AUTHOR: David Trevaskis, Deputy Chief Executive Officer

ATTACHMENTS: Nil

PURPOSE OF REPORT:

To re-vest Lot 89 Gardiner Street, Moora, to the Crown in right of the State of Western Australia due to unpaid rates.

BACKGROUND:

1. Jane Robinson (“**Owner**”) is the registered proprietor of Lot 89 on Plan 3166 being the whole of the land contained in Certificate of Title Volume 547 Folio 29, more commonly known as Lot 89 Gardiner Street, Moora, in the State of Western Australia (“**Property**”);
2. The Owner is believed to be deceased;
3. The Shire caused their representative, CS Legal, to conduct searches to locate any beneficiaries of the Owner, which yielded no results;
4. As at 22 November 2019, the Owner owes the Shire the sum of \$14,348.33 being outstanding local government rates, service charges, interest and other charges (“**Arrears**”) payable to the Shire under the provisions of the *Local Government Act 1995* (WA); and
5. A portion of the Arrears have been outstanding for a period of at least three years.

COMMENT:

The vacant lot forms part of the Candy’s bush reserve.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

Section 6.74 of the Local Government Act 1995 (WA)

STRATEGIC IMPLICATIONS:

To ensure the effective and efficient provision of corporate and administrative services including the collection of rates and service charges.

SUSTAINABILITY IMPLICATIONS:

- **Environment**
There are no known significant environmental implications associated with this proposal.
- **Economic**
There are no known significant economic implications associated with this proposal.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS:

At 30 November 2019 \$14,348 of rates, service charges and other fees were owed to the Shire.

VOTING REQUIREMENTS

Simple Majority Required

COUNCIL RESOLUTION

170/19 Moved Cr Bellamy, seconded Cr Hamilton that pursuant to section 6.74 of the Local Government Act 1995 (WA), Council resolves to re-vest Lot 89 Gardiner Street, Moora, to the Crown in right of the State of Western Australia as rates and service charges have been unpaid for a period of at least 3 years noting that the Shire of Moora has previously made attempts to locate the owner Jane Robinson and any prospective beneficiaries of her estate.

CARRIED 8/0

9.1.6 RFT 04/19 – PREPARATION OF LOCAL PLANNING STRATEGY

FILE REFERENCE: L/TEN2-2

REPORT DATE: 5 December 2019

APPLICANTS/PROPONENT: Shire of Moora

OFFICER DISCLOSURE OF INTEREST: Nil

PREVIOUS MEETING REFERENCES: 17/10/18 (126/18)

AUTHOR: Alan Leeson, Chief Executive Officer

ATTACHMENTS: RFT 04/19 tender document;
Evaluation and pricing schedule (under separate cover),
Tender submissions (under separate cover)

PURPOSE OF REPORT:

To appoint a suitably qualified and experienced town planning consultant for the provision of consultancy services for the preparation of a Local Planning Strategy (LPS) for the Shire of Moora.

BACKGROUND:

Tenders were called for the provision of consultancy services to prepare a Local Planning Strategy for the Shire of Moora. Three tenders were received;

- Land Insights in conjunction with Edge Planning and Property;
- Urbis;
- Taylor Burrell Barnett

Under the Western Australian planning legislative framework, where a Planning Scheme zones and/or classifies land, there must be an LPS prepared. When the WAPC considers amendments to a Town Planning Scheme, the WAPC must be satisfied that such amendments are generally consistent with the LPS. At present, the Shire, through support from Landcorp and its operations, is currently undergoing major development projects which are currently not covered by the current LPS. It has now become necessary to commence preparation of a new LPS which covers the future development needs of the Shire as a whole.

The LPS provides the bridge between the broad scale state, regional and sub-regional plans and policies produced by the Western Australian Government, and the detailed local planning that provides specific guidance for the Shire of Moora's planning and development decision-making.

The LPS should recognise and have regard to a range of State and regional planning and policy documents. For the Shire of Moora this will include, as a minimum, but not limited to the following:

- The *State Planning Strategy*;
- All relevant State Planning Policies;
- The *Wheatbelt Planning and Infrastructure Framework (PPIF)*;
- *The Wheatbelt Blueprint*; and
- Any operational policies produced by the Western Australian Planning Commission (WAPC) that relates to land use planning and development in the Shire.

Any other strategic development initiatives that will or could have an impact on the future planning for the Shire should also be addressed (e.g. forward planning strategies relating to infrastructure capacity).

The preparation of an LPS for the Shire of Moora shall follow the guidance provided in the WAPC's *Local Planning Manual (2010)* to ensure all matters requiring consideration are covered in the LPS. The WAPC's expected minimum requirements are described in more detail below.

COMMENT:

Tenders have been assessed under the following criteria and weighting;

- Experience – 20%
- Methodology – 25%
- Capacity – 15%
- Price - 40%

Refer to attached evaluation and pricing schedule (under separate cover).

POLICY REQUIREMENTS:

Purchasing and Tender Policy 12 – Refer to Policy Manual

LEGISLATIVE REQUIREMENTS:

Part 3 - Functions of local governments (Division 3 - Executive functions of local governments) (Subdivision 6 - Various executive functions) 3.57. Tenders for providing goods or services.

Planning and Development (Local Planning Scheme) Regulations 2015 – Part 3 – Local Planning Strategies

11. Requirement for local planning strategy for local planning scheme

- (1) A local government must prepare a local planning strategy in accordance with this Part for each local planning scheme that is approved for land within the district of the local government.
- (2) A local planning strategy must —
 - (a) set out the long-term planning directions for the local government; and
 - (b) apply any State or regional planning policy that is relevant to the strategy; and
 - (c) provide the rationale for any zoning or classification of land under the local planning scheme.

- (3) A local planning strategy may be prepared concurrently with the local planning scheme to which it relates.

12. Certification of draft local planning strategy

- (1) Before advertising a draft local planning strategy under regulation 13 the local government must provide a copy of the strategy to the Commission.
- (2) On receipt of a copy of a draft local planning strategy the Commission must, as soon as reasonably practicable, assess the strategy for compliance with regulation 11(2).
- (3) If the Commission is not satisfied that a draft local planning strategy complies with regulation 11(2) the Commission may, by notice in writing, require the local government to —
 - (a) modify the draft strategy; and
 - (b) provide a copy of the draft strategy as modified to the Commission for assessment under subregulation (2).
- (4) If the Commission is satisfied that a draft local planning strategy complies with regulation 11(2) it must certify the strategy accordingly and provide a copy of the certification to the local government for the purpose of proceeding to advertise the strategy.

13. Advertising and notifying local planning strategy

- (1) A local government must, as soon as reasonably practicable after being provided with certification that a local planning strategy complies with regulation 11(2), advertise the strategy as follows —
 - (a) publish a notice of the local planning strategy in a newspaper circulating in the area to which the strategy relates, giving details of —
 - (i) where the strategy may be inspected; and
 - (ii) to whom, in what form and during what period submissions may be made;
 - (b) display a copy of the notice in the offices of the local government for the period for making submissions set out in the notice;
 - (c) give a copy of the notice to each public authority that the local government considers is likely to be affected by the strategy;
 - (d) publish a copy of the notice and the strategy on the website of the local government;
 - (e) advertise the strategy as directed by the Commission and in any other way the local government considers appropriate.
- (2) The local government must ensure that arrangements are in place for the local planning strategy to be made available for inspection by the public during office hours —
 - (a) at the office of the local government; and
 - (b) at the office of the Commission.
- (3) The period for making submissions in relation to a local planning strategy must not be less than a period of 21 days commencing on the day on which the notice of the strategy is published under subregulation (1)(a).
- (4) Notice of a local planning strategy as required under subregulation (1) may be given in conjunction with the notice to be given under regulation 20(1) for the scheme to which it relates.

14. Consideration of submissions

- (1) After the expiry of the period within which submissions may be made in relation to a local planning strategy, the local government must review the strategy having regard to any submissions made.

- (2) The local government may —
 - (a) support the local planning strategy without modification; or
 - (b) support the local planning strategy with proposed modifications to address issues raised in the submissions.
- (3) After the completion of the review of the local planning strategy the local government must submit to the Commission —
 - (a) a copy of the advertised local planning strategy; and
 - (b) a schedule of the submissions received; and
 - (c) particulars of any modifications to the advertised local planning strategy proposed by the local government.

15. Endorsement by Commission

- (1) Within 60 days of the receipt of the documents referred to in regulation 14(3) the Commission may —
 - (a) endorse the strategy without modification; or
 - (b) endorse the strategy with some or all of the modifications proposed by the local government; or
 - (c) require the local government to modify the strategy in the manner specified by the Commission before the strategy is resubmitted to the Commission for endorsement; or
 - (d) refuse to endorse the strategy.
- (2) The Minister or an authorised person may extend the time referred to in subregulation (1).

16. Publication of endorsed local planning strategy

- (1) If the Commission endorses a local planning strategy the Commission must publish the strategy in any manner the Commission considers appropriate.
- (2) The local government —
 - (a) must ensure that an up-to-date copy of the local planning strategy is kept and made available for public inspection during business hours at the offices of the local government; and
 - (b) may publish an up-to-date copy of the local planning strategy on the website of the local government.

17. Amendment to local planning strategy

- (1) A local planning strategy may be amended by an amendment to the strategy prepared by the relevant local government and endorsed by the Commission.
- (2) This Part, with any necessary changes, applies to the preparation and endorsement of an amendment to a local planning strategy in the same way as it applies to the preparation and endorsement of a local planning strategy.

18. Revocation of local planning strategy

- A local planning strategy may be revoked —
- (a) by a subsequent local planning strategy that —
 - (i) is prepared in accordance with this Part; and
 - (ii) expressly revokes the local planning strategy;
 - or
 - (b) with the approval of the Commission, by a notice of revocation —
 - (i) prepared by the local government; and
 - (ii) published in a newspaper circulating in the area to which the strategy relates

STRATEGIC IMPLICATIONS:

The Local Planning Strategy will provide the strategic direction for land use planning and development for the Shire of Moora for the next 10 to 15 years and will be the strategic basis for a review of the Shire of Moora Local Planning Scheme number 4 (LPS4). It will be consistent with state and regional planning policies and provides the rationale for the zoning and reservation of land in LPS4. The preparation of a Local Planning Strategy is a requirement of the Planning and Development (Local Planning Schemes) Regulations 2015.

SUSTAINABILITY IMPLICATIONS:

- **Environment**
There are no known significant environmental implications associated with this proposal.
- **Economic**
The Local Planning Strategy will in effect be the enabler to facilitate sustainable economic development and growth in the Shire of Moora.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS:

Resource requirements are in accordance with existing budgetary allocation of \$50,000 plus GST.

VOTING REQUIREMENTS

Absolute Majority Required

COUNCIL RESOLUTION

171/19 Moved Cr Lefroy, seconded Cr Clydesdale-Gebert that Council awards Tender 04/19, Preparation of Local Planning Strategy for the Shire of Moora to Urbis for a tendered price of \$49,500 plus GST.

CARRIED BY ABSOLUTE MAJORITY 8/0

10. ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

11. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL

The CEO introduced an item of urgent business titled ‘Application for Development Approval – Proposed Domestic Outbuilding (Storage Shed) & Ancillary Tourist Use (Bird Watching) on Lot 1 Midlands Road, Moora’ for Council consideration.

COUNCIL RESOLUTION

172/19 Moved Cr Clydesdale-Gebert, seconded Cr Holliday consider the item of urgent business as introduced by the Chief Executive Officer titled ‘Application for Development Approval – Proposed Domestic Outbuilding (Storage Shed) & Ancillary Tourist Use (Bird Watching) on Lot 1 Midlands Road, Moora’.

CARRIED 7/1

11.1 APPLICATION FOR DEVELOPMENT APPROVAL – PROPOSED DOMESTIC OUTBUILDING (STORAGE SHED) & ANCILLARY TOURIST USE (BIRD WATCHING) ON LOT 1 MIDLANDS ROAD, MOORA

FILE REFERENCE: TP/DA04/1920
REPORT DATE: 9 December 2019
APPLICANT/PROPONENT: Mr Walter I. Kerkhoff (Landowner)
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: Mr Joe Douglas, Town Planning Consultant
ATTACHMENTS: Attachments 1 & 2

PURPOSE OF REPORT:

Consideration and final determination of a development application received from Mr Walter Kerkhoff (Landowner) for the construction and use of a proposed new domestic outbuilding (i.e. storage shed) on Lot 1 Midlands Road, Moora and the continued operation of an existing unauthorised ancillary tourist use (bird watching) on the subject land.

BACKGROUND:

The applicant is seeking Council’s development approval for the following:

- i) Construction and use of a new 60.5m² zincalume outbuilding (i.e. shed) adjacent to the subject land’s southern boundary for domestic storage purposes as well as the small-scale production/manufacturing of bird nesting boxes for fauna conservation purposes; and
- ii) Bird watching by tourists and interested community members using an existing ‘hide’ located at the western end of the property along its Roberts Street frontage (i.e. an existing unauthorised Ancillary Tourist Use).

A full copy of the development application, including all supporting documentation and plans, is provided in Attachment 1.

Lot 1 is located in the northern extremities of the Moora townsite, comprises a total area of approximately 3,212m² and is relatively flat throughout with the natural ground level being approximately 203.5 metres AHD.

The subject land is bounded by Midlands Road to the east, McKinley Street to the north and Roberts Street to the west. Midlands Road is a sealed and drained State Road under the care, control and management of Main Roads WA. McKinley and Roberts Streets are sealed and drained Local Roads under the care, control and management of the Shire of Moora. All vehicle access to/from the land is provided via an existing driveway crossover along its McKinley Street frontage.



Location & Lot Configuration Plan (Source: Landgate 2019)

Lot 1 has been extensively developed and used for residential purposes and contains a two-storey single detached dwelling located centrally on the land. The property also contains a small shed, seven (7) aviary structures, above and below ground water storage tanks for stormwater drainage management purposes, a small unsealed vehicle access and parking area adjacent to its McKinley Street frontage and various landscaped areas throughout comprising mature trees and shrubs.

It is understood the applicant has owned and lived on the subject land for many years and is currently using it to pursue his interest in the conservation of Carnaby's Black Cockatoo which is listed as an endangered fauna species by the Federal and Western Australian governments. From the information provided in support of the application it appears the applicant, as part of his conservation endeavours, actively lures large numbers of these birds to his property on a daily basis by offering food and water. In addition, it's understood the applicant encourages tourists and interested local residents to visit the property and view the birds using an existing unauthorised 30m² 'hide' located along the land's Roberts Street frontage with signage installed to direct all vehicle parking to the verge area along this road.

Immediately adjoining and other nearby land uses are quite varied and include:

- Rural living type development to the north on the opposite side of McKinley Street with broadacre agriculture (i.e. cropping & grazing) beyond;
- A concrete batching and manufacturing facility to the east, including caretaker's dwelling, on the opposite side of Midlands Road (i.e. General Industry) with an operational railway reserve and broadacre agriculture (i.e. cropping & grazing) beyond;
- Small scale light industrial development and associated caretaker's dwellings immediately south and beyond; and
- Low density special residential type development to the west on the opposite side of Roberts Street with rural living type development beyond.

COMMENT:

Lot 1 is classified 'Light Industrial' zone in the Shire of Moora Local Planning Scheme No.4 (LPS4).

Council's stated objectives for the development and use of any land classified 'Light Industrial' zone are as follows:

- a) To provide for the needs of light and service industries and showroom uses to support the community;
- b) to achieve and maintain a high standard of presentation to Moora-Dongara Road (i.e. Midlands Road) at the northern entry and to the Bindoon-Moora Road at the southern entry to Moora; and
- c) to ensure appropriate buffers are provided and maintained between the light industrial uses and adjacent uses so as to avoid land use conflicts.

Under the terms of LPS4 the development and use of a single house as well as the erection or extension of an outbuilding on the same lot as a single house are expressly prohibited on any land classified 'Light Industrial' zone. Notwithstanding this fact, the subject land contains a previously approved single house and a number of associated outbuildings which enjoy what is legally known as a 'non-conforming' use right.

Clause 6.2.1 of LPS4 expressly states a person must not:

- a) alter or extend a non-conforming use;
- b) erect, alter or extend a building used in conjunction with or in furtherance of a non-conforming use; or
- c) change the use of land from a non-conforming use to another non-conforming use, without first having applied for and obtained Council's development approval.

In relation to the existing unauthorised Ancillary Tourist Use on Lot 1 (i.e. bird watching by tourists and interested community members using an existing 'hide' located at the western end of the property) Council should note such use is not specifically mentioned in the Zoning Table of LPS4 and cannot reasonably be determined as falling within the interpretation of one of the use class categories in that table. As such when considering and determining the application Council must decide whether such use:

- i) **is consistent** with the objectives and purposes of the 'Light Industrial' zone and is therefore permitted; or
- ii) **may be consistent** with the objectives and purposes of the 'Light Industrial' zone and thereafter advertise the application for public comment for a minimum required period of fourteen (14) days prior to final determination; or
- iii) **is not consistent** with the objectives and purposes of the 'Light Industrial' zone and is therefore not permitted.

Clause 6.2.3 of LPS4 also expressly states that when considering a development application to change the use of any land being used for non-conforming purposes Council shall not grant approval unless the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is, in the opinion of the local government, closer to the intended purpose of the zone.

Clause 6.2.2 of LPS4 requires any development application received to alter, extend or change any non-conforming use of land within the Shire to be advertised for public comment for a minimum required period of fourteen (14) days.

In addition to all of the above, Council's development approval is also required due to the land's location within Special Control Area 1 of LPS4 entitled 'Land Subject to Flooding'. Clause 4.11.2.1 of LPS4 expressly states Council's developmental approval is required for all use or development of any land within or partially within Special Control Area 1 including fill, excavation, a single house and any ancillary development and/or usage.

The application has been assessed with due regard for the following:

- a) the specific objectives and standards of the Shire's local planning framework including LPS4 and all relevant local planning policies;
- b) the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
- c) advice received from the Department of Water and Environmental Regulation which was sought and provided pursuant to the specific requirements of clause 4.11.2.2 of LPS4 as it applies to all land subject to flooding in the Moora townsite;
- d) advice received from the Shire's Building Surveyor and Environmental Health Officer; and
- e) three (3) written submissions and one (1) petition received during the required fourteen (14) day public advertising process.

It is concluded from this assessment that the proposal to construct a new 60.5m² zincalume outbuilding (i.e. shed) adjacent to the subject land's southern boundary for domestic storage purposes as well as the small-scale production/manufacturing of bird nesting boxes for fauna conservation purposes is generally compliant or capable of compliance with the following requirements:

- Land capability and suitability;
- Land use compatibility including buffer separation requirements;
- Lot boundary setbacks including fire separation requirements;
- Amenity of the locality including potential environmental, visual and social impacts;
- On-site landscaping, vehicle access and parking;
- Stormwater drainage management; and
- Bushfire and flood risk mitigation.

Notwithstanding the above conclusion, Council should note clause 3.10.3(b) of LPS4 as it applies to the development of any land classified 'Light Industrial' zone requires the whole of any wall or building facing any street to be constructed using brick, concrete or masonry. Under the terms of the application received the new shed on Lot 1 is proposed to be orientated towards Midlands Road with a 900mm high masonry wall constructed from the land's natural ground level and zincalume steel wall sheeting above ranging in height from 3.5 to 3.9 metres (i.e. the proposed new shed's front facade is not compliant).

Clause 3.10.3(b) states Council may permit the use of other materials on the external façade of a new building facing a street in the 'Light Industrial' zone where it is satisfied that such materials will not detract from the amenity of the area. In this particular instance it is concluded the proposed use of zincalume steel wall sheeting on the shed's front façade facing Midlands Road is acceptable and may be approved for the following reasons:

- i) The shed will have an average setback of approximately 18.8 metres to the land's boundary to Midlands Road which is far greater than that required by LPS4 (i.e. 7.5 metres) and will help mitigate any negative visual impacts when viewed from this road;

- ii) There is a significant amount of mature vegetation comprising large trees and shrubs along the land's Midlands Road frontage and southern side boundary which will help screen the proposed shed from public view; and
- iii) No objections regarding the location, orientation, dimensions or appearance of the proposed shed were raised by adjoining landowners or other members of the local community during public advertising of the development application.

In relation to the continued operation of the existing unauthorised Ancillary Tourist Use (i.e. bird watching) on Lot 1, including the associated 'hide' structure located at the western end of the property along its Roberts Street frontage, Council should note the following key points when considering and determining the application:

- i) The proposed Ancillary Tourist Use is based and reliant upon the applicant's active luring of Carnaby's Black Cockatoo to his property on a daily basis by offering food and water;
- ii) Correspondence received in support of the proposal from the applicant's representative Mr Lloyd Baugh expressly states it's not uncommon for 200 to 250 Carnaby's Black Cockatoos to frequent the property at any one time during the course of each day;
- iii) Of the three (3) written submissions received during public advertising, two (2) from nearby landowners objected to the proposal due to concerns regarding the noise impacts generated by Carnaby's Black Cockatoos, the significant amount of destruction to private gardens being caused by these birds as a consequence of their foraging, nesting and perching, the unlawful discharge of a firearm by the landowner as part of his efforts to control other bird species in the immediate area, and vehicle access and parking issues along McKinley Street caused by tourists visiting the property to view Carnaby's Black Cockatoos. The third submission received raised no objection to the proposed shed however no comment was made in relation to the proposed Ancillary Tourist Use (see Attachment 2);
- iv) A petition containing signatures from three (3) people supporting the applicant's supplemental feeding of Carnaby's Black Cockatoos during the breeding season was also received during public advertising (see Attachment 2). Notwithstanding this expressed support, the names and addresses of those people who signed it were not provided in the document. Furthermore, the support expressed was limited to the feeding of these birds during the breeding season only and not all year round as is currently the case;
- v) Carnaby's Black Cockatoo is listed as an endangered fauna species by the Federal and Western Australian governments;
- vi) The feeding of any native fauna within the Shire and the State more generally by any person is expressly prohibited by section 155 of the *Biodiversity Conservation Act of WA 2016* unless that person has lawful authority to do so (i.e. an approved license has been issued by the Parks and Wildlife division of the Department of Biodiversity, Conservation and Attractions pursuant to the *Biodiversity Conservation Regulations 2018*);
- vii) It is understood the applicant has not sought and obtained a license from the Parks and Wildlife division of the Department of Biodiversity, Conservation and Attractions to feed Carnaby's Black Cockatoos on Lot 1 or any other land in the Shire however is willing to do so if required;
- viii) Irrespective of whether or not the applicant has a license to feed Carnaby's Black Cockatoos on Lot 1, Council is required to consider the proposal from a land use planning perspective in the context of the objectives and requirements of LPS4 as they apply to the land's current 'Light Industrial' zoning classification and non-conforming use rights. The issuance of a license to feed the birds does and should not have any bearing on Council's consideration of the proposal in the context of the Shire's local planning

- framework (i.e. it is a separate approval required under a completely separate regulatory framework);
- ix) It is the reporting officer's view that the proposed Ancillary Tourist Use, including the luring of Carnaby's Black Cockatoo to the property on a daily basis by offering food and water, **is not consistent** with Council's stated objectives and purposes of the 'Light Industrial' zone and is therefore a use that is not permitted and should not therefore be approved;
 - x) In addition to point ix) above, it is the reporting officer's view that the proposed Ancillary Tourist Use is:
 - a) more detrimental to the amenity of the immediate locality than the existing non-conforming use of Lot 1 for low density residential purposes due to the amenity impacts experienced to-date (i.e. noise, destruction of vegetation, off-site vehicle access and parking arrangements). Whilst there may be scope to deal with and address the vehicle access and parking issues by requiring all parking to be provided on Lot 1, there is very limited ability to control the number of birds frequenting the immediate locality which means the noise and vegetation impacts are likely to prevail and give rise to formal complaints by those immediately affected; and
 - b) not closer to the intended purpose of the land's current 'Light Industrial' zoning classification given the stated objectives for this zone in LPS4; and
 - c) should not therefore be approved given the specific requirements of clause 6.2.3 of LPS4 as it applies to any proposed extension and/or change to the current non-conforming use of the subject land.

Whilst not directly relevant and applicable to the proposal for Lot 1, clause 5.4.7 of the Shire's Health Local Law 2016 as it applies to the nesting and/or perching of pigeons expressly states:

- 1) The local government may order an owner or occupier of a house in or on which pigeons are, or are in the habit of, nesting or perching to take adequate steps to prevent them continuing to do so; and
- 2) An owner or occupier shall comply with a local government order made under this clause.

The above clause provides a useful insight into Council's general position regarding the nesting and/or perching of birds which may become offensive or injurious to the local community's health or may attract vermin or other vectors of disease. It is contended the consequences of the applicant's activities on Lot 1 in relation to the luring of Carnaby's Black Cockatoo to the property on a daily basis by offering food and water are not dissimilar to some of the impacts associated with the nesting and/or perching of pigeons which Council seeks to expressly control for health reasons.

In light of the above findings it is concluded as follows:

- i) The proposal to construct a new 60.5m² zincalume outbuilding (i.e. shed) adjacent to the subject land's southern boundary for domestic storage purposes as well as the small-scale production/manufacturing of bird nesting boxes for fauna conservation purposes is acceptable having regard for the land's current 'Light Industrial' zoning classification and non-conforming use provisions of LPS4 and may therefore be conditionally approved on the same terms as other similar residential outbuildings in the Moora townsite; and
- ii) The proposed Ancillary Tourist Use, including the luring of Carnaby's Black Cockatoo to the property on a daily basis by offering food and water, is:
 - a) not consistent with Council's stated objectives and purposes for the 'Light Industrial' zone;

- b) more detrimental to the amenity of the immediate locality than the existing non-conforming use of Lot 1 for residential purposes due to the amenity impacts experienced to-date (i.e. noise, destruction of vegetation, off-site vehicle access and parking issues);
- c) not closer to the intended purpose of the land's current 'Light Industrial' zoning classification as required by clause 6.2.3 of LPS4; and
- d) is therefore a use that should not be permitted and approved by Council.

It is expected the applicant and his supporters will be aggrieved with any decision by Council to refuse the proposed Ancillary Tourist Use on Lot 1 as recommended by this report. It is however understood as a result of the Shire's investigation of the applicant's conservation activities in relation to Carnaby's Black Cockatoos that he is currently using at least one Crown reserve vested in the Shire for recreation and parkland purposes (i.e. Crown Reserve No.2797 being Pioneer Park located on the corner of Keane and Dix Streets) as well as the McKinley Street road reserve area to provide for the protection and conservation of this bird species. Whilst his efforts are applauded and broadly supported given the significant benefits, the legality of such activity on Crown land under the care, control and management of the Shire is questionable with no evidence of any formal approvals and/or lease or license agreements with the Shire and/or the Department for Planning, Lands and Heritage. It should be noted the use of any Crown land within the Shire for private purposes is not permitted and requires formal approval under the Shire's local planning framework as well as the *Land Administration Act 1997* and *Land Administration Regulations 1998*. As such it is recommended the Shire administration be authorised to work with the applicant to identify those Crown landholdings in the Shire where such activity could be formally considered and approved by Council, the Lands Division of the Department for Planning, Lands and Heritage and/or the Minister for Lands as may be required for any given site. As part of this process the applicant could also make application to the Parks and Wildlife division of the Department of Biodiversity, Conservation and Attractions for the issuance of a license to feed the birds pursuant to the specific requirements of the *Biodiversity Conservation Regulations 2018*.

POLICY REQUIREMENTS:

- Shire of Moora Policy No.6.5 - Outbuilding Policy Conditions (Cladding and Reflectivity)
- Shire of Moora Policy No.6.7 - Outbuilding Policy (Maximum Size)
- Shire of Moora Policy No.7.6 - Building and Development Control Strategies

LEGISLATIVE REQUIREMENTS:

- Planning and Development Act 2015
- Planning and Development (Local Planning Schemes) Regulations 2015
- Shire of Moora Local Planning Scheme No.4

STRATEGIC IMPLICATIONS:

- Shire of Moora Strategic Community Plan 2012-2022

SUSTAINABILITY IMPLICATIONS:

➤ **Environment**

There are no known significant environmental implications associated with that element of the development proposal for Lot 1 recommended for approval by Council (i.e. the new domestic storage shed) provided it is implemented in accordance with the conditions of any development approval that may ultimately be granted.

The proposed Ancillary Tourist Use, which is based and reliant upon the applicant's active luring of Carnaby's Black Cockatoo to the subject land on a daily basis by offering food and water, is expressly prohibited by section 155 of the *Biodiversity Conservation Act of WA 2016* without an approved license having been issued by the Parks and Wildlife division of the Department of Biodiversity, Conservation and Attractions pursuant to the *Biodiversity Conservation Regulations 2018*. Without a license it is contended the luring and feeding of Carnaby's Black Cockatoo may be environmentally unsustainable as the processes of natural selection for the species may be compromised. In addition, it is noted existing vegetation in the immediate locality is being negatively impacted by roosting and perching by this bird species as a direct consequence of being attracted/lured to the subject land by the applicant which is again considered unsustainable.

➤ **Economic**

There are no known significant economic implications associated with that element of the development proposal for Lot 1 recommended for approval by Council (i.e. the new domestic storage shed).

Whilst the proposed Ancillary Tourist Use may have proven to be a tourist attraction to-date with a number of associated economic benefits, such use is considered inappropriate and unsustainable for the various reasons cited previously in this report and should not therefore be supported and approved by Council. The suggestion that the Shire administration be authorised to work with the applicant to identify those Crown landholdings in the Shire where such activity could be formally considered and approved could itself attract tourists and maintain and build upon the associated economic benefits in a more sustainable manner with less impact on other nearby sensitive land uses.

➤ **Social**

There are no known significant social implications associated with that element of the development proposal for Lot 1 recommended for approval by Council (i.e. the new domestic storage shed).

Having regard for the concerns raised by nearby and adjoining landowners during public advertising of the application, it is contended the proposed Ancillary Tourist Use is not socially acceptable to those directly affected by such activity and is better suited to an alternative location/s in the Shire subject to receipt and determination of the required applications including formal consultation with the relevant government agencies and the local community.

FINANCIAL IMPLICATIONS:

There are no known financial implications to Council in relation to this item. All costs associated with the proposed development are the responsibility of and will be met by the applicant/landowner.

VOTING REQUIREMENTS:

Simple Majority Required

OFFICER RECOMMENDATIONS

- I. That Council resolve to grant development approval to Mr Walter I. Kerkhoff (Landowner) for the construction and use of a new 60.5m² zincalume outbuilding (i.e. shed) on Lot 1 Midlands Road, Moora for domestic storage purposes as well as the small-scale production/manufacturing of bird nesting boxes for fauna conservation purposes subject to the following conditions and advice notes:

Conditions

- i) The proposed outbuilding (i.e. shed) shall be constructed strictly in accordance with the information and plans submitted in support of the application subject to any modifications required as a consequence of any condition/s of this approval or otherwise approved by Council.
- ii) Any additional development which is not in accordance with the application the subject of this approval or any condition of approval will require the further approval of Council.
- iii) The proposed development shall be completed within a period of two (2) years from the date of this approval. If the development is not completed within this period, this approval shall lapse and be of no further effect. Where an approval has so lapsed, the proposed development shall not be carried out without the further approval of Council having first being sought and obtained.
- iv) The minimum final finished floor level of the proposed new outbuilding shall be 204.3 metres AHD (i.e. 800mm above the land's natural ground level of 203.5 metres AHD).
- v) Power points, electrical or data connection outlets in the proposed new outbuilding shall be installed a minimum of 0.5 metres above the structure's final finished floor level.
- vi) All external surfaces of the proposed new outbuilding shall be clad with new materials only.
- vii) All stormwater drainage generated by the proposed new outbuilding shall be managed and disposed of on-site using the existing underground stormwater storage tanks on the land (i.e. no stormwater is permitted to be directed and disposed of via any immediately adjoining property).
- viii) All breather inlets to the underground stormwater storage tanks on the land shall be 0.5m above the March 1999 flood level of 204 metres AHD.
- ix) The proposed new outbuilding shall only be used for the stated and approved purposes unless otherwise approved by the local government.
- x) The storage of any dangerous and/or toxic chemicals on the floor of the proposed new outbuilding is not permitted.

Advice Notes

- i) This approval is not an authority to ignore any constraint to development on the land which may exist through contract or on title, such as an easement, memorial or restrictive covenant. It is the responsibility of the applicant and landowner and not the Shire to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the Shire's attention.
- ii) This is a development approval of the Shire of Moora under its Local Planning Scheme No.4. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/landowner to obtain any

- other necessary approvals, consents, permits and licenses required under any other law, and to commence and carry out development in accordance with all relevant laws.*
- iii) The applicant/landowner is reminded of their obligation to ensure compliance with the following requirements:
 - a) Shire of Moora Annual Firebreak Notice as this applies specifically to land within the Moora townsite comprising an area of 3,000m² or more to help guard against potential bushfire risk; and*
 - b) Shire of Moora Health Local Law 2016.**
 - iv) In accordance with the Building Act 2011 and Building Regulations 2012, a building permit application must be submitted to and approved by the Shire's Building Surveyor prior to the commencement of any construction or earthworks on the land.*
 - v) The proposed new outbuilding is required to comply in all respects with the National Construction Code of Australia. Plans and specifications which reflect these requirements must be submitted to the Shire with the building permit application.*
 - vi) The noise generated by any activities on-site including machinery motors or vehicles shall not exceed the levels as set out under the Environmental (Noise) Regulations 1997.*
 - vii) No construction works shall commence on the land prior to 7am without the Shire's written approval. No construction works are permitted to be undertaken on Sundays or Public Holidays.*
 - viii) Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the Planning and Development Act 2005 and the Shire of Moora Local Planning Scheme No.4 and may result in legal action being initiated by the local government.*
 - ix) If the applicant/landowner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the Planning and Development Act 2005 Part 14. An application must be submitted within 28 days of the determination.*
- 2. That Council resolve to NOT grant development approval to Mr Walter I. Kerkhoff (Landowner) for the continued operation of the existing unauthorised Ancillary Tourist Use (i.e. Bird Watching) on Lot 1 Midlands Road, Moora, including the luring of Carnaby's Black Cockatoo to the property on a daily basis by offering food and water, for the following reasons:*
- a) The use is not consistent with Council's stated objectives and purposes for the 'Light Industrial' zone;*
 - b) The use is considered to be more detrimental to the amenity of the immediate locality than the existing non-conforming use of Lot 1 for low density residential purposes due to the amenity impacts experienced to-date (i.e. noise, destruction of vegetation, off-site vehicle access and parking issues) and the inability to control the number of birds frequenting the immediate locality which means the noise and vegetation impacts are likely to prevail and give rise to formal complaints by those immediately affected; and*
 - c) The use is not considered to be closer to the intended purpose of the land's current 'Light Industrial' zoning classification as required by clause 6.2.3 of the Shire of Moora Local Planning Scheme No.4 as it applies to the extension of and/or changes to existing non-conforming uses.*
- 3. That Council authorise the Shire administration to work with Mr Walter I. Kerkhoff to identify those Crown landholdings in the Shire of Moora where the proposed Ancillary Tourist Use (i.e. Bird Watching) could be formally considered and approved by Council, the Lands Division of the Department for Planning, Lands and Heritage and/or the Minister for Lands as may be required for any given site. Assuming a suitable site and/or sites are identified and approved for*

such use, that Mr Kerkhoff then be encouraged and supported by the Shire administration to make application to the Parks and Wildlife division of the Department of Biodiversity, Conservation and Attractions for the issuance of a license to feed Carnaby's Black Cockatoos pursuant to the specific requirements of the Biodiversity Conservation Regulations 2018.

Moved Cr Holliday, seconded Cr Lefroy

- I. That Council resolve to grant development approval to Mr Walter I. Kerkhoff (Landowner) for the construction and use of a new 60.5m² zincalume outbuilding (i.e. shed) on Lot 1 Midlands Road, Moora for domestic storage purposes as well as the small-scale production/manufacturing of bird nesting boxes for fauna conservation purposes subject to the following conditions and advice notes:

Conditions

- i) The proposed outbuilding (i.e. shed) shall be constructed strictly in accordance with the information and plans submitted in support of the application subject to any modifications required as a consequence of any condition/s of this approval or otherwise approved by Council.
- ii) Any additional development which is not in accordance with the application the subject of this approval or any condition of approval will require the further approval of Council.
- iii) The proposed development shall be completed within a period of two (2) years from the date of this approval. If the development is not completed within this period, this approval shall lapse and be of no further effect. Where an approval has so lapsed, the proposed development shall not be carried out without the further approval of Council having first being sought and obtained.
- iv) The minimum final finished floor level of the proposed new outbuilding shall be 204.3 metres AHD (i.e. 800mm above the land's natural ground level of 203.5 metres AHD).
- v) Power points, electrical or data connection outlets in the proposed new outbuilding shall be installed a minimum of 0.5 metres above the structure's final finished floor level.
- vi) All external surfaces of the proposed new outbuilding shall be clad with new materials only.
- vii) All stormwater drainage generated by the proposed new outbuilding shall be managed and disposed of on-site using the existing underground stormwater storage tanks on the land (i.e. no stormwater is permitted to be directed and disposed of via any immediately adjoining property).
- viii) All breather inlets to the underground stormwater storage tanks on the land shall be 0.5m above the March 1999 flood level of 204 metres AHD.
- ix) The proposed new outbuilding shall only be used for the stated and approved purposes unless otherwise approved by the local government.
- x) The storage of any dangerous and/or toxic chemicals on the floor of the proposed new outbuilding is not permitted.

Advice Notes

- i) This approval is not an authority to ignore any constraint to development on the land which may exist through contract or on title, such as an easement, memorial or restrictive covenant. It is the responsibility of the applicant and landowner and not the Shire to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the Shire's attention.

- ii) *This is a development approval of the Shire of Moora under its Local Planning Scheme No.4. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/landowner to obtain any other necessary approvals, consents, permits and licenses required under any other law, and to commence and carry out development in accordance with all relevant laws.*
- iii) *The applicant/landowner is reminded of their obligation to ensure compliance with the following requirements:*
 - a) *Shire of Moora Annual Firebreak Notice as this applies specifically to land within the Moora townsite comprising an area of 3,000m² or more to help guard against potential bushfire risk; and*
 - b) *Shire of Moora Health Local Law 2016.*
- iv) *In accordance with the Building Act 2011 and Building Regulations 2012, a building permit application must be submitted to and approved by the Shire's Building Surveyor prior to the commencement of any construction or earthworks on the land.*
- v) *The proposed new outbuilding is required to comply in all respects with the National Construction Code of Australia. Plans and specifications which reflect these requirements must be submitted to the Shire with the building permit application.*
- vi) *The noise generated by any activities on-site including machinery motors or vehicles shall not exceed the levels as set out under the Environmental (Noise) Regulations 1997.*
- vii) *No construction works shall commence on the land prior to 7am without the Shire's written approval. No construction works are permitted to be undertaken on Sundays or Public Holidays.*
- viii) *Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the Planning and Development Act 2005 and the Shire of Moora Local Planning Scheme No.4 and may result in legal action being initiated by the local government.*
- ix) *If the applicant/landowner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the Planning and Development Act 2005 Part 14. An application must be submitted within 28 days of the determination.*

COUNCIL RESOLUTION

173/19 Moved Cr Hamilton, seconded Cr Thomas that the item lay on the table, pending the outcome of a Fauna Disturbance Application (Bird feeding) by Mr W Kerkhoff to the Department of Biodiversity Conservation and Attractions.

CARRIED 7/1

CEO left the meeting at 6.08pm.

MEETING ADJOURNMENT

COUNCIL RESOLUTION

174/19 Moved Cr Seymour, seconded Cr Gilbert that the meeting be adjourned.

CARRIED 8/0

At 6.08pm the meeting was adjourned.

CEO rejoined the meeting at 6.14pm

RESUMPTION OF STANDING ORDERS

COUNCIL RESOLUTION

175/19 Moved Cr Bellamy, seconded Cr Lefroy that the meeting be reconvened at this juncture 6.16pm.

CARRIED 8/0

11.2 EMAIL CORRESPONDENCE – MR W PORTER – REFERENCE: W KERKHOFF – CARNABY COCKATOO FEEDING

COUNCIL RESOLUTION

176/19 Moved Cr Bellamy, seconded Cr Thomas that an item of late business concerning correspondence from Mr Wes Porter regarding shire staff in relation to W Kerkhoff's planning application be brought forward for Councils' consideration.

CARRIED 6/2

COUNCIL RESOLUTION

177/19 Moved Cr Bellamy, seconded Cr Hamilton that in relation to email correspondence from Mr Wes Porter to Shire Councillors dated 29 November 2019, Council direct Shire President Cr K Seymour to approach Mr Porter and request him to withdraw comments in relation to accusations against shire staff.

CARRIED 5/3

12. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

The Shire President acknowledged the contribution of outgoing Deputy CEO David Trevaskis and wished him all the best with his future ventures at the City of Kalgoorlie-Boulder.

13. CLOSURE OF MEETING

There being no further business, the President thanked the members of the public for their attendance and declared the meeting closed at 6.30pm.

CONFIRMED

PRESIDING MEMBER