



## MINUTES OF ORDINARY MEETING OF COUNCIL

**HELD ON 21 APRIL 2009**

I hereby certify that the Minutes of the Ordinary Meeting of Council held are a true and accurate record of the proceedings contained therein.

---

**Shire President Confirmed**

<b>Item No</b>	<b>Description</b>	<b>Page No</b>
1.	<b>DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS</b>	1
2.	<b>RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)</b>	1
3.	<b>DECLARATIONS OF INTEREST</b>	2
4.	<b>RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE</b>	2
5.	<b>PUBLIC QUESTION TIME</b>	2
6.	<b>PETITIONS</b>	2
7.	<b>APPLICATIONS FOR LEAVE OF ABSENCE</b>	2
8.	<b>CONFIRMATION OF MINUTES</b>	3
	8.1 That Council confirm Minutes of the Ordinary Council Meeting held on 17March 2009 (8616)	3
9.	<b>ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION</b>	3
10.	<b>DEPUTATIONS/PRESENTATIONS/SUBMISSIONS</b>	4
11.	<b>MINUTES OF COUNCIL COMMITTEE MEETINGS</b>	4
	11.1. <b>MINUTES OF AUDIT COMMITTEE MEETINGS</b>	4

<b>11.2. MINUTES OF AIRPORT COMMITTEE MEETINGS</b>	<b>4</b>
11.2.1 Minutes of the Airport Committee Meeting held on 14 April 2009 (8617)	4
<b>12. REPORTS</b>	<b>5</b>
<b>12.1. MATTERS ARISING FROM COMMITTEES OF COUNCIL</b>	<b>5</b>
12.1.1 East Kimberley Regional Airport - Car Hire Franchise Leases and Car Park Allocation (8618)	5
12.1.2 Air BPLease (8619)	12
<b>12.2. CORPORATE SERVICES</b>	<b>75</b>
12.2.1 List of Accounts Paid Under Delegation 18 (8620)	75
12.2.2 Monthly Financial Report (8621)	88
12.2.3 Proposal To Purchase Wyndham Town Lot 829 Koolama Street Wyndham (Ex Infant Health Clinic) (8622)	96
<b>12.3. ENGINEERING &amp; REGULATORY SERVICES</b>	<b>99</b>
12.3.1 Local Emergency Recovery Plan (8623)	99
12.3.2 M1 Channel Stormwater Outlets (8624)	102
12.3.3 Restricted Access Vehicle Notice System Review (8625)	109
12.3.4 Replacement of Light Vehicles (8626)	114
12.3.5 Period Contract for Street Sweeping (T08-08/09) 1 July 2009 to 30 June 2012 (8627)	117
12.3.6 Period Contract for Litter Collection (T07-08/09) 1 July 2009 to 30 June 2012 (8628)	120
<b>12.4. DEVELOPMENT</b>	<b>123</b>
12.4.1 Town Planning Scheme No. 7 - Amendment No. 18 (8629)	123
12.4.2 Town Planning Scheme No 7 - Amendment 22 (8630)	140
12.4.3 Wyndham Workcamp Expansion (8631)	155
12.4.4 Lakeside Residential Design Guidelines - DC23 (8632) (8633) (8634)	166
12.4.5 Draft Compliance and Enforcement Policy (8635)	179
12.4.6 Lot 103 Bloodwood Drive - 9 Accomodation Units (8636)	186
12.4.7 Proposed Temporary Workers Accommodation - Lot 2263 Casuarina Drive, Kununurra (8637)	200
<b>12.5. COMMUNITY SERVICES</b>	<b>212</b>
<b>12.6. CHIEF EXECUTIVE OFFICER</b>	<b>213</b>
12.6.1 Proposed Aquisition of Residential Land being Portion of Reserve 41812 (Waterlily Place) (8638)	213
12.6.2 Kununurra Administration Centre Land Purchase (8639)	216
12.6.3 Ord River Sailing Club - Proposed New Lease Site (8640) (8641)	220
12.6.4 Use of the Common Seal (8642)	230
12.6.5 Status Report Council Decisions January to March 2009 (8643)	232
12.6.6 2009 National General Assembly of Local Government (8644)	250

12.6.7 Delegated Authority Report (8645)	252
12.6.8 Local Government Reform Strategies (8646)	258
12.6.9 Kimberley Development Commission Board Representation (8647)	272
<b>12.7. ELECTED MEMBER REPORTS</b>	<b>274</b>
<b>13. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN</b>	<b>274</b>
<b>14. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN</b>	<b>274</b>
<b>15. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION</b>	<b>274</b>
<b>16. MATTERS BEHIND CLOSED DOORS</b>	<b>274</b>
16.3 CEO Performance Indicators (8648) (8649)(8650)	275
<b>17. CLOSURE</b>	<b>277</b>

# SHIRE OF WYNDHAM-EAST KIMBERLEY

## MINUTES OF THE ORDINARY COUNCIL MEETING HELD ON TUESDAY, 21 APRIL AT 6:00 PM

---

### 1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President opened the Meeting at 6pm.

### 2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Cr F Mills	Shire President
Cr R Addis	Deputy President
Cr D Ausburn	Councillor
Cr R Boshammer	Councillor (Arrived 6.05pm)
Cr P Caley	Councillor
Cr J Parker	Councillor
Cr K Torres	Councillor
Cr K Wright	Councillor

### LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Cr J Moulden	Councillor
P Stubbs	Chief Executive Officer
J Ellis	Executive Manager Corporate Services
A Douglas	Executive Manager Engineering & Regulatory Services (Arrived 6.11pm)
S Russell	Executive Support Officer – Corporate/Minute Taker
I D'Arcy	Executive Manager Town Planning and Economic Development (Arrived 6.10pm)

### PUBLIC GALLERY

Torben Sass-Niesen  
Toni Jarvis  
Shelley Madden  
Laurie McKenzie  
Cecil Richardson  
Rob Marshall  
Maxine Marshall  
Emma Saleeno (Arrived 6.06pm)

### **3. DECLARATIONS OF INTEREST**

- **Financial Interest**

P Stubbs declared a Financial Interest in Item 16.3 as it relates to his employment.

- **Impartiality Interest**

Cr Ausburn declared an Impartiality Interest to Item 12.1.1 East Kimberley Regional Airport – Car Hire Franchise Leases and Car park Allocation as she is a neighbour of Avis and Budget.

P Stubbs declared an Impartiality Interest to Item 12.1.1 East Kimberley Regional Airport – Car Hire Franchise Leases and Car park Allocation as his wife is employed by company.

- **Proximity Interest**

Nil

### **4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

### **5. PUBLIC QUESTION TIME**

Nil

### **6. PETITIONS**

Nil

### **7. APPLICATIONS FOR LEAVE OF ABSENCE**

#### **7.1 APPLICATION FOR LEAVE OF ABSENCE (8615)**

##### **COUNCIL DECISION**

***Minute No 8615***

***Moved: Cr Addis***

***Seconded: Cr Ausburn***

***That a leave of absence is approved for Cr Torres for the Meeting of 19 May 2009***

**CARRIED UNANIMOUSLY:(7/0)**

**8. CONFIRMATION OF MINUTES**

**8.1 CONFIRMATION OF MINUTES OF THE ORDINARY COUNCIL MEETING HELD ON 17 MARCH 2009 )**

**RECOMMENDATION**

That Council confirm Minutes of the Ordinary Council Meeting held on 17 March 2009

**COUNCIL DECISION**

***Minute No. 8616***

***Moved:Cr J Parker Seconded:Cr K Wright***

***That Council confirm Minutes of the Ordinary Council Meeting held on 17 March 2009***

**CARRIED UNANIMOUSLY: (8/0)**

**9. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

On behalf of Council I extend our congratulations to Rick Spry Manager of Councils Airports and operations who recently celebrated his 15<sup>th</sup> anniversary of employment with the Shire of Wyndham East Kimberley and to David Stranding who works in the Shires town maintenance crew and who has achieved 10 years service. David will be inducted into the Shire's "Hall of Fame" for service a staff function later this month. Rick and 8 other existing staff who have completed 10 years of service were inducted into the Hall of Fame in December 2007.

On Tuesday 24 March Cr's Parker, Caley and I meet with Senator Gary Gray in Wyndham to discuss the Australian Governments draft \$195M investment package. This package will be of tremendous importance to our region as it grows over the next few years.

On Friday 27 March I attended a forum hosted by the District Office of Education to explore with community representatives how the "gap" in indigenous education outcomes can be closed in the East Kimberley. This issue remains one of regions greatest challenge. I was impressed

with the passion, creativity, and robustness of discussion on matters around this issue, and I commend all those involved in that.

**10. DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**

Nil

**11. MINUTES OF COUNCIL COMMITTEE MEETINGS**

**11.1. MINUTES OF AUDIT COMMITTEE MEETINGS**

Nil

**11.2. MINUTES OF AIRPORT COMMITTEE MEETINGS**

**11.2.1 MINUTES OF THE AIRPORT COMMITTEE MEETING HELD ON 14 APRIL 2009 (8617)**

**RECOMMENDATION**

That Council note the unconfirmed minutes of the Airport Committee held on Tuesday 14 April 2009

**COUNCIL DECISION**

***Minute No. 8617***

***Moved:Cr K Wright***

***Seconded:Cr R Addis***

**That Council note the unconfirmed minutes of the Airport Committee held on Tuesday 14 April 2009**

***CARRIED UNANIMOUSLY: (8/0)***

## 12. REPORTS

### 12.1. MATTERS ARISING FROM COMMITTEES OF COUNCIL

#### 12.1.1 EAST KIMBERLEY REGIONAL AIRPORT - CAR HIRE FRANCHISE LEASES AND CAR PARK ALLOCATION (8618) )

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Avis Australia, Territory Thrifty Car Rental, Busby Investments T/A Budget Rent A Car
<b>LOCATION:</b>	East Kimberley Regional Airport
<b>AUTHOR:</b>	Brian Sargeant, Acting Airport Manager
<b>REPORTING OFFICER:</b>	Jo-Anne Ellis, Executive Manager Corporate Services
<b>FILE NO:</b>	66.20.33, 66.20.32, 66.20.30
<b>ASSESSMENT NO:</b>	N/A

#### PURPOSE

To set out an allocation plan for East Kimberley Regional Airports car park and extensions by offering new leases to current car hire franchise companies that lease cubicles and car park spaces at the East Kimberley Regional Airport.

#### BACKGROUND

This item was presented to the 9 December Airport Committee Meeting where the committee resolved:

*Minute No: AP 063*

*Moved: Cr K Wright*

*Seconded: Cr P Caley*

- a) *That this item be held over until the next Airport Committee Meeting with the following additional information being provided*
- *data in relation to number of car hires per flight,*
  - *cash in lieu contributions for carparking*
  - *cost per bay of new carpark*
  - *details of charges to car hire companies at Broome and Darwin*
- b) *That the committee be provided as general information details of the car parking fees charged to the public at Darwin Airport.*

*Carried Unanimously: 4/0*

The main car park has 71 bays with the current allocation breakdown as follows;

29 – 2hr parking	4 – Territory	4 - Hertz
19 - All day parking	4 – Budget	3 – Europcar
2 - Disabled parking	4 – Avis	2 – Taxi bays

There are an additional 9 bays in the Old Flight Services building car park located to the east of the main car park with the following allocations;

1 – AQWIS      2 – Hertz      2 – Territory  
2 – Avis      2 – Budget

There is adequate room for creation of an additional 4 bays in this area.

The new car park extension will create an additional 74 new bays.

Correspondence has been received from Avis Kununurra requesting an additional 12 bays to be consolidated with their existing bays in one area and located close to the baggage pickup area.

The leases for the hire car companies have expired or are due to expire prior to 31 October 2009. It is opportune to review these and offer new leases.

### **STATUTORY IMPLICATIONS**

Disposal of land must occur in accordance with the Local Government Act.

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

Any additional reserved car parking bays would increase the lease value. Revenue from lease fees contributes to Airport Reserve.

Cost of erection of reserve parking signage would be borne by the car rental companies.

### **STRATEGIC IMPLICATIONS**

Nil

### **COMMUNITY CONSULTATION**

Nil

### **COMMENT**

Further information requested by the Airport Committee

#### **Number of car hires per flight**

This data is so ambiguous that no Hire car company was able to provide data. Hire car companies reported that business varied so much from day to day, week to week, season to season. For example Budget reported that on one Monday flight they could have 14 cars hired out but the following Monday they may only have 2.

## Cash in lieu of contributions

Shire of Wyndham East Kimberley  
Town Planning Scheme No.7  
Kununurra and Environs

### PART VII – CAR PARKING – STANDARDS AND PROVISIONS

#### 8.4 CASH IN LIEU PROVISION OF CAR PARKING SPACES

- 8.4.1 Where a person who applies for planning approval is required to provide car parking spaces in accordance with the Scheme that may, if the council so agrees, make a cash payment to the Council in lieu of the provision of all or any of the required number of car park spaces.
- 8.4.2 The cash-in-lieu payment shall not be less than the estimated cost to the owner or developer of providing and constructing the parking spaces required by the Scheme plus the value of that area of the land which would have been occupied by the parking spaces.
- 8.4.3 The estimated cost of the land referred to in clause 8.4.2 shall be determined by the Valuer General or by a licensed valuer appointed by the council.
- 8.4.4 The estimated cost of the development of the parking bays referred to in clause 8.4.2 shall be determined by the Council or by a person nominated by the Council who is competent in the field of architecture or engineering.
- 8.4.5 The moneys received by the Council under clause 8.4.1 shall be paid into a separate car-parking fund and shall only be used for the acquisition or development of land as a public car park to reimburse Council any expenses it has incurred including loan repayments, within the locality and shall relate as much as practicable to the development of the land the subject of the payment.
- 8.4.6 The Council may make or adopt a policy defining the areas within which it considers payment of cash-in-lieu of the provision of car parking spaces to be acceptable.
- 8.4.7 If the parties cannot agree upon the amount payable, it shall be determined by arbitration in accordance with the Commercial Arbitration Act 1985. The cost of the arbitration shall be borne by the applicant.

#### Cost per bay of new car parking

At the time of writing the car park was on budget at \$ 586,500. An addition 74 bays will be constructed with cost per bay \$7,925.

#### Hire car parking charges at Broome & Darwin

Darwin International Airport

Terminal front bay - \$2,350 per annum

Hire car area per bay - \$1,350 per annum

Broome Airport data was not available.

### **ATTACHMENTS**

Proposed Car Park and Access Road Plan

### **VOTING REQUIREMENTS**

Simple Majority

### **OFFICER RECOMMENDATION**

That the Airport committee considers allocation of hire car bays in the car parks at East Kimberley Regional Airport.

### **COMMITTEE RESOLUTION**

Minute No AP 085

Moved: Cr J Moulden

Seconded: Cr K. Wright

That it be recommended to Council to offer new leases at the East Kimberley Regional Airport to:

- a) Avis Australia / W.T.H. Pty Ltd
- b) Thrifty / Territory Rent a Car Pty Ltd
- c) Budget / Busby Investments Pty Ltd
- d) Hertz / Tuffys Pty Ltd T/A East Kimberley Hirings
- e) Europocar

On the following conditions

1. leases commence on 1 July 2009, or at the expiration of the current lease, for a term of five years.
2. The use of the premises is for Hire Car Franchise purpose
3. Cubicle rent in the Airport Terminal is set at \$500 and is subject to review following the Terminal Upgrade.
4. Car bays are offered in rows 2 and 3 of the car park at an annual rental fee of \$2,000 per bay with a maximum of six bays to be allocated to each lessee.
5. Car bays are offered in rows 7 and 8 of the car park at an annual rental fee of \$1,000 per bay with a maximum of six bays to be allocated to each lessee.
6. The number of car park bays required by each lessee is to be confirmed in writing prior to the commencement of the lease and may only be altered once annually on the lease rent review date.
7. Lease fees will be subject to annual CPI increase on the lease rent review date.
8. An additional charge for lighting and security may be initiated by agreement between parties if the need to increase lighting and/or security at the East Kimberley Regional Airport car park arises.

Carried Unanimously: 3/0

## **COMMITTEE RECOMMENDATION**

That Council offer new leases at the East Kimberley Regional Airport to:

- a) Avis Australia / W.T.H. Pty Ltd
- b) Thrifty / Territory Rent a Car Pty Ltd
- c) Budget / Busby Investments Pty Ltd
- d) Hertz / Tuffys Pty Ltd T/A East Kimberley Hirings
- e) Eurpocar

On the following conditions

1. leases commence on 1 July 2009, or at the expiration of the current lease, for a term of five years.
2. The use of the premises is for Hire Car Franchise purposes.
3. Cubicle rent in the Airport Terminal is set at \$500 and is subject to review following the Terminal Upgrade.
4. Car bays are offered in rows 2 and 3 of the car park at an annual rental fee of \$2,000 per bay with a maximum of six bays to be allocated to each lessee.
5. Car bays are offered in rows 7 and 8 of the car park at an annual rental fee of \$1,000 per bay with a maximum of six bays to be allocated to each lessee.
6. The number of car park bays required by each lessee is to be confirmed in writing prior to the commencement of the lease and may only be altered once annually on the lease rent review date.
7. Lease fees will be subject to annual CPI increase on the lease rent review date.
8. An additional charge for lighting and security may be initiated by agreement between parties if the need to increase lighting and/or security at the East Kimberley Regional Airport car park arises.

## **COUNCIL DECISION**

***Moved:Cr K Wright***

***That an additional charge for breach of essential terms of lease by the lessee of \$100 per car per day over the agreed and paid for car parking bays to be included in the new leases for car hire companies.***

***Motion Lapsed***

***Minute No. 8618***

***Moved:Cr J Parker***

***Seconded:Cr P Caley***

That Council offer new leases at the East Kimberley Regional Airport to:

- a) Avis Australia / W.T.H. Pty Ltd
- b) Thrifty / Territory Rent a Car Pty Ltd
- c) Budget / Busby Investments Pty Ltd

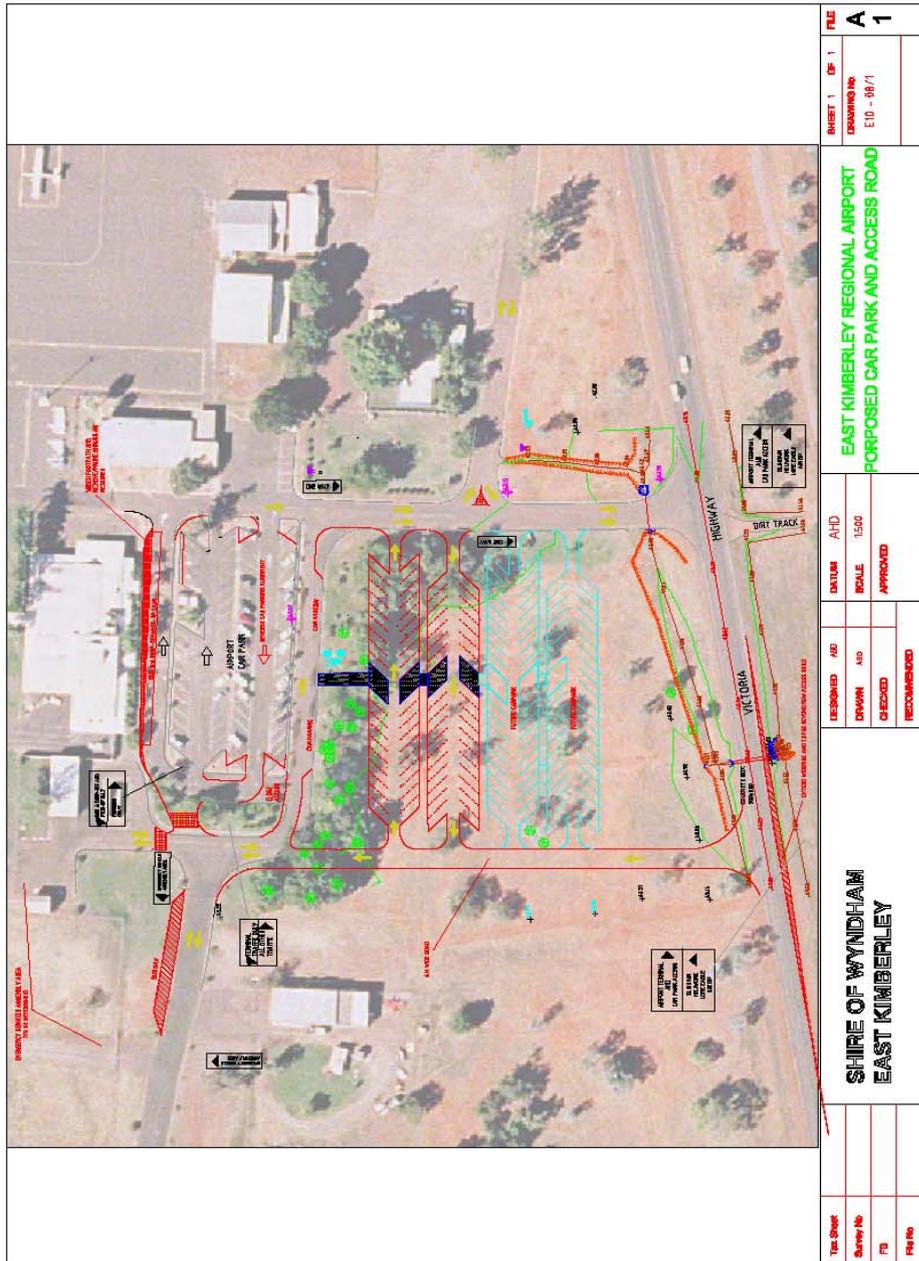
- d) Hertz / Tuffys Pty Ltd T/A East Kimberley Hirings
- e) Europcar

**On the following conditions**

1. leases commence on 1 July 2009, or at the expiration of the current lease, for a term of five years.
2. The use of the premises is for Hire Car Franchise purposes.
3. Cubicle rent in the Airport Terminal is set at \$500 and is subject to review following the Terminal Upgrade.
4. Car bays are offered in rows 2 and 3 of the car park at an annual rental fee of \$2,000 per bay with a maximum of six bays to be allocated to each lessee.
5. Car bays are offered in rows 7 and 8 of the car park at an annual rental fee of \$1,000 per bay with a maximum of six bays to be allocated to each lessee.
6. The number of car park bays required by each lessee is to be confirmed in writing prior to the commencement of the lease and may only be altered once annually on the lease rent review date.
7. Lease fees will be subject to annual CPI increase on the lease rent review date.
8. An additional charge for lighting and security may be initiated by agreement between parties if the need to increase lighting and/or security at the East Kimberley Regional Airport car park arises.

**CARRIED: (7/1)**

*For: Cr Caley, Torres, Mills, Addis, Ausburn, Boshammer and Parker.  
Against: Cr Wright*



THE SHIRE OF WYNDHAM EAST KIMBERLEY	DESIGNED AND DRAWN AHD AHD	CHECKED AHD	RECOMMENDED AHD	DATUM AHD	SCALE 1:500	APPROVED AHD	SHIRE OF WYNDHAM EAST KIMBERLEY PROPOSED CAR PARK AND ACCESS ROAD	SHIRE OF WYNDHAM EAST KIMBERLEY PROPOSED CAR PARK AND ACCESS ROAD	FILE NO. E10-08/1	DATE 1
--	----------------------------------	----------------	--------------------	--------------	----------------	-----------------	---	---	----------------------	-----------

### 12.1.2 AIR BPLEASE (8619)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Air BP
<b>LOCATION:</b>	East Kimberley Regional Airport
<b>AUTHOR:</b>	Brian Sargeant, Acting Airport Manager
<b>REPORTING OFFICER:</b>	Jo-Anne Ellis, Executive Manager Corporate Services
<b>FILE NO:</b>	43.04.0543.04.05
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

To recommend to Council to adopt the proposed Air BP Lease on land identified as at Lot 181 on Deposited Plan 28266 being the whole of the land in Certificate of Title Volume 2526 Folio 60 and being commonly known as "East Kimberley Regional Airport", Lot 181 Victoria Highway, Kununurra, and in particular that part of the Land having an area of approximately 5,250 square metres as depicted and hatched in black on the plan in Annexure "A" to this Lease.

#### **BACKGROUND**

Council has moved the following resolution (Minute Number 8147). Public advertising has been completed, and the lease is now presented to Council for final approval

*Minute No: 8147*

*Moved: Cr D Ausburn*

*Seconded: Cr J Parker*

*That Council:*

- 1. Advertise the lease of portion of Lot 181 Victoria Highway to Air BP for the \$21500 per annum indexed annually to CPI for 15 years with an option of an additional 15 years in accordance with section 3.58(3) of the Local Government Act.*
- 2. Advise Air BP that a development application and building license will be required to be submitted for approval and can be considered concurrently to the preparation of the lease, should council agree to that after consideration of any public comment received through advertising.*
- 3. That the Chief Executive Officer be given delegated authority to approve and progress the lease and with the lease to be submitted to Council for final approval.*

*Carried Unanimously 8/0*

This item was included in the 17 March 2009 Council Meeting Agenda. It was held over pending investigation in relation to the runway.

At the briefing session on 7 April 2009 Councillors requested that the Airport Committee give consideration of the runway issues and advise Council.

### **STATUTORY IMPLICATIONS**

Section 3.58 of the Local Government Act 1995 relates to disposing of property:

#### **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.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

Lease fees applicable would contribute to the Airport Reserve Fund.

## **STRATEGIC IMPLICATIONS**

No specific strategic implications are associated with this report.

## **COMMUNITY CONSULTATION**

Submissions were invited via a Public Notice - Notice of Intention to Lease by Private Treaty in the 26<sup>th</sup> Februarys edition of the Kimberley Echo. No responses were received by the submission closing date of 4.00pm, 11 March 2009.

## **ATTACHMENTS**

1. Air BP Lease
2. Annexure A

## **VOTING REQUIREMENT**

Simple Majority

## **OFFICER'S RECOMMENDATION**

That the Airport Committee recommends to Council to adopt the Air BP Lease as presented, and related to Lot 181 on Deposited Plan 28266 being the whole of the land in Certificate of Title Volume 2526 Folio 60 and being commonly known as "East Kimberley Regional Airport", Lot 181 Victoria Highway, Kununurra, and particular that part of the Land having an area of approximately 5,250 square metres as depicted and hatched in black on the plan in Annexure "A" to this Lease, with the following conditions:

1. a lease term of 15 years and the option of lease renewal for a further 15 years
2. the Rent of \$21,500.00 per annum payable in advance on the Commencement Date and each anniversary of the Commencement Date. The Rent being exclusive of GST, and subject to a 10% per annum increase.

## **COMMITTEE RESOLUTION**

Minute No: AP 087

Moved: Cr K Wright

Seconded: Cr J Moulden

That the Airport Committee recommends to Council to adopt the Air BP Lease as presented, and related to Lot 181 on Deposited Plan 28266 being the whole of the land in Certificate of Title Volume 2526 Folio 60 and being commonly known as "East Kimberley Regional Airport", Lot 181 Victoria Highway, Kununurra, and particular that part of the Land having an area of approximately 5,250 square metres as depicted and hatched in black on the plan in Annexure "A" to this Lease, with the following conditions:

1. a lease term of 15 years and the option of lease renewal for a further 15 years
2. the Rent of \$21,500.00 per annum payable in advance on the Commencement Date and each anniversary of the Commencement Date. The Rent being exclusive of GST, and subject to a 10% per annum increase.

Carried Unanimously: 3/0

## **COMMITTEE RECOMMENDATION**

*That Council adopt the Air BP Lease as presented, and related to Lot 181 on Deposited Plan 28266 being the whole of the land in Certificate of Title Volume 2526 Folio 60 and being commonly known as "East Kimberley Regional Airport", Lot 181 Victoria Highway, Kununurra, and particular that part of the Land having an area of approximately 5,250 square metres as depicted and hatched in black on the plan in Annexure "A" to this Lease, with the following conditions:*

1. *a lease term of 15 years and the option of lease renewal for a further 15 years*
2. *the Rent of \$21,500.00 per annum payable in advance on the Commencement Date and each anniversary of the Commencement Date. The Rent being exclusive of GST, and subject to a 10% per annum increase.*

## **COUNCIL DECISION**

***Minute No. 8619***

***Moved:Cr P Caley***

***Seconded:Cr D Ausburn***

***That Council adopt the Air BP Lease as presented, and related to Lot 181 on Deposited Plan 28266 being the whole of the land in Certificate of Title***

***Volume 2526 Folio 60 and being commonly known as 'East Kimberley Regional Airport', Lot 181 Victoria Highway, Kununurra, and particular that part of the Land having an area of approximately 5,250 square metres as depicted and hatched in black on the plan in Annexure 'A' to this Lease, with the following conditions:***

- 1. a lease term of 15 years and the option of lease renewal for a further 15***
- 2. the Rent of \$21,500.00 per annum exclusive of GST payable in advance on the Commencement Date and each anniversary of the Commencement Date and each anniversary of the Commencement Date subject to an annual CPI increase.***

***CARRIED UNANIMOUSLY: (8/0)***

**LEASE**

**PART LOT 181 VICTORIA HIGHWAY, KUNUNURRA  
"EAST KIMBERLEY REGIONAL AIRPORT"**

**SHIRE OF WYNDHAM EAST KIMBERLEY  
("Landlord")**

**AND**

**BP AUSTRALIA PTY LTD (ACN 004 085 616) TRADING AS AIR BP  
("Tenant")**

## CONTENTS

1.	<b>DEFINITIONS AND INTERPRETATION</b> .....	1
1.1	Definitions.....	1
1.2	Interpretation.....	8
2.	<b>OPERATIVE PART</b> .....	10
2.1	Lease of Premises.....	10
2.2	Quiet enjoyment .....	11
2.3	Tenant responsible as if owner.....	11
3.	<b>RESERVATION OF LANDLORD'S RIGHTS</b> .....	12
(a)	<i>Improvements to Leased Premises</i> .....	13
(b)	<i>Right to enter</i> .....	13
(c)	<i>Common Areas</i> .....	13
(d)	<i>Granting easements etc</i> .....	14
(e)	<i>Re-classification of fixtures and fittings</i> .....	14
4.	<b>RENT</b> .....	14
5.	<b>RENT REVIEW</b> .....	14
5.1	General.....	14
5.2	CPI Rent Review .....	14
5.3	Fixed Increase of Rent .....	15
6.	<b>NOT TO CAUSE RENT REDUCTION</b> .....	15
7.	<b>VARIABLE OUTGOINGS</b> .....	16
8.	<b>BULK SUPPLY OF SERVICES</b> .....	16
8.1	Services separately assessed.....	16
9.	<b>USE OF LEASED PREMISES AND FACILITIES</b> .....	16
10.	<b>SECURITY OF BUILDING AND LEASED PREMISES</b> .....	17
11.	<b>COVENANT TO REPAIR AND MAINTAIN</b> .....	17
12.	<b>POSITIVE COVENANTS</b> .....	18
13.	<b>NEGATIVE COVENANTS</b> .....	20
14.	<b>TENANT'S OBLIGATION TO EFFECT INSURANCES</b> .....	21
15.	<b>INDEMNITIES</b> .....	22
15.1	General indemnity .....	22
15.2	Nature of indemnity .....	22
16.	<b>ASSIGNMENT</b> .....	22
16.1	No assignment.....	22
16.2	Property Law Act excluded.....	22
16.3	Changes in beneficial ownership of shares.....	22
16.4	Landlord may consent to assignment.....	22
16.5	Landlord may consent to sublease.....	23
16.6	Landlord may consent to charge.....	24
16.7	Compliance with Acts .....	24
17.	<b>DAMAGE, DESTRUCTION OR RESUMPTION</b> .....	24
17.1	Definitions.....	24
17.2	Abatement .....	25
17.3	Either Party May Terminate.....	25

17.4	Tenant May Terminate .....	26
17.5	Exceptions .....	26
17.6	Landlord to Terminate .....	26
17.7	Antecedent Breaches .....	26
17.8	Dispute Resolution .....	26
17.9	Landlord Not Obligated to Reinstate .....	26
17.10	Proceeds of Insurance.....	26
17.11	Resumption of Leased Premises.....	26
18.	<b>LIMIT OF LANDLORD'S LIABILITY</b> .....	27
18.1	No warranties or representations .....	27
18.2	Landlord Not Liable .....	27
18.3	Landlord only liable while registered proprietor .....	28
19.	<b>DEFAULT</b> .....	28
20.	<b>LANDLORD'S POWERS ON DEFAULT</b> .....	28
20.1	Landlord's right of possession .....	28
20.2	Landlord may remedy Tenant's default .....	28
20.3	No prejudice of Landlord's rights .....	29
20.4	Exercise of rights by Landlord .....	29
21.	<b>ESSENTIAL TERMS</b> .....	29
21.1	Breach of Essential Terms .....	29
21.2	Damage for Breach of Essential Terms .....	30
21.3	Landlord's Entitlement to Damages .....	30
21.4	Landlord to Mitigate Damages.....	30
21.5	Calculation of Damages .....	30
22.	<b>TERMINATION</b> .....	30
22.1	Yield up Leased Premises .....	30
22.2	Remove Tenant's Fixtures.....	31
22.3	Making Good of Leased Premises on Termination .....	31
22.4	Landlord Can Make Good .....	31
22.5	Dealing with Tenant's property not removed at Termination.....	31
22.6	Tenant to continue to pay Rent and Variable Outgoings .....	32
23.	<b>OPTION OF RENEWAL</b> .....	32
24.	<b>HOLDING OVER</b> .....	32
25.	<b>POWER OF ATTORNEY</b> .....	33
26.	<b>TRUSTEE PROVISIONS</b> .....	33
27.	<b>SPECIAL CLAUSES</b> .....	33
28.	<b>MISCELLANEOUS</b> .....	34
28.1	Tenant not to permit prohibited matters .....	34
28.2	Cost of Complying with Obligations.....	34
28.3	Schedules .....	34
28.4	Landlord's consent.....	34
28.5	Proper Law and Jurisdiction .....	34
28.6	Time for payment.....	34
28.7	Time of the essence .....	34
28.8	Certificates .....	34
28.9	Exercise of rights by Landlord .....	34
28.10	Landlord may act by agent .....	35
28.11	Variation.....	35
28.12	Giving of notice.....	35
28.13	No moratorium.....	35
28.14	Further assurances.....	35

28.15 Effect of execution .....	35
28.16 Severance.....	36
28.17 Goods and services tax.....	36
28.18 Entire Agreement.....	37
28.19 Headings.....	37
28.20 Termination.....	37
<b>SCHEDULE 1 .....</b>	<b>38</b>
<b>SCHEDULE 2 - SPECIAL CLAUSES .....</b>	<b>41</b>



- (b) any person visiting the Leased Premises with the express or implied consent of any person referred to in paragraph (a) of this definition; and
- (c) any person claiming under or through the Tenant;

"Authorised Use" means the use specified in item 1 of Schedule 1;

"Building" means

- (a) any building, improvement or other permanent structure;
- (b) all plant, machinery, fixtures, fittings, furnishings and equipment; and
- (c) all conveniences, amenities and appurtenances;

now or hereafter constructed, made, erected, installed or situated on the Leased Land;

"Business Day" means a day other than a Saturday, Sunday or State public holiday in Western Australia;

"Commencement Date" means the commencement date specified in item 2 of Schedule 1;

"Common Areas" includes those parts of the Land that the Landlord has set aside (if any) as areas which are open to the public or otherwise available for common use, amenity, or convenience by the Occupiers;

"Conditions Precedent" means the conditions referred to in clause 2.4(a);

"Consumer Price Index" means the consumer price index compiled by the Australian Bureau of Statistics for the Perth (Capital City) Area (All Groups);

"CPI Rent Review Date" means a rent review date specified in item 8 of Schedule 1 as a "CPI Rent Review";

"Current CPI" means the Consumer Price Index number last published before the relevant Rent Review Date, or if an actuary is appointed under clause 5.2 to determine an index, the number certified by that actuary;

"End Date" means the date specified in item 3 of Schedule 1;

"Event of Default" means the events specified in clause 19 of this Lease and clauses 2.9(a) and 3.4 of the special clauses to this Lease;

"Facilities" means the drainage, sewerage and plumbing facilities, and the gas and electrical fittings or appliances in or on the Land or the Leased Premises;

"Final Period" means the period ending on Termination and commencing on the 1 July prior to Termination;

"Financial Year" means a year beginning on 1 July and ending on the following 30 June;

"First Period" means the period commencing on the Commencement Date and ending on the immediately subsequent 30 June;

"Fixed Increase Review Date" means a rent review date specified in item 8 of Schedule 1 as a "Fixed Increase Review";

"Gross Area of the Land" means the area of the horizontal plane of the Land as certified by the Landlord's surveyor and specified in item 14(a) of the Schedule 1;

"Land" means the land described in item 5(a) of Schedule 1;

"Laws" means all statutes, rules, regulations, proclamations, ordinances or by-laws present or future and includes applicable Australian Standards and Codes of Practice;

"Lease" means this deed and the Schedules and, where applicable, any appendices, plans or other attachments to this deed as amended from time to time;

"Lease Year" means a Financial Year or any other period of twelve (12) months nominated by the Landlord, and includes, where appropriate, the First Period and the Final Period;

"Leased Premises" means that part of the Land described in item 5(b) of Schedule 1 and the Building;

"Landlord's Fixtures" means the Landlord's fixtures and fittings in or on the Leased Premises and any Tenant's Fixtures which are re-classified by the Landlord as Landlord's Fixtures in accordance with this Lease;

"Landlord's Works" means any construction, refurbishment, upgrade and renovation works carried out or to be carried out on or to the Leased Premises as notified to the Tenant by the Landlord from time to time;

"Licensed Area" means the new access road leading from the highway to the Leased Premises as depicted on the map at Annexure "A";

"Maintain" includes maintain, repair, renovate, replace, decorate and refurbish, and "Maintenance" and "Maintaining" have equivalent meanings;

"Managing Agent" means the managing agent referred to in Clause 3(f), being initially the party described in item 13 of Schedule 1;

"Occupiers" means any tenant, licensee or other person with a right to occupy or use any part of the Land from time to time;

"Party" and "Parties" or "party" and "parties" mean respectively a party or parties to this Lease;

"Plans and Specifications" means all plans, specifications and working drawings in relation to the Tenant's Works as prepared by or on behalf of the Tenant and in the form approved by the Landlord and all Relevant Authorities;

"Plant and Equipment" means the plant and equipment used in connection with the provision of any Services or the heating, cooling, lighting, power or plumbing for the Leased Premises;

"Previous CPI" means the Consumer Price Index number last published before the date which is twelve (12) months before the relevant Rent Review Date, or if an actuary is appointed under clause 5.2 to determine an index, the number certified by that actuary;

"Rate" means the interest rate specified in item 6 of Schedule 1;

"Rates and Taxes" means:

- (a) council rates and charges including but not limited to, rubbish removal rates and charges (but not including rates levied in connection with the installation of underground power for the Leased Premises);
- (b) land tax (including metropolitan region improvement tax) on a single holding basis;
- (c) water, drainage and sewerage rates, including but not limited to meter rents, charges for the disposal of storm water and excess water charges;

levied, charged, assessed or imposed in respect of any part of the Leased Premises or the ownership or occupation of any part of the Leased Premises including but not limited to stamp and transaction duties, together with any related interest, penalties, fines and expenses in connection with them but excluding any tax imposed by the *Income Tax Assessment Act 1936 (Cth.)* or the *Income Tax Assessment Act 1997 (Cth.)*;

"Relevant Authority" means any government, statutory, public or other authority or body having jurisdiction over the Leased Premises or any matter or thing relating to the Leased Premises;

"Rent" means the rent specified in item 7 of Schedule 1 as reviewed in accordance with this Lease;

"Rent Review Date" means each rent review date as specified in item 8 of Schedule 1;

"Requirements" means any requirements, notices, orders or directions of any Relevant Authority;

"Schedule" means a schedule to this Lease;

"Services" means any telecommunication, electricity, gas, oil, fuel, water or other similar commodity, facility or service in, to or on the Leased Premises or otherwise serving the Leased Premises or, where applicable, any other part of the Land;

"State" means the State of Western Australia;

"Tenant's Business" means the business carried on by the Tenant from the Leased Premises;

"Tenant's Fixtures" means each fixture and fitting installed by the Tenant in or on the Leased Premises with the Landlord's consent which is not, or is not re-

classified as, a Landlord's Fixture in accordance with this Lease, and for the avoidance of doubt, includes without limitation, the Tenant's Works;

"Tenant's Obligations" means each covenant, obligation and duty contained or implied in this Lease or required by law to be performed by the Tenant, the Guarantors, or any Authorised Persons;

"Tenant's Proportion" means in relation to Variable Outgoings:

- (a) where the outgoing relates solely to the Leased Premises, 100 percent of the outgoings; and
- (b) where the outgoing relates to the Land, then an amount which bears the same proportion to the amount of the Variable Outgoings as the area of the Leased Premises bears to the Gross Area of the Land, as specified in item 14(b) of the Schedule 1;

"Tenant's Rights" means the Tenant's rights under this Lease or implied by law, including without limitation:

- (a) the exclusive right to use any (if any):
  - (ii) Landlord's Fixtures in the Leased Premises from time to time;
  - (iii) Plant and Equipment (if any);
  - (iv) Facilities in the Leased Premises (if any); and
  - (v) Services; and
- (b) the non-exclusive right to use any (if any):
  - (i) Landlord's Fixtures in;
  - (ii) Plant and Equipment in, on or serving;
  - (iii) Facilities in; and
  - (iv) Services supplying,

any other part of the Land and the Common Areas (if any) in common with the Landlord, the Occupiers and others, as required for the conduct of the Tenant's Business;

"Tenant's Works" means the development of the Leased Premises by the Tenant in accordance with:

- (a) the Approvals,
- (b) the Plans and Specifications; and
- (c) the terms and conditions set out in this Lease;

and which development can be generally described as involving:

- (d) the construction of:

- (i) six fuel storage tanks in a concrete bund;
  - (ii) a site office;
  - (iii) a hardstand;
  - (iv) traffic areas;
  - (v) fencing around the Leased Premises; and
  - (vi) a sealed access road connecting the Leased Premises to the existing road network; and
- (e) the general landscaping of the Leased Premises

"Term" means the term specified in item 9 of Schedule 1;

"Termination" means the expiry of the Term by effluxion of time or by earlier termination in accordance with this Lease;

"Variable Outgoings" includes, but is not limited to all the costs and outgoings charged to or incurred by the Landlord in respect of the Leased Premises or the Land or in the administration, security, operation or Maintenance of the Leased Premises or the Land including, but not limited to, the following:

- (a) insuring the Plant and Equipment against any risk whatsoever against which a prudent landlord would insure;
- (b) supplying, providing and Maintaining:
  - (i) Services to and any Facilities in the Common Areas;
  - (ii) the Plant and Equipment;
  - (iii) any item of consumables or services to or for the Common Areas or for the benefit of the Occupiers;
  - (iv) Services to the Land including, but not limited to, lighting, fire fighting and prevention systems and emergency generators;
  - (v) security systems and security personnel, including employees and independent contractors, for the Leased Premises; or
  - (vi) lighting for and signs in the Common Areas;
- (c) cleaning the Common Areas;
- (d) landscaping, gardening and reticulating any parts of the Leased Premises or the Land;
- (e) policing and regulating traffic in the Common Areas;
- (f) employing staff to undertake the matters referred to in this definition;
- (g) leasing, management, administration and operation costs and fees for undertaking the matters referred to in this definition;

- (h) storing, treating and removing all kinds of general waste, including rubbish and sewerage, from the Leased Premises or the Land;
- (i) Rates and Taxes;
- (j) legal and audit fees and disbursements in relation to the matters referred to in this definition;
- (k) leasing any plant, equipment or other item required for or in connection with the operation of the Land or the Leased Premises;
- (l) providing car parking areas, toilets, rest rooms and other public amenities on the Leased Premises or the Land;
- (m) any other expenditure properly incurred in the maintenance, repair or improvement of the amenities for the Land or the Leased Premises; and
- (n) taxes and statutory charges associated with the matters mentioned in this definition including but not limited to payroll tax, financial institutions duty, bank debits tax, tax on goods or services and taxes of a type not charged at the Commencement Date,

but excluding:

- (o) any amount separately charged to any Occupier; and

"Works Conditions" means that in carrying out the relevant works consented to by the Landlord under this Lease, the Tenant must:

- (a) do so:
  - (i) at the Tenant's cost;
  - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Landlord, acting reasonably;
  - (iii) using only good quality materials;
  - (iv) in full compliance with:
    - (A) and only after obtaining the approvals of, all Relevant Authorities;
    - (B) and subject to the conditions of, the Landlord's consent in relation to those works;
    - (C) plans and specifications approved by the Landlord;
    - (D) all Requirements and Laws, including but not limited to Civil Aviation Safety Standards;
  - (v) using a qualified and competent contractor engaged by the Tenant (who has a public liability policy of not less than \$5,000,000.00 and appropriate contract construction risk, workers compensation and other usual insurances, which insurance must note the rights and interest of the Landlord

and evidence of which must be provided to the Landlord);

- (b) ensure that the Tenant and all its employees, agents, contractors and workmen employed in executing the relevant works:
  - (i) duly and punctually comply with the reasonable directions of the Landlord in relation to their conduct in and access to the Leased Premises and when going to and from the Land and Leased Premises; and
  - (ii) do not do or permit any act or thing to be done which may be a nuisance or cause damage, disturbance or offence to the Landlord or other Occupiers;
- (c) if required by the Landlord, erect and maintain a fence around the Leased Premises during the erection and completion of the works and ensure that such fence is sufficiently sound, high and secure to prevent entry upon the Leased Premises by unauthorised persons and members of the public;
- (d) clean up the Leased Premises progressively during the construction, installation or demolition of the works as the case may be and promptly remove from the Leased Premises all rubbish and waste arising from such works; and
- (e) pay on demand to the Landlord:
  - (i) all the reasonable costs of the Landlord in connection with the relevant works including the Landlord's administrative and other reasonable costs of giving consent and the fees of any architect or other consultant used by the Landlord in connection with the relevant works EXCEPT THAT such costs do not include any costs or expenses incurred by the Landlord or entitled to be recovered by the Landlord in its capacity as the local government charged with the responsibility of approving such works; and
  - (ii) all costs and expenses incurred or arising as a consequence of any disruption caused by the Tenant or the Tenant's contractors on the Leased Premises in carrying out the relevant works.

"Written Law" has the same meaning given to that term in the *Interpretation Act 1984*.

#### 1.2 Interpretation

The following interpretations shall apply:

- (a) words importing the singular shall include the plural and vice versa, words importing gender shall include the masculine, feminine and neuter genders and words importing persons shall include individuals, firms, associations, partnerships, government authorities, incorporated and unincorporated entities and corporations;

- (b) if two (2) or more persons by this deed undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound thereby jointly and jointly and severally;
- (c) a reference to this deed includes a reference to any Schedule, Recital, Part, Clause, Sub-clause, paragraph or Annexure in or to this deed, and in or to this deed as amended, novated, supplemented, varied or replaced from time to time, and vice versa;
- (d) a reference to a Statute, Act or Code, Regulation or By-law or to any section, sub-section or paragraph thereof, includes any statutory amendment, replacement, consolidation, modification or re-enactment thereof from time to time, and for the time being in force, and all ordinances, by-laws, regulations, and other statutory instruments issued thereunder;
- (e) where the day or last day for doing an action or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is not a Business Day, the day or last day for doing that act or payment of that money or on which that entitlement arises or notice is deemed served, shall be deemed to be the next Business Day;
- (f) where any requirement, calculation or payment of money might otherwise fall to be performed or paid on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> day of a month which does not contain such a date, then references thereto shall be construed as references to the last day of that month;
- (g) a reference to any Party includes that Party in its own right and in its capacity as trustee of any trust (whether specified or not), and also includes that Party's executors, administrators, successors, substitutes and permitted assigns in accordance with this Deed, including any person taking by way of novation;
- (h) all headings and any table of contents or index have been inserted for convenience purposes only and shall not affect the interpretation hereof;
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
- (j) all references to monetary amounts are references to Australian dollars unless stated otherwise;
- (k) a reference to:
  - (i) a right includes a benefit, remedy, discretion, authority or power;
  - (ii) an obligation includes a warranty or representation;
  - (iii) a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (iv) provisions or terms of this deed include a reference to both express and implied provisions or terms;

- (v) writing includes any means or mode of representing or reproducing words in a tangible and permanently visible form, and includes facsimile transmissions.
- (vi) signature and signing includes due execution by a corporation or other relevant entity;
- (vii) a month means a calendar month;
- (viii) conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing; and
- (ix) an amount for which a person is contingently liable includes, without limitation, an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise;
- (l) each paragraph or sub-paragraph in a list is to be read independently from the others in that list;
- (m) no rule of construction of documents shall apply to the disadvantage of a Party, on the basis that that Party put forward this document or any relevant part of it;
- (n) "including" and similar expressions are not words of limitation;
- (o) a covenant, agreement, representation or warranty in favour of two (2) or more persons is for the benefit of them jointly and severally;
- (p) a reference to a statutory, professional or industry body includes a reference to a successor or substitute for that body;
- (q) unless repugnant to the context, a covenant by a Party to do or omit to do anything includes a covenant by an Authorised Person to do or omit to do that thing, and the Party is liable for all acts or omissions of an Authorised Person;
- (r) a general description of any matter or thing whatever shall not be read down if followed by any specific examples of that matter or thing;
- (s) derivatives of a word or expression defined in clause 1.1 have a corresponding meaning to that assigned to it in that clause; and
- (t) a reference to "Landlord" is a reference to the Shire of Wyndham East Kimberly in its capacity as landlord and not in its capacity, and separate and distinct from its capacity, as a local authority.

## 2. **Operative part**

### 2.1 **Lease of Premises**

In consideration of the Tenant agreeing to duly pay the Rent and other money payable under this Lease and to duly observe and perform the Tenant's Obligations, the Landlord:

- (a) leases the Leased Premises to the Tenant; and

- (b) grants the Tenant's Rights to the Tenant; and
- (c) grants to the Tenant a non-exclusive licence to pass over the Licensed Area for the purposes of pedestrian and vehicular access to and egress from the Leased Premises,

for the Term commencing on the Commencement Date subject to the reservation of the Landlord's rights under this Lease.

2.2 Quiet enjoyment

The Landlord warrants that the Landlord has full capacity to grant this Lease and, if the Tenant duly pays the Rent and other money payable under this Lease and duly observes and performs the Tenant's Obligations, the Landlord agrees that the Tenant may quietly hold the Leased Premises and enjoy the Tenant's Rights during the Term without any disturbance from the Landlord or any person lawfully claiming through the Landlord, except to the extent that interruption, disturbance or interference arises because of the exercise of the Landlord's rights or is otherwise permitted by any provision of this Lease.

2.3 Tenant responsible as if owner

The Tenant is subject to the same responsibilities relating to persons and property during the Term as if the Tenant were the owner of the Leased Premises.

2.4 Conditions Precedent

- (a) This Lease is subject to and expressly conditional upon:
  - (i) the Landlord complying with the procedures set out in section 3.58 of the *Local Government Act 1995* relating to disposal of property ("**Local Government Condition**");
  - (ii) the Western Australian Planning Commission ("**WAPC**") approving this Lease, if such approval is required by law ("**WAPC Approval Condition**"); and
  - (iii) the Tenant obtaining all necessary Approvals to undertake the Tenant's Works from all Relevant Authorities, including the prior consent of the Landlord ("**Development Condition**").

- (b) The Parties covenant and agree that:

Best endeavours

- (i) where relevant, the Parties will each use their best endeavours to satisfy the Conditions Precedent;

Local Government Condition

- (ii) the Landlord will bear all costs associated with satisfying the Local Government Condition;

WAPC Approval Condition

- (iii) if the approval of the WAPC is required and if the Landlord has not already done so, the Landlord will make an application for such approval within three (3) months after the date of the Lease;
- (iv) the Tenant will bear all the costs associated with satisfying or attempting to satisfy the WAPC Approval Condition, including but not limited to any application fees;
- (v) if the WAPC:
  - (A) refuses to grant the approval; or
  - (B) grants the approval subject to a condition with which the Landlord in its sole and absolute discretion is unwilling to comply with or considers not otherwise acceptable and the Landlord at any time after being notified of the condition elects, by notice in writing to the Tenant, to withdraw from the Lease;

THEN this Lease but for this clause 2.4 ceases to have effect and no Party has any claim against any other Party;

Development Condition

- (vi) the Tenant will bear all the costs associated with satisfying or attempting to satisfy the Development Condition, including but not limited to any application fees; and
- (vii) if any Approval:
  - (A) is refused; or
  - (B) granted subject to a condition with which the Tenant in its reasonable opinion is unable to comply with, and the Tenant within ten (10) Business Days after being notified of the condition elects, by notice in writing to the Landlord, to withdraw from the Lease,

THEN this Lease but for this clause 2.4 ceases to have effect and no Party has any claim against any other Party.

2.5 Discretion of the Shire

The parties agree and acknowledge that nothing in this Deed shall fetter or be construed as an attempt to fetter the discretion or the powers of the Shire under any Written Law and in particular does not fetter the Shire with regard to the approval or imposition of conditions on any approval required for the development of the Land or carrying out of the Tenant's Works in accordance with this Lease.

3. Reservation of Landlord's rights

Without limiting any other provision of this Lease, the Landlord reserves the following rights:

(a) *Improvements to Leased Premises*

the Landlord may at any time carry out improvements to the Leased Premises, including, without limitation:

- (i) construct new structures on the Leased Premises;
- (ii) alter, add to, extend, reduce the size of, or otherwise modify, existing structures on the Leased Premises;
- (iii) any other Landlord's Works,

but in exercising these rights, the Landlord shall use the Landlord's reasonable endeavours not to cause any undue interference with the conduct of the Tenant's Business;

(b) *Right to enter*

- (i) the Tenant shall permit the Landlord to enter the Leased Premises at all reasonable times on the giving of reasonable notice and in the presence of a person authorized by the Tenant, or immediately in the case of emergency, with or without workmen and materials to:
  - (A) view the state of repair of the Leased Premises and to ensure compliance with the Tenant's Obligations;
  - (B) comply with any requirement or order of any local government or other statutory authority;
  - (C) carry out any Maintenance, modification, installation or extension to the Leased Premises or the Land, the Plant and Equipment or cables, pipes or wires within the Leased Premises or the Land; and
  - (D) view the Leased Premises with any persons interested in the Land or the Leased Premises;

except that the Landlord shall use the Landlord's reasonable endeavours not to cause any undue interference with the conduct of the Tenant's Business; and

- (ii) the Landlord may enter the Leased Premises at any time for the purpose of doing anything which should have been done by the Tenant under this Lease but which has not been done or has not been done properly;
- (iii) the Landlord's right of entry under this clause 3(b) allows the Landlord to enter in the Leased Premises with or without workmen or other interested persons and, in the case of works that are required to be undertaken, with all necessary plant, equipment and materials to effect those works;

(c) *Common Areas*

with respect to structures and facilities in the Common Areas (if any), the Landlord may in its absolute discretion at any time, erect or modify such structures or facilities;

(d) *Granting easements etc*

the Landlord may grant easements of support or any other easements or similar rights over any part of the Land or the Leased Premises or dedicate, transfer or otherwise deal with any part of the Land or the Leased Premises in favour of another person for any reason whatsoever except that the Landlord shall not without the Tenant's prior consent do anything which will substantially and permanently derogate from the quiet enjoyment of the Tenant's Rights by the Tenant;

(e) *Re-classification of fixtures and fittings*

the Landlord may by notice to the Tenant at any time or times re-classify any Tenant's Fixtures which it reasonably considers form an integral part of the Leased Premises as Landlord's Fixtures. Ownership of the Tenant's Fixtures specified in the notice will pass to the Landlord on the giving of the notice and the Tenant shall have no right of compensation against the Landlord for such re-classification; and

(f) *Managing Agent*

the Landlord may appoint a Managing Agent to manage the Leased Premises and represent the Landlord in relation to this Lease. If the Landlord appoints a Managing Agent, the Managing Agent may exercise the Landlord's rights and powers under this Lease. The Landlord may at any time vary or terminate the authority of the Managing Agent. Any decision made by the Landlord overrides any decision made by the Managing Agent if there is any inconsistency between those decisions.

4. **Rent**

The Tenant must pay the Rent to the Landlord in the manner specified in item 7 of Schedule 1 at the Landlord's address in this Lease or any other address stipulated by the Landlord or by any other method specified by the Landlord, including without limitation by direct bank deposit, without deduction or set-off (including but not limited to equitable set-off) except that the first and last payments will be apportioned on a daily basis in respect of periods of less than a month, and the first payment is due on the Commencement Date.

5. **Rent review**

5.1 **General**

On each Rent Review Date, the Rent shall be reviewed in the manner set out in the following paragraphs of this clause 5.

5.2 **CPI Rent Review**

- (a) With effect from each CPI Rent Review Date, the Rent shall be reviewed so that it is the greater of the annual Rent payable immediately before the relevant CPI Rent Review Date or the sum calculated on the basis of the following formula:

$$RR = (R \times CCPI) \text{ divided by } PCPI$$

Where:

- "RR" = the annual Rent as reviewed;
- "R" = the annual Rent payable immediately before the relevant CPI Rent Review Date;
- "CCPI" = the Current CPI; and
- "PCPI" = the Previous CPI.

- (b) The Landlord may not earlier than three (3) months before a CPI Rent Review Date give the Tenant a notice setting out the amount of the reviewed Rent which shall be payable from the CPI Rent Review Date ("CPI Rent Review Notice"), except that the failure of the Landlord to give such a notice before the CPI Rent Review Date does not preclude the Landlord from giving such a notice in respect of that CPI Rent Review Date at any later time.

(c) Determination of Current CPI or Previous CPI

If for the purposes of a CPI Rent Review under clause 5.2(a), the Consumer Price Index number is not published or, in the opinion of the Landlord there is a material change in the basis on which the Consumer Price Index is determined, or no Consumer Price Index number was published in the twelve (12) to fifteen (15) month period before the relevant CPI Rent Review Date for the purposes of determining the Previous CPI, then the Landlord may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

- (i) in respect of the Current CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at that CPI Rent Review Date; and
- (ii) in respect of the Previous CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at the date which is twelve (12) months prior to that CPI Rent Review Date;

and the actuary's determination will be binding on the Landlord and the Tenant and the Landlord and the Tenant will pay the actuary's costs in equal shares.

5.3 Fixed Increase of Rent

With effect from each Fixed Increase Review Date, the Rent payable by the Tenant shall be a sum calculated on the basis of the Rent payable immediately before that Fixed Increase Date multiplied by the percentage specified in item 8 of Schedule 1 next to each Fixed Increase Review Date.

6. Not to Cause Rent Reduction

The Tenant shall not by any act or omission cause, directly or indirectly, the Rent to be reduced or impose on the Landlord any liability of the Tenant under this Lease unless obliged to do so by any statute or with the consent of the Landlord.

7. **Variable Outgoings**

- 7.1 This clause 7 shall only apply if so specified in item 12 of Schedule 1.
- 7.2 If this clause applies, the Tenant shall pay to the Landlord, or as the Landlord directs, the Tenant's Proportion of Variable Outgoings within twenty-eight (28) days of the Landlord giving the Tenant a statement of Variable Outgoings under clause 7.4.
- 7.3 Except in the case of manifest error, a statement issued by the Landlord under clause 7.4 will be *prima facie* evidence of the matters stated in that statement.
- 7.4 As soon as reasonably practical after the expiry of each Lease Year, the Landlord shall issue to the Tenant a statement setting out details of the actual Variable Outgoings incurred or paid for that Lease Year. The Landlord may, from time to time during any Lease Year, issue interim statements under this clause 7.4 as and when the Landlord makes, or becomes liable to make, any payments in relation to any item of Variable Outgoings.
- 7.5 If the Variable Outgoings includes any GST, the Tenant must pay that tax.
- 7.6 If the Tenant disputes any matter arising out of this clause 7, the dispute shall be determined by an Accountant appointed by agreement between the Landlord and Tenant and failing agreement, within seven (7) days of a request by either party that an Accountant be appointed, then by the President for the time being of the Institute of Chartered Accountants (WA Division) and in accordance with the following:
- (a) the Accountant will act as an expert and not as an arbitrator;
  - (b) the decision of the Accountant will be final and binding on the Landlord and the Tenant;
  - (c) the costs of the Accountant shall be paid equally by the Landlord and the Tenant; and
  - (d) within twenty-eight (28) calendar days after the dispute being determined by the Accountant under this clause 7.6, any necessary adjustment will be made to the Landlord's statement given under clause 7.4.

8. **Bulk Supply of Services**

8.1 Services separately assessed

The Tenant must pay to the Landlord or, if demand is made by a service provider, or statutory or other public authority, to that statutory or other public authority, all amounts separately charged or assessed in respect of the Leased Premises or the Tenant for or in connection with Services to or for the benefit of the Leased Premises or the Tenant, and the cost of installation of any meter, wiring or other device necessitated by the use of the Services.

9. **Use of Leased Premises and Facilities**

- 9.1 The Tenant shall not:

- (a) use the Leased Premises for any purpose other than the Authorised Use specified in item 1 of Schedule 1 or for any purpose for which the Leased Premises was not designed or designated; and
  - (b) use each Facility, Service, item of Plant and Equipment or Landlord's Fixture for a purpose for which it was not designed or designated.
- 9.2 Unless otherwise permitted by the Landlord in writing, the Tenant must not carry on any business in or from the Leased Premises except the Tenant's Business.
- 9.3 The Tenant accepts the Leased Premises for the Term with full knowledge of and subject to any existing prohibition, condition or restriction on the use of the Leased Premises.
- 9.4 If the carrying on of the Tenant's Business at the Leased Premises is permissible only with the consent, licence or authority under any statute, the Tenant shall obtain and maintain the currency of that consent, licence or authority and comply with that statute.
- 9.5 The Tenant:
- (a) shall comply with the Landlord's reasonable requirements for the use of each Facility, Service, item of Plant and Equipment and Landlord's Fixtures;
  - (b) shall not do or omit to do any thing which might interfere with or impair the efficient supply or operation of each Facility, Service, item of Plant and Equipment or Landlord's Fixtures; and
  - (c) in the conduct of the Tenant's Business comply strictly with all relevant requirements imposed by any act, regulation, law or local authority.

10. **Security of Building and Leased Premises**

- 10.1 The Tenant shall:
- (a) securely lock all doors, gates or other openings in, to or on the Leased Premises when the Leased Premises are unoccupied; and
  - (b) if required by the Landlord install in and operate on the Leased Premises a security alarm system approved by the Landlord.
- 10.2 The Landlord may enter the Leased Premises at any time for any purpose in relation to security, but nothing in this clause makes the Landlord responsible in any way for the security of the Leased Premises.

11. **Covenant to Repair and Maintain**

- 11.1 The Tenant shall:
- (a) Maintain the Leased Premises in good condition except in respect of:
    - (i) fair wear and tear;
    - (ii) damage which is or will be reinstated from the proceeds of insurance; and

- (iii) structural damage to the Leased Premises which has not been caused by an act or omission of the Tenant or an Authorised Person;
  - (b) promptly repair any damage to the Leased Premises for which the Tenant is responsible to the satisfaction of the Landlord;
  - (c) keep the Leased Premises clean and free from rubbish;
  - (d) Maintain the Landlord's Fixtures and the Facilities in the Leased Premises (if any) in good condition except in respect of fair wear and tear and damage which is or will be reinstated from the proceeds of an insurance policy, and where necessary, replace that Landlord's Fixture or the Facility to the satisfaction of the Landlord;
  - (e) maintain the Tenant's Fixtures in clean and good condition;
  - (f) promptly replace any broken glass in the Leased Premises; and
  - (g) keep all drains and other pipes in or connected to the Leased Premises properly cleaned and free-flowing;
- 11.2 If the Tenant does any work, other than the Tenant's Works, which affects the Leased Premises, such substantial alterations, work relating to Services, substantial repairs or maintenance or required structural work, the Tenant must:
- (a) comply with all relevant requirements of an authority and all laws and standards;
  - (b) before carrying out any work, obtain the Landlord's approval to the plans and specifications for the work;
  - (c) carry out the work in a safe and proper manner;
  - (d) use only good quality materials;
  - (e) employ only qualified and competent persons; and
  - (f) pay to the Landlord when the Landlord requests any expenses incurred by the Landlord in approving the work, including fees paid to architects, engineers, contractors or other advisors.

12. **Positive covenants**

The Tenant shall:

- (a) pay to the Landlord on demand all money paid by the Landlord on behalf of the Tenant in the discharge of any of the Tenant's liabilities under this Lease;
- (b) pay to the Landlord on demand all amounts payable by the Landlord in respect of legal costs and disbursements of and incidental to the instructions for and the preparation and execution of the Lease and each other instrument required to be prepared and executed under this Lease (all on a solicitor and own client basis);

- (c) pay to the Landlord on demand on a full indemnity basis all amounts payable by the Landlord in respect of legal costs and disbursements of and incidental to:
  - (i) any breach of the Tenant's Obligations; and
  - (ii) each action, suit, proceeding or matter arising out of or incidental to any document, or thing referred to in clauses 12(b) and 12(c)(i);
- (d) pay all stamp duty, fines and penalties payable under the *Duties Act 2008 (WA)* on this Lease;
- (e) keep the Facilities within the Leased Premises unobstructed;
- (f) report promptly to the Landlord or the Managing Agent in writing:
  - (i) all damage or defects in the Leased Premises, the Landlord's Fixtures, the Plant and Equipment or the Facilities in or on the Leased Premises of which the Tenant is or ought to be aware;
  - (ii) any malfunction of any Plant and Equipment or Facility either on the Leased Premises or used by the Tenant; and
  - (iii) any circumstances likely to be a danger or cause any damage or danger to the Leased Premises or any person in or on the Leased Premises of which the Tenant is aware;
- (g) remove on a regular basis rubbish which is not of a kind usually removed by the local government authority;
- (h) comply promptly with all legislation and by-laws affecting the Leased Premises or the use of the Leased Premises including any structural work in respect of the Tenant's Works;
- (i) observe and comply with any conditions of supply of Services by the Landlord, or where no conditions of supply are imposed by the Landlord, observe and comply with the conditions of supply of Services imposed by the relevant supply authority;
- (j) if any Service is not provided by the Landlord, make the Tenant's own arrangements at the Tenant's own cost for the supply of the Service to the Leased Premises. For the avoidance of doubt, the Landlord is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Leased Premises;
- (k) pay to the Landlord (or any other person as the Landlord may from time to time nominate), irrespective of any other provision of the Lease, the whole of any assessment for trade waste, excess water or other costs incurred or determined by the Landlord, in good faith, to have been incurred in respect of the Leased Premises as a result of any unusual use or circumstance relating to the Leased Premises;
- (l) on demand by the Landlord, pay the Landlord interest on any Rent, or other money payable under this Lease which is not paid on the due date calculated at the Rate specified in item 6 of Schedule 1 from the due date for payment until the date of actual payment; and

- (m) comply, and shall cause each of its Authorised Persons to comply, with all directions made or given by the Landlord in relation to the use of the Common Areas (if any);
- (n) notify the Landlord immediately of any notice or order received from any court relating to the Leased Premises or the Common Areas; and
- (o) take all reasonable precautions to keep the Leased Premises free of vermin including, but not limited to, engaging qualified pest exterminators to treat the Leased Premises from time to time during the Term.

13. **Negative covenants**

The Tenant shall not:

- (a) without the Landlord's prior consent make any alteration to or addition to or demolish any part of the Leased Premises, or remove or alter any of the Landlord's Fixtures, the Plant and Equipment or any Facility in or on the Leased Premises;
- (b) except for reasonable quantities for normal applications in connection with the use of the Leased Premises and in the carrying out of the Tenant's Business, bring onto, store or use any chemical or inflammable substance in or on the Building or the Leased Premises;
- (c) fail to comply with and observe the reasonable requirements of the Landlord in the use of the Plant and Equipment;
- (d) without the Landlord's prior consent, use any Service, heating, cooling, lighting or power, except battery power, other than that consented to by the Landlord;
- (e) without the Landlord's prior consent, install any electrical equipment on the Leased Premises which might overload the cables, switchboards or sub-boards through which electricity is connected to the Leased Premises;
- (f) do or omit to do anything which might cause the Leased Premises to deteriorate or become impaired except for fair wear and tear, to be obstructed, or to be in a condition other than a good and sanitary condition;
- (g) except as is lawful and necessary and an ordinary incident of carrying out the Tenant's Business, do or carry on in the Leased Premises any activity which might be harmful, offensive or illegal, or cause a nuisance, damage or disturbance to the Landlord or the Occupiers or the owners or occupiers of any nearby properties unless with the prior consent of any necessary authority and the Landlord;
- (h) without the Landlord's prior consent, erect or place on or in the Leased Premises any radio or television aerial or antenna;
- (i) without the Landlord's prior consent, place or operate in any part of the Leased Premises any radio, television, loud speaker, amplifier or other similar device;
- (j) store goods on or in the Leased Premises other than those necessary in the carrying out of Tenant's Business;

- (k) place any rubbish on or in any part of the Leased Premises except in a suitable receptacle;
- (l) burn any rubbish in or on the Leased Premises, unless permitted by law and a necessary and ordinary incident of the Tenant's Business;
- (m) lodge an absolute caveat to protect the Tenant's interest in the Leased Premises;
- (n) fail to remove a subject to claim caveat lodged by the Tenant over the Leased Premises on Termination of this Lease;
- (o) conduct any business in or from the Leased Premises at any time prohibited by law;
- (p) without the prior written consent of the Landlord, by any act or omission cause any insurance policy effected under this Lease or in respect of the Leased Premises to be void or voidable, or cause the rate of premium to be increased;
- (q) deliver or permit to be delivered goods or materials to or from the Leased Premises except in a manner which causes minimum interference to other Occupiers; or
- (r) in relation to the Common Areas (if any):
  - (i) cause an obstruction in any part of the Common Areas;
  - (ii) use any part of the Common Areas for purposes for which they are not designed;
  - (iii) leave any goods or articles in any part of the Common Areas; or
  - (iv) conduct any business from the Common Areas.

14. **Tenant's Obligation to effect insurances**

- (a) The Tenant shall effect and maintain in the names of the Landlord and the Tenant with an insurance company approved by the Landlord all policies of insurance relating to the Leased Premises or otherwise as reasonably required by the Landlord from time to time, including policies of insurance in respect of the matters referred to in item 10 of Schedule 1 and the Tenant shall:
  - (i) supply to the Landlord current details of all insurance effected in accordance with this clause, including copies of certificates of insurance or policy documents and receipts for premiums as updated, amended or varied from time to time;
  - (ii) not without the Landlord's prior consent, alter the terms or conditions of any policy; and
  - (iii) ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Landlord.
- (b) Subject to the Tenant being BP Australia Pty Ltd and BP Australia Pty Ltd being accredited as a self insurer, clause 14(a) will not apply to this lease, but

upon the assignment of the lease to any other party, the assignee will be bound to comply with clause 14(a).

15. **Indemnities**

15.1 **General indemnity**

Except to the extent contributed to by the Landlord, the Tenant shall indemnify and keep indemnified the Landlord against all losses, claims, damages, demands, costs and expenses for which the Landlord becomes liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:

- (a) which are caused or contributed to by the use or occupancy of the Leased Premises by the Tenant, an Authorised Person or any other person, except to the extent caused or contributed to by the Landlord;
- (b) resulting from an act or omission of the Tenant; or
- (c) resulting from a notice, claim or demand against the Tenant to do or refrain from doing any thing except to the extent that the Landlord is obliged by this Lease to pay for or contribute to the cost of compliance with the notice, claim or demand and fails to do so.

15.2 **Nature of indemnity**

The obligation of the Tenant to indemnify the Landlord under this Lease or at law is not affected by the obligation of the Tenant to effect insurance.

16. **Assignment**

16.1 **No assignment**

The Tenant shall not assign, mortgage or charge the Tenant's leasehold estate in the Leased Premises, nor sublet, part with possession or dispose of the Leased Premises in any way.

16.2 **Property Law Act excluded**

Sections 80 and 82 of the *Property Law Act* 1969 of the State are excluded.

16.3 **Changes in beneficial ownership of shares**

If the Tenant is a company whose shares are not listed on any Stock Exchange in Australia, a change in the beneficial ownership of more than fifty per cent (50%) of the shares or the redemption, cancellation or issue of shares in that company or any holding company of that company will be deemed to be an assignment of the Tenant's leasehold estate.

16.4 **Landlord may consent to assignment**

The Tenant will not be in breach of the covenant in clause 16.1 in respect of an assignment if the Landlord consents to the assignment. The Landlord will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Tenant satisfies the Landlord that:

- (i) the proposed assignee is a respectable and responsible person of good financial standing, with sound business acumen, with adequate business experience and who is capable of meeting all the financial commitments of the Tenant under this Lease;
  - (ii) there is no Rent or other money payable under this Lease due but unpaid; and
  - (iii) there is no unremedied breach of the Tenant's Obligations and there have been no substantial breaches of the Tenant's Obligations during the Term;
- (b) the Tenant procures the execution by the proposed assignee of an assignment of lease prepared by the Landlord's solicitors at the Tenant's cost which contains terms acceptable to the Landlord, including a covenant by the proposed assignee with the Landlord to pay all Rent and other money payable under this Lease and to observe and perform all of the Tenant's Obligations;
  - (c) if the proposed assignee is a company, the directors or substantial shareholders of the company at the option of the Landlord guarantee to the Landlord the observance and performance of all of the Tenant's Obligations including payment of the Rent and other money payable under this Lease; and
  - (d) the Tenant agrees that the covenants of the assignee are independent of the covenants of the Tenant in this Lease and will not release or relieve the Tenant from the Tenant's Obligations and the Tenant acknowledges that the Tenant will continue to be fully responsible for the Tenant's Obligations notwithstanding the assignment of the Lease to the proposed assignee, particularly on the occurrence of an Event of Default by the proposed assignee or any other party.

16.5 Landlord may consent to sublease

The Tenant will not be in breach of the covenant in clause 16.1 in respect of a sublease of the whole or part of the Leased Premises if the Landlord consents to the sublease. The Landlord will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Tenant satisfies the Landlord that:
  - (i) the proposed subtenant is a respectable and responsible person of a good financial standing, with sound business acumen, with adequate business experience and who is capable of meeting all the financial commitments of the subtenant under a sublease of this Lease;
  - (ii) the sublease will be granted without any fine or premium, and at a rent per square metre of the subleased area at least equal to the Rent payable under this Lease;
  - (iii) there is no Rent or other money payable under this Lease due but unpaid; and

- (iv) there is no unremedied breach of the Tenant's Obligations and there have been no substantial breaches of the Tenant's Obligations during the Term;
- (b) the Tenant procures the execution by the proposed subtenant of a sublease approved by the Landlord or the Landlord's solicitors at the Tenant's cost which contains terms consistent in all respects with this Lease and acceptable to the Landlord;
- (c) if the proposed sub tenant is a company, the directors or substantial shareholders of the company at the option of the Landlord guarantee to the Landlord the observance and performance by the proposed subtenant of all of the Tenant's Obligations as if the proposed sub tenant were named in this Lease as the Tenant; and
- (d) the Tenant agrees that the covenants of the subtenant are independent of the covenants of the Tenant in this Lease and will not release or relieve the Tenant from the Tenant's Obligations and the Tenant acknowledges that the Tenant will continue to be fully responsible for the Tenant's Obligations notwithstanding the sublease of the Lease to the proposed subtenant, particularly on the occurrence of an Event of Default by the proposed subtenant or any other party.

16.6 Landlord may consent to charge

- (a) The Tenant will not be in breach of the covenant in clause 16.1 in respect of a charge or mortgage if the Tenant obtains the Landlord's consent to that charge or mortgage.
- (b) The Landlord may consent to, or refuse to give its consent to, a charge or mortgage in its absolute discretion.

16.7 Compliance with Acts

The Landlord and the Tenant acknowledge that if in granting its consent to any assignment or sublease the Landlord has to first comply with or satisfy any obligations or requirements under any Written Law, the *Local Government Act 1995* or related Acts, including but not limited to section 3.58 of the *Local Government Act 1995* ("**Assignment/Sublease Condition Precedent**"), then the Landlord's consent is made expressly conditional upon and subject to satisfaction of the Assignment/ Sublease Condition Precedent.

17. Damage, Destruction or Resumption

17.1 Definitions

In this clause 17:

- (a) "Reinstatement Notice" means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the Reinstatement Works; and
- (b) "Reinstatement Works" means the work necessary to:
  - (i) reinstate the Leased Premises; or

- (ii) make the Leased Premises fit for occupation and use or accessible by the Tenant.

17.2 Abatement

- (a) If the Leased Premises are damaged or destroyed so as to render any part of the Leased Premises wholly or substantially:

- (i) unfit for occupation and use by the Tenant; or
- (ii) inaccessible having regard to the nature and location of the Leased Premises and the normal means of access to them;

AND

- (iii) the Tenant's insurance moneys are rendered irrecoverable as a consequence of an act, omission or default by the Landlord, its servants, agents or contractors;

THEN from the date that the Tenant notifies the Landlord of the damage or destruction ("Damage Notice"):

- (iii) the Rent;
- (iv) any other money payable by the Tenant under this Lease; and
- (v) the covenant to repair and maintain;

will abate according to the nature and extent of the damage or destruction sustained.

- (b) If clause 17.2(a) applies, the remedies for:

- (i) recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or
- (ii) enforcement of the covenant to repair and maintain;

will be suspended (or partially suspended as the circumstances require) from the date of the Damage Notice until the Leased Premises are:

- (iii) restored;
- (iv) made fit for the Tenant's occupation and use; and
- (v) made accessible.

17.3 Either Party May Terminate

If clause 17.2(a) applies, either party may terminate this Lease by notice to the other unless the Landlord:

- (a) within ninety (90) calendar days of receiving the Damage Notice, gives the Tenant a Reinstatement Notice; and
- (b) diligently proceeds within a reasonable time to carry out the Reinstatement Works.

17.4 Tenant May Terminate

If the Landlord gives a Reinstatement Notice to the Tenant and fails to commence the Reinstatement Works within a reasonable time, the Tenant may terminate this Lease by giving not less than thirty (30) calendar days' notice to the Landlord and, at the expiration of that period, this Lease will terminate.

17.5 Exceptions

Clauses 17.2, 17.3 and 17.4 will not apply where:

- (a) the damage or destruction was contributed to, or also caused by or arises from any wilful act of the Tenant or an Authorised Person; or
- (b) an insurer under any policy effected by the Landlord under this Lease refuses indemnity or reduces the sum payable under the policy because of any act or default of the Tenant or an Authorised Person.

17.6 Landlord to Terminate

If the Landlord considers the damage to the Leased Premises renders it impractical or undesirable to carry out the Reinstatement Works, the Landlord may terminate this Lease by giving not less than thirty (30) calendar days' notice to the Tenant and, at the expiration of that notice, this Lease will terminate.

17.7 Antecedent Breaches

No liability will attach to either party because of termination of this Lease under this clause 17 but that termination will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision of this Lease.

17.8 Dispute Resolution

Any dispute arising out of the provisions of this clause 17 shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985 (WA)*, and the parties may each be represented by a legal practitioner of their choice.

17.9 Landlord Not Obligated to Reinstat

Nothing in this Lease obliges the Landlord to reinstate the Leased Premises or the means of access to them.

17.10 Proceeds of Insurance

If the Leased Premises are damaged or destroyed and the Lease is terminated under this clause 17, the Tenant will have no interest in the insurance proceeds.

17.11 Resumption of Leased Premises

If the Land or any part of the Land is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of

the Tenant, this Lease may be terminated without compensation or other liability by either the Landlord or the Tenant by thirty (30) calendar days' notice to the other but without affecting the rights of either party against the other in respect of any previous breaches of the provisions of this Lease.

18. Limit of Landlord's liability

18.1 No warranties or representations

The Tenant acknowledges and agrees that:

- (a) all the Tenant's property in or on the Land and the Leased Premises shall be at the sole risk of the Tenant during the Term and the Landlord shall not be liable for any claim, loss or damage that the Tenant may suffer as a result of:
  - (i) any fault in the construction or state of repair of the Leased Premises, the Tenant's Fixtures or the Landlord's Fixtures;
  - (ii) any defect in any of the Plant and Equipment, Facilities or the Services;
  - (iii) any flow, overflow, leakage or breakdown of any water, airconditioning, gas, power or other source of energy whether from the Leased Premises or otherwise;
- (b) the Landlord gives no warranty as to the use to which the Leased Premises may be put; and
- (c) the Tenant has not relied on any representation or warranty of the Landlord in entering into this Lease and, for this purpose, the Tenant acknowledges that:
  - (i) the Tenant has relied on the Tenant's own skill and judgment and has made the Tenant's own enquiries in determining the suitability of the Leased Premises for the Authorised Use and the Tenant's Business; and
  - (ii) the Tenant's occupation of the Leased Premises is conclusive evidence of the Tenant's acceptance of the Leased Premises as being in good order, repair and condition at the Commencement Date.

18.2 Landlord Not Liable

- (a) The Landlord is not liable to the Tenant and the Tenant will not make a claim against the Landlord in respect of any liability resulting from any accident, death, injury, damage to any property (including water damage), equipment, or machinery malfunction, interruption of Services or other event of a similar nature in or affecting or the Leased Premises unless caused by the negligence of the Landlord.
- (b) The Tenant acknowledges and confirms that the Tenant's non-exclusive right to use the Common Areas (if any) is subject to the rights of the other Occupiers.

18.3 Landlord only liable while registered proprietor

Each Landlord is only liable for any breaches under this Lease occurring while that person is the registered proprietor of the Leased Premises.

19. Default

An Event of Default occurs if:

- (a) the Tenant fails to pay the Rent, the Variable Outgoings or other money payable under this Lease for seven (7) Business Days after the Landlord has given written notice to the Tenant of the default;
- (b) the Tenant fails to perform any of the Tenant's Obligations other than the payment of moneys referred to in clause 19(a) for seven (7) Business Days after the Landlord has given written notice to the Tenant of the default;
- (c) distress is levied or a judgement, order, security or encumbrance is enforced against any property of the Tenant;
- (d) a receiver or receiver and manager or controller as defined in the *Corporations Act 2001 (Cth.)* is appointed in respect of any part of the Tenant's property;
- (e) the Tenant ceases to carry on the Tenant's Business from the Leased Premises; or
- (f) where the Tenant is a company and:
  - (i) an application is made to a court for an order or an order is made that the Tenant be wound up;
  - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Tenant;
  - (iii) except for the purposes of reconstruction or amalgamation, the Tenant enters into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of the Tenant's creditors;
  - (iv) the Tenant resolves to wind itself up or otherwise dissolve itself;
  - (v) the Tenant states that it is insolvent; or
  - (vi) the Tenant takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

20. Landlord's powers on default

20.1 Landlord's right of possession

On the occurrence of an Event of Default, the Landlord may without giving any further notice or demand enter the Leased Premises and re-take possession, and on re-entry, the Term will immediately determine.

20.2 Landlord may remedy Tenant's default

- (a) If an Event of Default occurs or the Tenant otherwise fails to perform any of the Tenant's Obligations, the Landlord may without prejudice to the Landlord's rights arising from the Event of Default or the failure to perform, remedy that Event of Default or the failure to perform as if the Landlord was the Tenant, at the Tenant's cost. The Tenant must pay to the Landlord all liabilities incurred by the Landlord in remedying an Event of Default or failure to perform.
- (b) None of the following events constitutes a re-entry or forfeiture or waiver of the Landlord's rights to recover in full all Rent, Variable Outgoings and other money payable by the Tenant under the Lease:
  - (i) acceptance of the keys or other access devices for the Leased Premises;
  - (ii) entry to the Leased Premises by the Landlord for the purpose of inspection or for the purpose of showing the Leased Premises to prospective Tenants or to remedy an Event of Default; or
  - (iii) advertising the Leased Premises for re-letting.

20.3 No prejudice of Landlord's rights

Any re-possession or attempted re-possession of the Leased Premises by the Landlord or any demand for or acceptance of any of the Rent, Variable Outgoings or other money payable under this Lease will not:

- (a) prejudice or affect the Landlord's rights under this Lease;
- (b) release the Tenant from performing the Tenant's Obligations; or
- (c) be deemed an election by the Landlord as to the exercise of the Landlord's rights under this Lease or at law.

20.4 Exercise of rights by Landlord

The Landlord may exercise the Landlord's rights under this Lease or at law notwithstanding laches, neglect or waiver in respect of any breach of the Tenant's Obligations, and without giving notice except in accordance with this Lease or as required by law, and without having to prove default by the Tenant or the continuance of that default.

21. Essential terms

21.1 Breach of Essential Terms

- (a) If the Tenant's conduct constitutes a breach of an essential term of this Lease and the Landlord elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation of this Lease, the Tenant shall compensate the Landlord for all loss or damage suffered by reason of or arising from the repudiation.
- (b) Clauses 4 ("Rent"), 5 ("Rent Review"), 7 ("Variable Outgoings"), 9 ("Use of Leased Premises and Facilities"), 11 ("Covenant to Repair and Maintain"), 14 ("Tenant's Obligations to effect insurances") and 16

("Assignment") of this Lease are deemed to be essential terms. This is not an exhaustive list of the essential terms of this Lease.

**21.2 Damage for Breach of Essential Terms**

Any loss or damage for the unexpired residue of the Term suffered by the Landlord as a result of the Tenant's breach of an essential term may be recovered as damages at any time.

**21.3 Landlord's Entitlement to Damages**

The Landlord's entitlement to recover damages from the Tenant or any other person will not be limited or affected by any of the following:

- (a) if the Tenant abandons or vacates the Leased Premises;
- (b) if the Landlord elects to re-enter the Leased Premises or terminate this Lease;
- (c) if the Landlord accepts the Tenant's repudiation; or
- (d) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

**21.4 Landlord to Mitigate Damages**

- (a) If the Tenant vacates the Leased Premises or if the Landlord accepts the Tenant's repudiation based on the Tenant's breach of an essential term of this Lease and terminates this Lease, the Landlord must take reasonable steps to mitigate its loss and endeavour to re-lease the Leased Premises on reasonable terms.
- (b) The entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages.
- (c) The Landlord's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of law.

**21.5 Calculation of Damages**

Following repudiation by the Tenant if the Landlord terminates this Lease then, without prejudice to any other right or remedy, the Landlord may recover the difference between the aggregate of the Rent, the reasonable estimate of the Variable Outgoings and other money payable by the Tenant for the unexpired residue of the Term less any amount the Landlord obtains, or could in the Landlord's opinion reasonably be expected to obtain, by observing clause 21.4.

**22. Termination**

**22.1 Yield up Leased Premises**

The Tenant shall on Termination surrender and yield up the Leased Premises to the Landlord in a condition consistent with the compliance of the Tenant's Obligations during the Term and deliver to the Landlord all keys, access cards and other security devices for the Leased Premises and the Land.

22.2 Remove Tenant's Fixtures

The Tenant shall:

- (a) prior to Termination or on the termination of any period of holding over, remove from the Leased Premises all of the Tenant's Fixtures and other property and any Landlord's Fixtures which the Landlord requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Tenant's property,
- (b) comply with the Works Conditions in respect of the removal of those items specified in clause 22.2(a); and
- (c) submit details of the proposed removal works for the Landlord's approval not less than two (2) months prior to Termination, or in the event of the sooner determination of this Lease, on or prior to that sooner determination.

22.3 Making Good of Leased Premises on Termination

Subject to clause 22.2, the Tenant shall, unless the Landlord agrees to the contrary, prior to Termination or on the termination of any period of holding over, make good the Leased Premises, the Facilities and those parts of the Plant and Equipment affected by the Tenant's occupation of the Leased Premises.

22.4 Landlord Can Make Good

If the Tenant does not comply with the obligation to make good as set out in clause 22.3, the Tenant shall pay the Landlord within ten (10) Business Days after the Landlord requests payment, any costs reasonably incurred by the Landlord to make good the Leased Premises, the Facilities and those parts of the Plant and Equipment affected by the Tenant's occupation of the Leased Premises. The obligation to pay those costs does not limit any other rights of the Landlord in relation to the Tenant's default.

22.5 Dealing with Tenant's property not removed at Termination

The Landlord has the following rights in respect of the Tenant's property, including Tenant's Fixtures, which are not removed at Termination:

- (a) demolish and dispose of the Tenant's property or remove and store the Tenant's property in an alternative leased premises at the Tenant's cost;
- (b) to sell or dispose of the Tenant's property and apply the proceeds of sale towards payment of any unpaid Rent or other money payable under this Lease; or
- (c) to elect that the Tenant's property is the absolute property of the Landlord and to deal with the Tenant's property as the Landlord sees fit;

and the Tenant shall indemnify the Landlord in respect of any loss or damage suffered by the Landlord as a result of:

- (d) the Tenant failing to remove all of the Tenant's property by Termination; or
- (e) any claim against the Landlord by any person by reason of the exercise by the Landlord of its rights under this clause 22.5.

**22.6 Tenant to continue to pay Rent and Variable Outgoings**

If the Tenant fails to make good the Leased Premises as specified in clause 22.3, or fails to remove the Tenant's property by Termination, then until the Leased Premises are restored in accordance with this Lease or the Landlord elects to take the absolute property in the Tenant's property left after Termination, the Tenant shall continue to pay the Rent and the Variable Outgoings as if the Tenant were holding over in the Leased Premises.

**23. Option of Renewal**

If and only if no earlier than six (6) months or no later than three (3) months before the date of Termination, the Tenant gives notice to the Landlord exercising an option of renewal, and the Landlord is satisfied that there is no Rent, Variable Outgoings or other money payable under this Lease which is due but unpaid and there is no unremedied breach of the Tenant's Obligations and there have been no breaches of any of the essential terms of this Lease during the Term, the Landlord shall grant the Tenant a lease of the Leased Premises for the relevant Further Term at the Rent payable immediately before Termination as varied and reviewed pursuant to this Lease and otherwise on the same terms and conditions of this Lease except for the option of renewal for the relevant Further Term, which shall cease to have any further effect.

**24. Holding Over**

If after the expiry of the Term the Tenant continues in possession of the Leased Premises, the Tenant shall be deemed to be holding over as a monthly tenant and:

- (a) the Landlord shall, with effect from the fifth (5th) Business Day after the expiry of the Term, review the Rent pursuant to the provisions of clause 5 and the provisions of that clause will apply as if the fifth (5th) Business Day after the expiry of the Term is a Rent Review Date and the type of review specified were a Fixed Increase Review;
- (b) after the Rent review as specified in clause 24(a), the Rent shall be reviewed on each anniversary of the expiry of the Term pursuant to the provisions of clause 5 as if each such anniversary is a Rent Review Date and the type of review specified were a Fixed Increase Review;
- (c) the Tenant's right to remain in possession of the Leased Premises shall be subject to the continued performance of the Tenant's Obligations;
- (d) the monthly tenancy created by this clause may be terminated by either party giving the other party one (1) month's notice of termination which notice may be given at any time; and
- (e) the payment of Rent annually in advance in a period of holding over, shall not effect the holding over as a monthly tenant, nor shall it limit the rights of either party to terminate the tenancy pursuant to clause 24(d) and in the event of

termination any overpayment of Rent will be adjusted as at the termination date.

25. **Power of Attorney**

The Tenant for valuable consideration:

- (a) irrevocably appoints the Landlord and (if the Landlord is a company) every director and secretary of the Landlord (jointly and severally) the Tenant's attorney for the purpose of:
  - (i) withdrawing any caveat which the Tenant is obliged to withdraw but does not; and
  - (ii) doing anything else the Tenant is obliged to do under this Lease but does not do when required;
- (b) undertakes to ratify all that the attorney does or causes to be done under this clause; and
- (c) indemnifies the Landlord in respect of:
  - (i) losses arising from any act done under this clause; and
  - (ii) the Landlord's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause.

26. **Trustee Provisions**

If the Tenant has entered into this Lease in the capacity of trustee, whether or not the Landlord has any notice of the trust, the Tenant:

- (a) is taken to enter into this Lease both as trustee and in the Tenant's personal capacity and acknowledges that the Tenant is personally liable for the performance of the Tenant's Obligations under this Lease;
- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Landlord for any default by the Tenant;
- (c) will assign to the Landlord any right of indemnity the Tenant has against the assets of the trust to the extent of the liability of the Tenant under this Lease; and
- (d) warrants that the Tenant has the power and authority under the terms of the trust to enter into this Lease.

27. **Special Clauses**

- 27.1 The special clauses (if any) set out in Schedule 2 shall be deemed to be incorporated into and form part of this Lease as if fully set out in the body of this Lease.
- 27.2 If there is any inconsistency between the provisions of this Lease generally and the special clauses, the special clauses shall prevail to the extent of the inconsistency.

28. **Miscellaneous**

28.1 **Tenant not to permit prohibited matters**

If under this Lease the Tenant is required to do or is prohibited from doing any act, matter or thing the Tenant must also ensure that the Authorised Persons comply with that requirement or prohibition.

28.2 **Cost of Complying with Obligations**

Unless otherwise stated in this Lease, the Tenant must pay the cost of performing or complying with every obligation of the Tenant under this Lease.

28.3 **Schedules**

The Schedules shall form part of this Lease.

28.4 **Landlord's consent**

The Landlord may give a conditional or unconditional consent or approval at its absolute discretion to any matter in this Lease without giving any reasons for refusal of consent or approval.

28.5 **Proper Law and Jurisdiction**

This Lease is governed by the law in force in the State, or where applicable, the Commonwealth of Australia, and the parties consent to the jurisdiction of the courts of the State.

28.6 **Time for payment**

Any amount payable by the Tenant to the Landlord unless otherwise specified must be paid to the Landlord within seven (7) Business Days after the Landlord gives a notice to the Tenant requiring payment.

28.7 **Time of the essence**

Time shall be of the essence in all respects.

28.8 **Certificates**

A certificate signed by the Landlord or the Landlord's solicitors about a matter or a sum payable is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

28.9 **Exercise of rights by Landlord**

The Landlord may exercise each right, power or remedy at its discretion, separately or concurrently with any other right, power or remedy, and:

- (a) a single or partial exercise of a right, power or remedy does not prevent a further exercise of that right, power or remedy;
- (b) a failure to exercise or any delay in the exercise of a right, power or remedy does not prevent its exercise;

- (c) the rights, powers and remedies of the Landlord are cumulative with and not exclusive of the rights, powers and remedies provided by law; and
- (d) any demand made shall not in any way be deemed to constitute a waiver by the Landlord of any breach or non-observance of a Tenant's Obligation and shall not prejudice any other right of the Landlord in relation to such breach.

28.10 Landlord may act by agent

All acts and things which may be done by the Landlord may be done by a solicitor, agent, employee or contractor of the Landlord, including, without limitation, the Managing Agent.

28.11 Variation

This Lease may not be varied except in writing signed by all of the Parties.

28.12 Giving of notice

Any notice, approval, consent or other communication given under this Lease:

- (a) shall be in writing and in English;
- (b) may be served on the recipient personally, or by leaving it at the recipient's last known address, or sent by pre-paid post to the recipient's last known address or sent by facsimile transmission to the recipient's facsimile number (if known);
- (c) will be deemed to be served, if served personally, at the time of handing the notice to the recipient, if left at the recipient's last known address, at the time of leaving the notice at the recipient's last known address, if sent by pre-paid post to the recipient's last known address, on the second Business Day after the date of posting, if sent by facsimile transmission, on the same date as transmitted (if transmitted prior to 4:00pm on a Business Day) or the next Business Day (if transmitted at or after 4:00pm on a Business Day, or on a day not being a Business Day); and
- (d) if given by the Landlord, may be signed by the Landlord or a solicitor or agent of the Landlord.

28.13 No moratorium

The provisions of any statute which extends a date for paying money under this Lease or which abrogates, nullifies, postpones or otherwise affects any provision in this Lease shall not apply to limit the terms of this Lease.

28.14 Further assurances

Each Party shall execute and do all acts and things necessary to give full force and effect to this Lease.

28.15 Effect of execution

This Lease binds each person who executes it notwithstanding the failure by any other person to execute this Lease.

28.16 Severance

If any part of this Lease is or becomes unenforceable or void or voidable, that part will be severed from this Lease and those parts that are unaffected shall continue to have full force and effect.

28.17 Goods and services tax

(a) In the Lease:

"GST" means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

"GST Law" has the same meanings as in the GST Act;

"Tax Invoice" includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

(b) Words used in this clause which have a defined meaning in the GST Law have the same meanings as in the GST Law unless the context indicates otherwise.

(c) The Rent and other moneys payable under this Lease have been calculated without regard to GST, and the Landlord and the Tenant agree that the Landlord shall be entitled to charge an additional amount if the Landlord becomes subject to GST as a result of the grant of this Lease or any supply to the Tenant under or in connection with this Lease, and the following provisions shall apply:

(i) the Tenant must do everything reasonably requested by the Landlord to ensure this Lease is treated as taxable for the purposes of the GST, the Tenant must pay the GST to the Landlord at the same time as the payment to which the GST relates, and the Rent and other amounts payable under this Lease are exclusive of GST.

(ii) the Tenant must pay to the Landlord on demand any GST charged on goods and services acquired or payable or paid by the Landlord in connection with this Lease or the Leased Premises, including but not limited to any GST payable in connection with or in respect of the provision of any Services and the Rent; and

(iii) where the liability of the Tenant under this clause cannot be separately determined, the Tenant must pay to the Landlord on demand an amount which is equal to the Tenant's proportion of the relevant GST.

28.18 Entire Agreement

This Lease constitutes the entire agreement between the Parties and contains all the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of this Lease. This Lease supersedes all previous correspondence or documentation relating to the Tenant's leasehold interest in the Leased Premises.

28.19 Headings

Except in the Schedules, the headings used in this Lease are for reference only and shall not effect the interpretation of this Lease.

28.20 Termination

The Termination of this Lease does not affect the Tenant's obligation to pay any money or do any act which is payable or which is to be done after Termination as provided by this Lease.

**SCHEDULE 1**

**Item 1**     **Authorised Use**

Development for use as a site for the commercial supply of aviation fuel, aviation lubricants and related products.

**Item 2**     **Commencement Date**

1 March 2009

**Item 3**     **End Date**

The date that is FIFTEEN (15) years after the Commencement Date, being 1 March 2009.

**Item 4**     **Further Term**

One further term of FIFTEEN (15) years commencing on the day following the End Date and ending on the FIFTEENTH (15<sup>th</sup>) anniversary of the End Date.

**Item 5**     **Land and Leased Land**

Land

- (a) Lot 181 on Deposited Plan 28266 being the whole of the land in Certificate of Title Volume 2526 Folio 60 and being commonly known as "East Kimberley Regional Airport", Lot 181 Victoria Highway, Kununurra.

Leased Land

- (b) That part of the Land having an area of approximately 5,250 square metres as depicted and hatched in black on the plan in Annexure "A" to this Lease.

**Item 6**     **Interest Rate**

TEN PER CENTUM (10%) per annum.

**Item 7**     **Rent**

From the Commencement Date until varied, the Rent is TWENTY ONE THOUSAND FIVE HUNDRED DOLLARS (\$21,500.00) per annum payable in advance on the Commencement Date and each anniversary of the Commencement Date. The Rent is exclusive of GST.

**Item 8**     **Rent Review Dates**

The Rent shall be reviewed on the following dates in accordance with the mechanism set out alongside each date:

Date	Method

Annually on the anniversary of the Commencement Date during the Term	CPI Rent Review
For the purposes of clause 23 "Holding Over"	Fixed Review Increase of 10%

24

**Item 9** **Term**

The term shall be the period commencing on the Commencement Date and ending on the End Date.

**Item 10** **Tenant's Insurance Obligations**

Without affecting any further insurance to be effected by the Tenant as specified by the Landlord in writing to the Tenant, the Tenant shall effect policies of insurance in respect of:

- (a) public liability insurance for an amount not less than TEN MILLION DOLLARS (\$10,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Landlord;
- (b) the full insurable value on a replacement or reinstatement basis of the Tenant's Fixtures against fire, explosion, earthquake, aircraft, riot, civil commotion, flood, lightning, storm, tempest, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown or malfunction, and malicious acts or omissions;
- (c) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Tenant employed in or about the Leased Premises;
- (d) the full insurable value on a replacement or reinstatement basis of all plate glass windows and doors forming part of the Leased Premises; and
- (e) any other matter or thing which the Landlord reasonably requires by notice to the Tenant;

on the terms specified in clause 14 of the Lease.

**Item 11** **The Landlord's Fixtures**

The Landlord's Fixtures shall include but not be limited to the following:

**Item 12** **Variable Outgoings**

Clause 7 of this Lease does apply.

**Item 13** **Managing Agent**

Not applicable.

**Item 14** **Gross Area of the Land and Tenant's Proportion**

**Gross Area of the Land**

- (a) 257,506 square metres

Tenant's Proportion

(b) 2.04%

**Item 15** **Guarantor's Details**

N/A

**Item 16** **Bank Guarantee- Security Amount**

N/A

## SCHEDULE 2 - SPECIAL CLAUSES

### 1. Interpretation

- (a) These are the Special Clauses referred to in clause 26 of the Lease.
- (b) All words and expressions used but not defined in these Special Clauses but which are defined in clause 1 of the main body of the Lease, shall have the same meanings respectively assigned to them in clause 1 of the Lease.

### 2. Development of Leased Premises

#### 2.1 Tenant's Development Covenants

The Tenant must:

- (b) carry out and execute the Tenant's Works in accordance with the Works Conditions; and
- (b) not make any alterations to the Plans or Specifications or include, construct or erect any works on the Leased Premises which have not been previously approved in writing by the Landlord without:
  - (i) the prior written consent of the Landlord which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Landlord EXCEPT THAT the Landlord shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority; and
  - (ii) if applicable, the prior approval of any Relevant Authority.

#### 2.2 Non-Approved Works

If the Tenant carries out any works which have not been previously approved in writing by the Landlord or which are not undertaken in accordance with the provisions of this Lease, the Landlord may require the Tenant (but without limiting any other right or remedy available to the Landlord) at the Tenant's cost, to dismantle and remove any such works and to carry out the same in accordance with the Landlord's approval and otherwise in compliance with the provisions of this Lease.

#### 2.3 Access to the Leased Premises

- (a) The Tenant is entitled to take possession of the Leased Premises and to enter upon the Leased Premises and commence the Tenant's Works from and including the Commencement Date PROVIDED:
  - (i) the Lease has been executed by the Tenant, the Landlord and the Guarantor (if applicable) and all other consenting parties;
  - (ii) the Conditions Precedents have been satisfied; and
  - (iii) the Tenant has delivered to the Landlord the Bank Guarantee (if any) in accordance with special clause 4 of these Special Clauses.
- (b) For the avoidance of doubt, the Tenant is obliged to pay full Rent,

Variable Outgoings and all other money payable under the Lease from the Commencement Date regardless of whether the Tenant has commenced or completed the Tenant's Works or whether the Tenant can operate the Tenant's Business from the Leased Premises.

- (c) Notwithstanding clause 2.3(a), should the Tenant commence the Tenant's Works prior to the satisfaction of any Conditions Precedent, whether with or without the Landlord's prior consent, the Tenant does so at its own risk and shall have no claim against the Landlord in the event that any of the Conditions Precedent are thereafter not satisfied.

#### 2.4 Facilities for Tenant's Contractors

The Tenant and the Tenant's contractors must provide and, as necessary, negotiate with the Landlord for all temporary services (including, without limitation, electricity, water and telephone services), toilet facilities, hoisting facilities, lunch rooms and other amenities, and the carting away of rubbish which the Tenant or its contractors may require, and must pay to the Landlord on demand any expenses which the Landlord may thereby incur.

#### 2.5 Tenant Responsible for Damage

The Tenant shall, at the option of the Landlord, either repair and make good any damage which may be caused to the Land or Leased Premises or any part thereof as a result of the construction, erection or installation of the Tenant's Works, to the satisfaction of the Landlord or alternatively, shall reimburse on demand the Landlord for all the costs incurred by the Landlord in having such damage made good by the Landlord's own contractors.

#### 2.6 Tenant's Insurance

- (a) Prior to the commencement of the Tenant's Works (or any associated or incidental works on the Leased Premises), the Tenant must have:
  - (i) procured the insurance policies referred to in item 10 of Schedule 1; and
  - (ii) otherwise complied with the terms of clause 14 of the Lease in respect of those insurance policies.
- (b) For the avoidance of doubt and notwithstanding or limiting clause 14 or item 10 of Schedule 1 of the Lease, the Tenant must, prior to the commencement of any Tenant's Works or associated or incidental works on the Leased Premises:
  - (i) insure against and ensure that all of its contractors engaged in carrying out the Tenant's Works, throughout the Tenant's Works Period insure against any liability, loss, claim or proceeding whatsoever arising by virtue of any statute relating to workers' compensation or employer's liability, by any person employed in or about the execution of the Tenant's Works and shall also insure for the Tenant's and its contractors' common law liability to all such persons for such amount as shall be nominated by the Landlord; and
  - (ii) ensure that the insurance policy referred to in item 10(b) of Schedule 1 insures the Tenant's Works for their full reinstatement and replacement value and apply all insurance moneys received in reinstating, rebuilding and repairing any damage incurred or suffered to the Tenant's Works.

2.7 Assumption of Risk by Tenant

The Parties expressly acknowledge and agree that:

- (a) the construction of all of Tenant's Works (whether undertaken by the Tenant or the Landlord or any contractor on behalf of or at the direction of either the Tenant or the Landlord) shall be at the risk of the Tenant in all respects;
- (b) the Tenant bears the risk of:
  - (i) the Tenant's Works;
  - (ii) all Works Equipment; and
  - (iii) all unfixed goods and materials used or to be used in carrying out the Tenant's Works, including anything provided by the Landlord to the Tenant or brought onto the Leased Premises by any contractor; and
- (b) the Tenant releases and discharges the Landlord from all claims for loss of or damage to the Land or Leased Premises, and any plant, equipment, fixtures, fittings, merchandise, good or property of the Tenant contained in or about the Land or Leased Premises for the purpose of the Tenant's Works and from any loss of profits resulting from such loss or damage.

2.8 Property in Works

Despite any rule of law or equity to the contrary, title to and ownership of the Tenant's Works shall be the property of the Tenant regardless of their attachment or affixation to the Leased Premises, and shall be a Tenant's Fixture, unless re-classified as a Landlord's Fixture in accordance with this Lease.

2.9 Default

- (a) For the avoidance of doubt, a failure by the Tenant to perform or comply with any of its obligations under this clause 2 is an Event of Default and a breach of an essential term of the Lease ("Development Default").
- (b) Without prejudice to any other rights or remedies available to the Landlord, if the Landlord terminates this Lease pursuant to clause 19 on the occurrence of a Development Default:
  - (i) the Tenant shall, unless otherwise directed by the Landlord, within sixty (60) days from the date upon which the Landlord terminates the Lease remove from the Leased Premises the Tenant's Works in compliance with the Works Conditions and make good the Leased Premises to the satisfaction of the Landlord;
  - (ii) the termination of the Lease shall be without prejudice to the obligations of the Tenant to pay the Landlord any moneys which shall be due and owing as at the date on which the Landlord terminates the Lease; and
  - (iii) the Tenant shall pay to the Landlord on demand all costs and expenses incurred by the Landlord as a consequence of the Tenant's Development Default and in the exercise of the rights of the Landlord under this clause 2.9.

- (c) Should the Tenant not comply with its obligation under clause 2.9(b)(i) above the Landlord shall be a liberty to exercise any of the rights conferred on the Landlord pursuant to clause 22.5 of the Lease.
- (d) Until the Leased Premises are restored in accordance with the Lease (whether by the Tenant or the Landlord) or until the Landlord elects to take the absolute property in the Tenant's property (which includes the Tenant's Fixtures) left after termination, the Tenant shall continue to pay the Rent and Variable Outgoings as if the Tenant were holding over in the Leased Premises.

#### 2.10 Indemnity

Without limiting the generality of clause 15 of the Lease, the Tenant indemnifies the Landlord and the Landlord's employees against all claims, demands, loss, damage, costs and expenses of every description which the Landlord may suffer or incur in connection with or arising directly or indirectly from the Tenant's entry upon and occupation of the Leased Premises for the purpose of the Tenant's Works or the construction, installation or carrying out the Tenant's Works (whether undertaken by the Tenant or the Landlord or any contractor on behalf of or at the direction of either the Tenant or the Landlord).

#### 2.11 Definitions

For the purpose of this clause 2:

- (a) "Tenant's Works Period" means the period from which the Tenant's Works commence until the date that all Tenant's Works have been completed; and
- (b) "Works Equipment" means those things used, or work undertaken by the Tenant or its contractors to construct the Tenant's Works but which will not form part of the Tenant's Works.

### 3. Environmental Matters

#### 3.1 Tenant's Environmental Covenants

The Tenant must:

- (a) comply with all Environmental Laws including, without limitation, obtaining all necessary permits, authorisations and approvals required for the Tenant to carry out the Authorised Use on the Leased Premises;
- (b) take all practicable precautions to ensure that no Contamination of the Leased Premises or the Environment in the vicinity of the Leased Premises occurs;
- (c) not discharge into any stormwater drain any trade effluent, Hazardous Material or Waste, other than that which is authorised by the relevant Government Authority;
- (d) immediately notify the Landlord if:
  - (i) a Contamination Event occurs on the Leased Premises; or
  - (ii) an Environmental Notice is served on the Tenant;
- (e) if a Contamination Event occurs and irrespective of whether an Environmental Notice has been served on the Tenant, promptly take all

usual and reasonable actions at the Tenant's own cost and in accordance with best industry practice for the Remediation of the Leased Premises and any land in the vicinity of the Leased Premises to a condition, as far as practicable, as if the Contamination Event had not occurred;

- (f) at the Tenant's own cost, comply with every Environmental Notice issued in respect of, or arising from, the Tenant's occupation or use of the Leased Premises, whether the notice is served on the Landlord or the Tenant;
- (g) allow the Landlord and its employees and contractors:
  - (i) after receiving reasonable notice from the Landlord, access to the Leased Premises to conduct environmental audits or inspections from time to time; and
  - (ii) immediate access to the Leased Premises to conduct an inspection following a Contamination Event; and
- (h) pay the reasonable costs of any reputable environmental consultant appointed by the Landlord to undertake an inspection from time to time of the Leased Premises to verify the Tenant's compliance with this clause 3.

### 3.2 Remediate Contamination

- (a) Without limiting the Tenant's obligation under clause 3.1(e), the Tenant must ensure that at the expiration of the Term it has Remediated any Contamination of the Leased Premises or any land in the vicinity of the Leased Premises caused by the Tenant, to the reasonable satisfaction of the Landlord.
- (b) Subject to clause 3.2(e), not later than six months before the expiration of the Term, the Tenant must arrange for a reputable environment consultant approved by the Landlord (whose approval must not be unreasonably withheld) to:
  - (i) carry out an investigation of Contamination at the Leased Premises;
  - (ii) prepare a report with respect to any (if any) Contamination at the Leased Premises; and
  - (iii) prepare a Remediation Notice (if applicable).
- (c) Subject to clause 3.2(d), the Tenant must promptly carry out all the works specified in the Remediation Notice to the satisfaction of the Landlord, and at the Tenant's sole cost.
- (d) The Tenant is under no obligation to carry out remedial works in respect of Contamination of the Leased Premises shown to exist at the Commencement Date, except to the extent that the Tenant has disturbed the Contamination in a manner which creates a risk of harm to people or the Environment.
- (e) If this Lease is terminated by the Landlord prior to the expiration of the Term, the Landlord may:
  - (i) arrange for the investigation of Contamination referred to in clause 3.2(a) and for the preparation of a Remediation Notice (if applicable); and

- (ii) carry out the works specified in the Remediation Notice, at the Tenant's expense, and the Tenant will indemnify the Landlord under clause 3.3(a).

- (f) For the avoidance of doubt, this clause 3.2 is for the benefit of the Landlord and can only be waived by the Landlord.

### 3.3 Environmental Indemnity

- (a) Without limiting clause 15 of the Lease the Tenant indemnifies the Landlord and the Landlord's employees in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Landlord is or may become liable in respect of or arising from the Tenant's breach of any of the Tenant's Environmental Covenants.
- (b) Without limiting clause 3.3(a) above, in the event that the Tenant fails to promptly comply with its obligations under clauses 3.1(e), 3.1(f), 3.2(a), 3.2(b) or 3.2(c) the Landlord shall be at liberty to carry out all of the said obligations at the cost of the Tenant, which cost shall be recoverable from the Tenant on demand.

### 3.4 Event of Default and Essential Term

For the avoidance of doubt, a failure by the Tenant to perform or comply with any of its obligations under this clause 3 is an Event of Default and a breach of an essential term of the Lease.

### 3.5 Definitions

In this clause 3:

- (a) "Contamination" means the affectation of land (including any surface water, ground water or other waters and airspace) by any matter or substance, including but not limited to a solid, liquid, gas, odour, heat, sound, vibration or radiation which:
  - (i) makes or may make such land or the surrounding Environment:
    - (A) unsafe or unfit for habitation or occupation by persons or animals;
    - (B) environmentally degraded; or
    - (C) not comply with any Environmental Law; or
  - (ii) otherwise gives rise to a risk or possible risk of harm to human health or the Environment;
- (b) "Contamination Event" means any incident originating on the Leased Premises involving:
  - (i) any Contamination or likely Contamination of the Leased Premises, or the Environment in the vicinity of the Leased Premises; or
  - (ii) the unlawful disposal of Waste in a manner which harms or is likely to harm the Environment;

- (c) "Environment" means all components of the earth, including:
- (ii) land, air and water;
  - (iii) any layer of the atmosphere;
  - (iv) any organic or inorganic matter and any living organism including humans;
  - (v) human made or modified structures and areas;
  - (vi) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
  - (vii) ecosystems with any combinations of the above;
- (d) "Environmental Law" means any law, whether statute or common law (including the laws of negligence and nuisance), concerning the Environment and includes laws concerning:
- (i) the carrying out of uses, works or development or the subdivision of land;
  - (ii) emissions of substances into the atmosphere, waters and land;
  - (iii) pollution and contamination of the atmosphere, waters and land;
  - (iv) production, use, handling, storage, transportation and disposal of:
    - (A) Waste;
    - (B) Hazardous Materials; and
    - (C) dangerous goods
  - (v) conservation, heritage and natural resources;
  - (vi) threatened and endangered and other flora and fauna species;
  - (vii) the erection and use of structures; and
  - (viii) the health and safety of people,
- whether made or in force before or after the date of this Lease;
- (e) "Environmental Notice" means any direction, order demand or other requirement to take any action or refrain from taking any action in respect of the Leased Premises or its use from any Government Authority in connection with any Environmental Law;
- (f) "Government Authority" means any state, federal or local government department or authority, government Minister, governmental, semi-governmental, administrative or judicial person or any other person (whether autonomous or not) charged with the administration of any applicable law;
- (g) "Hazardous Material" means material which, because it is toxic, corrosive, flammable, explosive or infectious or possesses some other dangerous characteristics, is potentially dangerous to the Environment when stored or handled or when any part of the Environment is exposed to it;

- (h) "Tenant's Environmental Covenants" means the Tenant's obligations under clause 3.1, together and each of them separately;
- (i) "Remediation" includes the investigation, cleanup, removal, abatement, disposal, control, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of any Contamination, and "Remediated" and "remediate" has a corresponding meaning;
- (j) "Remediation Notice" means a statement of the works necessary to remediate any Contamination at the Leased Premises or the surrounding Environment to an appropriate standard;
- (k) "Waste" means any discarded, rejected, unwanted, surplus or abandoned substance whether or not:
  - (i) it is intentionally discarded;
  - (ii) it has a value or use; or
  - (iii) it is intended for sale, recycling, reprocessing, recovery or purification; and
- (l) A reference to "Tenant" also includes an Authorised Person.

#### 4. Bank Guarantee

- 4.1 The Tenant must deliver to the Landlord on or before the Commencement Date a guarantee or unconditional performance bond from a trading bank conducting business in Australia in a form and on terms approved by the Landlord ("Bank Guarantee") in favour of the Landlord to secure payment to the Landlord of the amount specified in item 16 of Schedule 1 ("Security Amount").
- 4.2 If:
  - (a) the Tenant fails to pay Rent, the Outgoings or other moneys payable under this Lease on the due date; or
  - (b) there occurs any other default by the Tenant under this Lease,
 the Landlord may present the Bank Guarantee to the relevant bank to pay the Landlord the Security Amount without reference to the Tenant and despite any notice from the Tenant to the Bank not to pay the Landlord any money.
- 4.3 Within ten (10) Business Days (and no later) after the Landlord receives payment of the full amount of the Security Amount under the Bank Guarantee, the Tenant must deliver to the Landlord a further Bank Guarantee on substantially the same terms as the Bank Guarantee initially delivered to the Landlord under this clause.
- 4.4 Payment under the Bank Guarantee does not limit the rights of the Landlord under this Lease or operate as a waiver of the Tenant's default of any of the Tenant's Obligations under this Lease.
- 4.5 Any part of the amount paid under the Bank Guarantee subsequently determined by the Landlord to be in excess of the loss incurred by the

Landlord resulting from the Tenant's initial default, or any other default of the Tenant, will be paid to the Tenant after the Landlord determines the amount of the excess.

- 4.6 Not more than three (3) months after the expiration of the Lease Year in which Termination occurs if the Bank Guarantee has not become presentable under this clause 4, the Landlord will promptly release the Bank Guarantee to the bank provided that there is then:
- (a) no Rent, Variable Outgoings or other moneys payable under this Lease; and
  - (b) no act, matter or thing in respect of which the Landlord has or may have a claim against the Tenant.

5. Guarantee and indemnity

5.1 In consideration of the Landlord, at the request of the Guarantor, agreeing to enter into this Lease with the Tenant, the Guarantor:

- (a) guarantees to the Landlord the due and punctual observance and performance of the Tenant's Obligations; and
- (b) indemnifies and keeps indemnified the Landlord against all losses, expenses, claims, and damages incurred or reasonably expected to be incurred by the Landlord by reason of any breach of the Tenant's Obligations.

5.2 The Guarantor's obligations under this Lease are an irrevocable and continuing guarantee and indemnity, and the Guarantor will not be wholly or partially released from the obligations of this clause 5 by any matter or thing, including without limitation:

- (a) the death, insolvency, bankruptcy, liquidation or mental incapacity of a Guarantor or any of them;
- (b) the death, insolvency, bankruptcy, liquidation or mental incapacity of the Tenant;
- (c) the avoidance of any payment by the Tenant or the Guarantor to the Landlord;
- (d) the payment of money to the Landlord by any person;
- (e) the performance, observance, non-performance or non-observation of any of the Tenant's Obligations;
- (f) the granting of time or other indulgence or consideration by the Landlord to any person;
- (g) the Landlord failing or neglecting to exercise any of the Landlord's rights under this Lease;
- (h) any act, omission, laches or default on the part of the Landlord which would affect the liability of any person to the Landlord but for this provision; or

- (i) any act or omission of the Landlord which results, or might result, in prejudice to a Guarantor or any of them.
- 5.3 This Lease is enforceable against the Guarantor and the Guarantor is liable under this Lease notwithstanding any claims that the Landlord is estopped from enforcing any term of this Lease, or that the Tenant has any other defence against an action by the Landlord to enforce any term of this Lease, and binds the Guarantor until the Tenant is released from its obligations under this Lease.
- 5.4 The Guarantor's obligations under this Lease are principal obligations and are not ancillary or collateral to any other obligation or instrument.
- 5.5 If the Landlord is unable to recover from any person any money owing under this Lease, or to enforce a remedy for any other breach of the Tenant's Obligations, the Guarantor also agrees to pay the Landlord on demand the loss, damage, costs and expenses suffered or incurred by the Landlord in respect of the breach of those covenants and the other provisions of this Lease apply as far as is possible to the indemnity conferred on the Landlord by this clause.
- 5.6 This guarantee and indemnity:
- (a) continues until the Tenant has performed all the Tenant's Obligations and while the Tenant occupies or is entitled to occupy the Leased Premises in any manner whatever;
  - (b) extends to the obligations of any assignee of the Tenant's interest under this Lease and of any sub-tenant;
  - (c) extends to all extensions of this Lease and any new lease of the Leased Premises granted to the Tenant or an assignee of the Tenant's interest under this Lease or any sub-tenant; and
  - (d) extends to claims by the Landlord for any liability arising from the repudiation of this Lease and any default under this Lease by the Tenant, and any action taken by the Landlord as a result of a default including the Landlord re-entering the Leased Premises or terminating this Lease.
- 5.7 The Guarantor may not, without the Landlord's consent:
- (a) raise a set-off or counterclaim available to the Guarantor against the Tenant in reduction of the Guarantor's liability under this clause;
  - (b) prove or claim in any bankruptcy, liquidation, arrangement or assignment of or in relation to the Tenant until the Landlord has received 100 cents in the dollar in respect of the money owing by the Tenant under this Lease and the Guarantor holds in trust for the Landlord any such proof or claim or any dividend received by the Guarantor from such proof or claim; or
  - (c) claim to be entitled to the benefit of any other security held by the Landlord in connection with this Lease, whether because of the rules of contribution, indemnity, subrogation, marshalling or for any other reason.

- 5.8 If a payment to the Landlord in connection with this Lease is void or voidable under laws relating to insolvency or protection of creditors the Landlord remains entitled to the rights against the Guarantor which the Landlord had under this clause before that payment was made.
- 5.9 The Guarantor acknowledges that the parties intend that the Lease may not be registered pursuant to the *Transfer of Land Act 1893 (WA)*.
- 5.10 The Guarantor hereby warrants to the Landlord that where the Tenant has executed or shall execute this Lease pursuant to any Memoranda and/or Articles of Association and/or Constitution, trust deed, will, deed of settlement, or other instrument whatsoever ("Instrument") the Tenant has done or prior to executing this Lease shall do, all acts, matters and things required by the Instrument or otherwise to ensure that each such party has validly executed or shall validly execute this Lease and shall be bound hereby in accordance with the terms of this Lease and the Guarantor hereby agrees unconditionally that he shall indemnify and keep indemnified the Landlord from and against all losses, costs, claims, expenses and damages of any nature whatsoever directly or indirectly incurred or reasonably expected to be incurred by the Landlord from or out of the breach of any of the warranties contained in this clause 5.10.
- 5.11 If the Guarantor comprises more than 1 person, the obligations of each Guarantor are joint and several.
- 5.12 In this clause 5, a reference to:
- (a) "Guarantor" means each Guarantor listed in item 15 of Schedule 1;
  - (b) "this Lease" includes any tenancy or other right of any kind by which the Tenant occupies or is entitled to occupy the Leased Premises; and
  - (c) "Tenant's Obligations" means each covenant, obligation and duty contained or implied in this Lease or any other instrument by which the Tenant occupies any part of the Land or Leased Premises or required by law to be performed by the Tenant or any Authorised Person
- 5.13 The Landlord may assign the rights under, and the benefit of, the obligations of the Guarantor under this Lease.

**EXECUTED BY THE PARTIES AS A DEED**

**EXECUTION BY THE LANDLORD:**

THE COMMON SEAL of the  
**SHIRE OF WYNDHAM EAST KIMBERLEY**  
was hereunto affixed in the presence of:

\_\_\_\_\_  
SHIRE PRESIDENT  
Print Name:

\_\_\_\_\_  
Chief Executive Officer  
Print Name:

**EXECUTION BY THE TENANT:**

EXECUTED for and on behalf of )  
**BP AUSTRALIA PTY LTD** )  
**(ACN 004 085 616)** )  
by authority of its Directors )  
in accordance with section 127 of the )  
*Corporations Act 2001 (Cth)* )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Director/Secretary

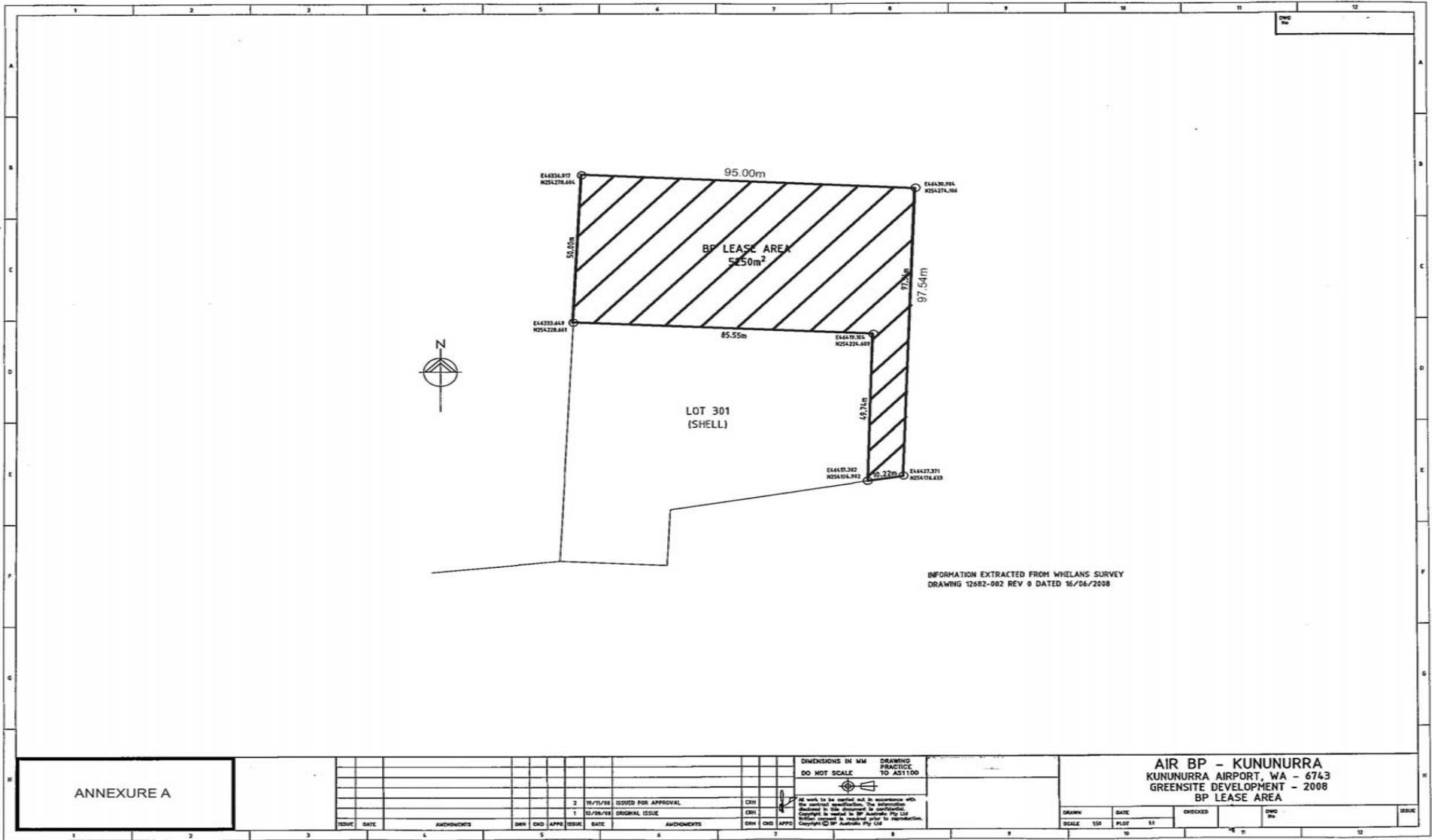
\_\_\_\_\_  
Name of Director/Secretary

**ANNEXURE "A"**  
**PLAN WHICH IDENTIFIES LEASED PREMISES**

C:\Airport Support Offices\Leases\Air BP Lease\BP Lease (part premises non retail) DRAFT 14.01.09 (clean).doc

Civic Legal

53



## 12.2. CORPORATE SERVICES

### 12.2.1 LIST OF ACCOUNTS PAID UNDER DELEGATION 18 (8620)

<b>DATE:</b>	8 April 2009
<b>PROPONENT:</b>	Shire of Wyndham East Kimberley
<b>LOCATION:</b>	Shire Of Wyndham East Kimberley
<b>AUTHOR:</b>	Sue Dillon, Senior Finance Officer
<b>REPORTING OFFICER:</b>	Jo-Anne Ellis, Executive Manager Corporate Services
<b>FILE NO:</b>	60.14.03
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

To present the listing of accounts paid under delegated authority in accordance with the requirements of the Local Government (Financial Management) Regulations 1996.

#### **BACKGROUND**

Delegation 18 – Payment of Creditors was adopted by Council on 17 July 2007. This delegation gives authority to make payments from the Municipal Fund or Trust Fund to the Chief Executive Officer. There is a sub delegation to the Executive Manager Corporate Services, Manager Financial Services and Financial Officers.

#### **STATUTORY IMPLICATIONS**

Local Government Act 1995 – Section 5.42  
Local Government (Financial Management) Regulations 1996 – Regulations 12 and 13

#### **POLICY IMPLICATIONS**

Delegation 18 – Payment of Creditors

#### **FINANCIAL IMPLICATIONS**

Ongoing management of Council funds by providing Council with sufficient information to monitor and review payments made.

#### **STRATEGIC IMPLICATIONS**

**Key Result Area 5 – Governance**

**Council's financial position and forward planning is sound**

#### **COMMUNITY CONSULTATION**

N/A

## **COMMENT**

In accordance with statutory requirements and delegated authority, each payment from the Municipal Fund or the Trust Fund is to be noted on a list compiled each month showing: the payee's name, amount of payment, date of payment and sufficient information to identify the transaction. The list is to be presented to Council at the next ordinary meeting of the Council following the preparation of the list and is to be recorded in the minutes of the meeting at which it is presented.

## **ATTACHMENTS**

List of Accounts Paid Under Delegation 18.

## **VOTING REQUIREMENT**

Simple Majority

## **MANAGERS' RECOMMENDATION**

That Council receives and accepts the listing of payments approved under Delegation 18 - Payment of Creditors, being:

Municipal cheques 38899 – 38920; 38991-38999 (5 to 26 March 2009)	\$45,582.90
Note: Cheque 38921-38990 to be used in the following months –cheques allocated out of order	
EFT 105326 – EFT 105552 (5 to 26 March 2009)	\$786,695.11
Payroll (11-27 March 2009)	\$266,407.04
Direct bank debits (March 2009)	\$15,230.54
<b>Total</b>	<b>\$1,113,915.59</b>

## **COUNCIL DECISION**

***Minute No. 86201***

***Moved:Cr D Ausburn  
Seconded:Cr R Addis***

Municipal cheques 38899 – 38920; 38991-38999 (5 to 26 March 2009)	\$45,582.90
Note: Cheque 38921-38990 to be used in the following months –cheques allocated out of order	
EFT 105326 – EFT 105552 (5 to 26 March 2009)	\$786,695.11
Payroll (11-27 March 2009)	\$266,407.04
Direct bank debits (March 2009)	\$15,230.54
<b>Total</b>	<b>\$1,113,915.59</b>

***CARRIED UNANIMOUSLY: (8/0)***

## List of Accounts Paid Under Delegation 18

### List of accounts submitted to Council 21 April 2009

Chq/EFT	Date	Name	Description	Amount
EFT105326	05/03/2009	ALLGEAR MOTORCYCLES	HONDA MOWER, BLADES, BRUSH CUTTERS	1,712.35
EFT105327	05/03/2009	ARGYLE MOTORS	50K SERVICE TO WY12646	197.00
EFT105328	05/03/2009	AUSTRALIA POST	ANNUAL POST OFFICE BOX FEES	95.00
EFT105329	05/03/2009	BCA SOLUTIONS NT	BUILDING PRACTITIONERS BOARD REG CHECKS	2,909.50
EFT105330	05/03/2009	BLACKWOODS ATKINS PTY LTD	GREASE CARTRIDGES & PICKET CAPS	124.40
EFT105331	05/03/2009	BOAB CARPENTRY MAINTENANCE SERVICE	VARIOUS BUILDING REPAIRS WYNDHAM	486.60
EFT105332	05/03/2009	BRANKO BP MOTORS	MONTHLY PURCHASES FOR WYNDHAM AIRPORT	117.30
EFT105333	05/03/2009	BRUCE HARDING	POWER SUBSIDY CLAIM NOV 08 TO JAN 09	45.63
EFT105334	05/03/2009	C & S JOLLY ELECTRICS	REPAIR TO POWER IN WYNDHAM OFFICE	876.26
EFT105335	05/03/2009	CARPET VINYL & TILE CENTRE	VINYL WYN AIRPORT, PAINT & ACCESSORIES WCC	4,119.94
EFT105336	05/03/2009	CIVIC LEGAL	PROFESSIONAL FEES	732.60
EFT105337	05/03/2009	COATES HIRE	HIRE OF SLUDGE PUMPS KNX TIP	111.99
EFT105338	05/03/2009	COURIER AUSTRALIA	DELIVERY OF FIRE SAFETY GOODS KNX DEPOT	308.92
EFT105339	05/03/2009	COMM AND PROTECTIVE SOLUTIONS	INSTALL ELECTRIC SWIPE LOCKS KNX ADMIN	5,080.72
EFT105340	05/03/2009	EAST KIMBERLEY DINGO	TURF LAYING KNX DAYCARE & REPAIRS WYN COURTS	6,555.00
EFT105341	05/03/2009	EAST KIMBERLEY HARDWARE	BATTERIES FOR A/PORT, RAKE, CABLE TIES, PICKETS	827.70
EFT105342	05/03/2009	EDUCATIONAL EXPERIENCE PTY LTD	PIN BOARD FOR WYN DAYCARE	237.05
EFT105343	05/03/2009	FESA	ESL INCOME PAYMENT	45,930.10
EFT105344	05/03/2009	FUJI XEROX AUSTRALIA PTY LTD	PHOTOCOPIER FOR ENGINEERING	26,224.00
EFT105345	05/03/2009	GAULT, JOHN DOUGLAS	WATER SUBSIDY CLAIM 04/04/08 - 02/08/08	294.07
EFT105346	05/03/2009	GLIDEPATH O & M PTY LTD	BAGGAGE HANDLING SYSTEM TUBS & FREIGHT	2,138.40
EFT105347	05/03/2009	GRUNT LABOUR SERVICES PTY LTD	LABOUR HIRE KNX TIP	3,954.16
EFT105348	05/03/2009	HART SPORT	20 BOXING MITTS KLC	655.50
EFT105349	05/03/2009	HORIZON POWER	POWER SUPPLY VARIOUS LOCATIONS	12,707.85
EFT105350	05/03/2009	JASON SIGNMAKERS LTD	GRAVEL ROAD SIGN RESEARCH STATION ROAD	220.00

EFT105351	05/03/2009	JSW HOLDINGS PTY LTD	VARIOUS EARTHWORKS KNX	1,786.40
EFT105352	05/03/2009	KIMBERLEY GREEN CONSTRUCTION	KEY SYSTEM UPGRADES KNX AIRPORT	817.93
EFT105353	05/03/2009	KIMBERLEY HYDRAULICS	HYDRAULIC HOSES & FITTINGS BOBCAT KNX	248.27
EFT105354	05/03/2009	KIMBERLEY MECH & TILT TRAY SERVICE	REMOVE VEHICLE FROM FLAMETREE TO DEPOT	99.00
EFT105355	05/03/2009	KIMBERLEY MOTORS	MONTHLY DIESEL PURCHASES WYNDHAM JAN 09	3,814.00
EFT105356	05/03/2009	KUNNERS SWAGS	REPAIRS TO BOXING BAG KLC	55.00
EFT105357	05/03/2009	KUNUNURRA LOCK & KEY	KEY CUTTING (4 KEYS) KNX ADMIN	32.00
EFT105358	05/03/2009	KUNUNURRA SECURITY SERVICE	SECURITY PATROLS FOR MONTH OF JAN 09	2,017.20
EFT105359	05/03/2009	LW PROPERTY CARE	CLEANING OF 3/64 RIVERFIG KNX	198.00
EFT105360	05/03/2009	NORSIGN PTY LTD	FLEXI GUIDE POSTS VARIOUS ROADS KNX	4,455.00
EFT105361	05/03/2009	OFFICE NATIONAL KUNUNURRA	ARCHIVE BOXES	54.95
EFT105362	05/03/2009	RAW DANCE COMPANY	MUSIC, A WAY OF LIFE' COMMUNITY EVENT	3,095.40
<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
EFT105363	05/03/2009	RICK SPRY	TELEPHONE REIMBURSEMENT JAN 09	34.13
EFT105364	05/03/2009	SONYA MCKAY	ALTERATIONS TO STAFF UNIFORMS	92.00
EFT105365	05/03/2009	TNT AUSTRALIA PTY LIMITED	FREIGHT OF GOODS FOR HEALTH DEPT	321.46
EFT105366	05/03/2009	TOLL EXPRESS	FREIGHT 1ST WEEK FEB 09	324.29
EFT105367	05/03/2009	TOP END MOTORS	2.5 HRS MERLO HIRE KNX CEMETERY	412.50
EFT105368	05/03/2009	TOTAL EDEN KP PUMPS	RETICULATION PART	13.00
EFT105369	05/03/2009	TRENNY'S REFRIG AND AIRCON PTY LTD	AIRCON REPAIRS 3B DRYANDRA & KLC	239.25
EFT105370	05/03/2009	UHY HAINES NORTON (WA) PTY LTD	AUDIT CERTIFICATION OF ROADS TO RECOVERY	2,200.00
EFT105371	05/03/2009	W.C. CONVENIENCE MANAGEMENT PTY LTD	SENSOR CONTROL PANEL & REPAIRS TO EXALOO KNX	1,169.61
EFT105372	05/03/2009	WA LOCAL GOVT ASSOCIATION WALGA	ADVERTISING FOR MONTH OF JAN 09	7,866.73
EFT105373	05/03/2009	WA LOCAL GOVT SUPERANNUATION PLAN	SUPERANNUATION CONTRIBUTIONS	627.12
EFT105374	05/03/2009	WANNA WORK LABOUR HIRE SOLUTIONS	LABOUR HIRE FOR LINKPATH CONSTRUCTION	36,860.00
EFT105375	05/03/2009	WYNDHAM SUPERMARKET	CONSUMABLES FOR WCC, REC CENTRE & AUST DAY	356.14
EFT105376	05/03/2009	WYNDHAM TOURIST INFORMATION CENTRE	TOURIST INFORMATION SERVICE PMT JAN 09	476.66
EFT105377	12/03/2009	ALLGEAR MOTORCYCLES	ROLL OF 3MM W/CORD KNX DEPOT	108.60
EFT105378	12/03/2009	ARGYLE ENGINEERING	6 X H/D TOILET ROLL HOLDERS FOR BONAPARTE ST	1,191.25

EFT105379	12/03/2009	ARGYLE MOTORS	5,000KM SERVICE AND SEAT COVERS WY12926	224.65
EFT105380	12/03/2009	ATO CHILD SUPPORT AGENCY	PAYROLL DEDUCTIONS	133.66
EFT105381	12/03/2009	AUSFUEL AFD	20 LTRS TRANSMISSION OIL	274.65
EFT105382	12/03/2009	AUSTRALIA POST	ANNUAL MAIL BOX RENEWAL KNX LIBRARY	17.50
EFT105383	12/03/2009	AUSTRALIAN SERVICES UNION	PAYROLL DEDUCTIONS	179.00
EFT105384	12/03/2009	BLACKWOODS ATKINS PTY LTD	GUIDE POSTS, GUM BOOTS & TAPE	443.14
EFT105385	12/03/2009	CARPET VINYL & TILE CENTRE	BLINDS, BLDG MTCE (WYN C/CARE & SHIRE HOUSES)	11,834.62
EFT105386	12/03/2009	CHEFMASTER AUSTRALIA	BULK PURCHASE OF GARBAGE BAGS	1,981.20
EFT105387	12/03/2009	CITY OF ALBANY	LONG SERVICE LEAVE TRANSFER PAYMENT	7,684.59
EFT105388	12/03/2009	COMMANDER AUSTRALIA LIMITED	INSTALL VOICE MAIL SYSTEM KNX ADMIN PHONES	587.40
EFT105389	12/03/2009	CORPORATE EXPRESS	BALANCE OF JAN 09 STATIONERY ORDER	955.21
EFT105390	12/03/2009	CSIRO PUBLISHING	BOOKS FOR LIBRARY	138.85
EFT105391	12/03/2009	EAST KIMBERLEY DINGO	HIRE OF EQUIPMENT FOR GARDEN AT EWIN CENTRE	2,212.50
EFT105392	12/03/2009	EAST KIMBERLEY HARDWARE	NUTS AND BOLTS, PAD LOCK	53.35
EFT105393	12/03/2009	EAST KIMBERLEY PLUMBING	REPAIR TO LEAKING PIPE KNX POOL	308.00
EFT105394	12/03/2009	EDUCATIONAL EXPERIENCE PTY LTD	BOOKS FOR KNX LIBRARY	711.36
EFT105395	12/03/2009	FISCHER, CYNTHIA	CLEANING PUBLIC TOILETS WYNDHAM FEB 09	3,642.37
EFT105396	12/03/2009	FRONTIER POST & NEWS	PRINTER CARTRIDGE WYNDHAM DAYCARE	101.40
EFT105397	12/03/2009	GUERINONI & SON	CULVERT FOR MESSMATE PUMP	800.00
EFT105398	12/03/2009	HAMILTON SOFTWARE & TRAINING	KINDY MANAGER TRAINING	220.00
EFT105399	12/03/2009	HART SPORT	BEACH VOLLEYBALL EQUIPMENT KLC	204.50
EFT105400	12/03/2009	HORIZON POWER	POWER SUPPLY VARIOUS LOCATIONS	12,321.35
EFT105401	12/03/2009	IMAGE PRINTING	DL PLAIN ENVELOPES	236.50
EFT105402	12/03/2009	IOR PETROLEUM PTY LTD	FUEL PURCHASE WHILST NO SUPPLY AT DEPOT JAN	6,609.06
<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
EFT105403	12/03/2009	JSW HOLDINGS PTY LTD	VARIOUS EARTHWORKS KNX	9,137.92
EFT105404	12/03/2009	JUDIUS PTY LTD	EDUCATIONAL TOYS WYNDHAM C/CARE CENTRE	73.32
EFT105405	12/03/2009	K & M ALLCLEAN	CLEANING KNX ADMIN, LEISURE & AIRPORT FEB 09	14,254.22
EFT105406	12/03/2009	KIMBERLEY COMMUNICATIONS	REPAIRS TO EXALOO & RADIO SERVICING/EQUIPMENT	1,078.00

EFT105407	12/03/2009	KIMBERLEY GROUP TRAINING	HOST EMPLOYERS CONTRIBUTION KNX TRAINEE	905.57
EFT105408	12/03/2009	KIMBERLEY INDUSTRIES METALAND	CHAIN, HAMMERLOCK & RING FOR CEMETERY BOX	101.09
EFT105409	12/03/2009	KIMBERLEY KOOL REFRIGERATION	AIR CON SERVICE & CHECK KNX ADMIN	154.00
EFT105410	12/03/2009	KIMBERLEY MARKETING	ART & CRAFT ITEMS HOLIDAY PROGRAM WYN REC	150.00
EFT105411	12/03/2009	KNA CHAMBER OF COMMERCE & INDUSTRY	M/SHIP FEE FOR KCCI 08/09 & STATE BUDGET LUNCH	505.00
EFT105412	12/03/2009	KUNUNURRA HOME & GARDEN	MASONRY DRILL BITS KNX DEPOT	16.18
EFT105413	12/03/2009	KUNUNURRA LOCK & KEY	ARCHIVE ROOM LOCK, OVAL CHANGE ROOMS KEYS	291.50
EFT105414	12/03/2009	KUNUNURRA MAINTENANCE SERVICE	REPAIRS TO SHADE SAIL & REPAIRS TO TOILETS KLC	1,749.00
EFT105415	12/03/2009	KUNUNURRA POOLS AND SPAS	DRY CHLORINE KNX L/CENTRE	975.00
EFT105416	12/03/2009	KUNUNURRA REFRIGERATION & AIRCON P/L	REPAIR AIRCON AT PRMH AS QUOTED	1,364.00
EFT105417	12/03/2009	KUNUNURRA SECURITY SERVICE	AIRPORT SECURITY & SCREENING 28/1/2009 - 10/2/2009	47,304.00
EFT105418	12/03/2009	KUNUNURRA VISITORS CENTRE	2ND PART ANNUAL GRANT	8,250.00
EFT105419	12/03/2009	L.G.R.C.E.U	PAYROLL DEDUCTIONS	15.30
EFT105420	12/03/2009	LAKE KUNUNURRA GOLF CLUB	GRANT-CONSTRUCTION OF MACHINERY STORE SHED	12,100.00
EFT105421	12/03/2009	LANDGATE	MINING, RURAL & GRV SCHEDULES	415.15
EFT105422	12/03/2009	MARTIN PRINT	BUSINESS CARDS VARIOUS STAFF	255.00
EFT105423	12/03/2009	MCLEAN ENTERPRISES	EMULSION FOR DISTRIBUTION VARIOUS LOCATIONS	770.00
EFT105424	12/03/2009	MEGAN HUNT	CLEANING WYN ADMIN, REC CTR & PRMH	2,699.13
EFT105425	12/03/2009	MIRIMA COUNCIL, LANGUAGE & CULTURE CTR	CULTURAL AWARENESS COURSE 5 EMPLOYEES	715.00
EFT105426	12/03/2009	MODERN TEACHING AIDS	CHAIR AND PVA GLUE WYNDHAM C/CARE CENTRE	243.69
EFT105427	12/03/2009	OFFICE NATIONAL KUNUNURRA	LABELS FOR ARCHIVING PROJECT	133.89
EFT105428	12/03/2009	ORD RIVER ELECTRICS	PEG SERVICES FOR DRAINAGE WORKS KNX	220.00
EFT105429	12/03/2009	ORDCO	GLYPHOSATE 450 FOR VARIOUS LOCATIONS	407.00
EFT105430	12/03/2009	ROYAL LIFE SAVING (WA BRANCH)	AUSTSWIM COURSE & RESUSCITATION FEE	385.10
EFT105431	12/03/2009	SHIRE OF WYNDHAM EAST KIMBERLEY	PAYROLL DEDUCTIONS	385.00
EFT105432	12/03/2009	SLINGAIR PTY LTD	KALUMBURU HEALTH INSPECTION	448.75
EFT105433	12/03/2009	THINKWATER	PIPE WRAP KNX DEPOT	143.00
EFT105434	12/03/2009	THORLEY'S STORE	DVD PLAYER WYNDHAM REC CENTRE	189.00
EFT105435	12/03/2009	TOP END MOTORS	SERVICE & NEW BRAKES WY11486 & HIRE OF MERLO	714.02

EFT105436	12/03/2009	WA LOCAL GOVERNMENT ASSOC WALGA	WEBSITE DEVELOPMENT AND TRAINING	5,943.30
EFT105437	12/03/2009	WA LOCAL GOVT SUPERANNUATION PLAN	SUPERANNUATION CONTRIBUTIONS	20,363.80
EFT105438	12/03/2009	WESTRALIA AIRPORTS CORPORATION P/L	2 ASIC CARDS KNX A/PORT	100.00
EFT105439	12/03/2009	WYNDHAM TOWN HOTEL	ACCOM & MEALS BRONZE & AUSTSWIM TEACHERS	752.00
EFT105440	19/03/2009	AERODROME MANAGEMENT SERVICES	TECH INSPECTION KNX & WYN AIRPORTS	7,084.00
EFT105441	19/03/2009	ALLGEAR MOTORCYCLES	MOWER BLADES, FACE MASK, LUBE AND OIL	940.20
EFT105442	19/03/2009	ARGYLE MOTORS	75K SERVICE ICQN641 & REPAIRS KNX RIDE ON	360.96
<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
EFT105443	19/03/2009	AUSTRALIA POST	POSTAGE KNX ADMIN & LIBRARY FEB 2009	876.61
EFT105444	19/03/2009	BOAB REFRIGERATION AND AIRCON	REPAIRS TO AIRCON 16 KIMBERLEY ST	671.00
EFT105445	19/03/2009	BRANKO BP MOTORS	FUEL FOR WYN VEHICLES, SERVICE 1APW451, TUBE	2,148.51
EFT105446	19/03/2009	BROADCAST AUSTRALIA PTY LTD	POWER FOR ANALOGUE SERVICE GWN & SBS	524.95
EFT105447	19/03/2009	BUSH CAMP SURPLUS STORES	5 PAIRS WORK SHORTS	177.00
EFT105448	19/03/2009	C & S JOLLY ELECTRICS	VOLTAGE PROTECTION FOR RAPISCAN KNX A/PORT	1,534.50
EFT105449	19/03/2009	CIVIC LEGAL	PROFESSIONAL FEES	5,548.29
EFT105450	19/03/2009	CORPORATE EXPRESS	STATIONERY ORDER KNX ADMIN FEB 09	2,091.82
EFT105451	19/03/2009	CROCODILE SIGNS	REFLECTIVE DECALS FOR LOADER KNX DEPOT	116.60
EFT105452	19/03/2009	CUSTOM IRRIGATION	INSTALLATION OF RETICULATION VARIOUS SITES KNX	66,000.00
EFT105453	19/03/2009	DAVEY TYRE AND BATTERY SERVICE	2 X REAR TYRES FOR JD RIDE ON MOWER	356.00
EFT105454	19/03/2009	DOUGLAS ALEXANDER	POWER SUBSIDY DEC 08 TO FEB 09	338.95
EFT105455	19/03/2009	EAST KIMBERLEY HARDWARE	BOLLARDS, BOLTS, PADLOCK, MORTAR, ETC	3,798.90
EFT105456	19/03/2009	EAST KIMBERLEY PLUMBING	REPAIRS TO LEAKING URINAL KNX KLC	141.90
EFT105457	19/03/2009	FUJI XEROX AUSTRALIA PTY LTD	SERVICE CHARGES FOR DPC3290FS COPIER	658.12
EFT105458	19/03/2009	GARRARDS PTY LTD	RESLIN FOR WYNDHAM FOGGING	3,269.35
EFT105459	19/03/2009	GRUNT LABOUR SERVICES PTY LTD	LABOUR HIRE KNX TIP	1,198.23
EFT105460	19/03/2009	GUERINONI & SON	REMOVAL OF CUMBUNGI WEED CELEB TREE PARK	693.00
EFT105461	19/03/2009	HORIZON POWER	IRRIGATION CONTROL FOR KONKERBERRY DVE	133.50
EFT105462	19/03/2009	ICEAGE REFRIGERATION & AIRCONDITIONING	REPAIR TO AIRCON 2 EUCALYPTUS CLOSE	55.00
EFT105463	19/03/2009	IOR PETROLEUM PTY LTD	DIESEL TO DEPOT FEB & MAR 09	15,320.90

EFT105464	19/03/2009	J.M. ROCK & P.G ROCK	REFUND OF SWIMMING LESSON FEES	56.00
EFT105465	19/03/2009	JAB INDUSTRIES	UPGRADE PIPES & REMOVE TREE WEABER PL RD	5,933.40
EFT105466	19/03/2009	JASON SIGNMAKERS LTD	VARIOUS ROAD SIGNAGE KNX	906.40
EFT105467	19/03/2009	JSW HOLDINGS PTY LTD	WATER TRUCK HIRE DRAIN CLEARING KONKERBERRY	184.80
EFT105468	19/03/2009	KIMBERLEY COLLEGE OF TAFE	2009 ENROLMENT FEES CERT II IN BUSINESS	116.20
EFT105469	19/03/2009	KIMBERLEY INDUSTRIES METALAND	Y12 DEFORMED BAR X 50 LENGTHS	1,242.03
EFT105470	19/03/2009	KIMBERLEY PROPERTY VALUERS	VALUATION FEES	1,100.00
EFT105471	19/03/2009	KIMBERLEY PUMPING SERVICE	PROGRESS PMT FILTRATION MESSMATE PUMP STN	38,986.20
EFT105472	19/03/2009	KIMBERLEY TREE SERVICES PTY LTD	REMOVAL, TRIMMING & MULCHING TREES KNX	11,038.00
EFT105473	19/03/2009	KIMBERLEY WASTE SERVICES	CONTRACT PMT TIDY TOWN COLLECTION FEB 09	9,162.00
EFT105474	19/03/2009	KOSMOS FOODS PTY LTD	ICECREAM ORDER FOR RESALE KLC	2,098.65
EFT105475	19/03/2009	KUNUNURRA 4WD SPARES	SEAT COVERS WY12352	187.00
EFT105476	19/03/2009	KUNUNURRA MAINTENANCE SERVICE	MAINTENANCE & INSTALLATIONS KLC & SWIM BEACH	9,666.00
EFT105477	19/03/2009	LAWRENCE & HANSON GROUP	ELECTRICAL WORKS LIGHTING SYSTEM KNX A/PORT	265.85
EFT105478	19/03/2009	MEGAN HUNT	WYNDHAM CLEANING	2,025.37
EFT105479	19/03/2009	NORDIG EARTHMOVING	SLASHING, SURVEY & RETIC AT CENTENARY PARK	2,464.00
EFT105480	19/03/2009	ORD MACHINING	REPAIRS TO GEN SET WYN AIRPORT	1,144.00
EFT105481	19/03/2009	ORD RIVER ELECTRICS	LIGHTING & ELECTRICAL REPAIRS AIRPORT, KLC	4,893.33
EFT105482	19/03/2009	ORD RIVER TRENCHING	1/2 DAY HIRE OF ELEVATED WORK PLATFORM A/PORT	88.00
<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
EFT105483	19/03/2009	ORDCO	SUPPLY 4 X 20L ROUNDUP GLYPHOSATE CHEMICAL	814.00
EFT105484	19/03/2009	ORIA ORCHARDS	WEEKLY SUPPLY OF FLOWERS KNX ADMIN	15.00
EFT105485	19/03/2009	ORICA AUSTRALIA PTY LTD	SUPPLY OF CHLORINE WYNDHAM SWIMMING POOL	1,218.80
EFT105486	19/03/2009	ORD VALLEY TURF	PREP & TURF PLANTING LAWN EWIN CENTRE	11,532.13
EFT105487	19/03/2009	PIVOTEL	SAT PHONE SERVICE FEB 09	105.00
EFT105488	19/03/2009	SEARLES MECHANICAL REPAIRS	60K SERVICE WY11630 & INVERTER ERSKINE LIGHTS	408.15
EFT105489	19/03/2009	SHELF SUPPLY	2 PR LEG PROTECTORS & DOG FOOD	108.00
EFT105490	19/03/2009	THINKWATER	PIPES WEABER PL RD DRAINAGE UPGRADE	2,823.35
EFT105491	19/03/2009	TNT AUSTRALIA PTY LIMITED	FREIGHT WATER AMPLES KNX TO NEDLANDS	100.28

EFT105492	19/03/2009	TONY'S PLUMBING & EXCAVATION PTY LTD	REPAIRS TO TOILETS WYN ADMIN	401.50
EFT105493	19/03/2009	TOP END TYRE RECYCLING	BAILING OF TYRES PROJECT KNX LANDFILL SITE	38,966.95
EFT105494	19/03/2009	TRENNY'S REFRIG & AIRCONDITIONING P/L	REPAIRS TO AIRCON KLC HALL	275.00
EFT105495	19/03/2009	TROPICAL PEST CONTROL	MOZZIE FOGGING FEB 08	1,320.00
EFT105496	19/03/2009	TUCKERBOX/RETRAVISION	MOBILE PHONES, CONSUMABLES, VAC CLEANER, ETC	2,807.41
EFT105497	19/03/2009	UHY HAINES NORTON (WA) PTY LTD	PROFESSIONAL FEES	1,980.00
EFT105498	19/03/2009	WA LOCAL GOVERNMENT ASSOC WALGA	REGISTRATION FOR WALGA BREAKFAST CR F MILLS	45.00
EFT105499	19/03/2009	WA LOCAL GOVT SUPERANNUATION PLAN	SUPERANNUATION CONTRIBUTIONS	174.44
EFT105500	19/03/2009	WANNA WORK LABOUR HIRE SOLUTIONS	LABOUR HIRE TYRE BAILING PROJECT	19,874.89
EFT105501	19/03/2009	WYNDHAM SUPERMARKET	CATERING COMMUNITY MEETING	333.13
EFT105502	26/03/2009	ALLGEAR MOTORCYCLES	CHAINSAW CHAIN & PULL CORD	217.00
EFT105503	26/03/2009	ALLIED PICKFORDS	FURNITURE REMOVAL TOWN PLANNER RELOCATION	10,153.00
EFT105504	26/03/2009	APPERLEY, KARYN	POWER SUBSIDY FEB 09	244.30
EFT105505	26/03/2009	ARGYLE ENGINEERING	REPAIR FLOOR & RAMPS PLANT TRAILER AS QUOTED	1,705.00
EFT105506	26/03/2009	ATO CHILD SUPPORT AGENCY	PAYROLL DEDUCTIONS	133.66
EFT105507	26/03/2009	ATTORNEY GENERAL'S DEPT AUSCHECK	ASIC CHECK KNX A/PORT	167.00
EFT105508	26/03/2009	AUSFUEL AFD AUSTRALIAN FUEL DISTRIB	FUEL PURCHASE MINOR PLANT FEB 09	94.62
EFT105509	26/03/2009	AUSTRALIAN SERVICES UNION	PAYROLL DEDUCTIONS	179.00
EFT105510	26/03/2009	AUSTRALIAN TAXATION OFFICE	BAS PAYMENT FEB 09	32,546.00
EFT105511	26/03/2009	BLACKWOODS ATKINS PTY LTD	SAFETY GLASSES, CAPS FOR PICKETS, ETC	624.46
EFT105512	26/03/2009	BOAB CARPENTRY MAINTENANCE SERVICE	REPLACEMENT DOOR WYN REC CTR	484.22
EFT105513	26/03/2009	BOSS FLUID POWER	TOILET ROLLS, TISSUES, GARBAGE BAGS, ETC	1,430.08
EFT105514	26/03/2009	C Y O'CONNOR TAFE	COURSE FEES LAW ENFORCEMENT, DOG/CAT MGMT	910.00
EFT105515	26/03/2009	COATES HIRE	BACKHOE HIRE GRAVE DIGGING & POUND WORKS	625.35
EFT105516	26/03/2009	COMFORT INN PERTH HOTEL	ACCOMMODATION FORUM KIMBERLEY PILBARA ZONE	424.40
EFT105517	26/03/2009	COMPACT EARTHMOVING EQUIPMENT	4 TONNE ALUMINIUM RAMPS	1,600.00
EFT105518	26/03/2009	DAVEY TYRE AND BATTERY SERVICE	BATTERIES BACKHOE & BOBCAT KNX DEPOT	402.71
EFT105519	26/03/2009	EAST KIMBERLEY HARDWARE	FENCE DROPPERS, PAINT, ROLLERS, GEN HARDWARE	1,120.50
EFT105520	26/03/2009	EAST KIMBERLEY PLUMBING	REPAIRS TO SOLAR H/W SYSTEM AT 6 EUGENIA ST	283.14

EFT105521	26/03/2009	GYM CARE	REPAIR OF TREADMILL MOTOR	1,198.12
EFT105522	26/03/2009	IMAGE PRINTING	DL WINDOW ENVELOPES 2000	242.00
<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
EFT105523	26/03/2009	JAB INDUSTRIES	EARTHWORKS MESSMATE WAY PUMP UPGRADES	1,342.00
EFT105524	26/03/2009	JASON SIGNMAKERS LTD	STREET/WARNING SIGNAGE	159.50
EFT105525	26/03/2009	KIMBERLEY COMMUNICATIONS	REPAIR DOOR MECHANISM ON AUTO TOILET	176.00
EFT105526	26/03/2009	KIMBERLEY FIRST NATIONAL REAL ESTATE	BOND TOP UP FOR UNIT 12/33 KONKERBERRY DRIVE	520.00
EFT105527	26/03/2009	KIMBERLEY INDUSTRIES METALAND	LIGHT FITTING FOR WINDSOCK LIGHTS WYN A/PORT	224.33
EFT105528	26/03/2009	KIMBERLEY MOTORS	MONTHLY DIESEL PURCHASES WYNDHAM FEB 09	3,378.94
EFT105529	26/03/2009	KIMBERLEY PUMPING SERVICE	SERVICE ALL AQUA PUMPS KNX POOL	5,617.70
EFT105530	26/03/2009	KIMBERLEY TREE SERVICES PTY LTD	TREE STUMP REMOVAL ON COOLIBAH DR	760.00
EFT105531	26/03/2009	KUNUNURRA LOCK & KEY	REPAIRS KNX OVAL TOILETS	234.50
EFT105532	26/03/2009	KUNUNURRA REFRIG & AIR CON PTY LTD	AFTER HOURS REPAIRS AIRCON KNX A/PORT	891.15
EFT105533	26/03/2009	KUNUNURRA SECURITY SERVICE	AIRPORT SECURITY & SCREENING 11/02/09 - 24/02/09	16,096.00
EFT105534	26/03/2009	L.G.R.C.E.U	PAYROLL DEDUCTIONS	15.30
EFT105535	26/03/2009	MCLEAN ENTERPRISES	AIRPORT FREIGHT KNX A/PORT	38.50
EFT105536	26/03/2009	MEGAN HUNT	WYNDHAM CLEANING	973.50
EFT105537	26/03/2009	NORDIG EARTHMOVING	EXCAVATION WORKS LILY CREEK	2,915.00
EFT105538	26/03/2009	OFFICE NATIONAL KUNUNURRA	NEW PRINTER CARTRIDGE FOR CANON IRC 5800	1,208.80
EFT105539	26/03/2009	ORD RIVER ELECTRICS	ELECTRICAL REPAIRS 28 EUGENIA ST	121.96
EFT105540	26/03/2009	PLAYRIGHT AUSTRALIA PTY LTD	PLAYGROUND SAFETY TRAINING COURSE	1,463.00
EFT105541	26/03/2009	CHILD AUSTRALIA	MANAGING RISKS IN CHILDCARE SEMINAR	44.00
EFT105542	26/03/2009	PUMPSERV PTY LTD	NEW PUMP (AIR BLOWER) FOR TOILET KNX A/PORT	880.00
EFT105543	26/03/2009	SHIRE OF WYNDHAM EAST KIMBERLEY	PAYROLL DEDUCTIONS	385.00
EFT105544	26/03/2009	SUPA FRESH HOT BREAD SHOP	CATERING WYNDHAM ADMIN OFFICE STAFF MEETING	49.00
EFT105545	26/03/2009	TONY'S PLUMBING & EXCAVATION PTY LTD	RENEW WATER COCK AT KNX DEPOT	113.00
EFT105546	26/03/2009	TOTAL SAFETY & FIRE SOLUTIONS	SERVICE OF FIRE EXTINGUISHERS FOR WYN DEPOT	2,828.10
EFT105547	26/03/2009	VANDERFIELD MACHINERY PTY LTD	BOLT KIT FOR SUPERIOR SLASHER P435	274.01
EFT105548	26/03/2009	VISION WONDER	CARICATURE DAVE STANDRING'S 10 YEAR SERVICE	95.00

EFT105549	26/03/2009	WA LOCAL GOVT SUPERANNUATION PLAN	SUPERANNUATION CONTRIBUTIONS	21,396.01
EFT105550	26/03/2009	WAYNE RICHARDS & REBECCA MORRALL	REIMBURSEMENT OF TAXI FARE AND MEALS	252.42
EFT105551	26/03/2009	WESTERN AUST. TREASURY CORPORATION	LOAN 118 INTEREST PAYMENT	8,872.90
EFT105552	26/03/2009	WYNDHAM TOURIST INFORMATION CENTRE	TOURIST INFORMATION SERVICE PMT JAN 09	476.66
				<b>786,695.11</b>

<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
38899	05/03/2009	CASH - PETTY CASH KNX DEPOT	PETTY CASH DEPOT FEB 2009	99.70
38900	05/03/2009	TELSTRA	LANDLINE CHARGES KNX YOUTH CENTRE	239.65
38901	05/03/2009	WALKABOUT SOUVENIRS	COASTERS, VASE, PLATE STAND FOR CHAMBERS	125.60
38902	12/03/2009	AMY OLIVER	REFUND OF AQUA NETBALL REGISTRATION	35.00
38903	12/03/2009	ASGARD SUPERANNUATION	SUPERANNUATION CONTRIBUTIONS	202.25
38904	12/03/2009	AUSTRALIAN SUPERANNUATION	SUPERANNUATION CONTRIBUTIONS	110.56
38905	12/03/2009	AXA AUSTRALIA	SUPERANNUATION CONTRIBUTIONS	163.60
<b>Chq/EFT</b>	<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
38906	12/03/2009	DEPT FOR PLANNING & INFRASTRUCTURE	12 MONTHS REGO WY01	65.00
38907	12/03/2009	MLC NOMINEES PTY LTD	SUPERANNUATION CONTRIBUTIONS	343.80
38908	12/03/2009	QBD BOOKSHOP	PURCHASE BOOKS KNX LIBRARY	274.12
38909	12/03/2009	QUADRANT SUPERANNUATION	SUPERANNUATION CONTRIBUTIONS	267.79
38910	12/03/2009	REST SUPER	SUPERANNUATION CONTRIBUTIONS	288.03
38911	12/03/2009	VICSUPER	SUPERANNUATION CONTRIBUTIONS	166.50
38912	19/03/2009	BCITF	BCITF PAYMENT 02/12/08 - 28/02/09	23,242.87
38913	19/03/2009	DEPT FOR PLANNING & INFRASTRUCTURE	ANNUAL LICENSE FOR SWIM BEACH BOAT RAMP	93.00
38914	19/03/2009	DEPARTMENT OF TREASURY AND FINANCE	FIREBREAK ADVERTISING	464.95
38915	19/03/2009	DRIVECHECK	BREATH TESTING INSTRUMENT KNX/WYN AIRPORT	3,005.20
38916	19/03/2009	HENDRICKSE, JUDY	REFUND FOR SWIMMING LESSONS	60.00
38917	19/03/2009	HORIZON POWER - NON ENERGY	RECONNECTION OF SHIRE PUMP FOR UPGRADE	250.00
38918	19/03/2009	TELSTRA	LANDLINE CHARGES FEB 2009	5,339.82
38919	19/03/2009	TEX GUN SUPPLIES	BIRD FIRE AMMUNITION AIRPORT	2,599.20

38920	19/03/2009	VOCAM PTY LTD CHEQUES 38921-38990	SUPPLY OF VIDEO AND MANUAL FOR FIRE SAFETY TO BE USED IN THE FOLLOWING MONTHS	396.00 -
38991	26/03/2009	ASGARD SUPERANNUATION	SUPERANNUATION CONTRIBUTIONS	202.25
38992	26/03/2009	AUSTRALIAN SUPERANNUATION	SUPERANNUATION CONTRIBUTIONS	147.42
38993	26/03/2009	AXA AUSTRALIA	SUPERANNUATION CONTRIBUTIONS	163.60
38994	26/03/2009	DEPT FOR PLANNING & INFRASTRUCTURE	12 MTHS REGO VARIOUS SHIRE VEHICLES	5,311.85
38995	26/03/2009	MLC NOMINEES PTY LTD	SUPERANNUATION CONTRIBUTIONS	392.79
38996	26/03/2009	QBD BOOKSHOP	BOOKS FOR LIBRARY	61.98
38997	26/03/2009	QUADRANT SUPERANNUATION	SUPERANNUATION CONTRIBUTIONS	267.79
38998	26/03/2009	REST SUPER	SUPERANNUATION CONTRIBUTIONS	282.29
38999	26/03/2009	TELSTRA	MOBILE TELSTRA ACCOUNT FEB - MARCH 09	920.29
				<b>45,582.90</b>

<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>	
11/03/2009	PAYROLL	PAYROLL	128,486.00	
13/03/2009	PAYROLL	ONE OFF PAY	1,559.98	
25/03/2009	PAYROLL	PAYROLL	130,235.70	
24/03/2009	PAYROLL	ONE OFF PAY	2,367.60	
24/03/2009	PAYROLL	ONE OFF PAY	2,376.83	
27/03/2009	PAYROLL	ONE OFF PAY	1,380.93	
				<b>266,407.04</b>

<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Amount</b>
25/03/2009	DIRECT DEBIT	RENT 12/33 KONKERBERRY DRIVE KUNUNURRA	2,036.66
16/03/2009	DIRECT DEBIT	RENT 4 BOOBIALLA WAY	2,491.67

20/03/2009	DIRECT DEBIT	RENT 20 BARRINGTONIA WAY	2,253.33
Mar-09	DIRECT DEBIT	BANK FEES	305.15
Mar-09	DIRECT DEBIT	BPOINT	230.73
02/03/2009	DIRECT DEBIT	VISA PAYMENT	1,140.21
19/03/2009	DIRECT DEBIT	MASTERCARD	5,254.02
Mar-09	DIRECT DEBIT	MERCHANT FEE	909.28
05/03/2009	DIRECT DEBIT	WESTNET P/L	609.49
		<b>TOTAL DIRECT DEBIT PAYMENTS</b>	<b><u>15,230.54</u></b>

## 12.2.2 MONTHLY FINANCIAL REPORT (8621)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Shire Of Wyndham East Kimberley
<b>AUTHOR:</b>	Gillian Old, Manager Financial Services
<b>REPORTING OFFICER:</b>	Jo-Anne Ellis, Executive Manager Corporate Services
<b>FILE NO:</b>	60.14.04
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

For Council to note and accept the Monthly Financial Report for March 2009.

### **BACKGROUND**

Council is required to prepare Monthly Financial Reports as required by the Local Government (Financial Management) Regulations 1996.

### **STATUTORY IMPLICATIONS**

Section 6.4 Local Government Act 1995  
Regulation 34, Local Government (Financial Management Regulations) 1996

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

Monthly financial reporting is a primary financial management and control process, it provides Council with the ability to oversee the Shire's financial performance against budgeted targets.

### **STRATEGIC IMPLICATIONS**

*Key Result Area 5 – Governance*

Council's financial position and forward planning is sound.

### **COMMUNITY CONSULTATION**

Nil

### **COMMENT**

Comment in relation to budget to actual variances are included as a note in the Financial Reports.

### **ATTACHMENTS**

Monthly Financial Report for March 2009.

**VOTING REQUIREMENT**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council accept the Monthly Financial Report for March 2009.

**COUNCIL DECISION**

*Minute No. 8621*

*Moved:Cr K Wright*

*Seconded:Cr P Caley*

*That Council accept the Monthly Financial Report for March 2009.*

***CARRIED UNANIMOUSLY: (8/0)***



# **Shire of Wyndham East Kimberley**

## **Monthly Financial Report 2008/09**

**As at 31 March 2009**

**Presented to Council 21 April 2009**

- Statement of Financial Activity
- Note to Statement of Financial Activity (Net Current Asset Position)
- Note to Statement of Financial Activity (Explanation of Material Variances)
- Note to Statement of Financial Activity (Budget Remaining to Collect/Spend)
- Monthly Report on Investment Portfolio (Cash)

**Shire of Wyndham East Kimberley  
Statement of Financial Activity  
Year to Date Actual v Year to Date Budget  
as at 31 March 2009**

	Year to Date Budget		Year to Date Actual		Variance	
	\$	\$	\$	\$	\$	
<b>Revenues</b>		9,609,455		9,516,160		
General Purpose Funding	3,368,570		3,350,838		(17,732)	-1%
Governance	41,232		31,008		(10,224)	-25%
Law, Order And Public Safety	54,944		35,999		(18,945)	-34%
Health	103,177		106,060		2,883	3%
Education And Welfare	1,056,126		1,070,803		14,677	1%
Housing	94,312		90,146		(4,166)	-4%
Community Amenities	1,907,925		1,859,175		(48,750)	-3%
Recreation And Culture	317,971		285,827		(32,144)	-10%
Transport	2,443,731		2,480,232		36,501	1%
Economic Services	80,655		87,339		6,684	8%
Other Properties And Services	140,812		118,734		(22,078)	-16%
<b>Expenses</b>		(10,578,454)		(10,356,486)		
General Purpose Funding	(292,117)		(365,453)		(73,336)	25%
Governance	(609,329)		(595,796)		13,533	-2%
Law, Order And Public Safety	(360,604)		(393,933)		(33,329)	9%
Health	(244,584)		(240,644)		3,940	-2%
Education And Welfare	(316,083)		(316,979)		(896)	0%
Housing	(207,491)		(205,942)		1,549	-1%
Community Amenities	(2,220,275)		(2,063,152)		157,123	-7%
Recreation and Culture	(2,539,750)		(2,498,392)		41,358	-2%
Transport	(3,286,459)		(3,251,273)		35,186	-1%
Economic Services	(364,668)		(325,026)		39,642	-11%
Other Properties And Services	(136,894)		(99,895)		36,999	-27%
<b>Adjustments for Cash Budget Requirements</b>						
Non-Cash Expenditure and Revenue		388,369		446,427	58,058	0
Capital Expenditure and Revenue		(3,301,769)		(1,997,296)		
Purchase for Land Held for Resale	0		0		0	
Purchase Land and Buildings	(375,000)		(333,319)		41,681	0%
Purchase Infrastructure Assets - Roads	(1,909,012)		(1,925,823)		(16,811)	1%
Purchase Infrastructure Assets - Parks	(447,187)		(400,092)		47,095	-11%
Purchase Infrastructure Assets - Footpaths	(132,664)		(262,640)		(129,776)	98%
Purchase Infrastructure Assets - Drainage	(70,000)		(28,996)		41,004	0%
Purchase Infrastructure Assets - Other	(2,084,727)		(1,391,713)		693,014	-33%
Purchase Plant and Equipment	(1,632,780)		(916,838)		715,942	-44%
Purchase Furniture and Equipment	(254,250)		(117,633)		136,617	-54%
Grants / Contributions for Development of Assets	3,138,241		3,107,558		(30,683)	-1%
Proceeds from Disposal of Assets	1,428,568		1,233,693		(194,875)	-14%
Proceeds from Sale of Land Held for Resale	300,000		302,605		2,605	
Repayment of Debentures	(122,866)		(122,750)		116	0%
Proceeds from New Debentures	0		0		0	
Self-Supporting Loan Principal Income	1,119		1,119		0	
Transfers to Reserves (Restricted Assets)	(1,141,011)		(1,142,468)		(1,457)	
Transfers from Reserves (Restricted Assets)	0		0		0	
<b>ADD</b> Estimated Surplus/(Deficit) July 1 B/Fwd	1,448,641	1,448,641	2,301,074	2,301,074	852,433	59%
<b>LESS</b> Estimated Surplus/(Deficit) June 30 C/Fwd	2,462,581	2,462,581	4,792,260	4,792,260	2,329,679	95%
Amount Required to be Raised from Rates	4,896,339	4,896,339	4,882,380	4,882,380	(13,959)	0%

## Shire of Wyndham East Kimberley

Notes to Statement of Financial Activity  
For the Period Ended 31 March 2009

	YTD Actual 2008/09	Brought Forward
Net Current Assets	\$	1 July 2008 \$
<i>Composition of Net Current Asset Position</i>		
<b>Current Assets</b>		
Cash - Unrestricted	2,253,099	1,155,459
Cash - Reserves	6,244,630	5,102,163
Cash - Restricted Unspent Grants		1,091,078
Investments - Restricted		
Receivables	2,806,880	1,141,569
Self Supporting Loans		1,119
Inventories	26,281	7,834
Land Held for Resale		-
	11,330,891	8,499,221
<i>Less</i>		
<b>Current Liabilities</b>		
Payables	(294,001)	(1,095,984)
	(294,001)	(1,095,984)
<i>Less</i>		
<b>Restricted Reserves</b>		
Cash	(6,244,630)	(5,102,163)
Investments		
	(6,244,630)	(5,102,163)
<b>Net Current Asset Position</b>	4,792,260	2,301,074

## Shire of Wyndham East Kimberley

Notes to Statement of Financial Activity  
For the Period Ended 31 March 2009

### Explanation of Material Variances

Variances +/- \$50,000

#### Operating

##### Recurrent Revenue - Excluding Rates

Nil.

##### Recurrent Expenditure

General Purpose Funding - Write off of outstanding rates as per minute 8611 not including in original budget.

Community Amenities - Expected year to date expenditure not incurred in Youth Services due to inability to recruit officers. Refuse collection services expenses have not been incurred for February/March as yet.

#### Capital

##### Non-Cash Expenditure and Revenue

Profit on Sale of Assets (Plant Operation) - Plant replacement is occurring later in financial year than originally estimated. This variance is also reflected in capital expenditure for purchasing plant & equipment and the capital revenue for proceeds from disposal of assets (plant replacement).

##### Capital Expenditure and Revenue

Purchase Infrastructure Assets (Footpaths) - Executive Manager Engineering & Regulatory Services will investigate and provide a report to the next Audit Committee meeting.

Purchase Infrastructure Assets (Other) - Delay in Multi Purpose Court Redevelopment has seen expenses incurred later than originally estimated.

Purchase Plant & Equipment - Plant replacement is occurring later in financial year than originally estimated. This variance is also reflected in proceeds from disposal of assets (plant replacement) and the non-cash revenue for profit/loss on sale of assets.

Purchase Furniture & Equipment - Kununurra Youth Centre equipment ordering has occurred later than estimated, will be invoiced next month. Wyndham Youth Service set up costs have not been incurred at time originally estimated due to inability to recruit officers.

Proceeds from Disposal of Assets - Plant replacement is occurring later in financial year than originally estimated. This variance is also reflected in the capital expenditure for purchase of plant & equipment, and the non-cash revenue for profit/loss on sale of assets.

**Shire of Wyndham East Kimberley**  
**Note to Statement of Financial Activity**  
**(Budget to Collect / Spend)**  
**as at 31 March 2009**

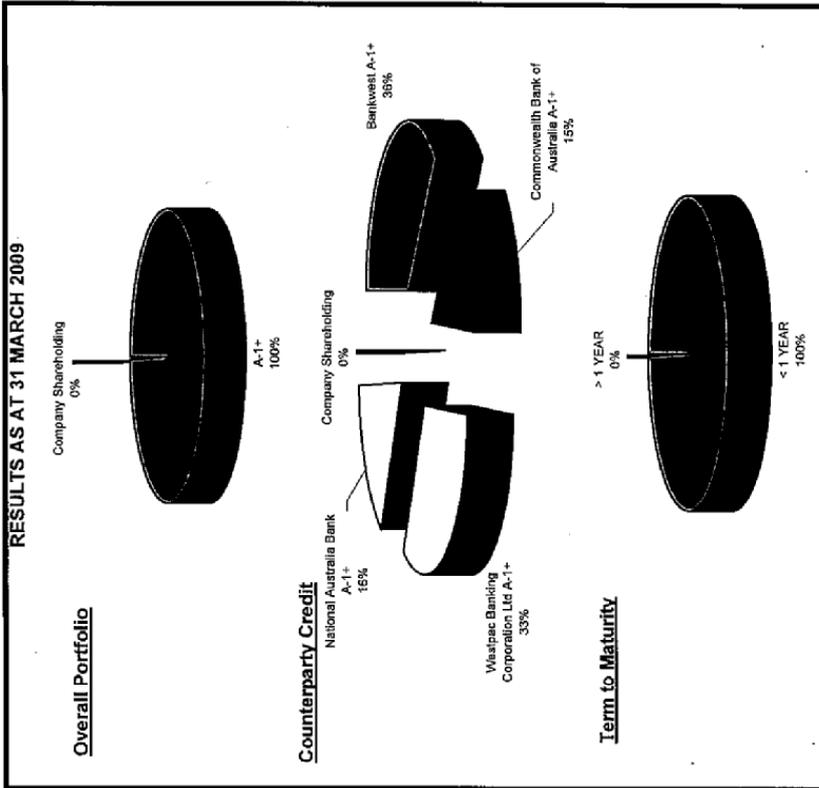
	Amended Adopted Budget		Year to Date Actual		Budget Remaining to Collect / (Spend)	
	\$	\$	\$	\$	\$	\$
<b>Revenues</b>		12,612,282		9,516,160		3,096,122
General Purpose Funding	4,364,562		3,350,838		1,013,724	
Governance	48,010		31,008		17,002	
Law, Order And Public Safety	72,600		35,999		36,601	
Health	146,920		106,060		40,860	
Education And Welfare	1,083,159		1,070,803		12,356	
Housing	126,470		90,146		36,324	
Community Amenities	2,347,689		1,859,175		488,514	
Recreation And Culture	464,900		285,827		179,073	
Transport	3,366,050		2,480,232		905,818	
Economic Services	296,285		87,339		208,946	
Other Properties And Services	275,637		118,734		156,903	
<b>Expenses</b>		(16,035,616)		(10,356,486)		(5,679,131)
General Purpose Funding	(373,155)		(365,453)		(7,702)	
Governance	(965,900)		(595,796)		(370,104)	
Law, Order And Public Safety	(514,546)		(393,933)		(120,615)	
Health	(339,005)		(240,644)		(98,361)	
Education And Welfare	(398,772)		(316,979)		(81,793)	
Housing	(298,386)		(205,942)		(92,444)	
Community Amenities	(3,815,413)		(2,063,152)		(1,552,261)	
Recreation and Culture	(3,349,562)		(2,498,392)		(851,170)	
Transport	(5,242,786)		(3,251,273)		(1,991,513)	
Economic Services	(629,627)		(325,026)		(304,600)	
Other Properties And Services	(308,463)		(99,895)		(208,568)	
<b>Adjustments for Cash Budget Requirements</b>						
Non-Cash Expenditure and Revenue		1,000,959		446,427		554,532
Capital Expenditure and Revenue		(4,775,039)		(1,987,296)		(2,777,743)
Purchase for Land Held for Resale	(250,000)		0		(250,000)	
Purchase Land and Buildings	(1,490,000)		(333,319)		(1,156,681)	
Purchase Infrastructure Assets - Roads	(4,323,016)		(1,925,823)		(2,397,193)	
Purchase Infrastructure Assets - Parks	(1,012,187)		(400,092)		(612,095)	
Purchase Infrastructure Assets - Footpaths	(147,164)		(262,640)		115,476	
Purchase Infrastructure Assets - Drainage	(125,000)		(28,996)		(96,004)	
Purchase Infrastructure Assets - Other	(2,942,527)		(1,391,713)		(1,550,814)	
Purchase Plant and Equipment	(1,761,280)		(916,838)		(844,442)	
Purchase Furniture and Equipment	(261,000)		(117,633)		(163,367)	
Grants / Contributions for Development of Assets	5,630,971		3,107,558		2,523,413	
Proceeds from Disposal of Assets	1,546,843		1,233,693		313,150	
Proceeds from Sale of Land Held for Resale	300,000		302,605		(2,605)	
Repayment of Debentures	(127,300)		(122,750)		(4,550)	
Proceeds from New Debentures	1,071,000		0		1,071,000	
Self-Supporting Loan Principal Income	1,119		1,119		(0)	
Transfers to Reserves (Restricted Assets)	(1,988,883)		(1,142,468)		(846,416)	
Transfers from Reserves (Restricted Assets)	1,123,385		0		1,123,385	
ADD Estimated Surplus/(Deficit) July 1 B/Fwd	2,301,075	2,301,075	2,301,074	2,301,074	1	1
LESS Estimated Surplus/(Deficit) June 30 C/Fwd		0	4,792,260	4,792,260	(4,792,260)	(4,792,260)
Amount Required to be Raised from Rates	4,896,339	4,896,339	4,882,380	4,882,380	13,959	13,959

Monthly Financial Report  
as at 31 March 2009

5 of 6

**MONTHLY REPORT ON INVESTMENT PORTFOLIO (CASH)**

RESULTS AS AT 31 MARCH 2009



INVESTMENT POLICY F17			
<b>"Overall Portfolio Limits"</b>			
S&P Long Term Rating	S&P Short Term Rating	Direct Investment Maximum %	Managed Funds Maximum %
AAA	A-1+	100%	100%
AA	A-1	100%	100%
A	A-2	60%	80%
Note: "S & P" relates to Standard & Poors credit rating agency			
<b>"Counterparty Credit Framework"</b>			
S&P Long Term Rating	S&P Short Term Rating	Direct Investment Maximum %	Managed Funds Maximum %
AAA	A-1	45%	50%
AA	A-1	35%	45%
A	A-2	20%	40%
<b>"Term to Maturity Framework"</b>			
Overall Portfolio Term to Maturity Limits	100% max 40%		
Portfolio % < 1 year	min		
Portfolio % > 1 year	60%		
Portfolio % > 3 year	35%		
Portfolio % > 5 year	25%		
Individual Investment Maturity Limits			
ADI	5 years		
Non ADI	3 years		
Note: "ADI" relates to an Authorised Deposit Institution (authorised under the Banking Act 1959)			

**EXPLANATION OF VARIANCES:**

Company shareholding (non S&P rated or ADI) represents less than 1% of investment portfolio. Council minute 8314 of 19 August 2008 provides instruction to sell shareholding. Council minute 8588 of 17 March 2009 instructs that status of shares be re-examined in 6 months time.

**12.2.3 PROPOSAL TO PURCHASE WYNDHAM TOWN LOT 829  
KOOLAMA STREET WYNDHAM (EX INFANT HEALTH CLINIC)  
(8622)**

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Department Of Planning & Infrastructure
<b>LOCATION:</b>	Wyndham
<b>AUTHOR:</b>	Jo-Anne Ellis, Executive Manager Corporate Services
<b>REPORTING OFFICER:</b>	Jo-Anne Ellis, Executive Manager Corporate Services
<b>FILE NO:</b>	01.2198.01
<b>ASSESSMENT NO:</b>	A2198

**PURPOSE**

For to Council to consider the proposal to purchase Lot 829 form the State Government for the purposes of staff housing.

**BACKGROUND**

The site is Crown Land and the improvements are the property of the Council. The site of the ex Wyndham Infant Health Clinic has a two storey building and until recently the accommodation section was rented to an external tenant.

The property is now vacant and considered to be in a state of disrepair with demolition recommended.

With a view to requiring additional staff housing the land would be suitable to purchase for that purpose as it is central to a range of facilities.

The site is currently zoned R15, and on that basis only be sufficient for a single dwelling.



The demolition of the existing building is recommended however given the budget implications the site is to be made secure in the interim. The recommendation to demolish the building is included in this report as it is considered appropriate to make the site safe, and await the allocation of funds within the 2009/10 budget.

Budgeting for staff housing is listed for consideration in the forthcoming Budget Workshops, and whilst it is not presumed that funds will be available within the next twelve months the acquisition of the land is a prudent investment.

*At the 17 February 2009 Ordinary Meeting of Council it was resolved:*

*Minute No. 8557*

*Moved: Cr P Caley*

*Seconded: Cr D Ausburn*

*That Council make application to the Minister for Lands to grant title to Shire of Wyndham East Kimberley for Lot 829 Koolama Street Wyndham for the purpose of staff housing.*

*CARRIED UNANIMOUSLY: (7/0)*

### **STATUTORY IMPLICATIONS**

Purchase of Crown Land requires an application to the Minister for Lands.

### **POLICY IMPLICATIONS**

Not applicable

### **FINANCIAL IMPLICATIONS**

The State has offered the land for sale at the valuation less cost of demolition. The valuation has been set at \$65,000 and the demolition of the building is quoted at \$48,950 resulting in a purchase price of \$16,050 including GST

A deposit will be required within 30 days and settlement within the next 60 days. As settlement will occur within 90 days so there is a possibility the funds will be required in the 2008/09 budget. Saving will need to be identified by management to fund the purchase.

Should settlement be beyond 30 June 2009 the purchase will be included in the 2009/10 budget.

Demolition costs are included in the draft 2009/10 budget for consideration.

## **STRATEGIC IMPLICATIONS**

Council's Strategic Plan identifies in its Key Result Area 5 – Governance:

- *Key Result Area 5 - Governance*  
*That Council works in a co-operative way in delivery its obligations and to communicate well with the community*  
*- Council provides a quality work environment that achieves effective recruitment, retention, progression, succession and performance.*

## **COMMUNITY CONSULTATION**

Community consultation has not been sought or recommended.

## **COMMENT**

It is recommended to accept the offer from Department of Planning and Infrastructure to proceed to freehold title at a cost of \$16,050 including GST.

## **ATTACHMENTS**

Nil

## **VOTING REQUIREMENT**

Absolute Majority

## **OFFICER'S RECOMMENDATION**

That Council accepts the offer from The Department of Planning and Infrastructure to purchase freehold title to Lot 829 Koolama Street Wyndham for \$16,050 including GST.

## **COUNCIL DECISION**

***Minute No. 8622***

***Moved:Cr K Wright***  
***Seconded:Cr P Caley***

***That Council accepts the offer from The Department of Planning and Infrastructure to purchase freehold title to Lot 829 Koolama Street Wyndham for \$16,050 including GST, being the balance between valuation of \$65,000 and quoted demoliton \$48,950 as agreed by the Minister for Land.***

***CARRIED UNANIMOUSLY: (8/0)***

## 12.3. ENGINEERING & REGULATORY SERVICES

### 12.3.1 LOCAL EMERGENCY RECOVERY PLAN (8624)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Shire of Wyndham East Kimberley
<b>AUTHOR:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>REPORTING OFFICER:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>FILE NO:</b>	65.01.08
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

To nominate Councillors to participate in the development of the Wyndham and Kununurra Local Recovery Plans.

#### **BACKGROUND**

The Shire is required to prepare, through its Local Emergency Management Committees, Local Recovery Plans. Taken to its fullest extent the Plan or Plans will need to include scenarios for all communities within the Shire. For example, the towns of Kununurra and Wyndham, larger aboriginal communities, and Argyle Diamond Mine will all require Recovery Plans.

#### **STATUTORY IMPLICATIONS**

The states s36(b) of the Emergency Management Act 2005 applies:

*It is a function of Local Government*

*(b) To manage recovery following and emergency affecting the community in its district;*

*Local Government is the 'managing agent' on behalf of the community and in that capacity, consult with and direct the efforts of relief agencies and services in community recovery.*

#### **POLICY IMPLICATIONS**

No specific policies apply

#### **FINANCIAL IMPLICATIONS**

The development of the plans will be undertaken as part of the ongoing administrative support for the Local Emergency Management Committees.

## **STRATEGIC IMPLICATIONS**

Governance: Key Result Area 5 includes an intent to provide “effective emergency management strategies and partnerships”.

## **COMMUNITY CONSULTATION**

Consultation is required in developing the Plans.

## **COMMENT**

Both the state and federal governments believe that local government is best placed to present and represent the local community in the event an emergency situation such as major bush fire, flooding, pandemic or similar scale situations that reduce or destroy the stability and effectiveness of a community. That responsibility extends to all parts of a local governments jurisdiction.

The State Emergency Management Council which comprises representatives of state government and agencies, and local government oversees the preparedness of the state and local government to deal with emergency planning, response and recovery. The Committee has prepared and distributed development guides for recovery plans.

To effect the planning process it is intended to have representatives from the Kununurra and Wyndham LEMCs as well as three Councillors. Sample Plans from other local authorities are being sought to assist in the preparation of the Recovery Plans for Kununurra and Wyndham although there may only be one Plan. Once developed it would be intended to extend the work of the group to assess the requirements of the other communities within the Shire.

## **ATTACHMENTS**

Nil

## **VOTING REQUIREMENT**

Simple majority

## **OFFICER'S RECOMMENDATION**

That Council nominate Councillors Boshammer, Ausburn, Torres and Caley to be Council's representatives on sub-committees of the Wyndham and Kununurra Local Emergency Management Committees.

## **COUNCIL DECISION**

***Minute No. 8623***

***Moved:Cr J Parker***

***Seconded:Cr R Boshammer***

***That Council nominate Councillors Boshammer, Ausburn, Torres and Caley to be Council's representatives on sub-committees of the Wyndham and Kununurra Local Emergency Management Committees.***

***CARRIED UNANIMOUSLY: (8/0)***

### 12.3.2 M1 CHANNEL STORMWATER OUTLETS (8624)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Kununurra
<b>AUTHOR:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>REPORTING OFFICER:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>FILE NO:</b>	50.09.05
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

To agree a response to the Water Corporation in regards to a number of stormwater drainage structures discharging in to the M1 Channel between Victoria Highway and Mills Road.

#### **BACKGROUND**

In September 2008, the local Water Corporation office wrote to the Shire raising concerns for a number of stormwater drainage outlets in to the M1 Channel.

The Water Corporation was seeking a response as to what action the Shire intended to take with respect to maintenance of the structures.

At the time the locations were assessed and the interim verbal response was that the land from which the water discharged was not managed by the Shire and therefore the responsibility for the structures was uncertain and not automatically accepted as being the Shire's.

#### **STATUTORY IMPLICATIONS**

The Water Corporation has management responsibility for King Location 915 within which the M1 channel is constructed.

#### **POLICY IMPLICATIONS**

No specific policy implications apply.

#### **FINANCIAL IMPLICATIONS**

The maintenance of the Shire's stormwater drains and structures is part of annual operating budgets within annual budgets.

This report does not impose any additional costs over and above the current funding obligations.

#### **STRATEGIC IMPLICATIONS**

Key Result Area 1; Infrastructure, includes an expectation that the Shire will provide a "drainage network that achieves its functional requirements".

## **COMMUNITY CONSULTATION**

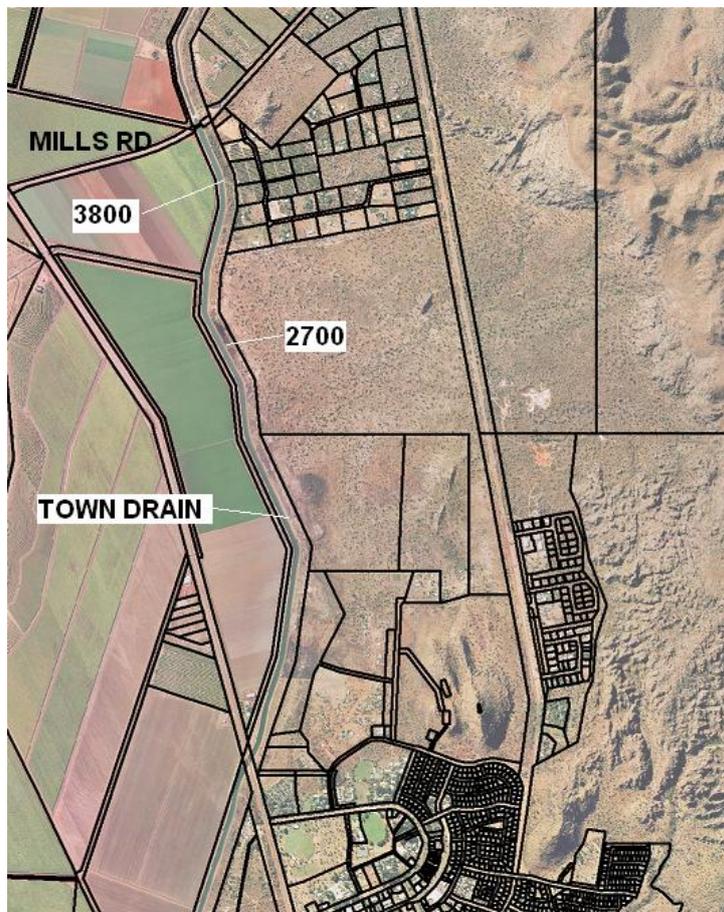
No community consultation has been undertaken in the preparation of this report.

## **COMMENT**

The drain outlet structures are located between Ivanhoe Rd and Mills Rd along the M1 channel.

There are no discreet drainage reserves that contain the open drains that concentrate water flows to the structures.

### Locality Plan showing the 3 structures



The designation of the drainage structures has been taken from the Water Corporation correspondence for simplification.

- 1) The “Town Drain” outlet is located approximately 1500 metres north of the Ivanhoe Rd bridge and comprises a concrete floodway with three pipes embedded within the drain crossing. Each pipe is fitted with a reflux valve to reduce backflow from the channel. The seals on the valves need replacement as water from the channel was observed to be bypassing the valves.

Locality Plan for the Town Drain Outlet



Photograph of the Town Drain Outlet Structure taken from the East Bank

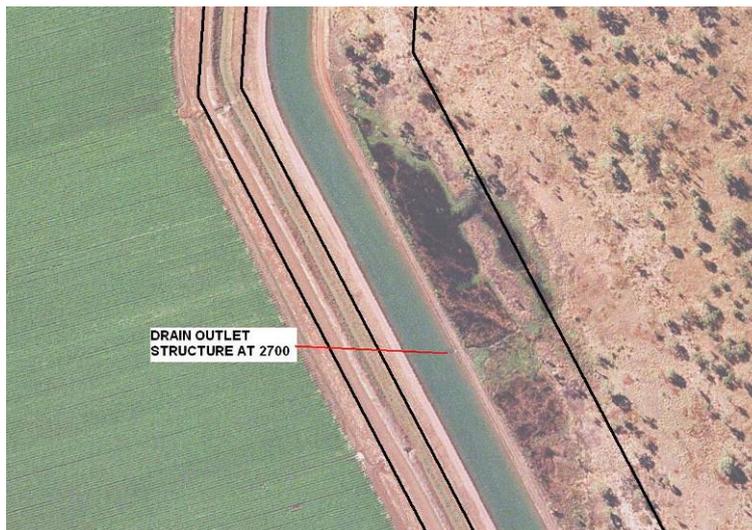


Photograph of outlet pipes



2) The outlet at 2700 metres north of the Ivanhoe Rd bridge is a single concrete box culvert with headwalls. The channel end of the culvert has been undermined and subsequently collapsed in to the bank of the channel.

Locality Plan for the drain outlet at 2700 metres

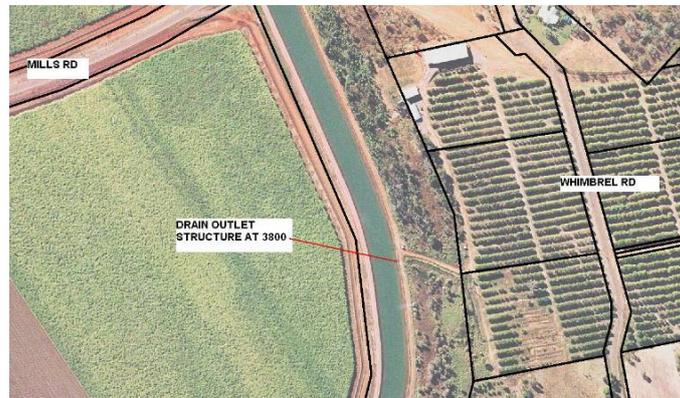


Photograph of the Drain Outlet (2700) Structure taken from the East Bank



3) The outlet at 3800 metres north of the Ivanhoe Rd bridge is a twin concrete box culvert with headwalls. The outlets are fitted with reflux valves, as is the Town Drain structure. The seals require replacement. The outlet is at the end of an open, unlined drain that receives water from the Whimbrel Rd properties. There is no defined drainage reserve or apparent easement/s.

Locality Plan for the drain outlet at 3800 metres



Photograph of the Drain Outlet (3800) Structure taken from the East Bank



In the absence of any verifiable information it would seem inappropriate for Council to consider acceptance of the structures or the associated works requested by the Water Corporation as the first point to establish is land tenure.

- Each of the drains is located within the main channel reservation (King Loc. 915);
- None of the abutting land is vested to or under management orders with the Shire;
- The 'Town Drain' outlet appears to be the discharge point for three discernible open drains and general water shed from the land extending as far as Mirima National Park. One of the drains crosses Speargrass Road at about mid-length and enters Reserve 39000 which is vested in the Minister for Water Resources. The other two drains traverse Reserve 31221, being co-managed by the Kimberley Land Council and Waringarri Aboriginal Corporation.

Clearly a large portion of the townsite drains to the channel. There does not appear to be any maintenance arrangements in place with the Water Corporation, and it would be assumed that the Water Corporation has the same view but is not specifically saying so in writing.

The long term management of drainage of the townsite needs clarification and the purpose of this item is to obtain Councillor's guidance as to the stance that staff should take in subsequent discussions.

Protection of the drains and their outlets to the M1 channel is likely to require a commitment from the Shire to at least maintain or share the maintenance costs. Full ownership of the drains and therefore the water quality is not a responsibility that staff would encourage as the broader implications of nutrient and sediment content in the stormwater is likely to be a factor in the future.

### **ATTACHMENTS**

Nil

### **VOTING REQUIREMENT**

Simple majority

### **OFFICER'S RECOMMENDATION**

That Council authorise the Shire President, Chief Executive Officer and Executive Manager Engineering and Regulatory Services to undertake negotiations with the Water Corporation in regards to maintenance and retention of existing stormwater drainage structures within the M1 channel reserve (King Loc. 915) in view of the absence of documentation that:

- a) adequately describes responsibility for structures within land managed by the Water Corporation, and
- b) adequately describes responsibility for the open stormwater drains that traverse Reserve 39000 (which is vested in the Minister for Water Resources) Reserve 31221 (being co-managed by the Kimberley Land Council and Waringarri Aboriginal Corporation).

## **COUNCIL DECISION**

***Minute No. 8624***

***Moved:Cr R Addis***

***Seconded:Cr D Ausburn***

***That Council authorise the Shire President, Chief Executive Officer and Executive Manager Engineering and Regulatory Services to undertake negotiations with the Water Corporation in regards to maintenance and retention of existing stormwater drainage structures within the M1 channel reserve (King Loc. 915) in view of the absence of documentation that:***

- a) adequately describes responsibility for structures within land managed by the Water Corporation, and***
- b) adequately describes responsibility for the open stormwater drains that traverse Reserve 39000 (which is vested in the Minister for Water Resources) Reserve 31221 (being co-managed by the Kimberley Land Council and Waringarri Aboriginal Corporation).***

***CARRIED UNANIMOUSLY: (8/0)***

### 12.3.3 RESTRICTED ACCESS VEHICLE NOTICE SYSTEM REVIEW (8625)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Main Roads Department
<b>LOCATION:</b>	Shire Of Wyndham East Kimberley
<b>AUTHOR:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>REPORTING OFFICER:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>FILE NO:</b>	21.01.01
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

Main Roads have requested a review of the Shire's Restricted Access Vehicle network of Class 2 and 3 vehicles to establish the suitability of existing roads or the nomination of new roads.

#### **BACKGROUND**

The Shire, as did the majority of local authorities went through a review process approximately four years ago and the request from Main Roads is the first review of the system.

Last year the omission of Stockman Rd (access to Ausfuel Depot) was raised and addressed by correspondence to Main Roads WA Heavy Haulage Section. It is noted that the road is still not shown on the attached Network maps.

#### **STATUTORY IMPLICATIONS**

Main Roads WA has responsibility for the issuing of permits for vehicles that exceed the dimensions of 'as of right' vehicles on all public roads within the State.

#### **POLICY IMPLICATIONS**

There are no specific policies associated with this report.

#### **FINANCIAL IMPLICATIONS**

The ability of transport operators to access roads is an essential part of the economic well-being of the Shire and the Kimberley Region.

There are added maintenance costs associated with heavy vehicle movements on the Shire's road network, and in particular the unsealed roads. The Officer recommendations for this report do not impose additional costs to those previously accepted by Council as part of its operating and capital budget implications.

#### **STRATEGIC IMPLICATIONS**

Key Result Area 1: Infrastructure includes the commitment to provide a "road network that is safe meets its functional requirements".

Key Result Area 2: Economic Development includes the commitment to “promote and facilitate economic opportunities”.

### **COMMUNITY CONSULTATION**

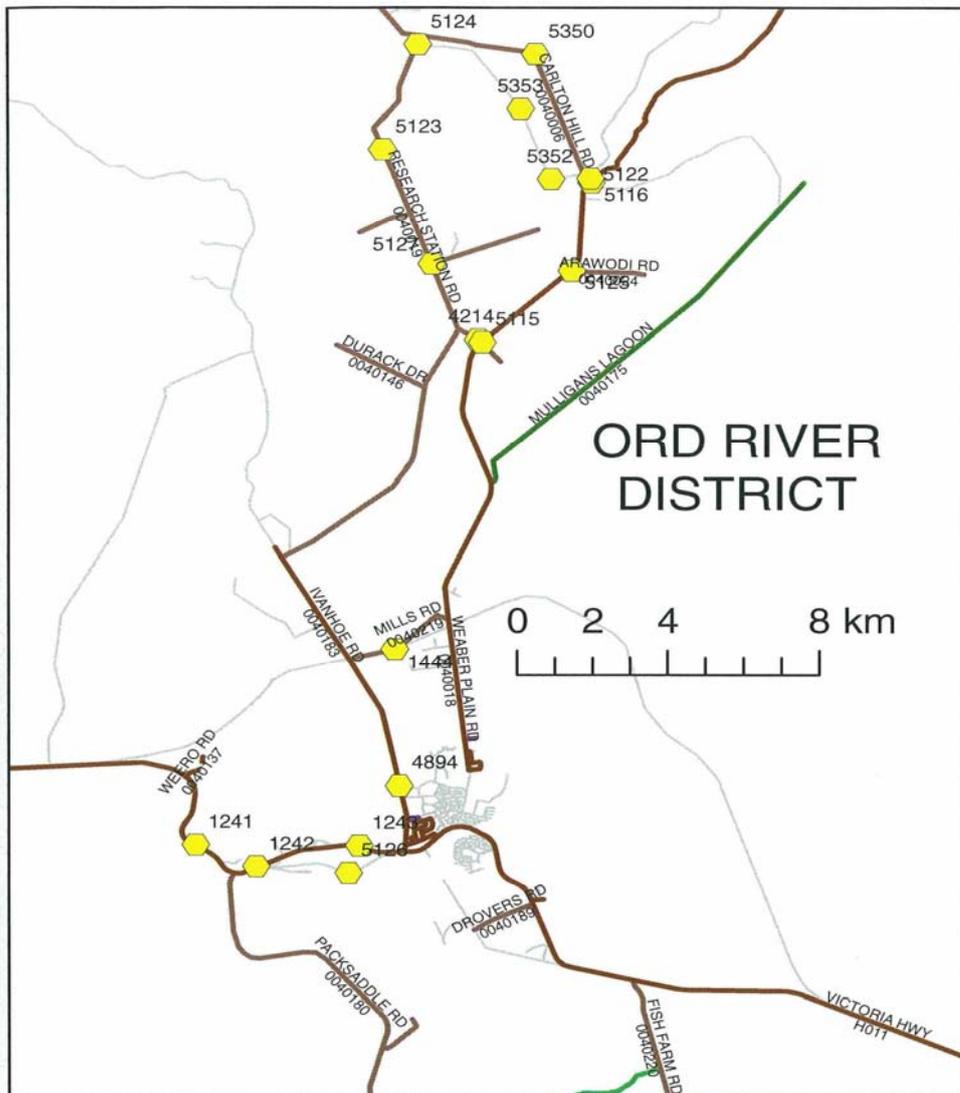
There has been no community consultation in the preparation of this report.

### **COMMENT**

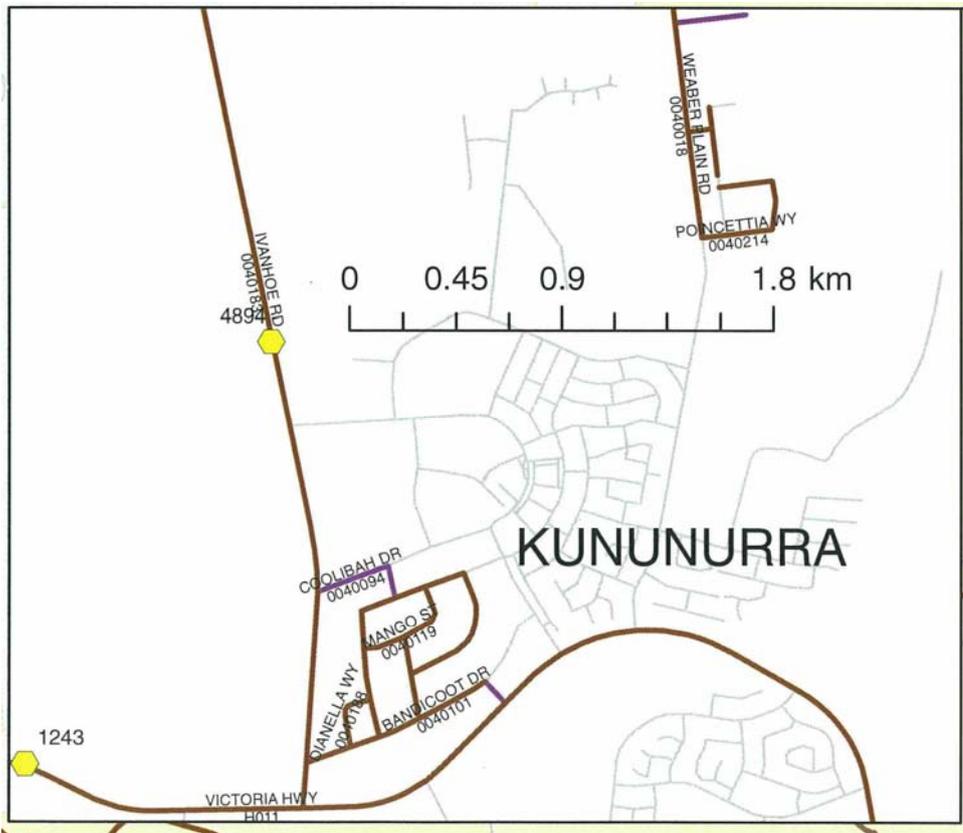
The network that has been in place for approximately four years uses a pre-approved permit system to reduce the time and effort required under the previous permit system. The obligation required from transport operators is that they comply with the system.

The roads included in the Class 2 and 3 network are shown in the included maps:

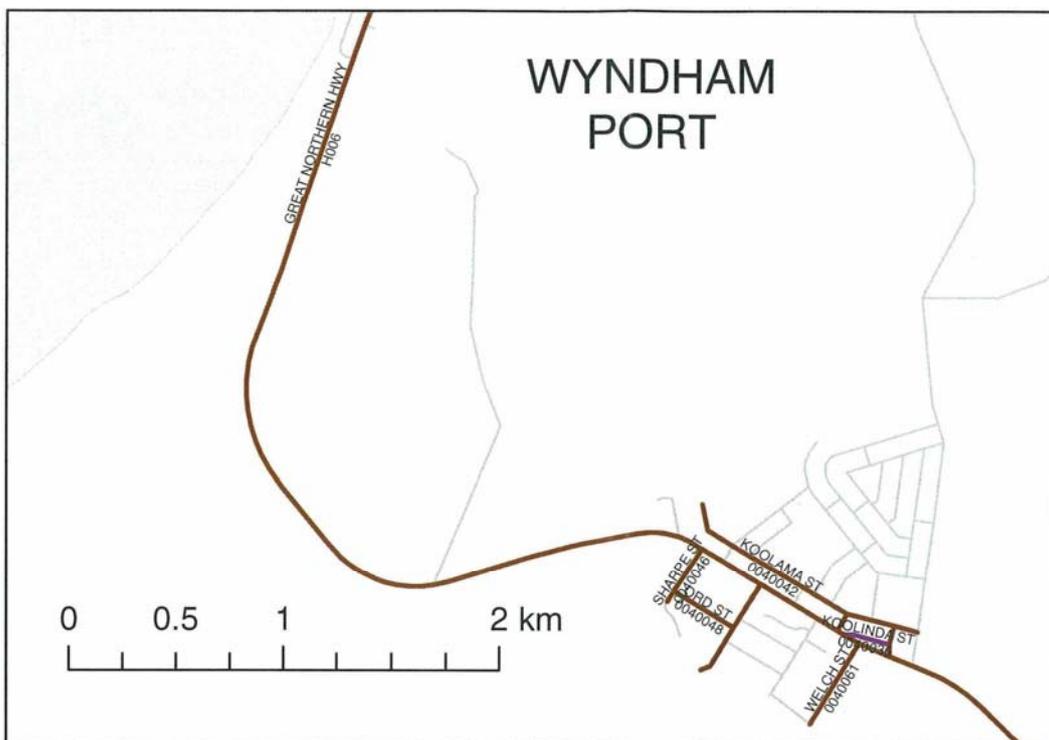
Ord River District



Kununurra townsite



Wyndham townsite and Port



The majority of roads shown on the above maps are listed to have vehicles up to 53.5 metre long multi-combination vehicles. The roads that are listed to have vehicles less than this maximum length are:

- Cocus Way (up to 36.5 metres)
- Mulligans Lagoon Road (up to 36.5 metres),
- Crossing Falls Road (up to 36.5 metres)
- Coolibah Drive (up to 27.5 metres)
- Pruinosa Street (up to 27.5 metres)

Roads outside of the above map areas are:

- Gibb River Kalumburu Road (up to 36.5 metres)
- Lake Argyle Road (up to 36.5 metres)
- Duncan Road (up to 36.5 metres)

Roads not listed for the Shire that are considered to be omissions from the original listing or have since been constructed are listed below. The proposed vehicle length is shown.

- Stockman Road (Victoria Highway to end) - up to 53.5 metres – Network 10  
Provides access to fuel depot and transport/earthworks contractors
- King River Road (Great Northern Highway to end) – up to 53.5 metres – Network 10 with Conditions – Daylight travel only, No use when visibly wet  
Provides access to pastoral lease
- New roads within Weaber Plain Road Light Industrial Area – up to 53.5 metres – Network 10  
Provides access to light industrial lots

The Officer's Recommendation is to have the omitted roads listed.

### **ATTACHMENTS**

Nil

### **VOTING REQUIREMENT**

Simple majority

### **OFFICER'S RECOMMENDATION**

That Main Roads WA be advised that Council seeks the following amendments and additions for the Shire's Restricted Access Vehicle Class 2/3 Period Permit System roads:

- (a) Stockman Road (Victoria Highway to end) - up to 53.5 metres – Network 10

- (b) King River Road (Great Northern Highway to end) – up to 53.5 metres – Network 10 with Conditions – Daylight travel only, No use when visibly wet
- (c) New roads within Weaber Plain Road Light Industrial Area – up to 53.5 metres – Network 10
- (d) Cocus Way – up to 53.5 metres – Network 10

### **COUNCIL DECISION**

***Minute No. 8625***

***Moved:Cr K Torres***

***Seconded:Cr R Addis***

***That Main Roads WA be advised that Council seeks the following amendments and additions for the Shire's Restricted Access Vehicle Class 2/3 Period Permit System roads:***

- (a) ***Stockman Road (Victoria Highway to end) - up to 53.5 metres - Network 10***
- (b) ***King River Road (Great Northern Highway to end) - up to 53.5 metres - Network 10 with Conditions - Daylight travel only, No use when visibly wet***
- (c) ***New roads within Weaber Plain Road Light Industrial Area - up to 53.5 metres - Network 10***
- (d) ***Cocus Way - up to 53.5 metres - Network 10***

***CARRIED UNANIMOUSLY: (8/0)***

### 12.3.4 REPLACEMENT OF LIGHT VEHICLES (8626)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Kununurra
<b>AUTHOR:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>REPORTING OFFICER:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>FILE NO:</b>	66.41.07
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

For Council to consider the replacement of five light vehicles.

#### **BACKGROUND**

At the 17 March 2009 Council Meeting, Council resolved:

*Minute No: 8592*

*Moved: Cr K Wright  
Seconded: Cr P Caley*

*Council request the Executive Manager Engineering & Regulatory Services to represent Item 12.3.1 Replacement of Light Vehicles to comply with Adopted Policy F19 - Purchasing and Tendering Policy.*

*CARRIED UNANIMOUSLY: (8/0)*

#### **STATUTORY IMPLICATIONS**

Replacement of vehicles less than \$100,000 can be undertaken by quotation. Local Government has access to the State Government's supply tender for vehicles.

#### **POLICY IMPLICATIONS**

No policy implications are associated with this report.

#### **FINANCIAL IMPLICATIONS**

Budget estimates included in the 2008/09 Budget are detailed as follows:

Plant No.	Description	Purchase Estimate	Trade Estimate	Changeover (excl GST)
P104	Mid-Range Dual Cab Utility	52,000	20,000	32,000
P327	2WD Tray Top Utility	33,000	12,000	21,000
P341	2WD Utility	30,000	15,000	15,000

P326	4WD Dual Cab Utility	38,000	20,000	18,000
P201	4WD Dual Cab Utility	40,000	20,000	20,000
			<b>TOTAL</b>	<b>106,000</b>

### **STRATEGIC IMPLICATIONS**

The timely replacement of the Shire's plant and equipment is consistent with sound asset management practices.

### **COMMUNITY CONSULTATION**

Not applicable

### **COMMENT**

Quotations were sought from Argyle Motors, Broome Toyota and Bridge Toyota. At the close of the Agenda deadline the additional quotes had not been received. They will be distributed under separate cover on Monday 20 April.

Plant No.	Description	Argyle Motors	Broome Toyota	Bridge Toyota
P104	Automatic Hilux SR5 4WD Dual Cab Utility with canopy, roo bar and spotlights			
P327	Manual Hilux SR 2WD Cab Chassis with steel tray			
P341	Holden Omega 2WD Utility with roo bar, spotlights, hazard lights and rigid tourneau cover			
P326	Manual Hilux SR 4WD Dual Cab Utility with roo bar and spotlights			
P201	Manual Hilux SR 4WD Dual Cab Utility			

The prices shown are the net changeover amounts excluding GST.

The shortfall in the changeover amounts is in the trade values and is reflecting the economic climate..

There are three options available to Council, being: -

- A) Accept the quotations and not proceed with the changeover of the Kununurra Backhoe until the 2009/10 financial year thereby utilising the budgeted funds to fund the shortfall, or
- B) Remove one of the vehicles from the replacement program and budget within the 2009/10 financial year, or
- C) Accept the new vehicles without trade-ins and invite the disposal of the trade vehicles by tender.

It is recommended that Option A be used.

The quoted prices exclude registration costs which are calculated and paid at the time of delivery based on a common expiry date of 30 March

**ATTACHMENTS**

Nil

**VOTING REQUIREMENT**

Simple majority

**OFFICER'S RECOMMENDATION**

A recommendation will be distributed under separate cover together with additional quotation information

**COUNCIL DECISION**

***Minute No. 8626***

***Moved:Cr K Torres***

***Seconded:Cr D Ausburn***

***That Council support the officer's request at the meeting to withdraw the report due to quotes were not submitted in time for the meeting.***

***CARRIED UNANIMOUSLY: (8/0)***

**12.3.5 PERIOD CONTRACT FOR STREET SWEEPING (T08-08/09) 1  
JULY 2009 TO 30 JUNE 2012 (8627)**

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Kununurra And Wyndham
<b>AUTHOR:</b>	John Gault, Engineering Technical Officer
<b>REPORTING OFFICER:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>FILE NO:</b>	66.57.08
<b>ASSESSMENT NO:</b>	N/A

**PURPOSE**

For Council to approve the preferred contractor for the provision of street sweeping services in Kununurra and Wyndham townsites for a three year period commencing 1 July 2009.

**BACKGROUND**

Tenders were invited by public advertising in the West Australian (7 March 2009) and Kimberley Echo (5 March 2009).

Tenders closed at 2:00 pm on Thursday 26 March 2009. At the time of opening three tenders were received; two (2) as per specification and one (1) as an alternative tender.

**STATUTORY IMPLICATIONS**

The Local Government (Functions and General) Regulations 1996 apply and have been complied with.

**POLICY IMPLICATIONS**

Shire of Wyndham East Kimberley Policy F19 – Purchasing and Tendering Policy

**FINANCIAL IMPLICATIONS**

In the 2008/09 budget council allocated \$120,000 for the financial year.

The previous contract was a fixed fee/rate for the three year period. The tender allows for a fixed fee/rate for the 2009/10 financial year and adjusted by CPI for the subsequent years.

The tendered amounts are summarised as follows:-

<b>Item</b>	<b>Supplier</b>	<b>Cost</b>	<b>GST</b>	<b>Total</b>
1	Sweeper Technology	\$232,500	\$23,250.00	\$255,750.00
2	Waste Services Australia	\$127,165	\$12,715.50	\$139,881.50
3	Waste Services Australia (Alternate)	\$122,965	\$12,296.50	\$135,261.50

Ongoing costs for this tender include CPI increases every financial year.

## **STRATEGIC IMPLICATIONS**

Key Result Area 1: Infrastructure commits the Shire to provide a “road network that is safe and meets its functional requirements”.

## **COMMUNITY CONSULTATION**

No consultation has taken place in the preparation of this report

## **COMMENT**

The alternate tender as submitted by Waste Services Australia (Kimberley Waste Services) is considered appropriate as it reflects a pragmatic approach to the sweeping of streets whereby the operator bypasses streets where there is no gutter debris to collect. This is based on the experience of the current contractor, and whilst the amount is minimal the standard of street sweeping is not considered to be compromised.

The basis of the evaluation was taken on price primarily, as the price difference was too great to realistically consider the highest tender. The Evaluation Criteria was the same as the previous tender being,:-

Price	65%
Experience	10%
Resources	10%
Demonstrated understanding	10%
Local supplier	5%

## **ATTACHMENTS**

Nil

## **VOTING REQUIREMENT**

Simple majority

## **OFFICER'S RECOMMENDATION**

That the Alternate tender as submitted by Waste Services Australia for street sweeping services for Kununurra and Wyndham for the period 1 July 2009 to 30 June 2012) for the sum of \$135,261.50 (for the 2009/10 financial year) be accepted as the most advantageous to Council.

**COUNCIL DECISION**

***Minute No. 8627***

***Moved:Cr D Ausburn***

***Seconded:Cr R Boshammer***

***That the Alternate tender as submitted by Waste Services Australia for street sweeping services for Kununurra and Wyndham for the period 1 July 2009 to 30 June 2012) for the sum of \$135,261.50 (for the 2009/10 financial year) be accepted as the most advantageous to Council.***

***CARRIED UNANIMOUSLY: (8/0)***

**12.3.6 PERIOD CONTRACT FOR LITTER COLLECTION (T07-08/09)  
1 JULY 2009 TO 30 JUNE 2012 (8628)**

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Kununurra
<b>AUTHOR:</b>	John Gault, Engineering Technical Officer
<b>REPORTING OFFICER:</b>	Alex Douglas, Executive Manager Engineering and Regulatory Services
<b>FILE NO:</b>	66.57.07
<b>ASSESSMENT NO:</b>	N/A

**PURPOSE**

For Council to approve the preferred contractor for the provision of litter collection services in Kununurra for a three year period commencing 1 July 2009.

**BACKGROUND**

Tenders were invited by publicly advertising in The West Australian (7 March 2009) and Kimberley Echo (5 March 2009).

Tenders closed at 2:00 pm on Thursday 26 March 2009. At the time of opening two tenders were received; one (1) tender as per specification and one (1) as an alternative tender

**STATUTORY IMPLICATIONS**

The Local Government (Functions and General) Regulations 1996 apply and have been complied with.

**POLICY IMPLICATIONS**

Shire of Wyndham East Kimberley Policy F19 – Purchasing and Tendering Policy

**FINANCIAL IMPLICATIONS**

The budget allocation for contract litter collection for the 2008/09 financial year is \$135,000.

It should be noted that in this contract there are additional areas for monthly litter collections in the following locations; Lakeside Stage 3, Lakeside Stage 4 and the recently extended Weaber Plain Road Light Industrial Area.

The tendered amounts are summarised as follows:-

<b>Item</b>	<b>Supplier</b>	<b>Cost</b>	<b>GST</b>	<b>Total</b>
1	Waste Services Australia	\$199,000.00	\$19,900.00	\$218,900.00
2	Waste Services Australia (Alternate)	\$162,500.00	\$16,250.00	\$178,750.00

Note: the alternative tender is significantly cheaper (\$40,000 p/a) but does mean that the areas of Swim Beach and Ivanhoe Crossing would only receive a twice weekly service.

### **STRATEGIC IMPLICATIONS**

Nil

### **COMMUNITY CONSULTATION**

No community consultation was undertaken in the preparation of this report.

### **COMMENT**

Even with the addition of two new suburbs and the extension to the Light Industrial Area the additional from the previous tender is significant. Clearly the fixed rate for the previous contract period has masked the operating costs of the contractor.

At this time it is considered that the Alternate tender is worth considering for at least a trial period of 6 months.

The basis of the evaluation was taken on price primarily, as the price difference was too great to realistically consider the highest tender. The Evaluation Criteria was the same as the previous tender being:-

Price	65%
Experience	10%
Resources	10%
Demonstrated understanding	10%
Local supplier	5%

### **ATTACHMENTS**

Nil

### **VOTING REQUIREMENT**

Simple majority

### **OFFICER'S RECOMMENDATION**

1. That the Alternate tender as submitted by Waste Services Australia for Litter Collection Services for the period 1 July 2009 to 30 June 2012 for the sum of \$178,750 be accepted as the most advantageous to Council.
2. That the litter at Swim Beach and Ivanhoe Crossing be monitored during the period of July to December 2009 and a report be submitted to Council in December 2009 or earlier if required should the need to increase litter collection at the two sites is justified.

**COUNCIL DECISION**

***Minute No. 8628***

***Moved:Cr K Wright***

***Seconded:Cr P Caley***

- 1. That the Alternate tender as submitted by Waste Services Australia for Litter Collection Services for the period 1 July 2009 to 30 June 2012 for the sum of \$178,750 be accepted as the most advantageous to Council.***
  
- 2. That the litter at Swim Beach and Ivanhoe Crossing be monitored during the period of July to December 2012 and a report be submitted to Council in December 2009 or earlier if required should the need to increase litter collection at the two sites is justified.***

**CARRIED UNANIMOUSLY: (8/0)**

## 12.4. DEVELOPMENT

### 12.4.1 TOWN PLANNING SCHEME NO. 7 - AMENDMENT NO. 18 (8629)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire of Wyndham East Kimberley
<b>LOCATION:</b>	Agricultural Areas around Kununurra
<b>AUTHOR:</b>	Ian D'arcy, Executive Manager Town Planning and Economic Development.
<b>REPORTING OFFICER:</b>	Ian D'arcy, Executive Manager Town Planning and Economic Development.
<b>FILE NO:</b>	43.31.18
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

The expressed purpose of this report is to seek the Council's acceptance to a schedule of modifications requested to be completed by the Minister for Planning to Amendment 18 to support a range of uses considered incidental to predominant agricultural use, including low key tourist accommodation and development.

#### **BACKGROUND**

Amendment 18 was initiated by the Council on the 21<sup>st</sup> August 2006 to provide for a range of commercial uses associated with low key tourism on an incidental basis such as Bed and Breakfast, Farmstay, Reception Centre, Restaurant, Shop, Tourist Accommodation, Wayside Stall, Plant Nursery, Art and Craft Centre, Art Gallery, Museum, Winery and Brewery, and accordingly afford greater opportunity for diversification within the Agricultural zones around the Kununurra townsite.

Upon preparation of the formal documentation the Amendment was adopted by the Council on the 19 December 2006 and subsequently advertised seeking public and agency comment pursuant to state *Town Planning Regulations, 1967*. At the conclusion of advertising the Council considered the submissions received through the advertising, completed minor modifications to the document and proceeded to request final approval from the (former) Minister for Planning and Infrastructure, Ms Alannah MacTiernan, on 23 August 2007.

The Minister in her response requested a number of modifications to the document that included removal of the 'Restaurant' and 'Reception Centre' uses from all agricultural zones, and an increase in the side and rear boundary setback distances from 25 to 50 metres for the 'Agriculture 2' zoning. The Council in opposing these modifications requested reconsideration of the Minister's position on the 'Restaurant' use citing a number of precedents in other Town Planning Schemes across the state. The Council also argued that a 50 metre setback distance for side and rear boundaries in the 'Agriculture 2' zone would be onerous given the narrow configuration of many of the lots in Packsaddle and River Farm roads and accordingly requested a reduction to a 35 metre setback distance.

Correspondence has now been received from the Western Australian Planning Commission (WAPC) advising that the current Minister for Planning, the Hon. John Day, is not prepared to grant final approval until the Shire has completed the stated modifications as outlined in the letter received from the WAPC.

### **STATUTORY IMPLICATIONS**

Scheme Amendment has been prepared by Council pursuant Section 75 of the *Planning and Development Act 2005*, with the process to amend the zoning enacted under the *Planning Regulations, 1967*.

### **POLICY IMPLICATIONS**

Upon final approval and gazettal of Amendment 18 there may be a need for preparation of one or more local planning policies to assist in prescribing the minimum and/or appropriate standards to be applied to particular classes of development as detail in Amendment 18.

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

Amendment 18 has been prepared to enhance, support and facilitate opportunities for diversification in the agricultural areas of the Shire where a ranges of uses can be introduced on a complimentary basis to 'value add' to individual enterprises and the local economy, mainly through increased tourism.

This is viewed as a positive strategic initiative provided all future development associated with Amendment 18 is appropriately managed and maintained as subordinate to the predominant agricultural use of the land.

### **COMMUNITY CONSULTATION**

As previously mentioned Amendment 18 has already involved extensive public consultation through the preparation of the document and subsequent formal advertising period. Then, upon final approval being granted by the Minister, as part of the gazettal process, a public notice will be published in the Kimberley Echo together with all members of the public that submitted comment being informed of the final outcome.

### **COMMENT**

In considering the modifications as requested by the Minister it is apparent that the respective changes accord the intent and objectives detailed in the initial Amendment 18. This includes the retention of a 'Restaurant' use in the Agricultural zones under the permissibility of an 'SA' use, which means discretion is afforded to the Council after mandatory advertising of the proposal seeking public comment.

However, it is noted the modifications also seek to alter the level of permissibility for many of the prescribes uses in the Amendment from an 'IP' use, being

permitted as incidental to the predominant use, to an 'AA' or 'SA' use that provides the Council with a greater level of discretion in determining such uses. This is considered appropriate as it is important the Council retain control over the approving of incidental development to ensure current and future agricultural activities are not compromised.

The other matter worthy of comment is modification 5.

*"by increasing the Rural Agriculture 2 side and rear boundary setbacks from 25 to 35m."* It is understood this was a compromised position taken by the Council in response to a proposed 50 metre setback distance by (former) Minister MacTiernan. From a planning perspective it is questionable as to whether 35 metres as a minimum is necessary given the narrow width of some of the properties in the Packsaddle and River Farm Road areas. Nevertheless this is a matter that can be addressed through the introduction of a local planning policy that can default the setback distance back to 25 metres for those lots that are constrained by the increased setback distance.

### **ATTACHMENTS**

The relevant documentation pertaining to Amendment 18 is provided as:

- Attachment 1 - Initial amendment;
- Attachment 2 - Letter from Shire requesting reconsideration of modifications
- Attachment 3 - Letter from WAPC detailing final modifications

### **VOTING REQUIREMENT**

Simple majority of the Council is required.

### **OFFICER'S RECOMMENDATION**

The Council resolve to:

1. Note and endorse without change the Schedule of Modifications received from the Minister for Planning in relation to Amendment No. 18 to the Shire of Wyndham East Kimberley Town Planning Scheme No.7; and
2. Pursuant to regulations 21 (2) and 25 of the *Town Planning Regulations 1967 (as amended)* return the formal documentation duly amended in accordance with the Schedule of Modifications to the Department for Planning and Infrastructure seeking the Western Australian Planning Commission's and the Hon. Minister for Planning's endorsement and final approval.

### **COUNCIL DECISION**

***Minute No. 8629***

***Moved:Cr R Boshammer***  
***Seconded:Cr R Addis***

**The Council resolve to:**

- 1. Note and endorse without change the Schedule of Modifications received from the Minister for Planning in relation to Amendment No. 18 to the Shire of Wyndham East Kimberley Town Planning Scheme No.7; and**
- 2. Pursuant to regulations 21 (2) and 25 of the Town Planning Regulations 1967 (as amended) return the formal documentation duly amended in accordance with the Schedule of Modifications to the Department for Planning and Infrastructure seeking the Western Australian Planning Commission's and the Hon. Minister for Planning's endorsement and final approval.**

**CARRIED UNANIMOUSLY: (8/0)**

**PLANNING AND DEVELOPMENT ACT 2005  
RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME**

**SHIRE OF WYNDHAM-EAST KIMBERLEY**

**TOWN PLANNING SCHEME NO.7**

**AMENDMENT NO. 18**

That the Council, pursuant to section 75 of the Planning and Development Act 2005, amend the Shire of Wyndham-East Kimberley Planning Scheme No.7 by:

1. Amending the Zoning Table to modify the use class permissibilities of Bed and Breakfast, Farm Stay, Reception Centre, Restaurant, Shop and Tourist Accommodation to an Incidental Use (to be designated as "IP") in the General Rural, Rural Agriculture 1 and Rural Agriculture 2 zones, as follows:

USE CLASSES	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2
COMMERCIAL			
Bed and Breakfast	IP	IP	IP
Farm Stay	IP	IP	IP
Reception Centre	IP	IP	IP
Restaurant	IP	IP	IP
Shop	IP	IP	IP
Tourist Accommodation	IP	IP	IP

2. Amending the Zoning Table to modify Wayside Stall from a Discretionary Use (designated as "AA") to an Incidental Use (to be designated as "IP") in the General Rural, Rural Agriculture 1 and Rural Agriculture 2 zones, as follows:

USE CLASSES	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2
COMMERCIAL			
Wayside Stall	IP	IP	IP

3. Amending the Zoning Table to modify Nursery – Plant from a Discretionary Use (designated as "AA") and Permissible Use (designated as "P") to an Incidental Use (to be designated as "IP") in the General Rural, Rural Agriculture 1 and Rural Agriculture 2 zones, as follows:

USE CLASSES	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2
COMMERCIAL			
Nursery - Plant	IP	IP	IP

4. Amending the Zoning Table to include the use class Art and Craft Centre as a commercial use, as follows:

USE CLASSES	TOWN CENTRE	LOCAL CENTRE	TOURIST	RESIDENTIAL	RESIDENTIAL DEVELOPMENT	LIGHT INDUSTRY	MIXED BUSINESS	RURAL INDUSTRY	COMPOSITE INDUSTRY	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2	RURAL LIVING	SPECIAL SITE
<b>COMMERCIAL</b>														
Art and Craft Centre	P	AA	P	X	X	X	SA	IP	IP	IP	IP	IP	IP	PREDOMINANT USES TO BE LIMITED TO THAT SPECIFICALLY MARKED ON THE SCHEME MAP OR LISTED IN APPENDIX 2

5. Amending the Zoning Table to modify the use class permissibilities of Art Gallery as a commercial use, as follows:

USE CLASSES	TOWN CENTRE	LOCAL CENTRE	TOURIST	RESIDENTIAL	RESIDENTIAL DEVELOPMENT	LIGHT INDUSTRY	MIXED BUSINESS	RURAL INDUSTRY	COMPOSITE INDUSTRY	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2	RURAL LIVING	SPECIAL SITE
<b>COMMERCIAL</b>														
Art Gallery	P	AA	P	X	X	X	SA	IP	IP	IP	IP	IP	IP	PREDOMINANT USES TO BE LIMITED TO THAT SPECIFICALLY MARKED ON THE SCHEME MAP OR LISTED IN APPENDIX 2

6. Amending the Zoning Table to include the use class Museum as a commercial use, as follows:

USE CLASSES	TOWN CENTRE	LOCAL CENTRE	TOURIST	RESIDENTIAL	RESIDENTIAL DEVELOPMENT	LIGHT INDUSTRY	MIXED BUSINESS	RURAL INDUSTRY	COMPOSITE INDUSTRY	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2	RURAL LIVING	SPECIAL SITE
<b>COMMERCIAL</b>														
Museum	P	AA	P	X	X	X	X	X	X	IP	IP	IP	X	
PREDOMINANT USES TO BE LIMITED TO THAT SPECIFICALLY MARKED ON THE SCHEME MAP OR LISTED IN APPENDIX 2														

7. Amending the Zoning Table to modify the use class permissibilities of Winery and Brewery as a commercial use, as follows:

USE CLASSES	TOWN CENTRE	LOCAL CENTRE	TOURIST	RESIDENTIAL	RESIDENTIAL DEVELOPMENT	LIGHT INDUSTRY	MIXED BUSINESS	RURAL INDUSTRY	COMPOSITE INDUSTRY	GENERAL RURAL	RURAL AGRICULTURE 1	RURAL AGRICULTURE 2	RURAL LIVING	SPECIAL SITE
<b>COMMERCIAL</b>														
Winery	X	X	X	X	X	X	X	AA	X	IP	IP	IP	IP	
Brewery	X	X	X	X	X	X	X	AA	X	IP	IP	IP	IP	
PREDOMINANT USES TO BE LIMITED TO THAT SPECIFICALLY MARKED ON THE SCHEME MAP OR LISTED IN APPENDIX 2														

**8. Amending Clause 5.21 to include additional clauses relating to setbacks for agricultural and incidental development, as follows:**

5.21.1(a) Setbacks for Agricultural Development

<b>TABLE 3 – ALL RURAL ZONES</b>			
<b>Zone</b>	<b>Building Setbacks (m)</b>		
	<b>Front</b>	<b>Side</b>	<b>Rear</b>
General Rural	20	10	20
Rural Agriculture 1	20	20	20
Rural Agriculture 2	20	20	20
Rural Living	10	5	10

5.21.1 (b) Setbacks for Incidental Development in Rural Agriculture 1 and Rural Agriculture 2 zones

<b>TABLE 3A – RURAL AGRICULTURE 1 AND RURAL AGRICULTURE 2 ZONES</b>			
<b>Zone</b>	<b>Building Setbacks (m)</b>		
	<b>Front</b>	<b>Side</b>	<b>Rear</b>
Rural Agriculture 1	20	100	100
Rural Agriculture 2	20	25	25

**9. Amending Clause 5.21 to include additional clauses relating to development controls for incidental development, as follows:**

5.21.2 Other Incidental Uses

Council may permit the development and use of the land for the following uses:

- Art and Craft Centre
- Art Gallery
- Bed and Breakfast
- Brewery
- Farm Stay
- Museum
- Nursery - Plant
- Reception Centre
- Restaurant
- Shop
- Tourist Accommodation
- Wayside Stall
- Winery

provided that:

- (a) The applicant submit a management plan addressing how potential conflicts, impacts and compatibility with existing and potential agricultural land uses – both internal and external to the site – are to be managed as per the requirements of SPP2.5;
- (b) the proponent submit an Agriculture Impact Statement, in accordance with the information prescribed in SPP2.5;
- (c) the proposed development remains as a subordinate use in scale, scope and intensity to the predominant agricultural nature of the site;
- (d) the proposed development is advertised;
- (e) signage within the agricultural zones to be restricted to the minimum exempted standards of the town planning scheme;
- (f) accommodation units in the Rural Agriculture 1 zone shall be limited to a maximum of two; and
- (g) accommodation units in the Rural Agriculture 2 zone shall be limited to a maximum of five.

DATED THIS 5<sup>th</sup> DAY OF February, 20 07



**CHIEF EXECUTIVE OFFICER**

Our Ref: 43.31.18  
Your Ref: 853/7/5/9 Pt 18  
Enquiries: Keith Williams

**Attachment 2: Amendment 18 TPS No 7  
Item No. 12.4.1**

Honourable Minister for Planning and Infrastructure  
Alannah MacTiernan  
13th Floor, Dumas House  
2 Havelock Street  
WEST PERTH 6005

**VIA Facsimile: 08 9213 6401**

Dear Ms MacTiernan,

**SHIRE OF WYNDHAM EAST KIMBERLEY - TOWN PLANNING SCHEME  
No 7 - KUNUNURRA & ENVIRONS - AMENDMENT No 18**

This letter refers to the above described Town Planning Scheme amendment. This matter was originally considered by Council at the Ordinary Meeting held on 19 December 2006, and advice regarding the amendment was received from the WAPC on 29 August 2007.

The majority of the advice is accepted, however, there are several matters that we would like reconsidered.

1. Council would like to retain the ability to approve a Restaurant in Agricultural zones proposed under Amendment 18. The WAPC advice referred to above directs the amendment be modified to prohibit the use class of restaurant in agricultural zones.

As you are aware the Ord Irrigation Scheme is a unique and special location. While it is accepted that the introduction of use classes such as restaurants in agricultural areas in places such as the Swan Valley or Margaret River might conflict with agricultural uses, the Ord Valley's remote location and isolation, low population base, and relatively limited agricultural variety mean that these conflicts are less likely to occur.

Council requests that Restaurant be considered as an IP use as originally recommended, or as an SA use, similar to Schemes for:

Shire	Scheme	Permissibility	Use Class
Augusta Margaret River	11	SA	Eating House & Licensed Restaurant
Gingin	8	AA	Restaurant
Swan	17	D [discretionary]	Restaurant
Albany	3	P	Tavern
Carnarvon	11	AA	Restaurant

[www.thelastfrontier.com.au](http://www.thelastfrontier.com.au)



**Shire of  
Wyndham-  
East  
Kimberley**

All communications  
to be addressed to the  
Chief Executive Officer  
PO Box 614  
Kununurra WA 6743  
Ph: (08) 9168 4100  
Fax: (08) 9168 1798  
Email:  
[mail@thelastfrontier.com.au](mailto:mail@thelastfrontier.com.au)

**Kununurra Office:**  
115 Cooliban Drive  
Kununurra

**Wyndham Office:**  
Koolama Street  
Wyndham

**The  
Last  
Frontier**

In conjunction with the significant requirements of Amendment 18 relating to protection of Agriculture, consideration of a Restaurant use as an IP or SA is considered sufficient to ensure that potential conflicts are minimised.

2. The introduction of 50 metre setbacks for diversified uses in the Rural Agriculture 2 zone will render the amendment redundant, as the predominant width of lots in this zone is 100 metres [most measure

This would clearly cause significant problems, as the cabins and chalets proposed to be permitted under the provisions of Amendment 18 would need to be 0 metres wide!

It should be noted that under current Scheme provisions Tourist Accommodation can be permitted by Council in the Rural Agriculture 2 zone, and approvals have been granted for this use for cabins in this zone. Introducing this setback conflicts with setbacks approved under these current Scheme provisions, and is consistent with setbacks agreed with the agricultural sector for this zone.

Combined with specific setback requirements for diversified uses of 70 metres to existing residential uses, this 35 metre setback will ensure conflicts are minimised, given that current setbacks for dwellings is only 20 metres. It should also be noted that there is a relatively low number of properties under this zone [Approximately 60].

3. Council also has some concern about prohibiting winery and brewery in agricultural zones, although it is accepted that these may be able to be considered as additional uses via Scheme Amendments, or reviewed further as part of the Review of Town Planning Schemes 6 & 7.

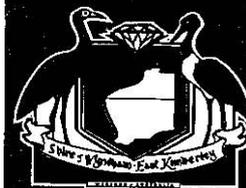
When considering this advice, please take into account that the purpose of the amendment is to permit diversified uses in the agricultural zones [General Rural, Rural Agriculture 1, Rural Agriculture 2]. The amendment will allow commercial agricultural operators to use their land for other subordinate land uses to supplement their primary agricultural income, within a limited range of land uses, and with specific stringent controls.

Importantly, under the current Scheme provisions Tourist Accommodation is an SA use in the Rural Agriculture 2 Zone, with no specific controls that would reduce conflict with Agricultural uses, allowing for approval of uses such as Backpacker Hostels. The amendment introduces provisions that prohibit Tourist Accommodation in this zone.

We point out that this amendment has undergone a rigorous consultation process, including specific discussion with key agriculture and tourism sector representatives, and direct discussion with the department of Agriculture and Food.

The amendment contains, to our knowledge, the only Scheme provisions in the state that address the issue of bio-security, and these provisions have been prepared in close consultation with the agricultural sector.

[www.thelastfrontier.com.au](http://www.thelastfrontier.com.au)



## Shire of Wyndham- East Kimberley

All communications  
to be addressed to the  
Chief Executive Officer  
PO Box 614  
Kununurra WA 6743  
Ph: (08) 9168 4100  
Fax: (08) 9168 1798  
Email  
[mail@thelastfrontier.com.au](mailto:mail@thelastfrontier.com.au)

**Kununurra Office:**  
115 Coolbah Drive  
Kununurra

**Wyndham Office:**  
Koolama Street  
Wyndham

The  
Last  
Frontier

We look forward to your further consideration of the amendment and endorsement of the documentation.

Please do not hesitate to contact Council's Planner, Keith Williams, on 9168 4100 should you have any further enquires regarding this determination.

Yours faithfully,



**KEITH WILLIAMS**  
**EXECUTIVE MANAGER TOWN PLANNING**

27 May 2008

enc.

Secretary  
Western Australian Planning Commission  
469 Wellington Street  
PERTH WA 6000



**Shire of  
Wyndham-  
East  
Kimberley**

All communications  
to be addressed to the  
Chief Executive Officer  
PO Box 614  
Kununurra WA 6743  
Ph: (08) 9168 4100  
Fax: (08) 9168 1798  
Email:  
mail@thelastfrontier.com.au

**Kununurra Office:**  
115 Coolibah Drive  
Kununurra

**Wyndham Office:**  
Koolama Street  
Wyndham

**The  
Last  
Frontier**

**Attachment 3: Amendment 18 TPS No 7**

Western  
Australian  
Planning  
Commission

50<sup>years</sup> spatial planning

Our Ref: 853/7/5/9 Pt 18  
Your Ref: 43.31.18 : TP645  
Enquiries: Sean Collingwood (9264 7836)

059720

18

43 31-18

23 August 2007

Chief Executive Officer  
Shire of Wyndham-East Kimberley  
PO Box 614  
KUNUNURRA WA 6743

Dear Sir

**TOWN PLANNING SCHEME No 7  
AMENDMENT No 18**

I refer to your letter of 20 April 2007 and advise that the Minister for Planning and Infrastructure determined the submissions in accordance with the Schedule of Submissions, and has decided not to approve the above amendment until such time as the modifications set out in the attached Schedule are effected.

Council is further advised that Use classes such as restaurant and brewery are not considered to be incidental to agricultural uses, but could be considered complementary to agricultural uses. Due to the nature of these uses, it would be appropriate for the Shire to consider these on a case-by-case basis through a scheme amendment process under the additional use provisions of the Scheme, rather than having them as discretionary uses in the zoning table.

Would you please arrange for three sets of amending documents to be prepared in accordance with the modifications required and submit them for the Minister's endorsement of final approval.

In accordance with the provisions of regulations 21 (2) and 25 of the *Town Planning Regulations, 1967 (as amended)*, Council is required to return the executed modified amending documents to the Commission within 42 days of being notified of the Minister's decision.

Three sets of amending documents are returned herewith for the purpose.

Council is further advised that the documents will need to be modified prior to final approval so that the words "Chairperson of the Western Australian Planning Commission" are replaced by the words "Delegated under S.16 of the PD Act 2005".

Yours faithfully



for Moshe Gilovitz  
Secretary  
Western Australian Planning Commission

Attach

Albert Facey House, 469 Wellington Street (cnr Forrest Place), Perth, Western Australia 6000  
Tel: (08) 9264 7777; Fax: (08) 9264 7566; TTY: (08) 9264 7535; Infoline: 1800 626 477  
e-mail: corporate@wapc.wa.gov.au; web address: <http://www.wapc.wa.gov.au>  
ABN 35 482 341 493



**SCHEDULE OF MODIFICATIONS  
SHIRE OF WYNDHAM - EAST KIMBERLEY  
TOWN PLANNING SCHEME NO. 7  
AMENDMENT NO. 18**

1. Modify the Zoning Table as follows:
- Reception Centre from 'IP' to 'X' in the General Rural, Rural Agriculture 1 and Rural Agriculture 2 zones;  
*Use is inappropriate for the zone*
  - Restaurant from 'IP' to 'X' in the General Rural, Rural Agriculture 1 and Rural Agriculture 2 zones;  
*Use is inappropriate for the zone*
  - Shop from 'IP' to 'X' in the General Rural, Rural Agriculture 1 and Rural Agriculture 2 zones;  
*Use class not required as sale of goods permitted through other use classes in the zone*
  - Tourist Accommodation from 'SA' to 'X' in General Rural, Rural Agriculture 1 and Rural Agriculture 2;  
*To be replaced with Cabin / Chalet to allow more accurate definition of the use class*
  - Change the description of 'Nursery - Plant' to 'Plant Nursery';  
*To ensure use class and definition have the same name*
  - Plant Nursery from 'P' to 'X' in Rural Living;  
*Use is inappropriate for the zone*
  - Art and Craft Centre from 'AA' to 'X' in Local Centre, from 'P' to 'AA' in Tourist, from 'X' to 'IP' in Light Industry, from 'IP' to 'X' in Rural Industry and from 'IP' to 'SA' in Composite Industry;  
*To ensure use is appropriate for the zone*
  - Art Gallery from 'AA' to 'X' in Local Centre, from 'P' to 'AA' in Tourist, from 'X' to 'IP' in Light Industry, from 'IP' to 'X' in Rural Industry and from 'IP' to 'SA' in Composite Industry;  
*To ensure use is appropriate for the zone*
  - Museum from 'AA' to 'X' in Local Centre, from 'P' to 'AA' in Tourist, and from 'IP' to 'X' in Rural Agriculture 1 and Rural Agriculture 2.  
*To ensure use is appropriate for the zone*
  - Winery and Brewery to be 'AA' in Rural Industry and 'X' in all other zones  
*To ensure use is appropriate for the zone*
  - Introduce the use classes 'Cabin' and 'Chalet' in the appropriate location in the table as follows:

Tourist	P
General Rural	IP
Rural Agriculture 1	IP
Rural Agriculture 2	IP
All other zones	X

*New use class to ensure 'tourist accommodation' in rural zones is limited to a development type appropriate for the zone*

2. Modify Schedule 1 - Definitions by the deletion of the definition of 'Nursery'  
*To remove duplication of definitions for Plant Nursery*
3. Introduce the following definitions into Schedule 1 - Definitions in the appropriate location:

'Chalet' means an individual self contained unit usually comprising cooking facilities, ensuite, living area and one or more bedrooms designed to accommodate short-stay guests, forming part of a tourism facility and where occupation by any person is limited to a maximum period of three months in any 12 month period;

'Cabin' means an individual self contained unit similar to a chalet but may lack ensuite facilities and may only comprise one room and is designed for short-stay guests, forming part of a tourism facility and where occupation by any person is limited to a maximum of three months in any 12 month period.

*To provide definitions for new use classes introduced to the Scheme, consistent with the recommendations of the Tourism Planning Taskforce Report*

4. Modify the definition of 'Transient Accommodation' in Schedule 1 - Definitions by replacing 'used for habitation for the purposes of accommodation for a period not exceeding 6 months' with 'used for habitation for the purposes of accommodation and not occupied by the same tenant for a continuous period for more than 6 months in any 12 month period'.
5. Modify Table in Clause 5.21.2 (b) by increasing the Rural Agriculture 2 side and rear setbacks from 25m to 50m.

*To ensure the incidental development is setback sufficiently so as to not impact on adjoining agricultural uses.*

6. Modify Clause 5.21.2 as follows:
  - Delete the use classes Brewery, Museum, Nursery - Plant, Reception Centre, Restaurant, Shop, Tourist Accommodation and Winery;  
*As use classes are not permitted as incidental development*
  - Add the use classes Cabin, Chalet and Plant Nursery;  
*To reflect the use classes added to incidental development*
  - Add the following to (a)
    - i. prior to construction of any units, the applicant shall submit a management plan developed in consultation with the Department of Agriculture and Food Western Australia and other relevant agencies or stakeholders, detailing measures to manage the following impacts:

- a) dust and noise;
  - b) visual amenity; and
  - c) biosecurity
- ii. prior to the construction, all promotional information intended to be displayed shall be submitted to Council for approval;
  - iii. prior to occupation, relevant officers shall inspect accommodation to ensure biosecurity information is displayed in a prominent place; and
  - iv. prior to occupation, relevant officers shall inspect procedures to ensure that all guests are made aware of the biosecurity issues and preventative measures upon check in.

*To ensure agricultural uses are not adversely impacted by tourist development*

- Delete (e)  
*More appropriate as a local planning policy*
- Delete (f) and (g) and replace with the following:  
(e) a maximum of 3 accommodation units is permitted on lots in the Rural Agriculture Zone 1, Rural Agriculture Zone 2 and the General Agriculture Zone

*To ensure the accommodation is incidental to the agricultural use*

- Add the following:  
(f) All accommodation units shall:
  - i. be separated from the nearest residential building on an adjacent property by a minimum of 70 metres; and
  - ii. comply with the setback provisions in the Scheme; and
  - iii. have screening vegetation planted and maintained to shield the neighbouring property from accommodation units.

*To ensure that the accommodation units do not have an adverse impact on adjoining properties*

- 7. Renumber Clause 5.21.2 - Transient Accommodation to Clause 5.21.3 - Transient Accommodation

*To update clause numbering following the introduction of a new Clause 5.21.2*

- 8. Delete Clause 5.21.3 (a) and replace with:

(a) That any occupant is directly employed in the agricultural sector;

*To allow for the establishment of transient workforce accommodation in the Rural Agricultural zones*

- 9. Adding the following to Clause 5.21.3:

(e) The applicant submit a management plan addressing how potential conflicts, impacts and compatibility with existing and potential agricultural land uses - both internal and external to the site - are to be

managed as per the requirements of State Planning Policy 2.5, and including but not limited to the following:

- i. prior to construction of any units, the applicant shall submit a management plan developed in consultation with the Department of Agriculture and Food Western Australia and other relevant agencies or stakeholders, detailing measures to manage the following impacts:
  - a) dust and noise;
  - b) visual amenity; and
  - c) biosecurity
- ii. prior to the construction, all promotional information intended to be displayed shall be submitted to Council for approval;
- iii. prior to occupation, relevant officers shall inspect accommodation to ensure biosecurity information is displayed in a prominent place; and
- iv. prior to occupation, relevant officers shall inspect procedures to ensure that all workers are made aware of the bio-security issues and preventative measures prior to taking up residence with the accommodation.

## 12.4.2 TOWN PLANNING SCHEME NO 7 - AMENDMENT 22 (8630)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire of Wyndham East Kimberley
<b>LOCATION:</b>	Lot 2 of King Location 438 Old Darwin Road Kununurra
<b>AUTHOR:</b>	Ian D'arcy, Executive Manager Town Planning and Economic Development
<b>REPORTING OFFICER:</b>	Ian D'arcy, Executive Manager Town Planning and Economic Development
<b>FILE NO:</b>	43.31.22
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

The purpose of this report is to gain the Council's acceptance to a schedule of modifications requested to be completed by the Minister for Planning to Amendment 22, which seeks to introduce a new zone 'Rural Smallholdings' to the Shire of Wyndham East Kimberley Town Planning Scheme No.7 – Kununurra and Environs, and support a change in zoning for Lot 2 Old Darwin Road from 'Agriculture 1' zone to 'Rural Smallholdings' zone.

### **BACKGROUND**

Amendment 22 was initiated by the Council on the 21<sup>st</sup> August 2007 to rezone King Location 438, Lot 2 Old Darwin Road Kununurra from 'Agriculture 1' to 'Rural Smallholdings'. In order to do so the need arose to introduce a new 'Rural Smallholdings' zone to the Shire's Town Planning Scheme No.7 inclusive of defined objectives and development requirements.

In summary Amendment 22 advocates the change in zoning will facilitate the opportunity for future subdivision of Lot 2 that will effectively yield a total of 24 lots averaging 5.68 hectares in area whilst also retaining the existing 3 hectare 'Special Site' zone located in the south-west corner of the subject property.

A copy of the rezoning map is provided as Figure 1 while the subdivision guide plan is offered as Figure 2 for ease of reference.



Figure 1 – Rezoning Map for Lot 2 Old Darwin Road extracted from TPS No.7 - Amendment No.22

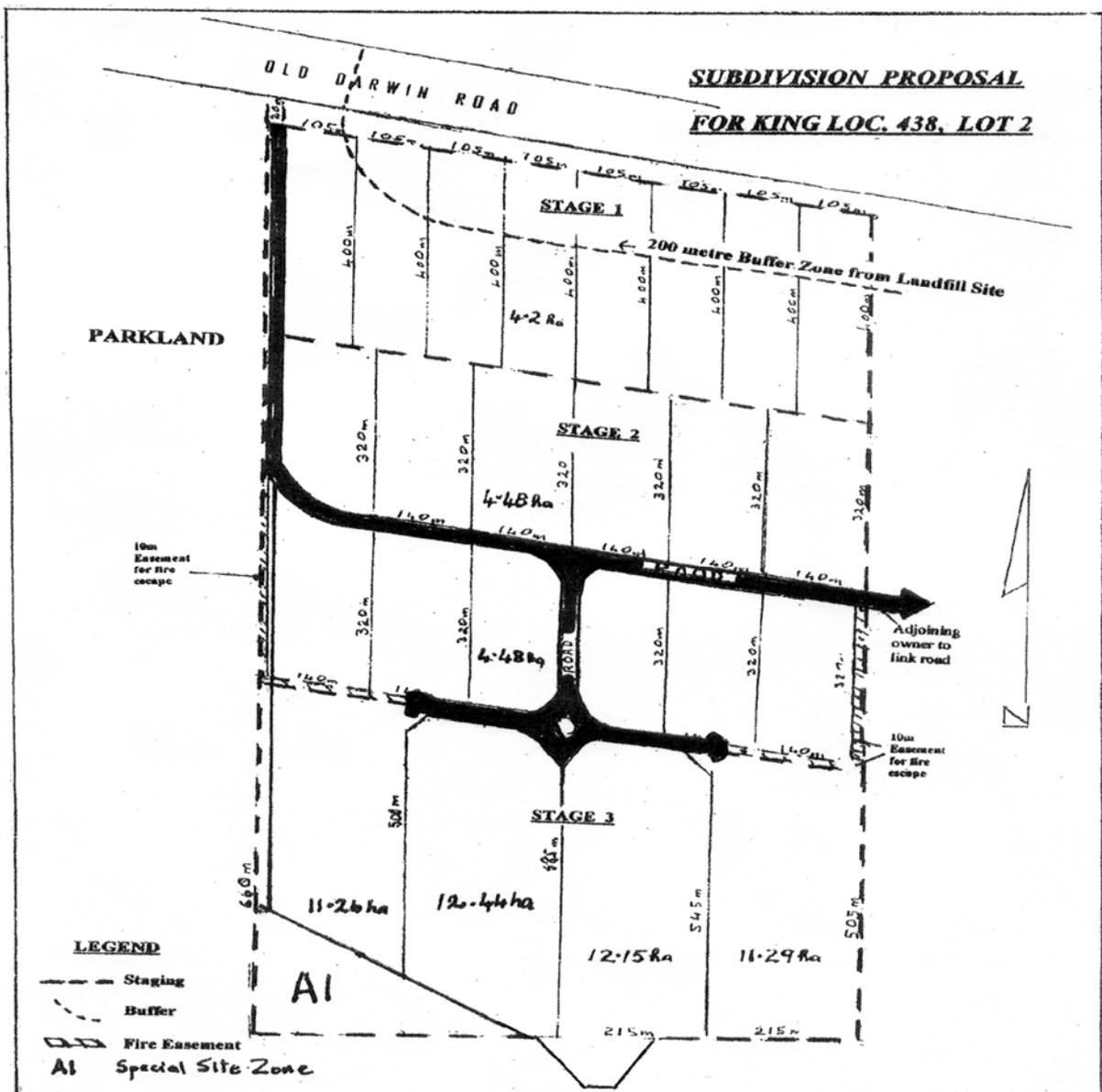


Figure 2 – Subdivision Guide Plan extracted from TPS No.7 - Amendment No.22

Correspondence has now been received from the Western Australian Planning Commission (WAPC) advising that the current Minister for Planning, the Hon. John Day, is not prepared to grant final approval until the Shire has completed the stated modifications as outlined in the letter received from the WAPC. Furthermore the WAPC letter provides advice that.....

*“Prior to, or concurrently with the lodgement of a subdivision application for Lot 2, the proponent will be required to provide a suitable technical analysis prepared by the appropriately qualified professionals to determine an appropriate buffer from the landfill site, storm water management measures, measures to protect the Emu Creek and an appropriate effluent disposal system.”*

### **STATUTORY IMPLICATIONS**

Scheme Amendment has been prepared by Council pursuant Section 75 of the *Planning and Development Act 2005*, with the process to amend the zoning enacted under the *Planning Regulations, 1967*.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

Nil

## **STRATEGIC IMPLICATIONS**

The rezoning and subdivision of Lot 2 Old Darwin Road accords with the strategic direction as outlined in the Shire's Local Planning Strategy that advocates the need for more rural residential land and lifestyle lots within close proximity to the Kununurra townsite to meet demand and ease land speculation and surging property prices.

## **COMMUNITY CONSULTATION**

Amendment 22 was publicly advertised as part of the statutory Scheme process where by all submissions received were considered by the Council on 18<sup>th</sup> March 2008. Then, upon final approval being granted by the Minister, as part of the gazettal process, a public notice will be published in the Kimberley Echo together with all members of the public that submitted comment being informed of the final outcome.

## **COMMENT**

In considering the modifications as requested by the Minister it is apparent the respective changes principally relate to formatting (re-numbering of clauses to the Town Planning Scheme) to provide consistency with the model scheme text. Therefore, on this understanding the Minister's schedule of modifications is considered logical and acceptable.

## **ATTACHMENTS**

The relevant documentation pertaining to Amendment 22 is provided as:

- Attachment 1 - Extract from initial amendment;
- Attachment 2 - Letter from WAPC detailing final modifications

## **VOTING REQUIREMENT**

Simple majority.

## **OFFICER'S RECOMMENDATION**

That Council resolve to:

1. Note and endorse without change the Schedule of Modifications received from the Minister for Planning in relation to Amendment No. 22 to the Shire of Wyndham East Kimberley Town Planning Scheme No.7 – Kununurra and Environs;

2. Forward a copy of the endorsed Schedule of Modifications to the proponent for the respective changes to be completed to the documentation; and
3. Pursuant to regulations 21 (2) and 25 of the *Town Planning Regulations 1967 (as amended)* return the formal documentation duly amended in accordance with the Schedule of Modifications to the Department for Planning and Infrastructure seeking the Western Australian Planning Commission's and the Hon. Minister for Planning's endorsement and final approval.

### **COUNCIL DECISION**

***Minute No. 8630***

***Moved:Cr R Addis***

***Seconded:Cr D Ausburn***

***That Council resolve to:***

1. ***Note and endorse without change the Schedule of Modifications received from the Minister for Planning in relation to Amendment No. 22 to the Shire of Wyndham East Kimberley Town Planning Scheme No.7 - Kununurra and Environs;***
2. ***Forward a copy of the endorsed Schedule of Modifications to the proponent for the respective changes to be completed to the documentation; and***
3. ***Pursuant to regulations 21 (2) and 25 of the Town Planning Regulations 1967 (as amended) return the formal documentation duly amended in accordance with the Schedule of Modifications to the Department for Planning and Infrastructure seeking the Western Australian Planning Commission's and the Hon. Minister for Planning's endorsement and final approval.***

***CARRIED UNANIMOUSLY: (8/0)***

## **PLANNING AND DEVELOPMENT ACT 2005**

### **RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME**

#### **SHIRE OF WYNDHAM-EAST KIMBERLEY**

#### **TOWN PLANNING SCHEME NO.7**

#### **AMENDMENT NO. 22**

That the Council, pursuant to section 75 of the Planning and Development Act 2005 amend the Shire of Wyndham-East Kimberley Planning Scheme No. 7 by:

1. Rezoning King Location 438, Lot 2 Old Darwin Road. Kununurra, from the 'Rural Agriculture 1" zone to the 'Rural Small Holdings" zone.
2. Inserting the following provisions into the text of the Scheme:
  - 5.25 Rural Small Holdings Zone
    - 5.25.1 Objective
      - (a) to provide appropriate land for people wishing to reside on rural lifestyle lots;
      - (d) to ensure that adjoining agricultural uses are protected with appropriate separation between agricultural and residential development; and
      - (e) to protect productive agricultural land on site by retaining areas suitable for horticulture in larger lots.
    - 5.25.2 Development Requirements  
In considering an application for Planning Approval for a proposed development, the provisions of Clause 5.20.2 a) to e) shall apply to the Rural Small Holdings Zone.

3. Renumber existing Clause 5.25 "Planning Policies" to Clause 5.26 and existing Clause 5.26 "Subdivision" to Clause 5.27 and any references throughout the Scheme text.
4. At Clause 5.2 "Planning Approval Not Required" modify Clause 5.2.1 item (f) to include the words "and Rural Small Holdings" after the words "Rural Living".
5. At Clause 5.21 "Development in the Rural Agriculture 1, Rural Agriculture 2, General Rural, and Rural Living Zones" modify the table at Clause 5.2.1 "Setbacks" to include Rural Small Holdings with setbacks as per those for the Rural Living zone.
6. At Clause 6.5 "Overall Planning Area No. 4 – Old Darwin Road Precinct" include a new dot point as follows:
 

6.5.4 "Rural Small Holdings subdivision creating a variety of lot sizes with a minimum of 4 hectares."
7. Modifying Table 1 – Zoning Table by including the Use Class of "Rural Small Holdings" an inserting column number 16 with the following permissibilities:

USE CLASSES	16
<b>COMMERCIAL</b>	
Amusement Parlour	X
Art Gallery	IP
Bakery - Retail	X
Bakery – Wholesale	X
Bed and Breakfast	IP
Boarding House	X
Brewery	X
Car Park	X
Caravan Park	X
Camping Ground	X
Convenience Store	X
Drive-In Theatre	X
Dry Cleaning Premises	X
Farm Stay	IP
Farm Supply Centre	X
Fast Food Outlet	X
Fish Shop	X
Funeral Parlour	X
Garden Centre	AA
Health Studio	X
Home Business	AA
Home Occupation	P
Hotel	X
Laundromat	X
Lunch Bar	X
Marine Filling Station	X
Market	X

Motel	X
Motor Vehicle/Marine Sales Premises	X
Motor Vehicle Hire	X
Motor Vehicle Wash Station	X
Night Club	X
Nursery – Plant / Plant Nursery	X
Office	IP
Reception Centre	X
Restricted Premises	X
Restaurant	X
Road House	X
Service Station	X
Shop	X
Showroom	X
Tavern	X
Tourist Accommodation	X
Warehouse	X
Wayside Stall	AA
Winery	X
<b>RESIDENTIAL</b>	
Aged & Dependent Persons Dwelling	X
Caretaker's Dwelling	X
Community Home	X
Grouped Dwelling	X
Multiple Dwelling	X
Residential Building	X
Single Dwelling	P
Transient Accommodation	X
<b>INSTITUTIONAL</b>	
Civic Building	AA
Club Premises	X
Community Service Depot	AA
Consulting Rooms	X
Day Care Centre	X
Detention Centre	X
Education Establishment	X
Hospital	X
Kennels/Cattery	X
Kindergarten	X
Medical Centre	X
Public Amusement	X
Public Worship	X
Radio & TV Installation	X
Veterinary Consulting Room or Hospital	X
<b>INDUSTRIAL</b>	
Abattoir	X
Boat Building Facility	X
Factory units	X

Fuel Depot	X
Industry: General	X
Light	X
Service	X
Extractive	X
Hazardous	X
Noxious	X
Cottage	SA
Rural	X
Motor Vehicle Repair	X
Motor Wrecking	X
Salvage Yard	X
Transport Depot	X
<b>RURAL</b>	
Airfield	X
Aquaculture	X
Equestrian Centre	X
Intensive Agriculture	X
Milk Depot	X
Piggery	X
Poultry Farming	X
Private Recreation	X
Public Recreation	P
Rural Pursuit	SA
Stable	P
Zoological Gardens	X

8. Amending the Scheme Maps accordingly.

DATED THIS 21<sup>st</sup> DAY OF August 2007



.....  
CHIEF EXECUTIVE OFFICER

FILE NO. \_\_\_\_\_  
PART OF AGENDA \_\_\_\_\_

**Attachment 2: Amendment 22 TPS No 7  
Item No. 12.4.2**

Western  
Australian  
Planning  
Commission

Our Ref: 853/7/5/9 Pt 22  
Your Ref: 43.31.22 : TP899  
Enquiries: Pam Baskind (9192 0204)

Doc No.	065251
Date	11 MAR 2009
Officer	
Response	
File	01.3021.02
Cross Ref.	43.31.22

27 February 2009

Chief Executive Officer  
Shire of Wyndham-East Kimberley  
PO Box 614  
KUNUNURRA WA 6743

Dear Sir

**TOWN PLANNING SCHEME No 7  
AMENDMENT No 22**

I refer to your letter of 8 April 2008 and advise that the Minister for Planning determined the submissions in accordance with the schedule of submissions, and has decided not to approve the above amendment until such time as the modifications set out in the attached Schedule are effected.

The Shire is advised that prior to, or concurrently with the lodgement of a subdivision application for Lot 2, the proponent will be required to provide a suitable technical analysis prepared by appropriately qualified professionals to determine an appropriate buffer area from the landfill site, storm water management measures, measures to protect the Emu Creek and an appropriate effluent disposal system.

Would you please arrange for three sets of amending documents to be prepared in accordance with the modifications required and submit them for the Minister's endorsement of final approval.

In accordance with the provisions of regulations 21 (2) and 25 of the *Town Planning Regulations, 1967 (as amended)*, Council is required to return the executed modified amending documents to the Western Australian Planning Commission within 42 days of being notified of the Minister's decision.

Three sets of amending documents are returned herewith for the purpose.

Council is advised that in carrying out the modifications to the amending document, the *Resolution Deciding to Amend a Town/Local Planning Scheme* is not modified, and Council's initial and final approval adoption dates remain as the dates the amendment was originally adopted by Council prior to advertising (regulation 13(1)) and following advertising (regulation 17(2)).

Council is further advised that the documents will need to be modified prior to final approval so that the words "Minister for Planning and Infrastructure" are replaced by the words "Minister for Planning". Please ensure that these and all future documents



wa.gov.au

Albert Facey House, 469 Wellington Street (cnr Forrest Place), Perth, Western Australia 6000  
Tel: (08) 9264 7777; Fax: (08) 9264 7566; TTY: (08) 9264 7535; Infoline: 1800 626 477  
e-mail: corporate@wapc.wa.gov.au; web address: <http://www.wapc.wa.gov.au>  
ABN 35 482 341 493

**COPY**

have "Minister for Planning" (and "Delegated under S.16 of the PD Act 2005") on the adoption page otherwise the documents will be returned for modification.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Evans', written in a cursive style.

FOR TONY EVANS  
SECRETARY  
WESTERN AUSTRALIAN PLANNING COMMISSION

Attach

Albert Facey House, 469 Wellington Street (cnr Forrest Place), Perth, Western Australia 6000  
Tel: (08) 9264 7777; Fax: (08) 9264 7566; TTY: (08) 9264 7535; Infoline: 1800 626 477  
e-mail: [corporate@wapc.wa.gov.au](mailto:corporate@wapc.wa.gov.au); web address: <http://www.wapc.wa.gov.au>  
ABN 35 482 341 493

## SCHEDULE OF MODIFICATIONS

### SHIRE OF WYNDHAM EAST KIMBERLEY TOWN PLANNING SCHEME NO. 7 AMENDMENT NO. 22

#### Scheme Map

1. Modify the Scheme map to include King Location 438, Lot 2 Old Darwin Road Kununurra as *Rural Smallholding* zone.

#### Scheme Text

1. Insert the following as Clause 5.21:

#### 5.21 RURAL SMALLHOLDING ZONE

##### 5.21.1 Objective

- (a) to provide appropriate land for people wishing to reside on rural lifestyle lots;
- (b) to ensure that adjoining agricultural uses are protected with appropriate separation between agricultural and residential development; and
- (c) to protect productive agricultural land on site by retaining areas suitable for horticulture in larger lots.

##### 5.21.2 Development Requirements

In considering an application for Planning Approval for a proposed development, the provisions of Clause 5.20.2 a) to e) shall apply to the Rural Smallholding zone.

2. Renumber the following clauses and any references throughout the Scheme text:
  - (a) renumber existing Clause 5.21 Development in the Rural Agriculture 1, Rural Agriculture 2, General Rural and Rural Living zones to Clause 5.22; and
  - (b) renumber existing Clause 5.23 to Clause 5.27.
3. Insert the following at Clause 5.21:
  - (a) the words 'and Rural Smallholdings' after the words 'Rural Living'.
4. Insert the following at Clause 5.21.1 Table 3 - Rural Zones:

Zone	Building Setbacks (m)		
	Front	Side	Rear

General Rural	20	10	20
Rural Agriculture 1 and 2	20	20	20
Rural Living	10	5	10
Rural Smallholdings	10	5	10

5. Insert the following bullet point at Clause 6.5 Overall Planning Area No. 4 - Old Darwin Precinct:

6.5.1

- Subdivision for the purpose of providing Rural Smallholding subdivision creating a variety of lot sizes with a minimum of 4 hectares.

6. Modify table 1 - Zoning Table:

- (a) add Use Class 16. Rural Smallholding
- (b) insert column number 16 with the following permissibilities:

USE CLASSES	16
<b>COMMERCIAL</b>	
Amusement Parlour	X
Art Gallery	IP
Bakery – Retail	X
Bakery – Wholesale	X
Bed and breakfast	IP
Brewery	X
Car Park	X
Caravan Park	X
Camping Ground	X
Convenient Store	X
Drive-In Theatre	X
Dry-Cleaning Premises	X
Farm Stay	IP
Farm Supply Centre	X
Fast Food Outlet	X
Fish Shop	
Funeral Parlour	X
Garden Centre	AA
Health Studio	X
Home Business	AA
Home Occupation	P
Hotel	X
Laundromat	X
Lunch Bar	X
Marine Filling Station	X
Market	X
Motel	X
Motor Vehicle/Marine Sales Premises	X

Motor Vehicle Hire	X
Motor Vehicle Wash Station	X
Night Club	X
Nursery – Plant / Plant Nursery	AA
Office	IP
Reception Centre	X
Restricted Premises	X
Restaurant	X
Road House	X
Service Station	X
Shop	X
Showroom	X
Tavern	X
Tourist Accommodation	X
Warehouse	X
Wayside Stall	AA
Winery	X
<b>RESIDENTIAL</b>	
Aged & Dependent Persons Dwelling	X
Caretaker's Dwelling	X
Community Home	X
Grouped Dwelling	X
Multiple Dwelling	X
Residential Building	X
Single Dwelling	P
Transient Accommodation	X
<b>INSTITUTIONAL</b>	
Civic Building	AA
Club Premises	X
Community Service Depot	AA
Consulting Rooms	X
Day Care Centre	X
Detention Centre	X
Education Establishment	X
Hospital	X
Kennels/Cattery	X
Kindergarten	X
Medical centre	X
Public Amusement	X
Public Worship	X
Radio & TV Installation	X
Veterinary Consulting Room or Hospital	X
<b>INDUSTRIAL</b>	
Abattoir	X
Boat Building Facility	X
Factory Units	X
Fuel Depot	X
Industry: General	X
Light	X
Service	X
Extractive	X
Hazardous	X
Noxious	X

Cottage	SA
Rural	X
Motor Vehicle Repair	X
Motor Wrecking	X
Salvage Yard	X
Transport Depot	X
<b>RURAL</b>	
Airfield	X
Aquaculture	X
Equestrian Centre	X
Intensive agriculture	X
Milk Depot	X
Piggery	X
Poultry Farming	X
Private Recreation	X
Public Recreation	P
Rural Pursuit	SA
Stable	P
Zoological Gardens	X

### 12.4.3 WYNDHAM WORKCAMP EXPANSION (8631)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Department of Corrective Services
<b>LOCATION:</b>	Lot 468 and Lot 622 Great Northern Highway Wyndham
<b>AUTHOR:</b>	Ian D'Arcy, Executive Manager Town Planning and Economic Development
<b>REPORTING OFFICER:</b>	Ian D'Arcy, Executive Manager Town Planning and Economic Development
<b>FILE NO:</b>	43.04.2843.04.28
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

This report is presented to Council for consideration of a proposal from the Department of Corrective Services to expand the capacity of the Prison Work Camp at Wyndham, from 20 to 40 persons, through the development of a new facility immediately adjacent to the existing camp.

#### **BACKGROUND**

The Shire is in receipt of a request from the Department of Corrective Services (DCS) seeking the Council's endorsement to expand the capacity of the existing Work Camp at Wyndham from 20 to 40 persons on the current site. The camp is presently located on the Airport land, being Lot 468 Great Northern Highway – refer to Figure 1.



Figure 1 – Location Plan

Additionally, the Council has identified that the eastern portion of Lot 468 together with Lot 622 is ideally suited to a rural residential development to meet an increasing demand for lifestyle lots in Wyndham, and accordingly has prepared a conceptual plan of subdivision that provides for 9 lots of approximately 5 hectares each – refer to Figure 2.

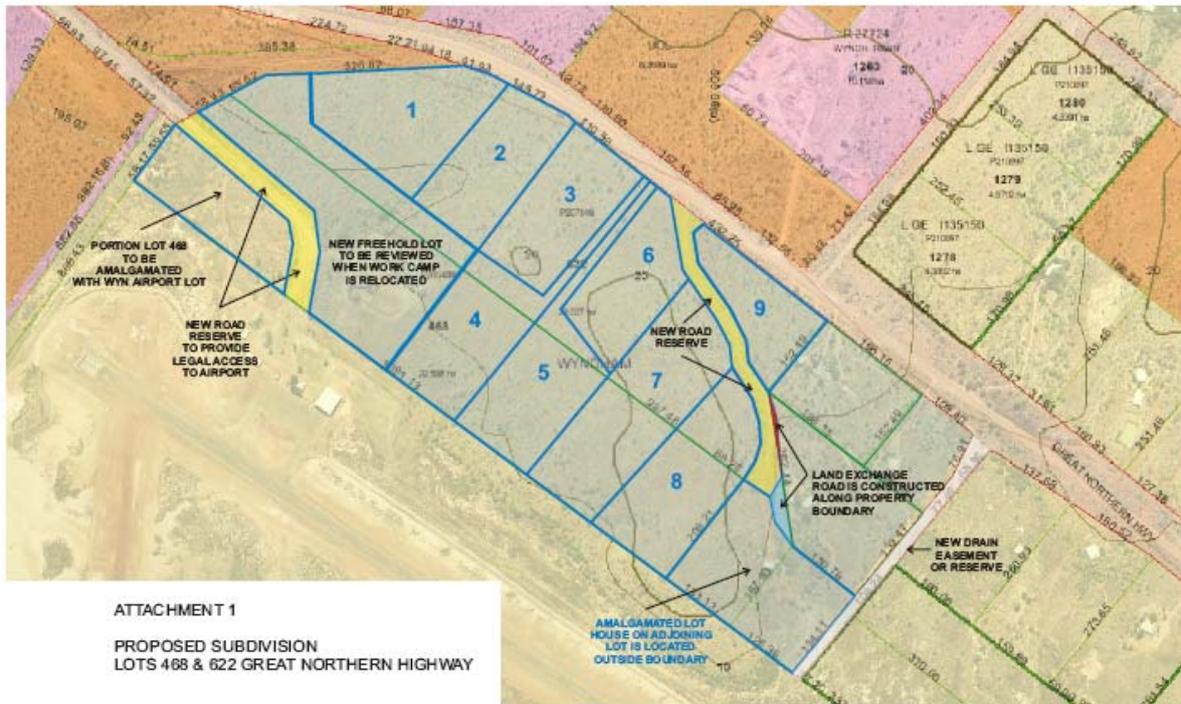


Figure 2 – Conceptual Plan of Subdivision

As understood from DCS the current Wyndham Work Camp:

- Was established in 2002 after the previous camp closed in 1997;
- Has successfully served the Wyndham community through the provision of in-kind labour that to date has amounted to 78,125 hours work at an approximate value of \$1,303,906;
- Has provided considerable benefit by allowing minimum security prisoners to be located near to their families, an initiative endorsed by elders;

Additionally, DCS is promoting that:

- Expansion of the work camp in Wyndham adjacent to the existing facility will allow for the new the new camp to operate as a central hub affording the opportunity for prisoners to undertake work in more remote locations;
- The new facility will provide a range of economic and social/employment benefits of the Wyndham community – refer to Attachment 1 for full list of benefits;
- The current site adjacent to the airport, after having considered a number of criteria including proximity to key services, availability of core infrastructure, and opportunities for local work activities, is the most suitable and appropriate location for the new camp facility;

- There is the possibility of infrastructure benefits that could be realised by the Shire as a result of construction of a new work camp, although such discussions will need to take place within the context of budgetary commitments and project timeframes for DCS.
- On completion of the new work camp the existing facility will ultimately be demolished, however, the Department is prepared to consider 'gifting' some of the transportable buildings to the Shire for re-use should this be viewed as desirable.
- The Council give favourable consideration to the proposal for the reasons outlined above, and proceed to:
  - approve the construction and operation of a new work camp on Lot 1 (adjacent to the existing work camp);
  - immediately enter into a Memorandum of Understanding (MOU) with the DCS to formalise the current arrangement of occupancy for the existing site;
  - Under agreement, commence preparation of a formal lease for the new site (proposed Lot 1 ) for a period of no less than 21 years to provide additional security of tenure for the new camp facility;
  - Commence formal proceedings for the rezoning of the subject land to support subdivision and development as proposed.

## **STATUTORY IMPLICATIONS**

### **Zoning**

The subject land is zoned 'Public Purposes – Wyndham Aerodrome' under the Shire Town Planning Scheme No.6.

Specifically, Clause 2.2 of the Town Planning Scheme states in part that.....  
*"where an application for planning consent is made with respect to land within a Reserve, the Council shall have regard to the ultimate purposes intended for the Reserve"*.

Given the work camp has been in existence and operational adjacent to the aerodrome since 2002 without significant incident, it is reasonably argued that the use of the camp in its current location does not pose any threat nor is seen as largely incompatibility with the current zoning and the continued function of the aerodrome.

Nevertheless, it would be prudent for the Council to amend the zoning of the work camp site to a 'Special Site – Institutional Use – Prison Work Camp Facility' should the Council support the DCS request to construct a new work camp on Lot 622. In turn this will provide a formal acknowledgement of the permissibility of the use and additionally compliment any long term tenure arrangement applied to the land. However, the costs incurred in rezoning the land should be borne by DCS.

As for the balance of land covered under the draft Concept Plan of Subdivision, the Council's initial proposal to rezone the land to 'Special Rural' should continued to be pursued based on a redesign of the subdivision layout to create an adequate buffer around the work camp and reduce the lot size - refer to comment section of this report.

## **Tenure**

Notwithstanding the DCS request to re-development a new work camp adjacent to the existing facility, it is considered appropriate the Council enter into an MOU to formally acknowledge the current tenure arrangements for the existing facility, at least a further 12 months. This will then provide an acknowledgement to the current use irrespective as to where new facility will be constructed.

Furthermore, should the Council support the DCS request a more formal agreement by way of a 21 year lease (or similar) should be applied on the understanding that all costs are met by DCS.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

Given the subject land is not required for aerodrome purposes and the Council has, through acknowledgement of increased demand for affordable lifestyle lots in Wyndham, flagged its intention to rezone and subdivide the subject land it is possible the retention of the prison work camp on proposed Lot 1 (refer to Figure 2 above) may have a detrimental affect on the prices of the proposed lots when offered for sale.

However, it is acknowledged that in order to reduce any possible impact DCS has indicated its willingness to, where reasonable and practicable to the construction of the new camp facility, upgrade necessary infrastructure that could also prove beneficial to reducing future subdivision costs. Clearly, this is a matter that would be subject to negotiation where it is suggested that delegation be afforded to the Shire President, Deputy Shire President and CEO to undertaken on the Council's behalf.

Another area that could be applied in this regard is the costs associated with both the rezoning of the land and preparation of a formal lease agreement. In both instances it would be reasonable for the DCS to absorb these costs based on the benefit to be realised to the state government and to assist as an off-set to any potential impact on sale prices as a result of the location of the new camp.

## **STRATEGIC IMPLICATIONS**

This proposal raises no apparent strategic implications based on a new camp being constructed on Lot 622 (proposed Lot 1), although should an alternate site be identified further consideration to the strategic implications for Wyndham may be required.

## **COMMUNITY CONSULTATION**

As the existing work camp has been sited on Lot 468 since 2002 and the new camp is proposed to be established on the adjacent Lot 622, it is not considered necessary for the Council to undertake community consultation.

However, should the Council not support the request from DCS and an alternative site is identified, then there may be a need to engage the community before determining the appropriateness of the alternate site.

### **COMMENT**

Whilst the DCS proposal to site the new camp on Lot 622 (proposed Lot 1) could have implications for the future subdivision (mainly in regard to community perception and land values) the matters raised in their submission are broadly supported. From a planning perspective it is apparent the camp has continued to function without concern or complaint being received from local residents, particularly those who reside within a kilometre radius. On this understanding it is expressed that the current site is well accepted, and arguably the best suited, based on the investigations undertaken by the DCS.

However, to allay any concerns that could arise through public perception and misunderstanding that could adversely affect the sale of the Shire's future special rural subdivision, it is suggested the concept plan be redesigned to provide a sufficient buffer around the new work camp and a more generous lot yield that offers variation in size based on a manageable level. Presently the concept plan advocates 9 lots of around 5 hectares in area consistent with the neighbouring special rural lots, although, it is considered more appropriate if the subdivision focused on providing lots in a range of 2 – 4 hectares consistent with a rural residential designation. Due to time constraints with the Easter break, a sketch plan has not been prepared. However, should the Council support a new work camp being sited on Lot 622 (proposed Lot 1) a sketch plan could be prepared for consideration by the Council at the May ordinary meeting.

### **ATTACHMENTS**

Attachment 1 – DCS Submission

### **VOTING REQUIREMENT**

Simple majority

### **OFFICER'S RECOMMENDATION**

That the Council:

1. Endorse the establishment of a new (40 person) prison work camp on Lot 622 (proposed Lot 1) Great Northern Highway, Wyndham subject to the Department of Corrective Services:
  - a) Accepting all costs associated with the preparation and execution of a formal lease agreement between the Department for Corrective Services and the Shire of Wyndham-East Kimberley for the new work camp site on Lot 622 (proposed Lot 1);
  - b) Accepting all costs associated with the rezoning of Lots 622 and 468 from 'Public Purposes – Wyndham Aerodrome' zone to 'Special Site – Institutional Use – Prison Work Camp Facility' zone and 'Special Rural - SR2' zone, including external consultancy fees;

- c) Agreeing to, where reasonable and practicable to construction of the new camp facility, the upgrade of necessary infrastructure that could prove beneficial to reducing future subdivision costs for Lot 622 and Lot 468;
  - d) Agreeing to the gifting of the existing camp buildings to the Shire of Wyndham – East Kimberley, if accepted, including the relocation to an alternate location within the district, or the decommissioning and removal of such building upon expiration of their current use;
  - e) Confirming through a Memorandum of the Understanding of 1a) – d) above and current tenure of the existing work camp facility on Lot 468 for a further 18 months.
  - f) Entering into a lease for the new proposed Lot 1 Great Northern Highway, Wyndham.
2. Inform the Department of Corrective Services of the Council decision as detailed in recommendation 1 above.
  3. Delegate authority to the Shire President, Deputy Shire President and CEO to negotiate the details of 1 (c) and (e), (f).

*Foreshadowed Motion:*

*Cr K Wright*

*"That an approach to the Department of Corrective Services be made to offer an alternative site being unallocated Crown Land formerly used by Wyndham Speedway, as a potential prison camp site.*

*The foreshadowed motion lapsed as it was ultra vires to the Council Decision.*

## **COUNCIL DECISION**

***Minute No. 8631***

***Moved:Cr R Boshammer***

***Seconded:Cr J Parker***

***That the Council:***

1. ***Endorse the establishment of a new (40 person) prison work camp on Lot 622 (proposed Lot 1) Great Northern Highway, Wyndham subject to the Department of Corrective Services:***
  - a) ***Accepting all costs associated with the preparation and execution of a formal lease agreement between the Department for Corrective Services and the Shire of Wyndham-East Kimberley for the new work camp site on Lot 622 (proposed Lot 1);***
  - b) ***Accepting all costs associated with the rezoning of Lots 622 and 468 from 'Public Purposes - Wyndham Aerodrome'***

**zone to 'Special Site - Institutional Use - Prison Work Camp Facility' zone and 'Special Rural - SR2' zone, including external consultancy fees;**

- c) Agreeing to, where reasonable and practicable to construction of the new camp facility, the upgrade of necessary infrastructure that could prove beneficial to reducing future subdivision costs for Lot 622 and Lot 468;**
  - d) Agreeing to the gifting of the existing camp buildings to the Shire of Wyndham - East Kimberley, if accepted, including the relocation to an alternate location within the district, or the decommissioning and removal of such building upon expiration of their current use;**
  - e) Confirming through a Memorandum of the Understanding of 1a) - d) above and current tenure of the existing work camp facility on Lot 468 for a further 18 months.**
  - f) Entering into a lease for the new proposed Lot 1 Great Northern Highway, Wyndham.**
- 2. Inform the Department of Corrective Services of the Council decision as detailed in recommendation 1 above.**
  - 3. Delegate authority to the Shire President, Deputy Shire President and CEO to negotiate the details of 1 (c) and (e), (f).**

**CARRIED: (7/1)**



## **EAST KIMBERLEY WORK CAMP Relocation and Construction of a New Work Camp**

The purpose of this paper is for the Department of Corrective Services (hereafter referred to as the Department) to outline, to council members attending the Wyndham Shire meeting on 21 April 2009, its intention to build a new work camp within the town. The Department seeks the Shires support and endorsement to progress with the recommendations outlined at the conclusion of this report.

### **1. Introduction**

Wyndham was the Departments sixth work camp and its establishment in June 2002 was welcomed by the local community, who has long supported the old Wyndham prison which closed in 1997.

The camp was also welcomed by local elders as an opportunity to keep prisoners close to family and country. To date, Wyndham work camp has undertaken 78,125 hours of community work to an approximate value of \$1,303,906.

The success of locating a work camp in Wyndham is evident by the longevity of its location coupled with the range of work activities undertaken by prisoners. In building on this success, the Department now intends to construct a new work camp on a site adjoining the existing location and to increase capacity almost twofold (to 40 prisoners). The new facility will operate as a central hub from which prisoners will undertake work in more remote locations thereby providing additional benefits to the local community of the Shire of Wyndham.

### **2. Proposed New Site**

In determining site suitability, the Department has considered a number of criteria including proximity to key services, availability of core infrastructure, and opportunities for local work activities.

Early consideration was given to a range of sites that were both centrally and remotely located to Wyndham town. Sites over 50km from the town were quickly discounted due to their inability to satisfy the criteria; most notably socio-cultural, economic, and environmental factors.

From this process of early investigation, two sites presented as worthy of further, more detailed, exploration; the existing town based work camp site and the golf course. The latter site was identified by the Shire as a possible alternative. At this point, consideration of other sites ceased.

A more detailed assessments of both sites to determine their suitability against the selection criteria, identified the current town site as achieving potentially greater outcomes in relation to accessibility to key services (in particular emergency services), availability of core infrastructure, and economic considerations.

It is on this basis that the Department has determined the only viable site for the construction of a new work camp is Lot 1 which adjoins the existing work camp site. As such, the Department does not intend exploring other option.

Preliminary site plans are attached for the Shires information. It should be noted however, that these are to be considered draft documents pending a full survey of the area by the Department.

### **3. Benefits and Opportunities**

#### **3.1 Benefits to host towns:**

Work camps deliver significant economic and social benefit to each community in a number of distinct areas, including:

- significant improvements in physical and social infrastructure
- environmental improvements
- contribution to community pride and cohesion
- protection and improvement of cultural heritage
- contribution to tourism
- strengthening the capacity of “civil society”, particularly voluntary organisations and volunteers.

The presence of the work camp enables local towns to respond to some emerging problems that confront all small rural towns including:

- ageing and declining pool of volunteers
- ageing infrastructure
- labour and skill shortages
- environmental degradation.

#### **3.2 Benefits for the community:**

- Through the engagement of prisoners, work camps positively impact on the completion of community projects that may otherwise not be undertaken due to limited community resources. These benefits are tangible and have a direct positive impact on community lifestyle. Work camps also provide the flexibility to respond to communities with the greatest need. For instance, prisoners have been mobilised to help extinguish fires, provide clean-up and repairs after floods and cyclones and assist with search and rescue efforts.
- Ultimately, the benefits work camps offer prisoners benefit the entire community. In particular, they offer prisoners the opportunity to make a real contribution to local communities as part of their rehabilitation and for the communities to benefit from this.
- Improved community safety throughout the State through the provision of appropriate custodial options and lower recidivism rates.
- Work camps are a prime example of the innovative partnerships that can be formed between Government and local communities in striving for a better Western Australia.

#### **3.3 Opportunities**

A locally based work camp comprising 40 low risk prisoners has the potential to provide the town of Wyndham with the opportunity for increased locally based expenditure resulting from the need to support the additional numbers. The requirement for additional staff may also provide local employment opportunities.

The Department is also open to discussing possible infrastructure benefits that may come to the Shire as a result of the construction. Any such discussions will need to take place within the context of budgetary commitments and project timeframes.

On completion of the new work camp the existing facility will be demolished. Prior to this occurring the Department is happy to enter into discussions with the Shire in relation to the 'gifting' of a number of transportables for their use.

**Recommendations:**

1. That the Shire of Wyndham approve the construction and operation of a new work camp on Lot 1 (adjacent to the existing work camp). The exact location of the work camp will be determined by the Department after a site survey (due for completion end April) and the results communicated with the Shire shortly after.
2. That, on approval of the required site, a Memorandum of Understanding is entered into between the Department and the Shire of Wyndham in respect to occupancy of the existing site for the longest period.
3. That, upon endorsement of the recommended site, the Department and the Shire of Wyndham enters into a lease agreement of 21 years for the new site.
4. That, upon endorsement, the Shire will re-zone the current Lots as part of the subdivision and the work camp site will be classified separately.

*Tillie*

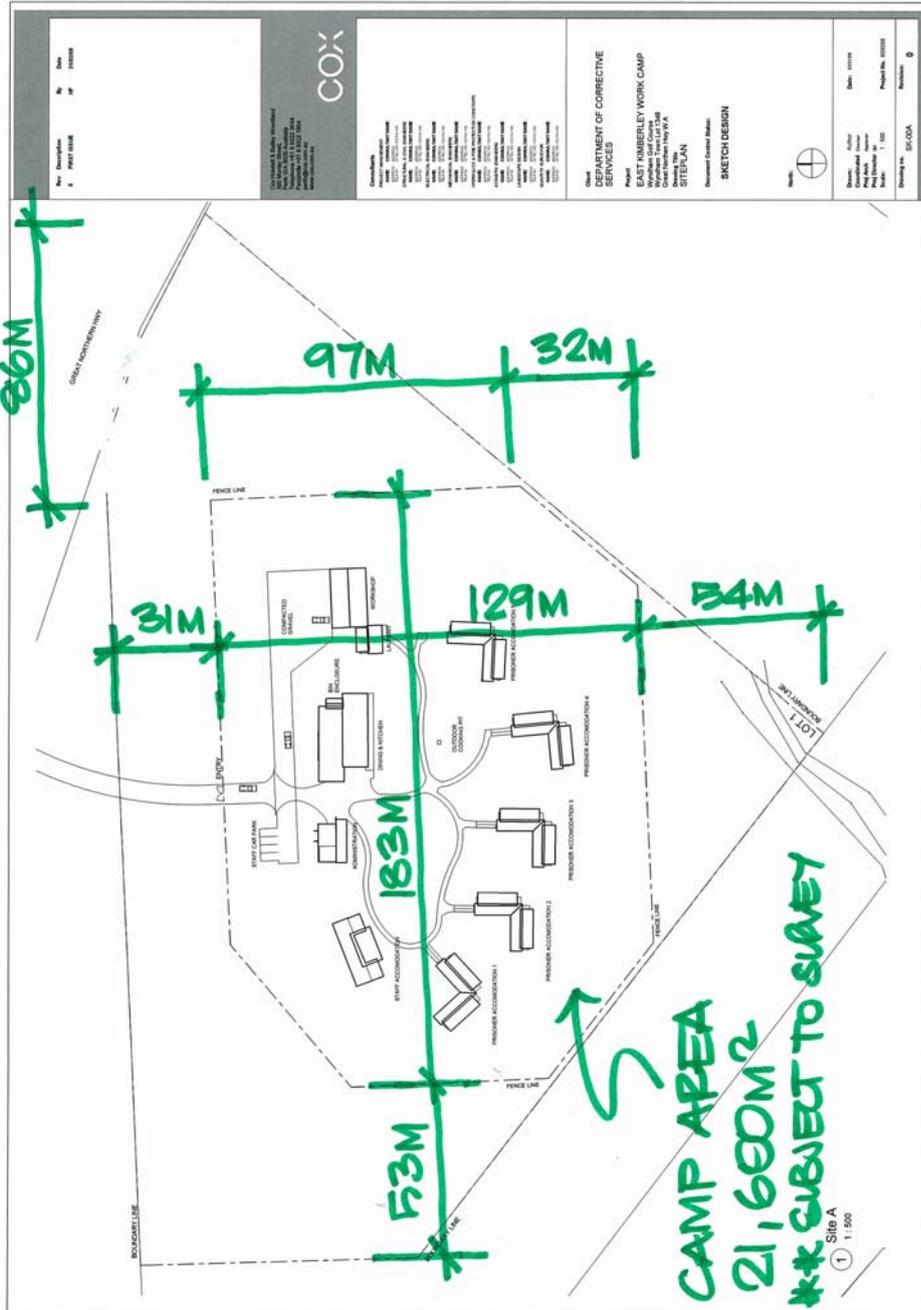
Tillie Prowse

Project Manager : Remote & Regional Prisons

Strategic Asset Services : Department of Corrective Services

Tel: 9264 1005 : Mobile: 0427 449 992

# Preliminary Site Plan



#### **12.4.4 LAKESIDE RESIDENTIAL DESIGN GUIDELINES - DC23 (8632) (8633) (8634)**

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire of Wyndham - East Kimberley
<b>LOCATION:</b>	Lakeside Estate - Kununurra
<b>AUTHOR:</b>	Ian D'Arcy, Executive Manager Town Planning and Economic Development
<b>REPORTING OFFICER:</b>	Ian D'Arcy, Executive Manager Town Planning and Economic Development
<b>FILE NO:</b>	43.02.02
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

To review and amend the Lakeside Design Guidelines – DC Policy 23 by incorporating additional provisions to provide a greater level of diversity in housing stock and interest in architectural style and design without diminishing the standard of housing development.

#### **BACKGROUND**

In 2004 the Council adopted as a Development Control Policy a set of design guidelines prepared by Landcorp that prescribe minimum standards for residential housing development within the Lakeside housing estate.

Since the application of the design guidelines many of the standards have been applied by the Council's Officers when processing planning and building approvals, however, it has become apparent the guidelines do not adequately cater for variation in housing style or design. Therefore as part of an overall review of the development control policies over the coming months, this Policy is presented with a number of amendments for the Council's consideration.

#### **STATUTORY IMPLICATIONS**

The ability to prepare a Development Control (Local Planning) Policy is afforded to the Council under Clauses 12.6.1 of the Shire of Wyndham - East Kimberley Town Planning Scheme No.7. In accordance with Clause 12.6.4 (a) of the Town Planning Scheme the Council is required to advertise the amended Policy at least once per week for two consecutive weeks in a local newspaper requesting submissions be lodged within a period on no less than 21 days.

#### **POLICY IMPLICATIONS**

Refer to Comment Section.

#### **FINANCIAL IMPLICATIONS**

A cost in the order of \$300 - \$400 for publication of adverts in the local newspaper will be incurred by Council. However, it is intended to include 4 – 5 development control policies within the one advert to minimise the costs associated with the Policy review.

## **STRATEGIC IMPLICATIONS**

Generally and for the most part development control policies are formulated within the legal framework prescribed by legislation and aligned with the strategic direction as set by the Council. These policies are aimed at prescribing minimum standards and the type of development and use acceptable to the Council in consideration of community sentiment. Additionally, these policies also aid in providing a foundation for delegation to be set to assist in streamlining approval processes and establishing relative levels of compliance.

In consideration of the amendments advocated to DC Policy 23, it is viewed that the recommended modifications and additional provisions represent a positive strategic implication.

## **COMMENT**

In review of DC Policy 23, it is argued that while the Lakeside Design Guidelines have proven to be effective in maintaining a standard quality of housing, they are too restrictive in providing an appropriate level of choice in housing design and construction in the Lakeside estate. Therefore, based on this view it is recommended the current policy be amended to allow a greater level of diversity in housing stock whilst still achieving a minimum standard of development.

Listed in Table 1 below are the proposed modifications and an associated explanation for each change.

No.	Modification	Reason
1.	The removal of all reference to transportable and kit homes not being permitted.	The standard of design and finish of most kit homes and prefabricated transportable buildings is of a high standard and will have to achieve the minimum standards prescribed by DC Policy 23 (as amended).
2.	Amendment of the provision relating to minimum roof pitches to read:  <i>All Gable and hip style roof structures for houses shall be pitched at no less than a minimum of 22 degrees and all skillion and curved style roofs at no less than a minimum of 15 degrees where visible from the street. A shallower pitch to a minimum of 7 degrees is acceptable for verandahs, patios, canopies, outbuildings, attached and free standing garages and carports, and small sections of skillion roofs behind parapet walls.</i>	Variation in roof profiles from hip, gable, 'Dutch' gable, curved and/or skillion offers greater diversity in architectural design and interest that can adequately fit with the East Kimberley environs without compromising or adversely affecting the standard of housing stock with the Lakeside Park Estate
3.	The remove of all reference to density and setbacks in relation to applying the R15 standards to lots coded R20 or higher.	A policy can not prescribe a different building density to that afforded as part of the property zoning. A policy can only apply a

		reduction, not an increase, to a minimum setback distances from boundaries.
4.	Reference to front fences being amended requiring and application be submitted to the Council for approval – refer to 4.4 of Amended DC Policy 23.	A Front Boundary Fencing Policy is to be prepared in coming months addressing the standard of fencing for respective townsite zones and designated areas in and around the Wyndham and Kununurra
5.	Reformatting of the Policy to provide greater clarity and representation of the Guidelines administered by the Shire.	The current set of Guidelines is largely general in nature and loosely worded in part. It is viewed that improved clarity will provide a greater level of certainty in achieving compliance.

### **ATTACHMENTS**

Attachment 1 - Existing DC Policy 23  
Attachment 2 - Amended DC Policy 23

### **VOTING REQUIREMENT**

Simple majority

### **OFFICER'S RECOMMENDATION**

The Council resolve to adopt the amended Development Control Policy 23 - Lakeside Residential Development Guidelines as shown in Attachment 2 (with or without modification by Council) pursuant to Clause 12.6.1 (a) of the Shire of Wyndham - East Kimberley Town Planning Scheme No.7, and proceed publish a notice to this effect in the local newspaper pursuant to Clause 12.6.4 (a) of the Town Planning Scheme.

### **COUNCIL DECISION**

***Minute No. 8632***

***Moved:Cr P Caley***  
***Seconded:Cr D Ausburn***

***That Council suspend Standing Orders 7.5 to enable Councillors to speak more than once in relation to matter being discussed***

***CARRIED UNANIMOUSLY: (8/0)***

*Standing Order 7.5 suspended at 6.48pm*

**Minute No: 8633**

**Moved:Cr P Caley**

**Seconded:Cr R Addis**

**That Council resume Standing Order 7.5**

**CARRIED UNANIMOUSLY: (8/0)**

*Standing Order 7.5 resumed at 6.50pm*

**Minute No: 8634**

**Moved:Cr D Ausburn**

**Seconded:Cr P Caley**

***The Council resolve to adopt the amended Development Control Policy 23 - Lakeside Residential Development Guidelines as shown in Attachment 2 (with or without modification by Council) pursuant to Clause 12.6.1 (a) of the Shire of Wyndham - East Kimberley Town Planning Scheme No.7, and proceed publish a notice to this effect in the local newspaper pursuant to Clause 12.6.4 (a) of the Town Planning Scheme.***

**CARRIED UNANIMOUSLY: (8/0)**

**Attachment 1: DC23 Existing Policy  
Item No. 12.4.4**

POLICY NO:	DC23
DIVISION:	Development Control
SUBJECT:	Lakeside Residential Development Guidelines Policy
REPORTING OFFICER:	Executive Manager Engineering and Development Services
ENABLING LEGISLATION:	Town Planning Scheme No 7 - Kununurra & Environs

**OBJECTIVE:**

LandCorp has developed design guidelines for the Lakeside Park subdivision. These guidelines form the basis of additional development control to achieve a sustainable, high amenity subdivision.

The policy addresses design aspects and issues such as:

- Building Form, Character & Materials
- Climate Sensitive Design
- Fencing
- Density and Setbacks
- Garages & External Storage Areas
- Solar Collectors and Clothes Lines.

These Guidelines have been prepared to provide:

- Visually attractive and appropriate development
- Integrated design
- Promotion of safety, variety and a sense of place
- Provide exemplary streetscapes and high quality design and aesthetics
- Promote sustainability through efficient construction, energy and water conservation

**POLICY:**

See attached guidelines.

ADOPTED:  
REVIEWED:  
AMENDED:

# Lakeside Park Estate Kununurra

## Design Guidelines for Residential Lots

Development Control Policy No. 23 - Lakeside Park Design Guidelines

### Introduction

These Design Guidelines are written to reflect LandCorp's desire to achieve both sustainable housing design and high quality aesthetics within Kununurra. These design guidelines are referred to in the contract of sale when you purchased your block.

These design guidelines apply to the current and future stages of residential development within the area shown on the plan within this document.

### Design Recommendations

The objective of the recommendations are:

- To achieve visually attractive and compatible development and activities
- To achieve integrated design between neighbours whilst screening unsightly aspects
- To promote safety, variety and a sense of place
- To ensure that houses present in an exemplary way to the street and form part of a community that values quality of design, aesthetics and construction
- Promote greater sustainability through high performance buildings, energy and water conservation and efficiency.

### Building Form, Character & Materials

Consideration must be given to:

- Minimum size of dwelling (excluding carport, garaging and verandahs) shall be:
  - 140 square metres for lots with an area equal to or greater than 700 square metres
  - 100 square metres for lots with an area less than 700 square metres
- Some sites will be specifically nominated as suitable for grouped dwellings, in which case the minimum size of each group dwelling shall be 80 square metres
- Clearly defined entrances
- Houses situated on corner lots addressing both street frontages.
- Pre-built, relocated, transportable or kit homes may be permitted with the consent of the CEO of the Shire of Wyndham East Kimberley under delegated authority, but must incorporate at least two of the following design features:
  - Gabled roofline to street frontage;
  - Portico, porch or entry feature;
  - Wide verandahs to street frontage;
  - Variation in street elevation setbacks; and



[www.landcorp.com.au](http://www.landcorp.com.au)



- Any other design features approved by the CEO of the Shire of Wyndham East Kimberley under delegated authority. Where the CEO cannot or does not agree with a design feature the proposed design will be referred to Council to determine.

#### **Climate Sensible Design**

The following design criteria are provided to assist the new home owner/occupier and their chosen architect or designer and builder. A more efficient and comfortable home can be achieved through consideration to:

- Installation of a solar hot water system
- Water efficiency- installation of water sensitive fixtures such as AAA rated dual flush toilet systems
- Passive solar design, including appropriate room location and zoning for day lighting and ventilation
- Extensive eaves overhang to the house to support thermal comfort and efficiency
- Verandahs to the front of houses are encouraged to provide articulation and energy efficiency
- Dark coloured roofing absorbs heat and is not recommended for the climate. Use of colourbond roof colours darker than BHP "Gull Grey" is not recommended. Zincalume is not encouraged due to its reflective nature and potential glare issues with neighbouring properties
- Roof pitches of a minimum of 22 degrees, where visible from the street is encouraged. A shallower pitch is acceptable for verandahs, carports, canopies and small sections of skillion roofs behind parapets
- Adequate insulation under the roof cladding, walls and ceilings
- Roof ventilation
- Effective use of pergolas and vegetation for shade, particularly to east, west and south facing windows.

#### **Garaging & External Storage Areas**

It is important that garages (particularly doors), carports and parking areas be detailed to reduce their visual impact and add interest to the streetscape.

- A carport or garage should be provided.
- Garages and carports shall preferably be located under the main roof of the dwelling and be constructed of the same materials as the main dwelling.
- Outbuildings are encouraged to be constructed of the same materials as the main dwelling where they exceed 25 square metres in area.
- No commercial vehicles in excess of 4.5 tonnes GVM are to be stored forward of the building setback.
- Driveways and crossovers are encouraged to be completed in the same construction period as for the dwelling.



Below: If carports cannot be integrated under the roof of the main dwelling they should be located immediately adjacent and utilise the same roof forms, pitch and material as the roof or verandah.

In this example the carport is integrated under the main roof structure.



#### **Density and Setbacks**

Are to be in accordance with the Residential Design Code for single house density R 15, with the exception of those lots specifically nominated group dwelling in accordance with R 20.

#### **Fencing**

Private outdoor and semi-public open space is an important component of any residential development and it is recommended that:

- Low and open fences create a valuable semi-public space in addition to the street. However, for security, it is recognised that the need for taller fences is legitimate.
- To achieve a visual effect front fences shall be no higher than 1.0 metre and be visually permeable.
- Side fences (within the front setback of the house) should be no higher than 1.0 metre and be constructed of the same or matching materials as those used in the front fences.
- Fencing to those lots where the side fence abuts a street may have a fence to screen and provide security to rear yards. However should houses overlook secondary streets (corner lots) it is strongly encouraged that such fencing not enclose the side of the house and be largely open in design and visually permeable above 1.0 metre in height.

A solid fence with little or no articulation is not seen to be appropriate.



[www.landcorp.com.au](http://www.landcorp.com.au)





### **Clothes Lines and Drying Areas**

These should be screened from public areas.

### **Solar Hot Water System Collectors**

Wherever possible, solar collectors should be:

- Concealed from the street or other public areas
- Colour coded to the colour of the roof
- Installed on the plane of the roof at the rear and ideally the storage tanks located within the roof space. Stands on rooftops is discouraged.

### **Design & Building Approval**

Approval of plans and specification for dwellings shall be by the Shire of Wyndham East Kimberley. The provisions of this policy will be taken into account during assessment of any application lodged for the subdivision area. Any non - compliant application will be referred to LandCorp and to Council for a determination.

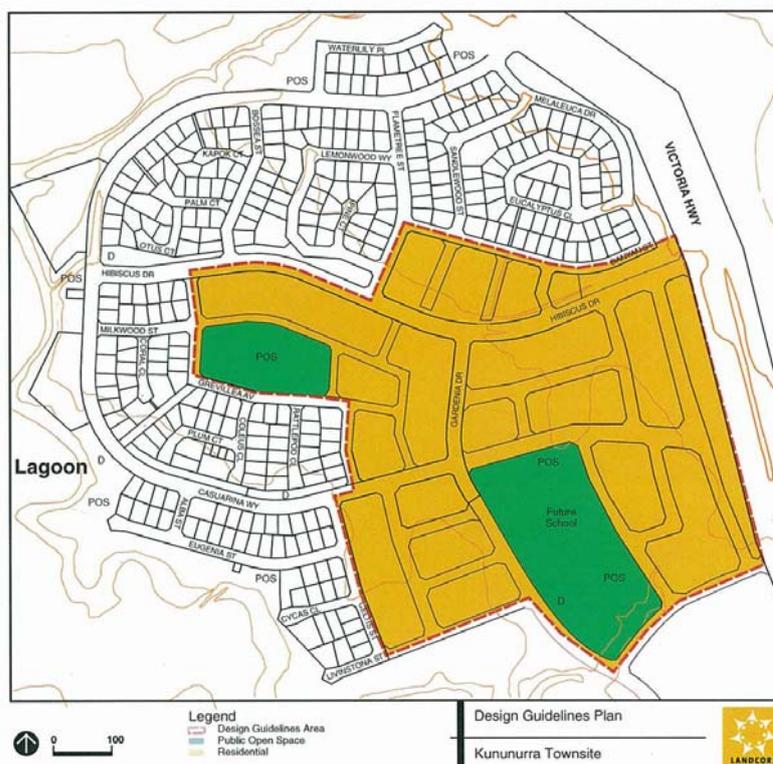
### **Statutory Requirements**

These guidelines are "in addition" to all other statutory requirements pertaining to building development, design and construction. For any instances where these design guidelines are found to conflict with the statutory requirements of other authorities i.e. requirements of the Local Authority in accordance with Town Planning Scheme No 7, Building Code of Australia, Residential Design Codes etc, the statutory requirements are to take precedence. These design guidelines apply to the current and future stages of residential development within the area shown on the plan adjacent.



[www.landcorp.com.au](http://www.landcorp.com.au)





**Conclusion**

By adopting these practices as outlined, LandCorp in conjunction with the Shire of Wyndham East Kimberley will create an environment of sustainable housing design and high quality aesthetics.

This brochure is published by LandCorp to provide information on the Lakeside Park Estate. The information contained in this brochure is provided in good faith, however neither LandCorp, nor any of its directors, agents or employees give any warranty of accuracy not accept any liability as a result of a reliance upon the information, advice, statements or opinions contained in the brochure. This disclaimer is subject to any contrary legislative provisions.



**Attachment 2: DC23 Amended Policy  
Item No. 12.4.4**

POLICY NO:	DC23
DIVISION:	Development Services
SUBJECT:	Lakeside Residential Development Guidelines Policy
REPORTING OFFICER:	Executive Manager of Town Planning and Economic Development
ENABLING LEGISLATION:	Town Planning Scheme No 7 - Kununurra & Environs

**OBJECTIVE:**

These guidelines apply to the Lakeside Park Estate and effectively form the basis of additional development control to achieve a sustainable, high amenity residential area for the benefit of local residents.

The policy addresses design aspects and issues such as:

- Building Form, Character & Materials
- Climate Sensitive Design
- Fencing
- Density and Setbacks
- Garages & External Storage Areas
- Solar Collectors and Clothes Lines.

These Guidelines have been prepared to provide:

- Visually attractive and appropriate development
- Integrated design
- Promotion of safety, variety and a sense of place
- Provide exemplary streetscapes and high quality design and aesthetics
- Promote sustainability through efficient construction, energy and water conservation

**POLICY:**

**1.0 Introduction**

These guidelines are “in addition” to all other statutory requirements pertaining to building development, design and construction. For any instances where these design guidelines are found to conflict with the statutory requirements of other authorities i.e. requirements of the Local Authority in accordance with Town Planning Scheme No 7, Building Code of Australia, Residential Design Codes etc, the statutory requirements are to take precedence. These design guidelines apply to the current and future stages of residential development within the Lakeside Park Estate.

## **2.0 Building Form, Character, Materials and Colours for all Housing**

2.1 Minimum size of dwelling (excluding carport, garaging and verandahs) shall be:

- ❖ 140 square metres for lots with an area equal to or greater than 700 square metres.
- ❖ 100 square metres for lots with an area less than 700 square metres.
- ❖ 80 square metres for each group dwelling.

2.2 All dwellings shall have clearly defined entrances to the street.

2.3 Houses situated on corner lots shall address both street frontages through architectural design features.

2.4 All Gable and hip style roof structures for houses shall be pitched at no less than a minimum of 22 degrees and all skillion and curved style roofs at no less than a minimum of 15 degrees where visible from the street. A shallower pitch to a minimum of 7 degrees is acceptable for verandahs, patios, canopies, outbuildings, attached and free standing garages and carports, and small sections of skillion roofs behind parapet walls.

2.5 Zinalume is not permitted to be used for external cladding due to its reflective nature and potential glare issues with neighbouring properties.

2.6 The use of light colours for external roof and wall claddings and finishes is encouraged.

## **3.0 Garaging & External Storage Areas**

3.1 Garages (including doors) and carports shall be consistent in design (theme), materials and colours to the dwelling to reduce visual impact and add interest to the streetscape.

3.2 Where practicable garages and carports should be located under the main roof of the dwelling.

3.3 Outbuildings shall be constructed of the same materials as the main dwelling where they exceed 25 square metres in area.

3.4 No commercial vehicles are to be parked on the property or the street verge for any more than forty eight (48) hours, unless approval has been obtained by the Council.

3.5 Driveways and crossovers are encouraged to be completed in the same construction period as for the dwelling.

## **4.0 Fencing**

4.1 All side and rear boundary fencing shall be no greater than 1.8 metres in height.

4.2 Side fences forward of the front building line of the house shall be no higher than 1.2 metre and be constructed of the same materials/matching in colour with the predominant side and rear boundary fences.

- 4.3 Fences on secondary streets (corner lots) boundaries shall be largely open in design and visually permeable above a height of 1.2 metre.
- 4.4 The installation of a front boundary fence is the subject of an application to the Council for planning consent.

## **5.0 Clothes Lines and Drying Areas**

5.1 Clothes lines shall be screened from public areas.

5.2 Wherever possible, solar collectors should be:

- ❖ Concealed from the street or other public areas
- ❖ Colour coded to the colour of the roof
- ❖ Installed on the plane of the roof at the rear and ideally the storage tanks located within the roof space. Stands on rooftops are discouraged.

## **6.0 Climate Sensible Design**

6.1 Where possible new houses should include:

- ❖ Installation of a solar hot water system.
- ❖ Water sensitive fixtures such as AAA rated dual flush toilet systems.
- ❖ Passive solar design, including appropriate room location and zoning for day lighting and ventilation.
- ❖ Extensive eaves overhang to support thermal comfort and efficiency.
- ❖ Verandahs to the front of houses to provide articulation and energy efficiency.
- ❖ The highest rated insulation under roof cladding, and within wall and ceiling cavities.
- ❖ Additional roof ventilation.
- ❖ Effective use of pergolas and vegetation for shade, particularly to east, west and south facing windows.

***ADOPTED:***

***REVIEWED:***

***AMENDED:***

#### 12.4.5 DRAFT COMPLIANCE AND ENFORCEMENT POLICY (8635)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire of Wyndham East Kimberley
<b>LOCATION:</b>	Whole of the District
<b>AUTHOR:</b>	Ian D'Arcy, Executive Manager Town Planning and Economic Development
<b>REPORTING OFFICER:</b>	Ian D'Arcy, Executive Manager Town Planning and Economic Development
<b>FILE NO:</b>	43.02.0143.02.01
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

This report relates to the preparation of a draft Compliance and Enforcement Policy that principally relates to town planning, building and health matters that fail to meet prescribed compliance standards detailed in relevant legislation and outlines a procedure by which enforcement action will be administered.

#### **BACKGROUND**

In response to the need for a consistent approach to administering and enforcing a range of legislation pertaining the functions and responsibilities of the Shire of Wyndham East Kimberley applicable to the planning, building and health disciplines a draft Compliance and Enforcement Policy (Development Control Policy – 26) has been prepared for the Council's consideration and adoption for advertising purposes.

#### **STATUTORY IMPLICATIONS**

This Policy applies to the legislative framework and provisions prescribed under, but not necessarily limited to:

- *Building Regulations, 1989*
- *Building Code of Australia,*
- *Caravan Parks and Camping Ground Act, 1995*
- *Caravan Parks and Camping Ground Regulations, 1997*
- *Environmental Protection Act, 1986*
- *Food Act, 2008*
- *Health (Food Hygiene) Regulations, 1993*
- *Health Act, 1911*
- *Land Administration Act, 1997*
- *Litter Act, 1979*
- *Local Government (Miscellaneous Provisions) Act, 1960*
- *Planning and Development Act, 2005*
- *Strata Titles Act, 1985*
- *Shire of Wyndham – East Kimberley Town Planning Scheme No.6*
- *Shire of Wyndham – East Kimberley Town Planning Scheme No.7*
- *Shire of Wyndham – East Kimberley adopted Local Planning Policies*
- *Shire of Wyndham – East Kimberley adopted Local laws*

Notably, the preparation and adoption of policies by the Council can be enacted under the *Local Government Act, 1995*, and the Shire of Wyndham – East Kimberley Town Planning Scheme No.7 under the auspice of *Planning and Development Act 2005*. In this particular instance, given draft Policy DC 26 merely applies to an administrative process, the Council only needs to adopt this policy pursuant to the Local Government Act.

### **POLICY IMPLICATIONS**

This policy will assist Shire Officers in the performance of their duties.

However, it must be noted that as a general rule, a policy is not binding on the Council where by the policy as a whole or in part may be waived, although it is advised the Council adhere to the policy where practical, or at the very least give due regard to the policy to maintain a level of consistency.

### **FINANCIAL IMPLICATIONS**

A cost in the order of \$300 - \$400 for publication of adverts in the local newspaper will be incurred by Council. However, it is intended to include 4 – 5 development control policies within the one advert to minimise the costs associated with the Policy review.

Whilst there are no specific or particular financial implications applicable to the *adoption* of this policy, it must be recognised this policy relates to varying degrees of enforcement action being taken that could ultimately result in a financial cost/s or implication/s on the Council. On this understanding it is appropriate for the Council to set aside a budget allocation of at least \$20,000 each year for legal expenses associated with development matters, with any unspent funds from each budget allocation to be held over in reserve and accumulated to cover any significant legal costs/expenses that may be incurred in relation to protracted proceedings.

### **STRATEGIC IMPLICATIONS**

It is important the Council recognise and accept the need for compliance in order to maintain the social fabric and well being of the broader community as promoted in the Council's Strategic Plan. A lack of compliance and associated enforcement is likely to adversely affect and potentially undermine the Council's function to deliver good governance resulting in a denigration of community values and quality of lifestyle.

However, as stated in the draft Policy, whilst there is a general duty imposed on the Council to enforce legislation for which it is responsible, that general duty is not absolute. In each case it will be necessary to determine whether legal costs and other liabilities are justified for the good governance of the Shire and whether or not engagement, enforced and self regulation would be a suitable alternative means of achieving the required level of compliance within the relevant legislation.

Therefore, it will be necessary for the Council to determine the level of compliance and enforcement to be applied in consideration of the seriousness of an alleged offence.

## **COMMUNITY CONSULTATION**

Although not mandatory, it is considered important the community be granted the opportunity to have input into the draft Policy given the implications will ultimately rest with the community. Therefore, it is recommended the draft Policy DC 26 be advertised for a period of 21 days seeking public comment.

## **COMMENT**

As stated in the draft policy the principal objective is to provide a structured and consistent approach to addressing issues of non-compliance associated with development across the Shire and ensure an orderly and proper standard of amenity is achieved commensurate with the social fabric and community expectations. In this regard the policy lists general principals and details a protocol for Shire Officers to administer an equitable communication process and consistent approach to addressing issues of non-compliance.

## **ATTACHMENTS**

Attachment 1 – Draft Development Control Policy (DC) 26 – Compliance and Enforcement.

## **VOTING REQUIREMENT**

Simple majority.

## **OFFICER'S RECOMMENDATION**

The Council resolve:

1. To endorse the draft Development Control Policy 26 – Compliance and Enforcement Protocol, as provided in Attachment 1 to this report, for the purpose of receiving comment from the broader community.
2. To allocate \$20,000 in the 2009/2010 budget for legal expenses associated with development matters, with any unspent funds to held over in reserve and accumulated to cover any significant legal costs/expenses that may be incurred in relation to protracted proceedings.

## **COUNCIL DECISION**

***Minute No. 8635***

***Moved:Cr R Addis***  
***Seconded:Cr J Parker***

The Council resolve:

3. To endorse the draft Development Control Policy 26 – Compliance and Enforcement Protocol, as provided in Attachment 1 to this

report, for the purpose of receiving comment from the broader community.

4. To allocate \$20,000 in the 2009/2010 budget for legal expenses associated with development matters, with any unspent funds to held over in reserve and accumulated to cover any significant legal costs/expenses that may be incurred in relation to protracted proceedings.

***CARRIED UNANIMOUSLY: (8/0)***

**Attachment 1: Draft Compliance and Enforcement Policy  
Item No. 12.4.5**

<b>POLICY NO:</b>	DC 26
<b>DIVISION:</b>	Development Services
<b>SUBJECT:</b>	Draft Compliance and Enforcement Policy
<b>AUTHOR:</b>	Bruce Harding and Ian D'Arcy
<b>REPORTING OFFICER:</b>	Ian D'Arcy (EXTPED)
<b>ENABLING LEGISLATION:</b>	Local Government Act 1995

**1. OBJECTIVE**

To provide a framework and consistent approach for Council Officers to implement compliance standards and instigate enforcement action, as described in various Acts and Regulations (Legislation) the Shire administers, proportionate to the seriousness of an alleged offence or issue of non-compliance.

**2. POLICY**

**1.0 Introduction**

As with many Local Governments in Western Australia the Shire of Wyndham East Kimberley is largely responsible for the administration and enforcement of an array of State Government Legislation. Whilst the list is extensive this Policy specifically applies to the legislative framework and provisions prescribed under, but not necessarily limited to:

- *Building Regulations, 1989*
- *Building Code of Australia,*
- *Caravan Parks and Camping Ground Act, 1995*
- *Caravan Parks and Camping Ground Regulations, 1997*
- *Environmental Protection Act, 1986*
- *Food Act, 2008*
- *Health (Food Hygiene) Regulations, 1993*
- *Health Act, 1911*
- *Land Administration Act, 1997*
- *Litter Act, 1979*
- *Local Government (Miscellaneous Provisions) Act, 1960*
- *Planning and Development Act, 2005*
- *Strata Titles Act, 1985*
- *Shire of Wyndham – East Kimberley Town Planning Scheme No.6*
- *Shire of Wyndham – East Kimberley Town Planning Scheme No.7*
- *Shire of Wyndham – East Kimberley adopted Local Planning Policies*
- *Shire of Wyndham – East Kimberley adopted Local laws*

In consideration of this legislation and in order for the Council to achieve an appropriate standard of amenity in step with the social fabric and community expectations for both Kununurra and Wyndham it is necessary for the Shire to

apply a consistent approach to addressing issues of non-compliance associated with development. In this regard the following general principals and enforcement procedures provides a clear guide for Shire Officers to administer an equitable communication process and approach to addressing issues of non-compliance.

## **2.0 General Principles**

- 2.1 For a concern from a member of the public to be acted upon notice must be in written form incorporating relevant details, including name, address, contact details and nature of concern. Anonymous or verbal notification will not be accepted and acted on unless otherwise determined by the Chief Executive Officer.
- 2.2 All concerns will be treated confidentially, where possible and appropriate.
- 2.3 All concerns will be considered on merit and in context of a non personal interest. A matter will not be progressed should, in the opinion of the Chief Executive Officer, the concern be perceived as vexatious or not in good faith.
- 2.4 Councillors and Shire Officers who become aware of potential issues of non-compliance are required to submit details to the CEO or the relevant Executive Manager in the form of a written and signed file note.
- 2.5 All matters of alleged non-compliance must be recorded by the responsible officer/s in written format and filed in the Shires record management system.
- 2.6 Notwithstanding the requirements of the Legislation all notifications regarding an alleged issue of non-compliance must give the recipient a minimum of thirty (30) calendar days in which to comply, unless in the opinion of the Officer there is a known or perceived risk to the public where it is incumbent on the Officer to do everything in their power to alleviate the risk.
- 2.7 In the event of an application being progressed at the time of an alleged offence the processing/assessment of the application shall be 'suspended' until the issue of non-compliance has been resolved to the satisfaction of the Chief Executive Officer or Council.
- 2.8 Notwithstanding any legislative requirement, Officers that hold delegated authority are authorised under this policy to issue letters of warning under procedures 3.1 and 3.2 in consultation with the Executive Manager for Town Planning and Economic Development. Further delegation is afforded to the Executive Manager for Town Planning and Economic Development to administer procedures 3.1 to 3.3, and the Chief Executive Officer to administer procedures 3.1 – 3.4.
- 2.9 Whilst there is a general duty imposed on the Shire to enforce legislation for which it is responsible, that general duty is not absolute. In each case it will be necessary to determine whether

legal costs and other liabilities are justified for the good governance of the Shire and whether or not engagement, enforced and self regulation would be a suitable alternative means of achieving the required level of compliance within the relevant legislation.

### **3.0 Enforcement Procedure**

- 3.1 Upon receipt of a complaint or when attention is drawn to an alleged issue of non-compliance the relevant officer shall investigate the matter through written notice to the occupier/owner of the property seeking confirmation of the status of the activity or serving a notice to comply with a response to be received within thirty (30) days.
- 3.2 At the expiration of the first notice, if necessary, a second letter of non-compliance shall be sent by registered mail with receipt of notification being obtained from Australia Post. This notice shall be for a period of thirty (30) days where by a response is to be received and/or necessary compliance has been achieved. At this point the matter shall be listed for the Council's information.
- 3.3 Should a response to the second notice prove unsatisfactory a memo is to be submitted to the relevant Executive Manager outlining all the details of the complaint, the section of the legislation that has been breached, the compliance actions already taken (copies of letters sent) and the recommended action within the legislation. The Executive Manager for Town Planning and Economic Development is to review all the evidence and if deemed necessary authorise the issue of a third notice to comply within a further thirty (30) days. This notice shall flag that failure to comply may result in legal proceedings to be instigated in accordance with the relevant legislation. An update of the progress of the matter will again be listed for the Council's information.
- 3.4 At the conclusion of the third notice the matter of alleged non-compliance will be presented to the Chief Executive Officer where, based on the nature and circumstances and extent of co-operation from occupier/owner, and in consultation with the Shire President and Deputy Shire President, a determination to commence legal proceedings may be instigated pursuant to the relevant legislation. Conversely, the matter is to be referred to the Council for consideration and an appropriate course of action to be taken.

**ADOPTED:**

**REVIEWED:**

**AMENDED:**

## 12.4.6 LOT 103 BLOODWOOD DRIVE - 9 ACCOMODATION UNITS (8636)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Civic North Pty Ltd
<b>LOCATION:</b>	Lot 103 Bloodwood Drive, Kununurra
<b>AUTHOR:</b>	Jennifer Ninnette – Town Planning Officer
<b>REPORTING OFFICER:</b>	Ian D’Arcy – Executive Manager Town Planning & Economic Development
<b>FILE NO:</b>	01.1165.02
<b>ASSESSMENT NO:</b>	A1165

### **PURPOSE**

For Council to consider granting planning consent for the development of nine (9) accommodation units on Lot 103 Bloodwood Drive, Kununurra.

### **BACKGROUND**

Lot 103 has been used for workers accommodation since the 1970’s, and has been registered with Council as a residential building/lodging house for a number of years.

The owner, MP Properties, purchased the site in March 2007 and currently uses the lodging house to provide accommodation for staff at the Kimberley Grande Motel, also owned by the same company. Currently some of the motel staff accommodate in the motel itself, which the applicant does not consider to be conducive to staff welfare.

Therefore, refurbishment of the existing lodging house and development of the proposed accommodation units is for the purpose of providing affordable accommodation to enable the applicant to attract and retain professional staff for their existing motel.

### **Site and Surrounds**

The subject site has a total area of 2598m<sup>2</sup> and is located on the southern side of Bloodwood Drive. The surrounding land is used for a variety of uses, including service industry, light industrial and showroom uses.

As mentioned, the site is currently developed with a lodging house which is licensed for 15 rooms and to house 23 people. This building effectively consists of eleven (11) rooms, shared kitchen, television room, showers (3) and toilets (3), and also includes four (4) separate single rooms, and an open laundry building.

There is also an existing dwelling and small carport on the site which will need to be removed for the proposed development.

MP properties have undertaken substantial work to improve the amenity and standard of the existing lodging house since acquiring the site, and it is considered that the proposed development is in line with this improvement.



### Development Proposal

To enhance the capacity of staff accommodation the applicant seeks to construct 9 accommodation units on the site of varying size listed as follows:.

- ❖ 3 x three bedroom units, each an area of 58.14m<sup>2</sup>.
- ❖ 6 x two bedroom units, each of an area of 41m<sup>2</sup>, attached to form three duplex buildings.

All of the units proposed include kitchen, living and dining rooms, bathroom and deck area.

The proposed development will require the removal of the dilapidated dwelling located near the front boundary of the property, small carport and a couple of trees.

Whilst the proposed accommodation units are primarily to house Kimberley Grande staff, registration as a lodging house/motel could also provide short to medium term accommodation for the general public, subject to availability.

Plans of the proposed development are provided as attachments to this report.

### PLANNING FRAMEWORK

#### Town Planning Scheme No 7

The land is located within the Mixed Business Zone. Pursuant to Clause 5.12 of Town Planning Scheme No 7 - Kununurra and Environs (TPS), the objectives of the Zone are:

**5.12.1 Objective**

- (a) *To encourage the establishment of predominantly showrooms related to manufacturing on-site and service industry and/or service trades centres;*
- (b) *To only permit the establishment of a caretakers dwelling if such dwelling is considered necessary by Council for operational and security purposes of the business already established on-site.*

Lodging House is defined in the TPS as having the same meaning as is given to the term in and for the purposes of the Health Act 1911.

The Health Act 1911 defines 'Lodging House' as:

*Means any building or structure permanent or otherwise, and any part thereof, in which provision is made for lodging and boarding more than six persons, exclusive of the family of the keeper thereof, for hire or reward; but the term does not include:*

- a) *premises licensed under a publican's general licence, limited hotel licence, or wayside-house licence, granted under the Licensing Act 1911.*
- b) *Residential accommodation for students in non-governmental school within the meaning of the School Education Act 1999; or*
- c) *Any building comprising residential flats.*

'Lodging House' is not listed as a use class in the TPS Zoning Table (Table 1), and the closest use classes and are 'Motel' or 'Residential Building', which are defined as below.

**Motel**

*means any land or buildings used or intended to be used to accommodate patrons in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and to which a licence under the Liquor Licensing Act 1998 may have been granted.*

**Residential Building**

*A building or portion of building, together with rooms and outbuildings separate from such building but incidental thereto; such building being used or intended, adapted or designed to be used for the purpose of human habitation:*

- *Temporarily by two or more persons;*
- *Permanently by seven or more persons who do not comprise a single family, but does not include a hospital or sanatorium, a prison, a hotel, a motel or a residential school.*

It is considered that the proposed developed complies with the respective definitions of 'Residential Building' and 'Motel', and therefore can be favourably entertained at the Council's discretion given both classes are an 'SA' use (discretionary use after advertising) in Town Planning Scheme No.7.

In the case of this application it could also be reasonably argued that the proposed development has an overall positive impact on amenity of the site. The site is screened from the road by fencing and its location on Bloodwood Drive is not considered to be in conflict with adjoining properties.

The development also complies with the development provisions of the Scheme, including setbacks and car parking requirements.

#### Local Planning Strategy

The Shire of Wyndham East Kimberley Local Planning Strategy (LPS) identifies the need for an increased supply of hotel, motel and guesthouse rooms, caravan park and camping sites for tourism, and identifies the need to facilitate the attraction of new employees and retention of existing workers to the region through provision of high quality residential environment, and the need to improve the quality and variety of housing choices to address the mobility and seasonality of the workforce.

The LPS states that showroom and service commercial development shall be encouraged in the western side of town within the Mixed Business zone with an emphasis on a high standard of streetscape.

The Mixed Business zone acts as a transitional zone between the Town Centre and Tourist zones, and therefore the LPS states that industrial uses should be discouraged.

It is considered that the proposal is in line with the LPS, as it will provide adequate residential accommodation to attract and retain seasonal workers and represent a suitable transitional use between the town centre and tourist zones.

#### Strategic/Structure Plans

The Kununurra Structure Plan, which forms part of the Kununurra - Wyndham Area Development Strategy (KWADS), designates the subject land as being for Mixed Business purposes.

It states that the Mixed Business zone strategic location close to the town centre and Lake Kununurra offers the opportunity to redevelop the land uses that are more compatible with the town centre, and that this zoning is to cater for the further expansion of commercial orientated uses.

It is considered that the existing and continued use of the site as a lodging house/motel is compatible with surrounding uses and more compatible with future development of the town centre in contrast to continued operation of the surrounding light industrial uses.

## Council Policies

The land is located in the Policy Area Precinct 5 – Mixed Business Precinct. The objective of the Precinct, as with the other planning instruments, is:

- ❖ *To facilitate the transition of the area from Industrial Use to Mixed Business Use.*
- ❖ *Encourage the establishment of 'shop front' service commercial and showroom development.*
- ❖ *Introduce appropriate amenity standards through the development approval process in order to improve the appearance of buildings, parking areas, storage yards and landscaped areas.*

The use of the land conforms to the objectives of this policy, in that the proposed development will bring about improvement to appearance of buildings, parking and landscaped areas. It is also considered that the proposal will assist with the transition of the mixed business area from workshops to offices and accommodation that is more in keeping with the objectives of the zoning.

## Community Consultation

Town Planning Scheme No. 7 (Kununurra and Environs) requires community consultation for the proposal as motel is a 'SA' use class in the Mixed Business zone. As the site is already used for the purpose of lodging house it was determined that in this instance notification letters to surrounding landowners would suffice.

Notification letters advising of the proposed development were sent to surrounding landowners giving 21 days in which submissions could be lodged. At the conclusion of the advertising period no submissions were received.

## PHYSICAL ASSESSMENT

### Land Capability

The land is flat and sandy and is suitably zoned for urban development. Therefore there are no apparent issues in relation to land capability.

### Servicing

The subject site is serviced by water and electricity, however the site is not connected to Water Corporations reticulated sewer service. Given the level of residential density the proposed development will require the applicant to connect to the sewer, as it cannot be supported by on site effluent disposal/septic systems. In this regard the applicant has been informed that any approval granted by the Council will be subject to connection to the reticulated sewerage system.

### Environmental Impact

As previously mentioned the land is zoned for urban land uses. Notably, some trees will need to be removed, however, it is recommended as a condition of approval that the site be landscaped as part of the overall development.

## Design

In general, the overall design of the development is considered to be of a high standard that together with the removal of dilapidated building and ongoing refurbishment and upgrade of the existing buildings will provide for a more aesthetically appealing development.

However, it is noted that the proposed one bedroom accommodation units are deficient in cover and protection over the external doorways which can easily be rectified by a cantilever extension to the roof or additional awning to provide for necessary weather protection. With respect to the proposed two bedroom units a verandah is already provided over the doorway and outdoor deck area to provide for such weather protection.

## Social/Economic Implications

It is viewed that the proposed development will have a positive impact on social or economic aspects of the locality through the provision of high quality staff housing and the ability to attract and retain staff.

## **FINANCIAL IMPLICATIONS**

The applicant has paid the application fee of \$960.00.

## **CONCLUSION / COMMENT**

The application is recommended for approval subject to conditions, on the basis that it is considered to be a conforming use which is compatible with the surrounding uses and provisions of the Town Planning Scheme, and presents an opportunity to improve the amenity of existing development and increase the availability of appropriate seasonal accommodation within the townsite.

## **ATTACHMENTS**

1. Site Plan
2. Development Plans

## **VOTING REQUIREMENT**

Simple Majority

## **RECOMMENDATION**

That the Council grant formal Planning Consent for the development of nine (9) motel accommodation units on Lot 103 Bloodwood Drive, Kununurra subject to the following conditions:

1. Development shall be in accordance with the attached approved plan(s) dated 21<sup>st</sup> April 2009 and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.

2. *The applicant is required to make arrangements with and to the approval of the Water Corporation, for the provision of reticulated sewerage to the development.*

3. *The one bedroom accommodation units shall designed and constructed to provide extended cover over doorways (such as a cantilever or awning) for adequate protection from the weather.*

4. *A landscaping plan shall be submitted prior to or at the time of application for a building licence with all land indicated as landscaped area on those plan(s) being developed prior to, or concurrently with the practical completion of the development and maintained thereafter to the approval of the local government.*

*associated access (including street crossover) as delineated on the endorsed plan shall:*

- i be provided and completed to the approval of the local government prior to the commencement of the use hereby permitted;*
- ii thereafter be maintained to the approval of the local government;*
- iii be made available for such use at all times and not used for any other purpose unless specifically approved;*
- iv be properly formed to such levels that it can be used in accordance with the plan;*
- v be drained and sealed with an all weather seal coat to the approval of the local government;*
- vi have the boundaries of all vehicle spaces clearly indicated on the ground in conformity with the endorsed plan;*
- vii be designed in accordance with AS2890.*

6. *During construction stage adjoining lots are not to be disturbed without the consent of the owner/s in writing;*

7. *No site earthworks or development shall occur that will cause additional runoff of stormwater to adjacent properties. Stormwater from runoff and any sealed areas shall should be mechanically directed into Council's stormwater system or disposed of onsite. Stormwater shall not be permitted to pond on the site, other than within designated detention basins, or against any buildings or structures. Details on the proposed method of control and disposal of stormwater from the site, including access roads, parking areas and roofs are to be confirmed with the Executive Manager of Engineering and Development Services and submitted with the building application.*

## **COUNCIL DECISION**

**Minute No. 8636**

**Moved:Cr R Boshammer**

**Seconded:Cr R Addis**

**That the Council grant formal Planning Consent for the development of nine (9) motel accommodation units on Lot 103 Bloodwood Drive, Kununurra subject to the following conditions:**

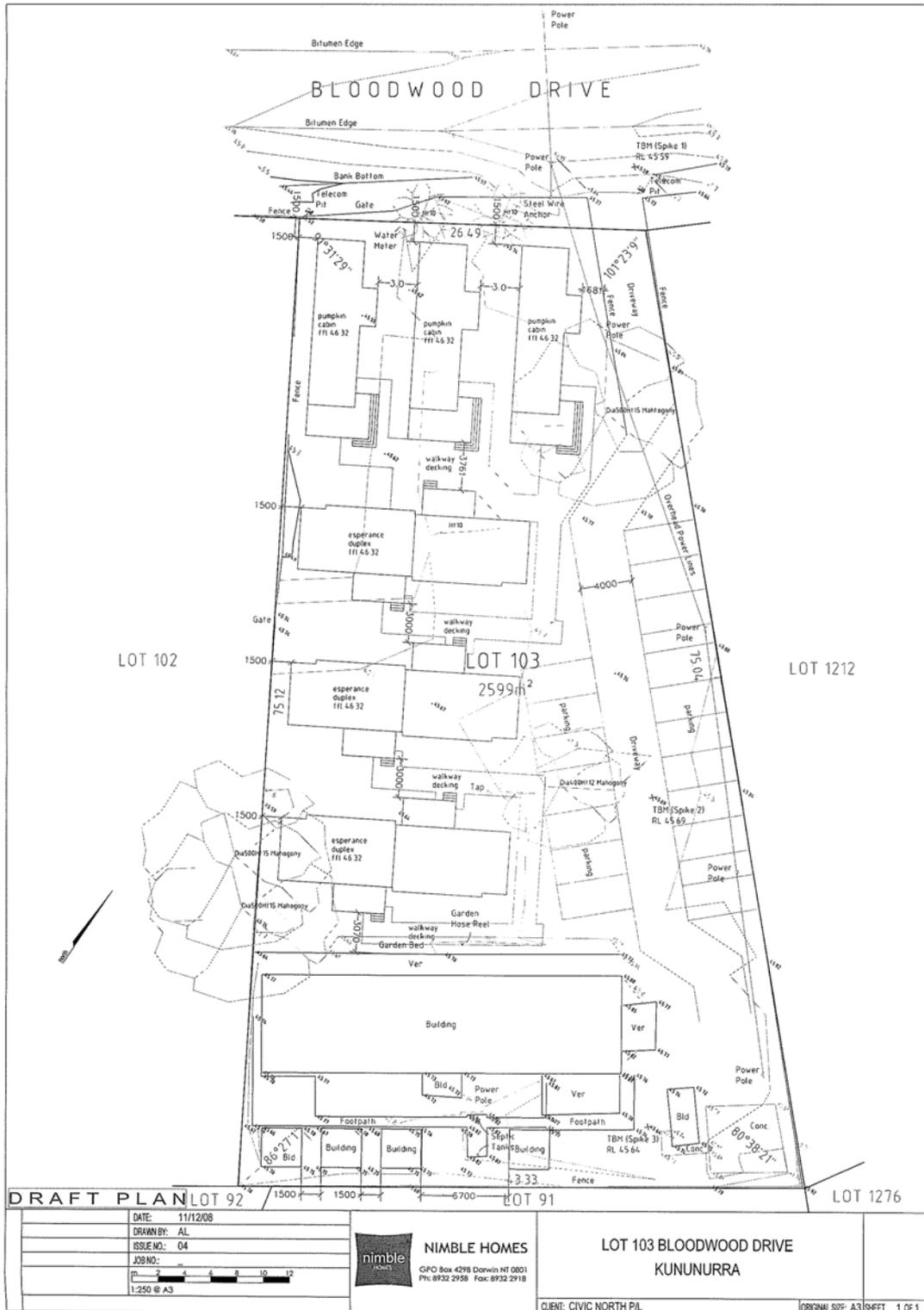
- 1. Development shall be in accordance with the attached approved plan(s) dated 21st April 2009 and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.**
- 2. The applicant is required to make arrangements with and to the approval of the Water Corporation, for the provision of reticulated sewerage to the development.**
- 3. The one bedroom accommodation units shall designed and constructed to provide extended cover over doorways (such as a cantilever or awning) for adequate protection from the weather.**
- 4. A landscaping plan shall be submitted prior to or at the time of application for a building licence with all land indicated as landscaped area on those plan(s) being developed prior to, or concurrently with the practical completion of the development and maintained thereafter to the approval of the local government.**
- 5. The area set aside for the parking of vehicles, together with the associated access (including street crossover) as delineated on the endorsed plan shall:
  - i be provided and completed to the approval of the local government prior to the commencement of the use hereby permitted;**
  - ii thereafter be maintained to the approval of the local government;**
  - iii be made available for such use at all times and not used for any other purpose unless specifically approved;**
  - iv be properly formed to such levels that it can be used in accordance with the plan;**
  - v be drained and sealed with an all weather seal coat to the approval of the local government;**
  - vi have the boundaries of all vehicle spaces clearly indicated on the ground in conformity with the endorsed plan;**
  - vii be designed in accordance with AS2890.****

6. ***During construction stage adjoining lots are not to be disturbed without the consent of the owner/s in writing;***
7. ***No site earthworks or development shall occur that will cause additional runoff of stormwater to adjacent properties. Stormwater from runoff and any sealed areas shall should be mechanically directed into Council's stormwater system or disposed of onsite. Stormwater shall not be permitted to pond on the site, other than within designated detention basins, or against any buildings or structures. Details on the proposed method of control and disposal of stormwater from the site, including access roads, parking areas and roofs are to be confirmed with the Executive Manager of Engineering and Development Services and submitted with the building application.***

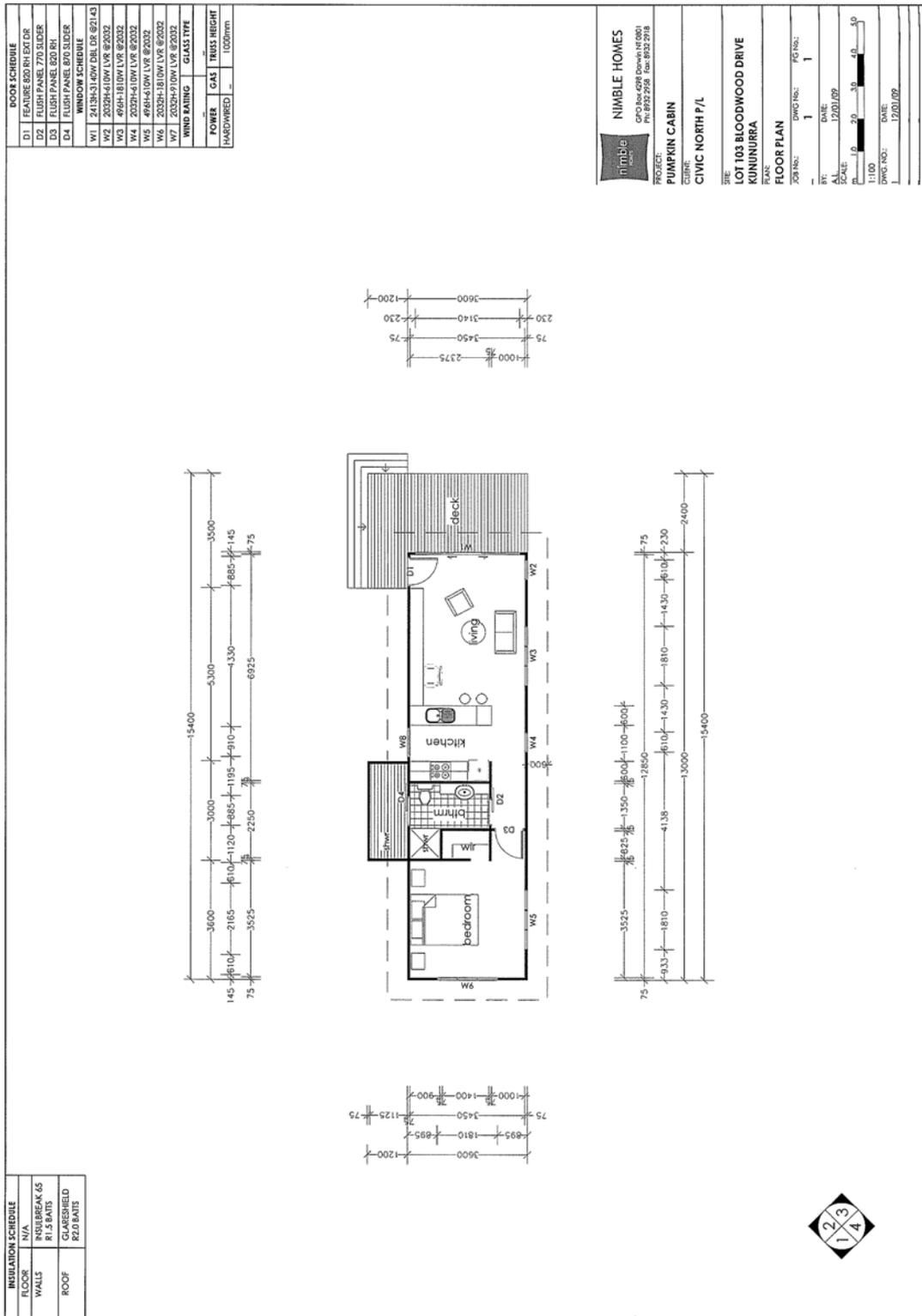
**CARRIED UNANIMOUSLY: (8/0)**

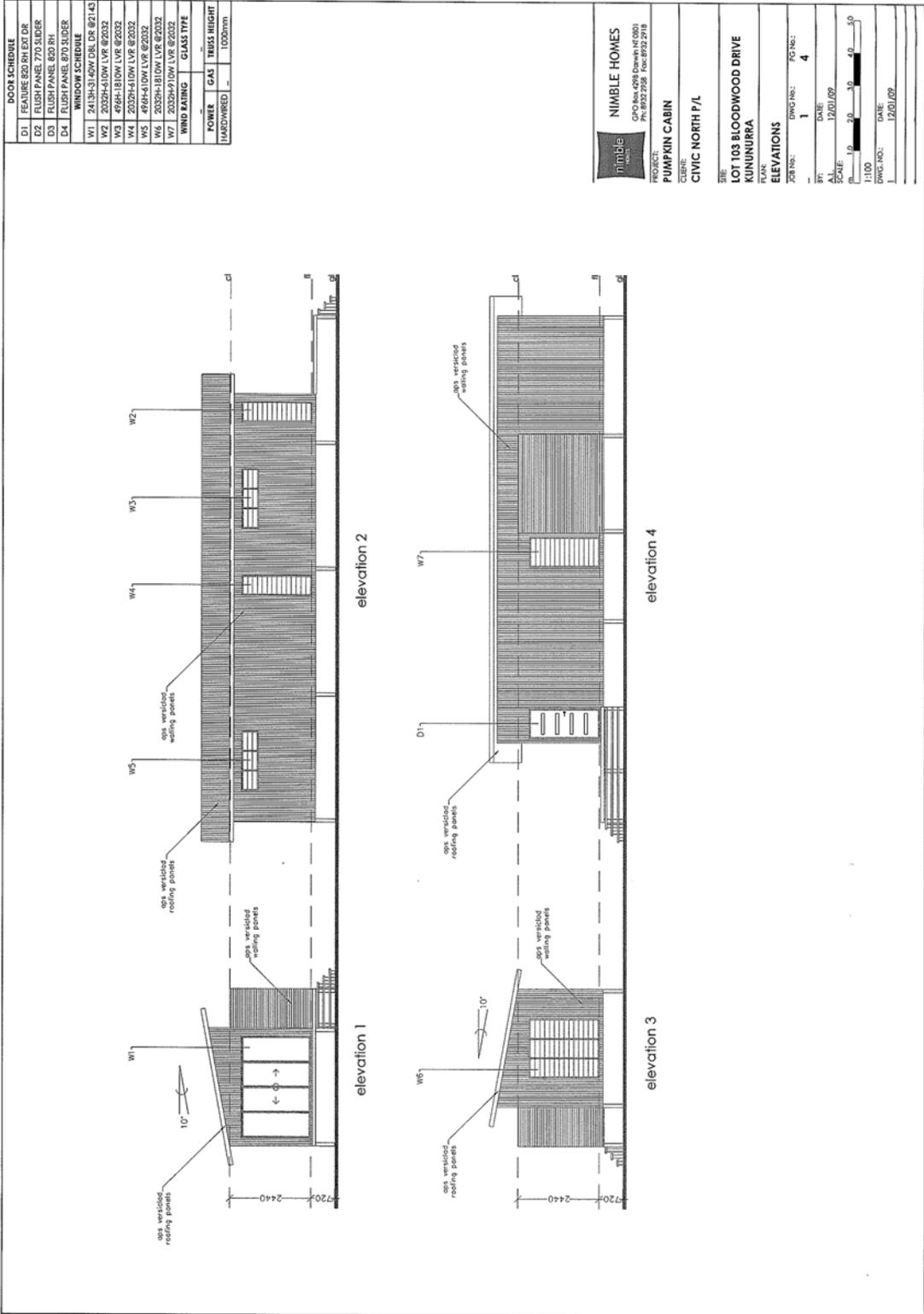
*Officers Recommendation Items 2 to 7 were handed out at the meeting as they were missing from the Meeting Agenda due to a formatting error.*

**Attachment 1: Lot 103 Bloodwood Drive Site Plan  
Item No. 12.4.6**



**Attachment 2: Lot 103 Bloodwood Drive Development Plans  
Item No. 12.4.6**





DOOR SCHEDULE	
D1	FEATURE 600 RH EXT DR
D2	FLUSH PANEL 770 SLIDER
D3	FLUSH PANEL 600 RH
D4	FLUSH PANEL 870 SLIDER

WINDOW SCHEDULE	
W1	2413F-31-40W DRL DR @2145
W2	2032F-410W LVP @2032
W3	476F-11810W LVP @2032
W4	2032F-410W LVP @2032
W5	476F-11810W LVP @2032
W6	2032F-410W LVP @2032
W7	2032F-410W LVP @2032

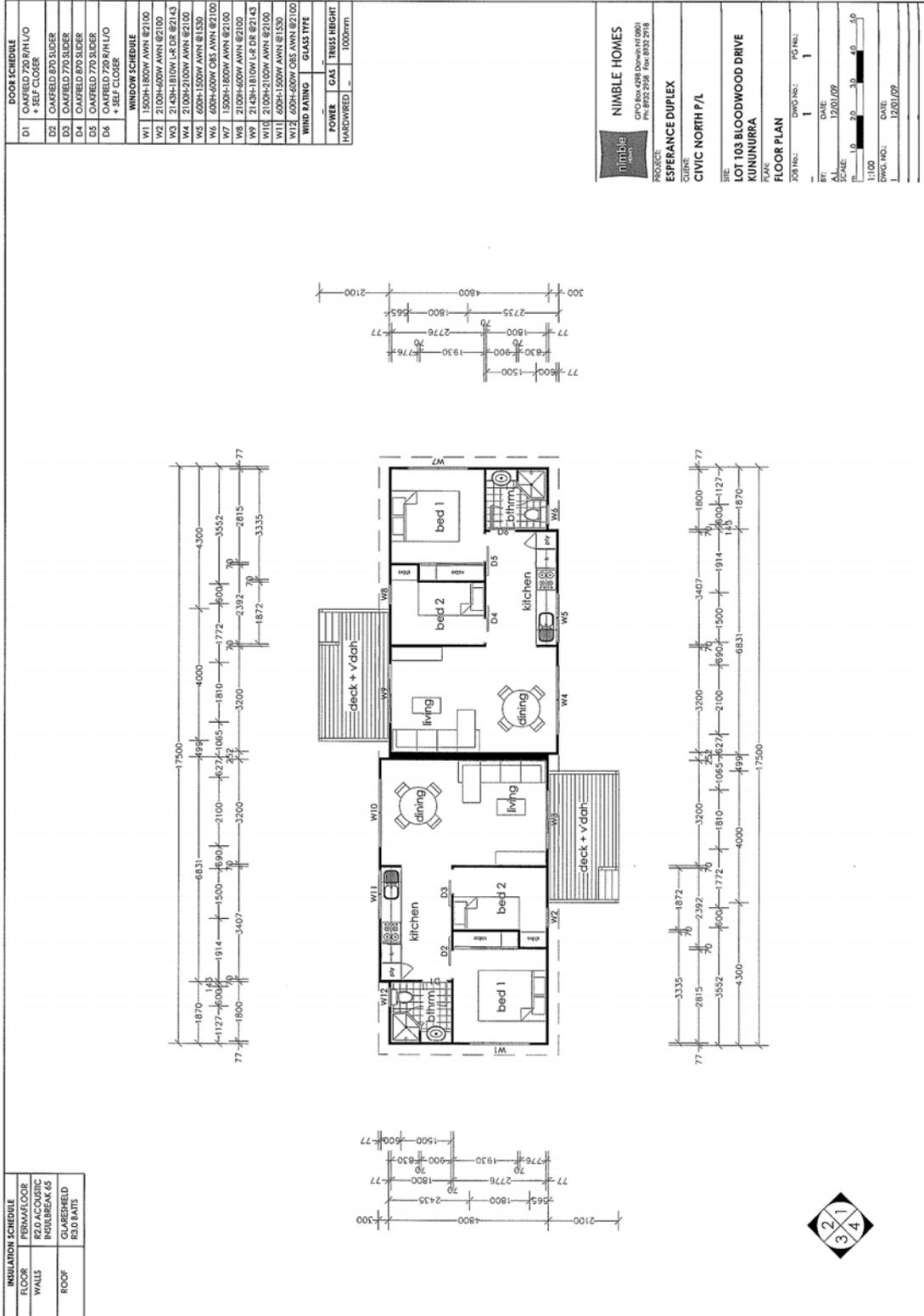
WIND RATING		GLASS TYPE	
POWER	GAS	TRIPLE MIGHT	
MARSHWREED			1000mm

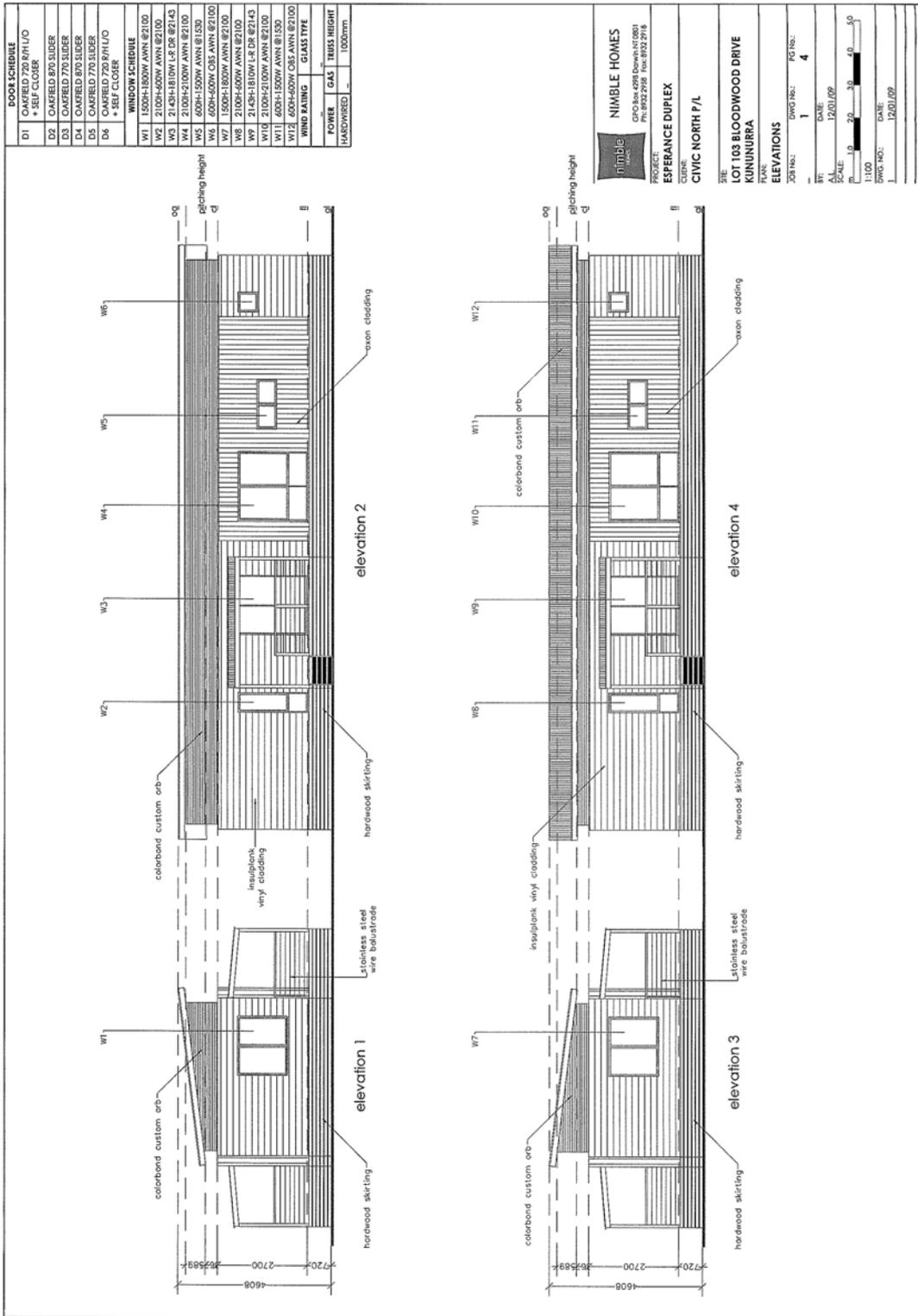
**nimble** NIMBLE HOMES  
 650 Hwy 428, Berrimah NT 1361  
 Ph: 8132 2928 Fax: 8132 2918

PROJECT: PUMPKIN CABIN  
 CLIENT: CIVIC NORTH P/L

SITE: LOT 103 BLOODWOOD DRIVE  
 KUNUNURRA

PLAN: ELEVATIONS  
 JOB NO.: 1 DWG NO.: 4  
 BY: DATE: 12/01/09  
 ALL SCALE: 1:100  
 1:100 0 1.0 2.0 3.0 4.0 5.0  
 DWG NO.: 1 DATE: 12/01/09





## 12.4.7 PROPOSED TEMPORARY WORKERS ACCOMMODATION - LOT 2263 CASUARINA DRIVE, KUNUNURRA (8637)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Laurie McKenzie (Ingle Pty Ltd)
<b>LOCATION:</b>	Lot 2263 Casuarina Drive, Kununurra
<b>AUTHOR:</b>	Jennifer Ninyette, Town Planning Officer
<b>REPORTING OFFICER:</b>	Ian D'Arcy, Executive Manager Town Planning & Economic Development
<b>FILE NO:</b>	01.1736.02
<b>ASSESSMENT NO:</b>	A1736

### PURPOSE

For Council to consider an application for planning consent for the development of 20 temporary workers accommodation units at Lot 2263 Casuarina Drive, Kununurra.

### SITE LOCATION

The subject site is Lakeside Resort, a tourist operation which provides motel accommodation (lodging house), along with caravan and camping sites.

The site is located on the western side of Casuarina Drive adjacent to Lily Creek Lagoon. The land is zoned 'Tourist' under the Shire of Wyndham - East Kimberley Town Planning Scheme No.7.



The motel has a total of 52 bedrooms and is licensed for a maximum of 150 people.

There are a total of 88 caravan and camping sites, comprising of 8 long stay sites, 52 short stay sites and 30 overflow sites for peak seasons.

The resort is also licensed with two food premises, being the Sails Bistro and Durack Steakhouse.

### **PROPOSED LAND USE / DEVELOPMENT**

The applicant is seeking planning consent to develop 20 rooms for the purpose of temporary workers accommodation in anticipation of the expected influx of seasonal workers.

The proposal is to relocate 5 second hand 4 room 'single men's quarters', in place of five existing caravan sites. Each room contains toilet and shower facilities, and has an area of 11.88m<sup>2</sup>.

In effect, the proposal will reduce the number of camping and camping sites to 83, and will increase the number of lodging house (motel) rooms to 72.

The applicant has supplied photographs of one of the accommodation blocks, which appears to be in good condition.

Plans and photographs of the development are attached.

### **FINANCIAL IMPLICATIONS**

The Application Fee of \$275.00 has been paid.

### **COMMUNITY CONSULTATION**

Under Town Planning Scheme No. 7 – Kununurra and Environs, Transient Accommodation is an 'AA' use class within the Tourist zone, and therefore requires Council approval but does not need to be advertised.

### **ATTACHMENTS**

Attachment 1 - Site Layout

Attachment 2 - Accommodation Block (4 Room) Plan

Attachment 3 - Photographs

Attachment 4 – Submission to Council

### **PLANNING ASSESSMENT**

#### **Town Planning Scheme No. 7 – Kununurra and Environs**

As mentioned in the background section the land is located within the 'Tourist' zone. Notably, Clause 5.24 of the Town Planning Scheme (TPS) states that the objectives of this zone are:

### 5.24.1 Objective

- a) *To encourage tourist accommodation and activity in areas adjacent to attractive natural and man-made features.*
- b) *To encourage tourist uses on land adjacent to the existing town centre and forming the approach to the town centre of Kununurra.*
- c) *To encourage a high standard of aesthetic quality, landscaping and presentation.*

The TPS also stipulates that Council may approve the use of a tourist site in the Tourist Zone for permanent residential purposes to a maximum of 30% of the number of units, rooms or caravan/cabins approved for the site.

The development of motel rooms in the 'Tourist' zone is a permitted use, however as the proponent does not wish for the development to be permanent, and specifically for workers accommodation, it is to be assessed as transient accommodation, which is a discretionary use ('AA') under the Scheme.

Although the development is to be temporary, it is viewed that extra design features/details should be will be required to ensure a standard of aesthetic quality in keeping with the existing amenity of the resort.

It is possible for further permanent motel development on the site, however for this to occur, the design, aesthetic and amenity of the motel rooms would need to be upgraded.

### Strategic/Structure Plans

The Shire of Wyndham - East Kimberley Local Planning Strategy (LPS) identifies the need for an increased supply of hotel, motel and guesthouse rooms, caravan park and camping sites for tourism, and identifies the need to facilitate the attraction of new employees and retention of existing workers to the region through provision of high quality residential environment, and the need to improve the quality and variety of housing choices to address the mobility and seasonality of the workforce.

Although the accommodation is aimed specifically for the seasonal workforce, it will help relieve both short term and medium term accommodation pressures in general during the peak season.

## **PHYSICAL ASSESSMENT**

### Land Capability

The proposed site is relatively flat and is currently grassed for camping. There are no issues in relation to land capability.

### Servicing

The subject site is currently serviced. Any additional servicing requirements would be the responsibility of the applicant.

## Environmental Impact

The land is zoned for tourist land uses. It is not expected that any trees will need to be removed, and the existing landscaping will be required to be retained and/or reinstated as part of the development. Therefore, the development is unlikely to have any environmental impacts.

## Design

Although the development is temporary in nature and considered adequate for transient accommodation, it is suggested a number of features be provided to improve the aesthetics and function of the units. This includes:

- ❖ adequate cover and protection over the external doorways which can easily be rectified by a cantilever extension to the roof or additional awning to provide for necessary weather protection.
- ❖ decking or paving to be installed below external doorways with adequate steps should be requested to provide safe entry/exit from each room.
- ❖ the buildings to be painted or re-clad to compliment the existing resort development, and existing landscape value of the resort.

Also, the application is deficient in identifying the location of 20 additional car parking spaces to serve the transient accommodation units. Whilst there appears to be adequate room on site it would be appropriate for the applicant to submit additional information prior to or at the time of obtaining a building licence that adequately addresses the provision of car parking and stormwater drainage.

## **CONCLUSION / COMMENT**

It is considered that the proposed accommodation will meet an immediate demand for the seasonal workforce accommodation, which will relieve some pressure on other accommodation types.

As the development is not intended to be permanent and the buildings are of a lesser standard than the existing resort development it is recommended that Council only grant approval for a maximum period of 5 years subject to improvements outlined above. Then, should at the expiration of the approval period the applicant seek to retain the buildings on a permanent basis, notwithstanding a new application will need to be submitted, the applicant should be required to upgrade the buildings with a pitched roof consistent with the existing motel units.

However, in consideration of the current application the minor design shortfalls and landscaping enforcement can be achieved through development conditions to ensure appropriate design and amenity of existing development can be achieved.

## **VOTING REQUIREMENT**

Simple Majority

## **OFFICER RECOMMENDATION**

That Council grants planning consent for the development of 5 x 4 bedroom transient accommodation units for a period of 5 years on Lot 2263 Casuarina Drive, Kununurra, (Lakeside Resort), subject to the following conditions:

1. All development shall be in accordance with the attached approved plan(s) dated 21<sup>st</sup> April 2009 and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.
2. The accommodation units shall be designed and constructed to provide extended cover over doorways (such as a cantilever or awning) for adequate protection from the weather.
3. The accommodation units shall be designed and constructed to provide save entry/exit to each room. This will require either decking or paving and adequate steps.
4. The accommodation units shall be complementary in colour to the existing motel development and landscape values of the Resort.
5. The transportable building shall be fixed to the ground by footings, as directed by the local government.
6. A landscaping plan shall be submitted prior to or at the time of application for a building licence with all land indicated as landscaped area on those plan(s) being retained, or reinstated with the practical completion of the development and maintained thereafter to the approval of the local government.
7. The provision of twenty (20) car parking bays constructed to a minimum compact gravel standard to be maintained to the satisfaction of the local government. In this regard the applicant is required to submit a plan prior to or at the time of obtaining a building licence outlining the location of the required car parking on-site.
8. This approval is valid for a period of five (5) years. Within 3 months of the expiry of this approval, a new application is required to be submitted to Council. However, if Council is to consider approving the units for an extended period then the development shall be made permanent and the proposed accommodation will require upgrading.
9. During construction stage adjoining lots are not to be disturbed without the consent of the owner/s in writing;
10. No site earthworks or development shall occur that will cause additional runoff of stormwater to adjacent properties. Stormwater runoff from the accommodation units and car parking area/s shall be mechanically directed into Council's stormwater system or disposed of onsite. Stormwater shall not be permitted to pond on the site, other than within designated detention basins, or against any buildings or structures. Details on the proposed method of control and disposal of stormwater from

the site, including access roads, parking areas and roofs are to be confirmed with the Executive Manager of Engineering and Development Services and submitted with the building application.

11. That a notation be placed on the title of land regarding temporary nature of approval.

### **COUNCIL DECISION**

**Minute No. 8637**

**Moved:Cr D Ausburn**

**Seconded:Cr K Wright**

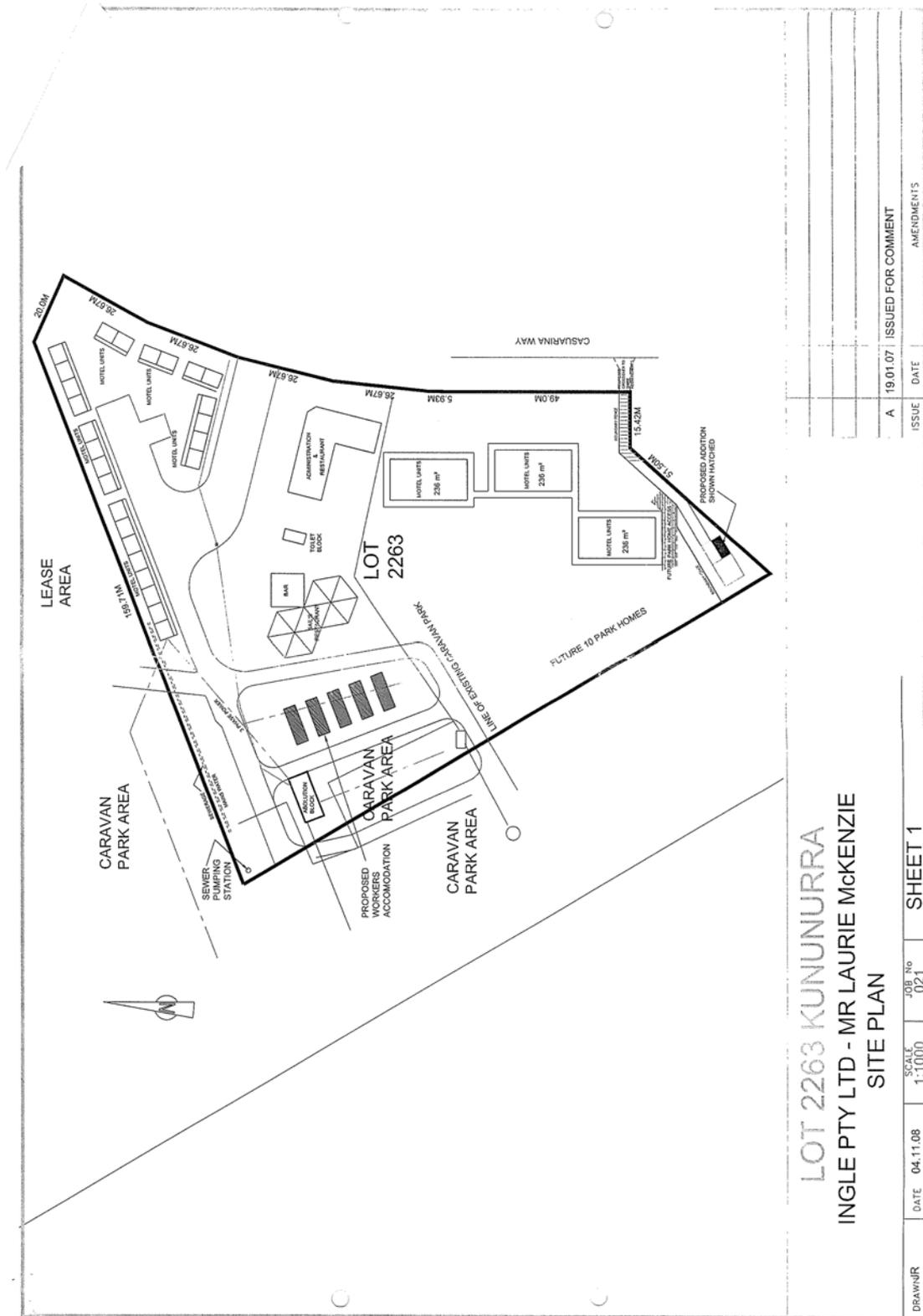
***That Council grants planning consent for the development of 5 x 4 bedroom transient accommodation units for a period of 5 years on Lot 2263 Casuarina Drive, Kununurra, (Lakeside Resort), subject to the following conditions:***

- 1. All development shall be in accordance with the attached approved plan(s) dated 21st April 2009 and subject to any modifications required as a consequence of any condition(s) of this approval. The endorsed plans shall not be modified or altered without the prior written approval of the local government.***
- 2. The accommodation units shall be designed and constructed to provide extended cover over doorways (such as a cantilever or awning) for adequate protection from the weather.***
- 3. The accommodation units shall be designed and constructed to provide safe entry/exit to each room. This will require either decking or paving and adequate steps.***
- 4. The accommodation units shall be complementary in colour to the existing motel development and landscape values of the Resort.***
- 5. The transportable building shall be fixed to the ground by footings, as directed by the local government.***
- 6. A landscaping plan shall be submitted prior to or at the time of application for a building licence with all land indicated as landscaped area on those plan(s) being retained, or reinstated with the practical completion of the development and maintained thereafter to the approval of the local government***
- 7. The provision of twenty (20) car parking bays constructed to a minimum compact gravel standard to be maintained to the satisfaction of the local government. In this regard the applicant is required to submit a plan prior to or at the time of obtaining a building licence outlining the location of the required car parking on-site.***

8. ***This approval is valid for a period of five (5) years. Within 3 months of the expiry of this approval, a new application is required to be submitted to Council. However, if Council is to consider approving the units for an extended period then the development shall be made permanent and the proposed accommodation will require upgrading.***
9. ***During construction stage adjoining lots are not to be disturbed without the consent of the owner/s in writing;***
10. ***No site earthworks or development shall occur that will cause additional runoff of stormwater to adjacent properties. Stormwater runoff from the accommodation units and car parking area/s shall be mechanically directed into Council's stormwater system or disposed of onsite. Stormwater shall not be permitted to pond on the site, other than within designated detention basins, or against any buildings or structures. Details on the proposed method of control and disposal of stormwater from the site, including access roads, parking areas and roofs are to be confirmed with the Executive Manager of Engineering and Development Services and submitted with the building application.***
11. ***That a notation be placed on the title of land regarding temporary nature of approval.***

**CARRIED UNANIMOUSLY: (8/0)**

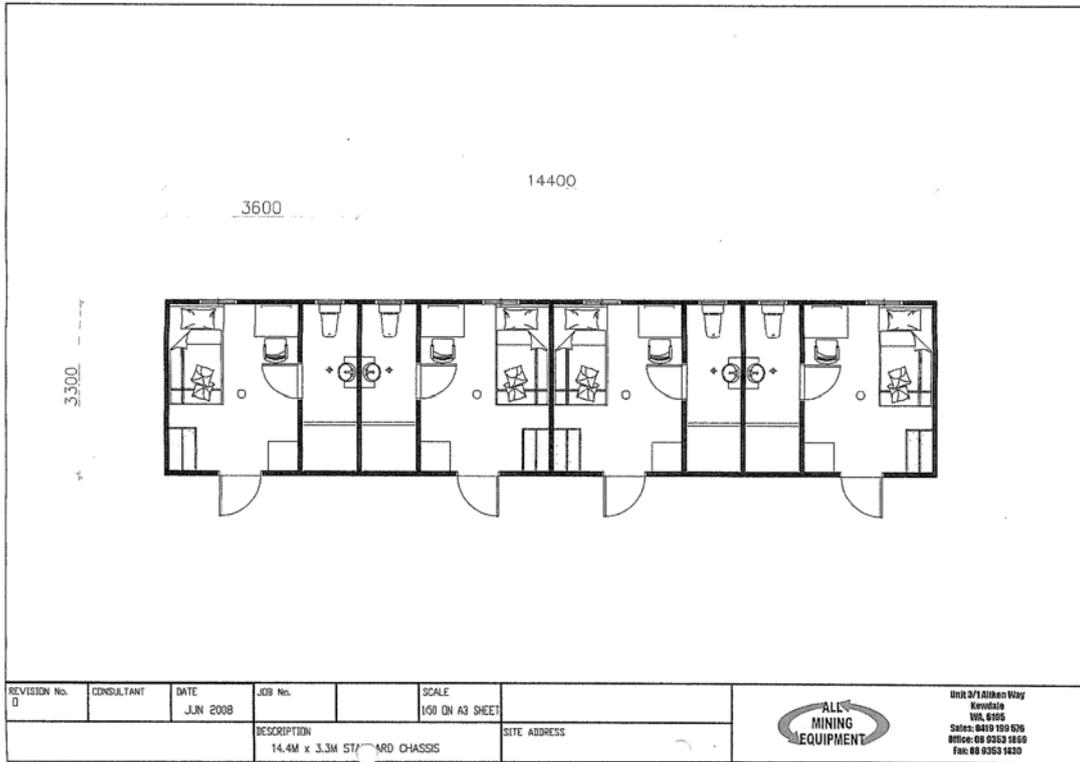
**Attachment 1: Lot 2263 Casuarina Way Site Layout  
Item No. 12.4.7**



**LOT 2263 KUNUNURRA  
INGLE PTY LTD - MR LAURIE MCKENZIE  
SITE PLAN**

DRAWNR	DATE	SCALE	JOB No	SHEET	ISSUE	DATE	AMENDMENTS
	04.11.08	1:1000	021	SHEET 1	A	19.01.07	ISSUED FOR COMMENT

**Attachment 1: Lot 2263 Casuarina Way, Accommodation Block Plans  
Item No. 12.4.7**



**Attachment 3: Photo 1**  
**Item No: 12.4.7**



**Attachment 3: Photo 2**  
**Item No: 12.4.7**



**Attachment 3: Photo 3**  
**Item No: 12.4.7**



**Attachment 3: Photo 4**  
**Item No: 12.4.7**



**Attachment 4: Lot 2263 Casuarina Drive, Submission to Council  
Item No. 12.4.7**

**KUNUNURRA LAKESIDE RESORT**

---

Telephone 08 91691092  
Fax 08 91682741  
Email lakeside@comswest.net.au

Casuarina Way  
P O Box 1129  
KUNUNURRA WA 6743

**DATE:7/4/2009**

At Ian D'Arcy,  
Town Planning Department,  
Shire of Wyndham East Kimberley,  
xmtped@thelastfrontier.com.au

9/4/2009.

Dear Sir

Application is made for the installation of 5 only single person accommodation units of 4 rooms each, each with their own en-suites, in accordance with our Development Application / Building licence submitted to Council in January this year.

The proposed location on site has no resulting negative visual effect and will be enhanced through the following modifications.

A bull nosed verandah 1.5m wide is to be installed to protect the entry side with a 100mm thick slab and single step to each entry door.

The resulting 1.5 m break between the buildings and verandah is to be heavily landscaped

The break between the ends of each building would have a colour bond fence / site screen installed on the Eastern side providing a continuous site proof wall in the same colour as the buildings.(cream)

Extensions to Sails Restaurant to the North would provide additional dining area without having any effect on the existing tourist trade

The units would allow the trading of the property for the full year as distinct from the traditional tourist season allowing the employment of kitchen dining and cleaning staff for the full year and complementing our existing lodgers and eating house permits.

BCA Solutions NT have produced a favourable report on fire hazard and building type.

Yours sincerely

Laurie McKenzie  
Kununurra Lakeside Resort

**12.5. COMMUNITY SERVICES**

Nil

## 12.6. CHIEF EXECUTIVE OFFICER

### 12.6.1 PROPOSED AQUISITION OF RESIDENTIAL LAND BEING PROTION OF RESERVE 41812 (WATERLILY PLACE) (8638)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Waterlily Place, Kununurra
<b>AUTHOR:</b>	Peter Stubbs, Chief Executive Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	42.09.01
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

For Council to consider an offer by the State Government of Western Australia to sell a portion (4,800m<sup>2</sup>) of Reserve 41812 Waterlily Place, Kununurra to Council for residential housing development for the sum of \$50,000.

#### **BACKGROUND**

That portion of Reserve 41812 adjacent Casuarina Drive, Lakeside Kununurra is currently subject to installation of reticulation works to improve the public open space. This public open space now has increased accessibility for the public by through the installation of Lakeside Link Path across Lily Creek Lagoon.

In the lead up to the reticulation works (2008/09) billboard signage was used in Reserve 41812 to advise the pubic of the proposed works and suggested use of portion of this Reserve for residential housing development. The signage is still in place.

The suggested for use of a portion of this land for residential housing is founded on two basis. The first being the need to more residential land in Kununurra and the second being that to have reticulated the whole area over this portion of reserve was judged to be cost prohibitive in the context of total improvements to the public open space occurring, and in part5ovualr to future recurrent costs.

Council resolved to seek acquisition of a portion of this Reserve for residential housing.

The State Government has agreed to sell the land to Council for \$50,000. The land is 4,800m<sup>2</sup> and has a valuation of \$1,000,000. The land has a potential dwelling yield (R30) of 11 units. Concept designs for a mix of 3 x 2 units and 2 x 2 units have been produced.

#### **STATUTORY IMPLICATIONS**

The subject land, if acquired by Council, will need to be rezoned from 'Special Foreshore' zone to 'Residential R30' zone pursuant to the *Planning and Development Act 2005*.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

\$50,000. to be funded from 2008/09 Royalties to Regions funding.

## **STRATEGIC IMPLICATIONS**

The portion of Reserve 41812 is regarded as having excellent potential for residential development given its proximity to the town centre of Kununurra, positioned adjacent to development of public open space, and also being adjacent to land in Waterlily Place currently being rezoned to accommodate an R30 density (Amendment 25).

The proposed use of the land is consistent with the needs of the community to accelerate land for residential development.

## **COMMUNITY CONSULTATION**

Community consultation to date in relation to use of this land for housing has occurred via billboard signage and notice on the Kimberley Echo newspaper.

Further consultation would be needed should Council determine to undertake development of the property. In particular there is a requirement for further consultation under the *Local Government Act 1995* to advertise a Business Plan supporting the proposed the development, and under the *Planning and Development Act 2005* to amend the zoning.

## **COMMENT**

Nil

## **ATTACHMENTS**

Nil

## **VOTING REQUIREMENT**

Absolute Majority

## **OFFICER'S RECOMMENDATION**

1. That Council accept the offer from the State Government to acquire approximately 4,800m<sup>2</sup> of Reserve 41812 on the corner of Waterlily Place and Casuarina Drive, Lakeside, Kununurra for the sum of \$50,000 inclusive of GST, with the acquisition to be funded from the Councils 2008/09 Regions for Royalties funding.
2. That Council Initiate a Scheme Amendment pursuant to Section 75 of the *Planning and Development Act 2005* to amend the Shire of Wyndham – East Kimberley Town Planning Scheme No.7 by rezoning a portion

(4,800m<sup>2</sup>) of Reserve 41812 bordered by Waterlily Place and Casuarina Way, Kununurra from 'Special Foreshore' zone to 'Residential R30' zone.

### **COUNCIL DECISION**

***Minute No. 8638***

***Moved:Cr K Wright***

***Seconded:Cr R Boshammer***

1. ***That Council accept the offer from the State Government to acquire approximately 4,800m<sup>2</sup> of Reserve 41812 on the corner of Waterlily Place and Casuarina Drive, Lakeside, Kununurra for the sum of \$50,000 inclusive of GST, with the acquisition to be funded from the Councils 2008/09 Regions for Royalties funding.***
  
2. ***That Council Initiate a Scheme Amendment pursuant to Section 75 of the Planning and Development Act 2005 to amend the Shire of Wyndham - East Kimberley Town Planning Scheme No.7 by rezoning a portion (4,800m<sup>2</sup>) of Reserve 41812 bordered by Waterlily Place and Casuarina Way, Kununurra from 'Special Foreshore' zone to 'Residential R30' zone.***

**CARRIED UNANIMOUSLY: (8/0)**

## 12.6.2 KUNUNURRA ADMINISTRATION CENTRE LAND PURCHASE (8639)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Office Of Hon Brendon Grylls Mla
<b>LOCATION:</b>	Coolibah Drive, Kununurra
<b>AUTHOR:</b>	Peter Stubbs, Chief Executive Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	01.2148.13
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

For Council to consider an offer from the State Government to acquire approximately 3,500m<sup>2</sup> of Reserve 27603 containing the current Kununurra Council Administration Centre for the sum of \$490,000 inclusive of GST.

### **BACKGROUND**

In the 2008/09 budget Council budgeted funds for the surveying to create a freehold title over approximately 3,500m<sup>2</sup> of Reserve 27603 containing the current Kununurra Council Administration Centre, with a view to acquiring this from the State Government.

This was seen as a strategic acquisition to enable and assist the Council develop a new and replacement Administration Centre. The current centre being 40 years old, and now inadequate to accommodate staff to meet the growing services needs of the region.

Freehold acquisition of this land allows greater flexibility to the Council and potential fund raising through sale of the property to assist fund a new Administration Centre. This may then add value of seeing the existing Coolibah re developed in the town centre.

The land was initially offered a \$560,000 in 2008. The current offer has been discounted by the value of accepted improvements the Council has made to the site (\$70,000 parking improvements)

### **STATUTORY IMPLICATIONS**

Nil

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

\$490,000 would need to be funded in the 2009/10 budget.

## **STRATEGIC IMPLICATIONS**

Freehold title over the land enables Council to control its destiny in terms of the future of the Council Administration Centre

## **COMMUNITY CONSULTATION**

Consultation with the community about a new location for a Council Administration Centre is considered essential. The first occasion for this is considered to be late April 2009 as part of the Enquiry by Design process that will be held in the region, and which will feed into the development of the new Town Planning Scheme.

It is recommended that feedback from the Enquiry by Design process be collated and released for wider public comment.

## **COMMENT**

The current Administration Centre is already inadequate. This has been recognised by the need to include additional office space in the form of transportable offices in 2009.

The region is entering a period of substantial growth through the combined effective of the Ord Expansion project (\$200M) and the Australian Governments East Kimberley investment package (\$195M). Local Government services are going to need to expand also over the decade ahead and beyond.

It is considered that re-development of the current site is problematic, as functioning Shire would need to occur while re-construction took place, or the Shire Administration be temporarily moved (for up to 18 months). There are not viable alternate temporary options.

Sale of the existing site potentially encourages needed re-development in the town centre, and would raise perhaps an additional \$1M of funding available for a new facility. That additional funding would not be available for re-development of the existing site.

## **ATTACHMENTS**

Proposed timeline for a replacement of Council Kununurra Administration Centre.

## **VOTING REQUIREMENT**

Simple Majority

## **OFFICER'S RECOMMENDATION**

1. That Council confirm with the Minister for Regional Development and Lands that Council accepts the offer to acquire approximately 3,500m<sup>2</sup> of Reserve 27603 containing the existing Council Kununurra Administration site for the amount of \$490,000 inclusive of GST.

2. That Council include as part of an Enquiry by Design process to be held in late April 2009 input from stakeholders about potential new sites for the replacement Council Kununurra Administration site.

### **COUNCIL DECISION**

***Minute No. 8639***

***Moved:Cr K Wright***

***Seconded:Cr R Boshammer***

1. ***That Council confirm with the Minister for Regional Development and Lands that Council accepts the offer to acquire approximately 3,500m<sup>2</sup> of Reserve 27603 containing the existing Council Kununurra Administration site for the amount of \$490,000 inclusive of GST.***
2. ***That Council include as part of an Enquiry by Design process to be held in late April 2009 input from stakeholders about potential new sites for the replacement Council Kununurra Administration site.***

***CARRIED UNANIMOUSLY: (8/0)***

**Attachment: Kununurra Administration Centre Land Purchase  
Item No.: 12.6.2**

Kununurra Shire Administration Centre			
Purpose = to cater for growing service delivery demands, attraction/retention of staff			
Status Report			
Key Date	Action	Officer	Completed
July 2008	Council allocated \$100,000 in its 2008/09 budget to assist with surveying costs to support land acquisition if supported by State Government.	CEO	Completed
June 2008	State Government completed land valuation and offer to sell land to Council for \$560,000 the unimproved value	CEO	Completed
1 July 08	State Offer considered by Councillors at Briefing Session	CEO	Completed
19 July 08	Council considers State Offer and delegates Shire President and Deputy President to negotiate with Minister on reduced sale offer.	CEO	Completed
Sept 08	State Election and new Govt	SP/DSP	
Sept 08	Shire offer to purchase land \$56,000 being 10% of valuation	CEO	
Oct 08	State advised greater substantiation required support offer of \$56,000.		
Nov 08	Shire provides evidence of \$600,000 investment in the building and site since 2000 in attempt to offset cost.		
Mar 09	State agreed to reduce sale price by \$70,000 to \$490,000		
April 09	Briefing Session consideration, formal consideration of offer by Council		
May-Sept 09	Public consultation via Inquiry by Design to evaluate alternative new sites	CEO	
Nov 09	Discussion on strategy to sell existing site on lease back Council to consider tender documents for engaging contractor for architectural design work	CEO	
Feb 10	Council consideration on strategy to sell existing site on lease back (to raise seed funding). Call tenders for initial concept design Execution of strategy to sell existing site on lease back. Council to award tender for design work Action initiated to secure ownership of new site if required.	CEO CEO CEO	
	Council to consider draft design and preliminary cost estimates leading into budget process.	CEO	
	Council decision to sell existing site or not (allows certainty in budgeting going forward)	CEO	
	Briefing Session consideration of tender for detailed design and construction	CEO	
	Council to consider draft tender documents for detailed design & construction	CEO	
	Council to consider/award Tenders received	CEO	
Nov 010	Construction commenced	CEO	
Nov 011	Construction completed Externals (landscaping etc completed) Exit existing site and occupation of new site Electors meeting and Official Opening of new Centre	CEO CEO CEO CEO	

### 12.6.3 ORD RIVER SAILING CLUB - PROPOSED NEW LEASE SITE (8640) (8641)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Reserve 41812, Lake Kununurra Foreshore
<b>AUTHOR:</b>	Peter Stubbs, Chief Executive Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	01.2860.06
<b>ASSESSMENT NO:</b>	A2860

#### **PURPOSE**

For Council to consider the evidence provided by the Ord River Sailing Club as proof of the Club's authenticated membership base, as determined by Council resolution Number 8519, 20 January 2009, so that further consideration of potential investment in new Club facilities can be made.

#### **BACKGROUND**

The Ord River Sailing Club had a lease on the Lake Kununurra Foreshore between Swim Beach and Ski Beach from 1 March 1982. The lease expired in 2003.

At the Ordinary Council Meeting 19 August 2008 Council resolved as follows (Minute No 8337):

*"That in surveying proposed lease areas allowance be made for the option of a future lease to accommodate the Kununurra Sailing Club at the site indicated on the map in attachment 4 and that all infrastructure be relocated or replaced at no cost to the Kununurra Sailing Club."*

The Ord River Sailing Club wrote to Council 24 November 2008 seeking to progress a future lease as per the Council resolution, and advising of its preferred terms of lease.

This request was provided to elected members at the 2 December 2008 Briefing Session.

Surveying of lease sites has occurred, and other commercial leases have been drafted.

This decision of Council was made after considering the Officer Recommendation provided below:

1. That Council offer a new 21 year lease to the Ord River Sailing Club on the following terms:
  - 1.1 \$100 per year lease fee with CPI indexation
  - 1.2 Lease fee to be paid by 30 May each year

2. That Council will allocate an amount of \$100,000 within the 2009/2010 Budget for the cost involved in providing the Ord River Sailing Club Incorporated with the following facilities on proposed lease Lot 1:

New shed excluding internal WC facility fixtures	\$50,000
WC plumbing, fixtures and Effluent Treatment System	\$30,000
Electrical water pump and 5000L holding tank	\$ 6,000
Electrical supply to new Shed	\$ 3,500
Contribution to new Inlet	\$10,000
Tree planting	\$ 500

### **STATUTORY IMPLICATIONS**

Section 3.58 of the Local Government Act 1995 prescribes how the disposal of land including leases is to occur.

Local Government (Functions and General) Regulations 1996, Part 6 - Miscellaneous

Sec 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 \$20 000; 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 \$50 000.

*[Regulation 30 amended in Gazette 25 Feb 2000 p. 974-5; 28 Apr 2000 p. 2041; 31 Mar 2005 p. 1055-6.]*

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

The Council resolution, Minute 8337, makes it clear that there is to be no cost of establishing a new lease and premise for the Ord River Sailing Club. It is presumed based on this resolution that Council is prepared to fund those costs, possibly with grant assistance.

The estimated cost to Council comprises of several elements, as follows:

New shed including internal WC facility	\$90,000
Effluent Treatment System	\$10,000
Electrical water pump and 5000L holding tank	\$ 6,000
Electrical supply to new Shed	\$ 3,500
Contribution to new Inlet	\$10,000
Tree planting	\$ 500
Estimated TOTAL	\$120,000

### **STRATEGIC IMPLICATIONS**

Under Council's Strategic Plan, Key Result Area 2 – Community, Council has acknowledged the desire to develop the strengths and potential of the community now and into the future.

While the Sailing Club membership is understood to be small at present, development of the lease site could be argued as a future proofing measure.

## **COMMUNITY CONSULTATION**

Nil at this time. Advertising of the proposed lease would be required upon completion of the draft lease documentation.

## **COMMENT**

The key issue is for Council to determine whether it is satisfied that the Ord River Sailing Club has authenticated its membership base.

The Ord River Sailing Club presented its membership list and last two Annual General Meeting Minutes to Council Chief Executive Officer and Executive Manager of Engineering and Regulatory Services on Friday 27 March 2009. There are 29 members on the membership list, with all but 4 members residing in the district. The remaining 4 are life members who have left the district.

It is recommended that Council accept evidence as provided by the Ord River Sailing Club that its membership list is current and that its Club is acting constitutionally.

## **ATTACHMENTS**

Ord River Sailing Club letter 16 February 2009

## **VOTING REQUIREMENT**

Absolute Majority

## **OFFICER'S RECOMMENDATION 1**

That Council Rescind Minute No 8337 part 7

*"That in surveying proposed lease areas allowance be made for the option of a future lease to accommodate the Kununurra Sailing Club at the site indicated on the map in attachment 4 and that all infrastructure be relocated or replaced at no cost to the Kununurra Sailing Club."*

## **OFFICER'S RECOMMENDATION 2**

That Council include \$75,000 in the 2009/10 draft budget to assist the Ord River Sailing Club to establish new premises on a new leased site between the Commercial Boat Facility and Swim Beach.

## **COUNCIL DECISION**

**Minute No: 8640**

**Moved:Cr K Wright**

**Seconded:Cr P Caley, R Boshammer**

***That Council to rescind Minute Number 8337 part 7.***

***“That in surveying proposed lease areas allowance be made for the option of a future lease to accommodate the Kununurra Sailing Club at the site indicated on the map in attachment 4 and that all infrastructure be relocated or replaced at no cost to the Kununurra Sailing Club.”***

**CARRIED: (6/2)**

*For Cr Wright, Caley, Mills Addis, Ausburn and Boshammer*

*Against: Cr Parker and Torres*

**Minute No: 8641**

**Moved:Cr D Ausburn**

**Seconded:Cr K Wright**

***That Council include \$75,000 in the 2009/10 draft budget to assist the Ord River Sailing Club to establish new premises on a new leased site between the Commercial Boat Facility and Swim Beach.***

**CARRIED: (7/1)**

*For: Cr Ausburn, Wright, Mills, Addis, Boshammer, Torres and Caley.*

*Against: Cr Parker*



Doc # 064904

Doc No.	084905
Date	
Officer	CEO
Response	
File	43.04.01
Cross Ref.	01-28105-710

**ORD RIVER SAILING CLUB**

P.O. Box 223,  
KUNUNURRA, W.A. 6743.

Mr Alex Douglas  
Executive Manager  
Engineering and Regulatory Services  
Shire of Wyndham East Kimberley  
PO Box 614, Kununurra, WA 6743.

Dear Mr Douglas

**ORD RIVER SAILING CLUB LEASE**

Further to your letter of 22 January 2009 and the Council Decision (Minute No. 8519) in the Minutes of the Ordinary Council Meeting of 20 January 2009, I understand that Council requires further authentication of the ORSC's membership.

The ORSC's Committee is determined that privacy considerations for both the Club and for its individual members will be observed. I therefore provide a Statutory Declaration stating that the ORSC had no less than twenty seven (27) members at the end of 2008 and also stating that the ORSC's AGM was conducted on 10 March 2008. By way of further proof of the Club's legal existence I have attached copies of two recent bank statements and once again a copy of the Club's Incorporation Certificate.

The ORSC, one of Kununurra's oldest Clubs, wishes to emphasise that it has been in communication with the Shire of Wyndham East Kimberley for three and a half years in an effort to secure, out of preference, a lease for its existing and original site to provide a basic sailing facility on Lake Kununurra that may benefit present and future generations (refer ORSC correspondence to Council dated 17 September 2005, 19 June 2006 and again 2 February 2008).

Having provided the information requested, the ORSC, now looks forward to receiving the Shire's earliest advice that Council has either agreed to:

- the ORSC's request for a lease of its original and current location (by far the most cost-effective option, especially given the ample room upstream for commercial operators and as included in the Shire's original concept for a commercial boating facility); or
- meet the full cost of any relocation, preferably by recouping it from the commercial beneficiaries, and with the confirmed Department of Water approval for the construction of a new launching inlet and ramp.

Torben Sass-Nielsen  
Commodore  
15 February 2009

Copies to: SWEK Councilors, Department of Water

**Attachment:** Ord River Sailing Club letter 16 February 2009  
**Item No. 12.6.14**

WESTERN AUSTRALIA

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

STATUTORY DECLARATION

TORBEN SASS-NIELSEN OF 114 PARADLOFE  
CLOSE, KUNUNURRA, WESTERN AUSTRALIA,  
(name, address and occupation of person making declaration)  
AGRICULTURAL CONTRACTOR

sincerely declare as follows:-

- 1) AT THE END OF THE 2008 CALENDER YEAR THE DAD RIVER SAILING CLUB INCORPORATED HAD NO LESS THAN TWENTY SEVEN (27) MEMBERS.
- 2) THE DAD RIVER SAILING CLUB INC. CONDUCTED ITS ANNUAL GENERAL MEETING FOR 2008 ON THE TENTH DAY OF MARCH, TWO THOUSAND AND EIGHT

(insert content of the statutory declaration: use numbered paragraphs if content is long)

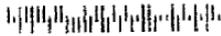
This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005

at Kununurra  
(place)  
11 FEBRUARY 2009  
(date)  
in the presence of -  
(Signature of authorised witness)  
Owen Douglas Deas  
JP 5529  
(Name of authorised witness and qualification as such a witness)

by   
(Signature of person making the declaration)

Statement	263 (Page 1 of 1)
Statement begins	29 November 2006
Statement ends	31 December 2006
Closing balance	██████████ CR
Enquiries	13 2221 (24 hours a day, 7 days a week)



THE SECRETARY  
 ORD RIVER SAILING CLUB INC  
 PO BOX 223  
 KUNUNURRA WA 6743

### Cheque Acct Bearing Interest

Account number 06 6530 00901807

Name: ORD RIVER SAILING CLUB INC  
 Branch: KUNUNURRA WA  
 Bank, State & Branch number (BSB) 06 6530.

Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221.

Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.



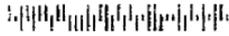
Date	Transaction	Debit	Credit	Balance	
29 Nov 2006	OPENING BALANCE			██████████ CR	
31 Dec 2006	CLOSING BALANCE			██████████ CR	
		Opening balance	Total debits	Total credits	Closing balance
		██████████ CR	Nil	Nil	██████████ CR

During these uncertain times, it's reassuring to know you're banking with one of the world's strongest banks.

In fact, we're one of only three banks in the world to have the security of an A+ credit rating. Our strong capital and funding positions, robust risk management approach and strong financial performance means we can continue protecting the interests of our customers even in the toughest of times. That's why you, as Australians, trust us with their savings more than any other bank.

We have, with the ongoing assistance of our financial strength, provided a safe haven for more than 90 years and will offer your great strengths today, tomorrow and in the future.

Statement 257 (Page 1 of 1)  
 Statement begins 31 May 2008  
 Statement ends 30 June 2008  
 Closing balance [REDACTED] CR  
 Enquiries 13 2221  
 (24 hours a day 7 days a week)



THE SECRETARY  
 ORD RIVER SAILING CLUB INC  
 PO BOX 223  
 KUNUNURRA WA 6743

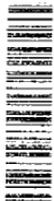
**Cheque Acct Bearing Interest**

Account number 06 6530 00901807

Name ORD RIVER SAILING CLUB INC  
 Branch: KUNUNURRA WA.  
 Bank, State & Branch number (BSB) 06 6530.

Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221

Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.



Date	Transaction	Debit	Credit	Balance
31 May 2008	OPENING BALANCE			[REDACTED] CR
02 Jun	CREDIT INTEREST		[REDACTED]	[REDACTED] CR
25 Jun	[REDACTED] Membership [REDACTED]		[REDACTED]	[REDACTED] CR
25 Jun	DEPOSIT		[REDACTED]	[REDACTED] CR
27 Jun	000012	[REDACTED]		[REDACTED] CR
27 Jun	000013	[REDACTED]		[REDACTED] CR
30 Jun 2008	CLOSING BALANCE			[REDACTED] CR
Opening balance		-	Total debits	+ Total credits = Closing balance
[REDACTED] CR		-	[REDACTED]	+ [REDACTED] = [REDACTED] CR

071405 1 222222 0000

DUTY STATE

A760022

Form 11



Certificate of Change of Name

Associations Incorporation Act, 1895-1987  
Section 7(1)

These are to Certify that the name of **ORD RIVER YACHT CLUB INC.**

incorporated as an Association under the provisions of the Associations Incorporation Act.

1895 on the **Thirty First** day of **March** 1976

has been changed to **ORD RIVER SAILING CLUB INC.**

Dated this **Second** day of **October** 1986



DEPUTY COMMISSIONER FOR CORPORATE AFFAIRS

#### 12.6.4 USE OF THE COMMON SEAL (8642)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Shire Of Wyndham East Kimberley
<b>AUTHOR:</b>	Fiona Kuiper, Executive Support Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	60.14.04
<b>ASSESSMENT NO:</b>	N/A

#### **PURPOSE**

For Council to receive the report on the application of the Shire of Wyndham East Kimberley Common Seal from the period 10 March to 10 April 2009.

#### **BACKGROUND**

Information is presented to inform Council on those documents to which the Shire Common Seal has been applied. In the time period specified above, the following documents have had the Shire of Wyndham East Kimberley Common Seal applied:

<b>Date of Use</b>	<b>Document</b>	<b>Officer</b>
04/10/09	Licence Agreement - SWEK and Kununurra Chamber of Commerce	Jo-Anne Ellis

#### **STATUTORY IMPLICATIONS**

Local Government Act 1995

Council's Standing Order Local Law makes reference to the application of the Common Seal.

#### **POLICY IMPLICATIONS**

Nil

#### **FINANCIAL IMPLICATIONS**

Nil

#### **STRATEGIC IMPLICATIONS**

This report aligns with Council's focus on Governance, Key Result Area 5, in Council's Strategic Plan.

#### **COMMENT**

It is the Officer's recommendation that Council formally receive a report on use of the Shire Common Seal.

## **ATTACHMENTS**

Nil

## **VOTING REQUIREMENT**

Simple Majority

## **RECOMMENDATION**

That Council receive the report on the application of the Shire of Wyndham East Kimberley Common Seal 10 March to 10 April 2009.

## **COUNCIL DECISION**

*Minute No. 8642*

*Moved:Cr P Caley*

*Seconded:Cr R Boshammer*

*That Council receive the report on the application of the Shire of Wyndham East Kimberley Common Seal 10 March to 10 April 2009.*

***CARRIED UNANIMOUSLY: (8/0)***

## 12.6.5 STATUS REPORT COUNCIL DECISIONS JANUARY TO MARCH 2009 (8643)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Shire Of Wyndham East Kimberley
<b>AUTHOR:</b>	Peter Stubbs, Chief Executive Manager
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Manager
<b>FILE NO:</b>	60.14.04
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

For Council to receive and note a report summarising the status of Council decisions for the period January to March 2009.

### **BACKGROUND**

A Status Report detailing the status of Council decisions has been presented at Briefing Sessions since June 2007. The intent of this report was to summarise the status of Council decisions in a single document.

### **STATUTORY IMPLICATIONS**

Nil

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

This report aligns with Council's focus on Governance, Key Result Area 5, in Council's Strategic Plan.

### **COMMENT**

Nil

### **ATTACHMENTS**

Status Report January to March 2009

### **VOTING REQUIREMENT**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council receive and note the Status Report for the period January to March 2009.

**COUNCIL DECISION**

*Minute No. 8643*

*Moved:Cr D Ausburn  
Seconded:Cr K Torres*

*That Council receive and note the Status Report for the period January to March 2009.*

***CARRIED UNANIMOUSLY: (8/0)***

Council Meeting	Minute Number	Resolution	Action/Status	Leading Officer	File No	Completed	Reported
20/01/09	8517	<p>That Council seek support from the Kimberley Country Zone and the Western Australian Local Government Association to pursue an amendment of the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974 definition of a single dwelling from;</p> <p>(a) that is occupied or intended to be occupied for the purpose of human habitation by not more than 8 persons;</p> <p>(b) standing on a lot within the meaning of the Town Planning and Development Act 1928; and</p> <p>(c) that is the only dwelling standing on that lot;</p> <p>And be replaced with the following definition:  'single dwelling' means a dwelling -</p> <p>(a) that is occupied or intended to be occupied for the purpose of human habitation by not more than 8 persons;</p> <p>(b) standing on a lot within the meaning of the Planning and Development Act 2005</p>	Done	Peter Stubbs	33.11.04,33.14.22	Item submitted to the Kimberley Zone meeting 8th May 2009	

20/01/2009	8519	<p>That Council offer a new 21 year lease to the Ord River Sailing Club on the following terms:</p> <p>1.1 \$100 per year lease fee with CPI indexation.  1.2 Lease fee to be paid by 30 May each year.</p> <p>2. That Council will allocate an amount of \$100,000 within the 2009/2010 Budget for the cost involved in providing the Ord River Sailing Club Incorporated with the following facilities on proposed lease Lot 1:</p> <p>New shed excluding internal WC facility fixtures \$50,000  WC plumbing, fixtures, Effluent Treatment System \$30,000  Electrical water pump and 5000L holding tank \$ 6,000  Electrical supply to new Shed \$3,500  Contribution to new Inlet \$10,000  Tree planting \$ 500</p>	<p>undertaken by CEO, correspondence received. Awaiting Council decision. Matter included in the April Council Agenda</p>	Alex Douglas	01.2860.06	
20/01/09	8522	<p>1 That Council offer approximately 88m<sup>2</sup> of the redundant access way in Erythrina Street, Kununurra to the owners of Unit 30/1 Erythrina Street and approximately 130m<sup>2</sup> to the owners of Unit 31/1 Erythrina Street at the valuation prices of \$8,000 and \$13,000 respectively. 2 That should the owners of Unit 30 &amp; 31/ 1 Erythrina Street not confirm acceptance of the offer in writing within 21 days of the offer being made, then the offer to dispose of the land be made to the Department of Housing Works to amalgamate the land with the adjacent Lot 997 the Department owns. 3. That the Shire President and Chief Executive Officer be authorised to complete any negotiations to dispose of the land, including negotiations on price, to expedite the sale. 4 That revenue from the sale of the land be allocated to Council's Parks Reserve Account so that it can be reinvested for community benefit</p>	<p>Formal offers made to the owners of Units 30 &amp; 31. Negotiated prices have been accepted between the Shire and each party. Formal contracts are to be entered into shortly.</p>	Peter Stubbs	01.5498.02	Completed

20/01/09	8523	That Council advertise its intent to clarify the 'Function Hall Cleaning Charge' as 'Additional Function Hall Cleaning Charge' and increase the fee to \$300	Fee increased and additional charges advertised in Kimberley Echo.	Karyn Apperley	30.14.13	completed
20/01/09	8526	That Council will not consider advertising the proposed rezoning of Lot 1 Old Darwin Road from Rural Agriculture 1 to Special Residential, until the owner of the property has rectified the issues of drainage and salinity that have rendered Lot 1 unsuitable for intensive horticulture.	Proponent notified in writing on 28/01/2009.	Peter Stubbs	01.0572.02	completed
20/01/09	8527	That Council 1. Pursuant to Section 7 of the Town Planning and Development Act 1928 (as amended), amend the Shire of Wyndham-East Kimberley Town Planning Scheme No. 7 (Kununurra and Environs) by: a) Rezoning Lots 2, 3 997, 1015, 1082, 1083 and 1257 Erythrina Street and Lots 828 - 832, 1016, 1017 and 1077 - 1081 Weaber Plain Road from Residential R15/50 to Residential R50; b) Rezoning Lots 858 - 861, 1035, 1060 - 1062 and 1073 - 1075 Weaber Plain Road from Residential R15 to Residential R30; c) Rezoning Lots 401, 862, 873, 1036, 1394 - 1397, 1403 - 1406, 1410 - 1413, 1424, 1425, 1433, 1443 - 1445, 1469, 1620, 1621, 2218- 2220 and 2398 Barringtonia Street; Lots 1434, 1449, 1450, 1470 -1478, 1622, 1625 -1634 and 2262 Dryandra Road; Lots 1451, 1452, 1456, 1481, 1482, 1486 - 1488, 2205 - 2210 and 2266 Wilga Place; Lots 1435, 1441, 1461 - 1466, 2211 - 2217 Mallee Court; Lots 1379 - 1386, 1393, 1398 - 1402 1414, 1415, 1420 - 1422, 1427, 1428, 1431, 1521, 1616 - 1619 and 2231 Boobiulla Way; Lots 1378, 1387 - 1392, 1426 and 1498 - 1501 Acacia Court; Lots 1495 - 1497 and 1502 Calatropis Court; Lots 402, 863, 864, 907, 1018 - 1025 and 1038 Greybox Crescent; Lots 1026-	Amendment was forwarded to the Environmental Protection Authority, requesting that the level of assessment for the amendment be set pursuant to Section 48A of the Environmental Protection Act 1986 (as amended) on 12/02/09, and the level of assessment from the Environmental Protection Authority has been received. Amendment documents have been prepared by Whelan's, and the amendment was advertised in the Kimberley Echo on 2 April 2009.	Peter Stubbs	43.04.14	completed

		1034, 1040 - 1043 and 1063 - 1067 Carbeen Street and Lots 1044 - 1048, 1049 - 1059 and 1068 - 1072 Woollybutt Place from Residential R15 to Residential R20. d) Amending the Scheme Maps accordingly.2. Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation;3. Forward the Town Planning Scheme Amendment to the Environmental Protection Authority, requesting that the level of assessment for the amendment be set pursuant to Section 48A of the Environmental Protection ct 1986 (as amended); and4. Upon receipt of the level of assessment from the Environmental Protection Authority, advertise the amendment for a period of 42 days via the placement of an advertisement in the Kimberley Echo, erection of a notice in the Shire Offices and the posting of notices to affected parties.'				
20/01/09	8527	That Council 1. Pursuant to Section 7 of the Town Planning and Development Act 1928 (as amended), amend the Shire of Wyndham-East Kimberley Town Planning Scheme No. 7 (Kununurra and Environs) by a) Rezoning Lots 2, 3 997, 1015, 1082, 1083 and 1257 Erythrina Street and Lots 828 - 832, 1016, 1017 and 1077 - 1081 Weaber Plain Road from Residential R15/50 to Residential R50;b) Rezoning Lots 858 - 861, 1035, 1060 - 1062 and 1073 - 1075 Weaber Plain Road from Residential R15 to Residential R30;c) Rezoning Lots 401, 862, 873, 1036, 1394 - 1397, 1403 - 1406, 1410 - 1413, 1424, 1425, 1433, 1443 - 1445, 1469, 1620, 1621, 2218-2220 and 2398 Barringtonia Street; Lots 1434, 1449, 1450, 1470 -1478, 1622, 1625 -1634 and 2262 Dryandra Road; Lots 1451, 1452, 1456, 1481, 1482, 1486 - 1488, 2205 - 2210 and 2266 Wilqa Place; Lots 1435, 1441, 1461 - 1466, 2211 - 2217	Amendment was forwarded to the Environmental Protection Authority, requesting that the level of assessment for the amendment be set pursuant to Section 48A of the Environmental Protection ct 1986 (as amended) on 12/02/09, and the level of assessment from the Environmental Protection Authority has been received. Amendment	Peter Stubbs	43.04.14	completed

		<p>Mallee Court; Lots 1379 - 1386, 1393, 1398 - 1402 1414, 1415, 1420 - 1422, 1427, 1428, 1431, 1521, 1616 - 1619 and 2231 Boobiulla Way; Lots 1378, 1387 - 1392, 1426 and 1498 - 1501 Acacia Court; Lots 1495 - 1497 and 1502 Calatropis Court; Lots 402, 863, 864, 907, 1018 - 1025 and 1038 Greybox Crescent; Lots 1026-1034, 1040 - 1043 and 1063 - 1067 Carbeen Street and Lots 1044 - 1048, 1049 - 1059 and 1068 - 1072 Woolybutt Place from Residential R15 to Residential R20.d) Amending the Scheme Maps accordingly.2. Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation;3. Forward the Town Planning Scheme Amendment to the Environmental Protection Authority, requesting that the level of assessment for the amendment be set pursuant to Section 48A of the Environmental Protection Act 1986 (as amended); and 4. Upon receipt of the level of assessment from the Environmental Protection Authority, advertise the amendment for a period of 42 days via the placement of an advertisement in the Kimberley Echo, erection of a notice in the Shire Offices and the posting of notices to affected parties.'</p>	<p>documents have been prepared by Whelan's, and the amendment was advertised in the Kimberley Echo on 2 April 2009.</p>			
20/01/09	8529	<p>That Council defer consideration of the amendment until 12 months after the completion of the mitigation works so that the effectiveness of the of the mitigation works has been established.</p>		Peter Stubbs	43.31.20	completed

20/01/09	8530	<p>That further to Council Minute Number 8445, 17th November 2008, Council amend the offer a new lease over a portion of Reserve 41812 to Kununurra Lakeside Resort (Ingle Pty Ltd), with the following lease conditions:</p> <ul style="list-style-type: none"> <li>a) Development (construction, buildings, concrete bays, footpaths, BBQ's etc) of leased land cannot be closer than 10m from water edge or edge of lease adjacent to the water.</li> <li>b) Water, power and sewerage can be approved in the lease area with written approval of the co-vestees.</li> <li>c) Sewerage must be connected to the sewer network.</li> <li>d) Removable structures (Caravans, camping, Cabins when on-stumps/skids, chairs etc) to be allowed with the written permission of co-vestees.</li> <li>e) Leased area will not be exclusive i.e. public will have access.</li> <li>f) 21 year lease tenure to apply.</li> <li>g) Shire rates to apply the leased area.</li> <li>h) Perth CPI lease fee adjustments to apply in years when valuations are not done.</li> <li>i) Lease fees to be set at \$30,750.00</li> <li>j) Development and Management Plans required to the satisfaction of the DOW.</li> <li>k) boat launching and mooring being limited to the current two self drive/hire vessels owned by the lessee, with no use permitted for any other commercial boating operations, and no refuelling or sillage removal (other than chemical sillage) to occur from the leased area, as per requirements of the Department of Water as co- vestee of the leased area.</li> <li>l) Reclaimed land on the foreshore, which has been subject to the valuation, be, be part of the leased area.</li> </ul> <p>2. That should the offer of the new lease to Kununurra</p>	Negotiations not yet completed	Peter Stubbs	66.20.01	on going
----------	------	---	--------------------------------	--------------	----------	----------

		Lakeside Resort (Ingle Pty Ltd), not be accepted in writing by the 20th February 2009, then the offer will lapse and Council will not re consider the matter again until December 2009. 4. That the Shire President, Deputy Shire President and Chief Executive Officer be delegated authority to negotiate further changes to the proposed lease condition to facilitate finalisation of the lease.				
20/01/09	8531	That Council, in accordance the Land Administration Act 1997, s. 58 (1) resolve to close the Durack Road reserve from its junction with Research Station Road to its western end, and request the Department for Planning and Infrastructure to commence action to removal the public gazettal of the road.	Formal request to DPI sent 15/04/09	Peter Stubbs	01.2235.13	Completed

20/01/09	8542	<p>That Council:1. Rescind points 1 and 4 of Minute No 8381 of 16 September 2008, being:1. That Council authorise officers to liaise with the approved tenderer to develop 2 basketball courts incorporated into the Multipurpose Court Facility and re-surfacing 1 existing basketball/netball court to a. maintain basketball court facilities and consolidate hard courts b. cater for casual and community use, and c. capitalise on the existing competitive price estimate Council has received on re-surfacing and availability of contractors in the</p> <p>4. That Council decommission 2 of the existing outdoor netball/basketball courts by removing court furniture and fencing (on 2 boundaries only to maintain oval security) to allow car parking on the site but reserve the site for future hard court expansion when the need for additional courts is demonstrated. 2. Utilise the basketball furniture committed to the proposed two basketball courts in the Kununurra Multipurpose Recreation Courts complex as a result of Council Minute No 8381 of 16 September 2008 in the re-surfacing and upgrade of the existing three Kununurra basketball/netball courts to provide three basketball courts on the site.3. Accept the commitment by the Kununurra Tennis Club Inc, the Kununurra Netball Association Inc and the Kununurra Basketball Committee to raise \$51,000 and provide a 5 – 8 year self supporting loan provided that there is a director's guarantee provided by at least two members of each group or provision of another form of surety as negotiated and agreed by the Shire President, Deputy Shire President and CEO.4. Do not proceed with line marking two tennis/netball courts for basketball within the Kununurra Multipurpose Court Facility.</p>	<p>noted and actioned. Contractor advised of further variation to specifications previously provided as result of 16 Sept Council resolution. Meeting to be held at date to be determined re self supporting loan</p>	Karyn Apperley	30.09.02	
----------	------	---	---	----------------	----------	--

17/02/09	8549	That the Council offer to Shoal Air Pty Ltd a 3 year lease over a 100 m <sup>2</sup> portion of Wyndham Airport for the purpose of locating a transportable office under the following conditions ' Advertising and Public Comment period ' Planning approval prior to occupation of the building. ' An annual lease fee of \$10,000 plus GST with annual CPI indexation. ' Shoal Air are responsible for all costs in relation to connection of utilities and sub meters	Letter sent to Shoal Air who declined verbally, requested this in writing.	Jo-Anne Ellis	20.12.08	
17/02/09	8552	That Council allocate funds from its Airport Accounts to support an independent analysis of the potential to establish an air link route between Kununurra, Alice Springs and Broome with the aim of facilitating regional growth and access to Eastern Australia.		Peter Stubbs	60.14.13	
17/02/09	8557	That Council make application to the Minister for Lands to grant title to Shire of Wyndham East Kimberley for Lot 829 Koolama Street Wyndham for the purpose of staff housing.	undertaken by CEO, correspondence received. Awaiting Council decision	Alex Douglas	01.2198.01	

17/02/09	8561	<p>That Council 1. Approve the Planning Application submitted by Ms Sarah Brett, on behalf of the Kimberley Wildlife Rescue Inc, for the use of Zoological Gardens in a Rural Agricultural zone to enable the development of Wildlife Gardens Stage 1, on portion of Lot Ivanhoe Road, Kununurra, subject to;</p> <p>1.All proposals for development being submitted to Council and other agencies as required for approval, and all improvements being in keeping with the integrity of the area and natural environment. 2.Compliance with the Wildlife Conservation Act 1950 and subsidiary legislation. 3.Compliance with the Department of Environment and Conservation Section 16 Licence and conditions. 4.Not to be within 500m of any existing residence. 5.Required to be a minimum of 5km from any built up residential area.2. Waive the requirement of payment of the \$250.00 Planning Application Fee and \$500.00 Building Licence fee due to the Kimberley Wildlife Rescue Inc being a non-profit organisation. It is noted that statutory fees such as the BCITF fees cannot be waived.3. Sanction the CEO with delegated authority to grant planning consent upon receipt of more detailed development plans.</p>	<p>Kimberley Wildlife Rescue advised of Council's resolution on 24/02/09. Planning consent will be given under the delegated authority of the CEO upon receipt of more detailed development plans, which have not been received to date.</p>	<p>Jennifer Ninyette</p>	01.0100.02	
----------	------	--	--	--------------------------	------------	--

17/02/09	8562	That Council 1. Advertise the proposed road closure 2. Resolve to close a portion of Carpentaria Street subject to no objections being received during the advertising period. 3. Following completion of the advertising period, request the Department for Planning and Infrastructure (DPI) to close an approximately 2,500 m <sup>2</sup> portion of the Carpentaria Street with; (i) The northern 1000 m <sup>2</sup> portion to be amalgamated into Drainage Reserve 41909; and (ii) The southern 1500 m <sup>2</sup> portion to be sold and amalgamated into Lot 2340 Kentia Way.	Road closure was advertised in the Kimberley Echo 5/3/09, and advertising period closed 4/4/09. No submissions were received. Prior to approaching DPI, advice letters will be sent to service agencies giving 30 days to comment.	Peter Stubbs	01.5203.02	Ongoing
17/02/09	8566	That Council advise Celliston Nominees/Diversion Cruises that if the offer of a new lease until 30 September 2009 consistent with the Council decisions Minute Number 8508, 22 December 2008, is not accepted in writing by 27 February 2009 then the offer will lapse and be withdrawn and the building owned by Celliston Nominees/Diversion Cruises on Reserve 41812 adjacent Lily Creek Lagoon will be removed at Council's expense and the land returned to public open space	Celliston Nominees has new draft lease consistent with Council resolution but has not responded to it.	Peter Stubbs	66.20.02	on going
17/02/09	8572	That Council advise the Kununurra Ski Club that it recommends the Club investigate grants for capital equipment to assist its members to maintain the grassed surfaces at the Ski Club lease adjacent Lake Kununurra		Peter Stubbs	66.20.18	completed
17/02/09	8573	2 That Council delegate the Shire President, Deputy Shire President and Chief Executive officer to jointly negotiate appropriate lease payment schedules for commercial leases between Ski Beach and Swim Beach, Lake Kununurra, Reserve 41812	Agreements reached in principle	Peter Stubbs	43.04.01	on going

17/02/09	8577	<p>1. That Council support the Ord River Sports Club request for a 24 month, \$70,000 self supporting loan, with the loan being only provided after the Council is in receipt of a copy of Minutes of a properly constituted General Meeting of the Club in which the Club membership resolves:</p> <ol style="list-style-type: none"> <li>1. to support the loan request.</li> <li>2. to take responsibility for servicing the loan debt,</li> <li>3. enter into a written agreement with Council to undertake a Master Planning exercise for the future of Club site as a community asset; and</li> <li>4. Agreeing in writing to re-structuring the Club Board and constitution, within 6 months, to include Councillor positions, and external Board members, in particular the MG Corporation, to facilitate a broader more strategic community approach to the Clubs future.</li> </ol> <p>2. That Council waive penalties of associated with outstanding rates owed by the Ord River Sports Club of \$222.41.</p>	Loan advertised for public comment ads required under LG Act. Comments close 18 April.	Peter Stubbs	66.20.37	on going
----------	------	--	--	--------------	----------	----------

17/02/09	8579	<p>1. That Council issue Request for Tender T05 - 08/09 Project Manager for East Kimberley Regional Airport Terminal Expansion Project.</p> <p>2. That Tenders are evaluated based on the capacity of the Tenderers to complete the requirements of the tender including:</p> <p>2.1. Compliance Criteria (must comply)</p> <ul style="list-style-type: none"> <li>a) Completion of Tenderers Offer</li> <li>b) Compliance with Conditions of Tendering</li> <li>c) Compliance with Specification</li> <li>d) Corporate Information</li> <li>e) Financial Information</li> <li>f) Conflict of Interest</li> <li>g) Insurance</li> </ul> <p>2.2 Qualitative Criteria (used to Rank Tenders)</p> <ul style="list-style-type: none"> <li>a) Organisational Capabilities - 40%</li> <li>b) Key Personnel - 35%</li> <li>c) Performance - 25%</li> </ul> <p>2.3. Price Submitted for Tender</p> <p>The tendered price along with the qualitative ranking will be used to determine the most advantageous tender to Council</p>	Tender closes 25 May 2009	Jo-Anne Ellis	66.57.05	
17/03/2009	8585	That Council advise Melon Farm (NT) Pty Ltd that Council will advertise for public comment, its intent to sell by private treaty approximately 2,000m <sup>2</sup> of vacant land adjacent to and contiguous with Lot 313 at the East Kimberley Regional Airport at a price of \$48.00m <sup>2</sup> .	Valuation obtained, advertisement to proceed.	Jo-Anne Ellis	20.09.06	on going
17/03/2009	8588	That Council adopt the recommendation that the status of the 4,061 Cambridge Gulf Limited shares be re-examined in six months time.	To be taken back through Audit Committee	Gill Old	61.35.07	

17/03/2009	8592	Council request the Executive Manager Engineering & Regulatory Services to represent Item 12.3.1 Replacement of Light Vehicles to comply with Adopted Policy F19 - Purchasing and Tendering Policy.	Report to 21 April Council Meeting	Alex Douglas	66.41.07	
17/03/2009	8594	That Council undertake the sealing of Egret Close within the 2009/2010 financial year at an estimated cost of \$166,000 utilising those subdivider contributions held at the time (currently totalling \$102,299.09) and the balance from Shire funds		Alex Douglas	21.10.504	Listed and presented in Budget Workshop
17/03/2009	8595	Council moved to defer Item pending investigation with runway	Taken back through Airport Committee (April 2009) for consideration and recommendation to Council.	Jo-Anne Ellis	43.04.05	
17/03/2009	8596	1. That Council adopt the Weaber Plain Light Industrial Area Subdivision Design Guidelines Policy. 2. That Council advertise the proposed adoption of the Weaber Plain Road Light Industrial Area Subdivision Design Guidelines Development Control Policy in accordance with the provisions of Clause 12.6.4 of Town Planning Scheme No 7 - Kununurra and Environs.	Advertising done	Peter Stubbs	43.04.03	

17/03/2009	8599	<p>1. That Council issue tender T06-08/09 for the Design and Construction of the Wyndham Swimming Pool Upgrade upon confirmation of additional required grant funding for the project.</p> <p>2. That Tenders are evaluated based on the capacity of the Tenderers to complete the requirements of the tender including:</p> <p>2.1. Compliance Criteria (must comply)</p> <p>a) Compliance with Specifications contained in request.</p> <p>b) Compliance with Conditions of Tendering contained in request.</p> <p>c) Compliance with Quality Assurance requirements in request.</p> <p>d) Compliance with Start Date.</p> <p>e) Compliance with and completion of Price Schedule.</p> <p>2.2 Qualitative Criteria (used to Rank Tenders)</p> <p>a) Relevant Experience - 60%</p> <p>b) Ability to meet Construction Deadline - 40%</p> <p>2.3. Price Submitted for Tender</p> <p>The tendered price along with the qualitative ranking will be used to determine the most advantageous tender to Council.</p> <p>3. That Council approve the membership of the Tender Review Panel as follows:</p> <p>Councillor Representative Executive Manager Community Services Manager Recreation and Leisure Kimberley Regional Manager, Department of Sport and Recreation</p>		Karyn Apperley	30.09.03	
17/03/2009	8600	<p>2. That Council seek supporting funding to convert the existing two depreciated outdoor basketball courts at Wyndham for use as a BMX track (including perimeter bollards and provision of shade), to increase the diversity of activities for the community, including young people, and to rationalise future asset maintenance and replacement costs, with a view to completing this work in the 09/10 financial year.</p> <p>3. That Council authorise the CEO to implement the most appropriate and cost effective bollard system for the required perimeter barrier for the Wyndham Skate Park and proposed</p>		Karyn Apperley	30.09.04	

		BMX track area.				
17/03/2009	8605	That Council to accept the affidavit as evidence from the sailing club as presented and authorise the CEO to negotiate a new lease and develop the lease site with a contribution from Council of up to \$75,000	Motion lost. No action.	Peter Stubbs	43.04.01	
17/03/2009	8606	That Council take into consideration the potential of the future of the Sailing Club lease to be deferred to the April Briefing Session and the April Ordinary Council Meeting.	Included in April Briefing Session	Peter Stubbs	43.04.01	
17/03/2009	8610	That Council seek a negotiated compensation payment of \$38,000 and delegate to the Shire President and Chief Executive Officer to negotiate further as required on a compensation payment to Reg Properties Pty Ltd in relation to their purchase of Lot 1039 Greybox Crescent, Kununurra by tender, in recognition of the portion of lands rendered unsuitable for residential development due a the discovery of sewer lines through the property.	CEO advised Reg Properties Pty Ltd via fax on 12/03/2009 that Council may be prepared to offer \$38,000 for compensation. Reg Properties have not responded to this offer to date.	Jennifer Ninyette	01.2192.02	Ongoing

## 12.6.6 2009 NATIONAL GENERAL ASSEMBLY OF LOCAL GOVERNMENT (8644)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Australian Local Government Association Alga
<b>LOCATION:</b>	Canberra
<b>AUTHOR:</b>	Peter Stubbs Chief Executive Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs Chief Executive Officer
<b>FILE NO:</b>	65.13.03
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

To recommend that Shire President Fred Mills attends the 2009 National General Assembly of Local Government in Canberra between 21 and 24 June 2009.

### **BACKGROUND**

The National General Assembly of Local Government is a major annual event for Local Government. The theme of this years Assembly is "Rising to the Challenge – Infrastructure, Financing, Climate Change".

### **STATUTORY IMPLICATIONS**

Nil

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

Conference Registration fees, airfares and accommodation expenses will be met by Council. Funds in the 2008/09 budget are available.

### **STRATEGIC IMPLICATIONS**

Networking and opportunities for other meetings with politicians has the potential to have significant strategic benefit and opportunity for the East Kimberley.

### **COMMUNITY CONSULTATION**

Community consultation is not required in this instance.

### **COMMENT**

The meeting of Mayors and Shire Presidents as part of the Australian council of Local Government will also be held during this time.

The Australian Local Government Association is calling for notices of motions for the Assembly under the three major themes of Infrastructure, Climate Change and Local Government Financing. The closing date is 24 April 2009 and

discussion papers for each theme are available. Council may wish to consider submitting a notice of motion.

**ATTACHMENTS**

Nil

**VOTING REQUIREMENT**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Shire President Fred Mills attends the 2009 National General Assembly of Local Government in Canberra between 21 and 24 June 2009.

**COUNCIL DECISION**

***Minute No. 8644***

***Moved:Cr D Ausburn  
Seconded:Cr K Wright***

***That Shire President Fred Mills attends the 2009 National General Assembly of Local Government in Canberra between 21 and 24 June 2009.***

***CARRIED UNANIMOUSLY: (8/0)***

## 12.6.7 DELEGATED AUTHORITY REPORT (8645)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Shire Of Wyndham East Kimberley
<b>AUTHOR:</b>	Fiona Kuiper, Executive Support Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	60.14.04
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

To report to Council on the use of Delegated Authority by Officers for the period 1 March to 21 April 2009.

### **BACKGROUND**

Use of Council approved Delegated Authority by Officers is reported to Council on a monthly basis.

The attached tables outline use of Delegated Authority by relevant officers for the above period.

### **STATUTORY IMPLICATIONS**

LOCAL GOVERNMENT ACT 1995 - SECT 5.46

5.46. Register of, and records relevant to, delegations to CEO's and employees

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

This report aligns with Council's focus on Governance, Key Result Area 5, in Council's Strategic Plan.

## **COMMUNITY CONSULTATION**

Not Applicable

## **COMMENT**

The attached reports outline use of Delegated Authority by relevant Council Officers for endorsement by Council.

## **ATTACHMENTS**

Delegated Authority Report

## **VOTING REQUIREMENT**

Simple Majority

## **OFFICER'S RECOMMENDATION**

That Council receive the Delegated Authority Report for the period 1 March to 21 April 2009.

## **COUNCIL DECISION**

***Minute No. 8645***

***Moved:Cr D Ausburn  
Seconded:Cr J Parker***

***That Council receive the Delegated Authority Report for the period 1 March to 21 April 2009.***

***CARRIED UNANIMOUSLY: (8/0)***

**Attachment: Delegated Authority Report**

**BUILDING LICENCES ISSUED UNDER DELEGATED AUTHORITY – 1 – 31 March 2009**

LIC#	DATE	OWNER	ADDRESS	BUILDER	LOCATION	DESCRIPTION	NEW /ADD	LOT AREA	FLOOR AREA	EST. VALUE
030/2009	20/03/2009	D Brook	PO Box 838 Kununurra	Darren Fulcher	Lot 184 Corkwood Kununurra	class 1a with attached 10a	N	675	207	\$350,000.00
031/2009	12/03/2009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	King Loc 385 Packsaddle Road Kununurra	Class 10A - carport & shed	New	363.05	40	\$9,500.00
032/2009	16/03/2009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	Lot 6 Mills Road Kununurra	Class 10A - carport & shed	New	1729	40	\$9,500.00
033/2009	16/03/2009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	Lot 6 Mills Road Kununurra	Class 10A - verandah addition to front & rear	New	1729	105	\$30,000.00
034/2009	16/03/2009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	King Loc 240 Farm Hill Road Kununurra	Class 10A - carport & shed - Voyager 1	New	5171	40	\$9,500.00
035/2009	16/03/2009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	King Loc 240 Farm Hill Road Kununurra	Class 10A - verandah addition to front & rear - Voyager 1	New	5171	105	\$30,000.00
036/2009	18/03/009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	King Loc 240 Farm Hill Road Kununurra	Class 10A - carport & shed - Voyager 2	New	5171	40	\$9,500.00
037/2009	18/03/2009	Tropical Forestry Services	PO Box 628 Kununurra	Tropical Forestry Services	King Loc 240 Farm Hill Road Kununurra	Class 10A - verandah addition to front & rear - Voyager 2	New	5171	105	\$30,000.00
038/2009	19/03/2009	J & K Ireland	PO Box 64 Kununurra	KGC Enterprises Pty Ltd	Lot 103 Mills Road Kununurra	Class 10A - carport	New	20.31	40	\$4,000.00
039/2009	19/03/2009	M Barnes	PO Box 1688 Kununurra	M Barnes	Lot 1754 (8) Milkwood Street Kununurra	Class 10A - Nonhabitable shed without ablution	New	0.0786	19	\$5,000.00

040/ 2009	24/03/2009	David Farich	9 Selby Court Mindarie	David Farich	Lot 117 (7) Barding Loop Kununurra	Class 10A - Nonhabitable shed without ablution	New	0.0666	57.6	\$15,000.00
041/ 2009	25/03/2009	Bruce Connell	PO Box 41 Kununurra	Bruce Connell	Lot 52 jabiru Rd Kununurra	class 7b/8 Storage/packing shed non-habitable	New		486	\$150,000.00
042/ 2009	30/03/2009	Tim Walker	PO Box 1887 Kununurra	Tim Walker	Lot 460 Cherubin Rd crossing falls	Class 10A - Nonhabitable Patio	New		64	\$20,000.00
043/ 2009	30/03/2009	Commissioner of Main Roads	PO Box 138 Kununurra	TBA	Lot 3001 (67) Bandicoot Drive Kununurra	RECORD PURPOSES ONLY Class 5 & 8 Offices & Laboratory	Add			\$0.00
										<b>\$672,000.00</b>

**SIGN LICENCES ISSUED UNDER DELEGATED AUTHORITY – 1 – 31 March 2009**

<b>Licence No.</b>	<b>Date</b>	<b>Assess No.</b>	<b>Lot No.</b>	<b>Street Address</b>	<b>Applicant Name</b>	<b>Type</b>	<b>Fee</b>	<b>Receipt No</b>	<b>Planning Approval / Delegation</b>
002/2009- 01	18/03/09	#2148	2446	Coolibah Drive, Kununurra	The Ord Valley Muster (Kununurra Chamber of Commerce & Industry)	Amended Temporary Banner Sign	Nil	N/A	N/A exempt sign
003/2009	25/03/09	#2148	2446	Coolibah Drive, Kununurra	Kimberley Community Drug Service	Temporary Banner Sign	Nil	N/A	N/A exempt sign

**DEMOLITION LICENCES ISSUED UNDER DELEGATED AUTHORITY – 1 - 31 March 2009**

Licence Number	Date	Assess No	Property Address	Premises	Owner	Builder/ Contractor	Contact Details	Comments (Asbestos)
03/2009	10/03/2009	1522	Lot 1001 (7) Miniata Street Kununurra	Single Dwelling	Department of Housing & Works	JAB Industries	PO Box 559 Kununurra	Timber frame - asbestos clad
04/2009	10/03/2009	1413	Lot 1075 (10) Weaber Plain Road Kununurra	Single Dwelling	Department of Housing & Works	Colin Wilkinson Developments Pty Ltd	PO Box 3112 Broome WA	Timber frame - asbestos clad
05/2009	10/03/2009	1413	Lot 1029 (13) Carbeen Street Kununurra	Single Dwelling	Department of Housing & Works	Colin Wilkinson Developments Pty Ltd	PO Box 3112 Broome WA	Timber frame - asbestos clad
006/2009	30/03/2009	2212	Lot 311 Victoria Highway Kununurra	Underground Fuel Storage Tank Removal	Air Services lease - Shire of Wyndham East Kimberley	JAB Industries as contractor for Otek	PO Box 559 Kununurra	1150 litre Diesel Fuel tank

**TOWN PLANNING DELEGATED AUTHORITY APPROVALS - 11 March 2009 - 14 April 2009**

Application / Delegation Number	Approval Type	Date Received	Applicant	Owner	Property Address	Proposed Development	Assess't Number	Approval Date
15/09	HO	25-Feb-09	Robina Campbell	Dennis Prior	Lot 15 Bauhinia St, Kununurra	Making Lime Juice Cordial	945	27-Mar-09
20/09	P	11-Feb-09	KTC Landbank Pty Ltd	Paul & Rosalie Mock	Loc 231 Ivanhoe Road, Kununurra	Agroforestry - 72 hectares (retrospective)	100	27-Mar-09
12/09	P	25-Feb-09	Craig and Keeley Palmer	Craig and Keeley Palmer	Lot 531 Riverfarm Road, Kununurra	Build a new shadehouse	131	30-Mar-09
16/09	P	4-Mar-09	Wayne Brown	W and M Brown	Lot 212 Mango St, Kununurra	Proposed Carport and Shade Sail	814	30-Mar-09

**COMMUNITY QUICK GRANTS DELEGATED AUTHORITY APPROVALS - 18 March 2009 to 21 April 2009**

<b>Approval Date</b>	<b>Organisation</b>	<b>Purpose of Quick Grant</b>	<b>Total Project Cost</b>	<b>Amount Requested</b>	<b>Amount Approved</b>
20 March 09	Kununurra District High School	Contribution to Annual School Ball	\$8,200	\$500	\$500

**COMMUNITY IN-KIND REQUESTS DELEGATED AUTHORITY APPROVALS - 18 March 2009 to 21 April 2009**

<b>Approval Date</b>	<b>Organisation</b>	<b>Request Details</b>	<b>In-Kind Value</b>
26 March 09	Ord Valley Aboriginal Health Service	Waiver of Youth Centre hire fees for School Holiday Program, 15 <sup>th</sup> April 2009.	\$140
26 March 09	Ord Valley Aboriginal Health Service	Waiver of Youth Centre hire fees for School Holiday Program, 16 <sup>th</sup> April 2009.	\$140
26 March 09	Save The Children	Waiver of Youth Centre hire fees for School Holiday Program, 17 <sup>th</sup> April 2009.	\$140

## 12.6.8 LOCAL GOVERNMENT REFORM STRATEGIES (8646)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	Western Australia
<b>AUTHOR:</b>	Peter Stubbs, Chief Executive Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	65.13.01
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

To formulate a response to the local government reform strategies announced February by the Minister for Local Government, Hon. John Castrilli MLA.

For Council to consider a draft response the State Governments Local Government Reform Checklist.

### **BACKGROUND**

In February 2009, the Minister for Local Government announced wide-ranging Local Government Reform Strategies. As part of this, the Minister has encouraged each local government within Western Australia to embrace the opportunity for voluntary amalgamations to achieve much needed structural reform in this State. The Minister is also advocating each council to have an elected member group of between six and nine.

The Minister requested that by 31 August 2009, each of the 139 local governments in Western Australia will have made an informed decision on voluntary amalgamation, their preferred regional groupings and the number of elected members required within a range of six to nine.

It is expected that while undertaking the process of exploring options for amalgamation, local governments will also identify appropriate regional groupings within which to work collaboratively to deliver community benefits on a regional basis.

A Local Government Reform Steering Committee has been established and has published Structural Reform Guidelines which have been separately circulated to Councillors with this agenda. The process and timeframe for making a Reform Submission to the Minister is depicted diagrammatically on page 5 of the Guidelines.

Local Governments have been given until 30 April 2009 to respond to a Reform Checklist. This Reform Checklist and draft responses are attached and are presented for Council's consideration.

## **STATUTORY IMPLICATIONS**

Ultimately, local government is a creation of the state government (through the Local Government Act 1995). So the state government can change the legislation and reform local government as it wishes.

In Queensland, there was a requirement in the Local Government Act for a referendum before local governments could be amalgamated. This was of no effect because the government merely amended the Act to remove that requirement.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

Nil

## **STRATEGIC IMPLICATIONS**

It is important that Council advocate strongly for the best governance position that leads to good service outcomes for East Kimberley residents.

## **COMMUNITY CONSULTATION**

There has been no community consultation in the preparation of this report.

## **COMMENT**

Western Australia is probably the last jurisdiction in all of Australasia to be subjected to structural reform. Since 1989, local government reform has been enforced in New Zealand, Victoria, South Australia, Tasmania, New South Wales and most recently in the Northern Territory and in Queensland.

In New Zealand, local governments were given an extended opportunity to make submissions and then the amalgamations were imposed by the Local Government Commission. In Victoria, Premier Kennett overcame potential resistance by dismissing all the Councils at the outset and replacing them by commissioners to oversee the reforms. In Queensland, local governments were given an opportunity to work through by a voluntary process; however, when they failed to make satisfactory progress, the Minister stepped in and then forced amalgamations.

There are a number of comments considered relevant to local government reform:

1. If a State government is determined to have local government reform, local governments are powerless to resist it. It cannot be legally challenged (successfully), nor will the general public rise up sufficiently in support of their local Councils or the status quo.

2. By getting on board with the process, groups of councils may have an influence on the situation to get a reasonable outcome.
3. The most common arguments in favour of local government reform talk about economies of scale, gains in efficiency and such like. In practice, the efficiency gains that have been claimed for local government reform have never materialised or been clearly demonstrated.
4. It is usually the case that State governments are more interested in amalgamations of Metropolitan councils, "doughnut" councils, and councils where there are many local governments in a relatively small area (e.g. the Wheatbelt region of Western Australia) than in amalgamating geographically large remote councils that can demonstrate a reasonable degree of cooperation/or resource sharing.

At the Joint Kimberley Pilbara Zone Forum held in Perth March 2009, the Director-General of the Department of Local Government and Regional Development confirmed that some funding would be made available to assist groups of councils with working through the process and developing submissions that have to be lodged with the Minister by August 2009.

Council may want to consider an approach to other Kimberley local governments for the Kimberley Zone make application for funding to engage a consultant (e.g. Professor Brian Dollery of the University of New England) to work with the Kimberley local governments in investigating the issues and developing appropriate submissions.

It is important that the Local Government sector remains open-minded about local government reform at this point in the process. Whilst amalgamation of large local governments such as those in the Kimberley may be counter intuitive, it may not be prudent to anticipate the outcome of discussions with our neighbours and a proper study.

From discussions with the other CEO's and with some of the Councillors of the other Kimberley local governments, it seems (although they are open minded) nobody is enthusiastic about any potential amalgamations in the Kimberley Region.

However, there is some willingness to discuss the matter as the Minister requires and possibly to collectively engage a consultant to help us with these issues.

The Shire of Halls Creek are considering the recommendation to their Council below:

That:

1. The Chief Executive Officer be instructed to write to the Shires of Wyndham-East Kimberley, Derby-West Kimberley and Broome proposing that they form a "grouping" with the Shire of Halls Creek to explore the structural reform issues.
2. That it be proposed that a Project Team for the grouping to be established, comprising to elected members from each Council.

3. That it be suggested that the grouping applies to the Department of Local Government and Regional Development for funding assistance to engage a suitable consultant to assist in studying the reform issues and preparing reforms submissions.

Up to \$10,000 per Council may available from the Department of Local Government and Regional Development for funding assistance to engage a suitable consultant to assist in studying the reform issues and preparing reforms submissions.

### Reform Checklist

The Reform Checklist and draft responses are attached for Council consideration. Some perspective is recommended in considering the checklist. It is easy for sweeping statements and idyllic views about sustainability of Governments to touted. In reality though in many cases neither State Governments nor the Australian Governments could answer "YES" to many of the questions asked.

### ATTACHMENTS

Reform Checklist and draft responses

### VOTING REQUIREMENT

Simple Majority

### RECOMMENDATION

1. That Council adopt the draft Local Government Reform Checklist responses and submit these to the Department of Local Government and Regional Development.
2. That subject to the agreement of other Kimberley Local Governments, and funding provided by the State Government, Council agree to jointly investigate any benefits or draw backs for amalgamation of Kimberley Local Governments.

### COUNCIL DECISION

**Minute No. 8646**

**Moved:Cr K Wright**

**Seconded:Cr R Boshammer**

1. ***That Council adopt the draft Local Government Reform Checklist responses and submit these to the Department of Local Government and Regional Development.***

2. ***That subject to the agreement of other Kimberley Local Governments, and funding provided by the State Government, Council agree to jointly investigate any benefits or draw backs for amalgamation of Kimberley Local Governments.***

**CARRIED UNANIMOUSLY: (8/0)**

# Timeframe for Reform Submission to the Minister

## Stage 1

### March/April 2009

- Individual local governments to complete the attached reform checklist.
- Initial exploratory meeting to confirm local government amalgamation grouping is appropriate.
- Local governments determine suitable partners for amalgamation.
- Consideration of the reduction in the number of elected members.
- Consideration of skill sets for the establishment of a project team to coordinate local government's reform process.
- Local governments to forward completed checklist to the Local Government Reform Steering Committee by **30 April 2009**.

## Stage 2

### April/May 2009

- Project team established (2-3 members from each local government).
- Project team meets as required to determine preferred amalgamation structure.
- Project team to determine appropriate elected member representation and methods for ensuring appropriate community representation.
- Project team to consider local government regional grouping.
- Seek State Government funding assistance as necessary for preparing Reform Submissions.
- If required, consultant/facilitator engaged.
- Community consultation undertaken within each affected local government and comments recorded.

## Stage 3

### May/June 2009

- Project team develops Reform Submission to include:
  - preferred amalgamation structure or other types of boundary adjustments;
  - number of elected members; and / or
  - regional grouping; and
  - transition timeline, including timeframe and estimated additional transition costs.

## Stage 4

### June/July 2009

- Project team finalises Reform Submission and circulates to affected local governments.
- Each council passes a resolution to proceed based on the findings of the submission.
- Each council agrees to identify a date the amalgamation is to take effect.
- Each council is to agree to a date at which elected member numbers will be reduced.

## Stage 5

### August 2009

- Local governments forward the Reform Submission to the Minister for Local Government by **31 August 2009**.

- Minister provides Reform Submission to Local Government Reform Steering Committee for assessment.
- Steering Committee assesses Reform Submissions and seeks further information if needed.
- Steering Committee provides advice to Minister on preferred option for reform.

- Finalised proposals referred to the Local Government Advisory Board for consideration and recommendation.

**Attachment 1: Local Government Reform Checklist**

<b>Local Government Reform Checklist</b>			
Guiding principle <sup>1</sup>	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	
<b>1. Long term strategic planning</b>			
○ Your local government has a five year (or longer) strategic plan in place.	Yes		Strategic Plan and Plan for Future
○ Your local government has a five year (or longer) financial management plan in place that is linked to the plan for the future.		No	The validity of a 5 year plan is questionable. Few people predicated the extent of the current global recession, or the positive impact of Royalties for Regions on Local Government. These are significant events impacting on financial ability of LG's. That is not to say financial planning is not needed, but it will be overly simplistic to conclude that LG's are not sustainable because they do not have such plans.
○ Your local government has detailed three/five year business plans.		No	
<b>2. Detailed asset and infrastructure management planning</b>			
○ Your local government has an inventory of all infrastructure and assets and has an accompanying maintenance and renewal plan in place.	Yes		Asset Register Building Maintenance Plans Roads and Infrastructure Programs Plant Replacement Programs
○ Asset maintenance and replacement gaps have been identified and addressed in the financial plan.	Yes		Partially addressed. Council is currently undertaking an Asset Management Review.

<sup>1</sup> It is understood that some of these principles are not mandatory, however reflect principles of best practice.

Local Government Reform Checklist			
Guiding principle	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	
<b>3. Future financial viability and planning</b>			
<ul style="list-style-type: none"> <li>○ Your local government has adequate reserve funds for future capital works and plant replacement.</li> </ul>		No	This is a loaded question, implying grants funds may not be available for which there is no evidence. Federal and State Governments do not have adequate reserve funds in place, let alone LG's. Bridges are good example. The Commonwealth and State does not have Reserve funds for Bridge replacements, so lets not have "witch hunt" on LG about this.
<ul style="list-style-type: none"> <li>○ Your local government income stream including rates, fees, charges and grants can satisfy your long term community service and operational needs and without grants represents at least 40% of your total revenue.</li> </ul>		No	Rates, fees and charges represent around 35% of revenue which demonstrates our ability to win grants to fund discretionary activities. How does one determine the long term operational and service needs? What is long term? Service needs may well change over time, as they have through cost shifting in the past. Does the State Government have long term operational and service needs covered through its revenue streams, or does it rely on 4 year rolling budgets, aligned to electoral cycles?
<ul style="list-style-type: none"> <li>○ Your local government has financial management plans indicating:                             <ul style="list-style-type: none"> <li>- existing debt levels;</li> <li>- depreciation allocations compared to allocations on asset replacement and renewal;</li> <li>- operating deficit compared to rates revenue;</li> </ul> </li> </ul>	Yes		

<ul style="list-style-type: none"> <li>- amount of reserve funds compared to expenses/asset values; and</li> <li>- adverse financial trends.</li> </ul>			
<b>Local Government Reform Checklist</b>			
Guiding principle	Include figures	Explanatory comment	
<b>4. Equitable governance and community representation</b>			
<ul style="list-style-type: none"> <li>o Indicate the number of vacancies at the 2007 ordinary local government elections.</li> </ul>	4		
<ul style="list-style-type: none"> <li>o Indicate how many vacancies at the 2007 ordinary local government elections were uncontested.</li> </ul>	Nil	There were 11 nominations, one of which was deemed to be ineligible.	
<ul style="list-style-type: none"> <li>o Indicate the ratio of elected members to community population.</li> </ul>	9,000 residents/9 elected members = 1000 people/elected member.	Community population does not take into account the approximately 1,000 people from the Northern Territory who use the region for services. Border factor.	
<ul style="list-style-type: none"> <li>o Indicate the percentage of voter turnout at the most recent local government elections.</li> </ul>	21%	The region is characterised by a high indigenous population (around 37%) and this is relates to lower voter turnout.	
<b>5. Proficient organisational capacity</b>			
<ul style="list-style-type: none"> <li>o Indicate the number of staff vacancies and the period these vacancies have continued in each of;</li> <li>- senior management;</li> <li>- middle management; and</li> <li>- senior operational staff positions.</li> </ul>	Senior Management = 0 Middle Management = 0 Senior Operational Staff = 1 for 12 months	Filled by short term contracts.	

### Local Government Reform Checklist

Guiding Principle	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	
○ Your local government has an employee attraction and retention strategy.	Yes		Turnover down from 38% 2005/06 to 28% 2007/08.
○ Your current staff engage in annual professional training and development opportunities.	Yes		
○ Your local government currently experiences delays in meeting statutory reporting functions and / or requests extensions.		No	
○ Your local government processes residential building licence applications within 20 working days.	Yes		Generally yes- through delegated authority and provided all information is provided by applicants to support an assessment and decision.
○ Under delegations your local government processes development applications within 20 working days.	Yes		Generally yes- through delegated authority and provided all information is provided by applicants to support an assessment and decision.
○ All other development applications are processed within 40 working days.		No	Approximately 90% would be processed in this timeframe but not all.

### Local Government Reform Checklist

Guiding principle	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	

<b>6. Effective political and community advocacy for service delivery</b>			
○ Your local government has funding or other partnerships in place with programs and services sourced by the State Government.	Yes		
○ Your local government has funding or other partnerships in place with programs and services sourced by the Federal Government.	Yes		
○ Your local government has funding partnerships in place with the private sector to enhance service delivery.	Yes		Via Developer Contributions.
○ The relationship between local government boundaries and relevant State and Commonwealth Agency boundaries are appropriate for effective decision making.	Yes		East Kimberley
○ In the past 2 years your local government has attracted investment that has led to economic growth and job creation.	Yes		\$200M Royalties for Regions Investment in Ord Expansion \$195M Australian Government investment.

Local Government Reform Checklist			
Guiding principle	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	
<ul style="list-style-type: none"> <li>○ Your local government has community consultation strategies in place, both on-going and project specific.</li> </ul>	Yes		
<b>7. Understanding of and planning for demographic change</b>			
<ul style="list-style-type: none"> <li>○ Your local government's population trend for the past five years has been:               <ul style="list-style-type: none"> <li>- declining</li> <li>- stable</li> <li>- growing</li> </ul> </li> </ul>			Visitation rates to the region have grown at 10%. High indigenous birth rates drive population.
	+4%		
<ul style="list-style-type: none"> <li>○ Your local government's projected population for the next five years will be:               <ul style="list-style-type: none"> <li>- declining</li> <li>- stable</li> <li>- growing</li> </ul> </li> </ul>			Expanding economic base via Ord River Irrigation Expansion.  Strong growth in tourism expected to continue leading to jobs
	+5%		
<ul style="list-style-type: none"> <li>○ Your local government has plans in place for demographic change.</li> </ul>	Yes		LG acts to engage more with indigenous people. East Kimberley is not highly impact by aging population. Our population is a lot younger than State and Australian averages. Plan relates to services for people (e.g. land and housing) .

<b>Local Government Reform Checklist</b>			
Guiding principles	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	
<b>8. Effective management of natural resources</b>			
○ Your local government, by itself or in partnership, has resource management plans to address changing environmental conditions.	Yes		Lake Kununurra Management Plan.
<b>9. Optimal community of interest</b>			
○ Your local government provides services and facilities to communities with a similar community of interest.	Yes		
<b>10. Optimal service delivery to community</b>			
○ Your local government has the capacity to improve / increase service delivery in response to community expectation and associated demand.	Yes		

**Attachment 1: Local Government Reform Checklist continued**

<b>Local Government Reform Checklist</b>			
Guiding principles	Are these elements in place at your organisation?		Explanatory comment
	Yes	No	
<b>11. Membership of an effective regional grouping</b>			
○ Your local government is a member of a regional grouping of two or more local governments to plan and deliver services regionally.	Yes		Kimberley Zone
○ Indicate your regional grouping preference, identifying participating local governments.	N/A	N/A	Kimberley Zone= Shire of Broome, Shire of Derby West Kimberley, Shire of Halls Creek, Shire of Wyndham East Kimberley.
<b>12. Previous Structural Reform</b>			
○ Have you gained any benefits from structural reform measures taken with other local governments to date?		No	Kimberley Shire share resources where they can.
<b>13. Conclusion</b>			
○ After completing the checklist, are you of the view that amalgamation or any other type of structural reform is necessary for your local government?		No	There are no clear benefits from amalgamations in the Kimberley region.

## 12.6.9 KIMBERLEY DEVELOPMENT COMMISSION BOARD REPRESENTATION (8647)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire of Wyndham East Kimberley
<b>LOCATION:</b>	N/A
<b>AUTHOR:</b>	Peter Stubbs, Chief Executive Officer
<b>REPORTING OFFICER:</b>	Peter Stubbs, Chief Executive Officer
<b>FILE NO:</b>	63.13.03
<b>ASSESSMENT NO:</b>	N/A

### **PURPOSE**

For Council to consider making a nomination for a vacant Local Government position on the Kimberley Development Commission Board.

### **BACKGROUND**

The Kimberley Development Commission has advised the Kimberley Zone that a vacancy exists on its Board for one Local Government representative.

The Kimberley Zone will consider nominating a representative at its next Zone meeting to be held on the 8<sup>th</sup> May 2009. The 8<sup>th</sup> May 2009 is also the closing date for nominations to be submitted to the Minister for Regional Development and Lands via the Kimberley Development Commission.

The Kimberley Development Commission meets bimonthly and is a key agency for the development of the Kimberley region.

The Council had representation on the Kimberley Development Commission Board in recent years through former Shire President Michele Pucci.

Explanatory details and nomination forms were sent to all elected members by email 9 April 2009.

### **STATUTORY IMPLICATIONS**

Appointments to the Kimberley Development Board are made under the Regional Development Act 1993.

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

Nil

## **STRATEGIC IMPLICATIONS**

The Kimberley region has many exciting development opportunities ahead of it. It is considered to be in the interest of the region to have good representation from across the region on the Board, and in particular from the East Kimberley.

## **COMMUNITY CONSULTATION**

Nil

## **COMMENT**

Nil

## **ATTACHMENTS**

Nil

## **VOTING REQUIREMENT**

Simple Majority

## **OFFICER'S RECOMMENDATION**

That Council advise the Kimberley Zone that it nominates Cr \_\_\_\_\_ as its preferred representative for the current Local Government vacancy on the Board of the Kimberley Development Commission.

## **COUNCIL DECISION**

*Minute No. 8647*

*Moved: Cr D Ausburn*

*Seconded: Cr K Wright*

**That Council advise the Kimberley Zone that it nominates Cr Addis & Parker as its preferred representative for the current Local Government vacancy on the Board of the Kimberley Development Commission.**

***CARRIED: (6/2)***

## **12.7. ELECTED MEMBER REPORTS**

Cr D Ausburn:-

- 4.3.09 Budget Workshop Meeting
- 25.3.09 Minister Jacobs Meeting
- 26.3.09 BEFAC Meeting
- 14.4.09 Airport Stakeholders Meeting
- 21.4.09 Liquor Accord Meeting

Cr Fred Mills - March/April

- 20 March – Attended Business After Hours function with local business owner operators
- 20 March – Dinner with members of the Global Convention
- 21 March – Attended Local tour with members of the Global Convention
- 24 March – Met with Minister Albanese and Gary Gray - Media Opportunity basketball courts re grant
- 24 March – Meeting with Kununurra Markets Sub Committee re White Gum Park
- 25 March – Meeting with Water Minister re Expansion Project (discussion)
- 25 March – Dinner with Water Minister Jacobs and Party
- 26 March – Met with Air BP at airport re Fuel Depot lease
- 26 March – Met with Dept Water re Crossing Falls survey
- 27 March – Meeting / Workshop East Kimberley COAG Conversation
- 30 March – Meeting with Macka's Barra Camp re lower Ord issues
- 30/31 March – Attended Commonwealth Bank Ord Irrigation Conference
- 31 March – Attended JP's Conference
- 8 April – Attended Australia's Northwest Board meeting
- 8 April – Attended ANW 5<sup>th</sup> birthday Cocktail Function with local Tourism Operators
- 8 April – Attended ANW Board Dinner
- 9 April – Attended Anzac Day Commemorations KDHS
- 9 April – Met with Cec Richardson Ord River Sailing Club with Cr Wright
- 14 April – Meeting at the Airport with East Kimberley Airports User Group
- 15 April – KVC Board breakfast meeting at the Pump House Restaurant & Bar
- 20 April – Meeting with the Red Tape Reduction Group (RTRG)

## **13. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

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

Nil

## **15. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION**

Nil

## **16. MATTERS BEHIND CLOSED DOORS**

### 16.3 CEO PERFORMANCE INDICATORS (8649) (8650)

<b>DATE:</b>	21 April 2009
<b>PROPONENT:</b>	Shire Of Wyndham East Kimberley
<b>LOCATION:</b>	East Kimberley
<b>AUTHOR:</b>	Peter Stubbs Chief Executive Officer
<b>REPORTING OFFICER:</b>	Cr Fred Mills Shire President
<b>FILE NO:</b>	10.968.05
<b>ASSESSMENT NO:</b>	N/A

This item will be discussed Behind Closed Doors under Section 5.23 (2) (a), (b) and (c) as this is a matter that affects

- (a) a matter affecting an employee or employees;
- (b) the personal affairs of any person;

#### **COUNCIL DECISION**

**Minute No. 8649**

**Moved:Cr P Caley  
Seconded:Cr J Parker**

**That Council move Behind Closed Doors to consider Item 16.3.**

**CARRIED UNANIMOUSLY: (8/0)**

**Minute No: 8650**

**Moved:Cr P Caley  
Seconded:Cr D Ausburn**

**That Council adopt the CEO Performance Indicators as recommended by the CEO Review Committee**

**CARRIED UNANIMOUSLY: (8/0)**

*The CEO tabled the draft Performance Indicators that had been determined jointly between the CEO and CEO Review Committee. Discussion was held around the review process including the 360 degree assessment.*

*The CEO advised that the timing of the review had been added to the Shire compliance calendar to ensure the review occurs in the time frame required.*

**Minute No: 8651**

**Moved: Cr P Caley**

**Seconded: Cr J Parker**

**That Council move to go out of Behind Closed Doors**

**CARRIED UNANIMOUSLY. (8/0)**

## **CLOSURE**

With all matters of Business complete the Shire President declared the meeting closed at 7.41pm.