

## 12.3 COMMUNITY DEVELOPMENT

### 12.3.1 Draft Local Planning Strategy and Draft Local Planning Scheme No. 9

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Senior Planning officer
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>FILE NO:</b>	LP.02.3, LP.05.1
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### VOTING REQUIREMENT

Simple Majority

#### OFFICER'S RECOMMENDATION

That Council:

1. Notes the submissions received on the draft Shire of Wyndham East Kimberley Local Planning Strategy and draft Local Planning Scheme No. 9, and;
  - a) acknowledges the submission in regards to proposed change Residential R20 to Residential R15 on map 13 (Timor Street to Cambridge Street - on Great Northern Highway, Wyndham) and agrees to leave the zoning as Residential R15.
2. In accordance with Regulation 14(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, supports the draft Shire of Wyndham East Kimberley Local Planning Strategy with proposed modifications, as itemised in *Schedule of Proposed Modifications to the draft Local Planning Strategy* at Attachment 5, to address issues raised in the submissions.
3. In accordance with Regulation 25(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, supports the draft Shire of Wyndham East Kimberley Local Planning Scheme No. 9 with proposed modifications, as itemised in the *Schedule of Modifications to draft Local Planning Scheme No. 9* at Attachment 6, to address issues raised in the submissions.
4. Requests the Chief Executive Officer to submit copies of the following documents to the Western Australian Planning Commission for endorsement:-
  - a) advertised draft Shire of Wyndham East Kimberley Local Planning Strategy and Local Planning Scheme No. 9
  - b) the schedule of the public submissions received as outlined in Attachment 1
  - c) the proposed modifications to the draft Local Planning Strategy as outlined in Attachment 5
  - d) the proposed modifications to the draft Local Planning Scheme No. 9 as outlined in Attachment 6.

## **COUNCIL DECISION**

Minute No: 20/12/2016-11559

Commissioner resolved:

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Carried 1/0

***At the request of the Commissioner this item will be considered at both the Ordinary Council Meetings to be held on 22 November 2016 in Wyndham and 20 December in Kununurra.***

## **PURPOSE**

For Council to consider submissions received on the draft Local Planning Strategy and draft Local Planning Scheme No. 9.

## **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Advocator - advocate and support initiatives on behalf of the community and the Kimberley

Leader - plan and provide direction through policy and practices

Regulator - enforce state legislation and local laws

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

Local governments are required to maintain a local planning scheme in accordance with the *Planning and Development Act 2005*. The local planning scheme establishes the standards and requirements for planning and land use within the area. Local governments are also required to prepare a local planning strategy which sets out the long term vision for the local government area, and provides the strategic basis for the development of a contemporary local planning scheme for the local government area.

At the Ordinary Council Meeting of 24 February 2015 Council adopted the draft Local Planning Strategy and draft Local Planning Scheme No. 9 (Minute No. 10804 & 10805), and resolved to refer the documents to the Western Australian Planning Commission (WAPC) and the Environmental Protection Authority (EPA) as required to enable the consent to advertise the documents for public comment.

On 3 June 2015 the WAPC advised that the draft Strategy and Scheme could be advertised, subject to modifications being made to the draft documents prior to advertising. These modifications were made in consultation with the Department of Planning (DoP) over a number of months, and on 12 February 2016 the DoP approved the modified documents for advertising.

Accordingly, the draft Strategy and Scheme were made available for inspection and submissions from 10 March 2016 to 10 June 2016, during which time a total of 77 submissions were received.

Since that time, officers have reviewed the submissions received, again in consultation with the DoP, and have recommended a number of further modifications to the documents in light of the submissions received for the consideration of Council.

## **STATUTORY IMPLICATIONS**

*Planning and Development (Local Planning Schemes) Regulations 2015*

The *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations), outlines the process required to be followed for the preparation and adoption of local planning strategies and local planning schemes.

Local governments are required to prepare new local planning schemes based on the model provisions for local planning schemes included in the LPS Regulations. The purpose of the model provisions is to ensure a level of consistency between all local planning schemes, and make it easier for the community, local governments and State Government to understand and implement a scheme through a consistent structure, approach and provisions (wherever possible).

The LPS Regulations also include 'deemed provisions' for local planning schemes, standard provisions for various administrative matters including preparing local planning policies, heritage matters and procedures for dealing with planning applications. These provisions apply to all local planning schemes across Western Australia.

## **POLICY IMPLICATIONS**

### *State Planning Policies*

State Planning Policies are prepared by the WAPC, and address various matters including rural lands and agriculture, industrial development, residential development, commercial development, environmental protection, Aboriginal settlements, natural hazards and transport planning.

Local governments are required to comply with these policies when preparing local planning strategies and schemes. The Department of Planning, WAPC and Minister for Planning will assess the Shire's new Local Planning Scheme against these policies and may direct changes to be made if deemed necessary.

### *Local Planning Policies*

Local planning policies are prepared under the provisions of the deemed provisions of the LPS Regulations, but do not form part of the Scheme. Policies do not bind the Shire in respect of any decision making, but the Shire is required to have due regard to the provisions of a policy in making decisions.

There is likely to be future implications for the review of, or preparation of, the local planning policies which are required to be consistent with the Local Planning Strategy. As such, it is intended to undertake a review of the Shire's Local Planning Policy Manual following approval of the Strategy and Scheme.

## **FINANCIAL IMPLICATIONS**

The review of the Local Planning Strategy was funded through a grant received through the Northern Planning Program, for which Council budgeted for a total project cost (\$87,029.09), which has been expended since 2014. A separate amount of \$30,000 was budgeted for the Local Planning Scheme review.

Once the draft documents have been reviewed by the WAPC, any additional funds required will go towards undertaking any required modifications and advertising costs.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.1 : Strong community engagement

Objective 1.3 : Advocacy of East Kimberley issues and opportunities at regional, state and national levels

Objective 1.4 : Business innovation, efficiency and improved services

Strategy 1.1.2 : Improve planning processes to ensure broader engagement and identification of relevant issues from all parties.

Strategy 1.3.1 : Actively provide input to decision making at the Regional, State and Federal levels on behalf of the community

Strategy 1.4.1 : Ensure legislative compliance and follow best practice principles in planning and service delivery

## **RISK IMPLICATIONS**

Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

## **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and included:

- Notice in the Kimberley Echo on the 10 and 17 March 2016.
- Information stalls at the Kununurra Markets on 14 April 2016 and 14 May 2016.
- Community Open Houses at the Shire's Kununurra Administration Offices on 3 and 23 May 2016 and Wyndham Administration Offices on 5 and 25 May 2016.
- Notification letters to relevant government agencies, stakeholders and affected landowners.
- Notification via Facebook.

The draft documents were available for inspection at the Shire's Administration Offices in both Wyndham and Kununurra, the Kununurra School and Community Library, the Department of Planning/WAPC offices in Perth, and available for download from both the Shire's and DoP website between the 10 March 2016 and 10 June 2016.

A total of 77 submissions were received from 74 submitters. The submissions received are outlined in the table at Attachment 1.

## **COMMENTS**

The majority of submissions received were in relation to the proposed draft Local Planning Scheme No. 9, with a number of key issues emerging, as follows:

- Objection to the proposed increase of residential densities in Lakeside (Kununurra) to R25.
- Concern about rezoning of existing Rural Industry (TPS 7) lots to Agriculture – State or Regional Significance (Rural Ag 1) and Local Horticulture (Rural Ag 2).
- Objection to the rezoning of Old Darwin Precinct to Rural Residential.
- Concern about the lack of available Light and General Industry land within Kununurra, particularly as a result of the proposed rezoning of Weaber Plain Light Industrial Area from Light Industry to Composite Industry.
- Concern about the objectives, development provisions and non-agricultural land uses allowed in the Local Horticulture Zone (Rural Agriculture 2).
- Objections to the proposed increase in residential densities in Three Mile, Wyndham to R20, R25 and R30.
- Concern about the rezoning of some residential properties in Wyndham to Rural Townsite.
- Concern about development within the Environmental Conservation Reserve adjoining and overlapping Jabiru and Packsaddle Road properties.

These key issues are summarised in the “*Schedule of Recommended Modifications to draft Local Planning Scheme No. 9*” at Attachment 2, with recommended modifications to the draft Scheme text and maps to address the issues/concerns raised, and includes a number of minor modifications recommended in light of the submissions received. These recommended modifications to the draft Scheme include:

- Introduction of a new Cultural and Natural Resources Protection Reserve.
- Introduction of a new Rural Enterprise Zone to replace the previous Rural Industry zone (in Town Planning Scheme No. 7).
- Retaining the Light Industrial zone over the existing Weaber Plain Light Industrial Area.
- Introduction of a new Service Commercial Zone located between Ivanhoe Road and Poinciana Street.
- ‘Normalising’ zoning around Lake Argyle and proposed Lake Argyle Development Area.
- Modifying proposed residential densities for Wyndham Three Mile and Lakeside, Kununurra.
- Zoning the Old Darwin Precinct as Rural Smallholdings.
- Removing the dual zoning over Packsaddle and Jabiru Road properties and including a Special Control Area to control use and development.

In relation to the recommended modification of residential densities in Lakeside (Kununurra) and Three Mile (Wyndham), plans have been provided at Attachments 3 and 4 to demonstrate the proposed modified densities.

In relation to the draft Strategy, most of the submissions received recommended additional information or modifications to the document to provide for better clarity, or due to inconsistencies between the draft Strategy and Scheme. A number of administrative changes and additional discussion was also requested by the DoP which was not required to be implemented prior to advertising, however is required prior to Council support.

The recommended modifications to the draft Local Planning Strategy, are collated in the Schedule of Modifications provided at Attachment 5.

A Schedule of Modifications for the draft Local Planning Scheme No. 9, is also provided at Attachment 6.

The local government is not required to make any changes to the documents at this stage, and is simply required to make a resolution to support the draft documents with modifications to address issues raised in the submissions.

Following this resolution, the advertised documents, schedule of submissions and particulars of the proposed modifications proposed are provided to the WAPC for endorsement of the Strategy and Scheme.

## **ATTACHMENTS**

Attachment 1 - Schedule of Submissions

Attachment 2 - Recommended Modifications to draft Local Planning Scheme No. 9

Attachment 3 - Recommended Residential R Codes in Lakeside

Attachment 4 - Recommended Residential R Codes in Three Mile Wyndham

Attachment 5 - Schedule of Modifications to draft Local Planning Strategy

Attachment 6 - Schedule of Modifications to draft Local Planning Scheme No. 9

## Schedule of Submissions on SWEK draft Local Planning Strategy & draft Local Planning Scheme No. 9

No.	Name	Property Affected	Submission	Comment
1	Nicole & Trevor Floyd	Lot 14 Weaber Plain Road, Kununurra	Wish to apply for subdivision approval into 10 acre lots.	Subdivision application and approval is via a separate process. No changes recommended.
2	Mud Ark Pty Ltd	Lot 704 on DP 75319, Barytes Road, Wyndham	Support the zoning of Lot 704 to be changed from Special Site – Zoological Gardens to General Industry. The lot was the site of the Wyndham Crocodile Park until its closure in March 2015, and is proposed to remain as a Special Use – Zoological Gardens in draft LPS No. 9, with surrounding land zoned as General Industry. With the closure of the Wyndham Crocodile Park request that the zoning be aligned with the General Industry zoning of surrounding lots.	Noted and agreed. Already shown as industrial in Figure 6 of the Strategy. Recommend to rezone this lot as General Industry on Scheme Map 12.
3	Jeffery Thomas	Lot 13 Weaber Plain Road, Kununurra	Wish to have lot 13 zoned as Rural Residential. Considers a precedent has been set for this type of development near Mills Road, and that the size of the lot does not make it suitable for commercial agriculture. The land is not currently being used for agricultural purposes.	Noted. Land is currently zoned Rural Agriculture 1 (proposed Agriculture – State or Regional Significance). The draft Strategy recommends no rezoning should occur prior to undertaking the proposed priority agricultural land (PAL) assessment. Noted that draft Strategy identifies this area as Rural Residential, however not supported by the Department of Planning (DoP) without evidence of market demand. Noted that the size of Lots in this area may be more suitable as Local Horticulture (Rural Ag 2) or Rural Smallholdings. No changes recommended.
4	John & Jennifer Patton	51 Casuarina Way, Kununurra	Support rezoning of their property to R25.	Noted.

			<p>Believe this will allow another dwelling to be built on the property which will refresh the amenity of the area, which is a positive for nearby owners.</p> <p>Most of the infrastructure is already in place but it will provide additional employment for the local building industry.</p> <p>See it as a great initiative for the Shire with positives for the area and local employment.</p>	
5	Cliff Alford, Long Rein Pty Ltd	Lot 702 on DP 408129, Weaber Plain Road, Kununurra	<p>Objects to the proposed rezoning of this and surrounding lots from Rural Industry to Agriculture – State and Regional Significance. If rezoning is necessary, recommends it should be General or Light Industry.</p> <p>Site historically used as airstrip, and in conjunction with the construction of the Ord Sugar Mill, and zoned as Rural Industry since approx. 1995.</p> <p>Lot size and soil type are not conducive for agricultural use, but more suitable for general or light industry.</p> <p>Limited land is proposed to be zoned as General or Light Industry in draft LPS No. 9; considers this is not supportive of a town and region struggling to grow.</p> <p>There are existing transport and commercial businesses within the existing Rural Industry Zone which are proposed to be agricultural zones within draft LPS No. 9.</p> <p>Acknowledges that existing businesses can continue with their present use, but will be disadvantaged if they wish to vary their activities in the future.</p> <p>Notes that Project Sea Dragon has publically expressed interest to construct a Prawn Processing Facility in the vicinity of the Sugar Mill which will not be allowed by a change in zoning.</p> <p>Has recently purchased the property as a Rural Industry lot and has received planning approval to develop a Transport Depot specifically servicing primary industry. Indicated intention to develop a lunch bar/road house on the site to service the local area in the future. The change in zoning currently proposed will not allow this.</p>	<p>Noted.</p> <p>The Shire was directed to remove the proposed Rural Industry Zone prior to advertising, on the basis that rural industry (Industry – Primary Production) is a land use which can be considered within a number of zones, including the Agriculture – State and Regional Significance Zone.</p> <p>General Industry is a potential alternative zoning for the land, as it would allow for a broad range of industrial, service or storage activities, and would allow for a transport depot, lunch bar and roadhouse.</p> <p>It is noted that the advertised Scheme did show limited land zoned for Light Industry or General Industry in Kununurra.</p> <p>Acknowledged that the proposed Agriculture – State and Regional Significance Zone would allow for the development of a prawn processing facility (Industry – Primary Production), however would not allow for a Transport Depot, Road House or Lunch Bar.</p> <p>In the interim, the WAPC has undertaken a review of State Planning Policy 2.5, and the draft amended policy proposes that the WAPC will:</p> <p>a) promote the establishment of precincts for primary produce processing close to</p>

			<p>The Rural Industry zone has accurately described local activity within this predominantly agricultural area which has developed over time. If there is a need to change zoning for expediency, recommends it should be to General or Light Industry not Agriculture – State and Regional Significance.</p>	<p>services and freight routes, and with adequate buffers; and</p> <p>b) support the concept of rural enterprise zones in strategies and schemes that combine light industry and ancillary housing, provided they are carefully planned with general proximity to urban areas, are serviced and have design features that address buffers and amenity and generally meets the criteria listed in 5.6 (b)."</p> <p>On the basis of the above, DoP are proposing the introduction of a new Rural Enterprise zone in the LPS Regulations, and advised that the Shire may use this zone in place of the previous Rural Industry Zone.</p> <p>Recommend also review available land zoned for Light or General Industry in Kununurra.</p>
6.	Alan Wilson (x2)	Lots 100, 102 & 33 Egret Close, Kununurra	<p><u>Local Planning Scheme</u></p> <p>Opposed to the rezoning of Old Darwin Road precinct within the Scheme review from Rural Ag 1, Rural Ag 2 &amp; Rural Smallholdings to Rural Residential. Suggests the Scheme maps be modified to show the existing zoning of the 4 areas including the Tourist Zoning.</p> <p>Is not opposed to the owner of Lot 1 being invited to prepare a structure plan and rezoning documentation under LPS No. 9, as are the owners of adjoining Lot 2 and the area serviced by Egret Close under TPS 7.</p> <p>Believes that the owners of the 22 lots serviced by Egret and Curlew Close have purchased in the location knowing that lot sizes will remain the same and have specifically developed their land with the knowledge that the rate of town has been left behind, including the anti-social behaviour that exists in town. Feels betrayed by the proposal to rezone Lot 1 to Rural Residential and the</p>	<p>Noted.</p> <p>It is noted that the current Strategy (2005) identifies the Old Darwin Road Precinct as suitable for Rural Smallholdings.</p> <p>Originally the draft Strategy, as adopted by Council, recommended a streamlined Rural Living Zone, however the Shire was directed to split the proposed lots into either Rural Smallholding zone or Rural Residential zone.</p> <p>The precinct was identified as the next logical Rural Residential area in the draft Strategy, given the expansion of the townsite to the south, and that the land is close enough to town for provision of reticulated water supply (required for lots</p>

		<p>potential for the land to be subdivided into 130 house blocks.</p> <p>The Council previously considered a request from the owner of Lot 1 to advertise a Structure Plan in January 2009, however Council resolved (minute 8526) "<i>not to consider advertising 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</i>".</p> <p>Notes that the Structure Plan report included a report outlining how under the management of the landowner the soils/land had become no longer viable for commercial horticultural pursuits.</p> <p>Supplied a DVD to demonstrate the extent of drainage problems caused by the farming practices on Lot 1, which is also subject to salinity issues.</p> <p>Comments that Lot 1 has continued to be farmed, believed to be hydroponically, with nutrients and chemicals. Therefore believes that any change of zoning of this Lot via a Scheme Amendment and a Structure Plan should include soil analysis to test for contaminants such as toxic heavy metals and chemicals. Structure Planning should address drainage, roads, subdivision proposal and everything else required to be contained in a structure plan. Considers that rezoning of this lot should not proceed without such supporting documentation being provided by the land owner, and not as part of a scheme review process.</p> <p>Queries how the Scheme has been advertised and can be assessed and commented on, when the Strategy has not been finalised, and many of its recommendations have not commenced.</p> <p>States that the rezoning of Old Darwin Road precinct from Rural Ag 1 to Rural Residential without any evidence to contradict current thinking that Lot 1 is priority agricultural land (PAL) appears to be unwise and contradicts pages 15, 21 40 &amp; 42 of the draft Strategy.</p>	<p>under 4ha) and reticulated sewer to be provided.</p> <p>If these lots are zoned Rural Residential the landowner will still need to prepare a structure plan and go through the full process.</p> <p>Noted that draft Strategy recommends no rezoning should occur prior to undertaking the proposed priority agricultural land (PAL) assessment.</p> <p>Noted that most of the drainage issues are being exacerbated by the current farming practices. Drainage is dealt with through the LWMS, which is assessed at structure plan stage and then in more detail at the subdivision stage.</p> <p>DAFWA previously advised in writing that Old Darwin Road is not priority agricultural land</p> <p>The <i>Planning and Development Act (2005)</i> and <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> (LPS Regulations) recommend the Strategy and Scheme are reviewed together. The Strategy is essentially a report that justifies proposed land uses and changes to land uses.</p> <p>Structure Plan provisions are contained within the deemed provisions of the LPS Regulations, which apply to all Schemes across the State</p> <p>The new LPS Regulations also stipulate objectives and requirements for 'zones', which have been incorporated into the draft Scheme.</p>
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		<p>Notes that the objectives for the Rural Residential zone refer to “the structure planning provisions of the Scheme”, however cannot find these provisions within the Scheme to justify the inclusion of this rezoning in the draft LPS No. 9.</p> <p>Considers that advertising the proposed rezoning of the Old Darwin Road Precinct from Rural Ag 1 to Rural Residential within this review is inconsistent with the second (ii) objective of the Rural Residential zone “to ensure compatibility of the proposed uses with existing agricultural and horticultural activity and that the future of prime agricultural land for agricultural purposes is not compromised”, as Lot 1 has existing horticultural activity.</p> <p>Objects to the rezoning of the Old Darwin Road Precinct from Rural Smallholdings, Rural Ag 2 and Rural Ag 1 to Rural Residential and recommends that the Scheme Maps be amended to show the existing zoning, including retaining the Tourist Zoning to the north west and north east of Egret Close. Considers this would be consistent with page 42 of the draft Strategy which states that “rezoning as part of the scheme review is not recommended; instead scheme amendments by private developers will ensure delivery of rural living land, consistent with market demand. States that the shire should follow its own recommendations, otherwise how can it be expected for its residents to follow the rules.</p> <p>In June 1999 supplied a submission to TPS 7 which included a suggestion to set aside/identify a 40ha area suitable for a future shopping complex, two thirds of which will be required for parking. This site is described on Figure 3 of the draft Strategy as part of the East Lily Creek precinct identified as Future Urban land subject to structure plans.</p> <p>Considers that a portion of the proposed conservation reserve, to the north west of this area, could also be included, with the suggestion that a bridge be constructed over Lily Creek to link the Town Centre at Barringtonia Avenue and that Lakeside residents would have easy access via the highway.</p> <p>Notes that page 8 of the Strategy suggests that the population will grow by 350 people a year; the existing shopping complex was congested in 1999 and has been</p>	<p>Noted.</p> <p>Future retail requirements have been identified in the Shire’s EK@25 document which has informed the draft Strategy and Scheme, however specific locations for a future shopping centre would be identified in a structure plan.</p> <p>The draft Strategy identifies areas for future urban development and opportunity for town centre redevelopment. The draft East Lily Creek and draft Kununurra Civic Centre structure plans have identified additional areas for commercial development.</p>
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		<p>getting more congested every year. Notes that it has been 15 years since TPS 7 was gazetted, and if it takes the same amount of time for the next review the population of the Shire has the potential to have grown by 5250 people, but with the same limited shopping and car parking space.</p> <p>In relation to the objective (ii) of the Rural Smallholdings Zone "to provide for lot sizes in the range of 4ha to 40ha" suggests that an average 8ha be added. Considers that developers require the highest density possible to provide the greatest financial return, and therefore without modification to the Scheme every lot within the Rural Smallholdings zone will be 4ha and this will be protected by the Scheme.</p> <p>Queries the reason for the Rural Smallholding one. States that it appears to be closely linked to Rural Residential only larger lot size, and if this is the case suggests the removal of the 40ha upper limit. If the zone is to be more closely linked to the Rural Ag 2 zone believes there should be an average lot size added to protect land more suited to horticulture and land use should be more skewed towards hobby and commercial farming.</p> <p>Notes that clause 4.29.6 of the draft Scheme has no clause to allow for land clearing to facilitate horticultural activity in the Rural Smallholding zone although it is a permitted "P" use in the zoning table.</p> <p>Suggests that a single dwelling should be a "P" use in the Tourism Zone, on the basis that the landowner should have the right to live on his own land. Considers that most tourism land uses require 24-hour service, and to suggest that an owner or operator of a caravan park or similar is not allowed to reside on site with his family as well as conduct management of the park from the same site is wrong.</p> <p>Recommends the addition of a Machinery Shed as a use class should be added and put as a "P" use in all rural zones. This is on the basis that a machinery shed is a basic requirement for rural zones and should not require a planning approval to construct, which would be the case if a shed is not included in the zoning tables. However, would</p>	<p>Noted. The Rural Residential and Rural Smallholdings zones are in accordance with the new LPS Regulations also stipulate objectives and requirements for 'zones'. Confirms that the main difference between these is lot size, and that a greater range of land uses may be approved in the Rural Smallholdings zone.</p> <p>Noted. Recommend review of this clause.</p> <p>Noted. A Caretaker's Dwelling / Manager's Residence is usually approved on a tourism zoned property. A Single Dwelling is not permitted as a stand-alone use, but could be considered as an incidental use. It is noted that the proposed Tourist Zone allows for a percentage of permanent residential development on site.</p> <p>Noted. Recommend to introduce a 'machinery shed', 'farm building' or similar as a land use, with consideration to size of sheds in Rural Residential zone.</p>
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		<p>suggest a maximum floor area to be included in the Rural Residential Zone.</p> <p><u>Local Planning Strategy</u></p> <p>The section on Waste Management has not dealt with the buffer zone around the Kununurra landfill site. States that many management practices have changed since the introduction of the 500m buffer zone around the waste management sites, such as a significant reduction in fires and regular burying of waste has dramatically reduced odours. States that development of land within the 500 meters is not possible because an excessive buffer remains, and would like to see a discussion regarding this subject in the Strategy.</p> <p>Is opposed to rezoning of the Old Darwin Precinct within the scheme review and states that there is no supporting documentation in the Strategy to support the proposal to rezone this area, and in fact the Strategy opposes the zoning being changed as part of the Scheme review process.</p> <p>Notes that Lot 1 has been identified in the current Strategy as being predominantly prime agricultural land, and that the draft Strategy identifies the need to protect priority agricultural land, and that subdivision will not be supported.</p> <p>Recommends that the precinct should not be identified as Rural Residential in Figure 4 of the draft Strategy, and would support it being identified as Rural Smallholdings subject to an average lot size of 8ha being stipulated.</p> <p>Considers that there is no advantage to changing the zoning for the existing Rural Ag 2 lots within the Egret Close subdivision to Rural Smallholdings, as the area is already subdivided to the minimal lot size allowed.</p>	<p>Noted. Depending on the class of landfill, the Environmental Protection Authority <i>Guidance for the Assessment of Environmental Factors, 2005</i>, specifies the buffer distances or requires a case by case buffer distance. An approximate 500m buffer is shown on the Strategic plan for Kununurra. Any reduction of the landfill buffer would require technical investigations, including odour modelling. In the absence of such information it is not appropriate for the Strategy to consider a reduction in the buffer.</p> <p>Acknowledge that the draft Strategy does not recommend rezoning as part of the scheme review, and instead recommends that scheme amendments by private developers will ensure delivery of rural living land, consistent with market demand</p> <p>Recommend that the Old Darwin Precinct be identified as future rural residential in the draft Strategy, however to be zoned as Rural Smallholdings in the draft Scheme.</p>	
7.	State Heritage Office	<p><u>Local Planning Strategy</u></p> <p>1. Part 4.10 identifies the presence of Aboriginal heritage but makes no reference to historic cultural heritage. SHO records indicate that within the Shire there are 3 places included in the Register of Heritage places, and approximately 52 places in the municipal heritage</p>	<p><u>Local Planning Strategy</u></p> <p>Agreed that the Strategy should acknowledge the presence of the MHI and its relationship to the scheme.</p> <p>Recommend to include additional text within Part 1, section 4.11 and Part 2,</p>	

			<p>inventory (MHI). This suggests that the contribution of cultural heritage to the identity of the local area should be noted. Because aboriginal, natural and (built) cultural heritage are managed under separate legislation, government agencies and referral processes, it is recommended that they are considered separately within strategic documents.</p> <p>2. The WAPC's Local Planning Manual, while noting the flexibility of local planning strategies, identifies a number of areas in which the strategy would generally consider cultural heritage. Where heritage is identified as a contributory part of the local profile we would recommend the inclusion of the following:</p> <ul style="list-style-type: none"> <li>• A description of the area's heritage assets and references to the municipal heritage inventory as the main reference document for the identification of places with heritage significance.</li> <li>• Acknowledgement within the State and regional context of State Planning Policy 3.5 – Historic Heritage Conservation;</li> <li>• Defined objectives for the future of heritage places in the area; and</li> <li>• Strategies and actions to achieve those objectives, particularly any action or strategy relating to the Local Planning Scheme (e.g. 'prepare a local planning policy for heritage places'.)</li> </ul> <p><u>Local Planning Scheme</u></p> <p>3. The draft scheme has been prepared in accordance with the LPS Regs, Schedule 2, which is supported.</p> <p>4. The Scheme will enable the Shire to create a heritage list. The heritage list is a statutory instrument which allows the Shire to consider the heritage of a place as part of its decision-making process for proposed development. As the Shire is yet to establish a heritage list, the SHO recommend a clause be included which states that until such time as a heritage list is adopted by the Shire the heritage list means the municipal inventory.</p>	<p>section 2.6 of the draft Strategy relating to historic cultural heritage, to recognise State Planning Policy 3.5, the role of the MHI and the relationship to the scheme.</p> <p><u>Local Planning Scheme</u></p> <p>Noted.</p> <p>Recommended to include clause into draft Scheme which states, until such time as a heritage list is adopted by the until such time as a heritage list is adopted by the Shire, the heritage list means the municipal inventory.</p>
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8.	Rhonda Guerinoni JAB Industries / Rate Payers Association		Owns an earthmoving business and would like to see the roads wide enough to allow a prime mover and low loader to easily manoeuvre down roads without blocking traffic. Has experienced issues in Lakeside due to the number of narrow roads.	<p>Noted.</p> <p>Road widths are considered either at the Structure Planning or subdivision stage in accordance with the Liveable Neighbourhoods, or relevant WAPC Development Control Policy.</p> <p>No changes are required to be made to the Scheme text.</p>
9.	Julie Brown Martin Brown Family Trust	Cocus Way	Very happy to be able to have a dwelling instead of the limited size 'caretakers'	<p>Noted.</p> <p>Although the concept of the Composite Industry zone is generally supported, it will compromise the availability of land zoned for light industry in Kununurra and is recommended to be reviewed.</p>
10.	Chris Robinson, Oria Orchards	Lot 752 Packsaddle Road, Kununurra	It is important to identify Prime Agricultural Land (PAL) so that it can be protected from inappropriate & conflicting land uses. PAL is land identified as agricultural land & has access to public infrastructure (or private) designed for agriculture. Lot size is not important as different activities require different lot sizes e.g. intensive nursery needs approx. 4 ha, bananas & pawpaw can be profitable on 8ha. Mangoes probably need a minimum of 29ha etc. Welcomes the Shire's plan in relation to Rural Agriculture 2 (Local Horticulture). The allowable land uses are	<p>Noted. The draft Strategy recommends identification of PAL and development of an appropriate policy.</p> <p>Noted.</p>

			<p>appropriate to the zone and provide more protection to agriculture than previous schemes.</p> <p>Farm Stay – no list of definitions so unsure how Farm Stay is defined. Cannot find mention of chalet development as allowed in previous plans, and queries whether these are included under some other name or no longer allowed development.</p> <p>In section 4.27.2 (e) (i) it refers to the landscaping plan being in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health – August 2012 regarding the establishment of vegetation “as much as necessary”. Query why this is included and who or what may determine what is necessary and what is not. The guidelines are fairly specific in what it requires, and to allow discretion on this may compromise the reasons for it being there.</p> <p>Clause 4.27.2(e) allows by Council of landscaping plans, however it is not always the case that Council or the Shire have people qualified to assess biosecurity documents and plans.</p> <p>Clause 4.27.2(e)(i) refers to host plants, however queries what “host plants for what biosecurity threat?”. States that every threat may have a different set of potential or existing host plants. Questions whether the Shire;</p> <ul style="list-style-type: none"> <li>▪ is qualified to judge on this,</li> <li>▪ have the time to assess, monitor and police biosecurity threats; or</li> <li>▪ have the financial will or capacity to cover costs of an incursion in an agricultural area, which are far greater than in a residential area.</li> </ul> <p>Animal Establishment is included as an ‘A’ (to be advertised) use in the Rural Ag 2 zone. Queries how this relates to people who graze or stable horses and a few cattle.</p>	<p>Farm Stay is included in Part 6 (Terms referred to in Scheme), Division 2 (Land Use definitions used in the Scheme) of the draft scheme and is defined as:</p> <p><b>farm stay means land and buildings utilised for short stay tourist accommodation comprising a maximum of two chalets or cabins located no further than 30 metres from the external wall of an existing residential dwelling and such cabins/chalets will not exceed 70m<sup>2</sup> internal floor area.</b></p> <p>Note the concerns in regard to clause 4.27.2, in relation to compliance with the Department of Health guidelines, and ability of Shire Officers to assess biosecurity and landscaping plans. Recommend that this clause be reviewed.</p> <p>Animal Establishment defined as ‘means premises used for the breeding, boarding, training or caring of animals for commercial purposes’. Therefore, this is not intended to apply to people that keep a few horses, chickens, etc for personal purpose.</p>
11.	Shape Urban Pty Ltd, on behalf of Yeltara	Lot 1 Old Darwin Road, Kununurra	<p><u>Draft Local Planning Scheme No. 9</u> Support the proposed rezoning of the subject site as Rural Residential.</p>	Noted.

	<p>Developments Pty Ltd</p>	<p>There are no objections to the surrounding sites zoning, rather a concern that there be appropriate buffers and development controls to manage the interface between the rural residential lots and the Tourism zoned land given the different uses and possible intensity of permitted development. Recommend that setback be required for the Tourism zone located on the western lot adjacent to the subject site that would provide an appropriate interface between a low impact residential use site and a medium to high impact commercial use.</p> <p>Strongly support lot sizes ranging from 1ha to 4ha that would allow all lots to be similar sizes or a range of sizes.</p> <p>Strongly support the limited provisions controlling variation in lot sizes across a development area.</p> <p>Strongly support proposed uses for Rural Residential lots.</p> <p>Clause 4.29.2 - It is unclear whether the development of a single lot zoned Rural Residential would be able to develop without first preparing and having a structure plan approved. Coordination of development within a single parcel could be achieved by preparing a subdivision plan. Recommend to amend clause 4.29.2 to:</p> <ul style="list-style-type: none"> <li>• make it clear that a Structure Plan is not required for the development (subdivision) of a single lot that is zoned Rural residential to be developed in accordance with its zoning and general development requirements.</li> <li>• Provide clarification on the requirement of a Structure Plan for more complex rural residential areas requiring infrastructure coordination e.g. three or more lots, where it is believed that the planning issues cannot be resolved during the subdivision preparation and approval stage and where an additional layer of planning is required for orderly and proper planning.</li> </ul> <p>Clause 4.29.5 – It is unclear if all animals that are kept on a rural residential property for the enjoyment of the land by owners/occupiers are considered domestic household pets. It is envisaged that owners and occupiers of rural residential lots will own a range of animals for personal enjoyment including e.g. chickens, alpacas. It would be</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>The DoP has advised that a structure plan is required prior to subdivision of a single rural residential lot.</p> <p>Noted that it is likely that a range of animals may be kept on a rural residential or rural smallholding property for the enjoyment of the land by owners/occupiers which may not be considered domestic household pets</p>
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		<p>considered onerous and unnecessary if a development application was required to keep animals that were not to be used for commercial purposes on the property. Recommend to amend clause 4.29.5 to:</p> <ul style="list-style-type: none"> <li>• Make it clear that all animals that are not for commercial purposes within the lot/property can be kept without development approval.</li> <li>• Include the requirement for development approval for animals that will be for commercial use within a property and the requirement to keep within the stocking rates as set out by the Department of Agriculture and Food.</li> </ul> <p>Strongly recommend the inclusion of the entire Shire within the Scheme as it will provide for a coordinated approach to all development in the region. Considers this is particularly important in relation to the significant areas of environmental conservation owned and managed by a range of bodies, including that land adjacent to the subject site. A coordinated approach to assessing development to ensure the consideration of environmental as well as amenity values within these areas is supported.</p> <p><u>Draft Local Planning Strategy</u></p> <p>Support the objective to provide housing choice “through provision of alternative lot sizes and lifestyle opportunities”. Consider this aligns with the proposal to zone the subject site Rural Residential and deliver an alternative lifestyle opportunity to current and future residents of the Shire.</p> <p>Support the objective of Environmental Conservation to “preserve the values of natural resources by minimising and managing the impacts of land use and development on the environment”.</p> <p>Section 4.3 Housing Affordability and Supply identified that there is an issue with over development of existing residential sites within the Town and the resultant issues related to overcrowding. Consider that the provision of rural residential blocks such as the subject site provides a deliverable solution to this issue by providing larger blocks to accommodate the larger housing sizes as well as</p>	<p>e.g. chickens and horses. It is agreed that it would be onerous and unnecessary if a development application was required to keep animals that are essentially pets. Recommend to review this clause.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p>providing sufficient space between the residences whilst in close proximity to town and associated services.</p> <p>Section 4.4 Environment:</p> <ul style="list-style-type: none"> <li>▪ Support the protection of environmental conservation areas.</li> <li>▪ Support the development of a framework for environmental assets within the Shire as part of the overall planning framework, including that land adjacent to the subject site.</li> <li>▪ Support the recognition of addressing the visual landscapes in the planning process.</li> </ul> <p>The provision of potable water supply is raised as an issue particularly in relation to the provision of rural residential lands. It is also acknowledged that there is a demand for rural residential land within the Shire at present. The preparation of a Water Management Strategy is supported to facilitate the development of appropriate land to meet the demand now and in the future for residential and rural residential lands. The development of the strategy should be identified as a short term priority of the Shire. Recommend amend Section 4.6 to include the development of the Water Management Strategy as being identified as a short term priority of the Shire.</p> <p>The existing Kununurra landfill site is identified to be remediated and a new site identified within 10-15km of the town site. Given the likelihood of a medium to long term approach for the required remediation of the landfill site before it could be redeveloped to another use, it is recommended that the Local Planning Strategy identify as a strategy that the site be remediated in a way that is still visually appealing to the public during this process whilst ensuring public and environmental safety. Recommend amend Section 4.7 to include that the future remediation of the existing Kununurra landfill site identify as a strategy that the site be remediated in a way that is still visually appealing to the public.</p> <p>The development of a Strategic Land Release Plan is identified as a means to manage appropriate residential land development. This is supported as a valuable tool to</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted. Recommend that the 'strategic response' could be updated to state that remediation of the existing landfill site is undertaken to ensure that it is safe for the public and environment and visually appealing.</p> <p>Noted. If the land is appropriately zoned, development can take place subject to the provisions of the scheme. Notwithstanding</p>
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			<p>facilitate development in the context that land is able to be developed and released to the market where it is in line with the Local Planning Scheme zoning. Given the time it may take to develop this plan it is considered appropriate that land development proceed whilst it is prepared. Recommend amend Section 5.1 to clearly outline that development of land in accordance with its zoning in the Local Planning Scheme can proceed during the preparation and prior to the completion of the Strategic Land Release Plan.</p> <p>The preparation of a policy to guide development on land identified as Conservation Reserve is supported. The preparation of this policy should include the relationship of conservation land to adjoining zones, appropriate development types and controls, consultation requirements and ensuring amenity as well as environmental values are assessed and protected for the long term whilst allowing sensitive and appropriate development. Recommend amend Section 5.1 to include that the preparation of this policy should include the relationship of conservation lands to their adjoining zones, appropriate development types and planning controls. Include consultation requirements and ensuring amenity and environmental values are assessed and protected for the long term whilst allowing sensitive and appropriate development.</p>	<p>this, additional clarification can be provided that enables this development prior to the development of a land release plan.</p> <p>Noted. Recommend amend section 5.1 to state that the local planning policy should outline appropriate planning controls, development types and provide commentary on the relationship between the conservation land and the adjoining zones.</p>
12.	Andrew McLean, McLean Enterprises Pty Ltd	Lot 24 Ivanhoe Road, Kununurra	<p>Received planning permission in May 2012 to build and operate a Transport Depot under the current planning scheme, and spent over 2.5 million to develop the depot.</p> <p>Under draft LPS No. 9 it is proposed to change the zoning to Agriculture and consider this a major step backwards and not forward planning, and object to the proposed rezoning.</p> <p>The subject site and surrounding lots include two transport depots, one crane hire/transport depot, a possible fuel depot in the near future, all require road train access and reasonable sized blocks, plus a stock feed supplement manufacture and an irrigation supply business. Consider the area is ideally suited for these businesses as they are</p>	<p>Noted.</p> <p>The Shire was directed to remove the proposed Rural Industry Zone prior to advertising, on the basis that rural industry (Industry – Primary Production) is a land use which can be considered within a number of zones, including the Local Horticulture Zone.</p> <p>DoP are proposing the introduction of a new Rural Enterprise zone into the LPS Regulations, and advised that the Shire may use in place of the previous Rural Industry Zone.</p>

			<p>close to town for deliveries whilst still being outside of town, and keeping truck and road traffic on one road.</p> <p>The only other suitably zoned area is on Weaber Plain Road. To get there requires to travel a distance of 13km from the highway around the town centre area (Ivanhoe Road to Mills, to Weaber Plain Road) which includes one sharp turn with a 40km/h limit, and route retraced back to the highway. Currently only a 3km trip is required from the highway.</p>	
13.	John & Pauline Kirby	Lots 101, 197, 198, 199, 59, 61 Chamberlain Drive, Kununurra	<p>Recommend Section 4.29.6 Vegetation (d) should include the removal of introduced exotic trees such as Neem, Parkinsonia, Lucaena, Indian rain tree etc.</p> <p>The government has spent over \$500,000 for the eradication of neem trees and property owners should be encouraged to assist with this project by removing them from private property and maybe helping to diminish the spread of these exotic (pest) trees. The likes of Lucaena causes understorey grasses to die off leaving no ground cover which could eventually cause erosion.</p>	<p>Noted.</p> <p>Recommend 4.29.6(d) be amended to include introduced exotic trees, noxious trees or weeds.</p>
14.	Marion Kenny (x 4)	Lots 700 & 701 Weaber Plain Road, Kununurra	<p>Objects to the rezoning of Lots 700 &amp; 701 from Rural Industry to Agriculture.</p> <p>Land (Lot 319) originally developed as an airstrip and has various uses, supporting rural business, mining, tourism, agriculture, pastoral, civil engineering and Aboriginal communities since that time. The lot has recently been subdivided to create Lots 700 &amp; 701, with significant cost to install power and water etc.</p> <p>Is currently zoned Rural Industry and is identified in the Strategic Land Use Plan as rural industry.</p> <p>Adjacent lots share similar use.</p> <p>Due to its size it does not meet the criteria of Agricultural zoning, which could restrict the uses of the land, thereby hampering further development of the region.</p> <p>Development in agriculture to the north of Kununurra will require supporting industries which do not need to be based in the township of Kununurra and are better suited to being</p>	<p>Noted.</p> <p>The Shire was directed to remove the proposed Rural Industry Zone prior to advertising, on the basis that rural industry (Industry – Primary Production) is a land use which can be considered within a number of zones, including the Local Horticulture Zone.</p> <p>DoP are proposing the introduction of a new Rural Enterprise zone into the LPS Regulations, and advised that the Shire may use in place of the previous Rural Industry Zone.</p>

		<p>built in this location. There is very little general Industry in the draft LPS No. 9.</p> <p>The zone was created in 1995 and accurately reflects the business activities undertaken in the area. A similar zone should be adopted to allow this to continue, and not disadvantage current users.</p>	
Lot 595 Bandicoot Drive, Kununurra	<p>Objects to the rezoning of Lot 595 and adjacent land from Mixed Business to Mixed Use.</p> <p>Lot 595 was first developed over 30 years ago and has had an assortment of commercial and light industry uses. Currently, and for much of the last 20 years, has been used partially as a transport depot.</p> <p>Understands the Shire's intent to relocate industry away from the town centre, however as a land holder believes she and her tenants would be disadvantaged by this.</p> <p>The lot is currently zoned Mixed Business and adjacent lots share a similar use. The existing zone accurately reflects the business activities successfully undertaken in the area. A similar use should be adopted to allow this to continue, and not disadvantage the current users, tenants and the land owners.</p> <p>The Shire has plans for mixed business use in its development of East Lily Creek, as this is the area for future development it would be costly and unnecessary to relocate businesses and industry away from its current area. The draft strategy refers to assistance in relocating industry/businesses, however it would be helpful to be aware of what form this assistance would take and to what extent.</p> <p>There is very little general Industry and light Industry in the draft LPS No. 9.</p>	<p>Noted.</p> <p>The transport depot is already a non-conforming use within the current Mixed Business zone under TPS 7, and will remain as a non-conforming use in the proposed Mixed Use zone under the draft Scheme.</p> <p>A key recommendation of the draft Strategy is to investigate the feasibility of potential general industrial land around Kununurra and prioritise a site for development of a General Industrial Estate. It is acknowledged that incentives may be required to encourage relocation of some existing industries from the proposed Mixed Use area, however what form these incentives may take is unknown at this point in time.</p> <p>It is noted that the advertised draft Scheme does have limited land zoned for Light Industry or General Industry in Kununurra.</p> <p>Recommend to review available land zoned for Light or General Industry in Kununurra.</p>	
Lot 2408 (1) Rivergum Avenue, Kununurra	<p>Objects to the rezoning of Lot 2408 and adjacent land from Mixed Business to Mixed Use.</p> <p>Lot 2408 first developed over 30 years ago and has had an assortment of commercial and light industry uses. Over the years the property has had a variety of lessees and this</p>	<p>Noted.</p>	

			<p>flexibility in use has allowed businesses to change, to meet the different needs of the towns development as it has grown. Believes the proposed zoning would be a disadvantage to this, particularly in times such as the current economic downturn.</p> <p>Understands the Shire's intent to relocate industry away from the town centre, however as a land holder believes she and her tenants would be disadvantaged by this.</p> <p>Lot is currently zoned Mixed Business and adjacent lots share a similar use. The existing zone accurately reflects the business activities successfully undertaken in the area. A similar use should be adopted to allow this to continue, and not disadvantage the current users, tenants and the land owners.</p> <p>The Shire has plans for mixed business use in its development of East Lily Creek, as this is the area for future development it would be costly and unnecessary to relocate businesses and industry away from its current area. The draft strategy refers to assistance in relocating industry/businesses, however it would be helpful to be aware of what form this assistance would take and to what extent.</p> <p>There is very little general Industry and light Industry in the draft LPS No. 9.</p>	
15.	Peter Leslie Woodhead	King Location 431 Packsaddle Road, Kununurra	<p>Would like to change the zoning of King Loc 431 Packsaddle Road from Local Horticulture to Rural Residential. The lot is extremely undulating and is not connected to the irrigation scheme, the soil is a mix of clay, sand and shale rock and is not suitable for farming.</p>	<p>Noted. Lot 431 is located at the end of Packsaddle Road, and previously the site of an Abattoir.</p> <p>Proposed PAL investigation recommended prior to any rezoning. Likely to be more suitable for rural enterprise or similar use.</p>
16.	Mathew Dear, Ord Irrigation Cooperative		<p>Note that the Scheme maps exclude easements with notifications that detail "drainage infrastructure".</p> <p>Note that a number of major drainage reserves on Ironwood Drive and Weaber Plain Road are excluded from the Scheme Maps.</p>	<p>Noted.</p> <p>Easements often do not show up on cadastral maps, and it is impractical to identify easements on the Scheme maps.</p>

			<p>Note that a key retention basin is identified as Future Residential Land.</p> <p>Note that in the zoning more condensed urbanisation is occurring in locations that already have drainage issues, and no additional drainage reserves, over land flow or retention basins have been identified.</p> <p>Note that the Scheme Maps do not identify key drainage reserves in the Weaber Plain Flood mitigation area, and are being forgotten.</p> <p>Note that key OIAMC reserves are incorrectly marked.</p>	<p>However, recommend existing drainage reserves can be identified on the Scheme maps.</p> <p>Areas identified for future urban development will be subject to various investigations being undertaken as part of the structure planning process, such as the preparation of district or local water management strategies.</p> <p>Recommend additional information can be included in the Strategy regarding the drainage issues within the Kununurra townsite, and the flood management assessment being undertaken.</p>
17.	Bruce Connell, King's Church	Lot 32 Egret Close, Kununurra	<p>Request that an "Additional Use – Place of Worship" be added to the zoning of Lot 32.</p> <p>As per previous correspondence the primary use would remain as Tourism but the church would have the opportunity to use the buildings - café/conference centre as a meeting place.</p> <p>Would also like to set an area aside as a "Boab Chapel" – an outdoor area which could be used for weddings and other gatherings, as indicated on a development application submitted in 2011.</p>	<p>Noted.</p> <p>No change recommended. If required the landowner should apply through a separate Scheme Amendment process at a later date.</p> <p>Noted that a reception/conference centre can legitimately be used for a variety of meetings and functions.</p>
18.	Thomas and Dominique Breig	Lots 21 & 22 Curlew Close, and Lot 109 Kestrel Place, Kununurra	<p>Support the draft LPS No. 9, particularly the proposed rezoning of Curlew Close and Kestrel Place areas to Rural Residential. This would open up more opportunities for residents of Kununurra to settle/build or buy in a more rural setting.</p> <p>Also believe it would make this kind of residence more affordable and would prove a better long term investment for locals.</p> <p>There is limited choice at the moment for those who desire to move slightly out of town, and can be very expensive. As long term citizens and business entrepreneurs of Kununurra</p>	<p>Noted.</p>

19.	Mr Paul Conway & Dr Nicole Jeffery-Dawes	98 Egret Close, Kununurra	<p>they strongly believe future and current residents need to have a more affordable choice.</p> <p>Have returned to town after a period of absence from Kununurra with a plan to live and work sustainably in this region. This included purchasing property out of town on a large block, to ensure their mental health and well being, and assets were protected.</p> <p>Their medium term plan, once infrastructure and housing is established on the lot, is to commence a small scale horticultural concern. They are concerned if the property is rezoned, that this could potentially put this enterprise at risk.</p> <p>In reviewing the draft Scheme &amp; Strategy, they cannot ascertain how the proposed rezoning from Rural Ag 1 &amp; 2 to Rural Residential provides any benefit. During the last two wet seasons, with limited rain, the northern end of the property is covered in water due to run off from the farm adjacent, and they cannot see how they can further subdivide, given this periodic flooding. They were aware of this at the time of purchasing, and have found it becomes an ecosystem that sustains numerous native frogs and attracts a plethora of birdlife.</p> <p>Cannot see how changing from Rural Ag 1 &amp; 2 to Rural Residential will affect Egret/Curlew Close community as some blocks are already being subdivided from the original 4 hectares down to 1 hectare lots.</p> <p>To conclude they cannot see how we or the Shire will derive any direct benefit from rezoning the area, other than an increase in rates.</p> <p>Secondly concerned with the proposed change in zoning of the broadacre farm located to the east of the property, on Old Darwin Road.</p> <p>Believe that in the past, a development application was proposed for this land, however it was identified as agricultural land and disallowed. Both the draft Scheme &amp; Strategy stress the need to map and protect priority agricultural land and increase the work force of Kununurra.</p>	<p>Noted.</p> <p>It is noted that the current Strategy (2005) identifies the Old Darwin Road Precinct as suitable for Rural Smallholdings.</p> <p>The precinct was identified as the next logical Rural Residential area in the draft Strategy, given the expansion of the townsite to the south, and that the land is close enough to town for provision of reticulated water supply (required for lots under 4ha) and reticulated sewer to be provided.</p> <p>Noted that drainage issues on neighbouring property are being exacerbated by the current farming practices.</p> <p>Drainage issues will be required to be dealt with through the preparation of a Local Water Management Strategy, which is assessed at structure plan stage and then in more detail at the subdivision stage.</p> <p>Lot 1 Old Darwin Road will require a structure plan to support subdivision of Rural Residential lots. If this lot is zoned Rural Residential the landowner will still need to prepare a structure plan and Local Water Management Strategy to address various water issues, including water table, water supply and stormwater management, along with land capability and service provision, included road and drainage</p>
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		<p>Are confused as to why this land is being proposed for Rural Residential when the mapping of priority agricultural land has not been completed and is not in accordance with WAPC policy as outlined in the draft documents. It is evident that it appears to be the only agricultural land (not currently subdivided) being rezoned, and would like an explanation if possible, as to how this came to be.</p> <p>They have observed over the past 2 wet seasons that much of this land becomes water logged, with water sitting for significant periods of time (months). Given an increase in roads and roofs, it can be envisaged that the water logging would increase, further reducing the lands suitability for subdivision.</p> <p>2c) Significant water management issues. Currently, run off from the broadacre farm during the wet season period flows into the back of their property, along the properties in Curlew Close, through to Egret Close, and also the Ramsar Conservation area near Elephant Rock. The concern is that if the proposed development was to proceed (we believe it is 130+ blocks), significant water and waste water management mitigation would have to occur. As water has to flow downhill, this concentrated flow of water (and most likely sewerage given the existing drainage problems on the broadacre farm), would be funnelled into the back of our block, potentially raising the water level on our block and increasing the potential of flash flooding events. We are also concerned that this increase in water volume would upset the delicate ecosystem that currently exists on our block and downstream waterways.</p> <p>2d) Loss of amenity. As stated above, we purchased our block with the specific intention of living a rural lifestyle and not having too many neighbours. We have situated the home that we are currently in the process of building, to take in the spectacular Kimberley landscape that surrounds us. The thought of acquiring 130+ additional houses next to us, including views of their roofs and fences, increased traffic, and noise and light pollution will completely destroy our amenity.</p>	<p>corridors, and access and buffers for bushfire management. Generally, this process results in a variety of lot sizes being provided to address environmental considerations.</p> <p>Acknowledge that the draft Strategy does not recommend rezoning as part of the scheme review, and instead recommends that scheme amendments by private developers will ensure delivery of rural living land, consistent with market demand</p> <p>Recommend that the Old Darwin Precinct be identified as future rural residential in the draft Strategy, however to be zoned as Rural Smallholdings in the draft Scheme.</p> <p>Noted. A key objective of both the Rural Residential and Rural Smallholdings zones is to maintain the amenity of the locality and the conservation and landscape attributes of the land.</p>
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20.	Joanne Cullimore / David Cross, Ord River District Co-operative Ltd	Lot 10 Weaber Plain Road, Kununurra	<p>The proposed rezoning of Lot 10 (formerly 672) Weaber Plain Road from Rural Industry to Local Horticulture does not fit into the current land use and may restrict the business going forward.</p> <p>The proposed rezoning from Rural Industry to Local Horticulture does not fit within our current land use and could be restrictive on expansion activities in the future. We seek a classification similar to the former Rural Industry or more commercial / industrial in nature.</p> <p>ORDCO currently undertakes a number of activities which are not permitted under the proposed re-zoning proposal. These include - diesel fuel outlet, office, car park/commercial vehicle parking (whilst not deemed a car park, the vacant land at the front of our block is often used by trucks and road trains whilst loading produce around the valley). ORDCO holds a dangerous goods license which may be affected by the rezoning proposal.</p> <p>Whilst it is noted that the class of 'Farm Supply Centre' has been included as part of the permitted use, ORDCO is much more than this classification.</p> <p>Please note that ORDCO is fully supportive of the protection of prime agricultural land yet believes that the "prime land" needs to be identified through a suitable survey.</p>	<p>Noted.</p> <p>The Shire was directed to remove the proposed Rural Industry Zone prior to advertising, on the basis that rural industry (Industry – Primary Production) is a land use which can be considered within a number of zones, including the Local Horticulture Zone.</p> <p>DoP are proposing the introduction of a new Rural Enterprise zone into the LPS Regulations, and advised that the Shire may use in place of the previous Rural Industry Zone.</p>
21.	KP & DM Halford	Lots 1 -11 Crossing Falls Road, Kununurra	<p>Property zoned Rural Smallholdings &amp; recently subdivided to create 11 lots adjacent to Crossing Falls Road.</p> <p>During the subdivision process to create the 11 lots, it was advised that the smallest lot size permitted was 4ha, which became the size of the blocks on the final plan. However, in keeping with the proposed zoning in the immediate area, requests Council to reconsider the area for Rural residential, allowing for smaller lot sizes of between 1 and 2 hectares.</p> <p>Considers the major difference between the existing Rural Smallholdings and proposed Rural Residential zones is to ensure that adjoining and surrounding agricultural uses are protected with appropriate separation form residential</p>	<p>Noted.</p> <p>The Rural Residential and Rural Smallholdings zones are in accordance with the new LPS Regulations also stipulate objectives and requirements for 'zones'.</p>

			<p>development. States that since 2012 no commercial agricultural pursuits have taken place anywhere in the area, with the closest commercial property to the land located in Packsaddle. Provided a letter from DAFWA (8 May 2007), advising that the subject site "as being less than 50% suitable for potential for irrigated agriculture", and therefore considers there is no reason that the land should be zoned differently than the surrounding area. The draft LPS notes a strong desire for this type of housing option (Rural Residential) with large lifestyle lots in good proximity to town, and considers that Lots 1 -11 (rezoned and subdivided into smaller parcels) would offer this.</p> <p>Two of the 11 lots have been purchased, and the new owners have no objection to the property being zoned Rural Residential, and their current use and development of the land would not contravene this.</p> <p>Consider that providing smaller rural lifestyle lots could encourage residents to make the Shire their permanent home and enable people to build their dream home in a rural location.</p> <p>State that the biggest stumbling block to the sale of the lots is their size. The majority of people interested in a rural lifestyle want more space than a residential lot in town provides, however do not want to have so much land that all their time is taken up on land management.</p> <p>State that potable bore water has easily been found in the area, with good flow rates and no issues with sediment or quality, and have received good feedback on other benefits of the lots including: ease of access, sealed road frontage, soil type, general location, lack of noise and nearby river access. However, although there has been a lot of interest in the lots, very few buyers want more than 1 ha of land, or can afford a larger and higher priced lot.</p>	<p>The main difference between these is lot size, and that a greater range of land uses may be approved in the Rural Smallholdings zone.</p> <p>It is acknowledged that the Draft Strategy states that "rezoning as part of the scheme review is not recommended; instead scheme amendments by private developers will ensure delivery of rural living land, consistent with market demand", and that Scheme Amendments to rezone land for rural smallholding or rural residential developments should be supported by structure plans and local water management strategies (LWMS) consistent with Better Urban Water Management.</p>
22.	Margaret O'Neill	Lot 455 Crossing Falls Road, Kununurra	<p>Notes that the proposed zoning change for Crossing Falls is from 'Rural Living' to 'Rural Residential'. Rural Residential stipulates lot sizes from 1ha -4ha, however there are at least 6 properties within Crossing Falls (riverfront properties) under the minimum 1ha size.</p>	<p>Noted. The change from Rural Living to Rural Residential is simply in name to be consistent with the terms used in State Planning Policy 2.5 &amp; the LPS regulations. The intent of the zone remains the same,</p>

23.	Jeanne Barnes	6 Milkwood Street, Kununurra	<p>As a home owner, does not support the proposed rezoning of Lakeside properties. Concerned that:</p> <ul style="list-style-type: none"> <li>▪ the property values will be negatively affected, which has already occurred due to the economic downturn;</li> <li>▪ high density housing could exacerbate existing social issues.</li> </ul> <p>Notes that there is a large area of land in Lakeside which has infrastructure but as yet, no building – suggests only this area be earmarked for high density housing. Considers there are many other options, and that changing the zoning on existing properties is not the answer.</p>	<p>however a clear minimum is set, to reflect the majority of lots in the area and to restrict further subdivision.</p> <p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside.</p>
24.	Vina Goulden	Lot 468 Crossing Falls Road, Kununurra	<p>Notes that Crossing Falls is proposed to go to Rural Residential, however Lot 468 is under 1ha and does not meet the specified range of 1ha – 4ha for this zone.</p>	<p>Noted.</p>
25.	Melanie Gray, Ceres Farm	Lots 2 & 5 Packsaddle Rd, Kununurra	<p>Request that an investigation be completed which identifies prime agricultural land in the Ord River Irrigation Area. Currently, don't believe the Shire can effectively deal with any development proposals without knowing where the best agricultural land is. As such, unwanted land use conflict occurs.</p> <p>By 'prime' means land which is better than the land which it is being compared to. This would be predominantly by soil surveys. Some data on the soils would be available from the Department of Agriculture, as well as many local farmers who have had soil scientists come and evaluate their land.</p> <p>Zoning needs to be sustainable for the valley as agriculture land is the source of food and fibre requirements for living. Currently land use conflicts occur when developments are too close to agricultural land.</p> <p>Farming involves the use of gas guns (to scare away birds), spray planes and load machinery which cause nuisance such as noise, dust, spray drift, and if neighbours are too</p>	<p>Noted.</p> <p>The draft Strategy recommends identification of PAL and development of appropriate policy.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

			<p>close the farming operations can be impacted. Biosecurity is another major issue. Considers that as it currently stands, land use conflict is going to increase without being able to identify the prime agricultural land.</p> <p>In general, the higher the density of the population in an agricultural area the harder it is to farm. And, usually, the farmer is the one affected and is forced to stop their activities, even with economic losses involved.</p> <p>States there is a huge amount of evidence across the state and nationally that when incompatible land uses are placed together, land use conflict occurs. To try and prevent this, believes prime agricultural land needs to be identified, and needs to be used SOLELY for agriculture.</p> <p>Agriculture provides a sound economic base now and into the future especially with the world predicted to triple its food consumption by 2050. It would be great if we could all try and protect this valuable industry together.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
26.	Frances Kofod	20 Ironwood Drive, Kununurra	<p>Does not support proposed rezoning of residential land in Lakeside which would allow multiple dwellings on lots in Lakeside.</p> <p>Lives in Ironwood Drive, and dislikes what is happening all around the property, and considers that the demolition of single houses to allow redevelopment of two or three dwellings on the one lot should not be permitted in this area (Ironwood Drive) or Lakeside.</p> <p>States that in many cases old single houses, including many Homeswest houses, are demolished and established trees removed, to be overdeveloped with two or three houses without adequate provision for a yard. The style of housing replacing the old houses is also likely to be hot without air-conditioning, and do not provide space for children to play.</p>	<p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside.</p>
27.	Stephen Woodhead	2 Milkwood Street, Kununurra	<p>In relation to the proposed rezoning in Lakeside to denser housing R code, recommends leaving zoning density as is.</p>	<p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside.</p>

			<p>Considers that the higher density housing in old areas of Kununurra township (where one house is demolished and being replaced by two and three dwellings) is creating slum areas. These areas start off OK but in a couple of years seem to deteriorate badly.</p> <p>Previously owned a property in Carbeen Street, and higher density housing was spreading towards this area, along with anti-social behaviour. Considers that there has been further deterioration of the appearance and social 'feel' of this area.</p> <p>Would not normally object to a higher density R Code, but considers that in Kununurra the social dynamics do not function well in this situation.</p> <p>Also does not consider there is a shortage of land that require a higher R Code than existing in established areas of Lakeside.</p>	
28.	Paul Mock, The Sandalwood Sanctuary	Lot 231 Ivanhoe Road, Lot 246 & 649 Research Station Road, Kununurra	<p>Grows sandalwood, which would come under the definition of Tree Farming used in section 4.12 as an example of a "inappropriate land use" for priority agricultural land.</p> <p>Is greatly concerned how this definition could potentially prevent growing a crop which has been the most profitable in 20 years of farming in the Ord Valley.</p> <p>Currently grows sandalwood on a Rural Ag 1 property, which would presumably come under this definition of "inappropriate use".</p> <p>Queries what standard is used to classify tree farming as inappropriate on priority agricultural land &amp; what other things are included. Queries whether it is because tree farming:</p> <ul style="list-style-type: none"> <li>▪ is not edible</li> <li>▪ is not high value</li> <li>▪ has low employment value</li> <li>▪ is preventing other crops being grown</li> </ul> <p>Notes that cotton, hemp &amp; other agricultural products aren't edible either.</p> <p>States that the sandalwood:</p>	<p>Noted.</p> <p>Recommend modifications to the Strategy 4.12 to acknowledge the existence of tree farming and its importance to the economy. State Planning Policy 2.5 states that tree farms should generally not occur on priority agricultural land (but not that it is inappropriate)</p> <p>The DoP consider in SWEK it is reasonable for the Shire to continue to allow tree farms on agricultural land (as encouraged by DAFWA).</p>

			<ul style="list-style-type: none"> <li>▪ Is returning better income per hectare than any of his previous crops such as dairy, sugarcane, chickpeas or chia.</li> <li>▪ Is the highest employment source in town at the moment. Personally employs 4 people in comparison to 1 person when he grew sugarcane.</li> <li>▪ can be pulled out and other crops grown instead at anytime. Considers the market is already saturated with horticulture and if all the sandalwood farms switch to horticulture, prices would crash and result in a financial loss.</li> </ul> <p>States that if other "priority agricultural production" was more profitable, then he would change.</p> <p>Worried that, as it stands, there is a potential in the future to be prevented growing a product that is profitable, high value, high employment &amp; gives people pleasure through production of perfumes, ointments, medical treatments.</p> <p>Recommends that sandalwood and other cabinet timber species should be removed from the definition of "inappropriate land use" and appreciated for the contribution it has made to the community.</p>	
29.	Lindsay Bice	4 Milkwood Street, Kununurra	Does not support proposal to rezone Lakeside, as it may allow subdivision into smaller lots, resulting in increased noise and reduction of property values.	Noted. Recommend to review proposed residential densities for Lakeside.
30.	Department of Lands		Strategy identifies a category of land use for "Natural Resources and Cultural Protection" – would like to see this category used more extensively and possibly applied in the next Scheme. Consider there are direct links to be made between this category and identifying Native Title rights and interests, and may be a possible method of showing areas under a determination which are areas of Exclusive Native Title. Such exclusive areas are not necessarily communities/ settlements but are of significant value to Aboriginal people. From a tenure perspective, these could include leases under s83 of the <i>Land Administration Act 1997</i> , land reserved for "Use & Benefit of Aboriginal Inhabitants/Persons" and smaller communities which are	Noted and agreed. A similar land use category has been incorporated in Broome and Halls Creek Strategies and the DoP are supportive of a Cultural and Natural Resources reserve or zone being included in the Scheme as a regional variation.

			<p>not able to be shown as Settlement, but independent of the proposed Rural/Pastoral zone.</p> <p>Consider the definition of Settlement needs to include more detail on why some communities are identified and others are not, as there are some small communities with Layout Plans which are not zoned Settlement and other communities without Layout Plans that are.</p> <p>Consider there is value in planning for the Lake Argyle Development Area, however that the Scheme Map has no value as currently depicted. Recommend that the cadastre be updated, the zoning boundaries realigned and the current existing uses be included.</p> <p>N.B. The Department of Lands also proposed a table with specific recommendations for changes to the Scheme maps.</p>	<p>Noted. Whether or not a settlement is zoned as Settlement is normally based on criteria in State Planning Policy - Aboriginal settlements, or whether or not the settlement can be easily shown on the Scheme maps i.e. remote settlements are often a small portion of a larger land parcel or not easily discernible on a small scale map.</p> <p>Agree that the Scheme map showing the Lake Argyle development area should be modified.</p> <p>Note the table of specific Scheme map recommendations provided</p>
31.	Tourism Western Australia		<p><u>Local Planning Strategy (LPS)</u></p> <p>In determining the land and the planning requirements of tourism for the Shire's future, the LPS does not draw significantly upon findings from the various tourism assessments and initiatives undertaken over the past decade, which provide valuable insight to the tourism industry and tourism needs in the Shire, including the <i>East Kimberley Tourism Plan 2022 (EKTP)</i>, components of the Kimberley Science and Conservation Strategy, accommodation needs assessments for Kununurra, and studies into demand for and supply of caravan parks</p> <p>The LPS also does not present an in depth assessment of tourism activity and its contribution to the economy, the environment and the community in accordance with the WAPC's Tourism Planning Guidelines (2014), designed to assist local government in preparing tourism components of local planning strategies, and Planning Bulletin 83 which recommends that local governments give due consideration to tourism within its local planning strategy to establish a land use planning framework for tourism that is relevant to the locality.</p>	<p>Noted.</p> <p>Recommend that an additional section be added in Part 1 and additional text will be added to Part 2 – local economy, to outline the importance of tourism a major industry for the Shire, which should continue to be supported by the Shire and facilitated through the planning framework where possible.</p>



			<p>normally considered the 'ideal' outcome from a tourism perspective and should not be an objective for this zone.</p> <p>Recommend that objective (iv) 'to provide for limited permanent residential accommodation on tourism sites' is deleted, as provision for this is addressed in clause 4.25 'Tourism Zone Development Requirements' which specifies that a maximum of 40% of total number of accommodation units may be used for permanent residential purposes.</p> <p>It is recommended that 4.25.6 be reworded as its purpose is unclear.</p> <p>The Tourism Planning Guidelines provide standard definitions for tourism use classes not already included in the Model Scheme Text, which has not been adopted in the draft Scheme text. Noted that definitions for eco-tourist facility, lodge or tourist resort have not been included, and may be considered appropriate for the Shire, and are recommended to be included.</p> <p>Tourism WA's preference is for caravan parks to be zoned 'Special Use – Caravan Park' or similar, to protect the site for redevelopment to a higher and better use. It is recognised however that where caravan parks are privately owned and currently zoned 'Tourism', rezoning to a specific caravan park zone may not be supported.</p> <p>Acknowledge the lots fronting Victoria Highway (Kununurra), which enjoy a lakefront aspect and good access, are proposed to be retained in the tourism zone however that many are occupied by non-tourism uses which may be classified as non-conforming. Tourism WA Supports the recommendation in the LPS to relocate general industrial premises from this area.</p>	<p>Agree that objective (iv) is not required and recommend that it can be removed.</p> <p>Noted. Recommend to review clause 4.25.6 to provide clarity.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
32.	Brendan Pettit, Housing Authority		<p>Represent the Aboriginal Housing Services (AHS) division of the Housing Authority. AHS is responsible for delivering and managing housing and essential service infrastructure in remote Aboriginal communities. AHS also own residential land in Kununurra and Wyndham town sites to house Indigenous tenants relocating from remote areas for education and employment.</p>	<p>Noted.</p> <p>DoP supports the inclusion or amendment of the proposed settlements in the Scheme. Existing Settlement Zone based on cadastral boundaries and not those identified in the Layout Plans.</p>

		<p>The DoP, under a MoU, assist AHS through the preparation of planning tools such as Settlement Layout Plans to facilitate the orderly and proper planning in these areas. On review of the Draft LPS No. 9 maps, AHS have noted the following discrepancies with existing Settlement Layout Plans:</p> <p>Wuggubun Settlement – It is recommended that Wuggubun be zoned ‘Settlement’ in the draft LPS9 with the boundaries being in accordance with the Recommended Settlement Zone identified in the Wuggubun Layout Plan 1, Ratified Draft map-set.</p> <p>Wijilawarrim Settlement (Molly Springs) – It is recommended that Wijilawarrim (Molly Springs) be zoned ‘Settlement’ in the draft LPS9 with the boundaries being in accordance with the Recommended Settlement Zone identified in Wijilawarrim Layout Plan 1 map-set.</p> <p>Jimbilum Settlement – The area proposed to be zoned ‘Settlement’ in the draft LPS9 does not align with the Recommended Settlement Zone identified in Jimbilum Layout Plan 1. It is recommended that the Settlement boundary be realigned accordingly.</p> <p>Nullelywah Settlement – The area proposed to be zoned ‘Urban Development’ in the draft LPS9 does not align with the Recommended Settlement Zone identified in Nullelywah Layout Plan 1. It is recommended that the Urban Development boundary be realigned accordingly.</p> <p>Mirima Settlement - The area proposed to be zoned ‘Urban Development’ in the draft LPS9 does not align with the Recommended Settlement Zone identified in Mirima Layout Plan 1. It is recommended that the Urban Development boundary be realigned accordingly.</p> <p>Warrayu Settlement – The area proposed to be zoned ‘Settlement’ in draft LPS9 does not align with the Recommended Settlement Zone identified in Warrayu Layout Plan 1. Also, given the location of this property on the edge of the Wyndham town site, it is recommended that the zoning of this area change to ‘Urban Development’, and</p>	<p>DoP will be undertaking mapping changes when required (after Final Approval), as such can map settlement zones in line with the recommended settlement zone identified in each layout plan.</p> <p>In relation to the town based settlements of Nullelywah and Mirima which are proposed to be zoned Urban Development in the draft Scheme, again the Department of Housing has recommended that the proposed zone should align with the respective layout plans.</p> <p>The Urban Development zone identifies the requirement to undertake detailed investigation through the preparation of a structure plan prior to subsequent rezoning, development or subdivision of land. As such, the ultimate zoning of the land is likely to be a mix of different zones and reserves, and it is appropriate for the whole land parcel to be zoned Urban Development until structure planning has been undertaken.</p>
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			<p>the boundary be realigned in accordance with the Layout Plan map-set.</p> <p>The Housing Authority would request that the above recommendations to the various 'Settlement' and 'Urban Development' zones be incorporated into LPS9 to ensure the appropriate delivery of housing and services to these Settlements.</p> <p>Furthermore, AHS is also currently involved in the delivery of affordable housing options for Indigenous tenants in Kununurra and Wyndham town sites. The AHS division supports the proposal to increase residential densities in Wyndham and Kununurra. This will result in greater housing diversity and affordability and is in line with the State Affordable Housing Strategy 2010 – 2020.</p>	
33.	Debra Davidson	Lot 266 Packsaddle Road, Kununurra	<p>In reference to the draft LPP that was prepared in relation to development approval on the proposed Environmental Conservation Reserve for properties along Packsaddle and Jabiru road, object to the following:</p> <ul style="list-style-type: none"> <li>▪ Clause 2.4 – which recommends uses Council may consider within the reserve.</li> <li>▪ Landowners being able to build dwellings of any kind on the land to be zoned 'Environmental Conservation Reserve' as this portion of land is in front of the already established houses/dwellings, which are generally in line with each other.</li> </ul> <p>Reasons for opposing the above are as follows:</p> <ol style="list-style-type: none"> <li>1. Noise and dust: Any dwellings that are built past the already established dwellings would need to have driveways going past the established homes so would cause considerable dust and noise issues.</li> <li>2. Privacy: The privacy of already established dwellings would be compromised as the back yard of the new dwellings would look into the pergola's/sitting/pool areas of the established dwellings.</li> <li>3. Noise: Noise from the pergola's/sitting pool areas of the already established homes would travel forward to the dwellings in front. The water pumps for each landowner are also at the waterfront and need to be</li> </ol>	<p>Noted.</p> <p>The DoP have recently advised that the freehold portions should be a zone and not a reserve, however recommend that either a SCA is implemented, or a separate zone is used, such as 'Environmental Conservation Zone'.</p> <p>The Shire has the following options:</p> <ol style="list-style-type: none"> <li>1. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Local Horticulture, with a Special Control Area to be created over the reserve and portion of the Local Horticulture zone.</li> <li>2. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Environmental Conservation Zone, and include development provisions in the Scheme and a supporting local planning policy.</li> </ol> <p>Recommend this matter be reviewed.</p>

			<p>accessible to check when needed and not constrained by noise being too loud for homes too close to the water.</p> <p>4. Biosecurity: Farmers have stated over the past 12 months how concerned they are for people who live in the rural agricultural areas to follow a biosecurity plan which they should all strictly follow themselves, so building dwellings so close to the water would cause some concerns.</p> <p>States that when the two adjoining neighbours on Lot 267 and Lot 265 did not object to the chalet application on Lot 266, this was on the basis of the chalets being out of their view. Therefore is sure that the neighbours would not want the chalets to be moved onto the reserve in the future by either current or future owners.</p>	
34.	Michael Gasmier	3 Cycas Close, Kununurra	<p>Lots from Lakeside Stage 7 Residential Land Release remain unsold; partially developed. Believes that this is due to the fact the lot sizes are so small (about 350m2). Lily Creek residential Land release is pending. I believe there is sufficient land currently available to sell, which can be zoned for multiple dwelling development, should this be required. Should there be no more residential land available, then understandably, raising R codes is logical. However considers there is plenty of land available.</p> <p>The community has indicated larger lots and rural residential is what is wanted - increasing residential zoning as a blanket measure is the direct opposite of that. If individuals want to subdivide, then they can apply to do so on an individual basis. I object to this change over my lot.</p>	<p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside.</p>
35.	Silke Becke & Robert Parsons	85 Egret Close, Kununurra	<p>Generally, support a forward view, however believe that he documents are too optimistic, premature and not realistic.</p> <p>This point of view is due to current downturn in the economy, which has resulted in a number of mine closures, and businesses leaving town or downsizing, and very limited and sales for new industrial lots in Weaber Plain Road, lots in the latest Lakeside stages and new lots in Crossing Falls.</p>	<p>Noted.</p> <p>The Strategy provides the framework for the long term planning of the local government (10 – 15 years) and should provide a mechanism to guide development as the market leads to growth.</p>

			<p>Notes that the availability of water has been considered a major advantage, however is not a guaranteed and unlimited resource, therefore foresight is required as to how much usage this source will be able to support into the future.</p> <p>Considers the ever increasing social conflicts to be one of the major disadvantages of the region, and is detrimental in attracting new residents.</p> <p>Queries whether proposed rezoning of properties from "rural Ag 2" to "rural Residential" is simply for the Shire to increase rates revenue, and what if any increase to services or benefits would result of proposed zoning changes.</p> <p>In relation to Egret Close area, are concerned whether the water table will be able to cope with the proposed density of residents if all the land can be subdivide into 1ha lots. All lots would also need to have their own bore and septic system which could present a larger problem, with the clearance required from the water table.</p> <p>Also concerned with run-off surface water, and reduction in surface area for water to soak into and the soil profile, and considers that risk of flooding in Emu Creek would be extremely high in the right circumstances. In particular the adjoining farm (Lot 1) would require a lot of drainage infrastructure in order to prevent water spilling into neighbouring properties.</p> <p>Do not support rezoning at this point in time and query why an additional 17000 people would come to Kununurra.</p>	<p>Noted. The Strategy recommends that regional and district water management strategies be developed for townsites and urban expansion areas.</p> <p>Noted. Social conflicts are not issues that can be resolved by the Strategy.</p> <p>Possible areas for rural residential and rural smallholdings development were identified in the draft Strategy in consultation with DAFWA. These areas were generally located along serviced corridors into Kununurra to provide for efficient services of lifestyle lots.</p> <p>Noted. A local water management strategy and land capability assessment would be required to be developed to support rural residential subdivision.</p> <p>A reticulated water supply is required for lots under 4ha and reticulated sewer may be required to be provided in the instance of high water tables.</p> <p>Recommend that the Old Darwin Precinct be identified as future rural residential in the draft Strategy, however to be zoned as Rural Smallholdings in the draft Scheme</p>
36.	Terry Howe	10 Cycas Close, Kununurra	<p>Very concerned about the proposal to increase the density of housing, which is a no 'through' area and far away from the service centre of the town.</p> <p>Purchased the property based on a R15 zoning, however there is already a number of dual/multi dwellings on the street, which creates noise, safety &amp; parking issues.</p>	<p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside.</p>
37.			<p>Objects strongly to the rezoning of areas of Lakeside.</p>	<p>Noted.</p>

	Allan Wedderburn (2)	10 Cypas Close, Kununurra	<p>Purchased property in area based on the current R15 zoning. Considers any further subdivision will detract from the area due to increases noise, traffic and a reduction property prices and safety.</p> <p>Convention is for 'inner' suburbs closer to the 'CBD' to have higher zoning, not outer residential areas.</p> <p>Provided results of a facebook survey which asked "Do you want higher density housing in Lakeside?"</p> <p>East Kimberley Community Forum:  No – 36  Yes – 1</p> <p>Kununurra Community Notice Board:  No – 33  Yes – 5</p> <p>Note that some people may have polled on both, however that the message is "no" more higher density housing in Lakeside.</p>	Recommend to review proposed residential densities for Lakeside.
38.	Department of Water		<p><u>Local Planning Strategy</u></p> <p>Acknowledges that previous comments have been adopted in part.</p> <p><b>Whole of Shire</b></p> <p><b>Remote Communities</b> (pg 9)– Reiterates the importance of sound community layout planning including water infrastructure planning to protect drinking water supplies and flood risk mitigation.</p> <p><b>Environment</b> (pg 12)– Supports stipulation of buffers to sensitive water resources. The document suggests a 50m buffer be applied, which is adequate in many circumstances but this is highly dependent on the proposed land use and the biophysical nature of the waterway and foreshore area. The primary objective of providing a buffer is to limit run-off of sediments or pollutants, and to maintain naturally vegetated areas to protect waterways. Recommend that the biophysical criteria assessment undertaken by DPaW and</p>	<p>Noted.</p> <p>Noted.</p> <p>The Shire is considering implementing a Special Control Area over portions of the Lake Kununurra foreshore areas to control land use development, which would result in development applications being referred to relevant agencies for comment.</p>

		<p>DoW be used for the Lake Kununurra foreshore areas as it stipulates more relevant buffer distances dependent on proposed land use.</p> <p><b>Water Management Strategy</b> (pg 15) – Supports the recommendation to develop a water management strategy for the Shire at a district level and is keen to be involved in scoping and review. However, it is the responsibility of the Shire to prepare this document.</p> <p><b>Wastewater</b> (pg 15) – most remote communities and small rural holdings are not sewered and this could pose a risk to groundwater and surface water, and needs to be considered in planning.</p> <p>Kununurra Townsite Strategic Land Use Plan</p> <p><u>Opportunity 2</u> – drainage from the light industrial area into the old borrow pits and through to Lily Creek Lagoon should be investigated in the proposed Water Management Strategy.</p> <p><u>Opportunity 6</u> – given the longer term aspirations for urban development on the waterfront (and other infill development right around the Lily Creek Lagoon foreshore) it would be appropriate to consider a study on ecological values and processes to better support management decisions.</p> <p><u>Opportunity 8</u> – development aspirations for the site of the old borrow pits (including residential, tourism and commercial) might have significant constraints given its role in town drainage, potential contamination issues from the light industrial area and the low-lying nature of the area which will require significant site works). These issues would need to be addressed in any proposal for re-development.</p> <p>Water Supply - Agrees with the protection of the P1 area (Key Recommendation 33, pg 36 - 37).</p> <p>Welcomes any opportunity to be involved in a multi-agency group to provide advice with respect to the continued protection of the existing drinking water source area, the identification of any proposed new water supply, and the</p>	<p>The WAPC's Better Urban Water Management guidelines outlines that the preparation of a DWMS is the responsibility of DoW/local government. As a result, the Shire should work closely with the DoW to progress this.</p> <p>Noted. This is considered in the scope of any water strategy done in consultation with the DoW.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted. Any development on the waterfront would be subject to appropriate environmental considerations</p> <p>Noted.</p> <p>Noted.</p>
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		<p>subsequent methodology required to properly investigate a new source.</p> <p>The DoW will continue to support and be involved with any efforts to investigate alternative water sources but reiterates its position that it cannot support any development in the current P1 water reserve until an alternative source is fully proven and in operation.</p> <p>Key Recommendation 31 – Supports the relocation of the Kununurra WWTP and is currently working with all the relevant stakeholders to identify appropriate options.</p> <p>Supports strong planning for better access to Lily Creek Lagoon and the foreshore area, but does not support increased access through the P1 area.</p> <p>Key Recommendation 36 – seeks clarification as to what is meant by “... respond to the <i>recommendations of the Lake Kununurra Biophysical Foreshore Assessment</i>”.</p> <p><u>Kununurra Surrounds</u></p> <p>Opportunity 4 – if general industry is to be located directly adjacent to the lower Ord river appropriate buffers should be established to protect the river from impact.</p> <p><u>Wyndham and Surrounds</u></p> <p>Port Development – industrial waste and stormwater run-off needs to be carefully considered with any upgrades to the Port.</p> <p>Urban Expansion – ensure appropriate supply planning is undertaken in conjunction with any urban expansion early in the planning process.</p> <p><u>Lake Argyle</u></p> <p>A recreational and aquatic use plan should be developed for Lake Argyle to manage tourism, mooring, aquaculture, water supply and recreation pressures. DoW would be keen to provide expert input into any planning effort.</p>	<p>Noted – The Strategy states that this is a long term plan to enable residential, commercial and tourism development in the area.</p> <p>Noted.</p> <p>Noted</p> <p>This recommendation acknowledge that a biophysical criteria assessment has been undertaken on parts of the Lake Kununurra foreshore which should be considered in relation to any redevelopment.</p> <p>Noted.</p> <p>The LPS recommends that regional and district water management strategies be developed for townsite and urban expansion areas.</p> <p>Noted.</p>
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		<p><u>Consolidated Key recommendations</u></p> <p>Regional and District Water Management Strategies (DWMS) – It should be identified as the responsibility of the Shire to prepare a district water management strategy to address water issues. DoW can support the scoping and review of a strategy.</p> <p>Alternative water supply – the current town water supply bore field is adequate for the medium term growth of Kununurra and provides a very good quality supply. It is not the intention or priority of the DoW to pursue identification and development of an alternative supply. DoW will support any process initiated with expert advice and public drinking water source protection planning. The responsibility must be changed to reflect this.</p> <p><u>Local Planning Scheme</u></p> <p><b>Development Setbacks from surface water sources</b> – Supports stipulation of buffers to sensitive water resources.</p> <p>Notes the Scheme suggest a 50m buffer be applied to any development from the Lake Kununurra wetland boundary. This is adequate in many circumstances but is highly dependent on the proposed land use and the biophysical nature of the waterway and foreshore area. The primary objective of providing a buffer is to limit run-off of sediments or pollutants, and to maintain naturally vegetated areas to protect waterways.</p> <p>Recommend that the biophysical criteria assessment undertaken by the DPaW and DoW be used for the Lake Kununurra foreshore area as it stipulates more relevant buffer distances dependent on proposed land use. These areas could be identified as Special Control Areas (SCAs) on the scheme maps to allow for appropriate setbacks to be achieved during developments.</p> <p><b>Domestic water supplies</b> - Believes that the minimum 120,000L rainwater tank to be provided where a reticulated water supply is unavailable (Clause 4.14) may represent an inadequate supply given local estimates for an average household under normal living conditions. This should be</p>	<p>The WAPC's Better Urban Water Management guidelines outlines that the preparation of a DWMS is the responsibility of DoW/local government.</p> <p>As a result, the Shire should work closely with the DoW to progress this.</p> <p>Noted.</p> <p>Noted.</p> <p>The biophysical criteria assessment undertaken by the DPaW and DoW for the Lake Kununurra foreshore area was used as the basis of the provisions in Schedule 1 of the draft Scheme, and to determine the wetland boundary.</p> <p>Noted. It is acknowledged that where there is no water available, water supply is generally provided via a mix of ground or surface water, and rainwater.</p>
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		<p>investigated further for developments where a connection to a water service provided is not available.</p> <p><b>Wastewater treatment</b> - Within Part 4 of the Scheme, there needs to be wastewater treatment system requirements for developments where connection to reticulated sewage is not available. Where developments occur within 50m of the Lake Kununurra foreshore area a septic system is typically not suitable. Water quality protection note (WQPN) 70 – Wastewater treatment and disposal – domestic systems</p> <p><b>Commercial Boat Facility</b> – suggests that more specific conditions are applied to the Commercial Boat Facility in regards to wastewater treatment and setbacks so a consistent approach can be applied to all development within that facility.</p> <p><b>Stormwater, storm surge and flood management – DoW</b> provided some previous advice on what should be included in the Scheme in regards to flooding and stormwater management. It does not appear to have been incorporated in the draft Scheme, and DoW reiterates its advice that the Scheme should include provisions that require flood investigations to be conducted prior to planning and development in areas suspected to be at risk.</p> <p>Suggest a special control area could require building development or earthworks to obtain planning approval and specify further development requirements including: minimum floor levels, measures to protect foundations, restrictions within the floodway, and requirements for notifications on title. The <i>Stormwater Management Manual for Western Australia and the Decision Process for Stormwater Management</i> contain guidance on current best management practice.</p>	<p>Noted.</p> <p>Noted. Recommend that a condition be included to outline that the area will require a land capability assessment to be undertaken for onsite sewerage disposal.</p> <p>The Shire is in the process of undertaking a flood management assessment for Kununurra.</p> <p>Recommend additional information be included in the Strategy regarding the drainage issues within the Kununurra townsite and the flood management assessment being undertaken.</p> <p>Once flood mapping has been undertaken, relevant information can be incorporated into the Scheme.</p> <p>In the interim structure planning and preparation of a local water management strategy would be required to be conducted prior to planning and development in areas suspected to be at risk of flooding.</p>
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39.	Jim Engelke	Lot 5 Packsaddle Road, Kununurra	<p>Considers that the dual zoning of Packsaddle properties and the proposed renaming of the area as 'Environmental Conservation Reserve' has a strong flavour of anti-development, and in the future will be interpreted to become conservation park and subsequently development rejected.</p> <p>The title of Environmental Conservation Reserve implies that there is land worthy of conservation, which may be the case in some instances, however in many instances has been cleared or altered to a point where conservation values have been substantially diminished.</p> <p>Owners of Packsaddle properties in many cases have purchased portions of the foreshore area in freehold. Consider that if the Shire adopts the proposed 'Environmental Conservation Reserve' they are reducing the value of the land through inappropriate zoning, and exposes owners or the Shire to future obligations under a re-interpretation of the Environmental Conservation Reserve.</p> <p>States that a real example of this exists in the Ord Stage 2 Goomig development, where land set aside as buffer has since been reinterpreted as a conservation park and the conditions imposed on this parcel of land are greater than the State imposes upon its own legitimate Conservation Reserves.</p> <p>Considers that a clear message of 'no development' is being conveyed by adopting the nomenclature of 'Environmental Conservation Reserve'. The vast majority of lake Kununurra foreshore will not and must not be developed.</p> <p>States that if the Shire is committed to a growth strategy for the region then leaving development options open should be the preferred position, not actively shutting them down. Considers that development along the lake Kununurra foreshore in time will become an important attraction to the region and it would be disappointing and indeed negligent if this opportunity was prevented through poor decision making.</p>	<p>Noted.</p> <p>The DoP have recently advised that the freehold portions should be a zone and not a reserve, however recommend that either a SCA is implemented, or a separate zone is used, such as 'Environmental Conservation Zone'.</p> <p>The Shire has the following options:</p> <ol style="list-style-type: none"> <li>1. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Local Horticulture, with a Special Control Area to be created over the reserve and portion of the Local Horticulture zone.</li> <li>2. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Environmental Conservation Zone, and include development provisions in the Scheme and a supporting local planning policy.</li> </ol> <p>Recommend this matter be reviewed.</p>
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40.	Aboriginal Lands Trust		<p>Glad that the Scheme and Strategy recognises the significant role that local government planning and service delivery has in providing an improved economic opportunity and social outcomes for Aboriginal people in the Shire.</p> <p>In particular note:</p> <ol style="list-style-type: none"> <li>1. Acknowledgement of land for the use and benefit of Aboriginal people within the Scheme, and the inclusion of ALT held land within the Urban Development, Rural Pastoral and Settlement Zones; and</li> <li>2. The requirement for the development and implementation of Layout Plans (in accordance with State Planning Policy 3.2) for existing and proposed Aboriginal settlements.</li> </ol>	Noted.
41.	Lorre Daniel	54 Koolama Street, Wyndham	<p>Property is currently zoned Residential R15 and proposed to be rezoned to Rural Townsite with special uses and no obvious R code.</p> <p>Would not like to see group or multiple dwellings or business built in this area which could result in excess noise, rubbish and traffic (both foot and vehicle) increased, especially overnight.</p> <p>Considers there is enough commercial property available in the original town centre (Koolinda Street) which has parking facilities and would keep businesses closer together for easier public access.</p> <p>Would like the Shire not to allow the Government housing commission to build group or multiple dwellings along Great Northern Highway as they do not install front fences and poses a danger with groups of children playing on or near the main road.</p> <p>Considers there are plenty of lots around town to build houses on without overcrowding any area. Want people to come and stay, not be driven out by excessive noise.</p>	<p>Noted.</p> <p>Recommend review residential land proposed to be rezoned to Rural Townsite.</p>
42.	Rhonda & Ross McDonald	49 Great Northern Hwy, Wyndham	<p>Comment on the proposed rezoning of areas for 'Rural Townsite' in Wyndham.</p> <p>States that the current shopping centre (Town Centre) in Koolinda Street has numerous lots that have been vacant</p>	<p>Noted.</p> <p>Recommend review residential land proposed to be rezoned to Rural Townsite.</p>

		<p>for 20 years, therefore does not believe more land needs to be included.</p> <p>States that as it is proposed to rezone land between Timor and Cambridge Streets, which is currently zoned Residential R15, many lots on both sides of Great Northern Highway will be left without any effective Residential Design Code (R Code).</p> <p>Strongly considers that any housing development along the highway should be required to comply with the current R15 single dwelling requirements. This can be achieved by either retaining the current Residential R15 zoning, or specifying a residential code of R15 for the proposed Rural Townsite zone.</p> <p>Main concern is that multiple/group dwellings should not be approved in this area and considers it is not suitable for a main road.</p> <p>Has a house adjacent to two empty houses owned by the Department of Housing, which are planned for demolition, and an empty Shire property to the rear, and are concerned by the development that may be established on these properties.</p> <p>States that group dwellings have been constructed along the highway, Dorrigo and Duiverton Streets which have caused a number of problems which can be confirmed with relevant agencies.</p> <p>Understands that the Department of Housing are not required to comply with the Shire planning requirements, however requests that the Shire does everything in their power to compel the Department to consider these issues and the concerns of Wyndham residents.</p> <p>In relation to any commercial development within the proposed Rural Townsite zone, trusts that resident's opinions would be sought, and that the approval of any rural enterprise would require formal consultation with homeowners.</p>	
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43.	Department of Mines and Petroleum	<p>The DMP has assessed these documents with respect to access to mineral and petroleum resources, geothermal energy, and basic raw materials.</p> <p>Recommends that Council adopt the following strategies regarding mineral resources in their planning:</p> <ol style="list-style-type: none"> <li>1. Operating mines and quarries should be protected from sterilisation or hindrance by encroachment of incomplete adjacent development.</li> <li>2. Known resources and areas of identified high resource potential should not be unnecessarily sterilised by inappropriate zoning or development.</li> <li>3. Access to land for exploration and possible development should be maintained over as much of the planning area as possible.</li> </ol> <p>Consistent with Section 5.7 of State Planning Policy No. 2 Environment and Natural Resources, the important mineral resources and basic raw materials within the Shire should be identified and protected. DMP therefore suggests that the Strategy contain comments on geology, mineral resources and basic raw materials within the Shire.</p> <p>Recommend including the following comment on geology:</p> <p><i>The East Kimberley region has a complex history dating back more than 2.5 billion years. The formation of the oldest rocks in the region began with the deposition of sediments and the outpouring of volcanic lava. A continental collision uplifted and eroded the oldest rocks between 1.80-1.83 billion years ago, together with the deposition of sediments. Additional sediments were then deposited in the Kimberley Basin by a major river system flowing from the north. The resultant sedimentary rocks now underlie much of the Kimberley Plateau. Over the last 1.8 billion years, the Kimberley has periodically become geologically active with evidence of further deposition in basins and folding and faulting of the resultant sedimentary rocks.</i></p> <p><i>In the Neoproterozoic, between 700 and 600 million years ago, the Kimberley was subjected to glaciations. The</i></p>	<p>Noted.</p> <p>Recommend that additional text be included in local economy profile relating to mining to note the importance of the industry, but the limitations that the scheme has to address mining matters.</p> <p>Noted. SPP2.4 – Basic Raw Material is considered in Part 2, section 3.1.</p> <p>Noted and agreed. Recommend to add new text to part 2 – geology and landform.</p>
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		<p><i>resulting glacial deposits and evidence of the passage of ice sheets are well preserved.</i></p> <p><i>About 550 million years ago, the Halls Creek Fault in the east Kimberley became active as part of a system of faults with horizontal movement. This was followed by outpouring of extensive flows of basalt lava before establishment of shallow seas in the Cambrian period (540 to 490 million years ago) when the variety of life living within oceans grew significantly. Many fossils of this period have been preserved.</i></p> <p><i>About 375 million years ago, during the Devonian period, seas deepened and a series of barrier reefs began to form. The reefs fringed three sides of a land mass formed by the Kimberley Plateau. On the fourth side, the Halls Creek Fault again became active and erosion formed sandstones and conglomerates seen in the Bungles Ranges and at Hidden Valley. A period of glaciation between 310 and 270 million years ago during the Permian period affected much of Australia and sedimentary rocks buried the Devonian reefs. Deposition of sandstone, siltstone and conglomerates in shallow seas and rivers has continued through to the present in the Canning basin and areas around the present day Bungles and Osmond Range."</i></p> <p><i>There are a total of 39 operations for Basic Raw Materials (BRM) within the Shire, and the majority of these are gravel and sand deposits. Consider that all these areas warrant consideration in the Strategy for long term use and protection from conflicting land uses. This is outlined in Section 5.9 of draft State Planning policy 2.5.</i></p> <p><i>Section 120 of the Mining Act states that local planning schemes and local laws are to be considered but do not derogate from the Mining Act. Recommend that no comments be made in the Local Planning Strategy in regards to constraining or providing for mining operations, although it will be important to identify particular areas of known resources within the Strategy.</i></p> <p><i>Information on Mining Act tenements and Petroleum and Geothermal Energy Resources Act 167 titles is available from the Department's website, and is recommended that</i></p>	
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		<p>the shire consider using these systems in land use planning studies.</p> <p>It is important for areas of potential resources, or existing mineral and petroleum resources and BRM that will last for a number of years to be identified in the Strategy and protected in the scheme. This protection is to minimise conflict between future mining activities and incompatible development such as new residential or industrial areas.</p> <p>Appropriate separation distance should be established to protect mineral resources and BRM, which will allow the Shire to seek to protect the amenity of landowners and ensure the longevity of strategic resource extraction in the Shire. DMP recommend separation distances as per the EPA's "Guidance for the Assessment of Environmental Factors".</p> <p><u>Local Planning Scheme</u></p> <p>Mining operations are authorised under the Mining Act, and Section 120 of this Act states that local planning schemes and local laws are to be considered but do not derogate from the Mining Act.</p> <p>Recommend that no comments be made in the scheme or zoning table in regards to constraining or providing for mining operations unless there are pre-1899 'mineral-to-owner' lands within the Shire. In such circumstances DMP recommend a clear statement that this only applies to those freehold lands where the mineral rights are owned by the land owner not the Crown.</p> <p>Recommend that 'Industry-Extractive' be noted in the Shire's Zoning Table as a 'P' permitted use for all areas zoned 'Rural'.</p> <p>Notes that large areas of the Shire, mainly vacant crown land (vc) have been shown as "Environmental Conservation Reserve" in the Scheme maps and labelled as "Cultural and Natural Resource Use" in the Strategy, Figure 1. Many of these areas are required for current and future exploration and mining activities that will be needed to help sustain and grow the local economy. Therefore, consider it inappropriate to map such large areas as</p>	<p>Noted.</p> <p>Industry –Extractive is not permitted in the Local Horticulture, Rural Smallholdings or Rural Residential to the size of the lots.</p> <p>Noted. The Shire is proposing to incorporate a new "Cultural and Natural Resource Use" reserve into the Scheme, to be used in relation to areas that are not pastoral, and also not conservation reserves.</p>
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			<p>reserves for “Environmental Conservation” unless they are already conservation reserves under the <i>Conservation and Land Management Act 1984</i>.</p> <p>The Argyle Diamond Mine which operates under the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981, is inappropriately mapped as “Environmental Conservation Reserve”.</p> <p>Note that there are a number of proposed conservation reserves in the Shire as part of the Kimberley Science and Conservation Strategy, however believe that zoning or reservation for conservation under the Scheme should only cover gazetted Crown reserves so as not to pre-empt State Government decision making.</p> <p>Provided a list of Reserves for BRM in the Shire that are strongly recommended to be Public Purposes Reserve for the purpose of Extraction Area (‘EA’).</p> <p><b>Map 11</b> – Pending mining tenements M80/618 and L80/63 are currently shown as “Environmental Conservation Reserve”, but would be better categorised as “Public Purposes EA” as these two tenements cover a key resource of fresh basalt. This material is to be used locally in bitumen road construction.</p> <p><b>Map 11</b> - ‘Gravel’ Reserve 31451 is currently cut by a proposed Public Open Space Reserve. DMP suggest that this reserve together with Lot 1347 on DP 18290 be reserved as Public Purposes Reserve– E to facilitate the extraction of the gravel resource.</p> <p><b>Map 11</b> – Miscellaneous licence L8059, which is part of an existing ship loader at Derby is overlapped by an area shown as Public Open Space Reserve. This area of overlap would be better zoned as “General Industry” consistent with the proposed zoning of the adjacent area and the actual land use.</p> <p><b>Map 16</b> – the northern part of the proposed zone “Agriculture- State or regional Significance” cuts across granted mining lease M80/285, which is part of the Sorby Hills base metal mining project. Agricultural development</p>	<p>Noted. Recommend that the land should be zoned Rural/Pastoral.</p> <p>Noted.</p> <p>Noted.</p> <p>A number of these BRM’s are mining tenements, and as such are not easy to identify on the Scheme maps, however regardless of the underlying zoning, the Mining Act will allow for the ongoing mining activity.</p> <p>However, there are a number of existing gravel and raw material reserves, and adjoining land, that are recommended to be zoned accordingly as Public Purpose Reserve and denoted as extraction areas.</p>
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		<p>over this mining lease has the potential to conflict with the mining access rights of the mining lease holder.</p> <p><b>Map 16</b> – to the west, the proposed Environmental Conservation Reserve is incompatible with the mining access rights held under granted miscellaneous licence L80/69</p> <p><b>Map 17</b> – Reserve 50284 with a purpose of “Government Requirements (Raw Materials), Protection of Aboriginal Heritage and Buffer” is shown in the proposed ‘Agriculture-State and Regional Significance’. Recommend this area should be reserved for Public Purposes – EA or similar to reflect the Crown reserve purpose.</p> <p><b>Map 19</b> – ‘Raw Materials Area’ Reserves 49628 &amp; 49446 and pending mining tenements M80/619 and L80/69 are shown as Environmental Conservation Reserve and are recommended to be Public Purposes Reserve – EA.</p> <p><b>Map 20</b> – Mining lease M80/477 is located on VCL but is proposed to be zoned as “Agriculture-State or Regional Significance, and is incompatible with the current land use, which provides necessary BRM for use in the Kununurra region. Recommend adding Lot 501 on DP 44380 to the adjacent area as Public Purposes Reserve – EA.</p> <p><b>Map 21</b> - Pending mining lease M80/620 (BRM) is located on VCL but is proposed predominantly as Environmental Conservation Reserve and partly as Local Horticulture. As both are incompatible with planned BRM extraction recommends the pending mining lease should be reserved as Public Purposes Reserve – EA.</p> <p><b>Maps 21 &amp; 22</b> – Mining tenements M80/474, M80/494 and L80/67 (BRM) are covered by proposed Rural Residential zone, Primary Distributor Road and Environmental Conservation Reserve. Considers that none of these zones are compatible with mining to supply BRM to the Kununurra region. Recommends that these mining leases should be Public Purposes Reserve – EA or the potential for sequential land use should be recognised with respect to the Primary Distributor Road. DMP recommends that the Shire should consider a suitable separation distance</p>	
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		<p>between the BRM operations and sensitive land uses as proposed in draft SPP 2.5.</p> <p><b>Map 23</b> – Mining tenements M80/77, 80/622 &amp; L80/73 and pending mining lease M80/630 are not recognised on the scheme maps and are located in a proposed Environmental Conservation Reserve area. These tenements are contained within ‘Quarry’ Reserve 36951 which is not considered compatible with the proposed environmental conservation reserve. Recommends Reserve 36951 should be reserved for Public Purposes Reserve – EA.</p> <p><b>Map 23</b> – Mining lease M80/396 (BRM) located on gravel deposits in the Ord River valley is within the proposed Agriculture- State and Regional Significance zone. To reflect actual land use, recommend this lease should be Public Purpose reserve – EA.</p> <p><b>Map 24</b> – The proposed Industrial Development zone overlaps mining leases M80/360, M80/476 and M80/530 on which BRM extraction is taking place. While it may be possible for BRM extraction to take place ahead of industrial development, this would need to be carefully investigated.</p> <p><b>Maps 23 &amp; 25</b> - Mining lease M80/340 would be better reserved as Public Purpose – EA as extraction of BRM is incompatible with the proposed Environmental Conservation Reserve.</p> <p><b>Maps 23 &amp; 25</b> – Mining tenements G80/5, G80/18 and L80/36 are for BRM crushing and screening plant and hence are incompatible with the proposed Agriculture – State and Regional Significance.</p> <p><b>Map 28</b> - ‘Gravel’ Reserve 42304 and Reserve 47333 for “Extraction of gravel for construction, repair, maintenance of roads &amp; ancillary purposes” are recommended to be shown as Public Purpose Reserve – EA.</p> <p>Consider that the purpose of existing Land Administration Act 1997 reserves and mining rights granted under the Mining Act and the Diamond (Argyle Diamond Mines Joint</p>	
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			<p>Venture) Agreement Act 1981 have not been adequately reflected in the Scheme Maps.</p> <p>States that adequate consideration has not been given in the proposed Scheme to the compatibility of large tracts of rural land with current and future exploration and mining activities necessary for the sustainable economic development within the Shire as recognised in the “Resource Economy” section of the State Planning Strategy 2050.</p> <p>Notes that there is also inconsistency between the land uses shown for these areas in the Strategy document and the reserves proposed in the Scheme.</p>	<p>Noted. The Strategy identifies the future use of land, however land may not be immediately zoned subject to further investigation, demand or supporting documentation.</p>
44.	Gelgnayem Trust	5 Mango Street, Kununuirra	<p>Is concerned that the recommendation to continue the use of motor vehicle servicing in the newly named Mixed Use zone will impact negatively on the business. There are a large number of vehicle servicing businesses in the area already. The servicing of vehicles is of minimal impact on the amenity of the area. The businesses generally open from 7am – 5pm Monday to Friday.</p>	<p>Noted. Recommend to consider including Motor Vehicle Repair as a discretionary (D) or discretionary subject to advertising (A) use.</p>
45.	Christine McLachlan		<p><u>Local Planning Strategy</u></p> <p>Considers that the references in the report to planning for the ‘One Mile’ are very confusing. Assumes this refers to the Wyndham Port Townsite. One Mile is the Gully area.</p> <p>States there is no “regular coastal shipping service between Fremantle, Broome and Darwin”. The service was cancelled in 2015.</p> <p>Notes that Warrayu Community (p.18) is misspelt as ‘Warrayn’ Community.</p> <p>If “Enhance facilities of wayfinding to Five Rivers Lookout” (p.46) means put up more signs, could that just be stated.</p>	<p>Noted. Nomenclature to be confirmed and amended.</p> <p>Noted. Recommend this be removed.</p> <p>Noted. Recommend to change.</p> <p>Noted. Amend Figure 6, opportunity No. 3 as follows: ‘Enhance facilities of wayfinding (such as use of signage, colours and materials treatments) to Five Rivers Lookout.’</p>



46.	J & D Fulcher (x 2)	Jabiru Road, Kununurra	<p>In relation to the draft LPP for the Environmental Conservation Reserve along Packsaddle:</p> <p>1 – Agree to keeping a buffer zone between the river and the construction of habitable buildings or planting of crops. This gives a uniform view of residences along Jabiru and Packsaddle Road properties from the river and provides necessary privacy for the residents.</p> <p>2 – Agree with the proposed uses of the buffer zone in 2.3 in terms of creating passive recreational and tourism.</p> <p>Disagree with some uses listed in 2.4 being placed in the buffer zone especially oppose any form of dwelling, in which will be occupied by persons either full time or seasonally. Consider this could be detrimental visually in terms of neighbours views of the river, and also views from the river, where structures or crops are placed within the buffer zone. The privacy of adjoining properties needs to be maintained as it is not feasible to erect fences to protect privacy.</p> <p>3 – Understand the need to provide some additional information when planning is being assessed, but feel that too many reports are being requested, and Council does not have the power to make just common sense decisions without supporting documents from many other sources. This creates a time delay and frustration between residents and the Shire. Simpler processes need to be applied so people are not bogged down in unnecessary paperwork.</p>	<p>Noted.</p> <p>The DoP have recently advised that the freehold portions should be a zone and not a reserve, however recommend that either a SCA is implemented, or a separate zone is used, such as 'Environmental Conservation Zone'.</p> <p>The Shire has the following options:</p> <ol style="list-style-type: none"> <li>1. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Local Horticulture, with a Special Control Area to be created over the reserve and portion of the Local Horticulture zone.</li> <li>2. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Environmental Conservation Zone, and include development provisions in the Scheme and a supporting local planning policy.</li> </ol> <p>Recommend this matter be reviewed.</p>
		Lakeside	<p>Disagree with the proposed rezoning of current properties in Lakeside. Consider there is no need for high density housing to be constructed, and will only contribute to noise, traffic and antisocial behaviour.</p> <p>Seek to keep zoning in his area the same and not further congested with multiple housing.</p>	<p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside</p>
47.	Jamie Short	73A Casuarina Way, Kununurra		<p>Noted.</p> <p>Recommend to review proposed residential densities for Lakeside.</p>
48.	Gillian Taylor	16 Dorrigo Road, Wyndham	<ol style="list-style-type: none"> <li>1. Notes that the draft Scheme allows rezoning of residential area including their property. Considers increasing housing density is detrimental to Wyndham.</li> </ol>	<p>Noted.</p>

			<p>Opposes rezoning to their property and any zoning at R30. Believes that the limit should be R20.</p> <p>States that Dorrigo Road is a prime example of the issues relating to increased density housing.</p> <p>Understand that Homeswest are not required to comply with local planning schemes, which is unfortunate and unfair to local residents.</p> <p>2. Would like to see the proposed Town Centre be extended to both sides of Great Northern Highway. Considers this would make more sense than the current proposal.</p>	<p>Recommend to review residential densities in Wyndham.</p> <p>Noted.</p> <p>Recommend review areas proposed to be zoned Rural Townsite Zone</p>
49.	Lyn Arthur	3 Dorrigo Road, Wyndham	<p>1. Notes that the draft Scheme allows rezoning of residential area including their property. Considers increasing housing density is detrimental to Wyndham. Opposes rezoning to their property and any zoning at R30. Believes that the limit should be R20.</p> <p>States that Dorrigo Road is a prime example of the issues relating to increased density housing.</p> <p>Understand that Homeswest are not required to comply with local planning schemes, which is unfortunate and unfair to local residents.</p> <p>2. Would like to see the proposed Town Centre be extended to both sides of Great Northern Highway. Considers this would make more sense than the current proposal.</p>	<p>Noted.</p> <p>Recommend to review residential densities in Wyndham.</p> <p>Noted.</p> <p>Recommend review areas proposed to be zoned Rural Townsite Zone.</p>
50.	Maureen Farrell & Margaret Lippitt	41 Kabbarli Street, Wyndham	<p>1. Notes that the draft Scheme allows rezoning of residential area including their property. Considers increasing housing density is detrimental to Wyndham. Opposes rezoning to their property and any zoning at R30. Believes that the limit should be R20. States that parts of Wyndham that have high density housing show enough evidence why this is unsuitable.</p> <p>2. Would like to see the proposed Town Centre be extended to both sides of Great Northern Highway.</p>	<p>Noted.</p> <p>Recommend to review residential densities in Wyndham.</p> <p>Noted.</p> <p>Recommend review areas proposed to be zoned Rural Townsite Zone.</p>

51.	Glenda Harding, Craig and Keeley Palmer, Peter & Sue Cottle	Lots 528, 531 & 532 Riverfarm Road, Kununurra	<p>Considers this would make more sense than the current proposal.</p> <p>Consider that the existing Scheme and Strategy is:</p> <ul style="list-style-type: none"> <li>a) Imprecise, sending mixed unenforceable messages;</li> <li>b) Not based upon a strong strategic direction to protect the agricultural economy of the area; and</li> <li>c) Lacking the underlying scientific soil and economic information that is required.</li> </ul> <p>Consider that without significant modification the draft Scheme will expose the community and industry to continued uncertainty, cost and risk.</p> <p><u>Draft Local Planning Strategy</u></p> <p>Welcome and support the high priority placed on the protection of priority agricultural land in the ORIA.</p> <p>As acknowledged in the Strategy the problem is that priority agricultural land is not mapped or well defined within the Shire, and there is a risk that this land is available for inappropriate land use which diminishes the land available for priority agricultural production. Strongly agree that detailed investigations be undertaken as a matter of urgency to determine the distribution of priority agricultural land and the zoning of these areas accordingly.</p> <p>States that the identification of priority agricultural land is a complex technical process that encompasses a range of factors, and therefore the process needs to be data driven, transparent and defensible. Also notes that the WAPC recommends consultation with affected landowners and if the mapping work has not been completed, to 'use what's available'.</p> <p>Consider that in the absence of a robust technical assessment of soil types and their agricultural production potential there can be no justification for the local planning scheme to rezone land for '<i>local horticultural purposes as shown on the strategic land use plan, facilitating appropriate tourism development and non-agricultural business development</i>' (p 41)</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Local horticulture is the new name for Rural Agricultural 2. The LPS does not propose any land use changes in these area.</p> <p>However, it is agreed that the recommendation can be amended to identify the lots within this zone as primarily for intensive agricultural purposes.</p>
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		<p>Consider that the draft Strategy recommends an arbitrary zoning process that is premature and inconsistent with established farming practice of the past 30 years, does not take into account future agricultural crop developments, and risks the loss of priority agricultural land through inappropriate development before the identification process has been undertaken.</p> <p>Request the Shire to heed the advice of the WAPC to use the evidence currently available before rezoning the area currently known as Rural Agriculture 2. The land in this zone needs to be protected for agriculture until a rigorous assessment process concludes otherwise. This follows the 'precautionary principle' widely used in planning and other forms of regulation in situations where future impacts are envisaged and the existing science base has yet to 'catch up'.</p> <p>Consider the high quality soils, access to water, climate, Area Freedom Status, freight facilities, associated publically supported infrastructure and lot size of Rural Agriculture 2 zoned lots means growers can be innovative and flexible. Crop selection can be varied according to market demand, pest pressure or the release of new varieties allowing growers to respond quickly to changing circumstances and conditions. These lots are unique in the ORIA and planners should not make the mistake in thinking that smaller lots necessarily mean limited economic capability.</p> <p>Strongly opposed to the recommendation that the Local planning scheme 'rezone land for local horticultural purposes as shown on the strategic land use plan, facilitating appropriate tourism development and non-agricultural business development' (p 41). Request the Shire to be open and transparent by detailing evidence that is being used to justify this recommendation. State that the desire by one or two individuals to develop tourist accommodation on their lots should not be the basis for a decision with such far-reaching consequences. As well as the risk of losing priority agricultural land to inappropriate development, consider that the proposed rezoning of Rural Ag 2 would cause uncertainty amongst the existing potential farmers in this zone. State that it will discourage</p>	
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		<p>future investment in agriculture or horticulture in the ORIA impacting on the local economy and further unleashing the potential loss of priority agricultural land due to cessation of active farming on properties.</p> <p>Consider the proposed rezoning of land for rural residential or rural small holding development (p 42) is inconsistent with the rezoning of Rural Ag 2. The draft Strategy states rural residential and rural small holdings reflect residential land uses and facilitate serviced lifestyle. In particular the Strategy states that larger lots are intended to <i>'provide an interface to agricultural areas and intensive horticultural activities on priority agricultural land'</i>. Accordingly in the draft Scheme tourists developments such as cabins and restaurants are not permitted in this zone because of the potential for adverse impacts from farming practices. However, these are allowable uses in the proposed Local Horticulture Zone, a zone which is predominantly located at the interface with Rural Agriculture 1 and is by its very nature in the middle of horticultural activities and on potentially priority agricultural land. Request that the Shire recognise that if land uses such as restaurants and farm stay are not appropriate at the interface of residential and agricultural zones, then neither are they appropriate at the interface of horticultural and agricultural zones.</p> <p>Consider it imperative that the Shire reconsider the recommendation to rezone Rural Agriculture 2 in order to facilitate non-agricultural development. Urge the Shire to provide certainty to the many farmers who run successful and viable agricultural business in the Rural Ag 2 zone and ensure the continued availability of productive and viable agricultural land for future generations. Consider that the existing Rural Ag 2 zone must have a priority agriculture classification.</p> <p><u>Draft Local Planning Scheme No. 9</u></p> <p>Became involved in a lengthy and convoluted process objecting to the application of three chalets on a property in Riverfarm Road and during this process and the subsequent appeal by the applicants it became very clear that TPS 7 lacked clarity, was open to interpretation and</p>	<p>Non-agricultural uses were introduced into existing TPS 7, in both the Rural Agriculture 1 and 2 zones, with the intent to allow landowners to 'value-add' to their agricultural activities. Some of these uses have been retained in the draft Scheme for the proposed Local Horticulture Zone,</p>
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		<p>had subjective criteria that created uncertainty and indecision for all those involved in its implementation. The Shire became embroiled in costly and time consuming legal proceedings before finally having to agree to a development it had initially rejected on valid grounds. Ratepayers and the developers lost heavily out of this process, as did the Shire. Welcomed the draft Local Planning Scheme No. 9 and made submissions to GHD Consultants during the development, however consider that the draft LPS No. 9 seriously misses the opportunity to provide clarity and rigour to the development process in Rural Ag 2.</p> <p>Also consider that the mistakes of the past will be repeated and the potential for expensive mediation and legal proceedings has not been eliminated. Consider that the lack of clarity and consistency in fact reduces certainty to a point where further investment in horticulture in this zone will be severely compromised.</p> <p>Is perplexed as to why the objectives for Rural Ag 2 have changed significantly from those in TPS 7. Queries what evidence the Shire has to fundamentally alter the purpose of these blocks, and that this lack of transparency results in a perception that the changes are at best arbitrary.</p> <p>Consider that the proposal that productive agricultural enterprises will remain the primary land use clearly implies there will be many other non-agricultural developments. Feel that this is a significant and unsubstantiated change that will have far reaching implications to their ability to continue intensive horticultural operations on their land. Challenges the Shire to justify and defend the proposal by providing technical data, analysis and the results of community consultation.</p> <p>Contend that, based on the information available to the Shire and the extensive agronomic and historical commercial records of intensive farms in Rural Ag 2, the objectives as proposed are a serious erosion of our current and future opportunities. State they have heavily invested to ensure that intensive agriculture can be practiced and expanded an area where the best and most productive soils</p>	<p>however with the intent to include better controls, and limitations on the size and number of accommodation units that may be allowed.</p> <p>However, the submissions received consider that the planning controls in the draft Scheme are still not adequate to protect continued intensive agriculture or promote future agricultural development.</p> <p>Recommend review the objectives and provisions relating to the Local Horticulture Zone.</p>
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		<p>in the ORIA come together with the appropriate infrastructure power and water.</p> <p>Recommend that the Shire reconsider the objectives of Rural Ag 2 and dramatically strengthen rather than erode the protections available to intensive horticultural operations. Consider the Rural Ag 2 lots represent the best opportunity for intensive horticulture to flourish in the ORIA.</p> <p>Propose that the Rural Ag 2 zone be renamed as 'Priority Intensive Horticulture Zone' and that the Shire develop a strategy to protect and develop it rather than erode it. State that such a zone has the potential to generate in excess of \$50 million per year and to directly employ 500 families, and this level of output and activity would be a substantial boost in population and employment and add value, and importantly stability and diversity to the long term operation of the Ord. State that the outcome would only be achievable if the Shire uses its power to drive it.</p> <p>Implore the Shire to open a fulsome, informed and evidenced based debate about the potential of the subject land and therefore what controls are appropriate, rather than acquiescing to the limited and flawed rationale proposed by small scale opportunistic developers.</p> <p>Contend that there are technical experts, including those with experience elsewhere and farmers with long standing commercial experience and records available to ensure that such a forum or discussion would clearly highlight the importance of these blocks to future agricultural development in the Ord.</p> <p>Recommend that the Shire does not rush into a hasty and ill informed decision that affects their and the Ord's future so significantly without referencing the best available information.</p> <p>Consider that there are no controls proposed that will significantly support the objective <i>'to ensure that non-agricultural uses or development do not adversely affect the use of land for agriculture'</i>.</p> <p>State that it is widely documented and well understood that conflicts occur between non-agricultural developments (e.g.</p>	
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		<p>tourism) and the practicalities of farming when in close proximity. Farming practice involves noise, chemical use and spray drift, dust and the use of firearms to deter pest animals. Consider that the configuration and dimensions of the blocks on Riverfarm road in particular makes it impossible to maintain proposed separation distances.</p> <p>Are not confident that the development requirements proposed in the draft Scheme provide the rigorous objective safeguards needed to ensure there are no adverse effects from non-agricultural developments.</p> <p>Consider the mistakes of other regions can be avoided by identifying, maintaining and protecting land for agriculture and horticulture and ensuring these uses aren't compromised.</p> <p>Consider that proposed objectives (iii) and (iv) are flawed and simplistic statements that are impossible to implement, and that differences in interpretation will lead to conflict and expensive litigation in a search for futile compliance.</p> <p>Consider that the proposed objectives for the Rural Ag 2 zone should be more clear, in line with those proposed for the Rural Ag 1 and Rural Smallholding zones.</p> <p>Notes that Farm Stay is not permitted in either the Rural Ag 1 or Rural Smallholding zones, on farms that are much larger than the operations in Rural Ag 2. Consider that the impacts of such operations can be diluted much more effectively on large properties than on small, tightly packed, intensively farmed lots that make up Rural Ag 2. States that it is contradictory and irresponsible to afford protection in some zones and not the Rural Ag 2 zone, which compromises the current and future opportunities of these farmers in the face of incompatible development. Notes it has already been stated that Rural Ag 2 farms have access to high quality soil, unlimited water and many years of experience of intensive horticulture. States that the value of these framing operations needs to be acknowledged and the draft Scheme fails to do this.</p> <p><b>Development Requirements</b></p>	
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		<p>Seriously concerned about the development of non-agriculture; enterprises and activities in the Local Horticulture Zone. Recognise the Shire's intent that there are no adverse impacts on agricultural activities due to tourist or non-agricultural development, however doubt the propose development requirements afford the necessary protection.</p> <p>In relation to clause 4.27.2 (a), state that there needs to be a much clearer definition and measure of what constitutes an established horticultural or agricultural activity. Queries how this is quantified?</p> <p>Notes that TPS 7 requires that any proposed development <i>'remains as a subordinate use, in scale, scope and intensity to the predominant agricultural nature of the site'</i> which was able to be interpreted to allow tourist development on a block where no commercial agricultural activity takes place. States that if the Shire intends to enforce its scheme then it must introduce appropriate metrics. Suggests that a measurable target could easily solve this such as assessing a minimum turnover value for the established horticultural/agricultural activity, and stipulating that the non-agricultural development must not exceed a certain percentage of overall turnover. States that in this way the primary objective of the blocks in this zone remains horticulture or agriculture. State that landowners that are actively farming their properties are much more likely to understand and accept the impact farming practices will have on these developments, and therefore more likely to ensure adequate biosecurity protocols are maintained and appreciate the primary purpose of the property. Also consider that there needs to be provision to ensure and determine that the horticultural or agricultural activity is maintained at or above a minimum level once a non-agricultural development has been approved.</p> <p>Consider that intensive agriculture should be the objective of the Rural Ag 2 zone and the scheme controls singularly focussed on that objective, and significant tightening is required to the draft to not only achieve that objective, but</p>	
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		<p>to minimise the risks of the objective being 'undermined by piecemeal incompatible development.</p> <p>State that the Rural Ag 2 contains the most productive and valuable soils in the entire ORIA, which are the best location for intensive horticulture. These soils also have a significant historical production record and enormous future potential, but only if the soil is protected for intensive production by suitable planning controls.</p> <p>Consider the draft requirements do not account for this historical production and future potential, and that the Shire has a responsibility to fully consider all the evidence before making decisions about the future of these lots.</p> <p>Consider that clause 4.27.2 (c) illustrates a lack of understanding of the unique context the lots in the Rural Ag 2 zone are in, and that it would be impossible to site a tourist development on these lots without impacting on the expanded operation of horticultural pursuits and allowing for recommended separation distances from neighbouring horticultural operations. The lots on Riverfarm road are narrow and long. Consider the most productive soil in the ORIA exists in this zone, which has small scale production potential in excess of anywhere else in the ORIA. The Shire must fully understand how farms are and can be used into the future. State that clause 4.27.29 (c) is a development requirement which is completely unenforceable.</p> <p>In relation to clause 4.27.2 (d)(i) consider that the management plan requirements over simplify the issues arising from the approval of incompatible developments in close proximity with intensive horticulture. Recommend the requirement should specifically stipulate consultation with neighbouring landowners and industry for input into management plans.</p> <p>States that biosecurity remains a major concern for individual growers and industry as the Area Freedom Status contributes to the viability of the grower's enterprises. All growers are impacted and potentially compromised if Area Freedom is lost.</p>	
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		<p>Question the technical ability of staff to make decision based on the management plan i.e. what qualifications and experience do they have in assessing such plans, and who ensures ongoing compliance of the plans once approved.</p> <p>Query whether there are penalties for developers who fail to implement their management plan and how this is monitored and administered.</p> <p>Consider there is too much uncertainty around such a critical requirement, which places the Shire in the invidious position of being a technical expert beyond its responsibilities. The ultimate risk is borne by industry, and the draft currently offers inadequate protections.</p> <p>In relation to Clause 4.27.2(d)(ii) – (iv), are concerned as to who is deemed to be the ‘relevant officer’, and who is ensuring the material and procedures are reviewed, updated and maintained. Note that staff change, pest and disease pressures will change and the preventative measures may need to be adjusted according to outbreaks or new information.</p> <p>Consider that the requirements are vague and open to interpretation, and therefore inadequate to protect against the adverse impacts from tourist and non-agricultural developments.</p> <p>In relation to clause 4.27.2 (e) welcome the inclusion of reference to the Department of Health Guidelines (2012) with regard to separation of agricultural and residential land uses, however consider the draft is imprecise in its implementation, and is simply unenforceable.</p> <p>Query who will determine ‘as much as necessary’, and considers this to be unscientific and arbitrary way of managing and reducing conflict, health impacts and resulting complaints from conflicting uses.</p> <p>Consider the outcome is entirely avoidable if the Shire is prepared to consider the evidence and construct scheme controls that are necessary for the agricultural industry to flourish.</p>	
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		<p>State that the purpose of the DOH guidelines is to provide 'specific requirements to assist local governments, developers, land owners and consultants in providing adequate separation from conflicting land uses' and are based on 'current scientific knowledge and industry practice'. If the guidelines are disregarded then any 'alternative design is based on a thorough analysis of the specific site conditions by an expert and should be approved by the Environmental Protection Authority or the Department of Health'.</p> <p>Recommend this clause be amended to ensure that any landscaping plan is required to be in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health – August 2012.</p> <p>Consider that the terms 'unreasonably close' and 'appropriate visual screen' are unclear and subjective, which will lead to confusion, differing interpretations and potentially involve costly legal appeals, mediation and unsatisfactory outcomes for the local horticultural industry.</p> <p>In relation to clause 4.27.3, recommend that the clause be amended further to include:</p> <p>"Should an ancillary dwelling or caretaker's dwelling be approved, the local government will not consider any application for Bed and Breakfast or Farm Stay."</p> <p>Consider that the inclusion of up to 4 dwellings on 4ha blocks zoned primarily for horticulture or agriculture is seen to be subdivision by stealth and will further add to the pressure on intensive agricultural industry. Note that Rural Residential is a separate zone, therefore consider those wanting to live or holiday in a rural setting should have adequate provision in the Scheme to do so, but not on the most productive and valuable soils and to the detriment of the local horticulture industry.</p> <p>Are opposed to the continued inclusion of tourist and non-agricultural development in the Rural Ag 2 zone.</p> <p>Consider that:</p> <ul style="list-style-type: none"> <li>• The draft scheme is unenforceable</li> </ul>	
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			<ul style="list-style-type: none"> <li>• There is a significant lack of evidence underpinning the draft strategy and scheme</li> <li>• The Shire has an obligation to develop planning policy based on existing expert knowledge and gather evidence, such as soil mapping, as a matter of urgency</li> <li>• The Shire has a responsibility to support continued development of intensive agriculture in the ORIA and afford the same priority status to Rural Ag 2 as benefits Rural Ag 1.</li> <li>• All planning controls should underpin the Shire's responsibility to the continued development of intensive agriculture in the ORIA</li> <li>• All planning controls shall be written in a way that provides clarity for and certainty for all those committed to future agricultural development in the most productive areas of the Shire.</li> </ul>	
52.	East Kimberley Chamber of Commerce and Industry (EKCCI)		<p>Has had numerous members voice concerns regarding proposed rezoning of numerous areas within the Draft Local Planning Strategy namely those outlined with Figure 3 "Strategic Land Use Plan – Kununurra Townsite"</p> <p>Would appreciate if more time was permitted in obtaining and collating these concerns in a manner that is beneficial to all.</p>	<p>Noted.</p> <p>No further submission supplied.</p>
53.	Annie Thomas	80 Egret Close, Kununurra	<ol style="list-style-type: none"> <li>1. Purchased the property due to the size of the current blocks. Consider this provides a good distribution of properties, ensuring residents are not crowded and have ample space between dwellings. Consider that if neighbours are able to subdivided into 1 hectare lots, this will crowd the estate and impact residents' choice of lifestyle.</li> <li>2. Have concerns around the impact of a higher density of septic on the aquifer we draw our water from. This could occur if lots in the vicinity are able to subdivide down to 1 hectare lots.</li> </ol> <p>Moved to this area on the basis that blocks were all approximately 4 hectares or larger, and wish this remain through whatever means including zoning.</p>	<p>Noted.</p> <p>The precinct was identified as the next logical Rural Residential area in the draft Strategy, given the expansion of the townsite to the south, and that the land is close enough to town for provision of reticulated water supply (required for lots under 4ha) and reticulated sewer to be provided.</p> <p>Recommend that the Old Darwin Precinct be identified as future rural residential in the draft Strategy, however to be zoned as Rural Smallholdings in the draft Scheme.</p>

54.	LandCorp	<p><u>Local Planning Strategy</u></p> <p>Support key recommendation to streamline and simplify zones and ensure flexibility in all scheme reserves to enable strategic development projects and encourage town centre redevelopment.</p> <p>Support key recommendation to determine appropriate reservations for short and medium transport links.</p> <p>Consider the key recommendation to retain existing residential densities in established residential areas as shown on the strategic land use plan for Kununurra could impact future land supply as developers will be unable to increase density or use infill development to develop more housing. Recommend that pockets where higher density development may be acceptable could be identified whilst retaining existing densities in the majority of established areas.</p> <p>Support in principle the key recommendation to rezone the existing light industrial estate to composite industry, however there are concerns about rezoning all light industrial land to composite due to potential impacts triggered by limited the potential land uses and precluding certain use classes under Composite. Suggest that the Weaber Plain LIA should not be rezoned to Composite Industry until such time as a viable alternative industrial precinct is identified, but greater flexibility in terms of caretaker dwelling could be considered.</p> <p>Notes an error in LPS Part 1 - Figure 3 – it incorrectly shows LandCorp's LIA Stage 2 being rezoned to Composite Industry, although not shown on the Scheme Map 24.</p> <p>Figure 3 also does not show composite industry at Bull Run Road as shown on draft Scheme map 26, and it is suggested that Figure 3 be amended to reflect this.</p> <p>Support the key recommendation to rezone land as shown on the strategic land use plan for light industrial development subject to structure planning.</p> <p>In relation to the recommendation to retain existing extent of future light industrial land along Weaner Plain Road,</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Proposed Residential densities will be reviewed.</p> <p>Noted.</p> <p>Recommend review the availability of light industrial land in Kununurra.</p> <p>Noted. Recommend Figure 3 be amended.</p> <p>Noted. Recommend Figure 3 be amended.</p> <p>Noted.</p>
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		<p>state that previous consultative processes have indicated strong community feelings against any further industrial development along this stretch of Weaber Plain Road. State that Map 24 shows the LIA Stage 2 and englobo lots immediately to the north remaining zoned for Industrial.</p> <p>Support the recommendation to consider increased residential density in existing residential areas of Three Mile (Wyndham) to encourage redevelopment as a potential positive impact. Will be able to produce a higher dwelling yield in Wyndham where developable land is in short supply. Notes that this contradicts point 10 under 'Further Strategic Planning' to retain R15-20 densities.</p> <p>Support the recommendation to expand the planning scheme across the entire Shire area.</p> <p>Support the key recommendation to investigate appropriate zonings or reservations for Aboriginal lands in line with strategic land use plans, and incorporate into LPS. Note that currently ALT land are cited in the draft LPS part 1 – Strategic land Use Plan as existing residential and parks and recreation. States that these areas are subject to significant development constraints but could support increased residential development in the future.</p> <p>Support the recommendation to prepare a local planning policies to:</p> <ul style="list-style-type: none"> <li>• provide guidance for development that impacts on environmental values; and</li> <li>• provide guidance for landscape and visual impact assessments as part of development applications, in line with DoP guidelines.</li> </ul> <p>Support the recommendation to prepare a composite industry local planning policy to provide detailed guidance regarding standard of accommodation and visual presentation of composite properties, providing the policy also addresses potential conflicts between industrial uses and the residential element of composite industry.</p> <p>Support the recommendation to prepare structure plans for expansion areas that may allow pockets of higher density group housing on corner lots or in appropriate locations.</p>	<p>Noted. The englobo lot has been zoned Industrial Development on the basis that the land is set aside as a reserve for this purpose.</p> <p>This recommendation relates to urban expansion area, not within centres. Recommend revise Strategy to identify locations of amenity and activity where higher densities should be promoted.</p> <p>Noted.</p> <p>Noted. The Urban Development zone identifies the requirement to undertake detailed investigation through the preparation of a structure plan prior to subsequent rezoning, development or subdivision of land. As such, the ultimate zoning of the land is likely to be a mix of different zones and reserves, and it is appropriate for the whole land parcel to be zoned Urban Development until structure planning has been undertaken.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p>Suggested the Shire identifies areas where higher density would be acceptable.</p> <p>Support the recommendation to develop a policy in relation to home occupation to manage potential land use conflicts between residential and non-residential uses.</p> <p>Support the recommendation to prepare a strategic land release plan to enable appropriate sequencing of land across the Shire. Note that the Figure 3 does not show the full extent of Drovers Rest Development which extends further south to mirror due diligence studies and existing water corporation catchment plan.</p> <p>Note that the draft Scheme maps do not show Drovers Rest sites as zoned for Urban Development.</p> <p>In relation to the recommendation to investigate the use of developer contributions (to manage impact on local roads that occur from development of Ord Stage 2 in advance of planned heavy vehicle route), considers that the introduction of any sort of Developer Contribution Scheme in the Shire will constrain development by the private sector and the State by intensifying already high construction costs.</p> <p>Support the review of the Municipal Inventory to incorporate locations of Aboriginal history both pre and post European settlement.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Recommend modify Scheme maps to zone Drovers Rest as Urban Development.</p> <p>Noted.</p> <p>Noted.</p>
		<p>Support the recommendation to prepare a regional and district water management strategy for townsites and urban expansion areas, subject to DoW support.</p> <p>In relation to the recommendation to prepare a town centre plan for Kununurra, suggest the Shire consider the previous town centre plan prepared under the 'Strategic Directions' initiative, and the draft Civic Precinct Plan prepared in 2015. Consider that infill development opportunities need to be further explored.</p> <p>In relation to the recommendation for urban expansion areas in Kununurra to provide residential densities in the range of R15 to R25, believe that this can only impact on developer's ability to deliver a range of smaller more</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Recommend residential densities to be reviewed.</p>

		<p>affordable housing product. Consider this point is also at odds with point 4 under Local Planning Framework which suggests structure plans should identify pockets of higher density.</p> <p>In relation to the recommendation to review structure plan provisions and design guidelines for Stage 2 of Weaber Plain Road light industrial area to incorporate flexibility for caretakers' dwellings, note that the existing guidelines refer the purchaser to the provisions of TPS7 on the matter of caretakers' dwellings.</p> <p>In relation to the recommendation to investigate feasibility of potential general industrial land around Kununurra and priorities a site for development of general industrial estate, note that site selection could be undertaken by a planning consultant given the different land ownership of some suitable parcels. States that it is important to note that no regional industrial areas are a commercial proposition unless significant funds are allocated to bring trunk infrastructure service to the site. It is critical that any site has a whole of government support in order to gain State Government funding. It should also be noted industrial estates are not provided with reticulated sewer as the Water Corporation has a policy of not accepting waste from industrial precincts. Approval to dispose of wastewater from industrial estates then defers to the Department of Health's Draft Country Sewerage Policy. This policy notes that septic systems or ATU's can be used on lots bigger than 2000m<sup>2</sup>, but the maximum allowable flow rates for waste water is 685L per day which poses a significant constraint to some industrial land users.</p> <p>Support the recommendations to prepare town centre plans for One Mile and Three Mile in Wyndham.</p> <p>In relation to the recommendation for structure plans for urban expansion areas of Three Mile to provide residential densities in the range of R15 to R20, consider that restricting the density to R20 impacts on the ability to deliver a range of housing options. Consider this point contradicts point 7 under Local Planning Framework to consider an increased density.</p>	<p>Noted that higher densities are permitted in the Commercial Zone (R80) and areas immediately adjoining the town centre areas (R50).</p> <p>Noted. To be amended.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted. Proposed residential densities to be reviewed.</p>
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			<p>Support the recommendation to pursue the relocation of the Kununurra waste water treatment plant, however the draft LPS does not identify a potential site to support relocation of the WWTP.</p> <p>Support the recommendation to pursue identification of alternative water supply to enable the medium to long term redevelopment of the foreshore, subject to DoW support.</p> <p>Support the recommendation to participate in regional initiatives to attract private investment in economic development.</p> <p>Support the recommendation to prioritise the delivery of road construction projects identified on strategic land use plans subject to Main Roads WA support.</p> <p>Support the recommendation to incorporate enhanced pedestrian access to and enjoyment of foreshore areas within capital works programs.</p> <p>Support the recommendation to identify opportunities to redevelop Kununurra racecourse as a major events precinct and respond to the recommendations of the Lake Kununurra Biophysical Assessment.</p> <p>Support the recommendation to undertake a preliminary site investigation of the Kununurra landfill site to understand potential contamination issues to inform decommission and future reuse of the site.</p>	<p>A potential location for the new WWTP is identified on Figure 4.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted</p>
55.	Steven Guerinoni, Charles Guerinoni Trust (x 5)	10A , 10B, 10C, 24 Konkerberry Drive 9 Mango Street	<p>Notes that there are only 7 approved use classes on the proposed mixed use zone. Based on the nature of this of this lot, infrastructure onsite, historical use and desire of tenants, it is requested that the following be included as approved use classes:</p> <ul style="list-style-type: none"> <li>▪ bulky goods showroom</li> <li>▪ commercial vehicle parking</li> <li>▪ garden centre</li> <li>▪ motor vehicle sales</li> <li>▪ shop</li> <li>▪ trade supplies</li> <li>▪ warehouse/storage; and</li> <li>▪ workforce accommodation</li> </ul>	<p>Noted.</p> <p>Although there are only 7 permitted (P) use classes in the zone, however there are a number of uses that may be permitted at the discretion (D) of the local government, and in some instances after the proposal has been advertised (A).</p> <p>All uses listed in submission are permitted, as either (D) or (A) uses, at the discretion of the local government.</p>
56.	Steven Guerinoni, Guerinoni Investments (x 4)	18 Konkerberry Drive 10 Dianella Way 9 Poinciana Street 33 Poinciana Street		

57.	Maxine Middap	Lot 588 Cole Avenue Dorrigo Road	<p>1. Recommends both sides of the Great Northern Hwy should be zoned Rural Townsite. The draft Scheme shows a mixture of Rural Townsite and residential and it is mixed all the way through the Three Mile area. It would make sense to have it consistent i.e. along the whole extent of the Great Northern Highway in the Three Mile area.</p> <p>2. Map 14 – recommends the Cole Avenue road be shown as per the established road alignment. Considers it makes no sense to continue to have a road that is never going to be built as the 'official' road. The area shown as Cole Ave will have to remain an access route, as Telstra and Water Corporation services are located within the area.</p> <p>3. Does not support increasing R Codes to the extent proposed in the Three Mile area, and recommends it should remain as per TPS 6, or possibly having a combination of R20 &amp; R15, and retaining the only section of R25 which is located on the northern side of Delamere Street. States that having increased density in Martin Place has not proven to be very successful, and has created behavioural problems around that area.</p> <p>States that a lot of the residents in Wyndham are families and believes that trying to crowd families is not a desirable way to proceed.</p> <p>Considers that having R30 along Kangaroo Drive is only going to replicate the problems seen in Martin Place.</p> <p>Also considers there seems to be no logic in having R30 east of Welch Street along the Great Northern Highway, or along the southern side of the highway. States that some GROH houses have been built on spot zoned R20 zoned blocks, and wouldn't want to see lots any smaller or the houses any more crowded together.</p> <p>4. Map 13 - The Great Northern Highway is not shown in the correct position and considers there is no good reason not to amend this.</p> <p>5. Does not support the heavy haulage route continued to be shown on the scheme maps along the marsh land south of the Three Mile area, then along the highway to the Port area, where it is shown along Foreshore Road.</p>	<p>Noted.</p> <p>Recommend review proposed Rural Townsite areas.</p> <p>Noted.</p> <p>A formal road closure and road dedication process is required to be undertaken.</p> <p>Noted.</p> <p>Recommend review residential densities in the Three Mile area.</p> <p>Noted.</p> <p>Map shows the proposed heavy haulage route. Recommend that existing alignment of Great Northern Highway be included.</p> <p>Proposed heavy haulage routes are not the preferred option of the Shire however</p>
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58.	Mark Northover, Ord River Construction	6 Waterlily Place Lot 100 – 101 Mills Rod Mulligans Lagoon Road	<p>Understands that Main Roads designated the route fifty years ago, however considers it is time it is accepted that it is no longer a valid or desirable route. Considers that the portion along Foreshore Drive is no longer an option, with the boat ramps and the two jetties, plus boat parking along the length of the road, as well as a number of residential properties. A lot of the route both within the Three Mile and Port areas is shown across mud flats, which would be expensive to build designed to accommodate road trains. Also notes that the intended route still uses portions of the main highway between the Three Mile and Port areas, and the mixing of general traffic with heavy haulage is not desirable, nor should it be accepted by the Shire as such. Considers that the route shown around the Bastion through Chimooli in the Strategy is the ideal solution, and most of the route can be on hard ground. However, believes it is important to consider the heavy haulage route as a ring road, to allow at least empty trucks to pass through the built up areas if they wish, to pick up food and other supplies that might be required.</p> <p>States that the issue of a heavy haulage route has been raised many times over the last fifteen years and considers with the advent of Ord Stage 2 coming into production in the next few years, it is vital that the old, outdated impractical and unsafe route is cancelled permanently.</p> <p>6. Considers the subdivision east of Minderoo Street should be developed properly, as it is a good extension to the existing Three Mile area. Recommends look to expanding the existing Three Mile area instead of trying to squeeze more people into the same space.</p>	cannot be removed without comment from Main Roads WA.
			Noted.	
			<p>1. Was informed that heavy industry will fit into the general industry category. Non conformity and council approved caretakers' accommodation on general industry means families living on site have little regard to the interface between competing land use. Believe there may be a need for a separate designated heavy industrial sites of significant size, away from conflicts, and realistically taxed to sustain long term viability.</p>	Noted. There are currently no lots zoned General Industry that have a caretakers approved.

		Various mining leases	<p>2. Considers rural residential land should remain above 2ha.</p> <p>a) these holdings provide their own water and sewerage and smaller sizes could create water supply problems.</p> <p>b) to support the theme of a rural setting, minimum size of 2ha would allow the natural surrounds to be maintained.</p> <p>3. Industrial buildings constructed on composite zoned land is height restricted to 5 metres at the apex. This is contrary to good design and operational practices. Some trade delivery trucks are legal at 4.3m high (some permitted at 4.6m) and would not fit into a shed of this dimension. Especially considering the need for ceiling fans in this tropical zone. Replacing developed industrial sites with the new composite title would mean existing approved development will not comply to the proposed development guidelines. Support composite on vacant land.</p> <p>4. (Map 21) Proposed zoning is attempting to increase the non land use conformity problems and conflicts at the Mills road and Weaber plains intersection precinct.</p> <p>B) No forward zone planning for the introduction of the proposed bypass road and consideration of associated industries currently in operation. To name a few, Seed cleaning, fuel depot and retail outlet, roadhouse, weigh-bridge, grain storage depot, road train assembly area, earthmoving, lime kilns, agricultural workshops and rural aggregates. Conflicts are significant.</p> <p>5. (Map 17) Ningbin road is in a new and conflicting place for connection to this coastal road. Formalising an internal farm road, will not benefit any of the numerous proposed and current operations on the Northern section of the Ningbin road. The green swamp road originally connected to the existing Ningbin station road, west of the proposed easement location.</p> <p>A) Swek had assumed responsibility for Ningbin access at the northern radio repeater station (on Carlton road), and</p>	<p>Noted.</p> <p>The 5 metre height should refer to the wall height not the ridge height.</p> <p>Noted.</p> <p>The Shire was directed to remove the Rural Industry Zone prior to advertising, on the basis that rural industry (Industry – Primary Production) is a land use which can be considered within a number of zones, including the Local Horticulture Zone.</p> <p>DoP are proposing the introduction of a new Rural Enterprise zone into the LPS Regulations, and advised that the Shire may use in place of the previous Rural Industry Zone.</p> <p>Clarification was sought from Geographic Names who have confirmed that the scheme map shows the correct location of Ningbing Road.</p>
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			<p>significant funds expended for access to Ningbin, prior to the Green swamp land release process.</p> <p>B) Suggest that the Ningbin access is an extension of the Mindijirka road in the Agricultural and Pastoral zone, connecting to the designated approved access through the buffer zone. (Map 16)</p> <p>6. Waterlily precinct should remain as large lots and not the proposed higher density infill, as this would be deleterious to the enjoyment of the current amenities within the area. Significant vacant land in this precinct is undeveloped. Trees for shade are integral to this hot humid climate and small lots would not facilitate this.</p> <p>7. Over many years of dismissed complaints, Swek has not maintained a register of non land use conformity, has lost documents of many buildings and construction's, not upheld the integrity of councillor conflict declaration's, influencing the project's planning outcome's. The CEO selection committee has recognised the "importance of dumbing down" to reduce overall costs. All working towards a confusing, conflicting and convoluted land use's within the proposed TPS no. 9. It is a bit like driving down Ivanhoe road (stink avenue) within the effluent ponds that encroach on the restricted residential buffer zone, and that brings me to ask. Where is the relocated effluent ponds in the maps, and the proposed rubbish tip (recycling depot)? Where is the proposed access to town centre from the bypass road? Will access be past the hospital or the school?</p> <p>8. East lily creek proposed precinct and the school is of little importance in future plans, being a duplication of the currently upgraded schooling facilities. The overly optimistic population estimates adds to the rapidly escalating rates burden placed on the community.</p>	<p>Noted. Residential densities in Lakeside to be reviewed.</p> <p>Noted. The draft Scheme allows the Shire to develop a non-conforming use register, which the Shire is in the process of preparing.</p> <p>A potential location of the new WWTP is shown on Figure 4 in Part 1 of the draft Strategy.</p>
59.	Rex Boland	Lot 273 (previously Lot 550) Packsaddle Road, Kununurra	<p>Is a banana producer and has farmed on the property since 1981. Considers that WA's food security relies on farmers being able to continue to farm, and to access water so they can do so.</p> <p>Also believes that land must be retained for conservation, and managed properly for weeds, feral animals and fire</p>	<p>The submitters concerns are noted.</p> <p>Non-agricultural uses were introduced into existing TPS 7, in both the Rural Agriculture 1 and 2 zones, with the intent to allow landowners to 'value-add' to their agricultural activities. Some of these uses</p>

		<p>risk. Maintaining conservation reserves will help keep the land and river healthy. Subdividing land and not looking after it leads to deterioration of the land.</p> <p>Is reliant and committed to maintaining the ability to farm the land, which is fertile and productive, unimpeded by others. Does not appreciate this right to farm, enjoyment of the farming property and rural amenity being adversely affected by others, including the noise and erosion impacts from boats (bow waves).</p> <p>States that non-corporate farmers can be productive on small blocks, entirely at their own expense.</p> <p>Is concerned about the proposed non-agricultural uses that the Shire has the discretion to allow in the proposed Local Horticulture Zone under draft LPS No. 9 (section 4.27.2) which conflict with productive agriculture, which will restrict the farmers' ability to farm due to potential nuisance and potential biosecurity risks, and may impinge on landowners' rural amenity. However, agrees with the statement (4.27.2 (c)) that development cannot bisect existing or potential agricultural areas on a property.</p> <p>Does not support the desire of those who wish to exploit the perceived opportunity of non-farm income and multiple occupancy/ subdivision.</p> <p>Does not support the construction of boat ramps and pontoons which create an ecological risk.</p> <p>Water access is from the Ord River via a self-supply riverside pump. Water entitlement to pump from the river requires legal access for an easement and water licence.</p> <p>Purchased adjoining land (portion of Reserve 35289) located between his property and the Ord River in 2012. This reserve, which was set aside for natural regeneration, is zoned for conservation. Strongly supports this land remain as conservation reserve, to maintain the biodiversity of the river ecology.</p> <p>Supports the objective of the draft Packsaddle Environmental Conservation Reserve Policy "to protect the ecological integrity of lake Kununurra whilst providing for</p>	<p>have been retained in the draft Scheme for the proposed Local Horticulture Zone, however with the intent to include better controls, and limitations on the size and number of accommodation units that may be allowed.</p> <p>However, the submissions received consider that the planning controls in the draft Scheme are still not adequate to protect continued intensive agriculture or promote future agricultural development.</p> <p>Recommend review the objectives and provisions relating to the Local Horticulture Zone.</p>
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			<p><i>the maximum enjoyment of privately owned land in close proximity to the wetland in the packsaddle locality” provided that the proposed conservation reserve is actively managed.</i></p> <p>Weed control, fire control and feral animal control (e.g. wild pigs) must be undertaken by whomever is responsible for this reserve. Conservation land all around Packsaddle is filled with weeds and ferals, and is a fire risk. Considers the land needs to be maintained for the health of the river and surrounding environment, which will require workforce and financial resources. Queries whether the Shire will maintain the reserve?</p> <p>In conclusion wishes to maintain the right to farm, as well as ensuring the river and conservation land remain healthy.</p> <p>Is concerned about what impact there will be on the land if non-farming uses are permitted, as more people may bring more weeds and diseases on their vehicles. Therefore supports the preservation of all horticultural land now and into the future, but does not support the proposed non-farming uses listed as ‘discretionary’ in the draft LPS No. 9.</p>	
60.	Department of Health		<p><u>Water Supply and Wastewater Disposal</u></p> <p>The Strategy and Scheme should acknowledge and reference the following:</p> <ul style="list-style-type: none"> <li>▪ Developments are required to connect to scheme water and reticulated sewerage (if available) in accordance with the draft <i>Country Sewerage Policy</i>.</li> <li>▪ Any water supply, water management plan including the utilisation of recreational water and any waste water recycling is to comply with DOH guidelines and requirements.</li> <li>▪ Approval is necessary for any onsite waste water treatment process.</li> <li>▪ Non-scheme water area developments are to have access to a sufficient supply of potable water that is of the quality specified under the <i>Australian Drinking Water Quality Guidelines 2004</i>.</li> </ul> <p><u>Medical Entomology</u></p>	Noted.



			<p>issues in relation to disaster preparedness, recovery management or the associated impacts on public health.</p> <p>Note that the document provides a snapshot of foreseeable positive impacts in relation to economic, social, environmental, built form and infrastructure and governance but does not highlight potential negative impacts of such growth.</p> <p>Recommend that a risk assessment of each potential growth scenario should be incorporated into the plan, which the 'Risky Business' document may assist with.</p>	
61.	Peter Stubbs	Packsaddle and Jabiru Road, Kununurra	<p>Expresses concern an opposition in relation to the proposed dual zoning along Packsaddle and Jabiru Road where a zoning of "Environmental Conservation Reserve" is being proposed.</p> <p>States that there is a considerable amount of Ord River Foreshore between Kununurra and the Lake Argyle Dam (55km), most of which will rightly never be developed.</p> <p>Considers that a zoning of "Environmental Conservation Reserve" will make it extraordinarily difficult to see any future commercial use of the foreshore in the Packsaddle and Jabiru areas. If Kununurra is to become a more vibrant regional centre than it needs to stop making investment and development harder and actually encourage more of this.</p> <p>States that there is a reason people like places like Margaret River and the Swan Valley, and one reason is because of the diversity of experiences and land uses permitted. Kununurra is not in danger of being Hong Kong anytime soon.</p> <p>Allowing some development, even encouraging it, in this area could have profoundly beneficial benefits to Kununurra. Imagine Kununurra today without the Pump House restaurant. It is clearly a better place with it.</p>	<p>Noted.</p> <p>The DoP have recently advised that the freehold portions should be a zone and not a reserve, however recommend that either a SCA is implemented, or a separate zone is used, such as 'Environmental Conservation Zone'.</p> <p>The Shire has the following options:</p> <ol style="list-style-type: none"> <li>1. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Local Horticulture, with a Special Control Area to be created over the reserve and portion of the Local Horticulture zone.</li> <li>2. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Environmental Conservation Zone, and include development provisions in the Scheme and a supporting local planning policy.</li> </ol> <p>Recommend this matter be reviewed.</p> <p>Noted that the draft Strategy (Figure 3) identifies two areas to be investigated for feasibility for short term waterfront development to include residential, tourism and commercial, being portion of Crown land (King Location 715) adjacent to</p>

		<p>Lakeside Precinct, Kununurra</p>	<p>Notes that under the current R15 zoning in Lakeside the minimum land required per house is around 580m<sup>2</sup>, with an average of 666m<sup>2</sup>.</p> <p>Understands that a change of zoning from R15 to R25 would mean the minimum land required per house is 300m<sup>2</sup>, with an average of 350m<sup>2</sup>.</p> <p>Considers that this strategy for increased density is half baked and will lead to reduced amenity and attractiveness of Lakeside. It will reduce the outdoor amenity opportunities for residents on their properties and make it difficult to cool houses because there will be less shade and garden areas. It is not consistent with good urban form in a climate like Kununurra has.</p> <p>Urges Council to take a bolder step and cater for increased density in a more deliberate manner which will have a profound long term benefit for the community.</p> <p>Notes that there are no options to buy a quality town house/apartment, preferably 4 to 5 stories high, with views of the river and ranges, close to amenities and quality public open space, and investors will then look elsewhere for this sort of development.</p> <p>Queries where that market is being catered for now or into the future? Considers there will be a significant if not increasing number of people living singularly or couples who do not need or want R15 or R25 zonings. The options for people who do want that are available now. The options for people who want space and acreage are available now. Diversity of options is important.</p>	<p>Kimberleyland Holiday Park and portion of foreshore land on the opposite side of Lily Lagoon adjacent to the proposed Drovers Rest Development.</p> <p>Portion of King Location 715 has subsequently been identified as Urban Development (Scheme Map # 22), to earmark it for future development subject to more detailed structure planning.</p> <p>Noted.</p> <p>Residential densities in Lakeside proposed to be reviewed.</p> <p>The Commercial Zone also allows for development up to R80, and the previous height restriction of 10m has been removed from the draft Scheme.</p> <p>There is also residential land available in proximity to the town centre that allows densities of R50 or R30.</p> <p>The draft Strategy (Figure 3) also identifies two areas to be investigated for feasibility for short term waterfront development to include residential, tourism and commercial development, which could incorporate medium rise development.</p> <p>The proposed East Lily Creek development also has the opportunity to provide for a range of housing styles.</p>
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			<p>Considers these options need to be available if Kununurra is to be a modern contemporary place in a stunning landscape.</p> <p>States that this sort of living has its advantages:</p> <ul style="list-style-type: none"> <li>• Can lock and leave with greater security</li> <li>• It is more efficient use of space and public resources and it leaves a smaller urban footprint.</li> <li>• It encourages a more vibrant community.</li> </ul> <p>It may not be everyone's preference, but that is not the point. Diversity is the point.</p> <p>Considers that unless Kununurra embraces nodes of higher density it is destined to be just another urban sprawl community.</p> <p>Notes that high density, vertical tower style living is being embraced in places like Karratha and Darwin, with the waterfront port precinct at Darwin being a good example, and considers that is the direction Kununurra should take. Considers that areas proposed for development in the future like East Lily Creek and the area between the Pump House and town are ripe for this sort of much denser living.</p> <p>Recommends Council focus on this and not more mundane zoning changes suggested for Lakeside.</p>	
62.	Department of Parks & Wildlife (late Submission)		<p>Has no specific objections to the documents, however requests that they continue to be consulted on a case to case basis for any future development, land use changes or proposals in order to provide specific advice.</p> <p><u>Biodiversity Values</u></p> <p>There are a number of significant biodiversity values in the Shire, including in the immediate surrounds of the Kununurra townsite. Any proposed impacts to these from future developments will need to be assessed by the Department to determine the impact to threatened and priority species, wetlands and native vegetation. Appropriate vegetation buffers may be required for sensitive or environmental values.</p>	<p>Noted.</p> <p>Noted.</p>

			<p>Recommends areas of high conservation value or areas that contain suitable habitat for native species, be retained and incorporated into future development as public open space reserved for conservation and recreation. These areas can serve multiple additional purposes including acting as wildlife corridors, wind breaks, buffers to prevent erosion during heavy rainfall events and additionally will make the area more aesthetically pleasing.</p> <p>Recommends that a minimum of 30% of each vegetation and soil type in the Shire is retained as the EPA identified that, from a purely biodiversity perspective, the 'threshold level' below which a species loss appears to accelerate exponentially at an ecosystem level is regarded as being at a level of 30% of the pre-clearing extent of the vegetation type.</p> <p>Below are a number of key biodiversity values within close proximity to Kununurra for consideration.</p> <p><b>Typhonium</b> – is a small, cormous, perennial herb restricted to black cracking clays found in close proximity to the Ord River and Kununurra. It is a Declared Rare Flora with a restricted habitat type and distribution. Species has been severely impacted by existing and proposed clearing from Ord Stage 1 &amp; 2 agricultural developments due to the demand for this soil type and the locations they occur. Should a proposal be considered to potentially impact on Typhonium, the proponent may be required, at their expense, to survey for its presence within and surrounding the proposed area in order to assess the potential and proportional impact to the species and its habitat, which may require multiple wet seasons (depending on rainfall) and an experienced botanist familiar with the species. DPaW will then aide in determining the proportional impact of the proposal and whether it can be approved. Setting aside further areas that are known to contain Typhonium and the appropriate soil type will not only aid in the long term protection of the species, but will also protect other priority species also dependent on black cracking clays and may assist in approval of future proposals as the proportional impact will be minimised.</p>	<p>Noted. Recommend a summary of this information can be provided in the draft Strategy (Part 2 – flora)</p>
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		<p><b>Wetlands and Ramsar values</b> – the Shire contains a number of significant wetland values, including Ramsar listed sites in immediate proximity to Kununurra, in particular lake Kununurra. In accordance with Ramsar guidelines, any proposed developments adjacent to Ramsar sites, wetlands or other waterways will need to ensure a 50m vegetation buffer is maintained to protect the integrity of the waterway and the associated riparian values, as well as reducing runoff into the waterway. This will also protect fauna habitat, maintain the visual amenity and reduce the impacts of human activities on these environments.</p> <p>DPaW's particular concern is the potential impacts to water quality in the Ord River, as it consequently flows downstream to the Ord River Floodplain, a Ramsar listed site of international importance under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> which meets seven of the nine Ramsar criteria. There have already been a number of impacts to the Ord River from existing development including:</p> <ul style="list-style-type: none"> <li>• An increase in sedimentation to the lower Ord River and downstream sites, particularly from vegetation clearing, development and wet season runoff. An increase in sedimentation may negatively impact on the conservation values of the area.</li> <li>• The existing irrigation from Ord Stage 1 area has resulted in an increase in dry season flows, a decrease in high flows in the wet season and a decrease in flow variability of the lower Ord River. The effects that these have had on the lower Ord River include a disruption to riparian tree regeneration, reduced frequency and extent of inundation of Parry's lagoon, and increase in in-channel vegetation such as Typha, invasion of weeds, impacts to fish and macroinvertebrate communities and increased sedimentation in the mouth of the estuary. These impacts may be further exacerbated by future development in particular agricultural growth.</li> <li>• There is also a moderate to high risk from increased levels of nutrients and pesticides from irrigation drainage of the ecology of the lower Ord River. There are already</li> </ul>	<p>Noted. Recommend that additional text can be added to Part 2 – surface water and wetlands.</p>
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			<p>records of concentrations of two agricultural chemicals exceeding guideline levels. In addition, fish kills have been observed and there is evidence of bioaccumulation of pesticides in barramundi, estuarine crocodiles and freshwater crocodiles. Nutrient leaching may also cause eutrophication.</p> <ul style="list-style-type: none"> <li>• Contaminated storm water runoff, both agricultural (fertilisers and chemicals) and industrial, may affect water quality and cause habitat degradation, particularly late in the dry season.</li> <li>• Changes to the hydrology and ground water level of the area due to vegetation clearing, agriculture and irrigation, and the associated environmental impacts of these changes, in particularly salinity.</li> </ul> <p>Therefore any proposed development that may impact on the Ord River will need to be assessed for potential impacts and any discharge into the Ord River should be considered as discharging directly to natural surface waters. Management targets should comply with ANZECC &amp; ARMCANZ (2000) water quality guidelines for aquatic ecosystem protection.</p> <p><u>Crocodiles</u></p> <p>Lake Kununurra is part of a Crocodile Risk Mitigation Area and every attempt is made by DPaW to remove identified estuarine crocodiles, however they are highly mobile animals that are capable of moving large distances both over land and in the water. Therefore they are able to enter and move within the risk mitigation area undetected, and since November 2014, 3 estuarine crocodiles have been removed from Lake Kununurra.</p> <p>Lake Kununurra is also home to many freshwater crocodiles, and whilst they do not have an aggressive nature, they have been known to bite when provoked or frightened. It is therefore important that anyone using the lake are made aware of the risks and exercise caution and remain vigilant at all times.</p> <p><u>Adjacent Parks and Wildlife Managed Lands</u></p>	<p>Noted.</p>
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		<p>Recommend the following where develop border DPaW managed lands, particularly around Kununurra where there are a number of conservation reserves;</p> <ul style="list-style-type: none"> <li>• A buffer of native vegetation should be retained between the development areas and Departmental managed lands</li> <li>• The disturbance to the landscape is likely to increase the capacity for both terrestrial and aquatic weeds, which pose a further threat to the biodiversity values on land surrounding the development areas. Weeds are to be managed to prevent the spread into bordering conservation areas. In case of residential development or landscaping, species which are known to be invasive or environmentally damaging should not be used and instead planted with native species.</li> </ul> <p><u>Bushfire Management</u></p> <p>Would like to be consulted on any development proposals adjoining the conservation estate to assist in producing sound outcomes. In accordance with the draft SPP 3.7, "new development should provide the highest achievable level of protection from bushfire".</p> <p>Bushfires present a risk to communities, including human lives, homes, public and private infrastructure, amenity cultural and heritage values. DPaW's fire management activities, related to both planned and unplanned fire events, aim to take account of these issues in meeting the joint objectives of minimising harm to the community and managing the land and wildlife values in its care.</p> <p>However the proponent should ensure that all fire protection requirements are accommodated within the developments themselves and do not place impositions or reliance upon hazard reduction mechanisms being implemented within Departmental-managed lands.</p> <p>Adequate measures such as building setbacks, low fuel zones and firebreaks on adjoining private property allows a buffer between conservation estate and private property which makes it easier and safer to suppress bushfire and carry out hazard reduction measures such as prescribed</p>	<p>Noted.</p> <p>Noted. SPP 3.7 Guidelines require that private development assess and manage bushfire risk.</p> <p>Prior to granting consent to advertise the draft Strategy the WAPC requested a number of modifications required to be made, some prior to advertising and some that could be undertaken after advertising prior to final adoption.</p> <p>One such modification was that more information was required in relation to bushfire prone areas and subsequent bushfire hazard assessment.</p> <p>Additional discussion has therefore been prepared on bushfire prone areas, anticipated bushfire hazard levels, and implications for planning in Part 2 (background section) of the Strategy. Section 4.4 in Part 1 is also proposed to be updated to include a high level summary of the issue and a strategic response in relation to bushfire hazard.</p>
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		<p>burning both on conservation estate and private property. Applying prescribed fire is an inherently risky strategy and is undertaken where it is considered that the risk of not burning outweighs the more manageable risks associated with undertaking a prescribed burn. The lack of effective hazard reduction measures on adjoining private properties not only significantly increases the risks from bushfire but also significantly impacts on the ability to safely carry out any fuel reduction by prescribed burning on conservation estate.</p> <p>A perimeter road should be established between all areas of residential development which abut conservation areas for reasons of public safety, protection of bushland, emergency vehicle access and fire safety for residents. The width of the road reserve should be adequate to accommodate roads, dual use paths and drainage infrastructure.</p> <p>A preference for agricultural land or areas of low occupancy (e.g. ovals and open spaces) over urban areas or high occupancy infrastructure (e.g. primary schools) should be given to areas that border conservation estate due to the associated fire risks.</p> <p><u>Flooding</u></p> <p>Areas in the Shire may experience increased runoff on high rainfall events, a common occurrence during wet season storms, leading to flooding and/or erosion. Changes to the hydrology and ground water level of the area can potentially be altered due to vegetation clearing, and the impacts of high rainfall events may therefore be amplified.</p> <p>Recommends that suitable hydrological investigation and assessment of erosion risk is undertaken, and that appropriate flood and erosion mitigation strategies are implemented.</p>	<p>Noted.</p> <p>The Shire is in the process of undertaking a flood management assessment for Kununurra.</p> <p>Recommend additional information be included in the Strategy regarding the drainage issues within the Kununurra townsite and the flood management assessment being undertaken.</p> <p>Once flood mapping has been undertaken, relevant information can be incorporated into the Scheme.</p> <p>In the interim structure planning and preparation of a local water management strategy would be required to be conducted prior to planning and development in areas suspected to be at risk of flooding.</p>
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## Draft Shire of Wyndham East Kimberley Local Planning Scheme No. 9

### Recommended Modifications

Issue	Justification for modification /additional detail	Recommended Modification
<p><b>Rezoning Lot 704 (on DP 75319) Barytes Road, Wyndham from Special Site – Zoological Gardens and Ancillary Purposes to General Industry</b></p>	<p>Lot 704 Barytes Road, Wyndham was previously the site of the Wyndham Crocodile Park which has now closed.</p> <p>The surrounding land is proposed to be zoned General Industry.</p> <p><b>Recommend to rezone Lot 704 Barytes Road, Wyndham to General Industry zone to align with the zoning of surrounding lots.</b></p>	<p>Modify Scheme Map 12 to show Lot 704 (on DP 75319) Barytes Road Wyndham as General Industry on Scheme Map.</p> <p>Modify Scheme Text to remove SU14 from Schedule 3 – Special Use Zones</p>
<p><b>Recoding Lots in Lakeside to R25</b></p>	<p>The advertised draft Local Planning Scheme No. 9 (LPS 9) proposed to recode the older portions of the Lakeside Park residential estate to R20, and to recode existing dual coded sites to the higher coding i.e. R15/R30 to R30 and R15/50 to R50.</p> <p>Rezoning initially proposed to rectify existing zoning anomalies, and was first considered when there was greater demand for residential land.</p> <p>The majority of submissions received opposed the proposed increased in density and raised concerns that:</p> <ul style="list-style-type: none"> <li>▪ the property values will be negatively affected.</li> <li>▪ high density housing could exacerbate existing social issues and antisocial behaviour.</li> <li>▪ it may result in deterioration of amenity: increased noise, traffic, reduction in safety.</li> <li>▪ Individual dwellings would have reduced open space, outdoor living areas and landscaping, in particular trees;</li> <li>▪ it would impact on climatic design by not adequately providing for breeze paths and shading (trees or eaves) to adequately cool houses without air conditioning.</li> </ul> <p>Submissions also noted that there is existing land available to be developed, including a number of serviced lots in Lakeside Park (Stage 6 &amp; 7), which may remain unsold due to the small lot sizes</p>	<p>Modify Scheme Map 32 to retain existing R code as per TPS 7 with the following changes:</p> <ul style="list-style-type: none"> <li>▪ Zone the following properties as Residential R30: 18 Water Lily Place, 10, 12, 14, 16, 25, 27 &amp; 29 Casuarina Way, 6 Melaleuca Drive, 12 &amp; 14 Palm Court, Kununurra</li> <li>▪ Zone the following properties as Residential R40: 1, 5 &amp; 9 Plum Court, Kununurra</li> <li>▪ Zone the following properties as Residential R20: 11, 73 &amp; 94 Casuarina Way, 8, 10, 12, 14, 16, 18, 20, 24 Eucalyptus Close, 11 – 13, 15 Sandalwood Street, 5 Banyan Street, 13 &amp; 15 Flametree Street, 6 – 8, 17, 18, 24, 31 Lemonwood Way, 8 &amp; 10 Pine Court, 9 Palm Court, 2 – 6, 8 &amp; 10 Lotus Court, 29 &amp; 37 Grevillea Avenue, 2 Milkwood Street, 5 Coleus Close, 8 &amp; 16 Plum Court, 4 Alba Street, 30 &amp; 32 Eugenia Street, 3, 5, &amp; 7 Cycas Close, 2 &amp; 4 Livistona Street, Kununurra</li> </ul> <p>Modify Scheme map to remove the R25 Code shown over Nicholson Park (Reserve 48394) Public Open Space Reserve.</p>

when there is a desire for larger lots, and that the East Lily Creek precinct could provide for higher density development.

There were two submissions in support of the proposed recoding, on the basis that it would promote redevelopment opportunity and provide additional employment for the local building industry, and would result in greater housing diversity and affordability and is in line with the State Affordable Housing Strategy 2010 – 2020.

Of the 586 lots proposed to be recoded there are 83 existing lots that have been developed as grouped dwelling sites, however are not coded accordingly, 63 of which have been strata titled and the majority (75%) are privately owned.

The proposed increase from R15 to R25, other than addressing the existing coding anomalies, would allow those remaining lots above 700m<sup>2</sup> to be redeveloped, of which there are 298.

**Recommend to retain existing zoning within Lakeside an only allow pockets of higher density group housing, either on corner lots or in appropriate locations, including existing strata titled grouped dwelling sites.**

It is noted that under any coding including R15 coding, lots greater than 450m<sup>2</sup> have the ability to establish a 70m<sup>2</sup> ancillary dwelling on the same site as a Single Dwelling. Under the deemed provisions a development approval is not required for an ancillary dwelling if it complies with the Residential Design Codes (R Codes).

It is also noted that Nicholson Park in Lakeside although correctly coloured as Open Space Reserve has been denoted with an R25 code.

**Recommend modify Scheme Map 33 to remove the R Code from Nicholson Park (Reserve 48394).**

**Rezoning of existing Rural Industry (TPS 7) lots to Agricultural – State or Regional Significance (Rural Ag 1) and Local Horticulture (Rural Ag 2)**

The Shire was directed to remove the Rural Industry Zone from the draft Scheme prior to advertising, on the basis that there is no such zone in the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations)

Submissions received did not support the proposed rezoning on the basis that there are existing transport and commercial businesses within the existing Rural Industry Zone (TPS 7) which will become non-conforming land uses, and although they can continue with their present use, it is likely to restrict variation or expansion of activities in the future.

It was also considered that the existing Rural Industry zone (TPS 7) provided for local supporting industries and activity within the predominantly agricultural area, which are best suited to be located out of town, and of a size and location to support road train access.

It was suggested that a similar zone to Rural Industry should be adopted, however if not supported recommend General or Light Industry, or a more commercial nature, and that consideration should be given to zoning around the proposed bypass road, to address associated industries currently in operation and land use conflicts.

State Planning Policy 2.5 states that “the WAPC supports opportunities for employment and diversification of economic activity related to primary production. As such it will:

- a) promote the establishment of precincts for primary produce processing close to services and freight routes, and with adequate buffers; and
- b) support the concept of rural enterprise zones in strategies and schemes that combine light industry and ancillary housing, provided they are carefully planned with general proximity to urban areas, are serviced and have design features that address buffers and amenity and generally meets the criteria listed in 5.6 (b).”

SPP 2.5 defines Rural enterprise as:

*a predominantly light industrial zone that provides for light industrial land uses and an ancillary residential dwelling on one lot, with lot sizes in the order of one to four hectares. Also known as rural industry or composite zones.*

Modify Clause 3.1.2 to include a new Rural Enterprise Zone with the following objectives:

- to provide for light or rural industrial and ancillary residential development on one lot.
- To provide for lot sizes in the range of 1ha to 4 ha.
- To carefully design rural enterprise estates to provide a reasonable standard of amenity without limiting light or rural industrial land uses.
- To notify prospective purchasers of potential amenity impacts from light or rural industrial land uses.

Modify Table 1 - Zoning Table to include Rural Enterprise Zone with the following use class permissibility:

Abattoir	SA	Market	A
Animal Establishment	A	Motor Vehicle Repair	D
Brewery	D	Motor Vehicle Wash	A
Bulky Goods Showroom	A	Office	IP
Car Park	D	Road House	A
Commercial Vehicle Parking	D	Service Station	A
Dwelling – Single	IP	Telecommunication Infrastructure	A
Farm Supply Centre	P	Trade Display	D
Fastfood Outlet/ Lunch bar	A	Trade Supplies	D
Fuel Depot	D	Transport Depot	D
Garden Centre	D	Veterinary Centre	A
Industry - Cottage	D	Warehouse/Storage	D
Car Park	D	Waste Storage Facility	A

<p>On the basis of the above, DoP following the review of the SPP 2.5, are recommending the introduction of a new Rural Enterprise zone in the LPS Regs, and advised that the Shire may use in place of the previous Rural Industry Zone.</p> <p><b>Recommend to introduce a Rural Enterprise zone into the draft Scheme, however amend the objectives to provide for light and rural industry.</b></p> <p>Lot 51 Weaber Plain Road is currently zoned Rural Industry under TPS 7 however is the site of the Sandalwood Café, which could be considered as a restaurant/café and exhibition centre. There is a separate recommendation below (in relation to the proposed Local Horticulture Zone) which proposes to allow limited value-adding uses within the Agriculture – State and Regional Significance Zone as well as the Local Horticulture Zone. As such it is recommended that Lot 51 Weaber Plain Road remain zoned as Agriculture – State and Regional Significance Zone.</p> <p>Lot 100 Mills Road Kununurra is currently zoned Rural Living under TPS 7, which is proposed to be renamed Rural Residential in LPS 9, in accordance with the LPS regulations. This lot is located opposite existing Rural Industry lots, adjoins the proposed heavy vehicle route and has non-conforming use rights for an existing Lime Kiln. As such, it is recommended that Lot 100 should be included in the Rural Enterprise zone.</p> <p><b>Recommend to zone all existing TPS 7 Rural Industry lots as Rural Enterprise except for Lot 51 Weaber Plain Road, Kununurra, and to include Lot 100 Mills Road, Kununurra</b></p>	<table border="1"> <tr> <td data-bbox="199 405 261 981">Industry</td> <td data-bbox="261 405 1369 981">A</td> </tr> </table> <p>Modify the Scheme Text to include the following development provisions in Part 4 – General Development Requirements:</p> <p><b>Rural Enterprise development requirements</b></p> <p><i>The following development standards and requirements apply in addition to use specific provisions set out in Schedule 4 – Development Standards Table of this scheme.</i></p> <p><b>Minimum Setbacks</b></p> <p><i>Front: Industrial component – 9m, Residential component – behind or in line with industrial component</i></p> <p><i>Side and Rear – 5m</i></p> <p><i>Parking – Industrial/commercial component – one bay per 65m<sup>2</sup> NLA</i></p> <p><i>Landscaping: 2m landscaping strip along the front boundary.</i></p> <p><i>Within a lot situated within the Rural Enterprise zone, a person may only:</i></p> <p><i>(a) Undertake development which incorporates an industrial/business component;</i></p> <p><i>(b) Develop a residential dwelling where that residential component is incidental to an industrial/business component;</i></p> <p><i>(c) Allow a residential dwelling to be occupied by the owner, manager or employee (and their family and/or dependents) of the rural or light industrial pursuit;</i></p> <p><i>(d) Establish a light or rural industry that is of a nature which can operate compatibly with residential living and minimal impact on adjoining properties.</i></p> <p><i>No dumping or storage of waste or materials, or construction, servicing or maintenance, shall be carried out between the front building line and the street frontage. However, the local government at its discretion may approve the display of finished goods or goods for sale or ready for delivery.</i></p>	Industry	A
Industry	A		

Modify Scheme Maps 19, 21 & 31 to zone the following properties as Rural Enterprise:

- Lots 22 - 27 (DP 43085) & Lot 570 (DP 214946) Ivanhoe Road, Kununurra
- Lot 770 (DP 191117) Mills Road, Kununurra
- Lot 794 (218988) Mulligans Lagoon Road, Kununurra
- Lot 10 (DP 69516), Lot 443 (DP 181344) Lot 597 (DP 185360) & Lots 700 – 702 (DP 408129) Weaver Plain Road, Kununurra
- Lot 100 Mills Road, Kununurra

<p><b>Rezoning of Old Darwin Precinct from Rural Smallholdings, Rural Agriculture 1 and Rural Agriculture 2 to Rural Residential</b></p>	<p>The current Strategy (2005) identifies the Old Darwin Precinct as suitable for Rural Smallholdings, which allows for a lots ranging from 4ha to 40ha.</p> <p>Initially the draft Strategy, as adopted by Council, recommended a streamlined Rural Living Zone ranging from 1ha – 10ha, however the Shire was directed to split the proposed lots into either Rural Smallholding zone or Rural Residential zone in the draft Scheme, and modify the Strategy prior to advertising.</p> <p>The precinct was identified as the next logical Rural Residential area in the draft Strategy, given the expansion of the townsite to the south, and that the land is close enough to town for provision of reticulated water supply (required for lots under 4ha) and reticulated sewer to be provided (as required for lots under 4ha).</p> <p>Most of the submissions received in relation to this issue did not support the proposed change due to concern that smaller 1 hectare lots would impact residents' choice of lifestyle, and result in a loss of amenity. A number of Lot owners in Egret Close and Curlew Close wish lot sizes to remain the same or consider that the area already provides a good distribution of properties, ensuring residents are not crowded and have ample space between dwellings.</p> <p>The other main concern was in relation to water management issues, such as addressing drainage, supply of non-potable and potable water and wastewater issues. Many landowners concerned about capability of Lot 1 to be subdivided due to water management issues, including stormwater run-off and flooding, and commented on drainage and salinity issues caused by the farming practices.</p> <p>Two submissions of support were received, on the basis that it will provide more choice and opportunities for residents to live in a more rural setting, however recommended appropriate buffers and development controls to manage the interface between the proposed rural residential lots and adjoining Tourism zoned land given the different uses and possible intensity of permitted development.</p> <p>It is acknowledged that the Draft Strategy states that “<i>rezoning as part of the scheme review is not recommended; instead scheme amendments by private developers will ensure delivery of rural</i>”</p>	<p>Modify Scheme Maps 26 &amp; 28 to show Old Darwin Road (Lots 1 &amp; 2 on Diagram 87117, Lot 16 on Plan 46913, Lot 17 on Plan 46915, Lots 20 – 25 on Plan 56702, Lots 26 - 31 on Plan 59297, Lots 34 &amp; 35 on Plan 60858) Precinct as Rural Smallholdings.</p>
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*living land, consistent with market demand*", and that Scheme Amendments to rezone land for rural smallholding or rural residential developments should be supported by structure plans and local water management strategies (LWMS) consistent with *Better Urban Water Management*.

Development of a LWMS will require the concerns raised in relation to water management to be addressed, prior to rezoning or subdivision being supported. It is noted that most of the drainage issues are being exacerbated by the current farming practices, and that larger lot sizes are usually recommended for lots adjoining different zones to provide for greater separation of differing land uses.

**Recommend modify the Scheme Map to zone the Old Darwin Road precinct as Rural Smallholdings.**

<p><b>Rural Residential and Rural Smallholding Zone – Development Requirements</b></p>	<p>A number of submissions queried or made suggestions in relation to the proposed development requirements for the Rural Smallholding and Rural Residential zones, in particular clause 4.29.5 in relation to the keeping of animals, and clause 4.29.6 in relation to vegetation clearing.</p> <p>Clause 4.29.5 (a) outlines the keeping of animals (other than domestic household pets) on Rural Residential or Rural Smallholding zoned land requires development approval. However, it is likely that a range of animals may be kept on a rural residential or rural smallholding property for the enjoyment of the land by owners/occupiers which may not be considered domestic household pets, for e.g. chickens and horses. It is agreed that it would be onerous and unnecessary if a development application was required to keep animals that were not to be used for commercial purposes on a property.</p> <p><b>Recommend to amend clause 4.29.5 to specify that a development approval is only required for animals that are kept within a rural residential or rural smallholding lot for commercial gain.</b></p> <p>One submission, identified that Clause 4.29.6 does not allow for land clearing to facilitate horticultural activity in the Rural Smallholding zone although it is a permitted “P” use in the zoning table. It is noted that</p> <p>Clause 4.29.6 (c) allows for ‘clearing as may be reasonably required to accommodate an approved building and curtilage, or vehicular access to an approved building or other land use approved by the local government’.</p> <p>This clause can be interpreted to apply to horticulture as an approved land use. As such, no modification is required.</p> <p>Another submission recommended that Clause 4.29.6 (d) should include the removal of introduced exotic trees such as Neem, Parkinsonia, Lucaena, Indian rain tree etc, which is supported.</p> <p><b>Recommend 4.29.6(d) can be amended to include noxious trees or weeds.</b></p>	<p>Modify Clause 4.29.5(a) to read as follows:</p> <p>(a) <i>The keeping of animals on Rural Residential or Rural Smallholding zoned land for commercial gain requires the development approval of the local government, and if approved, shall accord with the maximum stocking rates prescribed by the Department of Agriculture and Food.</i></p> <p>Modify Clause 4.29.6(d) to read as follows:</p> <p>(d) <i>Trees which are dead, diseased, dangerous, introduced exotic trees, or noxious trees and weeds.</i></p>
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**Introduction of Farm Building as a land use**

One submission recommended the addition of a Machinery Shed as a use class, as a permitted “P” use in all rural zones, and that development approval should not be required, however, that a maximum floor area to be included in the Rural Residential Zone. It is noted that the proposed supplemental provisions allow for the erection or extension of an outbuilding on the same lot as a single house if a single house is a permitted (“P”) use in the zone (where R Codes do not apply) where the development complies with the standards set out in the Scheme for the particular zone (including boundary setbacks).

This means that a development approval would not be required for ‘domestic’ sheds. However, it is agreed that a development approval should be required for sheds over a certain size, height wall or ridge height in the Rural Residential zone.

A development approval however would be required for a machinery shed, packing shed, workshop etc which are used for commercial purposes.

Other local governments have included ‘Farm Buildings’ as a land use, with some examples below;

**Farm building** means those buildings and structures or parts of buildings and structures that are used for the storage of farm machinery and equipment and agricultural produce grown on the land.

**“farm building”** means a building of a permanent nature, other than a building used or intended to be used for residential purposes, that is on land used for agricultural purposes;

(a) for storage of agricultural products and produce; and/or  
(b) for the maintenance of farm machinery used by the occupier of the site;

but does not include Agriculture – Intensive, Industry – Rural, Industry – Service;

**Recommend include land use definition for farm building into draft Scheme.**

**Recommend include a provision that a development approval is required for outbuildings (sheds) over 200m<sup>2</sup>, or with a wall height exceeding 4.4m, or ridge height exceeding 6m.**

Modify Part 6, Division 2, 6.2 Land Use Definitions to include the following definition:

**farm building** means those buildings and structures on land used for agricultural purposes;

(a) for storage of agricultural products and produce; and/or  
(b) for the maintenance of farm machinery used by the occupier of the site;

but does not include agriculture – intensive or industry – primary production.

Include farm building in the in Table 1 - Zoning Table with the following use class permissibility:

Priority Agriculture	P
Local Horticulture	P
Rural/Pastoral	P
Rural Smallholdings	P
Rural Residential	D

And not permitted (X) in all other zones.

Modify Scheme Text to include an addition clause in Clause 4.29 as follows:

Outbuildings

Notwithstanding clause 61(1)(m) in Schedule A – Supplemental Provisions, the development of an outbuilding in the Rural Residential Zone with either:

- (a) A floor area exceeding 200m<sup>2</sup>; or
- (b) Wall height exceeding 4.4m; or
- (c) Ridge height exceeding 6m;

will require the development approval of the local government.

<p><b>Heritage</b></p>	<p>The Scheme will enable the Shire to create a heritage list. The heritage list is a statutory instrument which allows the Shire to consider the heritage of a place as part of its decision-making process for proposed development. As the Shire is yet to establish a heritage list, the State Heritage Office has recommended a clause be included which states, until such time as a heritage list is adopted by the Shire, that the heritage list is the municipal inventory.</p> <p><b>Recommend add a clause in the supplemental provisions to state that until such time as a heritage list is adopted by the local government, that the heritage list is the municipal inventory.</b></p>	<p>Add the following clause into Schedule A – Supplemental provisions to the deemed provisions:</p> <p><b>Clause 8 (4):</b></p> <p><i>Until such time as a heritage list is established by the local government in accordance with clause 8(1) of the deemed provisions, the heritage list is the municipal heritage inventory.”</i></p>
<p><b>Rezoning of Weaber Plain Light Industrial Area from Light Industry to Composite Industry</b></p>	<p>The intent of rezoning this area is to allow people to build a residence and establish a light industry or similar on the same property, as already occurring within the Weaber Plain Light Industrial Area (LIA).</p> <p>The DoP have acknowledged that there is a demand in regional areas for lots that can accommodate a business and a house, and advised that if the Shire does wish to include a composite zone, appropriate justification is required to be provided, via the local planning strategy. However, the DoP’s preferred approach, in keeping with the intent of the regulations to streamline zones, and to reflect the intention of the areas being primarily for business with the houses being incidental, is to use a Special Control Area or additional use to provide for dwellings within identified industrial areas, rather than introducing a composite zone into the model provisions.</p> <p>While submissions received support the proposed rezoning in principle, there were concerns raised about rezoning the whole of the Weaber Plain LIA to Composite Industry due to potential impacts on proposed residential use from existing established industries, the potential to preclude existing industries due to these impacts, and the lack of available light industrial land in Kununurra.</p> <p>It is acknowledged that the proposed Draft Scheme Maps only provide for an established Light Industry Zone in Wyndham (Three</p>	<p>Modify Scheme Map 31 to show the Weaber Plain Road Light Industrial Area as Light Industry Zone.</p>

Mile, Map 13), with two areas of proposed Industrial Development provided for within Kununurra and surrounds.

In the interim both LandCorp and the DoP have suggested that the Weaber Plain LIA should not be rezoned to Composite Industry until such time as a viable alternative industrial precinct is identified, but greater flexibility in terms of caretaker dwelling could be considered.

**Recommend retain the Light Industry zoning for the Weaber Plain Light Industrial Area, and allow only for caretaker dwellings to be established.**

It is also noted that there are a number of existing established Composite Industry lots on Bull Run Road, which have been developed in accordance with the provision of the Composite Industry Zone under TPS 7.

**Recommend retain the Composite Industry zone with those lots on Bull Run Road to remain zoned as Composite Industry.**

<p><b>Local Horticulture Zone (Rural Agriculture 2)</b></p>	<p>Main concerns raised around the non-agricultural uses that may be permitted, and how these will impact on the right and ability to farm on neighbouring properties, the increased biosecurity concerns, and how non-agricultural developments and associated impacts will be monitored and controlled.</p> <p>Non-agricultural uses were introduced into existing TPS 7, in both the Rural Agriculture 1 and 2 zones, with the intent to allow landowners to 'value-add' to their agricultural activities. Some of these uses have been retained in the draft Scheme for the proposed Local Horticulture Zone, however with the intent to include better controls, and limitations on the size and number of accommodation units that may be allowed.</p> <p>However, the submissions received consider that the planning controls in the draft Scheme are still not adequate to protect continued intensive agriculture or promote future agricultural development.</p> <p><b>Recommend that the objectives and development requirements for, and land use permissibility within, the proposed zone be amended to address the various concerns raised.</b></p> <p>Comments in relation to the proposed objectives of the zone, considered that the objectives as advertised encourage non-agricultural development within the zone, rather than promoting and protecting horticultural activities.</p> <p><b>Recommend modifying the objectives to identify the lots within this zone as primarily for intensive agricultural purposes.</b></p> <p>In relation to allowable uses within the Local Horticulture Zone, the main concern has principally been in relation to tourist accommodation. Under TPS 7, a maximum of three cabins or chalets can be approved on RA2 lots as an incidental use, with no maximum size specified, and only required the accommodation to remain as "a subordinate use in scale, scope and intensity to the predominant agricultural nature of the site".</p> <p>Draft LPS 9 proposes (clause 4.27.2) that a number of non-agricultural uses may be approved at the discretion of the local government following advertising of the application ('A use), and</p>	<p>Modify objectives of Local Horticulture Zone (rural Agriculture 2) as follows:</p> <ul style="list-style-type: none"> <li>(i) to identify and protect intensive agricultural land of local significance;</li> <li>(ii) to provide for a diversity of sustainable intensive agriculture and value-adding opportunities;</li> <li>(iii) to protect existing and potential agriculture production areas from inappropriate land use;</li> <li>(iv) to maintain the rural character of the area; and</li> <li>(v) to avoid activities causing adverse environmental impacts and any other land management practices that would be detrimental to the amenity of the area;</li> </ul> <p>Modify Scheme text to include an additional point in clause 4.27 as follows:</p> <p><i>In considering an application for development approval, the local government must ensure that the proposed development is consistent with and will not conflict with the viability of intensive agricultural and horticultural pursuits on the property and within the locality.</i></p> <p>Modify the table in Clause 4.27.1 to specify a minimum 40m setback for incidental (non-agricultural) development.</p> <p>Modify Clause 4.27.2 to delete the following uses that the local government may only permit in accordance with this clause:</p> <p>Nursery</p> <p><i>Modify Clause 4.27.2(a) to (e) to read as follows:</i></p> <ul style="list-style-type: none"> <li>(a) An established horticultural or intensive agricultural activity is being carried out on the property, with a minimum of 50% of the land under cultivation.</li> <li>(b) The proposed development is to remain incidental and subordinate to the established horticultural or intensive agricultural activity on the property.</li> </ul>
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<p>subject to other provisions including the submission of a management plan and landscaping plan. This includes 'Farm Stay' which allows for a maximum of two cabins/chalets with a maximum floor area of 70m<sup>2</sup>, and only when an established horticultural or agricultural activity is being carried out on the property.</p> <p>The submissions received outlined that landowners that are actively farming their own properties are much more likely to understand and accept the impact farming practices will have on these developments, and therefore more likely to ensure adequate biosecurity protocols are maintained and appreciate the primary purpose of the property. Comment was also made that there also needs to be provision to ensure and determine that the horticultural or agricultural activity is maintained at or above a minimum level once a non-agricultural development has been approved i.e. that the non-agricultural development remains as an ancillary use.</p> <p>Concern was also raised about the amount of accommodation that can be established if a Single Dwelling, Caretaker's Dwelling or Ancillary Dwelling, and two Farm Stay chalets/cabins, can be established on a property. In this regard it is recommended that the proposed maximum floor area of 70m<sup>2</sup> for farm stay accommodation be reduced.</p> <p>It is noted that 'nursery' has been included in clause 4.27.2, as a non-agricultural use, however fruit or plant nurseries are forms of intensive agriculture.</p> <p>Clause 4.27.2 outlines the requirement for a detailed landscaping plan to be submitted, which should be in accordance with the Department of Health Guidelines for Separation of Agricultural and Residential Land Uses – August 2012 regarding the establishment of vegetation buffers.</p> <p>These guidelines specify that a 300m minimum buffer is required to allow for spray drift, however that "alternatively a 40 m separation distance can be used where a vegetative buffer has been adequately designed, implemented and maintained in accordance with these guidelines".</p> <p>As the existing RA2 lots are too narrow to provide for a 300m buffer distance a vegetative buffer will be required for the</p>	<p>(c) The proposed development is not located on any part of the property utilised for agricultural or horticultural pursuits, and sited so it will not bisect existing or potential agricultural and horticultural areas on the property. Prior to the local government advertising and making a determination on the proposed development the applicant shall submit:</p> <p>(d) (i) A detailed 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. The management plan should detail measures to manage the following impacts:</p> <ul style="list-style-type: none"> <li>▪ dust and noise;</li> <li>▪ visual amenity;</li> <li>▪ biosecurity; and</li> <li>▪ ensuring the continued agricultural/horticultural activity on the land.</li> </ul> <p>(ii) A detailed landscaping plan in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health - August 2012 regarding establishment of vegetation buffers. The vegetation buffer shall also provide an appropriate visual screen from both the road and neighbouring properties.</p> <p>(e) As part of the advertising process the local government will seek comment on any application from the Department of Agriculture and Food and other relevant agencies or stakeholders, and surrounding landowners.</p> <p>(f) (i) Prior to the construction of any proposed development landscaping in accordance with the approved landscaping plan should be commenced.</p> <p>(f) (i) Relevant officers or use of any approved development: biosecurity information is displayed in a prominent place;</p> <p>(ii) Relevant officers shall inspect procedures to ensure that all employees are made aware of the biosecurity issues and preventative measures prior to commencement of operation; and</p> <p>(iii) Landscaping must be established in accordance with the approved landscaping plan.</p>
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development of any sensitive land uses, which includes tourist accommodation, playgrounds, childcare facilities.

Consider that landscaping plans should be in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health – August 2012 regarding the establishment of vegetation. Noted that any variation to the guidelines, requires site specific investigation to be undertaken to support the alternative. The guidelines outline where an alternative is proposed it should be assessed by the EPA and Department of Health.

**Recommend modifying clause 4.27.2 to:**

- **Include a statement similar to Clause 4.26.2 (in relation to Priority Agriculture) to outline that proposed development should be consistent with and will not conflict with the viability of intensive agricultural and horticultural pursuits on the property and within the locality.**
- **Increase setback distances for non-agricultural development to side and rear boundaries to 40m.**
- **Delete ‘Nurse’ from the list of non-agricultural uses.**
- **Specify that the listed non-agricultural uses can only be permitted if an established horticultural or intensive agricultural activity is being carried out on the property, with a minimum of 50% of the property under cultivation.**
- **Require that the management plan is submitted prior to the application being advertised.**
- **Require that landscaping be in accordance with the Department of Health Guidelines for Separation of Agricultural land and residential land uses.**
- **Specify that the any approved development will be required to inspected and a register of guests provided to the local government.**

**Recommend modifying the definition of Farm Stay to reduce the maximum floor area to 50m².**

It is acknowledged that there are a number of existing non-agricultural uses on Rural Agriculture 1 (TPS 7) zoned lots, in particular restaurants (cafes), which as outlined in submissions are larger lots which can better provide for separation distances.

(g) *A register of guests staying in any approved accommodation is to be provided to the local government upon request each year.*

Modify table 1 – Zoning Table (3.2 Zoning Table) to show the following additional permissibility:

Exhibition Centre	A	Farm Stay	A
Bed and Breakfast	A	Restaurant	A

Modify the table in clause 4.26.1 to include the following additional minimum side and rear setbacks:

Structures and Incidental development (non-agricultural) – 100m

Include additional Clause 4.26. 4 as follows:

*In accordance with the Zoning Table, the local government may only permit the development and use of land for the following non-agricultural uses:*

- Exhibition Centre;
- Bed and Breakfast;
- Restaurant;
- Educational Establishment;
- Brewery;
- Farm Stay;

if:

- (a) *An established horticultural, intensive or extensive agricultural activity is being carried out on the property, with a minimum of 50% of the land under cultivation.*
- (b) *The proposed development is to remain incidental and subordinate to the established horticultural or agricultural activity on the property.*
- (c) *The proposed development is not located on any part of the property utilised for agricultural or horticultural pursuits, and sited so it will not bisect existing or potential agricultural and horticultural areas on the property.*

**Recommend to allow non-agricultural uses within the proposed Agriculture – State and Regional Significance Zone subject to same provisions as Local Horticulture Zone, however require a minimum 100m setback from side and rear boundaries.**

- (d) *Prior to the local government advertising and making a determination on the proposed development the applicant shall submit:*
- (i) *A detailed 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. The management plan should detail measures to manage the following impacts:*
    - *dust and noise;*
    - *visual amenity;*
    - *biosecurity; and*
    - *ensuring the continued agricultural/horticultural activity on the land.*
  - (ii) *A detailed landscaping plan in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health - August 2012 regarding establishment of vegetation buffers. The vegetation buffer shall also provide an appropriate visual screen from both the road and neighbouring properties.*
- (e) *As part of the advertising process the local government will seek comment on any application from the Department of Agriculture and Food and other relevant agencies or stakeholders, and surrounding landowners.*
- (f) *Prior to the construction of any proposed development landscaping in accordance with the approved landscaping plan should be commenced.*
- (g) *Prior to occupation or use of any approved development:*
- (i) *Relevant officers shall inspect the development to ensure biosecurity information is displayed in a prominent place;*
  - (ii) *Relevant officers shall inspect procedures to ensure that all employees are made aware of the biosecurity issues and preventative measures prior to commencement of operation; and*
  - (iii) *Landscaping must be established in accordance with the approved landscaping plan.*
- (h) *A register of guests staying in any approved accommodation is to be provided to the local government upon request each year.*

**Light Industry and General Industry**

A number of submissions have noted that there is limited land proposed to be zoned as General or Light Industry in the draft Scheme.

Although a key recommendation of the draft Strategy is to investigate the feasibility of potential general industrial land around Kununurra and prioritise a site for development of a General Industrial Estate, and a number of potential industrial areas are zoned as Industrial Development in the draft Scheme, it is acknowledged that there is a shortage of land appropriately zoned to be developed for industrial purposes in the short term.

Only Light Industry zoned land shown in Wyndham (Map 13).

Only one lot in Stockman Road shown as General Industry in Kununurra (Map 20). Otherwise only Wyndham Port is zoned General Industry (Maps 11 & 12).

However, there are two areas shown as proposed Industrial Development zone in Kununurra, one north of the Weaber Plain LIA (Maps 23 & 24 and 31 & 32).

It is recommended that a Service Commercial zone in the Scheme to provide for:

- commercial activities which, due to the nature of the business, require good vehicular access and/or large sites.
- a range of wholesale sales, showrooms, trade and services which, by reason of scale, character, operational or land requirements, are not appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.

The Service Commercial zone would be ideally located along the eastern side of Ivanhoe Road adjoining the proposed Mixed Use Zone, as this road is currently a key transport corridor for heavy vehicles and would provide a buffer to the proposed Industrial Development area on the western side of Ivanhoe Road. These lots are also currently within the 500m WWTP buffer.

**Recommend that existing Weaber Plain Light Industrial Area remain as Light Industry Zone, subject to further consideration once new industrial land is available.**

Modify Scheme Text to include an additional zone in Clause 3.1.2 as follows:

**Service Commercial Zone**

- (i) To accommodate commercial activities which, due to the nature of the business, require good vehicular access and/or large sites.
- (ii) To provide for a range of wholesale sales, showrooms, trade and services which, by reason of scale, character, operational or land requirements, are not appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.

Modify Table 1 – Zoning Table in Clause 3.2 to include the Service Commercial Zone with the following permissible land uses:

Art Gallery	A	Industry Light	A
Brewery	A	Market	D
Bulky Goods Showroom	P	Medical Centre	D
Caretaker's Dwelling	D	Motor Vehicle, Boat or Caravan Sales	D
Car park	D	Motor Vehicle Repair	D
Civic Use	A	Motor Vehicle Wash	D
Club Premises	A	Reception Centre	A
Commercial Vehicle Parking	D	Recreation – Private	D
Convenience Store	A	Road House	A
Educational Establishment	D	Service Station	D
Exhibition Centre	D	Shop	D
Farm Supply Centre	D	Tavern	A
Fast Food Outlet/Lunch Bar	D	Telecommunications Infrastructure	A

<p><b>Recommend that a Service Commercial Zone be introduced into the draft Scheme with lots located between Ivanhoe Road, Bandicoot Drive, Poinciana Street and Drainage Reserve 32932 to be zoned Service Commercial.</b></p> <p>The Department of Lands identified a number of parcels of land around the Wyndham Port which are reserved or leased for port purposes, however are currently shown on the Scheme maps as Public Open Space Reserve.</p> <p><b>Recommend modify Scheme Map to show Lot 451, part of Port Reserve 2404, and Lot 827, leased for barge loading, as General Industry zone.</b></p> <p>The Department of Lands and Department of Mines and Petroleum have both identified existing miscellaneous licences and easements that provide for conveyor belts and barge loading facilities that provide for the loading of cargo ships from the industrial lots north of the Wyndham Port, which they have recommended should also be zoned General Industry.</p> <p>It is noted that the Strategic Land Use Plan for the Wyndham Port and One Mile Area (Figure 6) shows Port &amp; related industry land uses as extended to the edge of the Cambridge Gulf, and that the Port Reserve to the south is zoned General Industry Zone to the edge of the Cambridge Gulf.</p> <p><b>Recommend modify Scheme maps to zone UCL land between Cambridge Gulf and Lot 2 &amp; Lots 700 – 702 Barytes Road, Wyndham, and Lot 1768 on DP 95770 as General Industry Zone.</b></p> <p>It is also noted that a portion of Lot 2 Barytes Road is shown as Public Open Space Reserve, however should be General Industry Zone.</p> <p><b>Recommend that all of Lot 2 Barytes Road, Wyndham be shown as General Industry Zone.</b></p>	<table border="1"> <tr> <td>Fuel Depot</td> <td>D</td> <td>Trade Display</td> <td>A</td> </tr> <tr> <td>Funeral Parlour</td> <td>D</td> <td>Trade Supplies</td> <td>P</td> </tr> <tr> <td>Garden Centre</td> <td>D</td> <td>Transport Depot</td> <td>A</td> </tr> <tr> <td>Hospital</td> <td>A</td> <td>Veterinary Centre</td> <td>D</td> </tr> <tr> <td>Industry – Cottage</td> <td>A</td> <td>Warehouse/Storage</td> <td>D</td> </tr> </table> <p>Modify Scheme Text to include the following text in Part 4 – General Development Requirements:</p> <p><b>Service Commercial Development Requirements</b></p> <p><i>The following development standards and requirements apply in addition to use specific provisions set out in Schedule 4 – Development Standards Table of this scheme.</i></p> <p><i>Minimum Setbacks:</i></p> <p><i>Front: 9m</i></p> <p><i>Side and Rear – 5m</i></p> <p><i>Parking – One bay per 65m<sup>2</sup> NLA</i></p> <p><i>Landscaping: 2m landscaping strip along the front boundary.</i></p> <p><i>Where a lot has frontage to 2 streets and the setback to the building is reduced, the landscape requirement may be reduced</i></p> <p><i>Development within Front Setback Area</i></p> <p><i>The local government may approve the construction of a carport or pergola or like structure between the building line and the front boundary providing:</i></p> <p>(a) <i>that any such structure remains open sided and not in filled with any material which would ordinarily prevent the free passage of light and air, but may include lattice, battens or mesh as approved by the local government;</i></p> <p>(b) <i>that any activity beneath such structure does not include any industrial use and is only used for car parking, landscaping,</i></p>	Fuel Depot	D	Trade Display	A	Funeral Parlour	D	Trade Supplies	P	Garden Centre	D	Transport Depot	A	Hospital	A	Veterinary Centre	D	Industry – Cottage	A	Warehouse/Storage	D
Fuel Depot	D	Trade Display	A																		
Funeral Parlour	D	Trade Supplies	P																		
Garden Centre	D	Transport Depot	A																		
Hospital	A	Veterinary Centre	D																		
Industry – Cottage	A	Warehouse/Storage	D																		

		<p><i>display purposes or any other uses the local government may approve.</i></p> <p><i>No dumping or storage of waste or materials, or construction, servicing or maintenance, shall be carried out between the front building line and the street frontage. However, the local government at its discretion may approve the display of finished goods or goods for sale or ready for delivery.</i></p> <p>Modify Scheme Map 32 to show those lots bounded by Ivanhoe Road, Bandicoot Drive, Poinciana Street and Drainage Reserve 32932 as Service Commercial.</p> <p>Modify Scheme Map 12 to show Lot 451 on DP 77631 (part Reserve 24041) and Lot 827 on DP93569 as General Industry zone.</p> <p>Modify Scheme Maps 11 &amp; 12 to zone UCL land (PIN 1352826) and Lot 1768 on DP 95770, and all of Lot 2 Barytes Road, located north of the Wyndham Port as General Industry Zone.</p>
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<p><b>Rezoning Mixed Business Zone (TPS 7) to Mixed Use Zone</b></p>	<p>The majority of submissions received were in relation to Motor Vehicle Repair being a use that is not permitted in the Mixed Use Zone in the draft Scheme, however there are a number of existing businesses within the area, which may be negatively impacted by this.</p> <p>It is noted that Motor Vehicle Repair can be of minimal impact on the amenity of the area, as the businesses generally open 7am – 5pm Monday to Friday.</p> <p><b>Recommend amending Motor Vehicle Repair to be a discretionary use subject to advertising (A) in the draft Scheme.</b></p> <p>It is also recommended (above) that some of the proposed Mixed Use lots located closer to or fronting Ivanhoe Road should be instead zoned Service Commercial or similar.</p>	<p>Modify Table 1 – Zoning Table to show Motor Vehicle Repair as an 'A' use in the Mixed Use Zone.</p>
<p><b>Primary Distributor Road</b></p>	<p>The objective of the Primary Distributor Road reserve is 'to set aside land required for a primary distributor road'. As such the alignment on the map shows the intent to provide a short heavy haulage route south of the Three Mile area, and not the existing alignment of the Great Northern Highway (GNH). The alignment indicated is to show that the flow of traffic is directed south of Three Mile, and traffic would need to turn off the new highway alignment to go into the Three Mile area.</p> <p>The Primary Distributor Road shown on Map 13 does not match the alignment of the existing Great Northern Highway, instead shows portion of the road as Primary Distributor Road, and portions as Public Open Space.</p> <p>Options are to show the existing GNH be shown as Primary Distributor Road, or alternatively can be shown as No Zone (white) as are the majority of other roads.</p> <p>Comment to be sought from Main Roads as to whether the short heavy haulage links indicated on the Scheme Maps are still the preferred option.</p> <p><b>Recommend zone existing Great Northern Highway reserve, shown on Scheme Maps as Public Open Space Reserve to Primary Distributor Reserve.</b></p>	<p>Modify Scheme Map 13 to rezone those portions of Great Northern Highway shown as Public Open Space Reserve to Primary Distributor Reserve.</p> <p>Modify Scheme Map 8 &amp; 9 to zone the Gibb River Road reserve as Primary Distributor Reserve.</p>

	<p>The Department of Lands also noted that the Gibb River Road should be identified as a main road. In accordance with Main Roads WA Road Hierarchy would be a Regional Distributor, which in accordance with the LPS regulations should be shown as Primary Distributor Road.</p> <p><b>Recommend zone the Gibb River Road reserve shown on Scheme Maps 8 &amp; 9 as Primary Distributor Road.</b></p>	
<p><b>Drainage Reserves and Infrastructure</b></p>	<p>The Ord Irrigation Cooperative (OIC) have noted that a number of major drainage reserves on Ironwood Drive and Weaber Plain Road are not indicated as such on the draft Scheme Maps (Map 31), and key OIAMC reserves (within the ORIA) are incorrectly marked.</p> <p>The draft Scheme Maps do not identify key drainage reserves in the Weaber Plain Flood mitigation area (Map 21 &amp; 22).</p> <p>Some existing drainage infrastructure is located within larger parcels of land such as road reserve, or recreation reserve and as such cannot be adequately identified.</p> <p><b>Recommend existing drainage reserves and irrigation supply and drainage channels be identified on the Scheme maps as Infrastructure Services Reserve and denoted for Drainage or Water Supply as appropriate.</b></p> <p>The Department of Lands also identified some drainage and other infrastructure reserves that are not represented as such on the Scheme Maps within the Three Mile Precinct of Wyndham as well as Kununurra.</p> <p>Reserve 32078, is partly shown denoted for Drain (Lots 1316 &amp; 1348) and coloured red, however is not hatched as per the Infrastructure Services Reserve. Part of the reserve (Lot 1762) is shown as Light Industry Zone.</p> <p>Drainage reserves 31980 &amp; 31981, located between Dulverton and Minderoo Streets, are shown as Residential, as is Lot 44 (DP208835) which serves a drainage function between Koolama Street and the Great Northern Highway.</p> <p><b>Recommend zone Reserves 32078, 31980, 31981 &amp; Lot 44 on DP 208835 as Infrastructure Services Reserve denoted for drainage.</b></p>	<p>Modify Scheme Map 21 &amp; 22, to show the following parcels as Infrastructure Services Reserve and denoted for the purpose of Drain (D):</p> <ul style="list-style-type: none"> <li>Lot 606 on Plan 39383 (R 39383)</li> <li>Lot 775 on Plan 19023 (R 42882)</li> <li>Lot 778 on Plan 19023 (R 42882)</li> <li>Lot 779 on Plan 19023 (R 42882)</li> <li>Lot 657 on DP 187705 (R 40374)</li> </ul> <p>Modify Scheme Maps to show the ORIA irrigation supply and drainage channels as Infrastructure Services Reserve and denoted as Water Supply (WS) or Drain (D) as appropriate.</p> <p>Modify Scheme Map 13 to show Reserves 32078, 31980, 31981 &amp; Lot 44 on DP 208835 as Infrastructure Services Reserve denoted as Drain (D).</p> <p>Modify Scheme Map 31 to show Reserve 38082 (Lot 568 on DP 69976) as Infrastructure Services Reserve denoted as Drain (D).</p>

	<p>Reserve 38082 (Lot 568 on DP 69976) is a drainage reserve located between the Weaber Plain LIA and Hidden Valley Caravan Park in Kununurra, which is shown as Public open Space Reserve on the Scheme maps. <b>Recommend Reserve 38082 be zoned Infrastructure Services Reserve and denoted fro drainage.</b></p>	
<p><b>Introduce a new “Cultural and Natural Resources” Reserve</b></p>	<p>At the recommendation of DoP, areas of land have been identified as “Natural Resources and Cultural Protection” in the draft Strategy.</p> <p>The land use has been incorporated in Broome and Halls Creek Strategies and the DoP are supportive of a Natural Resources and Cultural Protection zone being included in the Scheme as a regional variation. The Shire of Broome has subsequently included a Culture and Natural Resource Use Zone in their Scheme.</p> <p>The DoL have commented that such a reserve or zone can assist with identifying areas under a determination which are areas of Exclusive Native Title, which are not necessarily settlements but are of significant value to Aboriginal people.</p> <p>DMP have also commented that there are a number of proposed conservation reserves in the Shire as part of the Kimberley Science and Conservation Strategy, however believe that zoning or reservation for conservation under the Scheme should only cover gazetted Crown reserves so as not to pre-empt State Government decision making.</p> <p>The DoP and DoL are supportive of a new ‘Cultural and Natural Resource Use’ reserve or zone as shown on the Strategic Land Use Plan for the whole Shire (Figure 1) in the draft Strategy, which is supported by the Shire and would also address the issues raised by DMP.</p> <p><b>Recommend to incorporate a Cultural and Natural Resource Use reserve into the Scheme Text to be used in relation to areas that are not pastoral, and also not conservation reserves.</b></p>	<p>Modify Clause 3.1.2 of the Scheme Text to include a Cultural and Natural Resource Reserve with the following objectives:</p> <ul style="list-style-type: none"> <li><i>(i) to provide for development associated with the extraction of mineral and natural resources;</i></li> <li><i>(ii) to ensure the preservation of Aboriginal heritage and culturally significant areas;</i></li> <li><i>(iii) to provide for the conservation of significant landscape and environmental areas and values;</i></li> <li><i>(iv) to allow for low impact tourism development including limited tourist accommodation and camping areas; and</i></li> <li><i>(v) to allow land uses associated with Aboriginal heritage, traditional law and culture.</i></li> </ul> <p>Modify Scheme Maps to identify land shown on the Strategic Land Use Plan for the whole Shire (Figures 1 &amp; 2) in the draft Strategy as Cultural and Natural Resources Reserve.</p>
<p><b>Settlement Zone</b></p>	<p>The Department of Housing has recommended that a number of Aboriginal settlements (Wuggubun, Wijilawarrim (Molly Springs) &amp; Jimbilum) should be zoned ‘Settlement’ with the boundaries being in accordance with the recommended settlement zone identified in the respective Layout Plans for each settlement.</p>	<p>Modify Scheme Maps 8 &amp; 29 to zone the Wuggubun, Wijilawarrim (Molly Springs), and Jimbilum &amp; Yirralleim settlements as Settlement, with the boundaries in accordance with the recommended settlement zone identified in the Layout Plan for each settlement.</p>

	<p>Areas shown as Settlement Zone are currently based on cadastral boundaries and not those identified in the Layout Plans. However, the DoP supports the inclusion or amendment of the proposed settlements in the Scheme, and will undertake the required mapping changes to the Scheme when required (after Final Approval).</p> <p>It is also noted that the Jimbulum layout Plan includes Jibilum and Yirrallelm 1 &amp; 2 settlements.</p> <p><b>Recommend zone the Wuggubun, Wijlawarim (Molly Springs), Jimbilum &amp; Yirrallelm settlements as Settlement with the boundaries in accordance with the recommended settlement zone identified in the respective layout plans.</b></p> <p>The Department of Lands recommend that the Ningbing settlement, shown on Scheme Map 5 as Settlement Zone should be rezoned on the basis that there is no Layout Plan and the settlement is uninhabited.</p> <p><b>Recommend zone the old Ningbing settlement as Rural/Pastoral.</b></p>	<p>Modify Scheme Map 5 to zone the old Ningbing settlement (lot 696 on DP 188947) as Rural/Pastoral.</p>
<p><b>Zoning around Lake Argyle and proposed Lake Argyle Development Area</b></p>	<p>The zoning boundaries shown on Scheme Map 33 do not match the cadastral boundaries, or the proposed Lake Argyle Development Area (LADA) Special Control Area.</p> <p><b>Recommend that the cadastral be updated and the zoning boundaries realigned.</b></p> <p>There is an option for the existing Lake Argyle Tourist Village and Historical Homestead Reserve to be zoned as Tourism (or Public Purposes Reserve denoted for Heritage Preservation in relation to the latter), as well as determining appropriate zoning for Aquaculture Lease site (Global Barramundi), and other telecommunication, electricity generation and water supply reserves.</p> <p><b>Recommend zoning:</b></p> <ul style="list-style-type: none"> <li>▪ the Lake Argyle Tourist Village as Tourism Zone;</li> <li>▪ the Historical Homestead Site as Public Purposes Reserve denoted for Heritage Preservation;</li> <li>▪ the lease area for the Global Barramundi aquaculture site as Special Use – Aquaculture</li> </ul>	<p>Modify Scheme Map 33 by:</p> <ul style="list-style-type: none"> <li>▪ Updating proposed zoning boundaries to match cadastre.</li> <li>▪ Zoning the Lake Argyle Tourist Village (Lots 525 &amp; 530 on DP 408830) as Tourism Zone.</li> <li>▪ Zoning the Historical Homestead Site (Lot 400 on DP 213293) as Public Purposes Reserve denoted for Heritage Preservation.</li> <li>▪ Zoning the land based portion of Reserve 43196 (Water Supply &amp; Electricity Generation) as Infrastructure Services Reserve denoted as Water Supply and Electricity Infrastructure.</li> <li>▪ Zoning Reserve 43140 for the purpose of Power Station, Lot 675 on DP 188040 and Lot 807 on DP 219138 as Infrastructure Services Reserve denoted as Electricity Infrastructure.</li> <li>▪ Zoning Lot 511 on DP403767 as Special Use – Aquaculture</li> <li>▪ Zoning Telstra site as Infrastructure Services</li> <li>▪ Zoning other land surrounding Lake Argyle from Environmental Conservation Reserve to Cultural and Natural Resources Reserve.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ <b>the land based portion of Reserve 43196 for the purpose of Water Supply &amp; Electricity Generation as Infrastructure Services Reserve denoted as Water Supply and Electricity Infrastructure;</b></li> <li>▪ <b>Reserve 43140 for the purpose of Power Station, along with associated infrastructure corridors as Infrastructure Services Reserve denoted as Electricity Infrastructure; and</b></li> <li>▪ <b>Existing Telstra infrastructure site as Infrastructure Services Reserve denoted as Radio/Television/ Communications.</b></li> </ul> <p>Land surrounding Lake Argyle is also proposed to be Environmental Conservation Reserve, however the land is UCL, Reserve 31165 for the purpose of "The Protection of the Water Resources Values of Lake Argyle &amp; the Ord Dam, Lake Argyles Wetland Values &amp; the Maintenance &amp; Enhancement of the Traditional Culture of the Miriuwung Gajerrong People", and a very small area reserved for the protection of flora.</p> <p><b>Recommend other land surrounding Lake Argyle, proposed as Environmental Conservation Reserve to instead be zoned as Cultural and Natural Resources Zone.</b></p>	<p>Modify Scheme Map 8 &amp; 9 by zoning land surrounding Lake Argyle from Environmental Conservation Reserve to Cultural and Natural Resources Reserve.</p> <p>Modify Scheme Text to include the following additional Special Use site in Schedule 3 – Special Use Zones:</p> <p><b>Reference:</b> <i>SU19</i>  <b>No.:</b> <i>Lot 511</i>  <b>Description:</b> <i>Lake Argyle Road</i>  <b>Special Use:</b> <i>Aquaculture</i>  <b>Conditions:</b> <i>As determined by local government.</i></p>
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<p><b>Tourism Zone</b></p>	<p>Tourism WA recommend that objective (iv) 'to provide for limited permanent residential accommodation on tourism sites be deleted, as provision for this is addressed in clause 4.25 (Tourism Zone Development Requirements) which specifies that a maximum of 40% of total number of accommodation units may be used for permanent residential purposes.</p> <p><b>Recommend delete objective (iv) for the Tourism Zone</b></p> <p>Tourism WA also recommended that Clause 4.25.6 be reworded as its purpose is unclear. Clause 4.25.6 reads as follows:</p> <p><i>4.25.6 No dumping or storage of waste or materials or construction, servicing or maintenance shall be carried out between the front building line and the street frontage, without prohibiting the display of finished goods or goods for sale or ready for delivery, as approved by local government.</i></p> <p>This is a generic clause that has been included as a development requirement for all the commercial and industrial zones, however is acknowledged that it can be more clearly worded.</p> <p><b>Recommend rewording Clauses 4.20.6, 4.21.5, 4.22.3, 4.23.3, 4.24.6 &amp; 4.25.6 to make it clear that the intent is that within the front setback within the Commercial, Mixed Use, General Industry, Light Industry, Composite Industry and Tourism zones that:</b></p> <ul style="list-style-type: none"> <li>▪ No dumping or storage of waste or materials can occur;</li> <li>▪ No construction, servicing or maintenance can occur;</li> <li>▪ The local government may approve the display of finished goods or goods for sale or ready for delivery.</li> </ul>	<p>Modify the objectives of the Tourism Zone in Clause 3.1.2 by deleting the following objective:</p> <p><i>(iv) to provide for limited permanent residential accommodation and tourism sites.</i></p> <p>Modify Scheme Text by replaces Clauses 4.20.6, 4.21.5, 4.22.3, 4.23.3, 4.24.6, 4.25.6 and 4.25.6 to read as follows:</p> <p><i>No dumping or storage of waste or materials, or construction, servicing or maintenance, shall be carried out between the front building line and the street frontage. However, the local government at its discretion may approve the display of finished goods or goods for sale or ready for delivery.</i></p>
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<p><b>Upcoding of Residential properties in Three Mile, Wyndham</b></p>	<p>Proposed rezoning principally initiated to rectify existing zoning anomalies, and was first considered when there was greater demand for residential land.</p> <p>However, there were a number of objections to the proposed increase of residential densities in Wyndham, on the basis that:</p> <ul style="list-style-type: none"> <li>▪ it may conflict with the objective of the Residential Zone to “promote and safeguard the health, safety, convenience, general public welfare and amenity” with the potential to: <ul style="list-style-type: none"> <li>○ result in smaller overcrowded dwellings and deterioration of amenity; and</li> <li>○ exacerbate existing social issues and antisocial behaviour;</li> </ul> </li> <li>▪ it is in contradiction with the draft Strategy statement that the “<i>current density of existing residential areas is appropriate to retain larger lots, and ensure the provision of housing for larger family groups</i>”.</li> <li>▪ there are concerns about higher density development fronting the highway; and</li> <li>▪ there are number of vacant residential lots within the Three Mile Precinct, included the undeveloped lots east of Minderoo Street.</li> </ul> <p>Some submissions recommended that the predominant existing R15 density should be retained, or a maximum residential density of R20. It is noted that there are existing lots ‘spot’ zoned R20, R25 and an area between Martin Place and Flinders Street which is dual coded as R15/R30.</p> <p>LandCorp and the Department of Housing support the increase of residential areas to encourage redevelopment, enable a higher dwelling yield, and result in greater housing diversity and affordability.</p> <p>It is noted that although there are a large number of existing undeveloped lots, many of these are currently not serviced by reticulated sewer, water, power, and in some cases there is also no constructed road.</p> <p>It is also noted that lots on Cato Court do not have an applicable R code indicated.</p>	<p>Modify Scheme Map 13 to zone the following properties as Residential R 15:</p> <ul style="list-style-type: none"> <li>▪ 70, 72, 74, 76 &amp; 80 Great Northern Highway, Wyndham</li> <li>▪ 1, 3, 5 &amp; 7 Cato Court, Wyndham</li> <li>▪ 7, 9, 11, 13, 15, 17, 19, 21, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85 &amp; 87 Kabbarli Street, Wyndham</li> <li>▪ 1 - 19, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72 &amp; 74 Koojarra Street, Wyndham</li> <li>▪ 1 - 4, 6, 7, 9 – 14 &amp; 16 Kwinana Street, Wyndham</li> <li>▪ 1 &amp; 3 Dorrigo Street, Wyndham</li> <li>▪ 2, 4, 6, 8, 12, 14, 16, 18, 20, 22, 30, 32 &amp; 34 Dulverton Street.</li> <li>▪ 22 &amp; 24 Delamere Street, Wyndham</li> <li>▪ 3 Troughton Street, Wyndham</li> <li>▪ Lot 1720 on DP 184867 &amp; Lot 501 on DP 74708</li> </ul> <p>Modify Scheme Map 13 to zone the following properties as Residential R20:</p> <ul style="list-style-type: none"> <li>▪ 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41 &amp; 43 Great Northern Highway, Wyndham</li> <li>▪ 19, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38 &amp; 40 Koolama Street, Wyndham</li> <li>▪ 3, 5, 7, 9 &amp; 11 Martin Place, Wyndham</li> <li>▪ 8, 10, 12, 14, 16, 18 &amp; 20 Kangaroo Drive, Wyndham</li> <li>▪ 1, 3, 5, 7, 11, 13 &amp; 15 Doongan Street, Wyndham</li> <li>▪ Part Lot 1791 (23) Koolama Street, Wyndham</li> <li>▪ 23, 25, 27, 29, 31, 33 &amp; 35 Kabbarli Street, Wyndham</li> <li>▪ 1 &amp; 2 Myrmidon Street, Wyndham</li> <li>▪ 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 &amp; 67 Koojarra Street, Wyndham</li> <li>▪ 8, 18, 20, 22, 24, 26 &amp; 28 Kwinana Street, Wyndham</li> <li>▪ 1, 3, 5, 7 &amp; 27 Delamere Street, Wyndham</li> </ul>
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**Recommended to look at retaining existing zoning within the Three Mile area and only allow pockets of higher density in appropriate locations, including existing grouped dwelling sites.**

Noted that under any coding including R15 coding, lots greater than 450m<sup>2</sup> have the ability to establish a 70m<sup>2</sup> ancillary dwelling on the same site as a Single Dwelling. Under the deemed provisions a development approval is not required for an ancillary dwelling if it complies with the R Codes i.e. no concession sought.

<p><b>Rezoning of Residential Properties in Wyndham to Rural Townsite</b></p>	<p>The inclusion of the Rural Townsite Zone, for existing and proposed town centre areas within Wyndham, was at the direction of the WAPC prior to advertising. However, inclusion of development provisions for the new zone was overlooked. This means that there was also no R Code referenced as part of the development requirements.</p> <p>There were a number of objections to the proposed rezoning of existing residential lots to Rural Townsite, with the main concern in relation to higher density grouped dwelling houses along the highway, and the potential overdevelopment of lots by the Department of Housing.</p> <p>It was also noted that there are a number of commercial properties available in the original town centre (Koolinda Street) with existing public parking facilities, providing for easier access and consolidation of commercial areas.</p> <p>There was also concern about businesses built between existing residences which could result in excess noise, rubbish and increased traffic (both foot and vehicle), especially overnight.</p> <p>However, there was one submission that recommended that the Rural Townsite zone should be extended on both sides of Great Northern Highway, for the extent of the Three Mile precinct.</p> <p>It is noted that access to lots located on the Great Northern Highway is provided via a number of service roads.</p> <p>Single Dwelling has been included as a Permitted Use in the Rural Townsite zone, as per the intent to of the Additional Use (A4) to allow single dwellings within Wyndham town centre area. The additional use is therefore no longer required.</p> <p><b>Recommend remove the Additional Use areas denoted by A4 on Scheme maps 12 &amp; 13, and remove A4 from the table in Schedule 2 – Additional Uses</b></p> <p><b>Recommend setting a maximum residential density of R40 in the Rural Townsite Zone.</b></p> <p><b>Recommend that the majority existing residential properties (TPS 6) fronting the Great Northern Hwy be zoned Residential R20 (instead of Rural Townsite).</b></p>	<p>Modify Scheme Text in Part 4 – Development Requirements to include the following text:</p> <p><b>Rural Townsite development requirements</b></p> <p>The following development standards and requirements apply in addition to use specific provisions set out in Schedule 4 – Development Standards Table of this scheme.</p> <p><i>Minimum Setbacks:</i>  <i>Front – Nil</i>  <i>Side &amp; Rear – On merit</i></p> <p><i>Parking – Residential, as per R Codes, Other, as per table 2</i>  <i>Bicycle Parking – 1 bay per 200m<sup>2</sup> NLA</i>  <i>Landscaping – 10% minimum coverage of the site area</i></p> <ol style="list-style-type: none"> <li><i>Provision shall be made for onsite loading and unloading of service vehicles to the satisfaction of the local government. The design of such areas shall require all entry and exit movements from and to the adjoining street or right of way to be in a forward direction.</i></li> <li><i>Addressing Streets</i> <ol style="list-style-type: none"> <li><i>Ground floor development fronting the street should comprise commercial land uses which provide active street frontages based on main street principles including direct entrances from adjoining paths, verandahs and eaves to provide pedestrian shelter, unobstructed shop front windows and facades with visual interest.</i></li> <li><i>Where a mixed use development incorporating commercial and residential development is proposed, the residential component of the site should be confined to upper stories or behind a commercial development at ground level fronting the street.</i></li> </ol> </li> <li><i>Residential development may be permitted to a maximum residential density of R40.</i></li> <li><i>For a lot in the Rural Townsite zone which abuts a lot in a Residential zone, setbacks shall comply with the Residential Design Codes applicable to the abutting Residential zoned lot, unless the local government approves otherwise.</i></li> <li><i>No dumping or storage of waste or materials, or construction, servicing or maintenance, shall be carried out between the front</i></li> </ol>
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*building line and the street frontage. However, the local government at its discretion may approve the display of finished goods or goods for sale or ready for delivery.*

Modify Scheme Map 12 to show the following properties as Residential R15:

- 52, 54, 56 & 58 Great Northern Highway, Wyndham

Modify Scheme Map 12 to show the following properties as Residential R20

- 34, 36, 38, 40, 42, 44 -51, 53, 55 & 57 Great Northern Highway, Wyndham

Modify Scheme Maps 12 & 13 by removing the Additional Use areas denoted by A4.

Modify the Scheme Text by removing A4 from the table in Schedule 2 – Additional Uses

<p><b>Environmental Conservation Reserve – Adjoining Jabiru and Packsaddle Road properties</b></p>	<p>The foreshore behind properties in Packsaddle and Jabiru Roads are currently zoned 'Special Foreshore Reserve' under TPS 7, and portions of the foreshore area have been sold to adjoining landowners resulting in dual zoning over freehold properties.</p> <p>The Shire originally intended to rezone the land to Local Horticulture (Rural Agriculture 2) as part of the Scheme review, which the EPA advised would require a Special Control Area (SCA) to control and limit potential development on the ex-Special Foreshore Reserve land, and requiring development applications to be referred to relevant agencies for comment.</p> <p>In the interim the DPaW and DoW undertook a biophysical assessment of the Lake Kununurra foreshore along this and other developed areas, which resulted in the delineation of wetland boundaries and buffers. The wetland boundaries identified in this document extend past the existing Special Foreshore Reserve.</p> <p>However, prior to advertising the Scheme the Shire was advised that the biophysical assessment would not be published, and therefore it would be difficult for the Shire to reference this document in the draft Scheme. The Council also did not support the inclusion of a SCA over freehold land, and opted to retain the existing dual zoning. The name of the reserve was changed to 'Environmental Conservation' to be consistent with the <i>LPS Regulations</i>.</p> <p>As an alternative a draft Local Planning Policy was prepared, based on the recommended allowable land uses in the biophysical assessment, which was provided to relevant landowners along Jabiru and Packsaddle Road. The provisions were also included in the table in Schedule 1 (Specified additional uses for land in local reserves in Scheme area) of the draft Scheme.</p> <p>However, the submissions received generally do not support the additional uses identified in the draft policy, in particular the development of any buildings or planting of crops, which would be required to be setback at least 50 metres of the Lake Kununurra wetland boundary.</p> <p>There was also some limited concern that the nomenclature of the Environmental Conservation Reserve implies a message of 'no</p>	<p>Modify the Scheme Maps 27, 28, 29, 30 to zone those portions of freehold properties currently shown as Environmental Conservation Reserve as Local Horticulture Zone and identify a Special Control Area over this area and the adjoining foreshore land.</p> <p>Modify the table in Schedule 1 in the Scheme Text to delete the additional uses (No. 1 and No. 2) in relation to the Environmental Conservation Reserve, Packsaddle Foreshore.</p> <p>Modify Part 5 of the Scheme Text to include an additional Special Control Area:</p> <p><b>5.5 Packsaddle Wetland Protection Area –PWPA</b></p> <p><b>5.5.1 Purpose</b></p> <p>(a) To protect the ecological integrity of Lake Kununurra whilst providing for the maximum enjoyment of privately owned land in close proximity to the wetland in the Packsaddle locality.</p> <p>(b) to ensure that proposed development will not impact on the wetland values of the Lake Kununurra foreshore environment, or that an improved environmental outcome can be achieved; and</p> <p>(c) to minimise visual impact as viewed from Lake Kununurra or other public viewpoints.</p> <p><b>5.5.2 Application Requirements</b></p> <p>(a) All development (including use of land, the removal of vegetation and earthworks) within the Packsaddle Wetland Protection Area shall be subject to a requirement for development approval and shall be subject to the discretion of the local government, notwithstanding that the use may be designated a 'P' use under the Scheme.</p> <p>(b) the local government is required to refer any land use or development application to the Department of Water and Department of Parks and Wildlife for advice, comment and recommendation, prior to any formal consideration under the Scheme.</p> <p>(c) in determining any land use or development applications within areas the local government will be guided by:</p>
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development', and that this proposed reservation will have the potential to reduce the value of the land.

The DoW and DPaW recommend that Special Control Areas (SCA's) be identified on the Scheme Maps in accordance with the biophysical criteria assessment they undertook for the Lake Kununurra foreshore area, to allow for appropriate setbacks to be achieved during developments, as the assessment stipulates more relevant buffer distances dependent on proposed land use.

The DoP have recently advised that the freehold portions should be a zone and not a reserve, however recommend that either a SCA is implemented, or a separate zone is used, such as 'Environmental Conservation Zone'.

The Shire has the following options:

1. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Local Horticulture, with a Special Control Area to be created over the reserve and portion of the Local Horticulture zone.
2. Rezone the freehold portions of the proposed Environmental Conservation Reserve to Environmental Conservation Zone, and include development provisions in the Scheme.

It is noted that the majority of the freehold portions of land have memorials on the titles advising that the land may be subject to flooding.

**Recommend to zone those portions of freehold properties currently shown as Environmental Conservation Reserve as Local Horticulture Zone and identify a Special Control Area over this area and the adjoining foreshore land.**

*(i) any comments, advice or recommendation from the Department of Water, Department of Parks and Wildlife or other relevant agencies;*

*(ii) the provisions of Clause 5.3 of the Scheme;*

*(iii) The matters set out in clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 - deemed provisions.*

*(iv) all other provisions applying to any underlying zone or reserve and any general provisions of the Scheme.*

*(d) In considering any application for development approval within the Packsaddle wetland protection area, the local government will consider all applications on their individual merit.*

<p><b>Special Use Zone Commercial Boating Facility</b></p>	<p>The DoW recommend more specific conditions are applied to the Commercial Boating Facility (SU17, Scheme Map 25) in regards to wastewater treatment and setbacks so that a consistent approach can be applied to all development within the facility.</p> <p>DoW recommend a minimum of 50m setback from the Lake Kununurra for any wastewater treatment system. However due to the size of these lots, standard septic systems cannot be approved, and reticulation areas for ATU's have also not been supported by DoW.</p> <p>DoW has advised that in situations where the 50m setback cannot be achieved alternative domestic wastewater options are:</p> <ul style="list-style-type: none"> <li>▪ Fully self-contained tanks to be regularly pumped out by a licenced waste operator. Tanks to be set back as far as possible from the water's edged and maintain 2m vertical clearance to groundwater, or to be adequately secured do as not to become buoyant.</li> <li>▪ Composting toilet and separate grey water treatment system set back as far as possible from the water's edge.</li> <li>▪ Demonstrating that site factors (such as soil type, permeability, vegetation cover) and system design have been investigated and proven to have a low risk of contamination to sensitive water resources. Investigations must be conducted by a qualified environmental consultant and a report submitted to support the application.</li> </ul> <p>The draft Scheme only identifies conditions 'As determined the local government'</p> <p><b>Recommend that a condition be included to outline that the area will require a land capability assessment to be undertaken for onsite sewerage disposal.</b></p>	<p>Modify SU17 in the table in Schedule 3 – Special Use Zones to include the following conditions: <i>Area subject to land capability assessment for onsite sewerage disposal.</i></p>
<p><b>Argyle Diamond Mine</b></p>	<p>The DMP has noted that the Argyle Diamond Mine which operates under the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981, is shown on the Scheme Maps as Environmental Conservation Reserve.</p> <p><b>Recommend that the Argyle Diamond Mine be zoned as Rural/Pastoral Zone.</b></p>	<p>Modify Scheme Maps 8 &amp; 9 to show the Argyle Diamond Mine (Lot 618 on DP 93093) as Rural Pastoral Zone</p>

<p><b>Special Use – Motel – Wyndham Townsite Map 13</b></p>	<p>Lot 723 Great Northern Hwy, and Lots 722, 1300, 721 Sharpe Street, Wyndham are zoned as Special Site – Motel under TPS 6, and proposed to be retained as Special Use – Motel in the draft Scheme, referenced as SU11 in the list of Special Use Zones in Schedule 3 of the draft Scheme.</p> <p><b>Recommend rezone as Rural Townsite, to allow for motel development or a number of other commercial and residential opportunities.</b></p>	<p>Modify Scheme Map to show Lots 723 Great Northern Hwy, and Lots 722, 1300 and 721 Sharpe Street Wyndham, as Rural Townsite.</p> <p>Modify Schedule 3 – Special Use Zones to remove the lots as proposed SU11.</p>
<p><b>Drovers Rest</b></p>	<p>Landcorp noted that the draft Scheme maps do not show Drovers Rest site as zoned for Urban Development. LandCorp has since confirmed the extent of the proposed Drovers Rest Development, which is also identified as Future Urban on the Strategic Land Use Plan for the Kununurra Townsite (Figure 3) of the draft Strategy.</p> <p><b>Recommend to zone the proposed Drovers Rest residential development area as Urban Development.</b></p>	<p>Modify Scheme Map 26 &amp; 32 to zone the proposed Drovers Rest residential development area (Lot 556 on DP 69425 and part Lot 568 on DP 404515) as Urban Development.</p>
<p><b>East Kimberley Regional Airport (Kununurra)</b></p>	<p>A submission identified four classes of development that are not well represented in Kununurra and could be encouraged at the airport area:</p> <ul style="list-style-type: none"> <li>▪ Light industrial/service development that has a need for larger land parcels.</li> <li>▪ Heavy vehicle distribution that has a need for larger land parcels.</li> <li>▪ Highway frontage land that can accommodate bulky goods and a major road house.</li> <li>▪ Support businesses for the mining oil and gas industries.</li> </ul> <p>This is supported by the East Kimberley Regional Airport (EKRA) Master Plan, which identifies a number of non-aeronautical key business activities that could be established ‘landside’ at the airport.</p> <p>It was also noted that only the main lot at the Kununurra Airport is identified (Lot 200) in the Schedule 3, however there are a number of Shire and privately owned lots that are within the Special Use Zone, which should be listed.</p> <p>There is also additional land earmarked for airport expansion in the EKRA Master Plan to allow extension and widening of the airport runway. The Department of Lands have recommended that</p>	<p>Modify Schedule 3 – Special Use Zones by modifying SU7 by:</p> <ul style="list-style-type: none"> <li>▪ Listing the following Lot number: Lots 66, 200 &amp; 202, 301 – 312, 314 -321,500 &amp; part Lot 876.</li> <li>▪ Listing the following roads in the Description: Peter Reid Drive, Dusty Rankin Drive, Laine Jones Drive Cyril Kleining Drive, and Victoria Hwy, Kununurra</li> <li>▪ Listing the following Special Use: <ul style="list-style-type: none"> <li>▪ <i>Airport: Other uses may be permitted by the local government provided that they are incidental to the predominant use of the land or deemed to be dependent on the function of the Airport or are shown to the satisfaction of local government to be consistent with the Airport’s long-term operational needs.</i></li> </ul> </li> </ul> <p>Modify the Scheme Text by including the following clause in Part 4 – General Development Requirements:</p> <p><b>Areas subject to aircraft noise.</b></p> <p>In areas subject to aircraft noise in excess of 20 ANEF:</p> <p>(a) development is required to incorporate noise attenuation measures to the satisfaction of the local government; and</p>

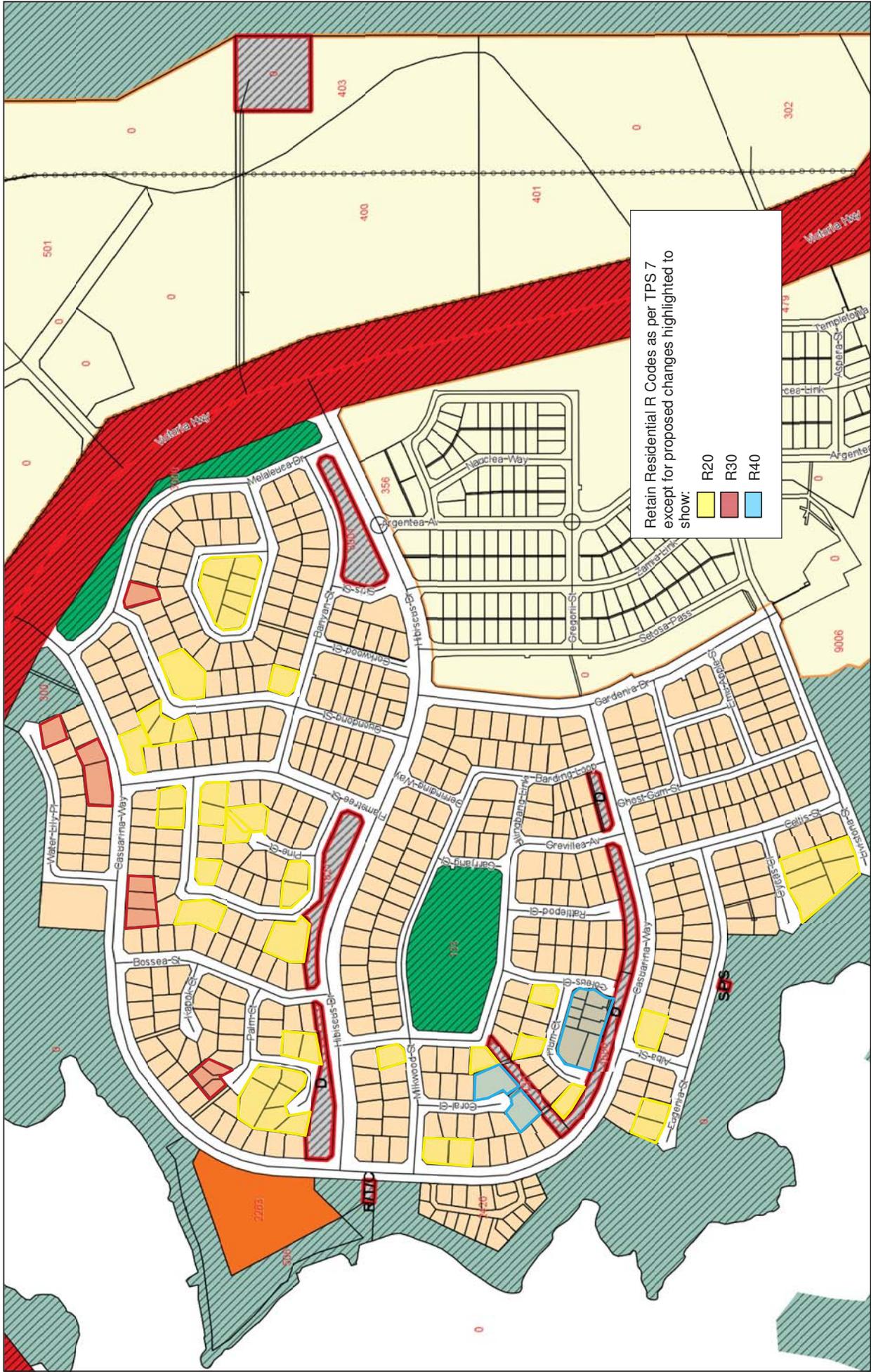
	<p>this land, being a portion of Lot 876 on DP 28266, should also be included in the Special Use zone.</p> <p><b>Recommend amending Schedule 3 – Special Use Zones to:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Amend the Airport Lot numbers to: Lots 66, 200 &amp; 202, 301 – 312, 314 -321, 500 &amp; part Lot 876.</b></li> <li>▪ <b>Amend the Special Use to include that other uses may be permitted if they “are shown to the satisfaction of local government to be consistent with the Airport’s long-term operational needs”.</b></li> </ul> <p>It was also noted that the airport should be protected from unreasonable encroachment of incompatible (noise sensitive) developments on the airport’s on-going growth, which is best addressed Australian Noise Exposure Forecast (ANEF) contours.</p> <p><b>Recommend incorporating reference in the draft Scheme to the adopted ANEF plan.</b></p>	<p>(b) in respect of subdivision of land, the local government will recommend to the Commission that all new lots be the subject of memorials on titles, warning of the potential for aircraft noise affecting such lots.</p> <p>Modify Scheme Maps 23 &amp; 25 to zone portion of Lot 876 on DP 28266 as Special Use denoted for Airport.</p>
<p><b>Kununurra Landfill</b></p>	<p>The Department of Lands noted that the extent of the Kununurra landfill site has been extended (primarily to provide an additional source of fill) and that the Scheme Maps should be amended to reflect the new boundary.</p> <p><b>Recommend modifying the Scheme Map to show the amended Kununurra landfill site as Public Purposes Reserves and denoted as Rubbish Depot.</b></p>	<p>Modify Scheme Map 26 to show the amended Kununurra landfill site (Reserve 28875) as Public Purposes Reserves and denoted as Rubbish Depot.</p>
<p><b>Gravel and raw materials areas</b></p>	<p>The Department of Mines and Petroleum recommended a number of mapping changes to identify Basic Raw Materials (BRM) areas which should be earmarked within the Shire. The Department of Lands also identified a number of gravel and raw materials reserve recommended to be zoned as Public Purposes Reserve and denoted as extraction areas or similar.</p> <p>A number of these BRM’s are mining tenements, and as such are not easy to identify on the Scheme maps, however regardless of the underlying zoning, the Mining Act will allow for the ongoing mining activity.</p> <p>However, there are a number of existing gravel and raw material reserves, and adjoining land, that are recommended to be zoned</p>	<p>Modify Scheme Map 8 to zone Reserve 40419 as Public Purpose Reserve and denoted as Extraction Area (EA).</p> <p>Modify Scheme Map 11 &amp; 14 to zone Reserve 31451 and adjoining UCL Lot 1347 on DP 18290 as Public Purpose Reserve and denoted as Extraction Area (EA).</p> <p>Modify Scheme Map 17 to zone Reserve 50284 as Cultural and Natural Resource Reserve.</p> <p>Modify Scheme Map 19 to zone Reserves 49628 &amp; 49446 as Public Purposes Reserve and denoted as Extraction Area (EA).</p> <p>Modify Scheme Map 19 &amp; 20 to zone Lot 501 on DP 44380 as Public Purposes Reserve and denoted for extraction area.</p>

	<p>accordingly as Public Purpose Reserve and denoted as extraction area:</p> <p>Map 8 - Reserve 40419 (Lots 912 and 913 on DP 31704, reserved for the purpose of Gravel and located either side of Victoria Highway, zoned as Rural/Pastoral. <b>Recommend zone as Public Purpose Reserve denoted for Extraction Area.</b></p> <p>Map 11 – Reserve 30212 (Lot 3694 on DP 37694) SWEK reserve for gravel - Public Purposes Reserve denoted for Extraction Area.</p> <p>Maps 11 &amp; 14 - Reserve 31451, reserved for the purpose of Gravel and located along the Great Northern Highway, is zoned as Public Open Space Reserve. DMP also suggest that this reserve together with adjoining unallocated Crown land Lot 1347 on DP 18290 be zoned as Public Purpose Reserve– Extraction Area. <b>Recommend zone Reserve 31451 and adjoining Lot 1347 as Public Purpose Reserve and denoted as Extraction Area.</b></p> <p>Map 17 - Reserve 50284 (Lot 353, 355), reserved for the purpose of “Government Requirements (Raw Materials), Protection of Aboriginal Heritage and Buffer” and located on Carlton Hill Road, is zoned as ‘Agriculture-State and Regional Significance’. <b>Recommend zone Reserve 50284 as Cultural and Natural Resource Reserve.</b></p> <p>Map 19 – ‘Raw Materials Area’ Reserves 49628, located on Valentine Springs Road, and Reserve 49446, located on Weaber Plain Road, are zoned Rural/Pastoral Zone and Environmental Conservation Reserve respectively. <b>Recommend zone Reserves 49628 &amp; 49446 as Public Purposes Reserve and denoted for extraction area.</b></p> <p>Map 19 &amp; 20 – Mining lease M80/477 is located on UCL (Lot 501 on DP 44380) located on Mulligans Lagoon Road, and is zoned Agriculture – State and Regional Significance Zone, however adjoins Reserve 31491 which is zoned Public Purpose Reserve – Extraction Area. DMP has recommended that Lot 501 be added into the Public Purposes Reserve and denoted for extraction area.</p>	<p>Modify Scheme Map 28 to zone Reserves 42304 &amp; 47333 be zoned Public Purpose Reserve and denoted for extraction area.</p>
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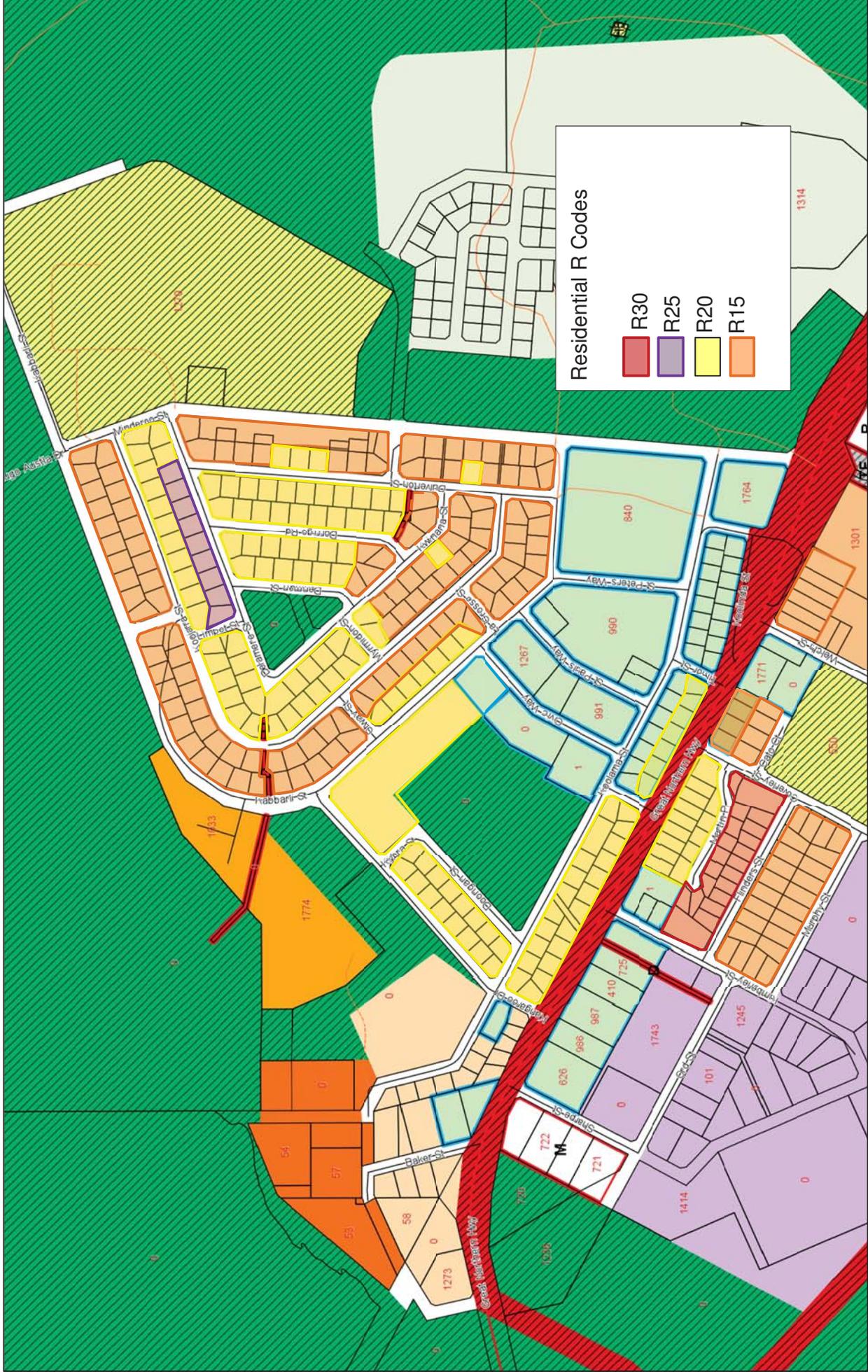
	<p><b>Recommend zone Lot 501 as Public Purposes Reserve and denoted for extraction area.</b></p> <p>Map 28 - 'Gravel' Reserve 42304 and Reserve 47333 for the purpose "Extraction of gravel for construction, repair, maintenance of roads &amp; ancillary purposes", both located along Crossing Falls Road, are zoned Rural/Pastoral Zone and Environmental Conservation Zone respectively. <b>Recommend Reserves 42304 &amp; 47333 be zoned Public Purpose Reserve and denoted for extraction area.</b></p>	
<p><b>Various Mapping changes</b></p>	<p>The Department of Lands made a number of comments and in relation to the Scheme Maps for the Shire's consideration. Some of the recommended changes have already been addressed in relation to other recommendations above.</p> <p>The Local Government Boundary shown on the Scheme maps is a solid red border which is similar to the border used for the Agricultural – State and Regional Significance Zone, and difficult to differentiate on some maps. <b>Recommend that the colour of the Local Government Boundary on the Scheme maps be changed.</b></p> <p>There is an unnecessary gap between Scheme Maps 19, 20, 21 &amp; 22, which is most clearly shown on Scheme Map 5. <b>Recommend Scheme Maps be modified to ensure continuity between inset Maps.</b></p> <p>It was also noted that no additional information is shown on inset Scheme Map 10 that is already shown on Scheme Map 5, and as such Scheme Map 10 may not be required. <b>Recommend remove Scheme map 10 and modify the Map Extensions plan and Scheme Map numbering accordingly.</b></p> <p>Noted that there should also be a buffer around the Waste Water Treatment Plant (WWTP) in Durack Road, Wyndham. In lieu of any site specific technical investigation, a standard 500m buffer should be shown on the Scheme Maps around Reserve 33109. Also noted that the Wyndham WWTP is zoned Light Industry. <b>Recommend zone Reserve 33109 as Infrastructure Services Reserve denoted as sewage treatment works and include a 500m sewage treatment buffer.</b></p>	<p>Modify the colour of the Local Government Boundary as shown on the Scheme Map legend and Maps.</p> <p>Modify Scheme Maps to ensure continuity between inset Maps.</p> <p>Delete Scheme Map 10, and modify the Map Extensions plan and Scheme Map numbering accordingly.</p> <p>Modify Scheme Map 13 to zone Reserve 33109 as Infrastructure Services Reserve and denoted as Sewage Treatment Works (ST) and include a 500m Sewer Treatment Buffer Area around the existing treatment ponds.</p> <p>Modify Scheme Map 13 to zone the following reserves on Durack Road, Wyndham as Infrastructure Services Reserve:</p> <p>Reserve 33852 –denoted as Water Supply (WS)</p> <p>Reserve 32654 – denoted as Sewer Pump Station (SPS) and Reserve 33880 – denoted as Sewage Treatment Works (ST) &amp; Water Supply (WS).</p> <p>Modify Scheme Map 13 to zone Reserve 30137 (Lot 1312) and Reserve 29606 (Lot 1307) on Ivanhoe Street as Public Open Space Reserve.</p> <p>Modify Scheme Maps 13 &amp; 14 to zone Reserve 38740 as Infrastructure Services Reserve denoted for Water Supply (WS).</p>

	<p>The following Crown Reserves in Durack Road, Wyndham are shown as Light Industry on Scheme Map 13 –</p> <ul style="list-style-type: none"> <li>▪ Reserve 33852 - for the purpose of water supply,</li> <li>▪ Reserve 32654 - for Sewerage Pumping Station, and</li> <li>▪ Reserve 33880 – for Water Storage and Treatment site (wastewater)</li> </ul> <p><b>Recommend these reserves should be Infrastructure Services Reserve denoted as water supply, sewer pump station and sewage treatment works &amp; water supply respectively.</b></p> <p>Adjoining reserve 30137 and Reserve 29606, Ivanhoe Street, Wyndham are reserved as Pistol Club &amp; Range and Public Recreation respectively. <b>Recommend these reserves be zoned as Public Open Space Reserve.</b></p> <p>Reserve 38740 is a reserve for water supply, for supply from Moochoolabra Dam to Wyndham townsite areas, and is shown as Light Industry (Map 13) and Public Open Space (Maps 13 &amp; 14). <b>Recommend zone Reserve 38740 as Infrastructure Services Reserve denoted for water supply.</b></p> <p>The main supply channel for Stage 1 of the Ord Irrigation Scheme (M1) is shown on the scheme maps as No Zone. It is noted that the M2 channel in Stage 2 is shown as Waterway Reserve. <b>Recommend that the M1 channel be zoned on the Scheme Maps as Waterway Reserve.</b></p> <p>Reserve 41793 for Recreation (Speedway) adjoining the EKRA site is zoned as Agricultural – State and Regional Development. <b>Recommend Reserve 41793 be zoned as Public Open Space Reserve.</b></p> <p>Yunama and Janama Springs (Lots 925 &amp; 926 on DP 35248) are two proposed Aboriginal settlements areas (located on Victoria Highway east of Kununurra), created as part of the Ord Final Agreement, to allow for a community living area, tourism and possible commercial development. <b>Recommend zone as Rural/Pastoral along with surrounding UCL Lot 5015 on DP 56724.</b></p>	<p>Modify Scheme Maps 18, 19, 21, 22, 23, 25, 31 &amp; 32 to zone the M1 main irrigation supply channel (Lots 915 on DP 28484, and lots 8011, 8012 &amp; 8013 on P 75731) as Waterway Reserve.</p> <p>Modify Scheme Map 25 to zone Reserve 41793 (lot 735 on DP 190116) for Recreation (Speedway) as Public Open Space Reserve.</p> <p>Modify Scheme Map 26 &amp; 28 to zone proposed Yunama and Janama Springs (Lots 925 &amp; 926 on DP 35248) settlement areas and surrounding UCL Lot 5015 on DP 56724 as Rural/Pastoral Zone.</p> <p>Modify Scheme Map 32 to zone Stages 5 &amp; 6 of Lakeside Park Residential Estate in accordance with the Lakeside Park (Stages 5 – 7) Structure Plan, with Stage 7 (south of Livistona Street) to remain as Urban Development Zone.</p>
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	<p>The Department of Lands have also recommended that as Stages 5 – 7 of the Lakeside Park Residential Estate in Kununurra, shown on Scheme Map 32, has been fully developed the estate should be zoned to show residential lots, roads, public open space and drainage reserves, with only those undeveloped portions</p> <p><b>Recommend that Stage 5 &amp; 6 of Lakeside be zoned in the Scheme in accordance with the Lakeside Park (Stages 5 – 7) Structure Plan, with Stage 7 (south of Livistona Street) to remain as Urban Development Zone.</b></p>	
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**Recommended R Code Changes - Lakeside**



**Recommended R Codes – Three Mile, Wyndham**

## Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

## Part 1

Section	Part 1 Modification	Justification
New sentence at the end of paragraph 3 of section '1.1 The Local Planning Strategy'	<p><i>The role of the LPS is to provide background information and analysis as well as strategic direction for the Shire so that it can act as a guiding tool in the decision making process, as well as informing future rezoning proposals and infrastructure projects. <a href="#">The local planning strategy provides the strategic basis for the development of a contemporary local planning scheme for the Shire.</a></i></p>	<p>This modification is administrative with the purpose being to provide greater context for how a scheme and strategy relate.</p> <p>This modification does not relate to a specific direction/request from the WAPC or submission.</p>
Add new objective to section '2.1 Objectives – towns and lifestyle'	<p><b><u>Public Health</u></b>  <u>To ensure good public health of the community.</u></p>	<p>This was a recommendation of the Department of Health which was raised during advertising and whilst public health is typically managed through other legislation and policy, it can be recognised by the local planning strategy.</p>
New section '1.3 Regulatory Requirements for Local Planning Strategies and Schemes'	<p><b><u>Regulatory Requirements for Local Planning Strategies and Schemes</u></b></p> <p><u>All local governments are required to maintain a local planning scheme in accordance with the <i>Planning and Development Act 2005</i>. The local planning scheme establishes the standards and requirements for planning and land use within the area. As a precursor to the local planning scheme, local governments are to prepare a local planning strategy which sets out the long term vision for a local government area.</u></p> <p><u>The strategy requires endorsement by the Western Australian Planning Commission (WAPC) for public consultation and final adoption.</u></p>	<p>This modification is administrative with the purpose being to provide greater context for how a scheme and strategy relate and the regulatory requirements.</p> <p>In response to a general query raised by the WAPC prior to</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification	Justification
<p>New section '4.2 Tourism' and renumber subsequent sections</p>	<p>The development of a new local planning scheme prepared in line with the strategy will be based on the 'model provisions' and 'deemed provisions' prescribed in the <u>Planning and Development (Local Planning Scheme) Regulations 2015</u>.</p> <p>The 'model provisions' provide a standard framework for local planning schemes and enable local governments to include provisions that relate specifically to the local area. This includes specifying zones and reserves, land use classifications and development provisions.</p> <p>The elements of the 'model provisions' which can be adapted to suit the Shire of Wyndham East Kimberley include:</p> <ul style="list-style-type: none"> <li>- <u>Aims of the scheme</u></li> <li>- <u>Reserves</u></li> <li>- <u>Zones and the zoning table</u></li> <li>- <u>General development requirements</u></li> <li>- <u>Special control areas</u></li> <li>- <u>Exemptions from development applications</u></li> </ul> <p>The 'deemed provisions' provide standard text that applies across all local governments and outlines the processes and procedures for schemes, structure plans and development assessment. These provisions cannot be varied by local government, however supplementary provisions can be included as part of the model provisions.</p> <p>The local planning strategy provides recommendations for the application of model provisions in the preparation of a contemporary local planning scheme for the Shire to achieve the objectives of the strategy. In particular, the strategy recommends the zones and reserves to be used, and provides commentary about considerations in the preparation of detailed provisions for these zones in a planning scheme review.</p> <p>Tourism is a growing industry for the Shire. The Shire's Indigenous cultural heritage and unique landscapes are a key attractor for tourists as well as the local community.</p> <p>The Shire offers a range of unique tourism developments that capitalise on the Shire's natural assets. These opportunities support diversification of the Shire's economy.</p>	<p>advertising regarding the content and structure of parts 4 and 5, it was determined that additional information was to be included in part 5 under each of the planning areas to show the relationship to the Regulations. This text proposed to be included in section 1.3 also provides greater linkages between the strategy and the Regulations.</p> <p>Tourism is an important industry within the Shire and in order to acknowledge this, it was important to</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification			Justification
	<p>The National Highway network that passes through the Shire enables tourists to connect from other parts of Western Australia to the Northern Territory. In addition, a number of unsealed roads are attracting the growing self-drive and 4WD tourist markets. These roads include the <u>Gibb River, Duncan and Kalumburu Roads</u>.</p> <p>The townsite of Kununurra offers tourist accommodation and local tourist attractions. Opportunities exist in the townsite to further develop the tourism industry around locations such as <u>Lake Kununurra</u> and the <u>Kununurra Racecourse</u>.</p> <p>Whilst the primary function of Lake Argyle is not for tourism, tourism uses have developed in this area, and there is opportunity to further grow this important tourist node.</p>			<p>include additional information.</p> <p>This text responds to comments raised by the WAPC prior to advertising.</p> <p>In addition, this responds to comments raised in a submission from Tourism WA that indicated that additional information was required.</p>
	<p><u>Current Issue</u></p> <p>Diversified economic development and employment is required to facilitate growth and services in the <u>Shire</u>.</p> <p>The Shire has a striking visual character that can be impacted by inappropriate development.</p> <p>Industries within Kununurra Mixed Business area affect amenity of adjacent areas</p> <p>Planned expansion of tourist village provides a major tourism opportunity</p> <p>Potential for land and waterway use conflict and incompatibility, and competition for access to particular areas. In particular, <u>water supply</u></p>	<p><u>Strategic Response</u></p> <p>Implement planning controls that facilitate tourism investment and opportunities.</p> <p>Incorporate planning controls to ensure tourism and other developments respect the natural and visual character of the Shire.</p> <p>Allocate land appropriate for strategic or general industrial to minimise land use conflicts with tourism and residential uses.</p> <p>Facilitate planned expansion of tourist village provides a major tourism opportunity</p> <p>Review governance arrangements regarding tourism assets</p>	<p><u>Study Area</u></p> <p><u>Whole of Shire Wyndham</u></p> <p><u>Environment</u></p> <p><u>Kununurra</u></p> <p><u>Lake Argyle</u></p> <p><u>Lake Argyle</u></p>	

Section		Part 1 Modification		Justification						
		<u>infrastructure that also presents tourism potential is not managed to optimise tourist experience.</u>								
New paragraph at the end of Section '4.4 Environment' (now 4.5)		Much of the Shire, except established townsites areas, falls within a mapped bushfire prone area, most likely reflecting a low to moderate bushfire hazard level in most areas. In line with State Planning Policy 3.7 and the Guidelines for Planning in Bushfire Prone Areas, bushfire risk, hazard, and potential bushfire attack level should be considered in all planning proposals.		Recognition of bushfire prone areas. Requested to be included by the WAPC prior to advertising..						
New issue, strategic response and study area under Section '4.4 Environment' (now 4.5)		<table border="1"> <thead> <tr> <th>Current Issue</th> <th>Strategic Response</th> <th>Study Area</th> </tr> </thead> <tbody> <tr> <td>Much of the Shire falls within a mapped bushfire prone area</td> <td>In line with state policy, planning and development proposals are to be supported by appropriate bushfire planning.</td> <td>Whole of Shire</td> </tr> </tbody> </table>	Current Issue	Strategic Response	Study Area	Much of the Shire falls within a mapped bushfire prone area	In line with state policy, planning and development proposals are to be supported by appropriate bushfire planning.	Whole of Shire		Recognition of bushfire prone areas. This issue and response relates to the bushfire information which was required to be included by the WAPC prior to advertising.
Current Issue	Strategic Response	Study Area								
Much of the Shire falls within a mapped bushfire prone area	In line with state policy, planning and development proposals are to be supported by appropriate bushfire planning.	Whole of Shire								
Amend subheadings and text under section '4.6 Water Supply and Management' (now 4.7) – industry supply and drainage and stormwater		<p><b>Industry and horticultural supply</b></p> <p><i>The Ord River has been significantly regulated to provide a reliable water source. Although this source was originally intended for irrigation and horticulture, it is now also used for mining and aquaculture. The Water Corporation is planning and undertaking strategic planning in relation to Lake Argyle to manage necessary water supply for agriculture and horticulture, considering the range of demand, and increased demand that is presented by Ord Stage 2.</i></p> <p><i>New industrial development across the Shire will need to carefully consider and plan for adequate water supply, water recycling, and appropriate treatment of wastewater.</i></p> <p><b>Drainage, and stormwater, and water quality</b></p> <p><i>There is a lack in information regarding water management, particularly in relation to drainage in and around townsites. Greater understanding is necessary to plan for and address areas where drainage is an</i></p>		Additional information was requested by the WAPC prior to advertising to identify and discuss water issues relating to drinking water, water quality and water for horticulture.						

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification	Justification
	<p><i>issue. In particular, management of stormwater for water quality around Lake Kununurra is an important component of managing wetland habitats around developed areas.</i></p> <p>Water quality of the Shire's lakes, wetlands and rivers can be affected by nearby land uses, groundwater pollution, stormwater runoff and inappropriate development. In particular, management of land uses and stormwater for water quality around Lake Kununurra is an important component of managing wetland habitats around developed areas. <u>Future land use change and strategic water planning should consider appropriate buffers between waterways and land use and provide an understanding of current water quality and concerns.</u></p>	
<p>Add new text at the end of section '4.6 Water Supply and Management' (now 4.7) – industry supply and drainage and stormwater</p>	<p><u>Floodway mapping is currently being undertaken.</u></p>	<p>Additional information provided to reference recent studies being undertaken. This responds to a submission from DPaW recommending that suitable hydrological investigation and assessment be undertaken.</p>
<p>Add new strategic response to section '4.7 – waste management' (now 4.8)</p>	<p><u>Undertake remediation of the existing landfill site to ensure that it is safe for the public and environment and visually appealing.</u></p>	<p>This amendment is response to a comment raised during consultation.</p>
<p>Amend spelling in section '4.9 main townsite'</p>	<p><i>Within the Wyndham townsite is the central area of Three Mile and settlement of Waraya Warrayu, and outlying areas of One Mile, Six Mile and settlement of Guda Guda (Nine Mile).</i></p>	<p>This responds to a comment raised during consultation.</p>
<p>Add new sub heading and text under '4.10 – heritage and Native Title' (now 4.11)</p>	<p><b><u>Historic Cultural Heritage</u></b></p> <p><u>Under the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Part 3 relates to Heritage protection. This part provides the ability of the local government to establish and maintain a heritage list. This enables the recognition and protection of places of heritage significance.</u></p>	<p>Additional information has been included to respond to comments made by the State Heritage Office.</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification	Justification
Section 4.12 Agricultural Land	<p><u>Further heritage guidance is provided through State Planning Policy 3.5 – Historic Heritage Conservation. Heritage Policies can be developed should additional planning controls and management be required.</u></p> <p><u>The Shire has an existing Municipal Inventory which includes the identification of 52 places and three places listed on the State Register (State Heritage Office, 2016).</u></p> <p>Amend paragraph one as follows:</p> <p><i>Priority agricultural land is not mapped or well defined within the Shire. This could result in enables inappropriate development land uses, such as subdivision or tree farming, which erodes the area of high quality agricultural land available for priority agricultural production (such as horticulture).</i></p>	<p>This amendment relates to comments raised by the Department of Planning and that SPP 2.5 states that tree farms should generally not occur on priority agricultural land (but not that it is inappropriate).</p> <p>DoP consider in SWEK it is reasonable for the Shire to continue to allow tree farms on agricultural land (as encouraged by DAFWA).</p>
Section 4.12 'strategic response'	<p><i>Review governance arrangements for infrastructure and tourism assets within Lake Argyle lease areas to optimise both water supply and tourism benefits.</i></p> <p><i>Precinct Structure planning to consolidate uses/activities, identify efficient servicing requirements and minimise and manage impacts on Lake Argyle</i></p>	<p>Amendment to reflect correct planning terminology. This relates to a general comment raised by the WAPC prior to advertising.</p>
New text added to section '5.1 Whole of Shire'	<p><u>Outside of the main townsites, which are considered in detail by subsequent strategic land use plans, the key planning purposes of the Shire lands are to:</u></p> <ul style="list-style-type: none"> <li>- <u>Protect key areas of natural significance</u></li> <li>- <u>Support cultural and natural resource use of lands</u></li> </ul>	<p>Additional text has been included to provide linkages to the local planning scheme to respond to a general comment raised by the</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification	Justification
	<ul style="list-style-type: none"> <li>- <u>Support ongoing pastoral activities</u></li> <li>- <u>Facilitate diversification of the economy through tourism and other appropriate development</u></li> </ul> <p>Achieving these planning purposes will require the use of appropriate zones and reserves from the model provisions (as set out in the <u>Planning and Development (Local Planning Schemes) Regulations, 2015</u>). <u>These include:</u></p> <ul style="list-style-type: none"> <li>- <u>Rural zone for pastoral and cultural lands, including opportunity for small scale tourism and other development.</u></li> <li>- <u>Settlement zone for existing and proposed Aboriginal settlements outside gazetted townsites in line with state planning policy 3.2 – Aboriginal Settlements.</u></li> <li>- <u>Environmental conservation reserve for national parks and other lands within the formal conservation estate.</u></li> </ul> <p><u>Specific provisions for these zones in the new local planning scheme should consider the specific recommendations set out in this section, to support the objectives of the local planning strategy.</u></p>	<p>WAPC prior to advertising.</p>
<p>Amend Figure 2 – Strategic Land Use Plan Shire of Wyndham-East Kimberley 2</p>	<p><u>Include areas surrounding Lake Argyle as 'Cultural and Natural Resource Use'</u></p>	<p>This has been included on Figure as a result of comments made during advertising from the Department of Lands. There was a preference to see this used more widely within the Shire and applied in the scheme.</p>
<p>Amend Figure 2 – Strategic Land Use Plan Shire of Wyndham-East Kimberley 2</p>	<p>Show all of Lot 3550 on DP 63533 (part of Ivanhoe Pastoral Lease) as Rural (pastoral)</p>	<p>In order to reflect the correct land use areas, all of Lot 3550 on DP 63533 should be shown as Rural (pastoral). This modification is a</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification	Justification
<p>New text added to section 5.1 Whole of Shire – Land supply – key recommendations'</p>	<p><u>On pastoral lands and leases across the Shire, there is opportunity for lease holders to develop tourist and other development that diversifies their current economic activities, and supports the broader economic development of the Shire.</u></p> <p><u>On pastoral leasehold land, any use or works outside the existing pastoral lease require approval from the Pastoral Lands Board. This is undertaken through a diversification permit from the Pastoral Lands Board. There is potential for diversification permit processes to overlap with development application processes, where a new local planning scheme is put in place across the entirety of the Shire.</u></p> <p><u>Whilst the Shire is consulted on applications for diversification permits, there is merit in requiring a development approval for non-pastoral use and development on pastoral lands. Diversification permits primarily relate to an additional land use within an existing pastoral lease. However, a development application will also consider matters such as services and amenity impacts. These are important to consider due to the remoteness of many pastoral lease areas, the potential servicing implications of new development, and the visual landscape of the Shire.</u></p> <p><u>Where a diversification permit is sought, the need for development approval should still be considered in the preparation of a new planning scheme. This will ensure that the development can be adequately serviced and that impacts on the surrounding area and landscape are managed. It is important that policy and scheme provisions do not make the development application process unnecessarily onerous for developers.</u></p>	<p>result of the Departments of Lands and Planning expressing support for the 'cultural and natural resource use' land use category. Through consideration of this, it was determined that other categories required modification.</p> <p>This text provides additional clarification around the relationship between pastoral lease diversification permits and development applications as requested by the WAPC prior to advertising.</p>
<p>New text added to paragraph 3 after the first strategic</p>	<p><i>The development of a strategic land release plan will enable the appropriate sequencing of land release. The rationale for land release and phasing needs to be directly related to infrastructure delivery. Structure plans and centre plans prepared for urban development should also provide detailed staging plans to</i></p>	<p>This text responds to comments raised during consultation and</p>

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Section	Part 1 Modification	Justification
<p>response of section '5.1 Whole of Shire'</p>	<p><u>ensure the sequencing of land development such that the market can respond to demand.</u>  <u>Notwithstanding the above, land owners can undertake development in accordance with the local planning scheme zoning prior to the development of a strategic land release plan.</u></p>	<p>is considered acceptable to enable landowners to progress with development in accordance with the scheme where a strategic land release plan has not been prepared.</p>
<p>Add new text before recommendations for section '5.1 Whole of Shire – Environmental Protection – Key recommendations'</p>	<p><u>The local planning policy should outline appropriate planning controls, development types and provide commentary on the relationship between the conservation land and the adjoining zones.</u></p>	<p>This text responds to comments raised during consultation and is considered acceptable to provide further guidance on what information should be included in the policy.</p>
<p>Delete recommendation 19 from section '5.1 Whole of Shire – Aboriginal Lands – Key recommendations' and renumber subsequent recommendations</p>	<p><del>19. Investigate appropriate zonings or reservations for Aboriginal lands in line with strategic land use plans, and incorporate these into the Local Planning Scheme.</del></p>	<p>Deleted based on request of the WAPC.</p>
<p>New text added to section '5.2 – Kununurra Townsite'</p>	<p><u>The key planning purpose for land within the Kununurra Townsite is to:</u></p> <ul style="list-style-type: none"> <li>- <u>Provide a regional service centre to support the community and industry of the East Kimberley</u></li> <li>- <u>Provide a diversity of housing and community services for the regional, permanent and temporary population</u></li> <li>- <u>Support local business, tourism and employment opportunities</u></li> </ul>	<p>The additional text provides an introduction to the Kununurra Townsite text and the relationship with the scheme to respond to a general comment</p>

Section	Part 1 Modification	Justification
<p>Amend Figure 3 in section 5.2 – Kununurra Townsite</p>	<ul style="list-style-type: none"> <li>- <u>Protect areas of environmental significance, including the Ramsar listed Lake Kununurra</u></li> </ul> <p><u>Achieving these planning purposes will require the use of appropriate zones and reserves from the model provisions (as set out in the <i>Planning and Development (Local Planning Schemes) Regulations, 2015</i>). These include:</u></p> <ul style="list-style-type: none"> <li>- <u>Residential zone for residential areas</u></li> <li>- <u>Urban development zone for urban expansion areas, including town based Aboriginal communities</u></li> <li>- <u>Industrial development zone for industrial expansion areas</u></li> <li>- <u>Commercial zone for town centre areas</u></li> <li>- <u>Light industry zone for light industrial areas</u></li> <li>- <u>Tourism zone for key, strategic tourism sites</u></li> <li>- <u>Public open space reserve for local parks and recreation areas</u></li> <li>- <u>Primary distributor road reserve for major road connections</u></li> <li>- <u>Infrastructure services reserve for land required for public utilities</u></li> <li>- <u>Environmental conservation reserve for Lake Kununurra foreshore.</u></li> </ul> <p><u>Additional zones for use within the Kununurra Townsite, currently outside the model scheme text although anticipated to be included, include:</u></p> <ul style="list-style-type: none"> <li>- <u>Composite industry zone for light/service industrial lots that also facilitate a residential/single dwelling component.</u></li> </ul> <p><u>Specific provisions for these zones in the new local planning scheme should consider the specific recommendations set out in this section, to support the objectives of the local planning strategy.</u></p> <p>Amend Figure 3 to show full extent of Drovers Rest development and identify the area as 'Future Urban - subject to structure plan'.</p>	<p>raised by the WAPC prior to advertising.</p> <p>This is in response to a comment raised by LandCorp during consultation.</p>

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Section	Part 1 Modification	Justification
<p>Amend Figure 3 in section 5.2 – Kununurra Townsite</p>	<p>Amend Figure 3 legend as follows:  <del>Composite industry/ light industry with generous caretaker residence criteria</del>                      Create new colour in legend for 'light industry'.                      And reduce the area shown as composite industry/light industry on the map and recolour the remaining area purple to reflect 'industrial development'.</p>	<p>Comments were raised by LandCorp during advertising regarding concerns about rezoning light industrial area to composite industry until such time as an alternative industrial area is identified. Standard caretaker requirements should apply in this area.</p>
<p>Amend Section 5.2 – Kununurra Townsite</p>	<p><del>Detailed planning for the Kununurra town centre is necessary through the preparation of a structure plan for the town centre Town Centre Plan. This plan should include:</del>                      ...                      Increased residential densities within the town centre to facilitate infill development and diverse accommodation options in areas of amenity and activity;</p>	<p>This responds to a submission from LandCorp relating to consideration of infill development opportunities.</p>
<p>Amend section '5.2 – Kununurra townsite - recommendation 36.'</p>	<p>...                      36. Identify funding opportunities to redevelop Kununurra Racecourse as a major events precinct and respond to the recommendations of the Lake Kununurra Biophysical Foreshore Assessment.</p>	<p>The biophysical assessment has not received formal endorsement therefore references to it should be removed. This responds to a submission raised during advertising. Clarification was sought with the DoP and the reference has now been removed.</p>

Section	Part 1 Modification	Justification
<p>New text added to section '5.3 – Kununurra Surrounds'</p>	<p><u>The key planning purpose for land within the Kununurra Surrounds area is to:</u></p> <ul style="list-style-type: none"> <li>- <u>Support agricultural production of state significance on priority agricultural land</u></li> <li>- <u>Facilitate lifestyle lots on appropriate land where it does not impact priority agricultural land</u></li> <li>- <u>Support industry, tourism and employment opportunities</u></li> <li>- <u>Protect areas of environmental significance, including the Ramsar listed Lake Kununurra</u></li> </ul> <p><u>Achieving these planning purposes will require the use of appropriate zones and reserves from the model provisions (as set out in the <i>Planning and Development (Local Planning Schemes) Regulations, 2015</i>).</u></p> <p><u>These include:</u></p> <ul style="list-style-type: none"> <li>- <u>Industrial development zone for industrial expansion areas</u></li> <li>- <u>General industrial zone for general industrial purposes</u></li> <li>- <u>Tourism zone for key, strategic tourism sites</u></li> <li>- <u>Rural zone for pastoral lands</u></li> <li>- <u>Rural residential zone for large lifestyle lots</u></li> <li>- <u>Rural smallholdings zone for smaller rural lots that support local agricultural production</u></li> <li>- <u>Settlement zone for existing and proposed Aboriginal settlements outside the gazetted townsites in line with State Planning Policy 3.2 – Aboriginal Settlements.</u></li> <li>- <u>Public open space reserve for local parks and recreation areas</u></li> <li>- <u>Primary distributor road reserve for major road connections</u></li> <li>- <u>Infrastructure services reserve for land required for public utilities</u></li> <li>- <u>Environmental conservation reserve for Lake Kununurra foreshore, national parks and other areas within the conservation estate.</u></li> </ul>	<p>The additional text provides an introduction to the Kununurra Surrounds text and the relationship with the scheme to respond to a general comment raised by the WAPC prior to advertising.</p>

Section	Part 1 Modification	Justification
	<p><u>Additional zones for use within the Kununurra Townsite, currently outside the model scheme text although anticipated to be included, include:</u></p> <ul style="list-style-type: none"> <li>- <u>Priority agriculture zone for agricultural lands.</u></li> <li>- <u>Composite industry zone for light/service industrial lots that also facilitate a residential/single dwelling component.</u></li> <li>- <u>Rural enterprise zone for rural/light industrial lots to promote the establishment of precincts for primary produce processing and supporting industries close to services and freight routes.</u></li> </ul> <p><u>Specific provisions for these zones in the new local planning scheme should consider the specific recommendations set out in this section, to support the objectives of the local planning strategy.</u></p>	
Amend Figure 4 – Strategic Land Use Plan Kununurra Surrounds	<p><u>Shade out portion of Drovers Rest currently identified for ‘Rural (pastoral)’ as this will now be identified on Figure 3.</u></p>	<p>This is in response to a comment raised by LandCorp during consultation.</p>
Amend Figure 4 – Strategic Land Use Plan Kununurra Surrounds	<p>Amend legend to as follows: Rural <del>Industry</del> <u>Enterprise</u></p>	<p>The Shire was directed to remove the Rural Industry zone from the scheme prior to advertising. This amendment to Figure 4 ensures alignment with the scheme.</p>
Amend Figure 4 – Strategic Land Use Plan Kununurra Surrounds	<p><u>Amend figure 4 to include a new asterisk adjacent to the most western and eastern arrow that represents the ‘primary distributor’ and to be shown on the legend as potential location of new landfill site.</u> <u>Amend the legend as follows:</u> <u>* Potential location for new landfill site still to be determined, however to be located approximately 10 – 15 km from Kununurra, towards Wyndham (northwest)</u></p>	<p>The strategy discusses the need for a new landfill site but does not identify the site as investigations are still required. The strategic plan should be amended to identify this as a key consideration but the detail in the</p>

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Section	Part 1 Modification	Justification
		<p>legend will state that the site is still to be determined.</p> <p>This amendment responds to queries raised during advertising concerning where the new landfill will be located.</p>
<p>Amend 5.3 Kununurra Surrounds, Priority Agricultural Land – Key Recommendation s 37</p>	<p><del>37. Department of Agriculture and to undertake detailed investigations to confirm distribution of priority agricultural land and understand appropriate rural lot sizes based on soil type and land capability. Alternatively, the Shire will seek grant funding to progress this matter.</del></p> <p><u>37. SWEK in conjunction with the Department of Agriculture and Food WA to undertake detailed investigations to confirm distribution of priority agricultural land and understand appropriate rural lot sizes based on soil type and land capability.”</u></p>	<p>Submissions received strongly support the identification and mapping of priority agricultural land (PAL), to ensure that productive agricultural land is retained and protected from inappropriate and conflicting land uses.</p> <p>The recommendation has been reworded to identify SWEK to undertake mapping as advised by the WAPC prior to advertising. It is suggested that this be undertaken in conjunction with DAFWA.</p>
<p>Amend 5.3 Kununurra Surrounds,</p>	<p><del>39. Local planning scheme to rezone land for local horticultural purposes as shown on the strategic land use plan to identify areas of local horticultural importance, facilitating appropriate tourism development and non-agricultural business development.</del></p>	<p>The submissions received showed strong support for the</p>

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Section	Part 1 Modification	Justification
<p>Priority Agricultural Land – Key Recommendations 39</p>		<p>identification and preservation of all horticultural land, with the belief that existing RA2 lots in River Farm Road and Packsaddle Road should be considered as priority agricultural land, until a technical assessment process concludes otherwise.</p> <p>The amendment to this recommendation recognises the importance of local horticulture.</p>
<p>Amend 5.3 Kununurra Surrounds, Rural Living development – key recommendation 42</p>	<p>42. Consider proposals to rezone land for rural residential or rural small holding development within areas as shown on the strategic land use plan, <u>if supported by a structure plan</u>.</p>	<p>Comments were raised during consultation in opposition to the rezoning of Old Darwin Road. Possible areas for rural residential and rural small holdings development were identified in the LPS in consultation with DAFWA. These areas were generally located along serviced corridors into Kununurra to provide for efficient services of lifestyle lots. Additional text relating to structure plans was included to</p>

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Section	Part 1 Modification	Justification
<p>New text added to section '5.4 – Wyndham Townsite'</p>	<p>The key planning purpose for land within the <u>Wyndham townsite and surrounds area is to:</u></p> <ul style="list-style-type: none"> <li>- <u>Provide a regional service centre to support the community and industry of Wyndham</u></li> <li>- <u>Provide a diversity of housing and community services for the regional, permanent and temporary population</u></li> <li>- <u>Support local business, tourism and employment opportunities</u></li> <li>- <u>Protect areas of environmental significance</u></li> <li>- <u>Facilitate lifestyle lots on appropriate land</u></li> </ul> <p><u>Achieving these planning purposes will require the use of appropriate zones and reserves from the model provisions (as set out in the <i>Planning and Development (Local Planning Schemes) Regulations, 2015</i>).</u></p> <p><u>These include:</u></p> <ul style="list-style-type: none"> <li>- <u>Rural townsite zone for town centre areas</u></li> <li>- <u>Residential zone for existing residential areas</u></li> <li>- <u>Urban development zone for future urban expansion</u></li> <li>- <u>Industrial development zone for industrial expansion areas</u></li> <li>- <u>General industrial zone for general industrial purposes near <u>Wyndham Port</u></u></li> <li>- <u>Light industrial zone for light and service industries</u></li> <li>- <u>Tourism zone for key, strategic tourism sites</u></li> <li>- <u>Rural zone for pastoral lands</u></li> <li>- <u>Rural residential zone for large lifestyle lots</u></li> </ul>	<p>ensure that the area is adequately serviced.</p> <p>The additional text provides an introduction to the Wyndham Townsite text and the relationship with the scheme to respond to a general comment raised by the WAPC prior to advertising.</p>

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Section	Part 1 Modification	Justification
	<ul style="list-style-type: none"> <li>- <a href="#">Settlement zone for existing and proposed Aboriginal settlements outside the gazetted townsite in line with state planning policy 3.2 – Aboriginal Settlements.</a></li> <li>- <a href="#">Public open space reserve for local parks and recreation areas</a></li> <li>- <a href="#">Primary distributor road reserve for major road connections</a></li> <li>- <a href="#">Infrastructure services reserve for land required for public utilities</a></li> <li>- <a href="#">Environmental conservation reserve for national parks and other areas within the conservation estate.</a></li> </ul> <p><a href="#">Specific provisions for these zones in the new local planning scheme should consider the specific recommendations set out in this section, to support the objectives of the local planning strategy.</a></p>	
Amend Figure 6, opportunity No. 3	<p><a href="#">Enhance facilities of wayfinding (such as use of signage, colours and materials treatments) to Five Rivers Lookout.</a></p>	This responds to a comment raised during consultation to provide further clarification around wayfinding.
Amend 5.4 relating to Wyndham Centres	<p><a href="#">Detailed planning for the One Mile and Three Mile townsites is necessary through the preparation of a structure plan for Town-Centre-Plan-for-each town centre area. This plan should include:</a></p> <p>...</p> <ul style="list-style-type: none"> <li>- <a href="#">Increased residential densities to facilitate infill development and diverse accommodation options in areas of amenity and activity;</a></li> </ul> <p>...</p>	This responds to a submission from LandCorp relating to higher densities in Wyndham.
Amend 5.4 relating to Three Mile Urban Growth	<p>Densities of <del>R25 to R30</del> R15 to R20 should be considered for existing residential areas outside the town centre to encourage redevelopment. Structure plans for urban expansion areas should facilitate lower densities of R15 through to R20 to meet demand for family and larger housing opportunities.</p>	Comments were raised in consultation that the residential zonings specified for Wyndham seemed contradictory. A submission was also received objecting to the higher densities in Wyndham.

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Section	Part 1 Modification	Justification
<p>New text added to section '5.5 – Lake Argyle Development Node'</p>	<p><u>The key planning purpose for land within the Lake Argyle development node area is to:</u></p> <ul style="list-style-type: none"> <li>- <u>Support regionally important water and energy supply and infrastructure</u></li> <li>- <u>Support tourism and employment opportunities</u></li> <li>- <u>Protect areas of environmental significance</u></li> </ul> <p><u>Achieving these planning purposes will require the use of appropriate zones and reserves from the model provisions (as set out in the <i>Planning and Development (Local Planning Schemes) Regulations, 2015</i>. These include:</u></p> <ul style="list-style-type: none"> <li>- <u>Tourism zone for key, strategic tourism sites</u></li> <li>- <u>Infrastructure services reserve for land required for public utilities</u></li> <li>- <u>Environmental conservation reserve for areas of conservation value.</u></li> <li>- <u>Waterway reserve for the Lake Argyle waterbody</u></li> </ul> <p><u>Specific provisions in the new local planning scheme should consider the specific recommendations set out in this section, to support the objectives of the local planning strategy.</u></p>	<p>Further consideration has been given to this and the strategy has been amended to maintain lower zonings of R15 and R20.</p> <p>The additional text provides an introduction to the Lake Argyle development node text and the relationship with the scheme to respond to a general comment raised by the WAPC prior to advertising.</p>
<p>Amend '5.5 – Lake Argyle Development Node' strategic response</p>	<p><del>Precinct Structure planning to consolidate uses/activities, identify efficient servicing requirements and minimise and manage impacts on Lake Argyle</del></p>	<p>Amend to refer to correct planning terminology. This responds to a general comment raised by the WAPC prior to advertising.</p>
<p>Delete recommendation</p>		<p>This has been deleted based on the</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to the Draft Local Planning Strategy

Section	Part 1 Modification		Justification						
	Key recommendation	Responsibility							
Amend recommendation	Investigate appropriate zonings or reservations for Aboriginal lands in line with strategic land use plans, and incorporate these into the Local Planning Scheme.	Shire of Wyndham East Kimberley as part of Local Planning Scheme Review	The biophysical assessment has not received formal endorsement therefore references to it should be removed. This responds to a submission raised during advertising. Clarification was sought with the DoP and the reference has now been removed.						
Amend recommendations	<table border="1"> <thead> <tr> <th>Key recommendation</th> <th>Responsibility</th> </tr> </thead> <tbody> <tr> <td><i>Prepare regional and district water management strategies for townsites and urban expansion areas.</i></td> <td>Department of Water</td> </tr> <tr> <td><u>Prepare district water management strategies for townsites and urban expansion areas.</u></td> <td><u>Shire of Wyndham East Kimberley (with support from Department of Water)</u></td> </tr> </tbody> </table>	Key recommendation	Responsibility	<i>Prepare regional and district water management strategies for townsites and urban expansion areas.</i>	Department of Water	<u>Prepare district water management strategies for townsites and urban expansion areas.</u>	<u>Shire of Wyndham East Kimberley (with support from Department of Water)</u>		This is to clarify who is responsible for preparing regional and district water management strategies and responds to a general comment raised by the WAPC prior to advertising and during advertising by the Department of Water.
Key recommendation	Responsibility								
<i>Prepare regional and district water management strategies for townsites and urban expansion areas.</i>	Department of Water								
<u>Prepare district water management strategies for townsites and urban expansion areas.</u>	<u>Shire of Wyndham East Kimberley (with support from Department of Water)</u>								

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Part 1 Modification		Justification				
Amend recommendation	<table border="1"> <thead> <tr> <th>Key recommendation</th> <th>Responsibility</th> </tr> </thead> <tbody> <tr> <td><i>Pursue the identification and development of alternative water supply to enable the medium to long term redevelopment of the foreshore.</i></td> <td>Water Corporation <del>Department of Water</del> <a href="#">Shire of Wyndham East Kimberley</a></td> </tr> </tbody> </table>	Key recommendation	Responsibility	<i>Pursue the identification and development of alternative water supply to enable the medium to long term redevelopment of the foreshore.</i>	Water Corporation <del>Department of Water</del> <a href="#">Shire of Wyndham East Kimberley</a>	It was raised in a submission from the Department of Water that they are not the responsible authority for this recommendation. However they will support the process though advice and public drinking water source protection planning.
Key recommendation	Responsibility					
<i>Pursue the identification and development of alternative water supply to enable the medium to long term redevelopment of the foreshore.</i>	Water Corporation <del>Department of Water</del> <a href="#">Shire of Wyndham East Kimberley</a>					
Various	Amend references to One Mile (in Wyndham) to refer to Port area.	This was raised in one of the submissions during advertising who advised that the reference to One Mile was confusing.				

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**Part 2**

<b>Section</b>	<b>Part 2 Modification</b>	<b>Justification</b>
Amend reference to percent	Amend all references to 'percent' to read '%'	Ease of reading. This is a minor administrative change.
Amend 'section 2.1 – demographic profile'	Amend all references to 'Aboriginal' to read 'Indigenous'	Administrative change.
'section 2.2 local economy – labour force'	<i>The Shire of Wyndham-East Kimberley generally has a higher proportion of 'blue collar' workers compared to the Kimberley and Western Australia, with the exception of labourers where the Kimberley has the highest proportion.</i>	Minor grammatical error in wording and removal of unnecessary quotation marks.
Add new sub heading in section '2.2 – Local Economy – key industries'	<p><b>Tourism</b></p> <p><u>Tourism is a major industry for the Shire of Wyndham East Kimberley. The unique landscapes and experiences of the Kimberley region make the area attractive for many visitors. Approximately 115,000 visitors visit the region (East Kimberley Tourism Plan 2022, 2013). Tourism industries should continue to be supported by the Shire and facilitated through the planning framework where possible.</u></p> <p><u>East Kimberley Tourism Plan 2022 (EKTP) provides the blueprint for stimulating tourism growth in the Shire of Wyndham East Kimberley. Specifically, the plan outlines four key areas for improvement: product development, access to the region, capacity of local tourism industry and building the value of tourism.</u></p> <p><u>The key strategic goal is to "increase the value of tourism to the East Kimberley from \$100.5m in 2013 to \$130m by 2022". The three priority market segments for tourism in SWEK to 2022 include business visitors, grey explorers and dedicated discoverers (adventure tourism), each with different priorities.</u></p> <p><u>Air access is a foremost issue with business visitors noting the limited flights and interstate being forced to stop-over in Darwin. The EKTP promotes the exploration of existing connections and new routes to meet the current demand. Conditions of major tourist roads was also noted as a concern, although funding may limit the ability to make any significant changes.</u></p> <p><u>In terms of accommodation, better coordination of overflow facilities for caravan parks by industry is a priority as well as the general revitalisation of visitor amenities.</u></p> <p><u>The Kimberley Science and Conservation Strategy was developed by the State Government in 2011, with an initial commitment of \$63 million funding to 2015 to resource development. The State Government has committed a further \$40 million to date for science and conservation in the Kimberley, particularly recognising the unique natural and cultural values of the region.</u></p>	<p>Additional information was requested by the WAPC prior to advertising and raised in a submission from Tourism WA. This recognises the importance of the tourism industry within the Shire.</p>

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Section	Part 2 Modification	Justification
<p>Add new text to section '2.3 Environment – geology and landforms'</p>	<p><u>A key strategy is the creation of the Kimberley Wilderness Parks, aligning with the EKTP that has a future focus on ecotourism and nature-based tourism. To implement the wilderness parks several broader initiatives were included in the strategy, including conservation and fire management approaches, training and employment for Aboriginal rangers, investment to raise awareness of tourism opportunities and improve visitor facilities.</u></p> <p><u>The East Kimberley region has a complex history dating back more than 2.5 billion years. The formation of the oldest rocks in the region began with the deposition of sediments and the outpouring of volcanic lava. A continental collision uplifted and eroded the oldest rocks between 1.80-1.83 billion years ago, together with the deposition of sediments. Additional sediments were then deposited in the Kimberley Basin by a major river system flowing from the north. The resultant sedimentary rocks now underlie much of the Kimberley Plateau. Over the last 1.8 billion years, the Kimberley has periodically become geologically active with evidence of further deposition in basins and folding and faulting of the resultant sedimentary rocks.</u></p> <p><u>In the Neoproterozoic, between 700 and 600 million years ago, the Kimberley was subjected to glaciations. The resulting glacial deposits and evidence of the passage of ice sheets are well preserved.</u></p> <p><u>About 550 million years ago, the Halls Creek Fault in the east Kimberley became active as part of a system of faults with horizontal movement. This was followed by outpouring of extensive flows of basalt lava before establishment of shallow seas in the Cambrian period (540 to 490 million years ago) when the variety of life living within oceans grew significantly. Many fossils of this period have been preserved.</u></p> <p><u>About 375 million years ago, during the Devonian period, seas deepened and a series of barrier reefs began to form. The reefs fringed three sides of a land mass formed by the Kimberley Plateau. On the fourth side, the Halls Creek Fault again became active and erosion formed sandstones and conglomerates seen in the Bungle Bungle Ranges and at Hidden Valley. A period of glaciation between 310 and 270 million years ago during the Permian period affected much of Australia and sedimentary rocks buried the Devonian reefs. Deposition of sandstone, siltstone and conglomerates in shallow seas and rivers has continued through to the present in the Canning Basin and areas around the present day Bungle Bungles and Osmond Range.</u></p>	<p>This text was provided by the Department of Mines and Petroleum for inclusion. It was agreed that this was useful background information to provide additional context.</p>
<p>Delete text from section '2.3 Environment – regional physical environment – Environmentally sensitive areas'</p>	<p><b><u>Environmentally Sensitive Areas</u></b>  <u>The Shire includes a number of environmentally sensitive areas. These areas, identified by the Department of Environmental Regulation, include:</u></p> <ul style="list-style-type: none"> <li><u>— World Heritage properties</u></li> <li><u>— Areas included on the Register of the National Estate</u></li> <li><u>— Defined wetlands and their 50 metre buffer</u></li> <li><u>— Rare flora and surrounding vegetation</u></li> <li><u>— Threatened ecological communities</u></li> </ul>	<p>This statement is generic and is not considered to add value to the strategy.</p>

Section	Part 2 Modification	Justification
	<p><i>The identification of land being within an environmentally sensitive area does not preclude use or development. However, there may be additional environmental requirements under the Environmental Protection Act 1986, such as in respect to vegetation clearing regulated by the Department of Environmental Regulation.</i></p>	
<p>Add new text to section '2.3 environment – Surface water and wetlands' at the end of paragraph 2.</p>	<p><u>Ramsar guidelines require a 50 metre vegetation buffer between Ramsar sites, wetlands or other waterways and development. Buffers can be further refined through detailed assessments.</u></p>	<p>Information was provided by the Department of Parks &amp; Wildlife for inclusion in the LPS. This provides a summary of the information.</p>
<p>Add new text to section '2.3 environment - flora'</p>	<p>There are significant biodiversity values in the Shire and to ensure that these are protected, the Department of Parks and Wildlife will need to assess future development where any proposed impacts may exist. <u>Areas of sensitive or environmental value, may require vegetation buffers.</u></p> <p><u>Typhonium – is a small, cormous, perennial herb found in close proximity to the Ord River and Kununurra. It is a Declared Rare Flora with a restricted habitat type and distribution. Future surveying may be required if future development is likely to impact the typhonium.</u></p>	<p>Information was provided by the Department of Parks &amp; Wildlife for inclusion in the LPS.</p> <p>DPaW advise that - there are a number of significant biodiversity values in the Shire and that any proposed impacts to these from future developments will need to be assessed by the DPaW to determine the impact to threatened and priority species, wetlands and native vegetation. Appropriate vegetation buffers may be required for sensitive or environmental values.</p> <p>Detailed information relating to typhonium was provided by DPaW.</p>

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Section	Part 2 Modification	Justification
<p>Insert new subheading and text and image to section '2.3 Environment – regional physical environment.</p>	<p><b>Bushfire hazard</b>  <u>State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP3.7)</u> provides a policy framework to manage risk of bushfire in land use planning and development. It is supported by <u>Guidelines for Planning in Bushfire Prone Areas</u>, and the deemed provisions of all <u>Western Australian local planning schemes</u> (set out in the <u>Planning and Development (Local Planning Schemes) Regulations 2015</u>). <u>Strategic policy objectives</u> look to avoid increasing intensity of development (and therefore risk) within areas of unacceptable bushfire risk.  The majority of the Shire of Wyndham East Kimberley pastoral lands are located within a mapped, designated bushfire prone area. The level of bushfire hazard within these areas will vary based on the nature of vegetation. The hazard levels are defined by the <u>Guidelines for Planning in Bushfire Prone Areas</u> prepared by the <u>Western Australian Planning Commission</u>.  The hazard levels are:  <u>Low:</u>  – devoid of standing vegetation (less than 0.25ha cumulative area);  – areas which, due to climatic conditions or vegetation (e.g. rainforest), do not experience bushfires;  – inner urban or suburban areas with maintained gardens and very limited standing vegetation (less than 0.25ha cumulative area);  – low threat vegetation, including grassland managed in a minimal fuel condition (i.e. to a nominal height of 100mm), maintained lawns, vineyard and orchards; and  – pasture or cropping areas with very limited standing vegetation that is shrubland, woodland or forest with an effective up slope, on flat land or an effective down slope of less than 10 degrees, for a distance greater than 100 metres  <u>Moderate:</u>  – areas containing pasture or cropping with an effective down slope in excess of 10 degrees for a distance greater than 100 metres;  – unmanaged grasslands;  – open woodlands;  – open shrublands;  – low shrubs on areas with an effective up slope on flat land or an effective down slope of less than 10 degrees, for a distance greater than 100 metres or flat land;  – suburban areas with some tree cover; and</p>	<p>This provides a summary of the information.  Recognition of bushfire prone areas.  This information responds to the bushfire information which was required to be included by the WAPC prior to advertising.</p>

Section	Part 2 Modification	Justification
	<p>– forest and woodlands with a permanent grass understorey or at most, a scrub understorey structure consisting of multiple areas of &lt;0.25ha and not within 20 metres of each other or single areas of &lt;1ha and not within 100 metres of other scrub areas.</p> <p><u>Extreme</u></p> <p>– forests with a scrub understorey which is multi-tiered;</p> <p>– woodlands with a scrub understorey which is multi-tiered;</p> <p>– tall shrubs; and</p> <p>– any area of vegetation not otherwise categorised as low or moderate</p> <p>The nature of vegetation in and around the main townsites of Wyndham and Kununurra would most likely reflect bushfire hazard levels of low and moderate. There may be pockets of extreme bushfire hazard (tall shrubs) in some areas of the Shire. In line with State Planning Policy 3.7 and the Guidelines for Planning in Bushfire Prone Areas, bushfire risk, hazard, and potential bushfire attack level should be considered in all planning proposals.</p> <p>Strategic planning and development proposals (such as rezoning of new developable land, structure plans, subdivisions, or development applications) are required to be supported by technical information that demonstrates that bushfire protection criteria set out in the guidelines can be met by the development proposed.</p> <p>The implementation of State Planning Policy No. 3.7 to individual development of habitable buildings (such as dwellings) is achieved through deemed provisions in all local planning schemes, put in place by the <i>Planning and Development Regulations (Local Planning Schemes) 2015</i>. The deemed provisions require that, prior to development of a habitable building, a bushfire attack level (BAL) assessment is undertaken. A Bushfire Attack Level (BAL) (which is set out in the Australian Standard 3959 Construction of Buildings in Bushfire-Prone Areas (AS 3959) and referenced in the Building Code of Australia (as amended)) provides a category of the level of exposure of a development to bushfire risk.</p> <p>– BAL-FZ (flame zone). This indicates direct exposure to flames from the fire front in addition to a heat flux greater than 40kW/m2 and ember attack.</p> <p>– BAL-40. This indicates exposure to increasing levels of ember attack and burning debris ignited by windborne embers together with a heat flux greater than 29kW/m2 but less than 40kW/m2. There is also an increased likelihood of exposure to flame.</p> <p>– BAL-29. This indicates exposure to increasing levels of ember attack and burning debris ignited by windborne embers together with a heat flux greater than 19kW/m2 but less than 29kW/m2.</p> <p>– BAL-19. This indicates increasing levels of ember attack and burning debris ignited by windborne embers together with a heat flux greater than 12.5kW/m2 but no greater than 19 kW/m2.</p> <p>– BAL-12.5m. This indicates exposure to ember attack with a heat flux of up to 12.5kW/m2.</p> <p>– BAL-Low. Insufficient risk to warrant specific construction requirements.</p>	

Section	Part 2 Modification	Justification
	<p>The Guidelines for Planning in Bushfire Prone Areas strongly recommend that BAL assessments are prepared by accredited Level 1 BAL Assessors. Where the results of the assessment show that a BAL-40 or BAL-FZ applies to the development area, a development application will be required. This removes any exemption that might otherwise be provided in the scheme for the development. The policy measures of SPP3.7 will be applied at the time of a development application. In most instances within the Shire, it is likely that site design and vegetation management can assist in the reduction of BAL on site to facilitate development. This may include preparation of bushfire management plans for some developments. The key policy measure in SPP 3.7 applicable to a development influenced by BAL-40 or BAL-FZ is that development will only be supported if:</p> <ul style="list-style-type: none"> <li>– the landowner/proponent has provided sufficient reason for why the proposal is considered to represent exceptional circumstances which adequately justifies a deviation from the policy measures;</li> <li>– it greatly improves the bushfire management of the site and surrounding area through the provision of a demonstrably significant reduction in the bushfire-related risk level to the community and property;</li> <li>– the benefits of the proposal going ahead in the area outweigh the costs to adjacent landowners, government and the general community; and</li> <li>– it is accompanied by a Bushfire Management Plan, jointly endorsed by the relevant local government and the State authority responsible for emergency services. The Bushfire Management Plan should demonstrate ongoing management measures that will improve the bushfire management of the site and/or surrounding area by minimising the level of bushfire impact.</li> </ul> <p>AS3959 sets out specific building standards for various BAL categories, where development is compliant and capable of approval against the above policy measures.</p>	
<p>Delete text in section '2.4 – transport – Wyndham Port'</p>	<p><i>The port forms part of a regular coastal shipping service between Fremantle, Broome and Darwin exporting live cattle and outputs from mining and agricultural operations as well as general cargo, fuel, and naval and recreational docking.</i></p>	<p>This was noted in a public submission that this service was cancelled in 2015 and is therefore no longer applicable.</p>
<p>Add new text to section '2.5 infrastructure – management and protection'</p>	<p>The Shire experiences issues with mosquitoes. Mosquito management should be investigated as part of a regional water management strategy.</p>	<p>This is to address comments raised by Department of Health.</p>
<p>Replace paragraphs from section '2.5 Infrastructure –</p>	<p><i>Pressure for increasing rural residential development needs to be carefully considered. Availability of potable water supply, particularly larger lots (above 4 hectares) which, under current WAPC policy, do not require connection to reticulated water supply. Proposals for rural residential development are to demonstrate</i></p>	<p>This text has been amended to respond to comments raised by the WAPC prior to</p>

Section	Part 2 Modification	Justification
<p>water – drinking water supply</p>	<p><del>sufficient water supply, considering appropriate water sources such as rainwater and groundwater where appropriate and where climatic conditions will yield sufficient supply.</del></p> <p><del>Water availability and planning for supply options of potable and non-potable water must be considered early in the planning process.</del></p> <p><u>Where lots with an individual area of 4 hectares or less are proposed and a reticulated water supply of adequate capacity is available, the proposal will be required to be serviced by a reticulated domestic (including fire-fighting) water supply. Where it has been satisfactorily demonstrated that a reticulated water supply is not available, or the individual lots are greater than 4 hectares, a fit for purpose domestic water supply (including for fire-fighting) may be considered. Any alternative water supply must be sustainable and consistent with the appropriate standards for health and water.</u></p>	<p>advertising regarding the need to reflect SPP 2.5.</p>
<p>Amend section '2.5 Infrastructure – Services to Aboriginal Settlements'</p> <p>Add new text to section '2.6 Land Use – Rural Residential Development'</p>	<p><b>Services to Aboriginal Settlements</b></p> <p><del>Aboriginal settlements have unregulated service provision, as desired in previous discussion on particular services types. Services to Aboriginal settlements are provided by the Department of Housing. Aboriginal settlements have unregulated service provision. Services are provided by the Department of Housing.</del></p> <p><u>Anecdotally, smaller lots within Packsaddle and River Farm Road are being used for rural residential development. Town Planning Scheme No. 7 currently provides opportunity for Council to approve non-horticultural tourist uses on these lots, such as accommodation and art/craft uses. This impacts on the use of these lots for the horticultural purposes for which they were developed as part of Ord Stage 1, and for which they are currently zoned. The removal of additional uses from the scheme may result in injurious affect to land values, and may lead to compensation claims particularly if land was purchased for such uses. Removing these uses may not be appropriate in future iterations of the scheme, however policy guidance is necessary to ensure these uses do not result in the loss of viable horticultural activities.</u></p>	<p>Additional information requested by WAPC prior to advertising regarding servicing of Aboriginal settlement.</p> <p>The additional information provides clarification associated with changes to zonings and the allowance of non-agricultural uses on land identified for local horticulture and the comments received around this. This text outlines the challenges with removing land uses which can be considered under an existing operating scheme.</p>
<p>Add new text to section '2.6 Land</p>	<p><u>The ecological features of the study area are strongly dependent on the Lake. It is these natural values that warranted recognition of the lake as an internationally significant wetland under the Ramsar Convention. As a Ramsar listed wetland, land uses within the vicinity of Lake Kununurra require careful consideration to</u></p>	<p>Additional information was requested by WAPC prior to</p>

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Section	Part 2 Modification	Justification
Use – Lake Kununurra'	<p>ensure the lake is not adversely impacted by water quality and loss of valuable habitat. Land use change within Kununurra Townsite and surrounds, in the vicinity of the lake, should be supported by appropriate investigations. Ramsar wetlands are matters of national environmental significance. Where a development presents potential to significantly impact on Lake Kununurra, it may require assessment and approval under the <u>Commonwealth Environmental Protection and Biodiversity Conservation Act 1999</u>.</p>	<p>advertising regarding justification of the additional land uses - Inclusion of the implications of Lake Kununurra as a RAMSAR wetland</p>
Add new 'Planning implications – Kununurra'	<p><u>Lake Kununurra is a Ramsar wetland. Land use change in the vicinity of the wetland must consider potential impacts to the lake environment.</u></p>	<p>Additional information to acknowledge the Ramsar wetland and land uses within the vicinity.</p> <p>This responds to comments raised by the WAPC prior to advertising.</p>
Add new text to section '2.6 – Land Use- Wyndham Port and One Mile'	<p><i>Adjacent to the port, the settlement of <del>One Mile</del> includes some of the more historical buildings in the town, including the Wyndham Museum. The <u>Port settlement area</u> includes a range of housing, and occasional retail and hospitality uses, including a tavern. Some housing in this area has been left to deteriorate, however new construction is occurring.</i></p> <p><i>The <u>port settlement</u> area also includes the now closed Crocodile Farm.</i></p> <p><i>Anthon's Landing is a key community focal point in the <del>One Mile</del> <u>Port settlement</u> area, providing a boat access area and a community jetty. A landscape concept for the foreshore area will see the continued revitalisation and development of these facilities.</i></p> <p><i>The lack of sewer infrastructure to this part of Wyndham has been a key barrier to redevelopment, particularly for hospitality uses such as new restaurants and cafes. Heavy vehicles accessing the <del>port</del> <u>Port</u> also create some land use conflict within the area.</i></p>	<p>Minor grammatical and area references amended.</p>
Add new paragraph to section '2.6 – Land Use- Ord River Irrigation	<p><u>Another risk to the primacy of agricultural and horticultural production is the potential for non-agricultural uses to impact on the availability and viability of land zoned for agriculture. Town Planning Scheme No. 7 currently provides opportunity for Council to approve non-horticultural tourist uses in various agricultural zones. This creates potential conflict between tourist and agricultural uses, and may also result in horticultural activity of lots being phased out as alternative commercial activities are undertaken. Future policy should provide guidance to manage these impacts, and reduce the impact of tourism uses on priority</u></p>	<p>Additional information provided regarding land use risks.</p> <p>This relates to discussion around uses</p>

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Section	Part 2 Modification	Justification
<p>Area' after the fourth paragraph Amend 'Planning implications – Ord River Irrigation Area'</p>	<p><u>agricultural land.</u>  <i>Pressure for tree farming and other non-agricultural land uses compromising horticultural development</i></p>	<p>on land identified for local horticultural uses. This is to acknowledge that it is not solely tree farming which could compromise horticulture development.</p>
<p>Add new text to section '2.6 – Land Use – Lake Argyle'</p>	<p><u>The Department of Transport will be preparing a recreation and aquatic use plan, which will provide further guidance in the future for Lake Argyle.</u></p>	<p>During advertising, the Department of Water raised the need for a recreational and aquatic use plan to be developed.  It was advised that the Department of Transport are preparing this plan, therefore additional text was included to clarify this.</p>
<p>Amend heading of section '2.6 – Land Use- Aboriginal Heritage' and creation of new sub headings</p>	<p><u>Native Title and Aboriginal Heritage</u>  <u>Aboriginal heritage</u></p>	<p>New headings provided to clearly separate difference matters. This amendment responds to a comment raised by the WAPC prior to advertising regarding separation of native title and heritage matters.</p>
<p>Delete existing Planning Implications – Aboriginal Heritage</p>	<p><del><b>Planning implications – Aboriginal Heritage</b> <i>The Shire includes a number of sites of Aboriginal heritage. Development and land use needs to consider and respect Aboriginal heritage.</i></del></p>	<p>New headings provided to clearly separate difference matters. This amendment responds to a comment raised by the WAPC prior to advertising regarding</p>

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Section	Part 2 Modification	Justification
Amend subheading of section '2.6 – Land Use- Native Title'	<b><u>Native title claims</u></b>	separation of native title and heritage matters. New headings provided to clearly separate difference matters. This amendment responds to a comment raised by the WAPC prior to advertising regarding separation of native title and heritage matters.
Delete existing Planning Implications – Native Title	<b><u>Planning implications – Native Title</u></b> <i>Large areas of the Shire are subject to Native Title claims and determinations</i>	New headings provided to clearly separate difference matters. This amendment responds to a comment raised by the WAPC prior to advertising regarding separation of native title and heritage matters.
Amend section '2.6 – Land Use- Aboriginal Settlements'	<b><u>Aboriginal Settlements</u></b> <i>Approximately 22 Aboriginal settlements of varying sizes are within the Shire. A number of Aboriginal settlements of varying sizes are within the Shire. This includes large settlements that operate as country towns, such as Kalumburu, and smaller seasonal settlements.</i> <u>A number of settlements, including Mirima and Nulleywah, are located adjacent to towns although are managed as separate Aboriginal settlements. These settlements are viewed by some community members as part of the larger town, or as a separate location or suburb. There are significant management and financial considerations for the Shire if these areas were to be normalised into townships.</u> <i>It is difficult to service Aboriginal settlements, and infrastructure is lacking outside of townships. Currently the Shire is not responsible for servicing Aboriginal, or providing infrastructure within settlements. Due to low population and high expense, infrastructure provision for Aboriginal settlements has tended to be a lesser priority than for townships. There is a role for State and Federal Government agencies to prioritise and plan for infrastructure delivery, supported by the preparation of Layout Plans for Aboriginal settlements.</i>	This amendment is to reflect earlier discussions with the DoP regarding the number of Aboriginal Settlements in the Shire. No number is specified as the settlement numbers vary depending on how they are referred to.  A new paragraph has been included to respond to the WAPC's request for more information relating to

Section	Part 2 Modification	Justification
<p>Section '2.6 – Land Uses' - Insert new planning implications – Native Title and Aboriginal Settlements</p>	<p><i>The Department of Planning has established a framework for developing Layout Plans that assist to guide land use and development with Aboriginal settlements, which includes investigating mechanisms for service and infrastructure provision.</i></p> <p><i>A number of settlements, including Mirima and Nulleywah, are located adjacent to towns although are managed as separate Aboriginal settlements.</i></p> <p><i>These settlements are viewed by some community members as part of the larger town, or as a separate location or suburb. There are significant management and financial considerations for the Shire if these areas were to be normalised into townsites.</i></p> <p><i>Informal conversations with Indigenous community members suggest there may be opportunity for active management and maintenance of Aboriginal settlements through schemes such as “work for the dole”.</i></p>	<p>servicing of Aboriginal Settlements.</p> <p>The text has remained minimal as the Shire is not responsible for servicing Aboriginal communities and cannot provide strategic guidance on this matter. Further information is requested from the DoP if additional text is required here.</p>
<p>Add new sub heading and text under section '2.6 – land Use'</p>	<p><b><u>Planning implications – Native Title and Aboriginal Settlements</u></b></p> <p><u>Large areas of the Shire are subject to Native Title claims and determinations.</u></p> <p><u>Aboriginal settlements are not well serviced</u></p>	<p>New planning implications prepared to reflect updated information. This amendment responds to a comment raised by the WAPC prior to advertising regarding separation of native title and heritage matters.</p> <p>Additional information relating to cultural heritage was requested by the State Heritage Office during the advertising period.</p>
<p>Additional planning controls and management for heritage places can be developed and managed through local planning policies.</p>	<p><b><u>Historic Cultural Heritage</u></b></p> <p><u>Local Government's have the ability under the local planning scheme to maintain a heritage list. The heritage list identifies places of cultural significance. The Shire has an existing Municipal Inventory, which includes the identification of 52 places and three places are listed on the State Register (State Heritage Office, 2016).</u></p> <p><u>Additional planning controls and management for heritage places can be developed and managed through local planning policies.</u></p>	<p>Additional information relating to cultural heritage was requested by the State Heritage Office during the advertising period.</p>

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Section	Part 2 Modification	Justification
	<p>**Insert photos of some of the Shire’s heritage listed properties.</p>	
<p>Add new section ‘2.6 – Land Use – rest of Shire’</p>	<p><i>Significant areas of the Shire are subject to mining tenements and pastoral leases. The mining industry is important in the Shire, however the Mining Act 1978 removes the influence of the Planning and Development Act 2005. As a result, the local planning scheme cannot address mining land uses.</i></p>	<p>This is to address comments raised by the Department of Mines during advertising.</p>
<p>Add new subheading and text to section ‘3.1 – State and Regional Planning Context’</p>	<p><b><u>Separate Approvals and Regulatory Processes</u></b></p> <p>There is a wealth of legislated, policy, and approval requirements at the State and Commonwealth Government levels which exist outside the planning framework. These influence land use and development within the Shire, and include:</p> <ul style="list-style-type: none"> <li>– <u>Land Administration Act 1997</u>, which provides a framework for managing Crown land, including lease areas (such as pastoral leases). This is administered by the State Department of Lands and the Pastoral Lands Board.</li> <li>– <u>Aboriginal Heritage Act 1972</u>, which provides for the protection of Aboriginal Sites from inappropriate development. This is administered by the Department of Aboriginal Affairs.</li> <li>– <u>Environmental Protection Act 1986</u>, which provides for the assessment of developments that would have a significant impact on the State’s environment, and regulates other activities through licensing, works approval, and vegetation clearing controls. This is administered by the Department of Environmental Regulation and the Environmental Protection Authority.</li> <li>– <u>Commonwealth Environmental Protection and Biodiversity Conservation Act 1999</u>, which provides for the assessment and approval of development that would impact on matters of national environmental significance including threatened species and ecological communities. Ramsar wetlands that support migratory species. The Act is administered by the Commonwealth Department of the Environment.</li> </ul> <p>This is not an exhaustive list, and it is important for developers within the Shire to understand obligations beyond the local planning framework that is administered by the Shire. It is also important that the local planning framework for the Shire of Wyndham East Kimberley does not unnecessarily duplicate existing approval processes at the State and Commonwealth level.</p>	<p>This text provides additional information around the range of non-planning legislation that needs to be considered in the process of land development and land uses.</p> <p>This text is in response to a comments raised by the WAPC prior to advertising.</p>

Section	Part 2 Modification	Justification
	<p><u>With regard to pastoral leases on Crown land within the Shire – which reflects the majority of the Shire’s land area – land use is strongly regulated through pastoral leases and the Pastoral Lands Board. The Pastoral Lands Board is a statutory authority established under the <i>Land Administration Act 1997 (WA)</i>, and administer pastoral leases.</u></p> <p><u>Under the <i>Land Administration Act 1997 (WA)</i>, pastoral leases must not be used for purposes other than pastoral purposes, except where a permit for diversification has been issued by the Pastoral Lands Board. These include pastoral use permits (which include low scale, pastoral based tourism) and non-pastoral use permits. In this way, land use on pastoral leases is managed separately to the local planning scheme and strategy.</u></p> <p><u>The assessment of permits for diversification includes a referral process to other government agencies. Through this, the Shire can look to influence and provide input to permits. There is a risk that the expansion of a local planning scheme across pastoral lease areas may duplicate this process. However, if local development control focuses on matters outside of the <i>Land Administration Act</i> and pastoral leases – such as visual amenity and servicing – then development approval processes will not necessarily duplicate the permit for diversification process, and will provide a beneficial, necessary step in development control.</u></p> <p><u>Permits for diversification also have to consider the <i>Native Title Act 1993</i> and potential implications. Whilst generally permits for pastoral use purposes do not represent a ‘future act’ (something that might affect native title) and therefore are permitted under the Act, it is possible that non-pastoral activities may. This is something that should be considered by potential developers in consultation with the Pastoral Lands Board and the Department of Aboriginal Affairs.</u></p> <p><u>In relation to environmental and heritage legislation, it is possible that local development control can overlap with these processes. Some of this can be avoided, such as through the <i>Environmental Protection Act 1986</i> which enables the assessment of local planning schemes and scheme amendments, to avoid the need for a separate environmental approval. It is important for local development control to provide for the management of local environmental and heritage matters that might otherwise not be addressed in state level assessment processes.</u></p>	

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Section	Part 2 Modification	Justification
<p>Add new text to the end of section 3.2 Local Planning Context – Kununurra and Wyndham Planning Schemes</p>	<p><u>The preparation of a new scheme must be in accordance with the <i>Planning and Development (Local Planning Scheme) Regulations 2015</i> which include deemed provisions (which apply statewide) and model provisions.</u></p>	<p>This amendment builds on the WAPC's comments relating to the role of DoL, DAA and the pastoral lands board in relation to local planning context. It was acknowledged that this section required updating as the regulation review has now been complete. Text relating to the new regulations has been included and the text relating to the review has been removed.</p>
<p>Delete subheading and text under section 3.2 Local Planning Context – Town Planning Regulations Review</p>	<p><del><b>Town Planning Regulations Review</b> The Western Australian Department of Planning (DoP) is currently conducting a review of the Town Planning Regulations (1967)(WAPC) (as amended) and the associated Model Scheme Text (MST). The changes are expected to be significant and will affect the existing and future planning schemes, and may necessitate further amendment to comply with the revised legislation once finalised. Through the review of the regulations, it is anticipated that local planning schemes will be required to be split into three parts:  Local Provisions – customised section to suit individual Local Governments; Generalised Provisions – standardised across the State and will address common elements and procedures; and Local Scheme Map – with standardised terminology, legend and colours.</del></p>	<p>This is no longer applicable now the Regulations have been finalised.  This amendment builds on the WAPC's comments relating to the role of DoL, DAA and the pastoral lands board in relation to local planning context. It was acknowledged that this section required updating as the regulation review has now been complete.</p>
<p>Amend Section 4 – Key issues - Strategic Issue – Remote</p>	<p><u>Approximately 22 Aboriginal settlements of varying sizes are within the Shire. A number of Aboriginal settlements of varying sizes are within the Shire. This includes large communities that operate as country towns, and smaller seasonal communities.</u></p>	<p>This amendment is to reflect earlier discussions with the DoP regarding the</p>

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Section	Part 2 Modification	Justification
Communities - Analysis		number of Aboriginal Settlements in the Shire. No number is specified as the settlement numbers vary depending on how they are referred to.
Add new reference to section 5	<p><a href="http://inherit.stateheritage.wa.gov.au">inHerit, State Heritage Office, Available from http://inherit.stateheritage.wa.gov.au</a></p> <p><a href="#">Kimberley Science and Conservation Strategy (Government of Western Australia, 2011)</a></p> <p><a href="https://maps.slp.wa.gov.au/landgate/bushfireprone2016/">Map of Bushfire Prone Areas 2016, (Office of Bushfire Risk Management), available from https://maps.slp.wa.gov.au/landgate/bushfireprone2016/</a></p> <p><a href="#">Shire of Wyndham East Kimberley East Kimberley Tourism Plan 2022 (KPP Business Development, 2013)</a></p>	Reference of new images included in bushfire section, heritage and additional information in the tourism sections of LPS.

## Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

## Scheme Text

Section	Modification to Scheme Text
Part 2 - Reserves	<p>1. Include the following additional reserve and objectives in cl 2.2.2:</p> <p><b>Cultural and Natural Resource Reserve</b></p> <ul style="list-style-type: none"> <li>(i) to provide for development associated with the extraction of mineral and natural resources;</li> <li>(ii) to ensure the preservation of Aboriginal heritage and culturally significant areas;</li> <li>(iii) to provide for the conservation of significant landscape and environmental areas and values;</li> <li>(iv) to allow for low impact tourism development including limited tourist accommodation and camping areas; and</li> <li>(v) to allow land uses associated with Aboriginal heritage, traditional law and culture.</li> </ul>
Part 3 – Zones and Use of Land - Zones	<p>2. Include the following additional zones and objectives in cl 3.1.2:</p> <p><b>Service Commercial Zone</b></p> <ul style="list-style-type: none"> <li>(i) to accommodate commercial activities which, due to the nature of the business, require good vehicular access and/or large sites.</li> <li>(ii) to provide for a range of wholesale sales, showrooms, trade and services which, by reason of scale, character, operational or land requirements, are not appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.</li> </ul> <p><b>Rural Enterprise Zone</b></p> <ul style="list-style-type: none"> <li>(i) to provide for light or rural industrial and ancillary residential development on one lot.</li> <li>(ii) to provide for lot sizes in the range of 1 ha to 4 ha.</li> <li>(iii) to carefully design rural enterprise estates to provide a reasonable standard of amenity without limiting light or rural industrial land uses.</li> <li>(iv) to notify prospective purchasers of potential amenity impacts from light or rural industrial land uses.</li> </ul>
Part 3 – Zones and Use of Land - Zones	<p>3. Modify the objectives of Local Horticulture Zone (Rural Agriculture 2) in cl 3.1.2 as follows:</p> <p><b>Local Horticulture Zone</b></p> <ul style="list-style-type: none"> <li>(i) to identify and protect intensive agricultural land of local significance;</li> <li>(ii) to provide for a diversity of sustainable intensive agriculture and value-adding opportunities;</li> <li>(iii) to protect existing and potential agriculture production areas from inappropriate land use;</li> <li>(iv) to maintain the rural character of the area; and</li> <li>(v) to avoid activities causing adverse environmental impacts and any other land management practices that would be detrimental to the amenity of the area.</li> </ul>
Part 3 – Zones and Use of Land - Zones	<p>4. Modify the objectives of the Tourism Zone in Clause 3.1.2 by deleting the following objective:</p> <ul style="list-style-type: none"> <li>(v) To provide for limited permanent residential accommodation and tourism sites.</li> </ul>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

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Part 3 – Zones and Use of Land – Zoning Table	<p>5. Modify Table 1 – Zoning Table in cl 3.2 by including the Rural Enterprise Zone with the following use class permissibility:</p> <table border="1" data-bbox="300 387 691 1715"> <thead> <tr> <th>Abattoir</th> <th>SA</th> <th>Farm Supply Centre</th> <th>P</th> <th>Market</th> <th>A</th> <th>Trade Display</th> <th>D</th> </tr> </thead> <tbody> <tr> <td>Animal Establishment</td> <td>A</td> <td>Fastfood Outlet/ Lunch bar</td> <td>A</td> <td>Motor Vehicle Repair</td> <td>D</td> <td>Trade Supplies</td> <td>D</td> </tr> <tr> <td>Brewery</td> <td>D</td> <td>Fuel Depot</td> <td>D</td> <td>Motor Vehicle Wash</td> <td>A</td> <td>Transport Depot</td> <td>D</td> </tr> <tr> <td>Bulky Goods Showroom</td> <td>A</td> <td>Garden Centre</td> <td>D</td> <td>Office</td> <td>IP</td> <td>Veterinary Centre</td> <td>A</td> </tr> <tr> <td>Car Park</td> <td>D</td> <td>Dwelling – Single</td> <td>IP</td> <td>Road House</td> <td>A</td> <td>Warehouse/Storage</td> <td>D</td> </tr> <tr> <td>Commercial Vehicle Parking</td> <td>D</td> <td>Industry - Cottage</td> <td>D</td> <td>Service Station</td> <td>A</td> <td>Waste Storage Facility</td> <td>A</td> </tr> <tr> <td>Dwelling – Single</td> <td>IP</td> <td>Industry</td> <td>A</td> <td>Telecommunication Infrastructure</td> <td>A</td> <td></td> <td></td> </tr> </tbody> </table> <p>And all other uses not permitted (X).</p>							Abattoir	SA	Farm Supply Centre	P	Market	A	Trade Display	D	Animal Establishment	A	Fastfood Outlet/ Lunch bar	A	Motor Vehicle Repair	D	Trade Supplies	D	Brewery	D	Fuel Depot	D	Motor Vehicle Wash	A	Transport Depot	D	Bulky Goods Showroom	A	Garden Centre	D	Office	IP	Veterinary Centre	A	Car Park	D	Dwelling – Single	IP	Road House	A	Warehouse/Storage	D	Commercial Vehicle Parking	D	Industry - Cottage	D	Service Station	A	Waste Storage Facility	A	Dwelling – Single	IP	Industry	A	Telecommunication Infrastructure	A																		
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Part 3 – Zones and Use of Land – Zoning Table	<p>9. Modify Table 1 – Zoning Table to include farm building as a use class permissible in the following zones:</p> <table border="1" data-bbox="600 712 708 1715"> <tr> <td data-bbox="600 1451 652 1715">Priority Agriculture</td> <td data-bbox="600 1384 652 1451">P</td> <td data-bbox="600 1205 652 1384">Rural Enterprise</td> <td data-bbox="600 1039 652 1205">P</td> <td data-bbox="600 712 652 1039">Rural Smallholdings</td> <td data-bbox="600 546 652 712">P</td> </tr> <tr> <td data-bbox="652 1451 708 1715">Local Horticulture</td> <td data-bbox="652 1384 708 1451">P</td> <td data-bbox="652 1205 708 1384">Rural/Pastoral</td> <td data-bbox="652 1039 708 1205">P</td> <td data-bbox="652 712 708 1039">Rural Residential</td> <td data-bbox="652 546 708 712">D</td> </tr> </table> <p>And not permitted (X) in all other zones.</p>	Priority Agriculture	P	Rural Enterprise	P	Rural Smallholdings	P	Local Horticulture	P	Rural/Pastoral	P	Rural Residential	D												
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Part 4 – General Development Requirements	<p>10. Include the following additional text in Part 4 – General Development Requirements:</p> <p><b>Rural Townsite Zone development requirements</b></p> <p>The following development standards and requirements apply in addition to use specific provisions set out in Schedule 4 – Development Standards Table of this scheme.</p> <table border="1" data-bbox="954 371 1166 1704"> <thead> <tr> <th colspan="2" data-bbox="954 1205 1023 1704">Minimum Setbacks</th> <th colspan="2" data-bbox="954 869 1023 1205">Parking</th> <th data-bbox="954 645 1023 869">Bicycle Parking</th> <th data-bbox="954 371 1023 645">Landscaping</th> </tr> <tr> <td data-bbox="1023 1205 1070 1704">Front</td> <td data-bbox="1023 1205 1070 1330"></td> <td data-bbox="1023 1205 1070 1330">Side</td> <td data-bbox="1023 1205 1070 1330">Rear</td> <td data-bbox="1023 645 1070 869"></td> <td data-bbox="1023 371 1070 645"></td> </tr> </thead> <tbody> <tr> <td data-bbox="1070 1205 1166 1704">Nil</td> <td data-bbox="1070 1205 1166 1330">On merit</td> <td data-bbox="1070 1205 1166 1330">On merit</td> <td data-bbox="1070 1205 1166 1330">On merit</td> <td data-bbox="1070 645 1166 869">Parking – One bay per 65m<sup>2</sup> NLA, Residential, as per R Codes,</td> <td data-bbox="1070 371 1166 645">1 bay per 200m<sup>2</sup> NLA</td> </tr> <tr> <td colspan="4" data-bbox="1166 371 1246 1704">Provision shall be made for onsite loading and unloading of service vehicles to the satisfaction of the local government. The design of such areas shall require all entry and exit movements from and to the adjoining street or right of way to be in a forward direction.</td> <td data-bbox="1246 645 1294 869">10% minimum coverage of the site area</td> <td data-bbox="1246 371 1294 645"></td> </tr> </tbody> </table> <p>Addressing Streets</p>	Minimum Setbacks		Parking		Bicycle Parking	Landscaping	Front		Side	Rear			Nil	On merit	On merit	On merit	Parking – One bay per 65m <sup>2</sup> NLA, Residential, as per R Codes,	1 bay per 200m <sup>2</sup> NLA	Provision shall be made for onsite loading and unloading of service vehicles to the satisfaction of the local government. The design of such areas shall require all entry and exit movements from and to the adjoining street or right of way to be in a forward direction.				10% minimum coverage of the site area	
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	<p>(a) Ground floor development fronting the street should comprise commercial land uses which provide active street frontages based on main street principles including direct entrances from adjoining paths, verandahs and eaves to provide pedestrian shelter, unobstructed shop front windows and facades with visual interest.</p> <p>(b) Where a mixed use development incorporating commercial and residential development is proposed, the residential component of the site should be confined to upper stories or behind a commercial development at ground level fronting the street.</p> <p>Residential development may be permitted to a maximum residential density of R40.</p> <p>For a lot in the Rural Townsite zone which abuts a lot in a Residential zone, setbacks shall comply with the Residential Design Codes applicable to the abutting Residential zoned lot, unless the local government approves otherwise.</p> <p>No dumping or storage of waste or materials, or construction, servicing or maintenance, shall be carried out between the front building line and the street frontage. However, the local government at its discretion may approve the display of finished goods or goods for sale or ready for delivery.</p> <p><b>Rural Enterprise Zone development requirements</b></p> <p>The following development standards and requirements apply in addition to use specific provisions set out in Schedule 4 – Development Standards Table of this scheme.</p> <table border="1" data-bbox="783 369 1008 1704"> <thead> <tr> <th colspan="3">Minimum Setbacks</th> <th rowspan="2">Parking</th> <th rowspan="2">Bicycle Parking</th> <th rowspan="2">Landscaping</th> </tr> <tr> <th>Front</th> <th>Side</th> <th>Rear</th> </tr> </thead> <tbody> <tr> <td>Industrial component - 9m</td> <td>5m</td> <td>5m</td> <td>Industrial/commercial component - 1 bay per 65m<sup>2</sup> NLA</td> <td>n/a</td> <td>2m landscaping strip along the front boundary</td> </tr> <tr> <td>Residential component – behind or in line with industrial component.</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Within a lot situated within the Rural Enterprise zone, a person may only:</p> <p>(a) Undertake development which incorporates an industrial/business component;</p> <p>(b) Develop a residential dwelling where that residential component is incidental to an industrial/business component;</p> <p>(c) Allow a residential dwelling to be occupied by the owner, manager or employee (and their family and/or dependents) of the rural or light industrial pursuit;</p> <p>(d) Establish a light or rural industry that is of a nature which can operate compatibly with residential living and minimal impact on adjoining properties.</p> <p>No dumping or storage of waste or materials, or construction, servicing or maintenance, shall be carried out between the front building line and the street frontage. However, the local government at its discretion may approve the display of finished goods or goods for sale or ready for delivery.</p>	Minimum Setbacks			Parking	Bicycle Parking	Landscaping	Front	Side	Rear	Industrial component - 9m	5m	5m	Industrial/commercial component - 1 bay per 65m <sup>2</sup> NLA	n/a	2m landscaping strip along the front boundary	Residential component – behind or in line with industrial component.					
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Part 4 – General Development Requirements	<p>11. Modify the table in cl 4.26.1 to include the following additional minimum side and rear setbacks: Agricultural land uses – 20m, Incidental development (non-agricultural) – 100m</p>															
Part 4 – General Development Requirements	<p>12. Include additional cl 4.26. 4 as follows: In accordance with the Zoning Table, the local government may only permit the development and use of land for the following non-agricultural uses: Exhibition Centre; Bed and Breakfast; Restaurant; Educational Establishment; Brewery; Farm Stay;</p>															

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	<p>if:</p> <p>(a) <i>An established horticultural, intensive or extensive agricultural activity is being carried out on the property, with a minimum of 50% of the land under cultivation.</i></p> <p>(b) <i>The proposed development is to remain incidental and subordinate to the established horticultural or agricultural activity on the property.</i></p> <p>(c) <i>The proposed development is not located on any part of the property utilised for agricultural or horticultural pursuits, and sited so it will not bisect existing or potential agricultural and horticultural areas on the property.</i></p> <p>(d) <i>Prior to the local government advertising and making a determination on the proposed development the applicant shall submit:</i></p> <p>(i) <i>A detailed 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. The management plan should detail measures to manage the following impacts:</i></p> <ul style="list-style-type: none"> <li>▪ <i>dust and noise;</i></li> <li>▪ <i>visual amenity;</i></li> <li>▪ <i>biosecurity; and</i></li> <li>▪ <i>ensuring the continued agricultural/horticultural activity on the land.</i></li> </ul> <p>(ii) <i>A detailed landscaping plan in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health - August 2012 regarding establishment of vegetation buffers. The vegetation buffer shall also provide an appropriate visual screen from both the road and neighbouring properties.</i></p> <p>(e) <i>As part of the advertising process the local government will seek comment on any application from the Department of Agriculture and Food and other relevant agencies or stakeholders, and surrounding landowners.</i></p> <p>(f) <i>Prior to the construction of any proposed development landscaping in accordance with the approved landscaping plan should be commenced.</i></p> <p>(g) <i>Prior to occupation or use of any approved development:</i></p> <p>(i) <i>Relevant officers shall inspect the development to ensure biosecurity information is displayed in a prominent place;</i></p> <p>(ii) <i>Relevant officers shall inspect procedures to ensure that all employees are made aware of the biosecurity issues and preventative measures prior to commencement of operation; and</i></p> <p>(iii) <i>Landscaping must be established in accordance with the approved landscaping plan.</i></p> <p>(h) <i>A register of guests staying in any approved accommodation is to be provided to the local government upon request.</i></p>
<p>Part 4 – General Development Requirements</p>	<p>13. <i>Modify Scheme text to include an additional point in cl 4.27 as follows:</i></p> <p><i>In considering an application for development approval, the local government must ensure that the proposed development is consistent with and will not conflict with the viability of intensive agricultural and horticultural pursuits on the property and within the locality.</i></p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

Section	Modification to Scheme Text
Part 4 – General Development Requirements	14. Modify the table in cl 4.27.1 to specify the following minimum side and rear setbacks: <i>Agricultural land uses - 20m, Incidental development (non-agricultural) – 40m and not within 70m of any residence on any adjoining property</i>
Part 4 – General Development Requirements	15. Modify cl 4.27.2 to delete the following uses that the local government may only permit in accordance with this clause: <i>Nursery</i>
Part 4 – General Development Requirements	<p>16. Delete cl 4.27.2(a) to (e) and replace with the following clauses:</p> <p>(a) <i>An established horticultural or intensive agricultural activity is being carried out on the property, with a minimum of 50% of the land under cultivation.</i></p> <p>(b) <i>The proposed development is to remain incidental and subordinate to the established horticultural or intensive agricultural activity on the property.</i></p> <p>(c) <i>The proposed development is not located on any part of the property utilised for agricultural or horticultural pursuits, and sited so it will not bisect existing or potential agricultural and horticultural areas on the property.</i></p> <p>(d) <i>Prior to the local government advertising and making a determination on the proposed development the applicant shall submit:</i></p> <p>(i) <i>A detailed 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. The management plan should detail measures to manage the following impacts:</i></p> <ul style="list-style-type: none"> <li>▪ <i>dust and noise;</i></li> <li>▪ <i>visual amenity;</i></li> <li>▪ <i>biosecurity; and</i></li> <li>▪ <i>ensuring the continued agricultural/horticultural activity on the land.</i></li> </ul> <p>(ii) <i>A detailed landscaping plan in accordance with the Guidelines for Separation of Agricultural and Residential Land Uses, Department of Health - August 2012 regarding establishment of vegetation buffers. The vegetation buffer shall also provide an appropriate visual screen from both the road and neighbouring properties.</i></p> <p>(e) <i>As part of the advertising process the local government will seek comment on any application from the Department of Agriculture and Food and other relevant agencies or stakeholders, and surrounding landowners.</i></p> <p>(f) <i>Prior to the construction of any proposed development landscaping in accordance with the approved landscaping plan should be commenced.</i></p> <p>(g) <i>Prior to occupation or use of any approved development:</i></p> <p>(i) <i>Relevant officers shall inspect the development to ensure biosecurity information is displayed in a prominent place;</i></p> <p>(ii) <i>Relevant officers shall inspect procedures to ensure that all employees are made aware of the biosecurity issues and preventative measures prior to commencement of operation; and</i></p> <p>(iii) <i>Landscaping must be established in accordance with the approved landscaping plan.</i></p> <p>(h) <i>A register of guests staying in any approved accommodation is to be provided to the local government upon request.</i></p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

Section	Modification to Scheme Text
Part 4 – General Development Requirements	<p>17. Modify cl 4.29.5(a) to read as follows:</p> <p>(a) <i>The keeping of animals on Rural Residential or Rural Smallholding zoned land for commercial gain requires the development approval of the local government, and if approved, shall accord with the maximum stocking rates prescribed by the Department of Agriculture and Food.</i></p>
Part 4 – General Development Requirements	<p>18. Modify cl 4.29.6(d) to read as follows:</p> <p>(d) <i>Trees which are dead, diseased, dangerous, introduced exotic trees, or noxious trees and weeds.</i></p>
Part 4 – General Development Requirements	<p>19. Include an additional point in cl 4.29 as follows:</p> <p><i>Outbuildings</i></p> <p><i>Notwithstanding clause 61(1)(m) in Schedule A – Supplemental Provisions, the development of an outbuilding in the Rural Residential Zone with either:</i></p> <p>(a) <i>A floor area exceeding 200m<sup>2</sup>; or</i></p> <p>(b) <i>Wall height exceeding 4.4m; or</i></p> <p>(c) <i>Ridge height exceeding 6m;</i></p> <p><i>will require the development approval of the local government.</i></p>
Part 4 – General Development Requirements	<p>20. Include additional clause in Part 4 – General Development Requirements:</p> <p><b>Areas subject to aircraft noise</b></p> <p><i>In areas subject to aircraft noise in excess of 20 ANEF:</i></p> <p>(a) <i>development is required to incorporate noise attenuation measures to the satisfaction of the local government; and</i></p> <p>(b) <i>in respect of subdivision of land, the local government will recommend to the Commission that all new lots be the subject of memorials on titles, warning of the potential for aircraft noise affecting such lots.</i></p>
Part 4 – General Development Requirements	<p>21. Renumber clauses in Part 4 – General Development Requirements as required.</p>
Part 5 – Special Control Areas	<p>22. Modify Part 5 of the Scheme Text to include the following additional Special Control Area:</p> <p><b>5.5 Packsaddle Wetland Protection Area –PWPA</b></p> <p>5.5.1 Purpose</p>

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

Section	Modification to Scheme Text			
	<p>(a) To protect the ecological integrity of Lake Kununurra whilst providing for the maximum enjoyment of privately owned land in close proximity to the wetland in the Packsaddle locality.</p> <p>(b) to ensure that proposed development will not impact on the wetland values of the Lake Kununurra foreshore environment, or that an improved environmental outcome can be achieved; and</p> <p>(c) to minimise visual impact as viewed from Lake Kununurra or other public viewpoints.</p> <p>5.5.2 Application Requirements</p> <p>(a) All development (including use of land, the removal of vegetation and earthworks) within the Packsaddle Wetland Protection Area shall be subject to a requirement for development approval and shall be subject to the discretion of the local government, notwithstanding that the use may be designated a 'P' use under the Scheme.</p> <p>(b) the local government is required to refer any land use or development application to the Department of Water and Department of Parks and Wildlife for advice, comment and recommendation, prior to any formal consideration under the Scheme.</p> <p>(c) in determining any land use or development applications within areas the local government will be guided by:</p> <ul style="list-style-type: none"> <li>(i) any comments, advice or recommendation from the Department of Water, Department of Parks and Wildlife or other relevant agencies;</li> <li>(ii) the provisions of Clause 5.3 of the Scheme;</li> <li>(iii) The matters set out in clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 - deemed provisions.</li> <li>(iv) all other provisions applying to any underlying zone or reserve and any general provisions of the Scheme.</li> </ul> <p>(d) In considering any application for development approval within the Packsaddle wetland protection area, the local government will consider all applications on their individual merit.</p>			
Part 6 – Terms referred to in the Scheme, Division 2 - Land Use Definitions	<p>23. Modify cl 6.2 to include the following definition:</p> <p><b>farm building</b> means those buildings and structures on land used for agricultural purposes;</p> <p>(a) for storage of agricultural products and produce; and/or</p> <p>(b) for the maintenance of farm machinery used by the occupier of the site; but does not include agriculture – intensive or industry – primary production.</p> <p>24. Modify the definition of 'farm stay' in cl 6.2 to allow a maximum internal floor area of 50m<sup>2</sup>.</p>			
Schedule 2 – Additional Uses	<p>25. Modify the table in Schedule 2 – Additional Uses by deleting the following row:</p> <table border="1" data-bbox="1262 295 1340 1727"> <tr> <td data-bbox="1262 1626 1305 1727">A4</td> <td data-bbox="1262 1010 1305 1626">Portions of the Wyndham Rural Townsite Zone as indicated on the Scheme Maps</td> <td data-bbox="1262 295 1305 1010">Nil.</td> </tr> </table>	A4	Portions of the Wyndham Rural Townsite Zone as indicated on the Scheme Maps	Nil.
A4	Portions of the Wyndham Rural Townsite Zone as indicated on the Scheme Maps	Nil.		

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

Section	Modification to Scheme Text			
Schedule 3 – Special Uses Zones	<p>26. Modify the table in Schedule 3 – Special Use Zones by:</p> <ul style="list-style-type: none"> <li>▪ Deleting the following Special Use sites:</li> </ul>			
SU11	Lot 723, 722, 1300, 721	Great Northern Hwy	Motel	As determined by local government
SU14	3	Barytes Road, West Side	Zoological Gardens and Ancillary Purposes	As determined by local government
<ul style="list-style-type: none"> <li>▪ Including the following Special Use site:</li> </ul>				
SU11	Lot 511	Lake Argyle Road	Aquaculture	As determined by local government
<ul style="list-style-type: none"> <li>▪ Modifying Special Use site SU7 as follows:</li> </ul>				
SU7	Lot 51166, 200 & 202, 301 – 312, 314 - 321,500 & part Lot 876	Peter Reid Drive, Dusty Rankin Drive, Laine Jones Drive Cyril Kleining Drive, and Victoria Hwy, Kununurra	Airport: Other uses may be permitted by the local government provided that they are incidental to the predominant use of the land or deemed to be dependent on the function of the Airport or are shown to the satisfaction of local government to be consistent with the Airport's long-term operational needs.	As determined by local government
<ul style="list-style-type: none"> <li>▪ Modifying Special Use site SU17 by including the following condition:</li> </ul>				
<p>Area subject to land capability assessment for onsite sewerage disposal.</p>				
<ul style="list-style-type: none"> <li>▪ Renumbering Special Use sites as required.</li> </ul>				
Schedule A - Supplemental provisions to the deemed provisions	<p>27. Include the following additional clause into Schedule A – Supplemental provisions to the deemed provisions:</p> <p><b>Clause 8 (4):</b>  <i>Until such time as a heritage list is established by the local government in accordance with clause 8(1) of the deemed provisions, the heritage list is the municipal heritage inventory."</i></p>			

Shire of Wyndham East Kimberley – Schedule of Proposed Modifications to Draft Local Planning Scheme No. 9

**Scheme Maps**

Map	Modification to Scheme Maps
Scheme Map Legend	<p>1. Modify Scheme Map Legend to include:</p> <ul style="list-style-type: none"> <li>▪ Cultural and Natural Resource Reserve as a Local Scheme Reserve</li> <li>▪ Service Commercial and Rural Enterprise as Zones</li> <li>▪ Aquaculture (AQ) as an additional Special Use</li> <li>▪ PWPA - Packsaddle Wetland Protection Area as Other</li> <li>▪ Change the colour of the Local Government Boundary</li> </ul>
Scheme Maps 1 – 9	<p>2. Modify Scheme Maps 1 – 9 by:</p> <ul style="list-style-type: none"> <li>▪ Modifying the colour of the Local Government Boundary as shown on the Scheme Map Legend</li> <li>▪ Zoning land shown on the Strategic Land Use Plan for the whole Shire (Figures 1 &amp; 2) in the draft Strategy as Cultural and Natural Resource Use as Cultural and Natural Resource Reserve, including land surrounding Lake Argyle.</li> </ul>
Scheme Map 5	<p>3. Modify Scheme Map 5 to zone the old Ningbing settlement (Lot 696 on DP188947) as Rural/Pastoral.</p>
Scheme Map 8	<p>4. Modify Scheme Map 8 to</p> <ul style="list-style-type: none"> <li>▪ zone Reserve 40419 as Public Purpose Reserve and denoted as Extraction Area (EA).</li> <li>▪ zone the Wuggubun and Wijlawarrim (Molly Springs) settlements as Settlement ,with the boundaries in accordance with the recommended settlement zone identified in the Layout Plan for each settlement.</li> </ul>
Scheme Maps 8 & 9	<p>5. Modify Scheme Map 8 &amp; 9 to:</p> <ul style="list-style-type: none"> <li>▪ zone the Gibb River Road reserve as Primary Distributor Reserve.</li> <li>▪ zone the Argyle Diamond Mine (Lot 618 on DP 93093) as Rural Pastoral Zone.</li> </ul>
Scheme Map 10	<p>6. Delete Scheme Map 10, and modify the Map Extensions plan and Scheme Map numbering accordingly.</p>
Scheme Maps 11 & 12	<p>7. Modify Scheme Maps 11 &amp; 12 to zone the following land parcels General Industry Zone</p> <ul style="list-style-type: none"> <li>▪ UCL land (PIN 1352826);</li> <li>▪ Lot 1768 on DP 95770;</li> <li>▪ LotBarytes Road, Wyndham;</li> <li>▪ Lot 451 on DP 77631 (part Reserve 24041);</li> <li>▪ Lot 827 on DP93569; and</li> <li>▪ Lot 704 (on DP 75319) Barytes Road, Wyndham.</li> </ul>
Scheme Maps 11 & 14	<p>8. Modify Scheme Map 11 &amp; 14 to zone Reserve 31451 and adjoining Lot 1347 on DP 18290 as Public Purpose Reserve and denoted as Extraction Area (EA).</p>

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Scheme Maps 12 & 13	9. Modify Scheme Maps 12 & 13 by removing the Additional Use areas denoted by A4.
Scheme Map 13	<p>10. Modify Scheme Map 13 to zone the following properties as Residential R 15:</p> <ul style="list-style-type: none"> <li>▪ 52, 54, 56, 58, 70, 72, 74, 76 &amp; 80 Great Northern Highway, Wyndham</li> <li>▪ 1, 3, 5 &amp; 7 Cato Court, Wyndham</li> <li>▪ 7, 9, 11, 13, 15, 17, 19, 21, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85 &amp; 87 Kabbarli Street, Wyndham</li> <li>▪ 1 - 19, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72 &amp; 74 Koojarra Street, Wyndham</li> <li>▪ 1 - 4, 6, 7, 9 – 14 &amp; 16 Kwinana Street, Wyndham</li> <li>▪ 1 &amp; 3 Dorrigo Street, Wyndham</li> <li>▪ 2, 4, 6, 8, 12, 14, 16, 18, 20, 22, 30, 32 &amp; 34 Dulverton Street.</li> <li>▪ 22 &amp; 24 Delamere Street, Wyndham</li> <li>▪ 3 Troughton Street, Wyndham</li> <li>▪ Lot 1720 on DP 184867 &amp; Lot 501 on DP 74708</li> </ul> <p>11. Modify Scheme Map 13 to zone the following properties as Residential R20:</p> <ul style="list-style-type: none"> <li>▪ 21, 23, 25, 27, 29, 31, 33 – 51, 53, 55 &amp; 57 Great Northern Highway, Wyndham</li> <li>▪ 19, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38 &amp; 40 Koolama Street, Wyndham</li> <li>▪ 3, 5, 7, 9 &amp; 11 Martin Place, Wyndham</li> <li>▪ 8, 10, 12, 14, 16, 18 &amp; 20 Kangaroo Drive, Wyndham</li> <li>▪ 1, 3, 5, 7, 11, 13 &amp; 15 Doongan Street, Wyndham</li> <li>▪ Part Lot 1791 (23) Koolama Street, Wyndham</li> <li>▪ 23, 25, 27, 29, 31, 33 &amp; 35 Kabbarli Street, Wyndham</li> <li>▪ 1 &amp; 2 Myrmidon Street, Wyndham</li> <li>▪ 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 &amp; 67 Koojarra Street, Wyndham</li> <li>▪ 8, 18, 20, 22, 24, 26 &amp; 28 Kwinana Street, Wyndham</li> <li>▪ 1, 3, 5, 7 &amp; 27 Delamere Street, Wyndham</li> </ul>
Scheme Map 13	<p>12. Modify Scheme Map 13 to:</p> <ul style="list-style-type: none"> <li>▪ zone Reserve 30137 (Lot 1312) and Reserve 29606 (Lot 1307) on Ivanhoe Street as Public Open Space Reserve.</li> <li>▪ zone Reserve 33109 as Infrastructure Services Reserve and denoted as Sewage Treatment Works (ST) and include a 500m Sewer Treatment Buffer Area around the existing treatment ponds.</li> <li>▪ zone Reserve 33852 (Durack Street) as Infrastructure Services Reserve and denoted as Water Supply (WS)</li> <li>▪ zone Reserve 32654 (Durack Street) as Infrastructure Services Reserve and denoted as Sewer Pump Station (SPS)</li> <li>▪ zone Reserve 33880 (Durack Street) as Infrastructure Services Reserve and denoted as Sewage Treatment Works (ST) &amp; Water Supply (WS).</li> <li>▪ zone Lots 723 Great Northern Hwy, and Lots 722, 1300 and 721 Sharpe Street, Wyndham as Rural Townsite Zone.</li> <li>▪ zone Reserves 32078, 31980, 31981 &amp; Lot 44 on DP 208835 as Infrastructure Services Reserve denoted as Drain (D).</li> <li>▪ rezone those portions of Great Northern Highway shown as Public Open Space Reserve to Primary Distributor Reserve.</li> </ul>

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Scheme Maps 13 & 14	13. Modify Scheme Maps 13 & 14 to zone Reserve 38740 as Infrastructure Services Reserve denoted for Water Supply (WS).
Scheme Maps 16-23, 25, 27, 29 & 30	14. Modify Scheme Maps 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29 & 30 to show the ORIA irrigation supply and drainage channels as Infrastructure Services Reserve and denoted as Water Supply (WS) or Drain (D) as appropriate.
Scheme Map 17	15. Modify Scheme Map 17 to zone Reserve 50284 as Cultural and Natural Resource Reserve.
Scheme Maps 18–19, 21–23, 25, 31 & 32	16. Modify Scheme Maps 18, 19, 21, 22, 23, 25, 31 & 32 to zone the M1 main irrigation supply channel (Lots 915 on DP 28484, and Lots 8011, 8012 & 8013 on P 75731) as Waterway Reserve.
Scheme Map 19 & 20	17. Modify Scheme Map 19 to zone the following land parcels as as Public Purposes Reserve and denoted as Extraction Area (EA). <ul style="list-style-type: none"> <li>▪ Reserves 49628</li> <li>▪ Reserve 49446; and</li> <li>▪ Lot 501 on DP 44380</li> </ul>
Scheme Maps 19, 21 & 31	18. Modify Scheme Maps 19, 21 & 31 to zone the following properties as Rural Enterprise: <ul style="list-style-type: none"> <li>▪ Lots 22 - 27 (DP 43085) &amp; Lot 570 (DP 214946) Ivanhoe Road, Kununurra</li> <li>▪ Lot 770 (DP 191117) Mills Road, Kununurra</li> <li>▪ Lot 794 (218988) Mulligans Lagoon Road, Kununurra</li> <li>▪ Lot 10 (DP 69516), Lot 443 (DP 181344) Lot 597 (DP 185360) &amp; Lots 700 – 702 (DP 408129) Weaver Plain Road, Kununurra</li> <li>▪ Lot 100 Mills Road, Kununurra</li> </ul>
Scheme Maps 19-22	19. Modify Scheme Maps 19, 20, 21 & 22 to ensure continuity between Maps.
Scheme Maps 21 & 22	20. Modify Scheme Maps 21 & 22 to zone the following parcels as Infrastructure Services Reserve and denoted for the purpose of Drain (D): <ul style="list-style-type: none"> <li>▪ Lot 606 on Plan 39383 (R 39383)</li> <li>▪ Lot 775 on Plan 19023 (R 42882)</li> <li>▪ Lot 778 on Plan 19023 (R 42882)</li> <li>▪ Lot 779 on Plan 19023 (R 42882)</li> <li>▪ Lot 657 on DP 187705 (R 40374)</li> </ul>
Scheme Maps 23 & 25	21. Modify Scheme Maps 23 & 25 to zone portion of Lot 876 on DP 28266 as Special Use denoted for Airport.
Scheme Map 25	22. Modify Scheme Map 25 to zone Reserve 41793 (lot 735 on DP 190116) for Recreation (Speedway) as Public Open Space Reserve.
Scheme Map 26	23. Modify Scheme Map 26 to show the amended Kununurra landfill site (Reserve 28875) as Public Purposes Reserves and denoted as Rubbish Depot.

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Scheme Maps 26 & 28	<p>24. Modify Scheme Map 26 &amp; 28 to</p> <ul style="list-style-type: none"> <li>▪ zone proposed Yunama and Janama Springs (Lots 925 &amp; 926 on DP 35248) settlement areas and surrounding UCL Lot 5015 on DP 56724 as Rural/Pastoral Zone.</li> <li>▪ Zone the Old Darwin Road Precinct (Lots 1 &amp; 2 on Diagram 87117, Lot 16 on Plan 46913, Lot 17 on Plan 46915, Lots 20 – 25 on Plan 56702, Lots 26 - 31 on Plan 59297, Lots 34 &amp; 35 on Plan 60858) as Rural Smallholdings Zone.</li> </ul>
Scheme Maps 26 & 32	<p>25. Modify Scheme Map 26 &amp; 32 to zone the proposed Drovers Rest residential development area (Lot 556 on DP 69425 and part Lot 568 on DP 404515) as Urban Development Zone.</p>
Scheme Map 28	<p>26. Modify Scheme Map 28 to zone Reserves 42304 &amp; 47333 as Public Purpose Reserve and denoted for Extraction Area (EA).</p>
Scheme Map 29	<p>27. Modify Scheme Map 29 to zone the Jimbilum &amp; Yirrallelm settlements as Settlement; with the boundaries in accordance with the recommended settlement zone identified in the Layout Plan for each settlement.</p>
Scheme Map 31	<p>28. Modify Scheme Map 31 to:</p> <ul style="list-style-type: none"> <li>▪ zone Reserve 38082 (Lot 568 on DP 69976) as Infrastructure Services Reserve denoted as Drain (D).</li> <li>▪ zone the Weaber Plain Road Light Industrial Area as Light Industry Zone.</li> </ul>
Scheme Map 32	<p>29. Modify Scheme Map 32 to retain existing R codes as per TPS 7 with the following changes:</p> <ul style="list-style-type: none"> <li>▪ zone the following properties as Residential R30: 18 Water Lily Place, 10, 12, 14, 16, 25, 27 &amp; 29 Casuarina Way, 6 Melaleuca Drive, 12 &amp; 14 Palm Court, Kununurra</li> <li>▪ Zone the following properties as Residential R40: 1, 5 &amp; 9 Plum Court, Kununurra</li> <li>▪ Zone the following properties as Residential R20: 11, 73 &amp; 94 Casuarina Way, 8, 10, 12, 14, 16, 18, 20, 24 Eucalyptus Close, 11 – 13, 15 Sandalwood Street, 5 Banyan Street, 13 &amp; 15 Flametree Street, 6 – 8, 17, 18, 24, 31 Lemonwood Way, 8 &amp; 10 Pine Court, 9 Palm Court, 2 – 6, 8 &amp; 10 Lotus Court, 29 &amp; 37 Grevillea Avenue, 2 Milkwood Street, 5 Coleus Close, 8 &amp; 16 Plum Court, 4 Alba Street, 30 &amp; 32 Eugenia Street, 3, 5, &amp; 7 Cycas Close, 2 &amp; 4 Livistona Street, Kununurra</li> <li>▪ zone Stages 5 &amp; 6 of Lakeside Park Residential Estate in accordance with the Lakeside Park (Stages 5 – 7) Structure Plan, with Stage 7 (south of Livistona Street) to remain as Urban Development Zone.</li> </ul>
Scheme Map 32	<p>30. Modify Scheme Map 32 to zone those lots bounded by Ivanhoe Road, Bandicoot Drive, Poinciana Street and Drainage Reserve 32932 as Service Commercial Zone.</p>
Scheme Map 33	<p>31. Modify Scheme Map 33 to:</p> <ul style="list-style-type: none"> <li>▪ Update proposed zoning boundaries to match cadastre.</li> <li>▪ Zone the Lake Argyle Tourist Village (Lots 525 &amp; 530 on DP 408830) as Tourism Zone.</li> <li>▪ Zone the Historical Homestead Site (Lot 400 on DP 213293) as Public Purposes Reserve denoted for Heritage Preservation (HP).</li> <li>▪ Zone the land based portion of Reserve 43196 (Water Supply &amp; Electricity Generation) as Infrastructure Services Reserve denoted as Water Supply (WS) and Electricity Infrastructure (EI).</li> </ul>

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	<ul style="list-style-type: none"><li>▪ Zone Reserve 43140 (Power Station), Lot 675 on DP 188040 and Lot 807 on DP 219138 as Infrastructure Services Reserve denoted as Electricity Infrastructure (EI).</li><li>▪ Zone Lot 511 on DP 403767 as Special Use denoted for Aquaculture.</li><li>▪ Zone Lot 406 on DP 180629 (Telstra) as Infrastructure Services Reserve and denoted as Radio/Television/Communications (R/T/C)</li><li>▪ Zone other land surrounding Lake Argyle as Cultural and Natural Resource Reserve.</li></ul>
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### 12.3.2 Proposed Aged Care Facility (Nursing Home) - Lots 571-573 Coolibah Drive, Kununurra

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Planning Officer
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>ASSESSMENT NO:</b>	A7698P
<b>FILE NO:</b>	DA49/16
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### VOTING REQUIREMENT

Simple Majority

#### OFFICER'S RECOMMENDATION

**That Council grant development approval for the use of a Residential Aged Care Facility (Nursing Home) at lots 571-573 Coolibah Drive, Kununurra, subject to the following conditions:**

- 1. Use and Development shall be in accordance with the approved plans and subject to any modifications required as a consequence of any conditions of this approval. The endorsed plans shall not be modified or altered without written consent of the local government.**
- 2. Prior to the application for a building permit, an Odour Management Plan shall be prepared to the satisfaction of the Shire by a suitably qualified consultant. The Odour Management Plan must detail measures to limit the impact of odour from the Kununurra Wastewater Treatment Plant to an acceptable level inside the Facility and within important outdoor spaces. Once approved, the Odour Management Plan will be endorsed and will then form part of this approval. The management and operation of the Residential Age Care Facility shall be conducted in accordance with the approved Odour Management Plan to the satisfaction of the Shire.**
- 3. A detailed schedule of external materials, finishes and colours to be used in the construction of the development shall be submitted to the Shire prior to lodgement of an application for a building permit to the satisfaction of the Shire.**
- 4. External lighting shall be provided and maintained to ensure the safety and security of patrons. This shall be consistent with Australian Standard 4282-1997 *Control of the obtrusive effects of outdoor lighting*.**

**5. Vehicle parking areas, access ways and crossover(s) shall:**

- (i) Be designed in accordance with Australian Standard AS 2890.1:2004, Parking Facilities, Part 1: *Off-street car parking* and the Shire's standards and specifications, prior to use and occupancy of the development;**
- (ii) Include two (2) car bays dedicated to people with disabilities in accordance with AS2890.6:2009, Parking Facilities, Part 6: *Off-street parking for people with disabilities*, linked to the main entrance of the development by a continuous accessible path of travel designed in accordance with AS1428.1:2009, Design for access and mobility, part 1: *General requirements for access - new building works*; and**
- (iii) Be constructed, sealed, kerbed drained and line marked prior to the development being occupied and maintained thereafter.**

**6. All stormwater drainage shall be designed and constructed at the applicant's cost and in accordance with the requirements of the Shire and in accordance with the current Australian Rainfall and Run-off Manual. Details on the proposed method of controlling the discharge are to comply with the conditions below.**

**The preferred method for the subject site is to be determined in consultation with the Shire prior to the submission of a building application:**

- (i) Stormwater retention of run-off from roof and or other paved/impervious areas shall be provided on site. The design is to ensure the discharge of stormwater from the developed site is so as to restrict discharge to that which existed prior to development. Design overflow from soak wells and site drainage shall ensure no discharge onto or through adjoining properties. Details on the site specific design of control and disposal of stormwater from the site are to be submitted with the preparation of a building application.**
- (ii) A drainage contribution fee may be charged if the discharge into the Shire's drainage system cannot be satisfactorily controlled and necessitates upgrade of the system servicing the catchment area. The payment if required and the amount, is to be confirmed by the Applicant with the Shire prior to the submission of a building application.**

**7. All hard stand areas subject to vehicular traffic shall be sealed and kerbed.**

**8. A bin storage area must be designed with a size suitable to service the development and screened from view of the street(s) to the satisfaction of the Shire, prior to the use and occupancy of the development.**

9. A Landscape Plan shall be prepared to the satisfaction of the Shire by a suitably qualified consultant and submitted to the Shire for approval prior to the commencement of works. The Landscape Plan shall be drawn to scale and show detailed landscape designs for the following:

- a) vegetated buffers along the western and southern boundaries of the site.
- b) general landscaping to complement the approved development, and to ensure an attractive entrance is maintained.
- c) the location, name and mature heights of proposed trees, shrubs and groundcovers.
- d) a minimum of one (1) canopy tree per every 10m within the 15-bay carpark area.

10. The development shall be connected to the reticulated sewerage system.

**ADVICE NOTES:-**

1. Building approval must be obtained prior to the commencement of the above approved works.
2. Premises used for the sale or storage of food in any manner whatsoever are to be registered under the Food Act and require Shire approval via the Shire Environmental Health Officers prior to use and occupancy.
3. In regard to Condition 2, please refer to the Odour Methodology Guideline prepared by the Department of Environment and Regulation WA. Measures to reduce the impact of odour may include, but are not limited to:-
  - Continuous dense landscaping on the boundary to assist in screening from odour causing activities.
  - Orienting buildings away from odorous sources.
  - Designing natural air flow through buildings or incorporating appropriate ventilation or an air conditioning system.
4. In regards to Condition 9, please refer to the Weaber Plain Light Industrial Area Design Guidelines - Recommended Plant Species List.
5. In regards to Condition 10, please liaise with the Water Corporation.

**COUNCIL DECISION**

Minute No: 20/12/2016-11560

Commissioner resolved:

That Council grant development approval for the use of a Residential Aged Care Facility (Nursing Home) at lots 571-573 Coolibah Drive, Kununurra, subject to the following conditions:

1. Use and Development shall be in accordance with the approved plans and subject to any modifications required as a consequence of any conditions of this approval. The endorsed plans shall not be modified or altered without written consent of the local government.

2. Prior to the application for a building permit, an Odour Management Plan shall be prepared to the satisfaction of the Shire by a suitably qualified consultant. The Odour Management Plan must detail measures to limit the impact of odour from the Kununurra Wastewater Treatment Plant to an acceptable level inside the Facility and within important outdoor spaces. Once approved, the Odour Management Plan will be endorsed and will then form part of this approval. The management and operation of the Residential Age Care Facility shall be conducted in accordance with the approved Odour Management Plan to the satisfaction of the Shire.
3. A detailed schedule of external materials, finishes and colours to be used in the construction of the development shall be submitted to the Shire prior to lodgement of an application for a building permit to the satisfaction of the Shire.
4. External lighting shall be provided and maintained to ensure the safety and security of patrons. This shall be consistent with Australian Standard 4282-1997 *Control of the obtrusive effects of outdoor lighting*.
5. Vehicle parking areas, access ways and crossover(s) shall:
  - (i) Be designed in accordance with Australian Standard AS 2890.1:2004, Parking Facilities, Part 1: *Off-street car parking* and the Shire's standards and specifications, prior to use and occupancy of the development;
  - (ii) Include two (2) car bays dedicated to people with disabilities in accordance with AS2890.6:2009, Parking Facilities, Part 6: *Off-street parking for people with disabilities*, linked to the main entrance of the development by a continuous accessible path of travel designed in accordance with AS1428.1:2009, Design for access and mobility, part 1: *General requirements for access - new building works*; and
  - (iii) Be constructed, sealed, kerbed drained and line marked prior to the development being occupied and maintained thereafter.
6. All stormwater drainage shall be designed and constructed at the applicant's cost and in accordance with the requirements of the Shire and in accordance with the current Australian Rainfall and Run-off Manual. Details on the proposed method of controlling the discharge are to comply with the conditions below.

The preferred method for the subject site is to be determined in consultation with the Shire prior to the submission of a building application:

  - (i) Stormwater retention of run-off from roof and or other paved/impervious areas shall be provided on site. The design is to ensure the discharge of stormwater from the developed site is so as to restrict discharge to that which existed prior to development. Design overflow from soak wells and site drainage shall ensure no discharge onto or through adjoining properties. Details on the site specific design of control and disposal of stormwater from the site are to be submitted with the preparation of a building application.

(ii) A drainage contribution fee may be charged if the discharge into the Shire's drainage system cannot be satisfactorily controlled and necessitates upgrade of the system servicing the catchment area. The payment if required and the amount, is to be confirmed by the Applicant with the Shire prior to the submission of a building application.

7. All hard stand areas subject to vehicular traffic shall be sealed and kerbed.
8. A bin storage area must be designed with a size suitable to service the development and screened from view of the street(s) to the satisfaction of the Shire, prior to the use and occupancy of the development.
9. A Landscape Plan shall be prepared to the satisfaction of the Shire by a suitably qualified consultant and submitted to the Shire for approval prior to the commencement of works. The Landscape Plan shall be drawn to scale and show detailed landscape designs for the following:
  - a) vegetated buffers along the western and southern boundaries of the site.
  - b) general landscaping to complement the approved development, and to ensure an attractive entrance is maintained.
  - c) the location, name and mature heights of proposed trees, shrubs and groundcovers.
  - d) a minimum of one (1) canopy tree per every 10m within the 15-bay carpark area.
10. The development shall be connected to the reticulated sewerage system.

**ADVICE NOTES:-**

1. Building approval must be obtained prior to the commencement of the above approved works.
2. Premises used for the sale or storage of food in any manner whatsoever are to be registered under the Food Act and require Shire approval via the Shire Environmental Health Officers prior to use and occupancy.
3. In regard to Condition 2, please refer to the Odour Methodology Guideline prepared by the Department of Environment and Regulation WA. Measures to reduce the impact of odour may include, but are not limited to:-
  - Continuous dense landscaping on the boundary to assist in screening from odour causing activities.
  - Orienting buildings away from odorous sources.
  - Designing natural air flow through buildings or incorporating appropriate ventilation or an air conditioning system.
4. In regards to Condition 9, please refer to the Weaber Plain Light Industrial Area Design Guidelines - Recommended Plant Species List.
5. In regards to Condition 10, please liaise with the Water Corporation.

Carried 1/0

## **PURPOSE**

For Council to consider approval of a Residential Aged Care Facility (Nursing Home) comprising 40 beds and associated facilities.

## **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Regulator - enforce state legislation and local laws

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

The subject land is located on the corner of Ivanhoe Road and Coolibah Drive, Kununurra. The land comprises three (3) lots, being Lot 571, part Lot 572, plus Lot 573, and has an overall area of 16,932m<sup>2</sup>. The site is currently reserved for Public Purposes, and denoted as 'Hospital' in Town Planning Scheme No. 7.

The subject land is generally flat, undulating with a fall of 0.75m from north to south boundaries. Several mature trees are located on the site. The surrounding area includes public sporting facilities to the north, public purpose-reserved land (Arboretum) to the west, fire and emergency facilities and the Kununurra District Hospital to the east, and commercial businesses to the south.



*Figure 1 - Locality Plan*

The existing Juniper Home and Community Care (HACC) building is on Lot 573. As annotated, future changes to the HACC building are not part of the current proposal (refer Attachment 1).

A Water Corporation odour buffer overlays the subject lot. The buffer line indicates a 500 metre distance from the Kununurra Wastewater Treatment Plant (WWTP). The existing HACC building (415m) and proposed Residential Aged Care Facility (435m) are situated inside this buffer (refer Attachment 2).

### Proposal

Key details of the proposal can be summarised as follows:

- 40-bed residential aged care facility within a single storey building, including a main foyer, administrative areas, staff amenities, kitchen, laundry, and resident amenities and activities areas.
- Activities building and space surrounded by four landscaped courtyards.
- Covered walkways and verandahs between buildings.
- Maximum building height of 5.4 metres above natural ground level.
- Street setback of 14.0 metres to Coolibah Drive and 18.0 metres to Ivanhoe Road.
- Vehicular access via the existing crossovers on Ivanhoe Road and Coolibah Drive.
- 31 car bays and 1 bus bay provided on-site.

### **STATUTORY IMPLICATIONS**

#### *Town Planning Scheme No. 7 - Kununurra and Environs (TPS No. 7)*

The subject land is reserved Public Purposes - Hospital.

Clause 2.2.1 of the Scheme provides: "Where an application for Planning Approval is made with respect to land within a Reserve, the Council shall have regard to the ultimate purposes intended for the Reserve and the Council shall, in the case of land reserved for the purposes of a Public Authority, confer with that Authority before granting its approval".

TPS No. 7 defines Hospital as "*means premises in which persons are admitted and lodged for medical treatment or care and includes a maternity hospital*".

Nursing Home is also defined in the Scheme, as "*means a hospital in which patients reside*".

Clause 5.4.5 "*Development within 500 metres of the Kununurra sewer treatment works may not be approved by the Council if such development includes a permanent residential or temporary residential component including tourist accommodation in the event that Council considers that such development may be affected by the odour buffer area.*"

Draft Local Planning Scheme No. 9 (LPS No. 9)

Draft LPS No. 9 reserves the subject land as 'Public Purposes - Hospital'.

The draft LPS No. 9 has incorporated the 500m odour buffer as a Special Control Area. This is shown in the Scheme Maps (refer Attachment 3) and has specific clauses in the Scheme Text:

5.4 Sewer Treatment Buffer Areas - STBA

5.4.1 Purpose

- (a) To provide an appropriate separation distance between sewer treatment infrastructure and potentially sensitive land uses.

Clause 5.4.2 Application Requirements

Development within 500m of the Kununurra sewer treatment works may not be approved by the local government if such development includes a permanent residential or temporary residential component, including tourist accommodation, in the event that the local government considers that such development may be affected by the odour buffer area."

Planning and Development (Local Planning Scheme) Regulations 2015

The Council is to have due regard to the matters contained under clause 67 of the *Planning and Development (Local Planning Scheme) Regulations 2015* when exercising its discretion. These matters of cl. 67 are considered most relevant to the application:

- (a) The aims and provisions of the Scheme and any other local planning scheme operating within the Scheme area;
- (b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the *Planning and Development (Local Planning Schemes) Regulations 2015* or any other proposed planning instrument that the local government is seriously considering adopting or approving;
- (c) any approved State planning policy;
- (d) any environmental protection policy approved under the *Environmental Protection Act 1986* section 31(d);
- (j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;

- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;
- (s) the adequacy of —
  - (i) the proposed means of access to and egress from the site; and
  - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.

A response to each consideration above is outlined:-

Requirement	Comment
Clause 2.2.1 of TPS No. 7.	The Public Purposes reserve objective is <i>“To identify and protect land required for public utilities, community purposes and educational facilities”</i> . Management orders on the subject lots are to Minister for Health (lots 573 and part-lot 572) and the Attorney-General (at Lot 571). Both parties have granted consent to the development application, and outlined their intention to proceed with tenure (conditional leasehold) to Juniper to accommodate the aged care facility. This process is guided by the <i>Land Administration Act 1997</i> (WA) s75 (3), whereby a community benefit shall be demonstrated.
Clause 5.4.5 of TPS No. 7	In regards to this clause, there are three (3) points that have been considered. 1) It is noted that the proposal does contain a residential component and as such the clause is applicable and relevant. 2) The wording of the phrase <i>“may not approve”</i> is considered to mean that an approval is open to Council to make - rather than an alternative such as <i>“must not”</i> . 3) The phrase <i>“may be affected”</i> is considered to mean that the state of being affected relates to a factor such as air quality or other indicator; rather than a factor already mentioned in the clause; such as a distance of less than 500m.
The aims and provisions of the Scheme and any other local planning scheme operating within the Scheme area	Through meeting the objectives of the Public Purposes reserve, it is considered that the proposal is sited appropriately.

<p>The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving</p>	<p>It is considered that through the imposition of the proposed conditions of approval the development would represent an acceptable form of development and meet the requirements of orderly and proper planning.</p> <p>It is noted that the draft LPS No. 9 and associated Scheme Maps have proposed a Special Control Area based upon a 500m odour buffer. The draft Scheme includes cl. 5.4.2:</p> <p>“Development within 500m of the Kununurra sewer treatment works may not be approved by the local government if such development includes a permanent residential or temporary residential component, including tourist accommodation, in the event that the local government considers that such development may be affected by the odour buffer area”.</p>
<p>Any approved State planning policy</p>	<p>In this instance SPP 4.1 State Industrial Buffer Policy is relevant. The policy outlines the need for appropriate separation distances, which are to be provided within appropriate guidance from a relevant environmental authority. In this regard, the relevant document is the EPA ‘Guidance for the Assessment of Environmental Factors’. This document provides generic separation distances for determining buffer areas, or otherwise advises that buffer studies should be carried out. Any buffer is then to be “brought into” planning instruments to then have a statutory effect. However in the case of Wastewater Treatment Plants, or Wastewater Disposal Sites (as treated effluent disposal does occur at the Kununurra WWTP) EPA guidance for ‘Separation Distances between Industrial and Sensitive Land Uses No. 3’ does not specify a generic separation distance. Rather, modelling on a case-by-case basis is specified. It is noted that an earlier version of the document did specify 500m, which has been incorporated into the Town Planning Scheme and draft LPS No. 9.</p>
<p>Any environmental protection policy approved under the Environmental Protection Act 1986 section 31(d);</p>	<p>EPA ‘Guidance for the Assessment of Environmental Factors’ has been considered in this assessment. The guidance specifies the need for “buffer studies in progress to determine appropriate separation distances”.</p> <p>Modelling information based upon upgrading works has been provided by the Water Corporation. These works are proposed for July 2019.</p>

<p>In the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve</p>	<p>The use of a 'Residential Aged Care Facility' is considered to be consistent with the reserve purpose which is Public Purpose - Hospital.</p> <p>The Scheme does not contain a definition of 'Residential Aged Care Facility', however it does include 'Nursing Home'; which is defined as "<i>a hospital in which patients reside</i>". It is recommended that Council consider the proposal under this definition. As a form of hospital, the proposed use is consistent with the reserve purpose.</p> <p>Council may note that at present the subject land is in Crown Reserves. Relevant documentation has been provided by the applicant and Department of Lands regarding the permissibility of tenure being granted to Uniting Church Homes (Trading as Juniper). The <i>Land Administration Act</i> describes these matters.</p>
<p>The compatibility of a use or development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development</p>	<p>The use and development of the surrounding lots has been considered. The proposal has a maximum building height of 5.4 metres.</p> <p>Street setbacks are 14.0 metres to Coolibah Drive and 18.0 metres to Ivanhoe Road.</p> <p>The height and setbacks are in keeping with the Kununurra District Hospital and commercial developments in the vicinity.</p> <p>The architectural design reflects the intended purpose of the proposal.</p> <p>A materials and finishes schedule is recommended as a condition of approval.</p> <p>Bin storage being provided with suitable screening and appropriate outdoor lighting to minimise spill are recommended as conditions.</p>
<p>Whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved</p>	<p>The plan allows for landscaping within the Ivanhoe Rd setback. It is recommended that a Landscape Plan featuring continuous dense landscaping be submitted as a condition of approval, to assist in screening from odour. It is noted that odour impacts may be mitigated through appropriate landscaping methods.</p>

<p>The suitability of the land for the development taking into account the possible risk to human health or safety</p>	<p>As indicated in the response from the Water Corporation, there is a possibility of an increased level of odour to people in this development. It is recommended that an odour assessment be imposed as a condition of approval, that identifies the most appropriate measures for dealing with potential odour impacts.</p> <p>Such measures may include but are not limited to orienting buildings away from odorous sources; and</p> <p>Designing natural air flow through buildings or incorporating appropriate ventilation/air conditioning systems.</p> <p>This odour study should be based upon the <i>Odour Methodology Guideline</i> prepared by the Department of Environmental Protection WA.</p> <p>This document is available on the Department of Environmental Regulation website.</p>
<p>The adequacy of —</p> <ul style="list-style-type: none"> <li>(i) the proposed means of access to and egress from the site; and</li> <li>(ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles</li> </ul>	<p>It is considered that utilising the existing crossovers and parking areas, as well as additional parking, shall result in a satisfactory layout. The site plan allows space for landscaping for the car parking, and in accordance with the Scheme, it is recommended that a condition of approval for trees and garden planting equivalent in area up to 10 per cent of the parking area shall be provided - for the purpose of shade and visual relief.</p> <p>The proposed use does not have a specific car parking requirement under the Scheme and as such it is at the discretion of Council. However the thirty-one (31) bays plus a bus bay is commensurate with the development standards of Table 2 in the Scheme for similar uses. It is noted that draft LPS No. 9 requires “1 bay for every 4 persons capable of being accommodated” for ‘Public Purposes’ which is achieved.</p> <p>Shire Infrastructure officers have recommended conditions on design and construction specifications.</p>
<p>The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.</p>	<p>The Shire’s Infrastructure officers have reviewed the proposal and have not raised any concerns with respect to increase in traffic volumes as a result of the proposal.</p>

## **POLICY IMPLICATIONS**

### Local Planning Strategy

The Strategy notes the Water Corporation's WWTP buffer in several instances:

"The WWTP has a buffer of 500 metres which, while a standard buffer distance, has potential for review. Buffers are no longer based on arbitrary 500 metre distance, and a buffer based on specific circumstances such as prevailing winds and risk management is accepted as best practice. Accordingly this buffer should be reviewed." (pg. 80).

As a Key Point of "5.4 Future Land Release, Development and Infrastructure in Kununurra" the Strategy also states: "The Water Corporation should undertake odour modelling to identify a more precise buffer to the wastewater treatment plant in Kununurra." (pg 83).

The buffer is indicated in the Strategic Land Use Plan (refer Attachment 4).

### Draft Local Planning Strategy

This document was advertised in 2016. Within 'Part 1 - Strategy' it provides:

"Current Issue: The current location of the Kununurra wastewater treatment plant causes odour impacts beyond the 500 metre buffer, and affects redevelopment of Mixed Business precinct for sensitive land uses, precluding expansion of the town centre to the west.  
Strategic Response: Relocate the Kununurra wastewater treatment plant, and facilitate the redevelopment of the site." (pg. 14).

As a Key Recommendation of the Strategy's overall *Consolidated Recommendations* it also states: "Pursue the relocation of the Kununurra wastewater treatment plant. Responsibility - Water Corporation" (pg. 59).

The buffer is indicated in the draft Strategic Land Use Plan (refer Attachment 5).

### Statement of Planning Policy 4.1 – State Industrial Buffer Policy

The stated objectives of this policy are:

- (1) To provide a consistent Statewide approach for the definition and securing of buffer areas around industry, infrastructure and some special uses.
- (2) To protect industry, infrastructure and special uses from the encroachment of incompatible land uses.
- (3) To provide for the safety and amenity of land uses surrounding industry, infrastructure and special uses.
- (4) To recognise the interests of existing landowners within buffer areas who may be affected by residual emissions and risks, as well as the interests, needs and economic benefits of existing industry and infrastructure which may be affected by encroaching incompatible land uses.

In order to define appropriate buffers, the policy provides that "*The DEP Generic Industrial Buffer Distance Review will be a guide to these buffer distances and environmental standards*". It is noted that this review led to the "Industrial-Residential Buffer Areas (Separation Distances)" released in July 1997. In this, a 500m buffer was included for wastewater treatment plants.

The policy further provides: *Once a buffer area is defined and accepted by the Western Australian Planning Commission, the local government or the Western Australian Planning Commission will incorporate the buffer within any statutory plans, strategic plans or policies affecting the subject land.* (pg. 8)

Sensitive uses are defined in this policy as: *“includes residential dwellings, major recreational areas, hospitals, schools and other institutional uses involving accommodation.”*

Environmental Protection Authority - Guidance for the Assessment of Environmental Factors  
The Guidance Statement for “Separation Distances between Industrial and Sensitive Land Uses No. 3” replaces the Guidance Statements “Industrial-Residential Buffer Areas (Separation Distances)” released in July 1997, and “Separation Distances between Industrial and Sensitive Land Uses” released in June 2004.

It regards to buffer distances for “Wastewater Treatment Plant” the document provides - “buffer studies in progress to determine appropriate separation distances”.

For “Wastewater disposal site (treated sewage)” the document provides - “case by case”.

Industry	Description of industry	DoE Licence or Registration category (*)	Key Government agencies for advice or approvals	Code of Practice (CoP) / environmental requirements	Impacts					Buffer distance in metres and qualifying notes
					Gaseous	Noise	Dust	Odour	Risk	
<b>Wastewater treatment plant</b>	sewage treatment facility (including Mechanical/Biological and Pond Systems and Facultative Pond Systems) 20-100 m <sup>3</sup> per day >100 m <sup>3</sup> per day	√  (85) (54)	Water Corp., Fisheries, WRC, local gov't		√	√		√	√	buffer studies in progress to determine appropriate separation distances
<b>Wastewater disposal site (treated sewage)</b>	site from which treated sewage is discharged (including by Spray irrigation and Flood/Channel Irrigation): 20-100 m <sup>3</sup> per day >100 m <sup>3</sup> per day	√  (85) (54)	Water Corp., Fisheries, WRC, local gov't DoH					√	√	case by case

Table 1 - Extract from EPA Separation Distances between Industrial and Sensitive Land Uses No. 3.

The Guidance Statement also provides a definition of sensitive uses that includes hospitals and nursing homes.

### **FINANCIAL IMPLICATIONS**

The development application fee has been paid.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 2.4: Access to appropriate health, family and community services

Objective 3.4: Enhancement of community facilities

Strategy 2.4.1 : Advocate for improved health and community services

## **RISK IMPLICATIONS**

Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

## **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and included notice being sent to nearby landowners advising them of the application and the advertising period of 14 days, per the *Planning and Development (Local Planning Schemes) Regulations 2015*. No submissions were received.

### Referrals

The application was referred to the Water Corporation and Department of Environment Regulation (DER) for comment.

The DER did not provide a response. The Water Corporation has made no objection to the proposal, subject to advice notes being attached. Comment was provided on several factors relating to upgrade works at the WWTP, a revised odour buffer, and design of the development itself. This advice has been used as part of the assessment of the application (refer Attachment 6).

## **COMMENTS**

### Response from the Water Corporation

The application has resulted in several discussions with the Water Corporation as well as the formal response as attached. This information indicates that upgrades to the WWTP are due to occur which will increase the volumes of treated sewage on-site from 1.5ML/day to 2.7ML/day.

The response indicates that modelling has been undertaken using on-site meteorological data to update the generic 500m odour buffer. A request to amend the planning scheme is also included.

The overall response indicates that advice should be attached to any approval stating: *The proposed development is located within the odour buffer area of the Kununurra Wastewater Treatment Plant. Under normal operating conditions there will be minimal odour emanating from the plant. However, during maintenance and abnormal operating and weather conditions an increased level of odour may occur that is likely to result in unacceptable adverse impacts to the amenity of people in the area.*

It is noted that a 'Finalised Line for Modelled Odour Buffer for Kununurra WWTP 2.7 ML/D Upgrade' is attached to the correspondence. This line does affect the proposal, crossing through the existing Juniper HACC building and the south-western corner of the proposed Residential Aged Care Facility.

#### SPP 4.1 State Industrial Buffer Policy

In examining the objectives of the SPP, it is noted that two key objectives are particularly relevant to the proposal, namely;

“(2) To protect industry, infrastructure and special uses from the encroachment of incompatible land uses.

(3) To provide for the safety and amenity of land uses surrounding industry, infrastructure and special uses.”

In regards to objective 2: Given the referral response from the Water Corporation, in particular, it is considered that the WWTP infrastructure is unlikely to be encroached upon by the proposal. It is noted that the Corporation have indicated that no complaints have been received from the existing plant. In regards to the proposal upgrades to the plant, the modelling data provided to the Shire from the Corporation indicates less emissions overall, although the capacity of the plant shall increase. This reduction is due to improved treatment and odour mitigation methods.

In regards to objective 3: “The safety and amenity” of the proposal is considered to be affected, as indicated in the 'Finalised Line for Modelled Odour Buffer for Kununurra WWTP 2.7 ML/D Upgrade'. It is therefore considered that further consideration of odour should be carried out by the applicant. Measures to reduce the impact of odour on the development should be carried out, which may for example include landscaping, building orientation, or appropriate ventilation systems. This should be implemented through an Odour Management Plan.

#### Conclusion

The recommended conditions of approval are considered to address the concerns raised by the Shire relating to: car parking design and layout, bin storage and screening, outdoor lighting and the safety and amenity of the future occupants of the building.

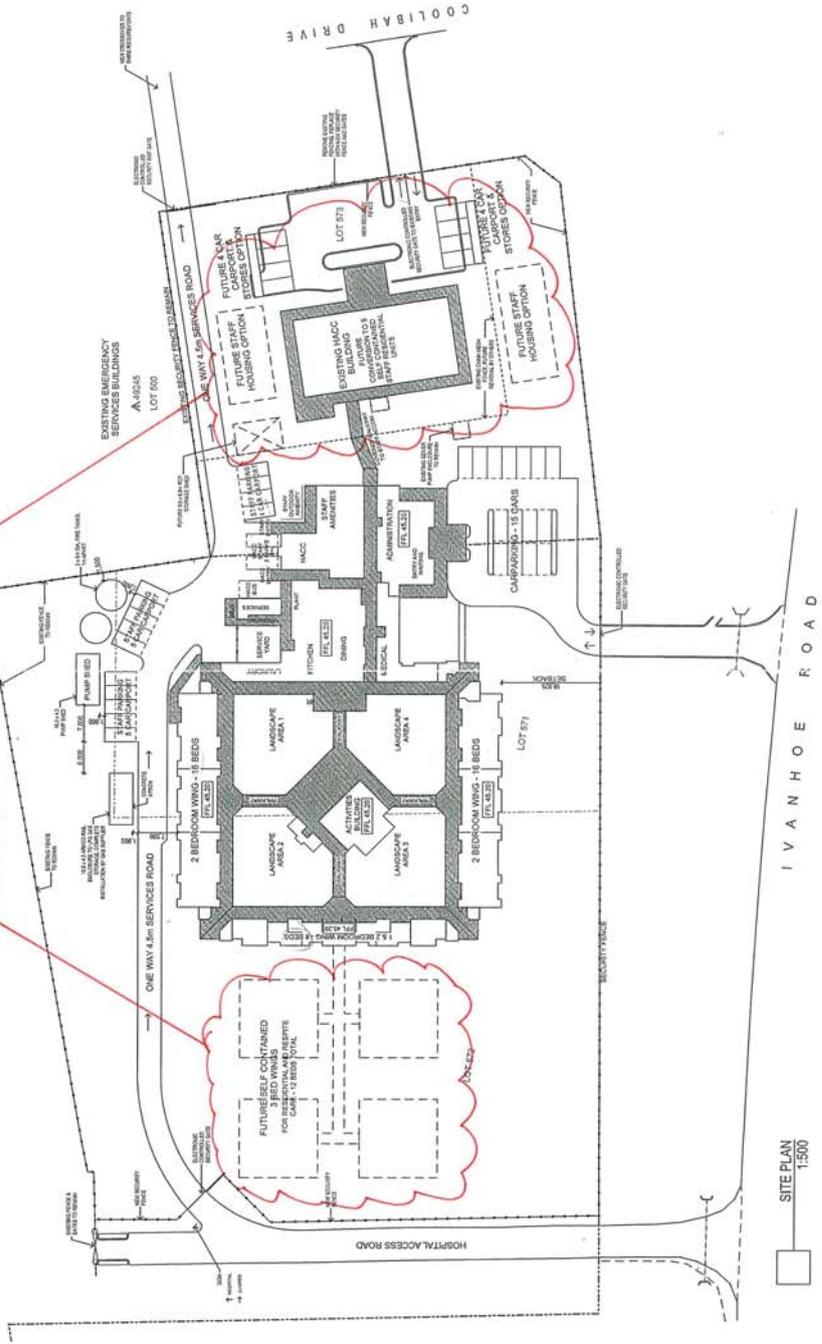
These conditions will ensure that the proposal satisfies the requirements of the statutory planning framework, the requirements of orderly and proper planning and the preservation of amenity within the locality.

For the reasons identified in this report, the proposed development is considered to satisfy the requirements of orderly and proper planning. The application is therefore recommended for approval subject to conditions.

#### **ATTACHMENTS**

- Attachment 1 - Proposal
- Attachment 2 - WWTP 500m Buffer area
- Attachment 3 - Draft Local Planning Scheme No. 9 map
- Attachment 4 - Strategic Land Use Plan (2006)
- Attachment 5 - Draft Strategic Land Use Plan (2015)
- Attachment 6 - Water Corporation response

NOT PART OF THIS APPLICATION  
RA 15/12/16

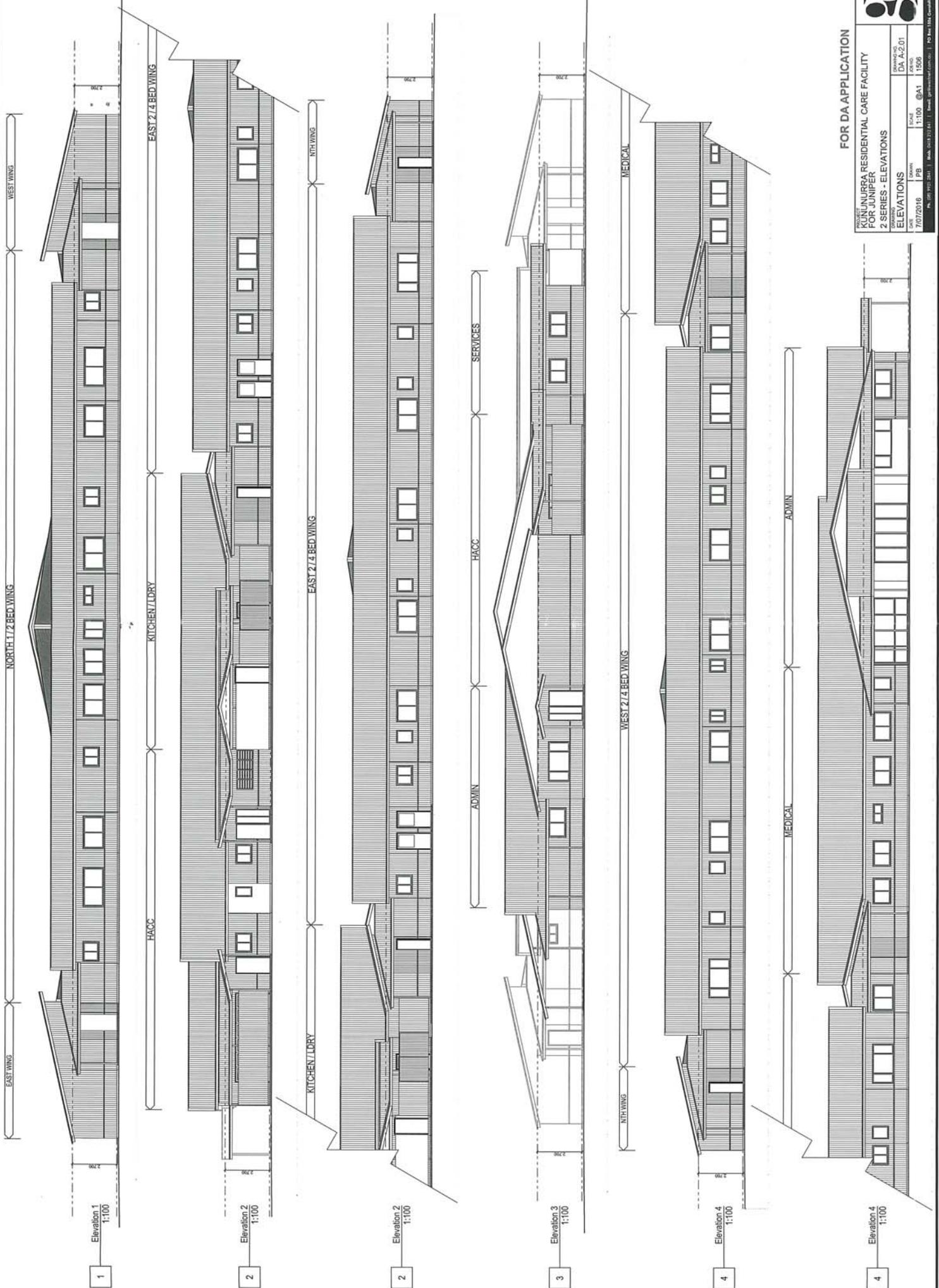


ON LOTS 573, 572 AND PART  
LOT 571, IVANHOE RD

FOR DA APPLICATION

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DATE	SCALE	DATE	SCALE
7/07/2016	1:500 @A1	15/08	1:500



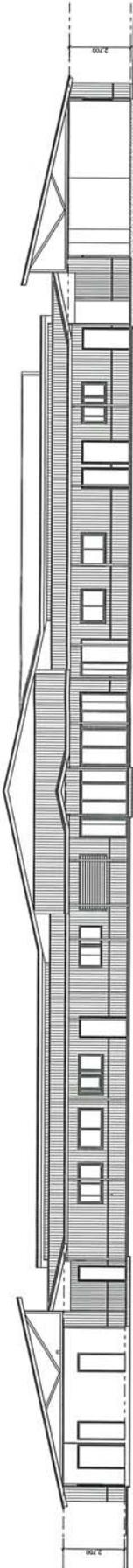


FOR DA APPLICATION

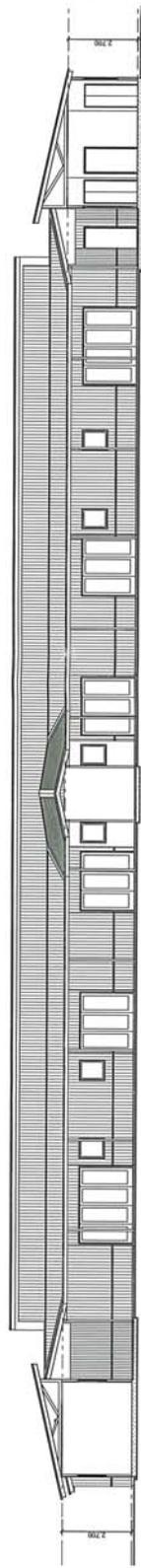
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DATE	DRAWN	SCALE
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7/07/2016 1:100 @A1 1556		CHECKED 1556



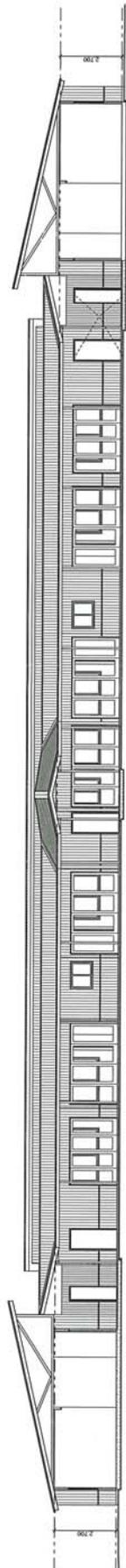
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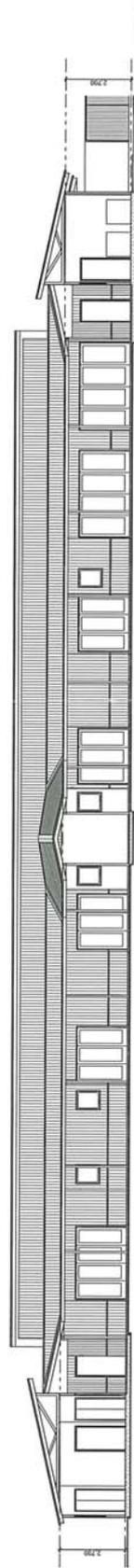
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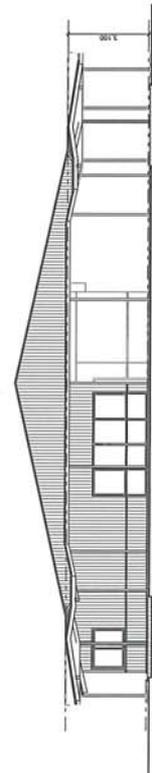
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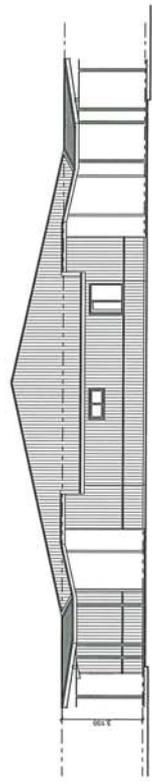
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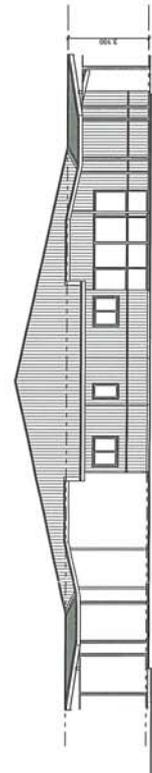
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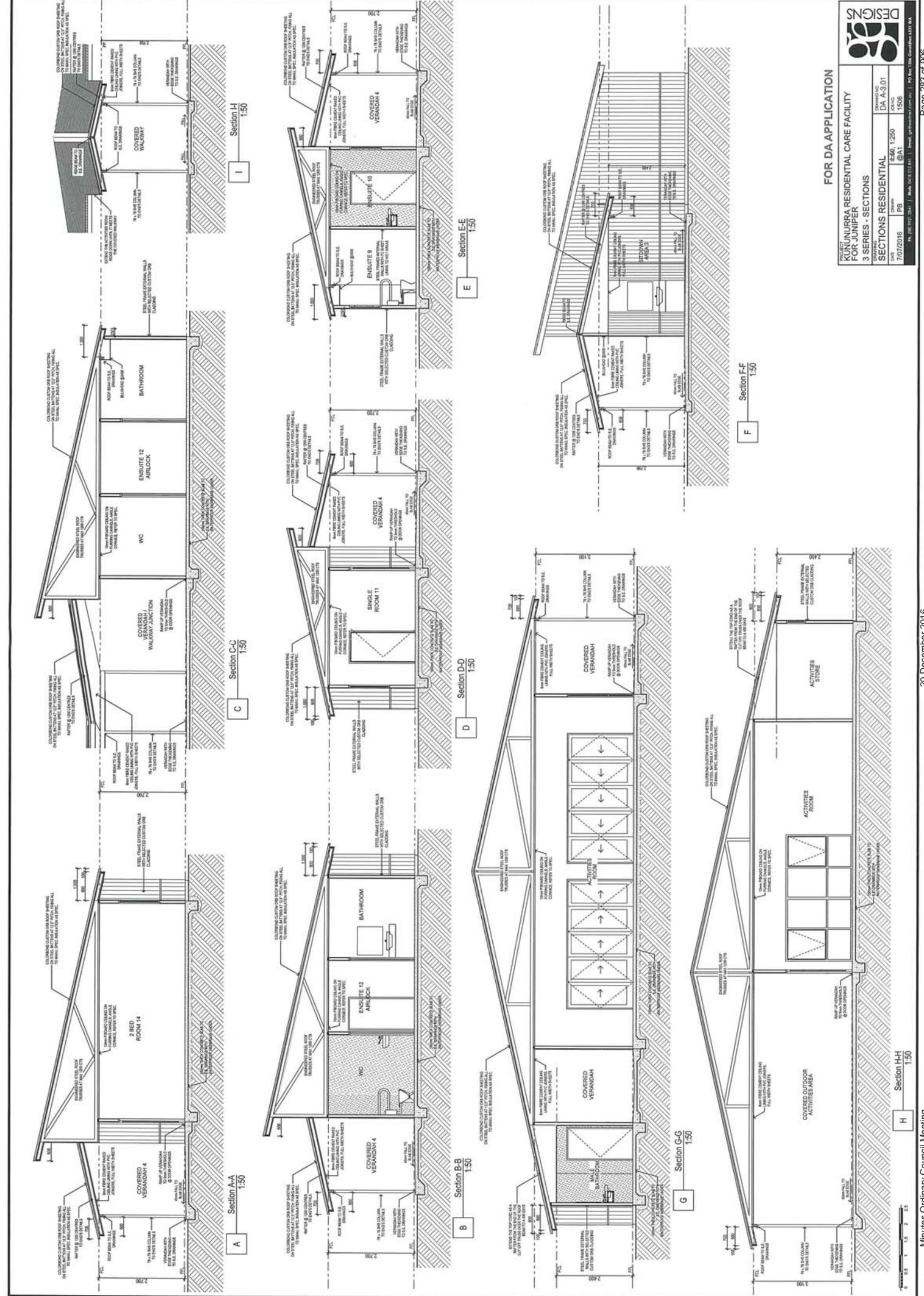
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 Elevation 10  
 1:100



11  
 Elevation 11  
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12  
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 1:100



**FOR DA APPLICATION**

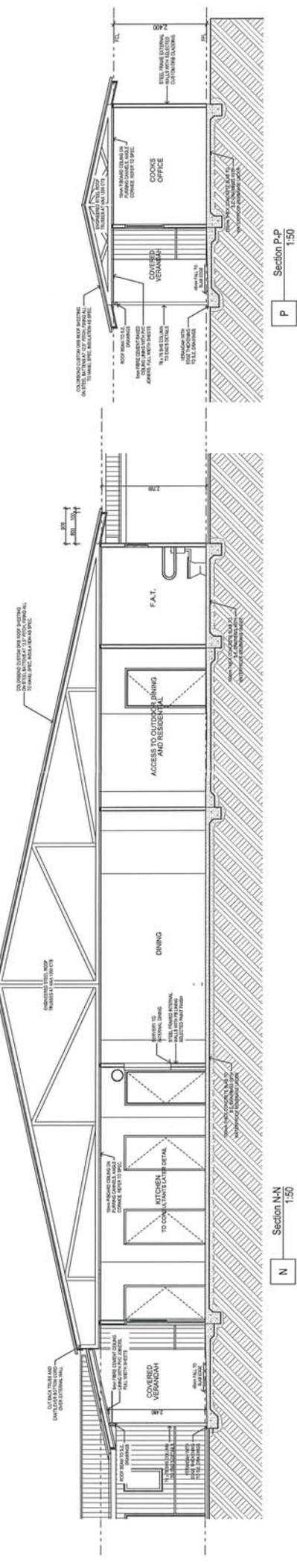
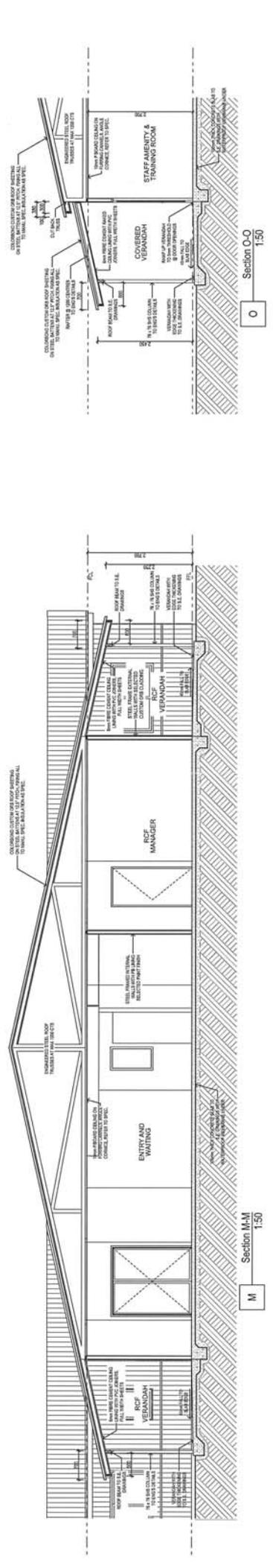
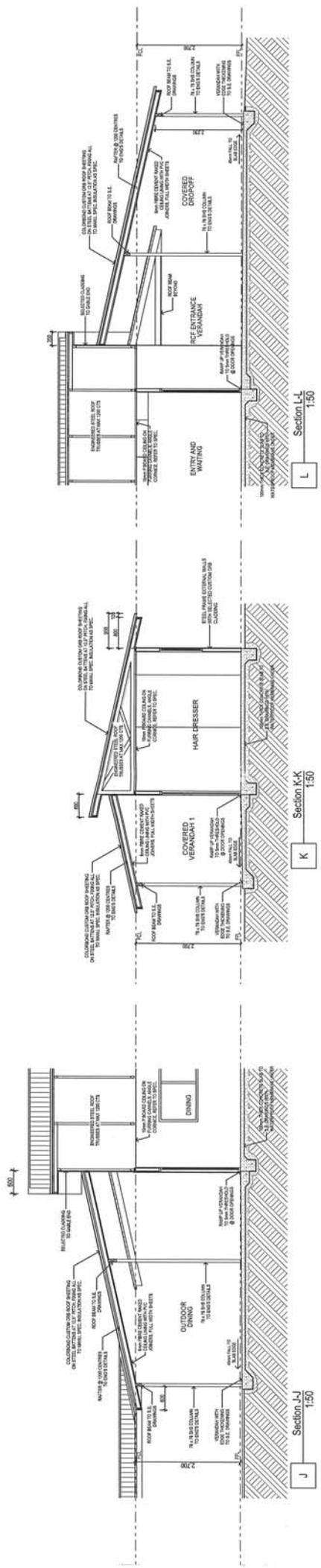
**KUNURRA RESIDENTIAL CARE FACILITY FOR JUNIPER**

**3 SERIES - SECTIONS**

**SECTIONS RESIDENTIAL**

DRAWING NO. DA A.3.01  
 DATE 15/07/2016  
 DRAWN FB  
 CHECKED GAI  
 SCALE 1:250  
 PROJECT 1508





**DESIGNS**

**FOR DA APPLICATION**

**PROJECT**  
KUNJURRA RESIDENTIAL CARE FACILITY  
FOR JUNIPER  
3 SERIES - SECTIONS

**DATE**  
7/07/2016

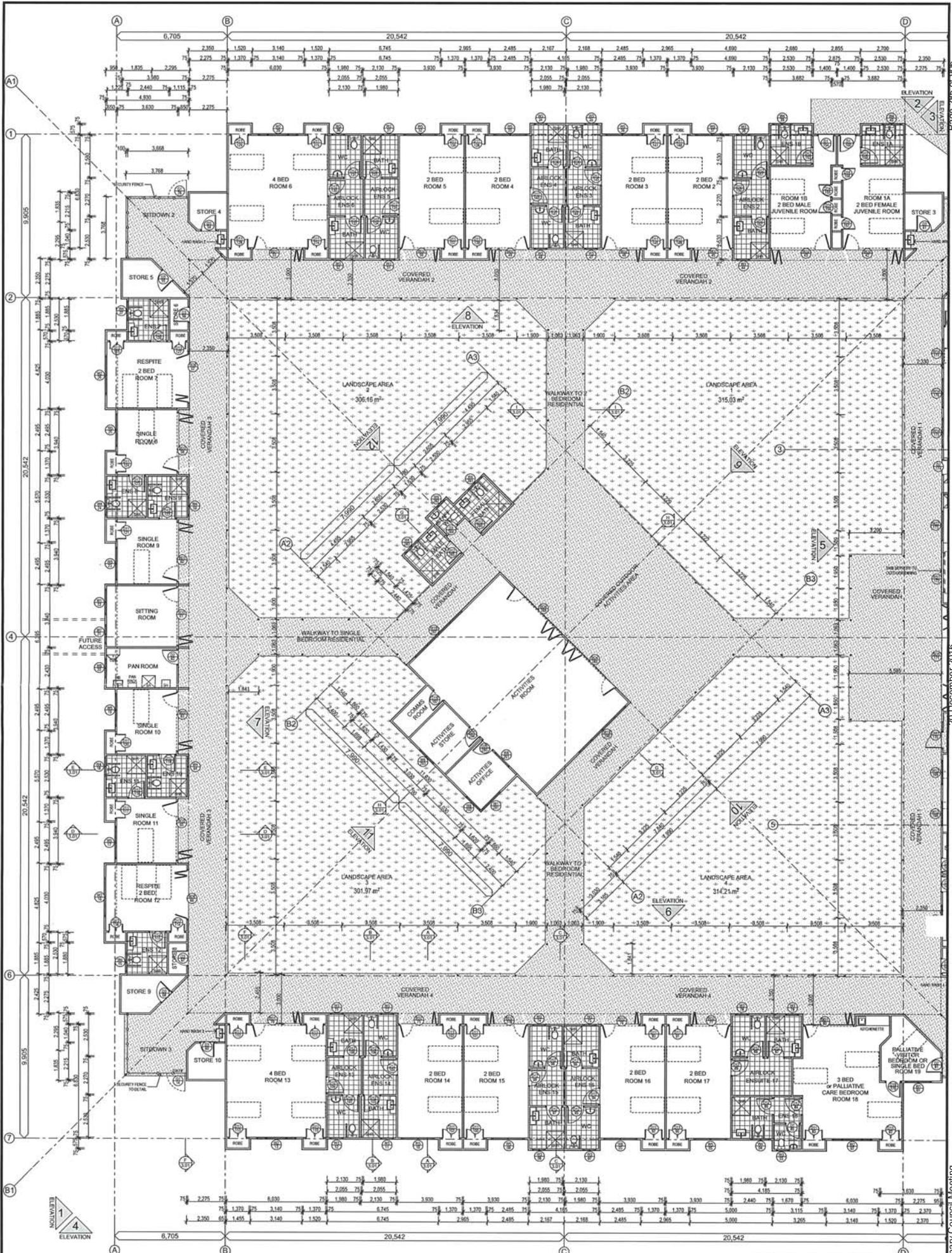
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**DRAWN BY**  
DA A-3.02

**CHECKED BY**  
PB

**PROJECT NO.**  
1506

**PO Box 1888, Geraldton WA**



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FOR DA APPLICATION

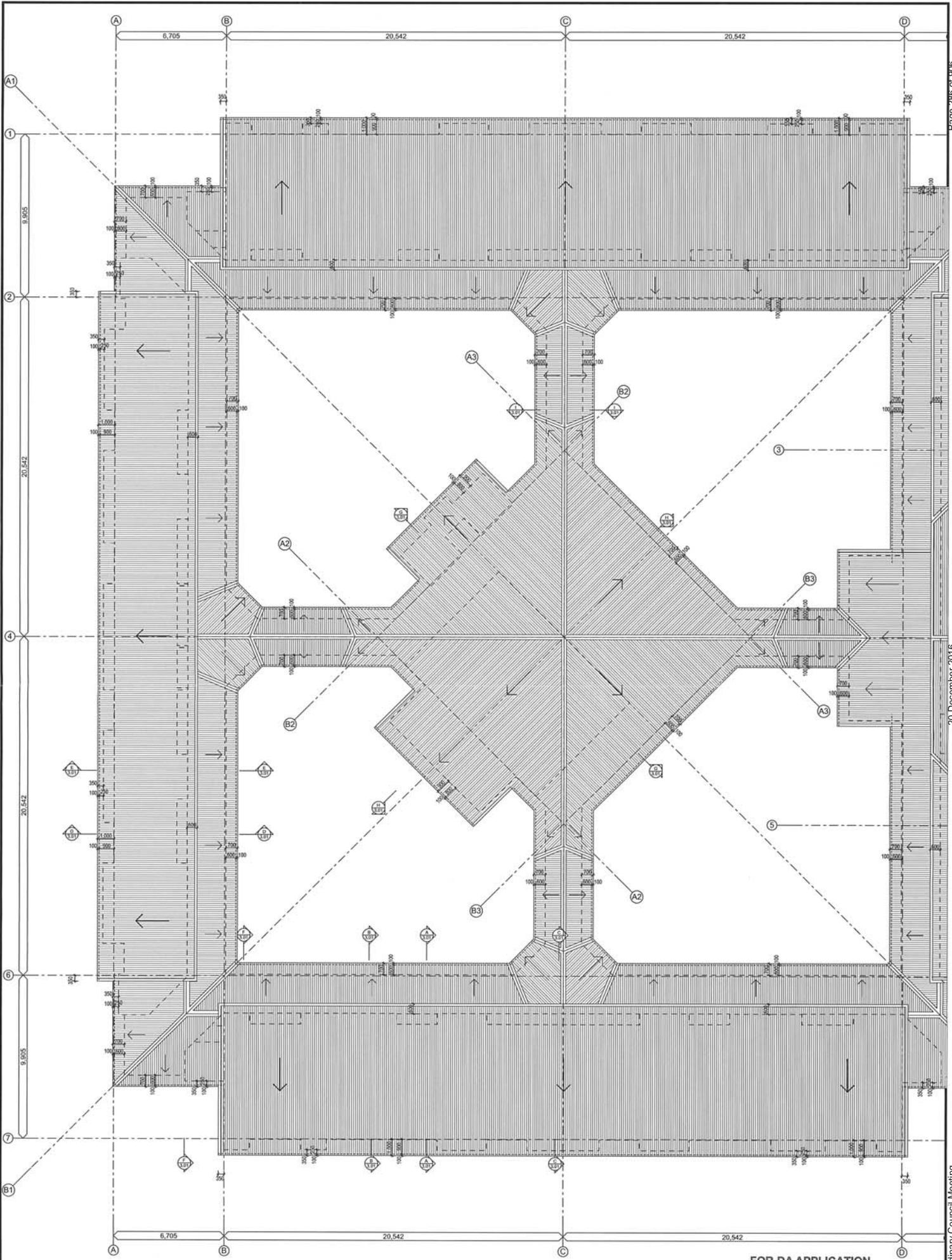
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KUNUNURRA RESIDENTIAL CARE FACILITY  
FOR JUNIPER  
1 SERIES - PLANS

DRAWING:  
FLOOR PLAN GENERAL RES.

DATE: 7/07/2016  
DRAWN: PB  
SCALE: 1:100  
JOB NO: @A1  
1506

DRAWING NO: DA A-1.01  
JOB NO: @A1  
1506



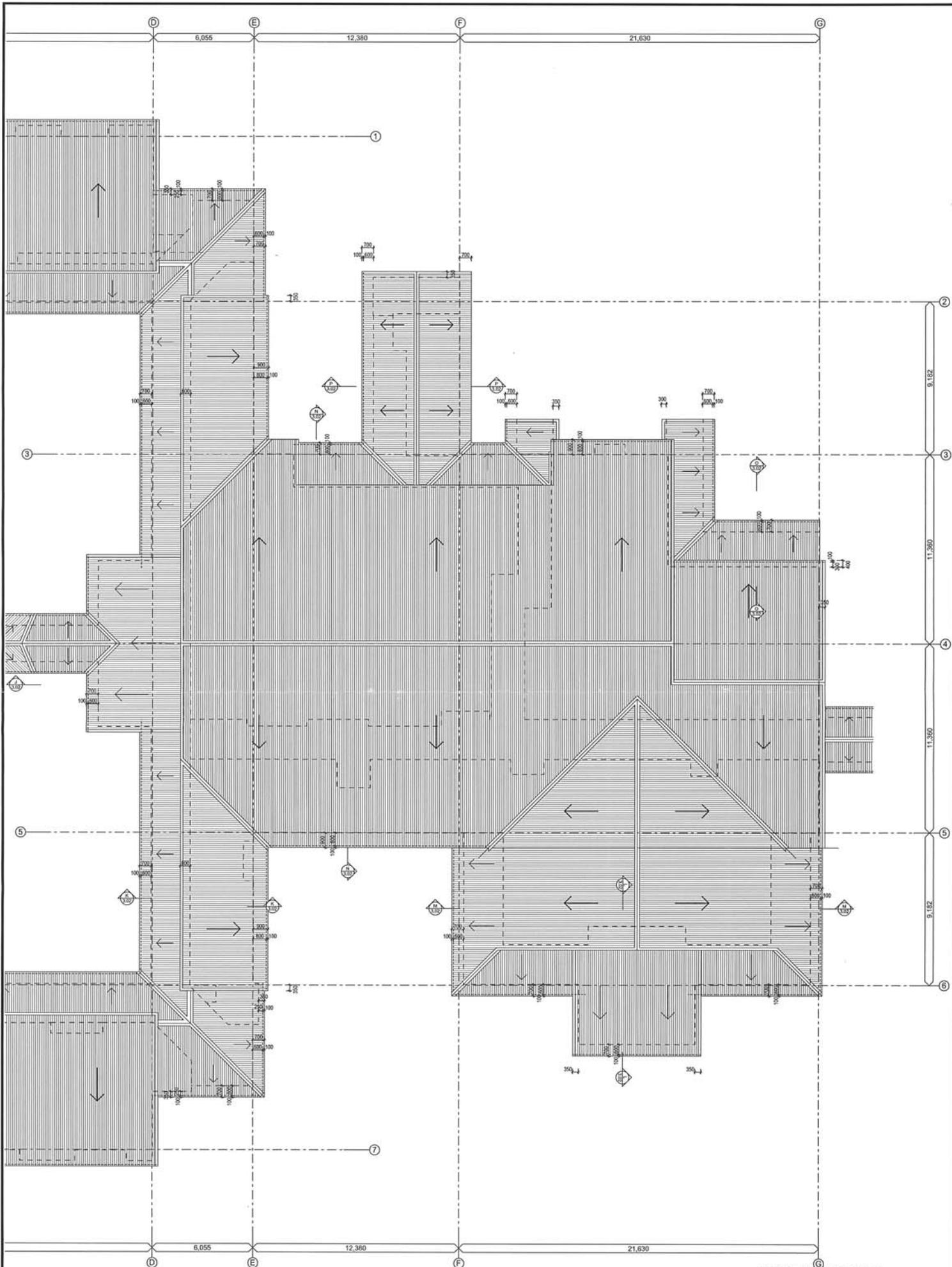


2. Roof Plan Residential  
1:100

FOR DA APPLICATION

PROJECT KUNUNURRA RESIDENTIAL CARE FACILITY FOR JUNIPER			
1 SERIES - PLANS			
DRAWING ROOF PLAN RESIDENTIAL		DRAWING NO. DA A-1.07	
DATE 7/07/2016	DRAWN PB	SCALE 1:100 @A1	JOB NO. 1506



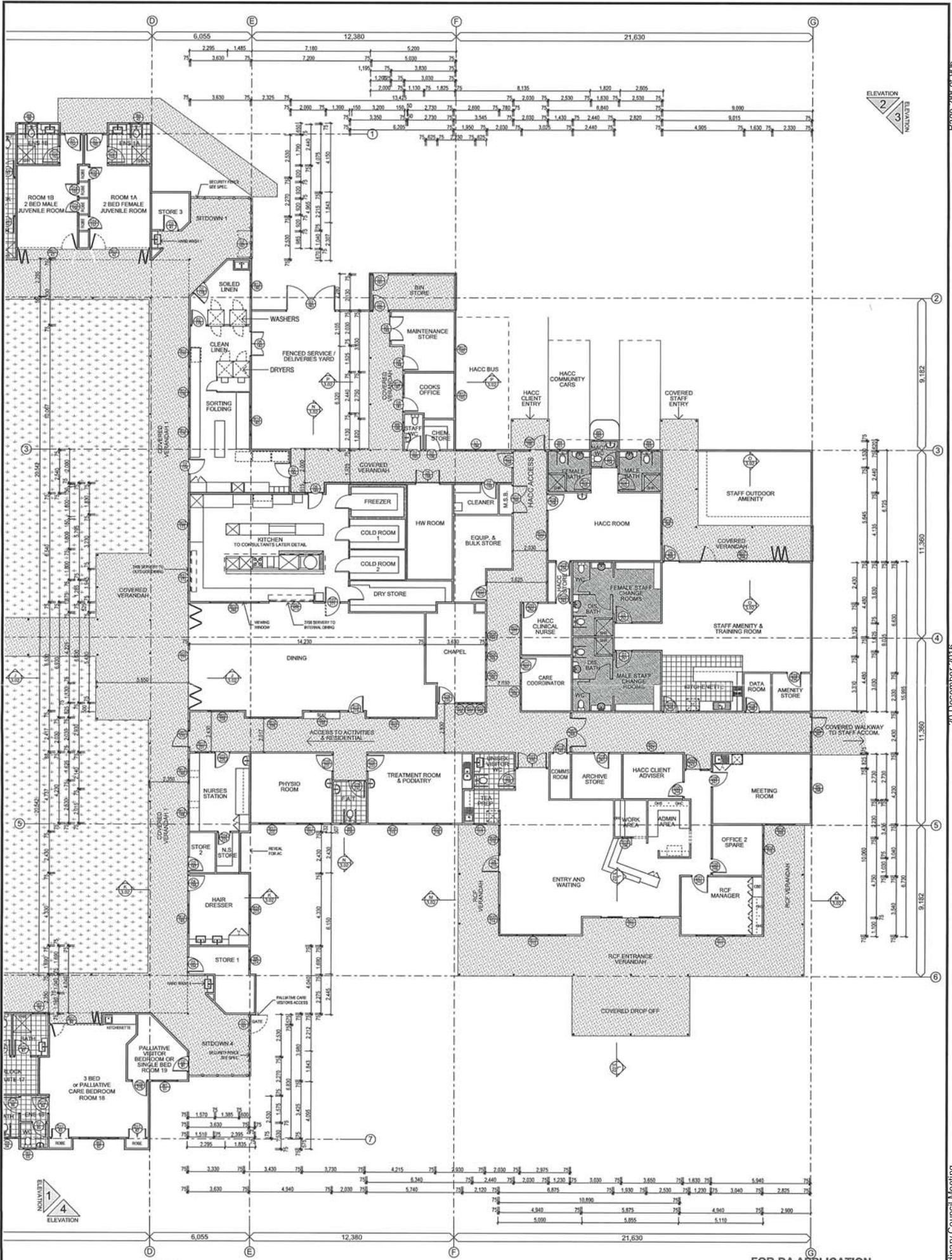


FOR DA APPLICATION

2. Roof Plan Admin.  
1:100

PROJECT: KUNUNURRA RESIDENTIAL CARE FACILITY FOR JUNIPER			
1 SERIES - PLANS			
DRAWING: ROOF PLAN ADMIN.		DRAWING NO. DA A-1.08	
DATE: 7/07/2016	DRAWN: PB	SCALE: 1:100 @A1	JOB NO. 1506
<small>PK 100 927 284   Mob: 04 9 212 841   Email: pd@nswrmet.com.au   PO Box 1854 Geraldton 6331 WA</small>			





0. Floor Plan Admin  
1:100



FOR DA APPLICATION

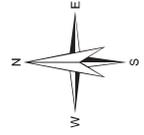
PROJECT: KUNUNURRA RESIDENTIAL CARE FACILITY FOR JUNIPER  
 1 SERIES - PLANS  
 DRAWING: FLOOR PLAN GENERAL ADMIN.  
 DATE: 7/07/2016 DRAWN: PB SCALE: 1:100 @A1 JOB NO: 1506  
 DRAWING NO: DA A-1.02  
 Ph: 08 9321 2841 | Mob: 0418 212 841 | Email: gordon@kdc.com.au | PO Box 1834 Geraldton 6337 WA



# Kununurra Waste Water Treatment Plant Odour Buffer



Legend	
Buffer Zones	
Desc_	
0 m	
440 m	
460 m	
480 m	
500 m	

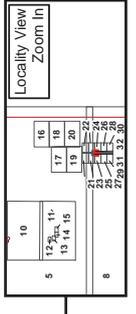
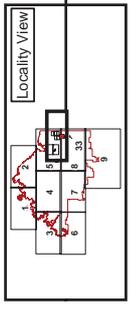
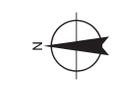




1:10,000 (at A3)

0 40 80 160 240 320 400  
Metres

Map Projection: Transverse Mercator  
Grid: Map Grid of Australia 1994, Zone 50



Shire of Wyndham-East Kimberley  
Local Planning Scheme Modifications

Job Number: 61-30817  
Revision: G  
Date: 14 Dec 2015

Shire of Wynndham - East Kimberley Local Planning Strategy  
**Kununurra Strategic Land Use Plan**

(to be read in conjunction with sections 5 and 6 of the LPS)

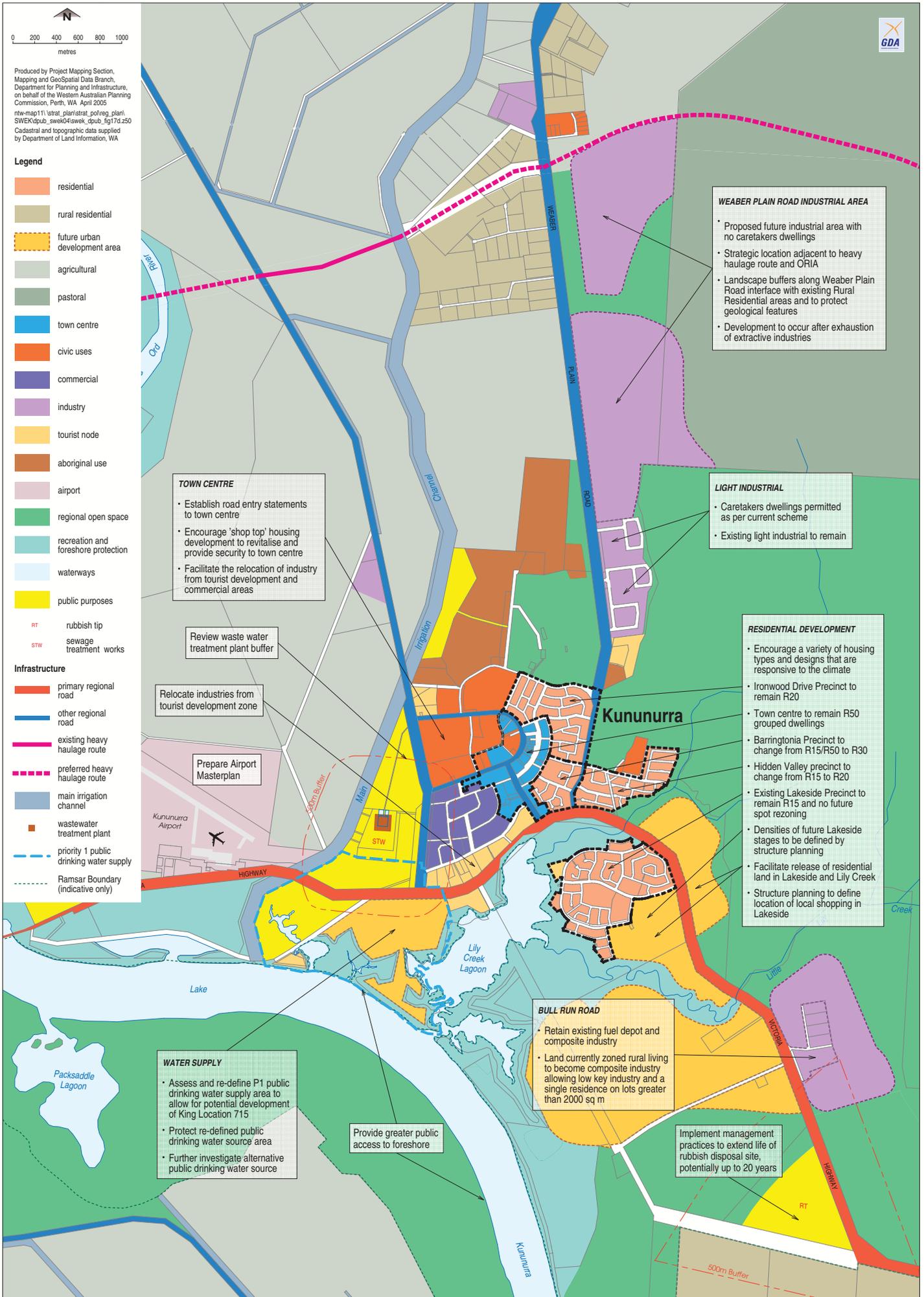


Figure 17d

Figure 3 - Strategic Land Use Plan

KUNUNURRA TOWNSITE

LEGEND

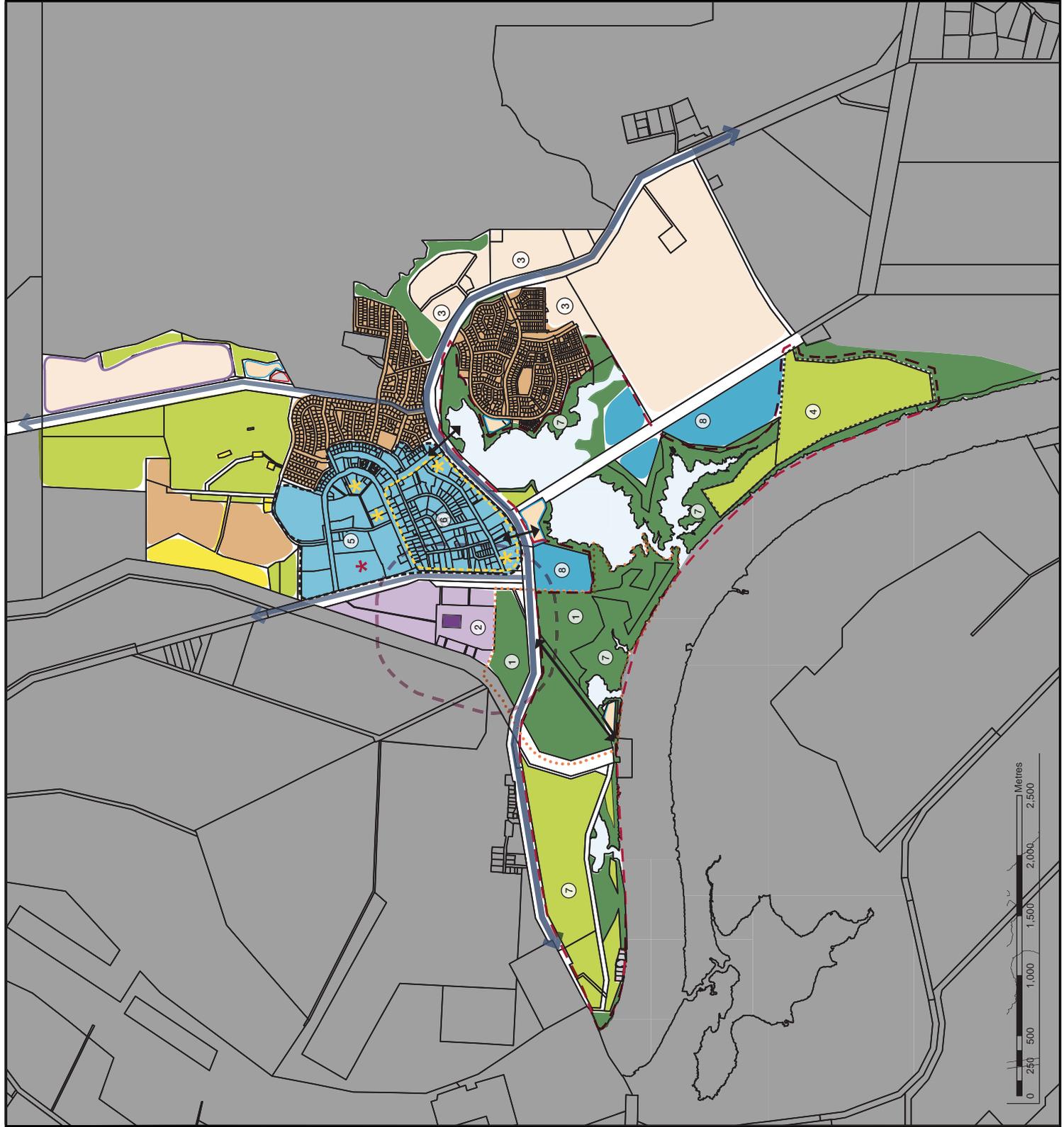
- Land Uses
- Town Centre Boundary
- Existing Residential
- Future Urban - subject to structure plans
- Tourist
- Conservation reserve
- Parks & recreation
- Composite industry / light industry with generous caretaker residence criteria
- Public purposes
- Industrial Development
- Special use
- Public drinking water source area
- Waste water treatment plant buffer
- Wastewater treatment plant - relocate in medium term

Transport movement

- Primary distributor
- Major road

Opportunities

- 1 Protect Public Drinking Water Supply Priority 1 area within appropriate scheme reserve
  - 2 Light Industry Expansion - subject to structure planning and landscape buffers to Ivanhoe Road
  - 3 Approved structure plans for residential development in the short to medium term
  - 4 Potential major events precinct
  - 5 Prepare town centre plan to address constraints and redevelopment opportunities in short to medium term. Town centre plan to include consideration and planning for recreational and community facilities.
  - 6 Opportunity to relocate general industrial premises
  - 7 Deliver recommendations of the Lake Kununurra Foreshore and Aquatic Use Plan
  - 8 Investigate feasibility for short term waterfront development, including residential, tourism, and commercial
- \* Opportunity for redevelopment to be considered in town centre plan
  - \* Opportunity to redevelop for additional community and recreation uses
  - ↔ Enhance pedestrian access to Lily Creek Lagoon and Lake Kununurra Foreshore



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Your Ref:  
Our Ref : JT1 2008 03141 V01  
Enquiries: Ian Kininmonth  
Telephone: 9420 2617



9<sup>th</sup> December 2016

Mr Roy Adam  
Planning Officer  
Shire of Wyndham East Kimberley  
PO Box 614  
KUNUNURRA WA 6743

**Kununurra WWTP odour buffer and proposed aged person development – Lot 571-573 Ivanhoe Road, Kununurra**

I refer to your email of 15<sup>th</sup> November 2016 relating to the above and subsequent telephone conversations.

Attached is a diagram which provides the finalised odour buffer for the Kununurra Wastewater Treatment Plant (WWTP) and its impact on lots 571-573. The buffer has been derived from odour modelling based on a 2.7 ML/d upgrade to the WWTP which is expected to be completed in 2018. The current capacity of the WWTP is 1.5 ML/d. The upgrade is required to support population growth, seasonal tourism and other activities in the town.

EPA Guidance Statement No 3 – Separation Distances between Industrial and Sensitive Land Uses, provides a list of sensitive land uses which should be excluded from buffers. This is further refined by the attached land use compatibility matrix. Aged and dependant persons accommodation and is listed as a use which is sensitive to odour.

Where the Council considers approving portion of a building which may be located in an odour buffer, the consideration should be given to the orientation and sealing of openings and the provision of air conditioning. An advice note should also be attached to the development approval which states the following:

*The proposed development is located within the odour buffer area of the Kununurra Wastewater Treatment Plant. Under normal operating conditions there will be minimal odour emanating from the plant. However, during maintenance and abnormal operating or weather conditions an increased level of odour may occur that is likely to result in unacceptable adverse impacts to the amenity of people in the area.*

As you know, a generic 500 metre odour buffer to the Kununurra WWTP has been in effect for some time and acknowledged in the planning scheme. Odour modelling using on-site meteorological data was undertaken recently to provide the modified

odour buffer. The planning scheme should be modified to reflect the new modelled odour buffer. We would like to discuss with the Council an amendment to the planning scheme which would modify the scheme text and result in the odour buffer being reflected on the scheme map. This is standard practice in the case of over twenty other planning schemes across Western Australia. I will contact you about this separately.

Please do not hesitate to contact me to discuss this advice.

Yours sincerely

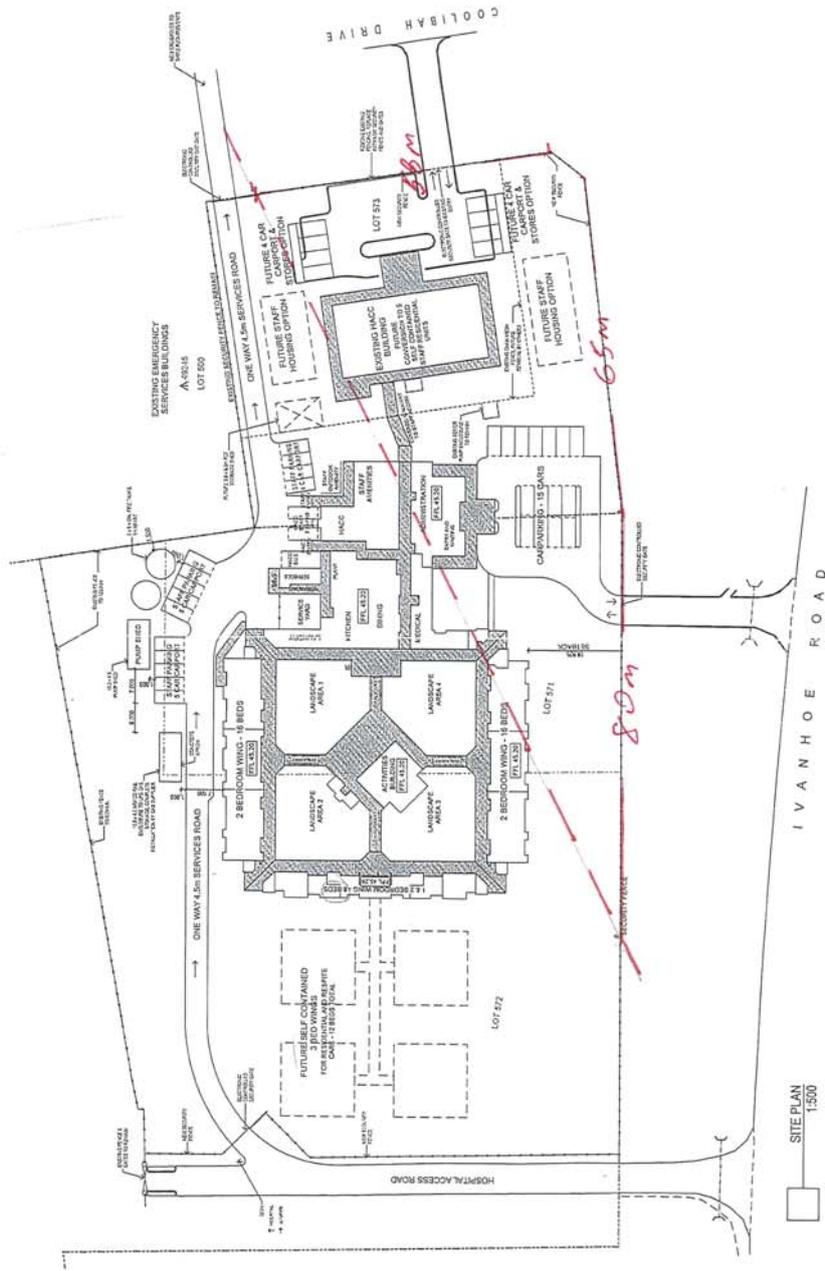
A handwritten signature in blue ink, appearing to read 'Ian Kininmonth', with a long horizontal flourish extending to the right.

Ian Kininmonth  
Senior Urban Planner  
Development Services Branch

Attachments:

1. Location of modified odour buffer to Kununurra WWTP on lots Lot 571-573 Ivanhoe Road, Kununurra
2. Buffer land use compatibility matrix

7/12/2016  
 FIGURE 1 - FINALISED LINE FOR MODELLED ODOUR BUFFER FOR KUNUNURRA WHTP 2.7 MLD UPGRADE



ON LOTS 572, 573 AND PART  
 OF LOT 571, MANINGRID  
 DISTRICT

FOR DA APPLICATION

PROJECT: KUNUNURRA RESIDENTIAL CARE FACILITY FOR IMPROVED SERVICES - SITE PLANS	
DATE: 7/07/2016	SCALE: 1:500 (DA) 1:500
DRAWN BY: [Name]	
CHECKED BY: [Name]	
DATE: 7/07/2016	
SCALE: 1:500 (DA) 1:500	
PROJECT: KUNUNURRA RESIDENTIAL CARE FACILITY FOR IMPROVED SERVICES - SITE PLANS	
DRAWN BY: [Name]	
CHECKED BY: [Name]	
DATE: 7/07/2016	
SCALE: 1:500 (DA) 1:500	



# Land use compatibility

Land use categories	Odour buffers	Chlorine buffers	Noise buffers
<b>Supported use ✓ Discretionary use ? Not supported *</b>			
Aged and dependant person dwelling	x	x	x
Agriculture - extensive	✓	✓	✓
Agriculture - intensive	✓	✓	✓
Agro-forestry	✓	✓	✓
Amusement parlour	x	x	x
Ancillary accommodation	x	x	x
Animal establishment	✓	✓	✓
Animal husbandry intensive	✓	✓	✓
Bed and breakfast	x	x	x
Betting agency	x	x	x
Caravan park	x	x	x
Caretakers dwelling	x	x	x
Car park	✓	✓	✓
Cemetery	✓	✓	✓
Childcare premises	x	x	x
Cinema / theatre	x	x	x
Civic use	x	x	x
Club premises	x	x	x
Community purpose	x	?	?
Consulting rooms	x	x	x
Convenience store	x	x	x
Corrective institution	x	x	?
Dwelling	x	x	x
Education establishment	x	x	?
Exhibition centre	x	x	x
Family day care	x	x	x
Fast food outlet	x	x	x
Fuel depot	✓	✓	✓
Funeral parlour	x	x	x
Grouped dwelling	x	x	x
Home business	x	x	x
Home occupation	x	x	x
Home office	x	x	x
Home store	x	x	x
Hospital	x	x	x
Hotel	x	x	x
Industry	✓	✓	✓
Industry - cottage	?	?	✓
Industry - extractive	✓	✓	✓
Industry - general	✓	✓	✓
Industry - light	?	?	✓
Industry - mining	✓	✓	✓
Industry - rural	✓	✓	✓
Industry - service	?	?	✓
Lunch bar	x	x	x
Marina	?	?	✓
Marine filling station	✓	✓	✓

# Land use compatibility



Land use categories	Odour buffers	Chlorine buffers	Noise buffers
Market	x	x	x
Medical centre	x	x	x
Motel	x	x	x
Motor vehicle repair	✓	✓	✓
Motor vehicle wash (carwash)	✓	✓	✓
Motor vehicle, boat or caravan sales	x	?	?
Multiple dwellings	x	x	x
Night club	x	x	✓
Office	x	x	x
Park home park	x	x	x
Place of worship	x	x	x
Plantation	✓	✓	✓
Public open space	✓	✓	✓
Public utilities	✓	✓	✓
Reception centre	x	x	x
Recreation private	x	?	?
Residential building	x	x	x
Restaurant	x	x	x
Restricted premises	x	x	x
Rural pursuit	?	?	?
Rural residential	x	x	x
Service station	✓	✓	✓
Shop	x	x	x
Showroom	x	x	x
Single house	x	x	x
Storage (warehouse)	✓	✓	✓
Tavern	x	x	x
Telecommunications	✓	✓	✓
Veterinary centre	?	?	✓
Winery	?	?	?

## Discretionary uses

Odour / chlorine /noise – direction should be sought from the Water Corporation’s Land Planning team by emailing [landplanning@watercorporation.com.au](mailto:landplanning@watercorporation.com.au)

## Wellhead protection zones (not listed)

Refer to the Department of Water’s Water Quality Protection Note [Land use Compatibility in Public Drinking Water Source Areas](#).

### 12.3.3 Community Lease - Kununurra Race Club

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Manager Community Services
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>ASSESSMENT NO:</b>	A2859
<b>FILE NO:</b>	CP.07.4
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### VOTING REQUIREMENT

Simple Majority

#### OFFICER'S RECOMMENDATION

That Council authorises the Chief Executive Officer to offer Kununurra Race Club a 21 year lease for a portion of Reserve 30290, part Lot 707 Drovers Road, Kununurra, as detailed in Attachment 3, subject to:-

- a) The lease requirements outlined in Schedule 1, Item 13 - Lessee's Buildings and Fixtures, being completed by The Kununurra Race Club; and
- b) The Minister for Lands consent.

#### COUNCIL DECISION

Minute No: 20/12/2016-11561

Commissioner resolved:

That Council authorises the Chief Executive Officer to offer Kununurra Race Club a 21 year lease for a portion of Reserve 30290, part Lot 707 Drovers Road, Kununurra, as detailed in Attachment 3, subject to:-

- a) The lease requirements outlined in Schedule 1, Item 13 - Lessee's Buildings and Fixtures, being completed by The Kununurra Race Club; and
- b) The Minister for Lands consent.

Carried 1/0

#### PURPOSE

For Council to offer a lease to the Kununurra Race Club (KRC) for the Portion of Reserve 30290 as depicted in Attachment 1, for a period of 21 years.

## **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Provider - provide physical infrastructure and essential services

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

KRC have held the lease over the full Reserve 30290, Drovers Road, Kununurra. The previous KRC Lease commenced on 1 July 1991 and expired 30 June 2012. Since this expiry the Club has operated as a tenant at will.

At the Ordinary Council Meeting of 22 November 2011 Officers were given authorisation to commence negotiations with Kununurra Race Club:

**Minute No. 9626**

**Moved: Cr K Torres**

**Seconded: Cr D Ausburn**

- 1) **That Council Requests the Chief Executive Officer to enter into negotiations with the following clubs with the view to determining their ongoing requirements in relation to their respective lease areas:**
  - a) **Kununurra Race Club over Reserve 30290**
  - b) **Lake Kununurra Golf Club Inc over Reserve 29167 and portion of Reserve 41812**
  - c) **Wyndham Turf Club over Reserve 24857, Reserve 32816 and Reserve 36818**
  - d) **Kununurra Speedway Club over Reserve 41793**
  - e) **Kununurra WaterSki Club over portion of Reserve 29297 and portion of Reserve 41812**
- 2) **That Officers write to each club to request that a long term business plan be supplied, in order to assist Council to decide the term of the lease to be offered.**
- 3) **That Officer's write to the Minister for Land to seek in principle approval to enter into a lease over the abovementioned reserves with the relevant community groups for a minimum term of 10 years.**

**Carried Unanimously 8/0**

While the 1991 KRC lease covered the full Reserve 30290, a significant portion of this Reserve was not required or used by the Club, including an area currently used by the Kununurra Bushmen's Rodeo Association by agreement. Prior to current lease negotiations, the KRC agreed to reduce the size of their lease area allowing a direct lease agreement between the Shire and Rodeo Association as well as use for other purposes.

In addition, there are several areas within Reserve 30290 that are, or may be used by multiple user groups. In accordance with CP/PMG - 3280 Leasing of Council Managed Reserve Land - Community, these areas have been excluded from all leases, rights for use

of these areas will be controlled through the issuing of licences. The KRC have been supportive of this approach.

A map of Reserve 30290 is provided as Attachment 1. This map shows the Kununurra Race Club lease site in relation to the licenced areas and other proposed leases within close proximity.

## **STATUTORY IMPLICATIONS**

### Local Government Act 1995

Under section 3.58 of the *Local Government Act 1995* (LGA), the leasing of land is included as a form of disposal of property and is required to be undertaken in accordance with this section of the LGA.

However, there are exemptions from the requirements outlined in regulation 30 of the *Local Government (Functions & General) Regulations 1996*, which states that a disposition of land is an exempt disposition if –

- “(i) the land is disposed of to a body, whether incorporated or not -
- (ii) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
- (iii) the members of which are not entitled or permitted to receive any pecuniary profit from the body’s transactions.”

As such, a lease to Kununurra Race Club Inc. is considered an exempt disposition and the Shire can directly enter into a lease negotiation.

### Land Administration Act 1997

The reserve purpose of Reserve 30290 is “Racecourse, Recreation and Sporting Clubs”.

## **POLICY IMPLICATIONS**

The Lease has been drafted in accordance with Council Policy CP/PMG 3780 Leasing of Council Managed Reserve Land - Community.

Kununurra Race Club have requested a 21 year lease. This is allowable under the Policy at the discretion of Council “*if the lessee can demonstrate the need for this extended term, as well as financial sustainability to meet this need, through the lodgement of a business plan.*” Kununurra Race Club have provided a Business Plan (refer Attachment 2).

## **FINANCIAL IMPLICATIONS**

The lease fee will commence at \$500.00 per annum.

All costs associated with the development of the Lease will be on costed to the Lessee.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 3: Protection and enhancement of lifestyle values, community facilities and the environment to provide safe and inviting communities.

Objective 3.5: An active outdoor lifestyle is encouraged and promoted

Strategy 3.5.2 : Encourage cooperation between sporting groups and assist them in building capacity

## **RISK IMPLICATIONS**

Non-compliance with Department of Local Government advisory standards and regulations

## **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and includes:

Ongoing communication with Kununurra Race Club Inc.

## **COMMENTS**

A draft lease was provided to KRC on 4 March 2016. A number of amendments were requested resulting in a reviewed draft being forwarded on 4 May 2016.

Further changes were made to this draft following the review of Council Policy CP3580 Leasing of Council Managed Reserve Land - Community in July 2016. Following notification of these changes Kununurra Race Club provided a response on 12 October 2016 raising several concerns with the draft lease. Issues of concern raised by the KRC included the following:-

- Option for renewal
- Environmental Matters
- Licence terms for the use of the Designated Fenced Area
- Concern over the term "premises" and the implications for Race Club buildings and fixtures.

KRD also requested an amendment to the requirement for the lessee to maintain insurance from "full insurable value" of buildings, fixtures to "a reasonable value". The generic community lease template has been amended to reflect this requirement.

A meeting was held on 22 November 2016 with the KRC to discuss these concerns and it is believed all concerns raised in the response received on 12 October 2016 were addressed. The Club also attended a meeting held 9 December and raised further issues. Legal advice was received based on the feedback at this meeting and minor changes to several clauses

were made. These changes are identified as tracked changes within Attachment 3. It should be noted that KRC specifically requested the removal of the Licence for the use of the Campground from the Lease. This change is also reflected in the attachment.

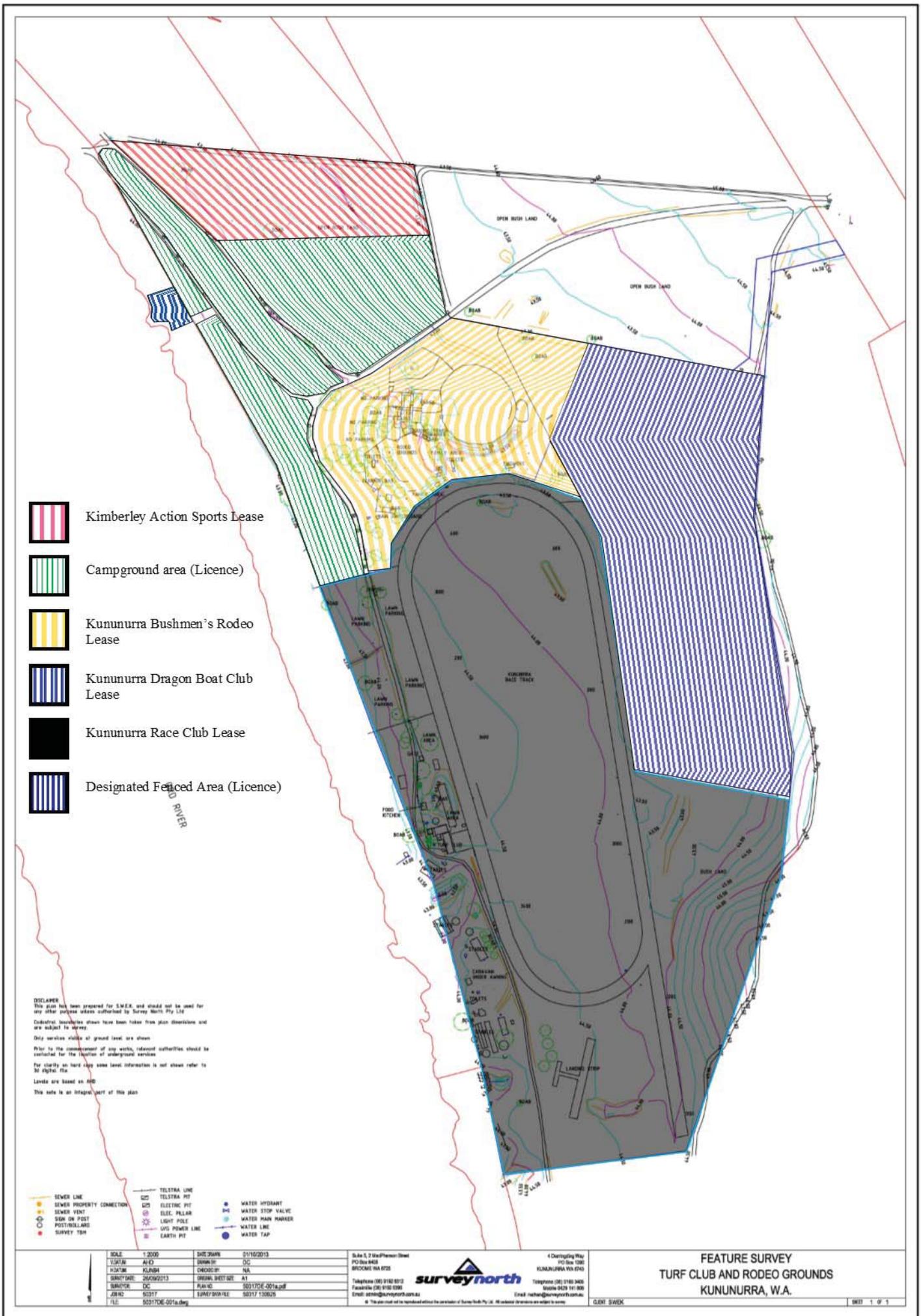
The Draft Lease has not yet been agreed to by the Kununurra Race Club, nor have they listed their assets under Section 13 of Schedule 1. Given there has been ample time and opportunity to raise concern however, the lease (Attachment 3) is now presented for endorsement to offer, subject to approval from the Minister of Lands and the completion of Section 13 of Schedule 1 of the lease.

### **ATTACHMENTS**

Attachment 1 - Map of Reserve 30290

Attachment 2 - Kununurra Race Club Business Case 2015

Attachment 3 - Draft Lease for Portion of Reserve 30290 with individualised changes highlighted





# KUNUNURRA RACE CLUB

## STRATEGIC PLAN

### 2014 FORWARD



## CLUB DETAILS

**NAME:** KUNUNURRA RACE CLUB  
**ADDRESS:** PO BOX 140, KUNUNURRA. WA. 6743  
**CLUB LOCATION:** LOT 707 RACE COURSE ACCESS RD, KUNUNURRA  
**COMMITTEE:**

PRESIDENT	GARY KING	0429381 771	WANDERIN@ACTIV8.NET.AU
JUNIOR PRESIDENT	TOM VICKERS	0409 291 950	KPSPUMPS.TOM@BIGPOND.COM
SECRETARY	GEOFF WARNOCK	0438 884 842	GULLIVERS@WN.COM.AU
TREASURER	GORDON ADAM	08 9642 2132	<a href="mailto:GADAM@WESTNET.COM.AU">GADAM@WESTNET.COM.AU</a>
COMMITTEE:	RICHARD FINCKH		
	DANNI FINCKH		
	COLIN SHEERIN		
	LEE TRIMBEL		
	ANNE JORRITSMA		
	SHELLEY BINNIE		
	VAUGHAN DAVIES		
	ROD BOEHM		
	TYNE MCCONNON		
	RACHEL LINES		
	LESLIE KING		

## HISTORY AND PROFILE

KUNUNURRA RACE CLUB WAS FORMED BACK IN 1967.

IT FIRST SET OUT TO PROVIDE A ONCE A YEAR GET TOGETHER FOR STATION OWNERS AND THEIR STAFF. STATION HORSES WERE USED AND A SMALL PURSE AND TROPHY WAS PUT FORWARD AFTER A WHILE TO MAKE IT INTERESTING.

OVER THE YEARS IT BECAME MORE AND MORE POPULAR, STATIONS FURTHER OUT GOT INVOLVED, PROFESSIONAL TRAINERS WERE ASKED TO COME ALONG AND SO IT WAS DECIDED TO RELOCATE TO A MORE CENTRAL LOCATION. THAT SITE IS WHERE THE RACE CLUB IS TODAY.

AS RECENTLY AS THE MID 80'S THERE WAS STILL TWO LOCAL IDENTITIES WITH TRAINER'S LICENCES AND HORSES.

WITH THE SPORT BECOMING MORE AND MORE PROFESSIONAL AND OWNERS AND TRAINERS MAKING HORSE RACING THEIR SOLE CAREER, LOCAL TRAINERS TOOK A STEP BACK AND SO STARTED THE PROGRESS OF GROWING THE PRESENT DAY CLUB.

STABLES WERE BUILT. OFFICE, JOCKEYS, ROOMS AND ABLUTIONS COMBINED. A SMALL SHED FOR THE TOTE ROOM AND TWO OUTDOOR 'OPEN AIR SHEDS, ONE FOR A COOKHOUSE AND THE OTHER FOR A BAR.

THE CLUB RAN WITH THESE UNTIL ROUGHLY 15 YEARS AGO AND FROM THEN EACH YEAR THERE HAS BEEN PROJECTS TO UPGRADE AND IMPROVE FOR ALL. OWNERS, TRAINERS, JOCKEY'S, HORSES AND PUBLIC ALIKE.



## **ABOUT THIS PLAN**

THIS PLAN HAS BEEN DEVELOPED BY THE CLUB TO ALLOW THE CLUB TO GO FORWARD.

IT WILL ALLOW THE CLUB TO GROW AND DIVERSIFY AS THE KUNUNURRA ITSELF GROWS.

WE HAVE TAKEN INTO CONSIDERATION THE FOLLOWING:

- **ENVIRONMENT** – AN OVERVIEW OF EXTERNAL FACTORS THAT DIRECTLY OR IN-DIRECTLY AFFECT THE CLUB.
- **TARGETS** – THE PEOPLE AND ORGANISATIONS WE NEED TO COMMUNICATE WITH BOTH NOW AND IN THE FUTURE.
- **POSITIONING** – HOW ARE WE GENERALLY PERCEIVED IN THE COMMUNITY
- **RESOURCES** – WHAT WE HAVE TO WORK WITH.

THE PLAN WILL FOCUS ON A SWOT ANALYSIS, REVIEWING THE STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS TO THE CLUB.

IT WILL ALSO IDENTIFY MAJOR OBJECTIVES OF THE CLUB AND WHAT ACTIONS OR OPERATIONAL OBJECTIVES HAVE TO BE ACHIEVED TO ATTAIN THESE GOALS.

## **MISSION STATEMENT**

*TO PROVIDE AN ENJOYABLE, SAFE AND SOCIABLE ENVIRONMENT FOR PARTICIPANT'S, MEMBERS, VOLUNTEERS AND PUBLIC ALIKE.*

## **VISION**

*TO CONTINUE TO GROW AND BE REGARDED AS THE BEST RACE TRACK IN THE EAST KIMBERLEY ATTRACTING THE BEST HORSES IN COUNTRY AUSTRALIA.*

*TO BE AN EVENT THAT IS MARKED ON ALL CALENDARS AS A NOT TO MISS OCCASION FOR LOCALS AND TOURISTS ALIKE.*

## **OBJECTIVES**

1. TO BE FINANCIALLY VIABLE AND SUSTAINABLE
2. TO CONTINUE TO ENCOURAGE MORE INDUSTRY PARTICIPANTS
3. TO INCREASE COMMUNITY BASED PARTICIPATION
4. TO IMPROVE THE EXISTING FACILITY
5. TO INCREASE SPONSORSHIP

## **KEY RESULT AREAS**

THESE AREAS HAVE BEEN IDENTIFIED BY THE CLUB AS BEING KEY AREAS FOR FUTURE DEVELOPMENT:

- PLANNING
- FINANCE
- HUMAN RESOURCES
- PARTICIPATION
- DIVERSIFICATION

## **ENVIRONMENTAL SNAPSHOT**

THIS PLAN IS PREPARED WITH CONSIDERATION FOR THE ENVIRONMENT AS IT CAN BE PERCEIVED AT THE TIME OF WRITING. IT IS VITAL TO HIGHLIGHT THE ISSUES IN THE GENERAL ENVIRONMENT THAT THE KUNUNURRA RACE CLUB OPERATES IN AND THE RELEVANT TARGETS, RESOURCES, COMPETITORS AND FINALLY THE POSITIONING OF THE CLUB IN THE COMMUNITY. A SUMMARY OF THESE FACTORS INCLUDES;

## **GENERAL ENVIRONMENT**

- VARIOUS SPORTING CLUBS THAT EXIST IN THE REGION
- THE GROWTH IN ALL AREA OF THE REGION
- INCREASING EXTERNAL COMMITMENTS FOR ALL PARTICIPANTS IN THE SPORT, INCLUDING WORK
- OTHER LOCAL EVENTS ARE DOMINANT IN MEDIA, SPONSORSHIP AND RECRUITMENT
- ALL ORGANIZATION ARE COMPETING FOR THE SAME SPONSORSHIP DOLLARS

## **TARGETS**

- POTENTIAL AND CURRENT PARTICIPANTS
- POTENTIAL AND CURRENT VOLUNTEERS
- POTENTIAL SPONSORS
- IMPROVED INFRASTRUCTURE

## **POSITIONING**

- SEEN AS A TRADITIONAL CLUB
- NOT A WEALTHY CLUB
- FRIENDLY CLUB WITH GREAT HISTORY
- ADEQUATE INFRASTRUCTURE

## **COMPETITORS**

- OTHER CLUBS AND ORGANIZATIONS DRAWING FROM THE SAME SPONSORSHIP BASE
- OTHER CLUBS AND ORGANIZATIONS DRAWING FROM THE SAME VOLUNTEER BASE
- WORK COMMITMENTS
- ALL LOCAL EVENTS TO BE COMPLETED IN THE SAME SHORT 'DRY SEASON' TIMEFRAME

## OUR RESOURCES

- SMALL BUT ACTIVE COMMITTEE
- RACING AND WAGERING WESTERN AUSTRALIA (RWVA) BACKING AND SUPPORT
- QUALITY INDUSTRY PARTICIPANTS
- SMALL BUT RELIABLE ON-CALL VOLUNTEER WORKFORCE FOR RACE DAYS
- BASIC PLANT & EQUIPMENT FOR MAINTENANCE



## SWOT ANALYSIS

<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>• OUTSTANDING SETTING</li> <li>• INDUSTRY STANDARD RACE TRACK</li> <li>• CORE GROUP OF INDUSTRY PARTICIPANTS</li> <li>• ENTHUSIASTIC, HARD WORKING COMMITTEE</li> <li>• A GOOD REPUTATION IN THE COMMUNITY AS AN ENJOYABLE EVENT</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>• VOLUNTEERS – FEW TOO MANY</li> <li>• LIMITED INDUSTRY PARTICIPANT'S FACILITIES I.E. CAMP FACILITIES.</li> <li>• FINANCIALLY UNABLE TO GROW THE CLUB AT THE PACE REQUIRED</li> </ul>
<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>• PROMOTE THE CLUB AND IT'S FACILITIES FOR NON- INDUSTRY BASED FUNCTIONS</li> <li>• OPPORTUNITY AND SPACE FOR GENERATING INCOME FROM SHORT STAY CARAVANS AND CAMPERS DURING THE TOURIST SEASON.</li> <li>• SET UP A WEB SITE TO PROMOTE THE CLUB</li> </ul>	<p><b>THREATS</b></p> <ul style="list-style-type: none"> <li>• AGING COMMITTEE AND VOLUNTEER WORKER GROUP</li> <li>• OVERLAP OF OTHER LOCAL EVENTS</li> <li>• FINANCIAL INSTABILITY</li> <li>• NATURE OF SPORTS CODE ATTRACTS HIGHER INSURANCE PREMIUMS ACROSS THE BOARD</li> <li>• REMOTE LOCATION IMPEDES ON PARTICIPANT NUMBERS</li> </ul>

**OBJECTIVE 1 - TO BE FINANCIALLY VIABLE**

**KEY AREAS**

- PLANNING
- SPONSORSHIP FUNDING
- GRANT FUNDING

<b>STRATEGIES</b>	<b>ACTIONS</b>
ENGAGE ALL COMMITTEE MEMBERS IN SEEKING SPONSORSHIP	<ul style="list-style-type: none"> <li>• PREPARE A SPONSORSHIP PROPOSAL</li> <li>• PLAN KEY EVENTS AND ACTIVITIES TO ENGAGE CURRENT AND POTENTIAL SPONSORS</li> </ul>
2. SOURCE FUNDING GRANTS	<ul style="list-style-type: none"> <li>• INVOLVE ALL COMMITTEE MEMBERS IN IDENTIFYING ALL GRANT SOURCES AND ACTIONING</li> </ul>
4. TO REMAIN DEBT FREE	<ul style="list-style-type: none"> <li>• ENSURE THAT THERE IS ALWAYS A BALANCE OF 1 COMPLETE RACE ROUND WITH NO FUNDING IN ACCOUNT</li> <li>• PRESENT A BUDGET TO COMMITTEE AT THE BEGINNING OF THE SEASON</li> </ul>

## OBJECTIVE 2 - ATTRACT AND DEVELOP PARTICIPATION

### KEY RESULT AREAS

- QUANTITY OF VOLUNTEERS
- QUANTITY OF INVOLMENT OF COMMITTEE
- QUANTITY OF INDUSTRY PARTICIPANTS
- 

STRATEGIES	ACTIONS
UNDERTAKE A COORDINATED AND TARGETED APPROACH TO ATTRACT MORE VOLUNTEERS	<ul style="list-style-type: none"><li>• DEVELOP A CALENDAR OF TASKS</li><li>• MAKE IT WORTHWHILE FOR VOLUNTEERS TO TAKE TIME OUT OF THEIR OTHER ACTIVITIES</li><li>• DEVELOP SET RACE DAY ROSTERS</li></ul>
2. UNDERTAKE A COORDINATED APPROACH TO RAISING MORE FUNDS	<ul style="list-style-type: none"><li>• DEVELOP A PROPOSAL FOR POTENTIAL SPONSORS</li><li>• DEVELOP A PROPOSAL FOR CATERING ON RACE DAYS</li><li>• DEVELOP A PROPSAL FOR THE HIRING OUT OF THE VENUE</li><li>• STRINGENTLY INVOLVE COMMITTEE IN THE FUND RAISING</li></ul>

**OBJECTIVE 3 - TO IMPROVE THE EXISTING FACILITY**

**KEY RESULT AREAS**

- QUALITY OF FACILITY
- DEVELOPMENT OF FACILITY
- MANAGEMENT OF FACILITY

STRATEGIES	ACTIONS
DEVELOP A PLAN TO UPGRADE THE FACILITY	<ul style="list-style-type: none"> <li>• TARGET KEY REQUIREMENTS AND PRIORITIZE</li> <li>• DEVELOP A PLAN TO WORK TO.</li> </ul>
TO SOURCE FUNDING TO ASSIST IN THE UPGRADE OF THE FACILITY	<ul style="list-style-type: none"> <li>• RESEARCH AVAILABILITY FROM STATE GOVERNMENT</li> <li>• SEEK FURTHER FUNDING FROM RWWA</li> <li>• MONITOR AND MANAGE THE UPGRADES</li> </ul>
DEVELOP A FACILITY PLAN TO MAINTAIN THE QUALITY OF THE VENUE.	<ul style="list-style-type: none"> <li>• ESTABLISH A FACILITY MANAGEMENT PLAN THAT INCORPORATES:               <ul style="list-style-type: none"> <li>- GROUNDS MAINTENANCE</li> <li>- BUILDING MAINTENANCE</li> </ul> </li> </ul>

**LEASE**

RESERVE

(Part Lot 707 on Plan 217504, Part Reserve 30290)

**SHIRE OF WYNDHAM EAST KIMBERLEY**

("Lessor")

AND

**KUNUNURRA RACE CLUB INC**

("Lessee")

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“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 Facilities,

hereafter constructed, made, erected, installed or situated on the Leased Premises.

“Business Day” means a day other than a Saturday, Sunday or State public holiday in Western Australia.

“CEO” means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease.

“Commencement Date” means the commencement date specified in item 2 of Schedule 1.

“Committee” means the management committee of the Lessee.

“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) and “CPI” has a corresponding meaning. If the CPI is discontinued or in the Lessor’s opinion does not reflect the increase in the cost of living for the City of Perth, the index which will be used will be an index specified by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.

“Council” means the council of the Lessor.

“Current CPI” means the Consumer Price Index number last published before the relevant Rent Review Date.

“End Date” means the date specified in item 3 of Schedule 1.

“Event of Default” means the events specified in clause 18 of this Lease and clause 3.8(a) of the special clauses to this Lease.

“Facilities” means the water supply, drainage, sewerage, plumbing, gas, electrical, telecommunications and data fixtures, fittings and 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.

“Further Term” means each further term specified in item 9 of Schedule 1.

“LAA” means the *Land Administration Act 1997* (WA).

“Land” means the land described in item 4(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 Lessor, and includes, where appropriate, the First Period and the Final Period.

“Leased Premises” means that part of the Land, together with all Buildings and improvements on the Land (if any), as described in Item 4(b) of Schedule 1.

“Lessee's Fixtures” means each fixture and fitting installed by the Lessee in or on the Leased Premises with the Lessor's consent which is not, or is not re-classified as, a Lessor's Fixture in accordance with this Lease, as described in item 13 of Schedule 1.

“Lessee's Obligations” means each covenant, obligation and duty contained or implied in this Lease or required by law to be performed by the Lessee, the Guarantors, or any Authorised Persons.

“Lessee's Rights” means the Lessee's rights under this Lease or implied by law.

“Lessee's Works” means the development of the Leased Premises by the Lessee in accordance with:

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

“Lessor's Chattels” means the furniture in or on the Leased Premises, including those described in item 12 of Schedule 1.

“Lessor's Fixtures” means the Lessor's fixtures and fittings in or on the Leased Premises as described in item 11 of Schedule 1

“Lessor'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 Lessee by the Lessor from time to time.

"Lessor's Rights" means the rights of the Lessor under this Lease or implied by law, including without limitation the benefit of the Lessee's Obligations.

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

"Minister" means the Minister for Lands, a body corporate under section 7 of the LAA.

"Party" means a party to this Lease.

"Plans and Specifications" means all plans, specifications and working drawings in relation to the Lessee's Works as prepared by or on behalf of the Lessee and in the form approved by the Lessor 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.

"Policy" means the Shire of Wyndham East Kimberley's Council Policy Number CP/PMG-3780 "Leasing of Council Managed Reserve Land". This includes any superseding policy or substitute for this policy.

"Previous CPI" means the Consumer Price Index number last published before a date 12 months before the relevant CPI Rent Review Date, or if an actuary is appointed under this Lease to determine an index, the number certified by that actuary.

"Public Building" has the meaning given to it in section 173 of the *Health Act 1911* (WA).

"Rate" means the interest rate specified in item 5 of Schedule 1.

"Rates and Taxes" means:

- (a) local government rates and charges including but not limited to, rubbish removal rates and charges;
- (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; and
- (d) rates, taxes, charges, duties and fees levied, charged, assessed or imposed by a Relevant Authority in respect of any part of the Leased Premises or the ownership or occupation of any part of the Leased Premises, 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 6 of Schedule 1 as reviewed in accordance with this Lease.

“Rent Review Date” means each rent review date as specified in item 7 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, data, electricity, gas, oil, fuel, water or other 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.

“Term” means the term specified in item 8 of Schedule 1 and, where appropriate, any Further Term granted under this Lease.

“Termination” means the expiry of the Term by effluxion of time or by termination in accordance with this Lease.

“Valuer” means a valuer appointed in accordance with clause 16.

“Works Conditions” means in respect of any Maintenance or works carried out by the Lessee, the Lessee must:

- (i) do so:
  - (i) at the Lessee's cost;
  - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Lessor, 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 Lessor's consent in relation to those works;
    - (C) plans and specifications approved by the Lessor;
    - (D) all Requirements and Laws;
  - (v) using a qualified and competent contractor engaged by the Lessee (who has a public liability policy of not less than \$20,000,000.00 and appropriate contract construction risk, workers compensation and other usual insurances, which insurance must note the rights and interest of the Lessor

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

- (ii) ensure that the Lessee 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 Lessor in relation to their conduct in and access to the Leased Premises and when going to and from the 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 Lessor or any other person;
- (iii) if required by the Lessor, 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;
- (iv) 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
- (v) pay on demand to the Lessor:
  - (i) all the reasonable costs of the Lessor in connection with the relevant works including the Lessor's administrative and other reasonable costs of giving consent and the fees of any architect or other consultant used by the Lessor in connection with the relevant works EXCEPT THAT such costs do not include any costs or expenses incurred by the Lessor or entitled to be recovered by the Lessor 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 Lessee or the Lessee'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 (WA)*.

## 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 Lease undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound both jointly and jointly and severally;
- (c) a reference to this Lease includes a reference to any Schedule, recital, part, clause, sub-clause, paragraph or Annexure in or to this Lease, and in or to this Lease 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 under them;
- (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 Lease, 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 Lease 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;
- (t) a reference to “Lessor” is a reference to the Shire of Wyndham East Kimberley only in its capacity as Primary Interest Holder of the Leased Premises and not in its capacity as a Relevant Authority, and separate and distinct from its capacity as a Relevant Authority; and
- (u) covenants implied by Laws are not incorporated in the Lease, unless the relevant Law provides that certain covenants are to be implied and cannot be excluded by agreement.

### 1.3 Performance of Functions by Minister

- (a) All acts and things which the Lessor is required or empowered to do under this Lease is done under section 46 read together with section 18 of the LAA.
- (b) Where pursuant to this Lease payments and rights accrue to the Minister or obligations are imposed on the Minister the same are for the benefit and burden respectively of the Lessor unless the context otherwise requires.

### 1.4 Approval by Minister

- (a) In any case where under this Lease the doing or executing of any act matter or thing by the Lessor is dependent on the approval or consent of the Minister, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the reasonable discretion or Lessor's absolute discretion and may be given subject to such conditions as the Lessor may reasonably determine unless otherwise provided in this Lease.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under clause (a) will constitute a breach of a condition or covenant under this Lease.

### 1.5 Land Administration Act

The Lessor and the Lessee agree that the provisions of:

- (a) the LAA relating to Leases of Crown land granted under section 79 of the LAA apply to the Lessee; and
- (b) this Lease do not in any way affect alter or derogate from the Lessor's or the Minister's rights or powers conferred under the LAA.

## **2. Operative part**

### 2.1 Lease of Leased Premises

In consideration of the Lessee agreeing to duly pay the Rent and other money payable under this Lease and to duly observe and perform the Lessee's Obligations, the Lessor leases the Leased Premises and grants the Lessee's Rights to the Lessee for the Term commencing on the Commencement Date subject to the reservation of the Lessor's Rights under this Lease.

### 2.2 Quiet enjoyment

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

### 2.3 Lessee responsible as if owner

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

### 2.4 Conditions Precedent

- (a) This Lease is subject to and expressly conditional upon:
- (i) the Lessee obtaining all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor ("Development Condition"); and
  - (ii) the Minister approving this Lease under the LAA

- (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;

#### Development Condition

- (ii) the Lessee will bear all the costs associated with satisfying or attempting to satisfy the Development Condition, including but not limited to any application fees; and

- (iii) if any Approval:

(A) is refused; or

(B) granted subject to a condition with which the Lessee in its reasonable opinion is unable to comply with, and the Lessee within twenty-eight (28) days after being notified of the condition elects, by notice in writing to the Lessor, 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 Lessor in its capacity as Relevant Authority

The parties agree and acknowledge that nothing in this Lease shall fetter or be construed as an attempt to fetter the discretion or the powers of the Lessor in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Lessor in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Leased Premises or carrying out of the Lessee's Works in accordance with this Lease.

### 2.6 Lessee Buildings and Fixtures

The parties agree and acknowledge the Lessee has constructed Buildings and Fixtures on the Premises as defined under clause 1.1 and are the asset of the Lessee as described in item 13 of Schedule 1.

### 3. Reservation of Lessor's rights

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

#### 3.1 Improvements to Leased Premises

- (a) The Lessor may at any time carry out improvements to the Leased Premises, including, ~~without limitation~~:
  - (i) construct amenities for use by the public, including public toilets, on the Leased Premises;
  - (ii) construct other new structures on the Leased Premises;
  - (iii) alter, add to, extend, reduce the size of, or otherwise modify, structures on the Leased Premises; and
  - (iv) any other Lessor's Works,
- (b) In exercising the rights in subclause 3.1(a), the Lessor shall:
  - (i) Consult with the Lessee prior to any improvements alterations or construction being carried out; and
  - (ii) use the Lessor's reasonable endeavours not to cause any undue interference with the Authorised Use.

#### 3.2 Right to enter

- (a) The Lessee shall permit the Lessor to enter the Leased Premises at all reasonable times on the giving of reasonable notice, or immediately in the case of emergency, with or without workmen and materials to:
  - (i) view the state of repair of the Leased Premises and to ensure compliance with the Lessee's Obligations;
  - (ii) comply with any requirement or order of any local government or other statutory authority;
  - (iii) carry out any Maintenance, modification, installation or extension to the Leased Premises or the Lessee's Building and Fixtures and the Plant and Equipment or cables, pipes or wires within the Leased Premises or the Lessee's Building and Fixtures; and
  - (iv) view the Leased Premises with any persons interested in the Leased Premises; except that the Lessor shall use the Lessor's reasonable endeavours not to cause any undue interference with the conduct of the Authorised Use;
- (b) the Lessor may enter the Leased Premises at any time for the purpose of doing anything which should have been done by the Lessee under this Lease but which has not been done or has not been done properly; and

- (c) the Lessor's right of entry under this clause 3.2 allows the Lessor 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.

### 3.3 Granting easements etc.

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

### 3.4 Re-classification of fixtures and fittings

Not Applicable

### 3.5 Managing Agent

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

## **4. Rent**

The Lessee must pay the Rent to the Lessor in the manner specified in item 6 of Schedule 1 at the Lessor's address in this Lease or any other address stipulated by the Lessor or by any other method specified by the Lessor, 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 Review on Rent Review Date

- (a) On each scheduled Rent Review Date, the Rent shall be reviewed in the manner set out in the following clauses of this clause 5.

### 5.2 CPI Rent Review

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

**RR = (R x CCPI) divided by PCPI**

Where:

“RR” = the annual Rent as reviewed;

“R” = the annual Rent payable immediately before the relevant Rent Review Date;

“CCPI” = the Current CPI; and

“PCPI” = the Previous CPI.

(b) Determination of Current CPI or Previous CPI

If for the purposes of a rent review, the Consumer Price Index number is not published or, in the opinion of the Lessor 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 Rent Review Date for the purposes of determining Previous CPI, then the Lessor may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

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

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

5.3 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.
- (c) If the Lessor has not given notice of the reviewed annual Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Rent, any necessary adjustment is to be made within twenty eight (28) days of service of the rent review notice.

5.4 Not to cause Rent reduction

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

## **6. Rates and Taxes**

- 6.1 The Lessee must pay to the Lessor within twenty eight (28) days, or if the demand is made to the Lessee by any Relevant Authority then to that authority on demand in full all Rates and Taxes assessed or imposed by any Relevant Authority or other service provider in respect of the Premises.
- 6.2 Except in the case of manifest error, a statement issued by the Lessor under clause 6.1 will be prima facie evidence of the matters stated in that statement.
- 6.3 If the year or other period in respect of which any particular Rate or Tax is payable does not coincide with the Lease year, the amount the Lessee is to pay in the first year and last year of the Lease will be adjusted proportionally.

## **7. Lessee to pay for Services**

### Services separately assessed

- 7.1 The Lessee must pay to the Lessor or, if demand is made by a service provider, or Relevant Authority, to that provider or Relevant Authority, all amounts separately charged or assessed in respect of the Leased Premises or the Lessee for or in connection with Services to or for the benefit of the Leased Premises or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of a Service.

### Bulk supplies Services

- 7.2 If the Lessor supplies any Services to the Leased Premises the Lessee must on demand pay to the Lessor the amount which the Lessee would have been charged by the original service provider, or Relevant Authority if the Services had been supplied to the Lessee directly together with an administrative charge of no more than twenty per cent (20%) of the amount charged by the original service provider, or Relevant Authority.
- 7.3 The Lessee must observe and comply with any conditions of supply of Services by the Lessor, or where no conditions of supply are imposed by the Lessor, observe and comply with the conditions of supply of Services imposed by the service provider or any Relevant Authority.
- 7.4 If any Service is not provided by the Lessor, the Lessee is responsible to make the Lessee's own arrangements at the Lessee's own cost for the supply of the Service to the Leased Premises and all associated Facilities. For the avoidance of doubt, the Lessor is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Leased Premises.

### Services not separately assessed

- 7.5 The Lessee must pay to the Lessor, or as the Lessor directs, the proportion of ninety per cent (90%) of all amounts charged or assessed in respect of the Land for or in connection with Services to or for the benefit of the Land or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of Service.

## **8. Use of Leased Premises and Facilities**

### 8.1 Authorised Use

The Lessee 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, Lessor's Chattels, the Lessee's Building and Fixtures for a purpose for which it was not designed or designated.

#### 8.2 Licenses and Limitations

- (a) The Lessee 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.
- (b) If the carrying on of the Authorised Use at the Leased Premises is permissible only with the consent, licence or authority under any Law, the Lessee shall obtain and maintain the currency of that consent, licence or authority and comply with that Law.
- (c) The Lessee shall not conduct any business in or from the Leased Premises which is prohibited by any Law.
- (d) The Lessee shall not contravene the provisions of the *Associations Incorporation Act 1987* (WA).
- (e) The Lessee agrees to comply with, the Department of Health's *Guidelines for Concerts, Events & Organised Gatherings* (December 2009) including any successor or substitute documents.

#### 8.3 Comply with Directions

The Lessee:

- (a) shall comply with the Lessor's reasonable requirements for the use of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures and Lessor's Chattels;
- (b) shall not do or omit to do anything which might interfere with or impair the efficient supply or operation of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures or Lessor's Chattel;
- (c) in the conduct of the Authorised Use comply strictly with all relevant requirements imposed by any Law or Relevant Authority; and
- (d) shall comply with all rules, regulations, directions and orders made in respect of the Leased Premises by the Lessor.

## 9. Security of Leased Premises

- 9.1 The Lessee shall securely lock all doors, gates or other openings in, to or on the Leased Premises when the Leased Premises are unoccupied.
- 9.2 The Lessor may enter the Leased Premises at any time for any purpose in relation to security, but nothing in this clause makes the Lessor responsible in any way for the security of the Leased Premises.

## 10. Maintenance and Works

### 10.1 Obligation to Maintain

The Lessee shall:

- (a) maintain the Leased Premises in a good condition and state of repair, except in respect of:
- (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of insurance;
- (b) promptly repair any damage to the Leased Premises for which the Lessee is responsible to the satisfaction of the Lessor;
- (c) keep the Leased Premises clean, tidy and free from rubbish;
- (d) maintain the Lessor's Chattels, the Lessor's Fixtures, the Lessee's Building and Fixtures and the Facilities in good condition and where necessary, replace that Lessor's Chattel, Lessor's Fixture, Lessee's Building and Fixtures or Facility to the satisfaction of the Lessor except in respect of:
- (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of an insurance policy;
- (e) not do or omit to do anything which might cause the Leased Premises, the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities 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;
- (f) maintain the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities in clean and good condition;
- (g) not without the Lessor'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 or any fixtures (including any Building);
- (h) keep all drains and other pipes in or connected to the Leased Premises or any fixtures (including any Building) properly cleaned and free-flowing;

- (i) maintain all roads, driveways and access ways on the Leased Premises and keep them free of rubbish and debris and ensure that they are not obstructed.

10.2 Alteration and Substantial Works

The Lessee must not make any alteration to or addition to or demolish any part of the Leased Premises, the Lessor's Fixtures or the Lessee's Building and Fixtures, or remove or alter any of the Lessee's Building and Fixtures, the Lessor's Fixtures, the Lessor's Chattels, the Plant and Equipment or any Facility or Service in or on the Leased Premises without the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority.

10.3 Standard for Maintenance and Works

The Lessee must comply with the Works Conditions in carrying out all Maintenance and any other work which affects the Leased Premises, the Lessee's Building and Fixtures.

10.4 Remove Non-approved Works

(a) The lessee must ensure that within 12 months of execution of the lease, that all structures on the lease site are approved and documented. This may be achieved through:

- (i) Finalisation of required documentation; or
- (ii) Removal of all unauthorised/undocumented structures.

(b) If the Lessee carries out any works, or erects any building or structure, on the Leased Premises which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this Lease, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle -and -remove -any such -works, -building -or -structures -and -the Lessee shall carry out the same in accordance with the Lessor's directions.

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10.5 Structural Maintenance

- (a) The Lessee is responsible for all structural repairs and maintenance of the Lessee's Building and Fixtures in accordance with this Lease; and
- (b) The Lessor is responsible for all structural repairs and maintenance of the Lessor's Fixtures.

**11. Positive covenants**

11.1 Costs and Expenses

The Lessee must pay to the Lessor or as the Lessor directs all the

Lessor's costs, charges and expenses in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Lease;
- (b) any consent, approval or exercise of any right, waiver, variation, release, surrender or discharge in connection with this Lease, including but not limited to all costs and expenses of and incidental to the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA);
- (c) any inspection or report concerning the Leased Premises and the Lessee's Building and Fixtures;
- (d) any breach of the Lessee's Obligations;
- ~~(e)~~ any work done at the request of the Lessee;
- (f) the exercise of attempted exercise of the Lessor's Rights; and
- (g) any action, suit or proceeding to which the Lessor is joined as a party as a result of the Lessee's occupation of the Leased Premises and the Lessee's Building and Fixtures, and

such costs, charges and expenses include, but are not limited to:

- (h) taxes and fees and fines and penalties which may be payable in connection with this Lease;
- (i) all legal costs and expenses on a full indemnity basis; and
- (j) all interest which the Lessor is entitled to claim.

#### 11.2 Reimburse Lessor Expenses

The Lessee shall pay to the Lessor on demand all money paid by the Lessor on behalf of the Lessee in the discharge of any of the Lessee's Obligations.

#### 11.3 Report to Lessor

The Lessee shall report promptly to the Lessor or the Managing Agent in writing:

- (a) all structural damage or defects in the Leased Premises, the Lessee's Building and Fixtures, the Lessor's Fixtures, ~~the Plant and Equipment or the Facilities in or on the Leased Premises~~ of which the Lessee is or ought to be aware;
- ~~(b) any malfunction of any Plant and Equipment or Facility either on the Leased Premises or used by the Lessee;~~
- ~~(e)~~(b) any notice or order received from any court relating to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures; and
- ~~(e)~~(c) any circumstances likely to be a danger or cause any damage or danger to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures or any person in or on the Leased

Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures of which the Lessee is aware.

#### 11.4 Comply with Laws

The Lessee shall comply promptly with all other Laws affecting the Leased Premises, the Lessee's Building and Fixtures or the use of the Leased Premises and the Lessee's Building and Fixtures including any structural work in respect of the Lessee's Works, including the *Health Act 1922 (WA)*, the *Health (Public Buildings) Regulations 1992*, the *Environmental Protection Act 1986 (WA)* and the *Environmental Protection (Noise) Regulations 1997*.

#### 11.5 Interest

The Lessee shall on demand by the Lessor, pay the Lessor 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 5 of Schedule 1 from the due date for payment until the date of actual payment.

### **12. Negative covenants**

The Lessee shall not:

- (a) except for reasonable quantities for normal applications in connection with the use of the Leased Premises and in the carrying out of the Authorised Use, bring onto, store or use any chemical or inflammable substance in or the Leased Premises;
- (b) store goods on or in the Leased Premises other than those necessary in the carrying out of the Authorised Use;
- (c) except as is lawful and necessary and an ordinary incident of carrying out the Authorised Use, 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 Lessor or the owners or occupiers of any nearby properties unless with the prior consent of any Relevant Authority and the Lessor;
- (d) place any rubbish on or in any part of the Leased Premises except in a suitable receptacle;
- (e) burn any rubbish in or on the Leased Premises, unless permitted by law and a necessary and ordinary incident of the Authorised Use; and
- (f) deliver or permit to be delivered goods or materials to or from the Leased Premises except in a manner which causes minimum interference to the Lessor or the owners or occupiers of any nearby properties.

### **13. Lessee's Obligation to effect insurances**

- 13.1 The Lessee shall effect and maintain in the names of the Lessor and the Lessee with an insurance company approved by the Lessor all policies of insurance relating to the Leased Premises, and the Lessee's Building and Fixtures or otherwise as reasonably required by the Lessor from time to time, including policies of insurance in respect of the matters referred to in item 10 of Schedule 1 and the Lessee shall:

- (a) supply to the Lessor 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;
- (b) not without the Lessor's prior consent, alter the terms or conditions of any policy; and
- (c) ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Lessor.

13.2 The Lessee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Lease or in respect of the Leased Premises and the Lessee's Building and Fixtures becoming void or voidable or which might increase the premium on any policy.

#### **14. Indemnities**

##### 14.1 General indemnity

Except to the extent contributed to by the Lessor, the Lessee shall indemnify and keep indemnified the Lessor against all losses, claims, damages, demands, costs and expenses for which the Lessor or the Minister for Lands 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 and the Lessee's Building and Fixtures by the Lessee, an Authorised Person or any other person, except to the extent caused or contributed to by the Lessor or the Minister for Lands;
- (b) resulting from an act or omission of the Lessee; or
- (c) resulting from a notice, claim or demand against the Lessee to do or refrain from doing anything except to the extent that the Lessor or the Minister for Lands 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.

##### 14.2 Nature of indemnity

The obligation of the Lessee to indemnify the Lessor under this Lease and the Minister for Lands or at law is not affected by the obligation of the Lessee to effect insurance and all indemnities shall survive the termination of the Lease.

#### **15. Assignment**

##### 15.1 No assignment

Section 18 of the LAA applies to this Lease and further the Lessee must not assign, mortgage or charge the Lessee's leasehold estate in the Leased Premises, nor sublet, part with possession or dispose of the Leased Premises in any way except where provided in the following provisions of clause 15.

##### 15.2 Property Law Act excluded

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Sections 80 and 82 of the *Property Law Act 1969 (WA)* are excluded.

15.3 Lessor may consent to assignment

The Lessee will not be in breach of the covenant in clause 15.1 in respect of an assignment if the Lessor consents to the assignment. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor 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 Lessee 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 Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed assignee of an assignment of lease prepared by the Lessor's solicitors at the Lessee's cost which contains terms acceptable to the Lessor, including:
  - (i) a covenant by the proposed assignee with the Lessor to pay all Rent and other money payable under this Lease; and
  - (ii) a covenant by the proposed assignee to observe and perform all of the Lessee's Obligations;
- (c) if the proposed assignee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance of all of the Lessee's Obligations including payment of the Rent and other money payable under this Lease;
- (d) the Lessee agrees that the covenants of the assignee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee'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; and
- (e) the Minister consents in writing to the proposed assignment of the Lease pursuant to section 18 of the LAA.

15.4 Lessor may consent to sublease

The Lessee will not be in breach of the covenant in clause 15.1 in respect of a sublease of the whole or part of the Leased Premises and the Lessee's Building and Fixtures if the Lessor consents to the sublease. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
  - (i) the proposed sub lessee 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 sub lessee 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 Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed sub lessee of a sublease approved by the Lessor or the Lessor's solicitors at the Lessee's cost which contains terms consistent in all respects with this Lease and acceptable to the Lessor;
- (c) if the proposed sub lessee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance by the proposed sub lessee of all of the Lessee's Obligations as if the proposed sub lessee were named in this Lease as the Lessee;
- (d) the Lessee agrees that the covenants of the sub lessee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the sublease of the Lease to the proposed sub lessee, particularly on the occurrence of an Event of Default by the proposed sub lessee or any other party; and
- (e) the Minister consents to the proposed sublease of the Leased Premises in accordance with section 18 of the LAA.

#### 15.5 Lessor may consent to charge

- (a) The Lessee will not be in breach of the covenant in clause 15.1 in respect of a charge or mortgage if the Lessee obtains the Lessor's and the Minister for Lands consent to that charge or mortgage.
- (b) The Lessor may consent to, or refuse to give its consent to, a charge or mortgage in its absolute discretion.
- (c) The Minister for Lands may consent to, or refuse to give consent to, a charge or mortgage with absolute discretion.

#### 15.6 Compliance with Acts

The Lessor and the Lessee acknowledge that if in granting its consent to

any assignment or sublease the Lessor has to first comply with or satisfy any obligations or requirements under any Written Law, including but not limited to section 3.58 of the *Local Government Act 1995* (WA) and regulation 30(2)(b) of the *Local Government (Functions and General) Regulations 1996* ("Assignment/Sublease Condition Precedent"), then the Lessor's consent is made expressly conditional upon and subject to satisfaction of the Assignment/Sublease Condition Precedent.

#### 15.7 Requirements before approval

The Lessee agrees that the Lessor and the Minister may, before giving approval under section 18 of the LAA in writing, require such information concerning the transaction for which approval is sought as the Lessor and the Minister specify.

### **16. Damage, Destruction or Resumption**

#### 16.1 Definitions

In this clause 16:

- (a) "Reinstatement Notice" means a notice given by the Lessor to the Lessee of the Lessor'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 Lessee.

#### 16.2 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 Lessee; or
  - (ii) inaccessible having regard to the nature and location of the Leased Premises and the normal means of access to them,

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

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

will subject to clauses 16.2(b) and 16.2(c), according to the nature and extent of the damage or destruction sustained, and the extent to which such destruction interferes with the continued operation of the Lessee's Business, abate in whole or in part as agreed by the Lessor and the Lessee or in the absence of agreement as determined pursuant to clause 16.2(c).

- (b) If clause 16.2(a) applies, then subject to clause 16.2(c) 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 Premises are:
  - (iii) restored;
  - (iv) made fit for the Lessee's occupation and use; and
  - (v) made accessible.
- (c) If the parties cannot agree on the proportion of the abatement pursuant to clause 16.2(a) or the date upon which the abatement should cease pursuant to clause 16.2(b):
  - (i) that proportion of the abatement and / or the date upon which the abatement should cease shall be determined by a Valuer appointed by the president of the Australian Property Institute (WA Division);
  - (ii) the costs of a Valuer appointed under clause 16.2(c)(i) shall be borne equally by the Lessor and the Lessee; and
  - (iii) until any dispute over the proportion of the abatement or the date upon which the abatement should cease has been determined the Lessee will continue to pay all money due pursuant to the Lease less any abatement that the Lessor accepts should be applied.

#### 16.3 Either Party May Terminate

If clause 16.2(a) applies, either party may terminate this Lease by notice to the other unless the Lessor:

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

#### 16.4 Lessee May Terminate

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

#### 16.5 Exceptions

Clauses 16.2, 16.3 and 16.4 will not apply where:

- (a) the damage or destruction was contributed to, or also caused by or arises from any wilful act of the Lessee or an Authorised Person; or

- (b) an insurer under any policy effected under this Lease refuses indemnity or reduces the sum payable under the policy because of any act or default of the Lessee or an Authorised Person.

#### 16.6 Lessor may Terminate

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

#### 16.7 Antecedent Breaches

No liability will attach to either party because of termination of this Lease under this clause 16 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.

#### 16.8 Dispute Resolution

- (a) Each Valuer appointed under clause 16.2 shall:
  - (i) act as an expert and not as an arbitrator; and
  - (ii) provide his or her determination and the reasons for his or her determination of the extent of an abatement and the period of abatement, in writing within ten (10) Business Days of his or her appointment.
- (b) Upon determination of the extent of an abatement and the period of abatement being finally determined then on the date upon which the immediately subsequent instalment of Rent is due and payable under this Lease:
  - (i) the Lessee shall pay the Lessor; or
  - (ii) the Lessor shall refund to the Lessee, as the case requires, the difference between what the Lessee has actually paid pursuant to the Lease from the date of service of the Damage Notice and what the Lessee is determined to have actually been liable to pay after the abatement.

#### 16.9 Lessor Not Obligated to Reinstate

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

#### 16.10 Proceeds of Insurance

If the Leased Premises are damaged or destroyed and the Lease is terminated under this clause 16, the Lessee will have no interest in the insurance proceeds other than those proceeds that relate to the Lessee's Building and Fixtures and contents.

#### 16.11 Resumption of Leased Premises

If the Leased Premises or any part of the Leased Premises is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of the Lessee, this Lease may be terminated without

compensation or other liability by either the Lessor or the Lessee 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.

## **17. Limit of Lessor's liability**

### 17.1 No warranties or representations

The Lessee acknowledges and agrees that:

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

### 17.2 Lessor Not Liable

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor 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 the Leased Premises.

### 17.3 Lessor only liable while Primary Interest Holder

Each Lessor is only liable for any breaches under this Lease occurring while registered as the Primary Interest Holder of the Leased Premises.

### 17.4 Lessee acts at own risk

Unless this Lease provides otherwise, whenever the Lessee is obligated or required by this Lease to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Lessee.

## 18. Default

An Event of Default occurs if:

- (a) the Lessee fails to pay the Rent, the outgoings or other money payable under this Lease for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (b) the Lessee fails to perform any of the Lessee's Obligations other than the payment of moneys referred to in clause 18(a) for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (c) distress is levied or a judgement, order, security or encumbrance is enforced against any property of the Lessee;
- (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 Lessee's property;
- (e) a person is appointed under legislation to investigate or manage any part of the Lessee's affairs;
- (f) the Lessee ceases to carry on the Authorised Use from the Leased Premises;
- (g) where the Lessee is an incorporated association and:
  - (i) an application is made to a court for an order or an order is made that the Lessee be wound up;
  - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Lessee;
  - (iii) except for the purposes of reconstruction or amalgamation, the Lessee 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 Lessee's creditors;
  - (iv) the Lessee resolves to wind itself up or otherwise dissolve itself;
  - (v) the Lessee states that it is insolvent; or
  - (vi) the Lessee takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

## 19. Lessor's powers on default

### 19.1 Lessor's right of possession

On the occurrence of an Event of Default, the Lessor 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.

### 19.2 Lessor may remedy Lessee's default

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- (a) If an Event of Default occurs or the Lessee otherwise fails to perform any of the Lessee's Obligations, the Lessor may without prejudice to the Lessor'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 Lessor was the Lessee, at the Lessee's cost. The Lessee must pay to the Lessor all liabilities incurred by the Lessor 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 Lessor's rights to recover in full all Rent, outgoings and other money payable by the Lessee under the Lease:
  - (i) acceptance of the keys or other access devices for the Leased Premises;
  - (ii) entry to the Leased Premises by the Lessor for the purpose of inspection or for the purpose of showing the Leased Premises to prospective Lessees or to remedy an Event of Default; or
  - (iii) advertising the Leased Premises for re-letting.

#### 19.3 No prejudice of Lessor's rights

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

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

#### 19.4 Exercise of rights by Lessor

The Lessor may exercise the Lessor's rights under this Lease or at law notwithstanding any delay of the Lessor in issuing proceedings or neglect or waiver in respect of any breach of the Lessee'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 Lessee or the continuance of that default.

## **20. Essential terms**

### 20.1 Breach of Essential Terms

- (a) If the Lessee's conduct constitutes a breach of an essential term of this Lease and the Lessor elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation of this Lease, the Lessee shall compensate the Lessor for all loss or damage suffered by reason of or arising from the repudiation.
- (b) Clauses 4 ("Rent"), 5 ("Rent Review"), 6 ("Rates and Taxes"), 8 ("Use of Leased Premises and Facilities"), 10 ("Maintenance and Works"), 13 ("Lessee's Obligations to effect insurances"), 15

("Assignment") and 27 ("Environmental Matters") of this Lease are deemed to be essential terms. This is not an exhaustive list of the essential terms of this Lease.

#### 20.2 Damage for Breach of Essential Terms

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

#### 20.3 Lessor's Entitlement to Damages

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

- (a) if the Lessee abandons or vacates the Leased Premises;
- (b) if the Lessor elects to re-enter the Leased Premises or terminate this Lease;
- (c) if the Lessor accepts the Lessee'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.

#### 20.4 Lessor to Mitigate Damages

- (a) If the Lessee vacates the Leased Premises or if the Lessor accepts the Lessee's repudiation based on the Lessee's breach of an essential term of this Lease and terminates this Lease, the Lessor 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 Lessor has observed the obligation to mitigate damages.
- (c) The Lessor's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of law.

#### 20.5 Calculation of Damages

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

### **21. Termination**

#### 21.1 Yield up Leased Premises

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

#### 21.2 Remove Lessee's Buildings and Fixtures

- (a) At the Termination of the Lease the Lessor is not required to compensate for, or purchase all or any, of the Lessee's Building and Fixtures.
- (b) The Lessor may by notice to the Lessee at any time up to the day that is ten (10) Business Days after the Termination of this Lease provide an offer to purchase the Lessee's Building and Fixtures.
- (c) If the Lessor does not purchase the Lessee's Building and Fixtures the Lessee shall unless the Lessor agrees to the contrary:
  - (i) prior to Termination or on the termination of any period of holding over, remove from the Leased Premises all of the Lessee's Building and Fixtures and other property and any Lessor's Fixtures which the Lessor requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Lessee's property;
  - (ii) comply with the Works Conditions in respect of the removal of those items specified in clause 21.2(a); and
  - (iii) submit details of the proposed removal works for the Lessor'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.

#### 21.3 Making Good of Leased Premises on Termination

Subject to clause 21.2, the Lessee shall, unless the Lessor agrees to the contrary, prior to Termination or on the termination of any period of holding over, make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises.

#### 21.4 Lessor Can Make Good

If the Lessee does not comply with the obligation to make good as set out in clause 21.3, the Lessee shall pay the Lessor within twenty eight (28) days after the Lessor requests payment, any costs reasonably incurred by the Lessor to make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises. The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessee's default.

#### 21.5 Dealing with Lessee's property not removed at Termination

The Lessor has the following rights in respect of the Lessee's property, including Lessee's Building and Fixtures, which are not removed at Termination:

- (a) demolish and dispose of the Lessee's property or remove and store the Lessee's property in an alternative Leased Premises at the Lessee's cost;

(b) to sell or dispose of the Lessee'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 Lessee's property is the absolute property of the Lessor and to deal with the Lessee's property as the Lessor sees fit;

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

(d) the Lessee failing to remove all of the Lessee's property by Termination; or

(e) any claim against the Lessor by any person by reason of the exercise by the Lessor of its rights under this clause 21.5.

#### 21.6 Lessee to continue to pay Rent and outgoings

If the Lessee fails to make good the Leased Premises as specified in clause 21.3, or fails to remove the Lessee's property by Termination, then until the Leased Premises are restored in accordance with this Lease or the Lessor elects to take the absolute property in the Lessee's property left after Termination, the Lessee shall continue to pay the Rent and the outgoings and other money payable as if the Lessee were holding over in the Leased Premises.

#### **22. Option of renewal**

Not used

#### **23. Holding Over**

If after the expiry of the Term the Lessee remains in possession of the Leased Premises with the consent of the Lessor, the Lessee shall be deemed to be a monthly tenant on such of the terms of this Lease as are capable of applying to a monthly tenancy. The Lessee's right to remain in possession of the Leased Premises shall be subject to the continued performance of the Lessee's Obligations.

(a) Subject to clause 23(b), the Rent payable during any period of holding over shall be one hundred and ten percent (110%) of the annual Rent payable immediately prior to the expiry of the Term.

(b) The Lessor may increase the Rent payable during any period of holding over upon giving the Lessee one (1) months' notice in writing.

(c) The monthly tenancy may be terminated by either party giving the other party one (1) months' notice of termination which notice may be given at any time.

#### **24. CEO and Lessor as Attorney**

The Lessee for valuable consideration:

(a) irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally the Lessee's attorney for the purpose of

(i) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and

- (ii) doing anything else the Lessee 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 Lessor in respect of:
  - (i) losses arising from any act done under this clause; and
  - (ii) the Lessor's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause.

## 25. Trustee Provisions

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

- (a) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee'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 Lessor for any default by the Lessee;
- (c) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (d) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

## 26. Special clauses

- 26.1 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.
- 26.2 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.

## 27. Environmental Matters

### 27.1 Lessee's Environmental Covenants

The Lessee must:

- (a) comply with all Environmental Laws including, without limitation, obtaining all necessary permits, authorisations and approvals required for the Lessee to carry out the Authorised Use on the Leased Premises;
- (b) Develop and implement a vegetation management plan for removal of weeds and planting of regionally native plant species, this is to include the removal of weed and pest species including Neem, Leucaena and Calotropis.
- (c) take all practicable precautions to ensure that no Contamination

of the Leased Premises or the Environment in the vicinity of the Leased Premises occurs;

- (d) not discharge into any stormwater drain any trade effluent, Hazardous Material or Waste, other than that which is authorised by the relevant Government Authority;
- (e) immediately notify the Lessor if:
  - (i) a Contamination Event occurs on the Leased Premises; or
  - (ii) an Environmental Notice is served on the Lessee;
- (f) if a Contamination Event occurs and irrespective of whether an Environmental Notice has been served on the Lessee, promptly take all usual and reasonable actions at the Lessee'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;
- (g) at the Lessee's own cost, comply with every Environmental Notice issued in respect of, or arising from, the Lessee's occupation or use of the Leased Premises, whether the notice is served on the Lessor or the Lessee;
- (h) allow the Lessor and its employees and contractors:
  - (i) after receiving reasonable notice from the Lessor, 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
- (i) pay the reasonable costs of any reputable environmental consultant appointed by the Lessor to undertake an inspection from time to time of the Leased Premises to verify the Lessee's compliance with this clause 27.

#### 27.2 Remediate Contamination

- (a) Without limiting the Lessee's obligation under clause 27.1(e), the Lessee 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 Lessee, to the absolute satisfaction of the Lessor.
- (b) Subject to clause 27.2(e), not later than six (6) months before the expiration of the Term, the Lessee must arrange for a reputable environment consultant approved by the Lessor (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 27.2(d), the Lessee must promptly carry out all the works specified in the Remediation Notice to the satisfaction of the Lessor, and at the Lessee's sole cost.
- (d) The Lessee 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 Lessee 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 Lessor prior to the expiration of the Term, the Lessor may:
  - (i) arrange for the investigation of Contamination referred to in clause 27.2(a) and for the preparation of a Remediation Notice (if applicable); and
  - (ii) carry out the works specified in the Remediation Notice, at the Lessee's expense, and the Lessee will indemnify the Lessor under clause 27.3(a).
- (f) For the avoidance of doubt, this clause 27.2 is for the benefit of the Lessor and can only be waived by the Lessor.

#### 27.3 Environmental Indemnity

- (a) Without limiting clause 14 of the Lease the Lessee indemnifies the Lessor and the Lessor's employees in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Lessor is or may become liable in respect of or arising from the Lessee's breach of any of the Lessee's Environmental Covenants.
- (b) Without limiting clause 27.3(a) above, in the event that the Lessee fails to promptly comply with its obligations under clauses 27.1(e), 27.1(f), 27.2(a), 27.2(b) or 27.2(c) the Lessor shall be at liberty to carry out all of the said obligations at the cost of the Lessee, which cost shall be recoverable from the Lessee on demand.

#### 27.4 Event of Default and Essential Term

For the avoidance of doubt, a failure by the Lessee to perform or comply with any of its obligations under this clause 27 is an Event of Default and a breach of an essential term of the Lease.

#### 27.5 Definitions

In this clause 27:

- (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:
- (i) land, air and water;
  - (ii) any layer of the atmosphere;
  - (iii) any organic or inorganic matter and any living organism including humans;
  - (iv) human made or modified structures and areas;
  - (v) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
  - (vi) 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 Laws;
- (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) "Lessee's Environmental Covenants" means the Lessee's obligations under clause 27.1, together and each of them separately;
- (i) "Remediation" includes the investigation, clean up, removal, abatement, disposal, control, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of any Contamination;
- (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; and
- (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.

## 28. Caveats and registration of Lease

### 28.1 Registration

- (a) The Lessee may register this Lease but must not lodge an absolute caveat over the Leased Premises to protect the interest of the Lessee under this Deed and the Lessee must surrender any registered lease and withdraw any caveat lodged by or on behalf of the Lessee over the Leased Premises on Termination of the Lease.

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- (b) In consideration of the Lessor leasing the Leased Premises to the Lessee, the Lessee irrevocably appoints the Lessor and every officer of the Lessor as defined by the *Corporations Act 2001* (Cth) to be attorney of the Lessee, in the name and on behalf of the Lessee, and as the act and deed of the Lessee to sign and lodge at Landgate, Perth, a surrender of lease and a withdrawal of any caveat lodged by or on behalf of the Lessee and not surrendered or withdrawn on Termination of the Lease, and the Lessee;
  - (i) undertakes to ratify all that the attorney does or causes to be done under or by virtue of this subclause; and
  - (ii) indemnifies the Lessor in respect of any loss arising from any act done under or by virtue of this subclause, and the Lessor's costs and expenses of and incidental to the surrendering of the Lease and withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Leased Premises.

**28.2 Lessee must withdraw Caveat and any Registered Encumbrances**

- (a) The Lessee on or before the Termination of the Lease must:
  - (i) withdraw any caveat lodged by the Lessee over the Leased Premises;
  - (ii) discharge any mortgage or other registered encumbrance relating to any liability of the Lessee registered over the Leased Premises;
  - (iii) surrender any registered lease over the Leased Premises;
  - (iv) execute a withdrawal of caveat in a form approved or any other document that may be required to remove any encumbrance on the certificate of title for the Leased Premises, and to execute a deed or surrender of lease in the form approved or any other document that may be required in order to remove any lease or notification of it as an encumbrance on the Certificate of Title for the Leased Premises;
  - (v) if requested by the Lessor, do all things necessary to assist in the cancellation of any qualified title for the Leased Premises.
- (b) The Lessee hereby indemnifies, and shall keep indemnified, the Lessor against all loss or damage suffered by the Lessor as a result of the Lessee's failure to comply with section 28.2(a) on or before termination of the Lease.

**29. Termination for Community Benefit**

- 29.1 The Lessor will reserve the right to terminate the lease if it is decided by the Council that an alternate use of the land may deliver exceptional significant community benefit without the loss of services to the community.

The Council will make every effort to meet the current needs of the lessee through conducting consultation and negotiation to minimise any

disadvantage to the lessee and the community.

- 29.2 Nothing in this clause 29 shall derogate from the Lessee's liability, up until the date of termination specified in the Termination Notice, for payment of the Rent and all other payments due under this Lease as well as the performance or observance of the terms of the Lease on the Lessee's part to be performed up to that date.
- 29.3 The Lessee's Obligations will survive the termination of the Term until they have been fulfilled.
- 29.4 Without derogating from the Lessee's Rights in the case of misrepresentation or fraud by the Lessor or any of the Lessor's officers, employees, agents or contractors, the Lessor will not be liable in any way for loss or injury (including economic loss or loss of profit) sustained by the Tenant or arising from anything referred to in this clause 29. In particular, the exercise by the Landlord of the rights conferred on it by this clause 29 will not constitute a breach of the Lessor's covenant for quiet enjoyment.
- 29.5 The Lessee shall deliver up the Premises to the Lessor at the expiration of the Termination Notice in accordance with the provisions of this Lease within a reasonable timeframe.

### **30. Miscellaneous**

#### 30.1 Lessee not to permit prohibited matters

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

#### 30.2 Cost of Complying with Obligations

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

#### 30.3 Schedules

The Schedules shall form part of this Lease.

#### 30.4 Lessor's consent

The Lessor 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.

#### 30.5 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.

#### 30.6 Time for payment

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

30.7 Time of the essence

Time shall be of the essence in all respects.

30.8 Certificates

A certificate signed by the Lessor or the Lessor'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.

30.9 Exercise of rights by Lessor

The Lessor 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 Lessor 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 Lessor of any breach or non-observance of a Lessee's Obligation and shall not prejudice any other right of the Lessor in relation to such breach.

30.10 Lessor may act by agent

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

30.11 Variation

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

30.12 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:
  - (i) personally; or
  - (ii) by leaving it at, or sending by pre-paid post to:
    - A. the recipient's last known personal address or place of business, in any case;
    - B. the Leased Premises, in the case of the Lessee; or
    - C. the registered office or principal place of business, in

the case of a corporation;

- (iii) by facsimile transmission sent to the recipient's facsimile number (if known);
- (c) will be deemed to be served:
  - (i) if served personally, at the time of handing the notice to the recipient;
  - (ii) if left at the recipient's last known address, last known place of business, the Leased Premises, a registered office or principal place of business, then at the time of leaving the notice;
  - (iii) if sent by pre-paid post, on the second Business Day after the date of posting;
  - (iv) 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);
- (d) if given by the Lessor, may be signed by the Lessor or a solicitor or agent of the Lessor;
- (e) where persons having the same interest in respect of the subject matter of the Lease are to notify any other party or are to be notified, notification to or by anyone of them is sufficient notification to or by all of them.

#### 30.13 No moratorium

The provisions of any Law 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.

#### 30.14 Further assurances

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

#### 30.15 Effect of execution

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

#### 30.16 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.

#### 30.17 Goods and services tax

- (a) In the Lease:  
"GST" means goods and services tax or similar value added tax levied

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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 Lessor and the Lessee agree that the Lessor shall be entitled to charge an additional amount if the Lessor becomes subject to GST as a result of the grant of this Lease or any supply to the Lessee under or in connection with this Lease, and the following provisions shall apply:
  - (i) the Lessee must do everything reasonably requested by the Lessor to ensure this Lease is treated as taxable for the purposes of the GST, the Lessee must pay the GST to the Lessor 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 Lessee must pay to the Lessor on demand any GST charged on goods and services acquired or payable or paid by the Lessor 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;

#### 30.18 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 Lessee's leasehold interest in the Leased Premises.

#### 30.19 Headings

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

#### 30.20 Termination

The Termination of this Lease does not affect the Lessee'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.

### **31. PPSA (Personal Property Securities Act)**

### 31.1 Interpretation

For the purposes of this clause:

- (a) "the Lessor's Personal Property" means all personal property the subject of a security interest granted to or held by the Lessor under the Lease; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

### 31.2 Further assurance

If the Lessor determines that the Lease (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Lessor has the priority required by it; and/or
- (c) enabling the Lessor to exercise rights in connection with the security interest.

### 31.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

### 31.4 Priority of the Lessor's interest

Nothing in the Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (a) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Lease attaches to the relevant collateral.

### 31.5 Enforcement

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) (enforcement methods) sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
- (b) (notices) sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) (rights to remedy) sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

#### 31.6 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor under the Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

#### 31.7 The Lessor's interest remains unaffected

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

31.8 Notices to the Lessor

Without limiting clause 31, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- (a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- (c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.

## SCHEDULE 1

### **Item 1** **Authorised Use**

Authorised Use: Race Course, Recreation and Sporting Club

Reserve Purpose: Race Course, Recreation and Sporting Clubs

### **Item 2** **Commencement Date**

1 January 2017

### **Item 3** **End Date**

31 December 2038

### **Item 4** **Land and Leased Premises**

#### **(a) Land**

Part Lot 707 Drovers Road,  
Part Reserve 30290 on DP217504

#### **(b) Leased Premises**

The Land, together with all Buildings- and improvements on the Land, as depicted and hatched on the plan in "Annexure A" to this Lease

### **Item 5** **Interest Rate**

As adopted though the Shire of Wyndham East Kimberley Adopted budget, to a maximum of Eleven per cent (11%) per annum

### **Item 6** **Rent**

The Rent is five hundred dollars (\$500.00) per annum plus GST, payable in advance on and thereafter on each anniversary of the Commencement Date

### **Item 7** **Rent Review Dates**

The Rent shall be reviewed every three (3) Lease Years.

1 January 2020 1 January 2023 1 January 2026  
1 January 2029 1 January 2032 1 January 2036

### **Item 8** **Term**

The term shall be twenty-one (21) years commencing on the Commencement Date and ending on the End Date.

### **Item 9** **Further Terms**

Not applicable

### **Item 10** **Lessee's Insurance Obligations**

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

- (a) public liability insurance for an amount not less than twenty million dollars (\$20,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Lessor;
- (b) ~~the full insurable~~ reasonable value on a replacement or reinstatement basis of the Lessee's Building and 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 Lessee employed in or about the Leased Premises;
- (d) ~~the full insurable~~ reasonable 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 Lessor and the Department of Lands reasonably requires by notice to the Lessee, on the terms specified in clause 13 of the Lease.

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**Item 11 Lessor's Fixtures**

Nil

**Item 12 Lessor's Chattels**

Nil

**Item 13 Lessee's Buildings and Fixtures**

Need to list buildings and fixtures

## 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 Lease, shall have the same meanings respectively assigned to them in clause 1 of the Lease.

#### 2. Approvals

Should the Lessee wish to undertake any Lessee's Works, the Lessee must obtain all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor.

#### 3. Lessee's Works

##### 3.1 Lessee's Development Covenants

The Lessee must:

- (a) carry out and execute the Lessee'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 Lessor without:
  - (i) the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor 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.

##### 3.2 Access to the Leased Premises

- (a) The Lessee is entitled to take possession of the Leased Premises and to enter upon the Leased Premises and commence the Lessee's Works from and including the Commencement Date PROVIDED:
  - (i) the Lease has been executed by the Lessee and the Lessor and all other consenting parties; and
  - (ii) the Conditions Precedents have been satisfied.
- (b) For the avoidance of doubt, the Lessee is obliged to pay full Rent, outgoings and all other money payable under the Lease from the Commencement Date regardless of whether the Lessee has

commenced or completed the Lessee's Works or whether the Lessee can operate the Authorised Use from the Leased Premises.

- (c) Notwithstanding clause 3.2(a) of this Schedule, should the Lessee commence the Lessee's Works prior to the satisfaction of any Conditions Precedent, whether with or without the Lessor's prior consent, the Lessee does so at its own risk and shall have no claim against the Lessor in the event that any of the Conditions Precedent are thereafter not satisfied.

### 3.3 Facilities for Lessee's Contractors

The Lessee and the Lessee's contractors must provide and, as necessary, negotiate with the Lessor 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 Lessee or its contractors may require, and must pay to the Lessor on demand any expenses which the Lessor may thereby incur.

### 3.4 Lessee Responsible for Damage

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

### 3.5 Lessee's Insurance

- (a) Prior to the commencement of the Lessee's Works (or any associated or incidental works on the Leased Premises), the Lessee must have:
  - (i) procured the insurance policies referred to in item 10 of Schedule 1; and
  - (ii) otherwise complied with the terms of clause 13 of the Lease in respect of those insurance policies.
- (b) For the avoidance of doubt and notwithstanding or limiting clause 13 or item 10 of Schedule 1 of the Lease, the Lessee must, prior to the commencement of any Lessee'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 Lessee's Works, throughout the Lessee's Works Period insure against any liability, loss, claim or proceeding whatsoever arising by virtue of any Laws relating to workers' compensation or employer's liability, by any person employed in or about the execution of the Lessee's Works and shall also insure for the Lessee's and its contractors' common law liability to all such persons for such amount as shall be nominated by the Lessor; and
  - (ii) ensure that the insurance policy referred to in item 10(b) of

Schedule 1 insures the Lessee'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 Lessee's Works.

### 3.6 Assumption of Risk by Lessee

The Parties expressly acknowledge and agree that:

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

### 3.7 Property in Works

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

### 3.8 Default

- (a) For the avoidance of doubt, a failure by the Lessee 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 ("Development Default").
- (b) Without prejudice to any other rights or remedies available to the Lessor, if the Lessor terminates this Lease pursuant to clause 19 on the occurrence of a Development Default:
  - (i) the Lessee shall, unless otherwise directed by the Lessor, within sixty (60) days from the date upon which the Lessor terminates the Lease remove from the Leased Premises the Lessee's Works in compliance with the Works Conditions and

make good the Leased Premises to the satisfaction of the Lessor;

- (ii) the termination of the Lease shall be without prejudice to the obligations of the Lessee to pay the Lessor any moneys which shall be due and owing as at the date on which the Lessor terminates the Lease; and
  - (iii) the Lessee shall pay to the Lessor on demand all costs and expenses incurred by the Lessor as a consequence of the Lessee's Development Default and in the exercise of the rights of the Lessor under this clause 3.8.
- (c) Should the Lessee not comply with its obligation under clause 3.8(b)(i) above the Lessor shall be at liberty to exercise any of the rights conferred on the Lessor pursuant to clause 21.5 of the Lease.
- (d) Until the Leased Premises are restored in accordance with the Lease (whether by the Lessee or the Lessor) or until the Lessor elects to take the absolute property in the Lessee's property (which includes the Lessee's Building and Fixtures) left after termination, the Lessee shall continue to pay the Rent, outgoings and all other payments pursuant to this Lease as if the Lessee were holding over in the Leased Premises.

### 3.9 Indemnity

Without limiting the generality of clause 14 of the Lease, the Lessee indemnifies the Lessor and the Lessor's employees against all claims, demands, loss, damage, costs and expenses of every description which the Lessor may suffer or incur in connection with or arising directly or indirectly from the Lessee's entry upon and occupation of the Leased Premises for the purpose of the Lessee's Works or the construction, installation or carrying out the Lessee's Works (whether undertaken by the Lessee or the Lessor or any contractor on behalf of or at the direction of either the Lessee or the Lessor).

### 3.10 Definitions

For the purpose of this clause 3:

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

## 4. **Hire of Leased Premises to third parties**

4.1 The Lessee may hire out the Leased Premises or any part thereof on a casual basis only, provided:

- (a) such use is consistent at all times with the Authorised Use and

relevant legislation;

- (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease;
  - (c) the Lessee registers the Leased Premises as a "Public Building" with the Relevant Authority within five (5) Business Days of executing this Lease;
  - (d) the Lessee ensures the hirer observes, performs and complies with all relevant legislation; and
  - (e) compiles regular risk management plans in accordance with Australian Standards.
- 4.2 For the purposes of this Lease, "casual hire" means any hire of the Leased Premises by the Lessee to a third party for a period of and not more than 48 hours in any calendar month and does not include any formal transfer, assignment or sublease of the Leased Premises.
- 4.3 The Lessee acknowledges and agrees that at all times, including when the Leased Premises are hired to a third party, it remains responsible for the Leased Premises, including without limitation any damages that may be caused or occurs during any hire period.

**SCHEDULE THREE:**

**Licences: Access Roads ~~and~~, Designated Fenced Area, ~~and Campground~~**

1. **Definitions**

(a) In this Schedule:

**Access Roads** the designated access roads as depicted on the plan attached as Annexure B being part of lot 707 on Deposited Plan 217504

~~**Campground** is the designated space as depicted on the plan attached as Annexure C being part of lot 707 on Deposited Plan 217504~~

**Designated Fenced Area** the Fenced Area as depicted on the plan attached as Annexure ~~C~~**D** being part of lot 707 on Deposited Plan 217504

**Authorised Person** has the same meaning in this Schedule as it has in the balance of the Lease;

**Licence** means the Access Roads, ~~and~~ Fenced Area, ~~and Campground~~ Licence created under this Schedule.

2. **Operative Part**

(a) In consideration of the Lessee entering into the Lease and observing the Lessee's Covenants, the Lessor grants the Lessee:

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(i) a non-exclusive right to use the access roads; and

~~(ii) a non-exclusive right to use of the campground where this is in directly relation to an event held by the lessee. It is not a requirement that the lessee use this area for all camping, the Club may apply for a temporary camp ground permit for camping on their lease site. The lessee must comply with all relevant legislation and Shire Policies.~~

~~(ii) a right to exclusive use of the designated fenced area for a six-week period each year in alignment with scheduled race club events and preparation. Notification of the dates of this use must be made in writing to the Lessor and Kununurra Bushmen's Rodeo Association no less than 8 weeks from the date of use.~~

~~(iii) (iii) a right to non-exclusive use of the designated fenced area at times other than a two-week period each year where the Kununurra Rodeo Association are provided with exclusive use in alignment with their scheduled events. Any use outside the Rodeo Association exclusive use period is to be arranged in consultation with the Kununurra Rodeo Association with reasonable notice provided. Support for this use is not to be unreasonably withheld.~~

~~an exclusive right to use of the Designated Fenced Area other than for a two-week period each year in alignment with scheduled rodeo events (Rodeo Association will have exclusive use during this period).  
1. Notification of the dates of the Rodeo Association use will be made in writing to the Lessor and Kununurra Race Club no less than 3 months from the date of use.~~

~~The lessee may permit other organisations to use the designated fenced area where appropriate, this permission is to be documented and in accordance with the lease clauses of section 3 of schedule 3.~~

- (b) The Lessee must at all reasonable times allow general public access to the Access Roads ~~and Campground~~ and accordingly may not permit any development or install any fence, gate or barricade preventing such access.
- (d) This Licence continues for so long as the Lessee remains the Lessee under the Lease.
- (e) This Licence does not confer upon the Lessee any estate or proprietary interest in any part of the Access Roads, ~~Campground~~ or Designated Fenced Area
- (f) The legal possession and control of the Access Roads, ~~Campground~~ and Designated Fenced Area remains vested in the Lessor.
- (g) This license does not confer upon the lessee any responsibility for the development, upkeep or maintenance of the access roads ~~or the campground~~.

### 3. **Incorporation of Lease Clauses**

The following clauses and/or schedules contained in the Lease shall be incorporated into this Licence as if they were set out herein in full except that any reference to Premises shall mean and be a reference to the Access Roads ~~and Campground~~.

- |    |   |   |
|----|---|---|
| a) | <u>Clause 3</u>   | <u>Reservation of lessors rights</u>            |
| b) | <u>Clause 8</u>   | <u>Use of leased premises and facilities</u>    |
| c) | <u>Clause 10:</u><br><u>10.1, items b, e, h, and i</u><br><u>10.2</u><br><u>10.3</u><br><u>10.5</u> | <u>Obligation to maintain</u>                   |
| d) | <u>Clause 11</u>  | <u>Positive Covenants</u>                       |
| e) | <u>Clause 12</u>  | <u>Negative Covenants</u>                       |
| f) | <u>Clause 13</u>  | <u>Lessee's obligation to effect insurances</u> |
| g) | <u>Clause 14</u>  | <u>Indemnification</u>                          |
| h) | <u>Clause 15</u>  | <u>Assignment</u>                               |
| i) | <u>Clause 16</u>  | <u>Damage, destruction or resumption</u>        |

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j)	<u>Clause 17</u>	<u>Limit of lessors liability</u>
k)	<u>Clause 21</u>	<u>Termination</u>
l)	<u>Clause 27</u>	<u>Environmental matters</u>
	<u>27.1 items a, c, d, e, f, g, i</u>	
	<u>27.2 items a, c, d, e, f</u>	
	<u>27.3</u>	
	<u>27.4</u>	
	<u>27.5</u>	
m)	<u>Clause 30</u>	<u>Miscellaneous</u>
n)	<u>Schedule 2, item 1</u>	<u>Interpretation</u>
o)	<u>Schedule 2, item 2</u>	<u>Approvals</u>
p)	<u>Schedule 2, item 3</u>	<u>Lessee's works</u>

- (a) ~~Clause 11 Lessee to maintain Premises and Improvements~~
- (b) ~~Clause 12 Maintenance of Lessor's fixtures~~
- (c) ~~Clause 13 Use of the Premises~~
- (d) ~~Clause 14 Miscellaneous Restrictions on Use~~
- (e) ~~Clause 15 Inflammable Substances~~
- (f) ~~Clause 16 Advertisements or Notices~~
- (g) ~~Clause 18 Easements~~
- (h) ~~Clause 20 Plant and Equipment Fixtures~~
- (i) ~~Clause 21 Insurance~~
- (j) ~~Clause 22 Lessee's Indemnities~~
- (k) ~~Clause 24 Report to Lessee~~
- (l) ~~Clause 26 Not to impede Exercise of Lessor's Rights~~
- (m) ~~Clause 27 Compliance with Statutes~~
- (n) ~~Clause 32 The Improvements on Termination~~
- (o) ~~Clause 34 Removal of Lessee's Fixtures~~
- (p) ~~Clause 39 Consents~~
- (q) ~~Clause 40 Act by Agents~~
- (r) ~~Clause 41 Lessee Liable for Authorised Persons~~
- (s) ~~Clause 42 Notice~~
- (t) ~~Clause 54 Goods and Services Tax~~
- (u) ~~Schedule 2 Special conditions~~

4. **Termination**

- (a) This Licence terminates when the Lease terminates unless this Licence terminates earlier under clause 4(b).
- (b) The Lessor is entitled to immediately terminate this Licence by notice to the Lessee if the Lessee:
  - (i) ceases to be the Lessee under the Lease;
  - (ii) vacates the Premises it occupies under the Lease; or

- (iii) fails to observe the Lessee's Covenants or fails to comply in any other way with this Licence.

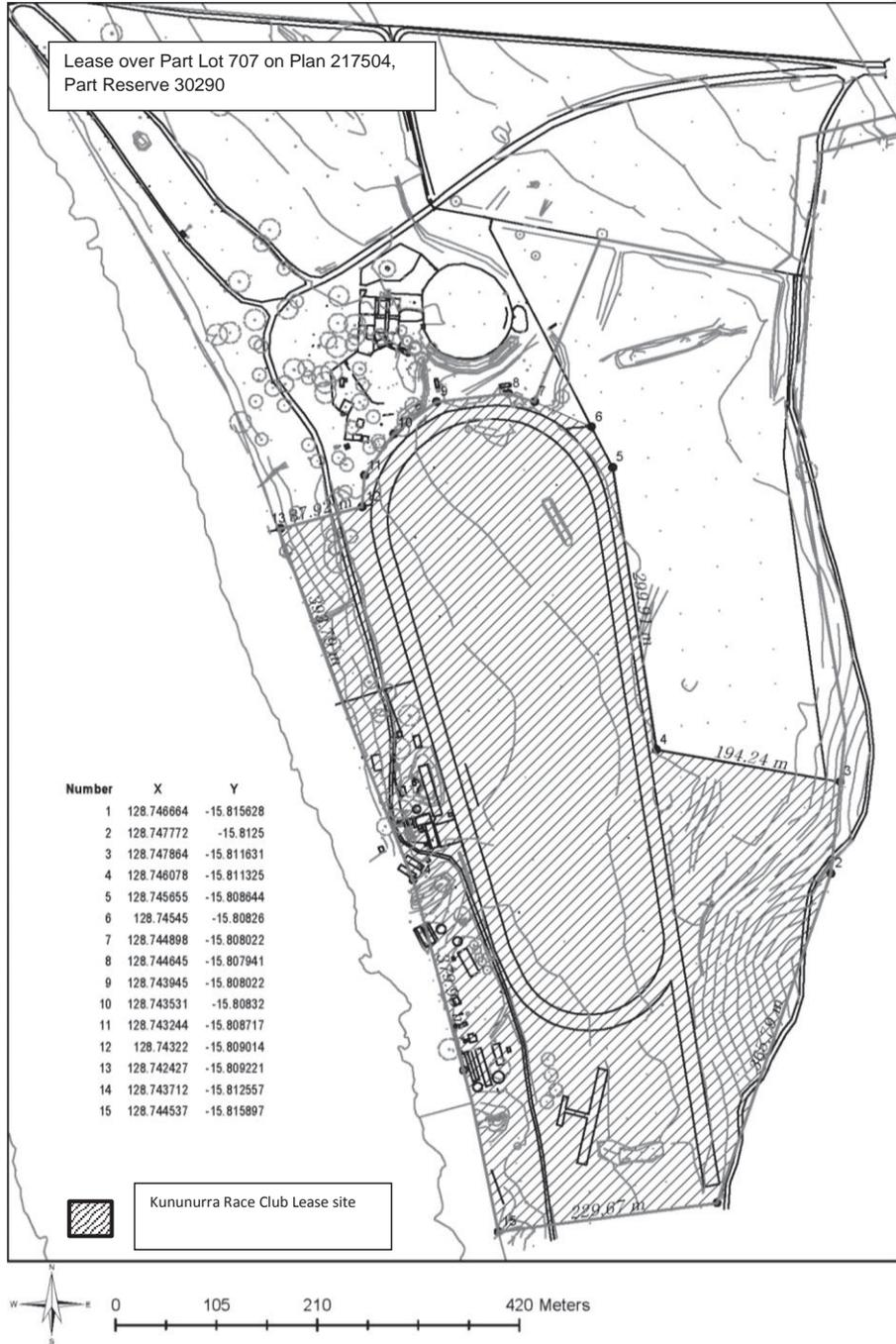
5. **No Assignment**

The Lessee must not assign, mortgage or charge the Lessee's rights under this Licence, nor sub-licence, part with possession or dispose of its rights in any way unless it is in conjunction with the assignment or subletting of the Premises leased by the Lease.

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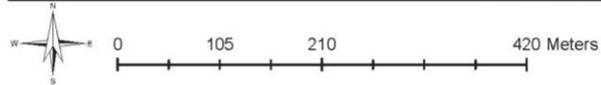


**ANNEXURE A – LEASE PLAN**





ANNEXURE B – ACCESS ROAD LICENCE AREA



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**Access Road Coordinates**

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Number	X	Y
1	128.7481	-15.8048
2	128.7464	-15.805
3	128.7452	-15.8053
4	128.7439	-15.8061
5	128.7431	-15.8067
6	128.7428	-15.8068
7	128.7426	-15.8068
8	128.7422	-15.8064
9	128.7418	-15.806
10	128.7415	-15.8056
11	128.741	-15.8051
12	128.7404	-15.8045
13	128.74	-15.8042
14	128.7399	-15.8042
15	128.741	-15.8051
16	128.7414	-15.8056
17	128.7418	-15.8062
18	128.7422	-15.8064
19	128.7423	-15.8066
20	128.7426	-15.8069
21	128.7424	-15.807
22	128.7423	-15.807
23	128.742	-15.807
24	128.7413	-15.8063
25	128.7411	-15.8058
26	128.7407	-15.8053
27	128.7403	-15.8049
28	128.7401	-15.8046
29	128.7398	-15.8042
30	128.7398	-15.8042
31	128.7403	-15.805
32	128.7406	-15.8054
33	128.7411	-15.806
34	128.7409	-15.8061
35	128.7409	-15.8062
36	128.7411	-15.8061
37	128.7414	-15.8064

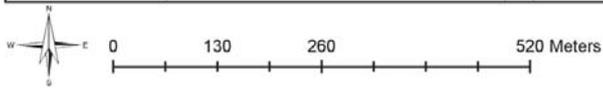
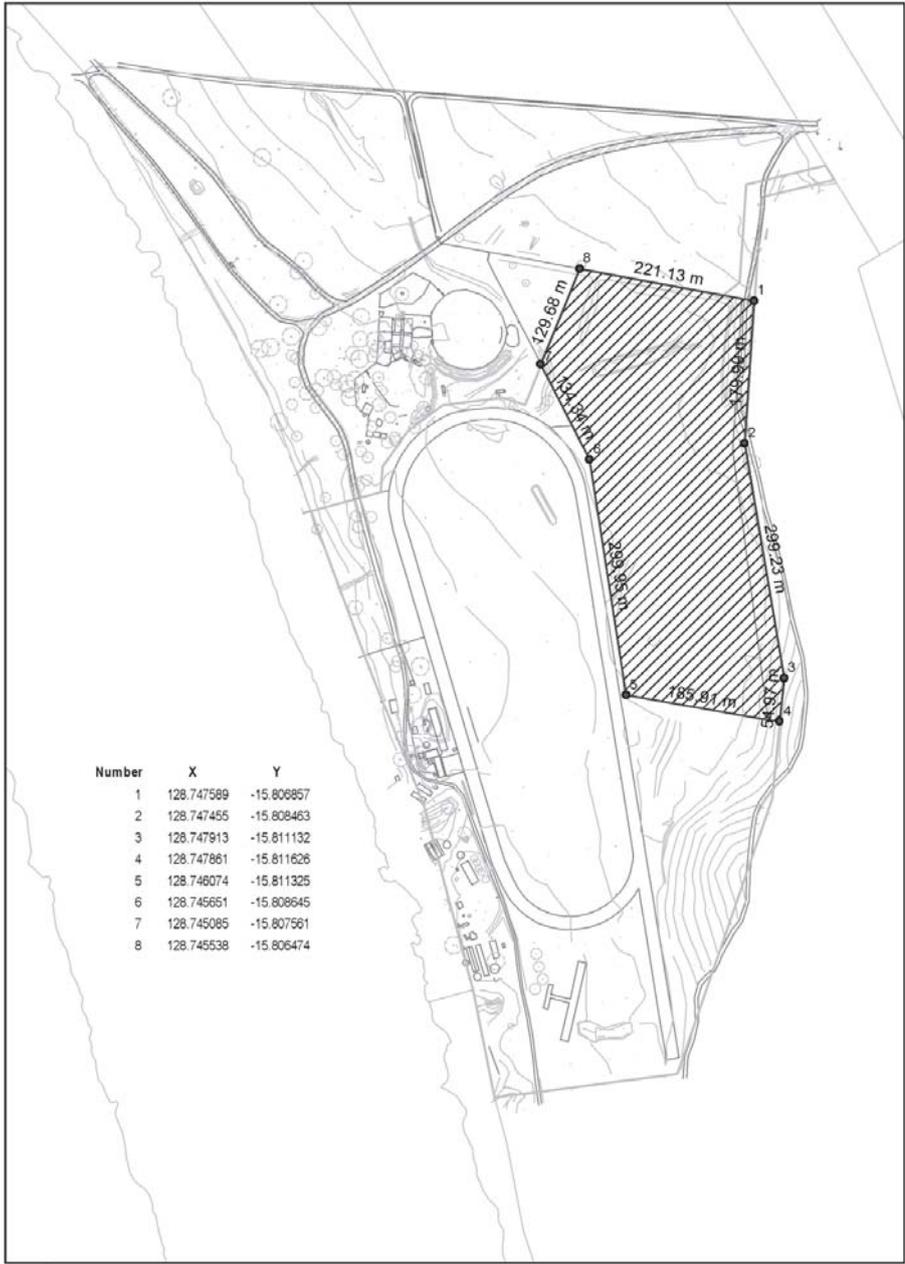
38	128.7417	-15.8067
39	128.742	-15.8071
40	128.7423	-15.8071
41	128.7422	-15.8075
42	128.7425	-15.808
43	128.7427	-15.8083
44	128.7428	-15.8085
45	128.7428	-15.8089
46	128.7429	-15.8091
47	128.743	-15.809
48	128.7429	-15.8087
49	128.7429	-15.8085
50	128.7428	-15.8082
51	128.7425	-15.8079
52	128.7423	-15.8076
53	128.7424	-15.8071
54	128.7429	-15.8069
55	128.7437	-15.8063
56	128.7446	-15.8057
57	128.7452	-15.8053
58	128.7463	-15.8051
59	128.7471	-15.805
60	128.7478	-15.8049
61	128.7479	-15.805
62	128.7478	-15.8052
63	128.7477	-15.8055
64	128.7476	-15.8058
65	128.7476	-15.8063
66	128.7474	-15.8068
67	128.7475	-15.8068
68	128.7476	-15.8062
69	128.7477	-15.8059
70	128.7477	-15.8056
71	128.7477	-15.8054
72	128.7479	-15.8052
73	128.7481	-15.805
74	128.7482	-15.8049

**~~ANNEXURE C – CAMPGROUND LICENCE AREA~~**

**~~ANNEXURE D-C – DESIGNATED FENCED AREA~~**

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#### 12.3.4 Community Lease - Kimberley Action Sports Inc.

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Wayne Richards, Manager Community Services
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>ASSESSMENT NO:</b>	A2859
<b>FILE NO:</b>	CP.07.25
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

**That Council authorises the Chief Executive Officer to offer Kimberley Action Sports a 10 year lease for a portion of Reserve 30290, Lot 707 Drovers Road, Kununurra as detailed in Attachment 2, subject to Minister of Lands approval.**

#### **COUNCIL DECISION**

**Minute No: 20/12/2016-11562**

**Commissioner resolved:**

**That Council authorises the Chief Executive Officer to offer Kimberley Action Sports a 10 year lease for a portion of Reserve 30290, Lot 707 Drovers Road, Kununurra as detailed in Attachment 2, subject to Minister of Lands approval.**

**Carried 1/0**

#### **PURPOSE**

For Council to offer a lease to Kimberley Action Sports Incorporated (KASI) for the portion of Reserve 30290 as depicted in Attachment 1, for a period of 10 years.

#### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Provider - provide physical infrastructure and essential services

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

An application for a lease from Kimberley Action Sports Incorporated was received on 24 June 2015. The proposal seeks the use of a portion of Lot 707 Drovers Road Kununurra for the purpose of constructing a bike track, as well as stating that they are interested in working on shared facilities with other organisations within close proximity. The leased area is within the area previously leased to the Kununurra Race Club, Reserve 30290 (currently a tenant at will over this area). In addition to the lease site it should be noted that the draft lease includes a licence for the use of the access roads and campgrounds within Reserve 30290. A map of Reserve 30290 is provided for reference (Attachment 1).

A draft lease, excluding mapping of the lease site, was provided on 10 February 2016 and approval from KASI received in March 2016. Since the date of KASI approval this process has been on hold as it was believed that as the Kununurra Race Club currently have responsibility for this land as a tenant at will, the KRC Lease needed to proceed first. Officers have since been informed that this lease may proceed prior to the finalisation of the Race Club Lease.

Kununurra Race Club have advised that they have no objections to this area being leased to Kimberley Action Sports prior to the finalisation of their lease should the Race Club lease be delayed. Department of Lands have advised that they do not believe there will be an issue with this course of action.

## **STATUTORY IMPLICATIONS**

### Local Government Act 1995

Under section 3.58 of the *Local Government Act 1995* (LGA), the leasing of land is included as a form of disposal of property and is required to be undertaken in accordance with this section of the LGA.

However, there are exemptions from the requirements outlined in regulation 30 of the *Local Government (Functions & General) Regulations 1996*, which states that a disposition of land is an exempt disposition if –

- “(i) the land is disposed of to a body, whether incorporated or not -
- (ii) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
- (iii) the members of which are not entitled or permitted to receive any pecuniary profit from the body’s transactions.”

As such, a lease to Kimberley Action Sports Inc. is considered an exempt disposition and the Shire can directly enter into a lease negotiation.

### Land Administration Act 1997

Reserve 30290 was previously reserved under the *Land Administration Act 1997* (LAA) for the purpose of 'Recreation (Race Course and Pony Club)'. Given the request to provide a leased area for Kimberley Actions Sports, Officers submitted a request to the Department of Lands to change the Reserve Purpose to "Racecourse, Recreation and Sporting Clubs". The Shire received confirmation of this amendment on 24 May 2016.

### **POLICY IMPLICATIONS**

The Lease has been drafted in accordance with Council Policy CP/PMG 3780 Leasing of Council Managed Reserve Land - Community.

### **FINANCIAL IMPLICATIONS**

The lease fee will commence at \$500.00 per annum.

All costs associated with the development of the Agreement for Lease will be on costed to the Lessee.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 3: Protection and enhancement of lifestyle values, community facilities and the environment to provide safe and inviting communities.

Objective 3.5: An active outdoor lifestyle is encouraged and promoted

Strategy 3.5.2 : Encourage cooperation between sporting groups and assist them in building capacity

### **RISK IMPLICATIONS**

Non-compliance with Department of Local Government advisory standards and regulations

### **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and includes:

Ongoing communication with Kimberley Action Sports Incorporated and other organisations located on Reserve 30290.

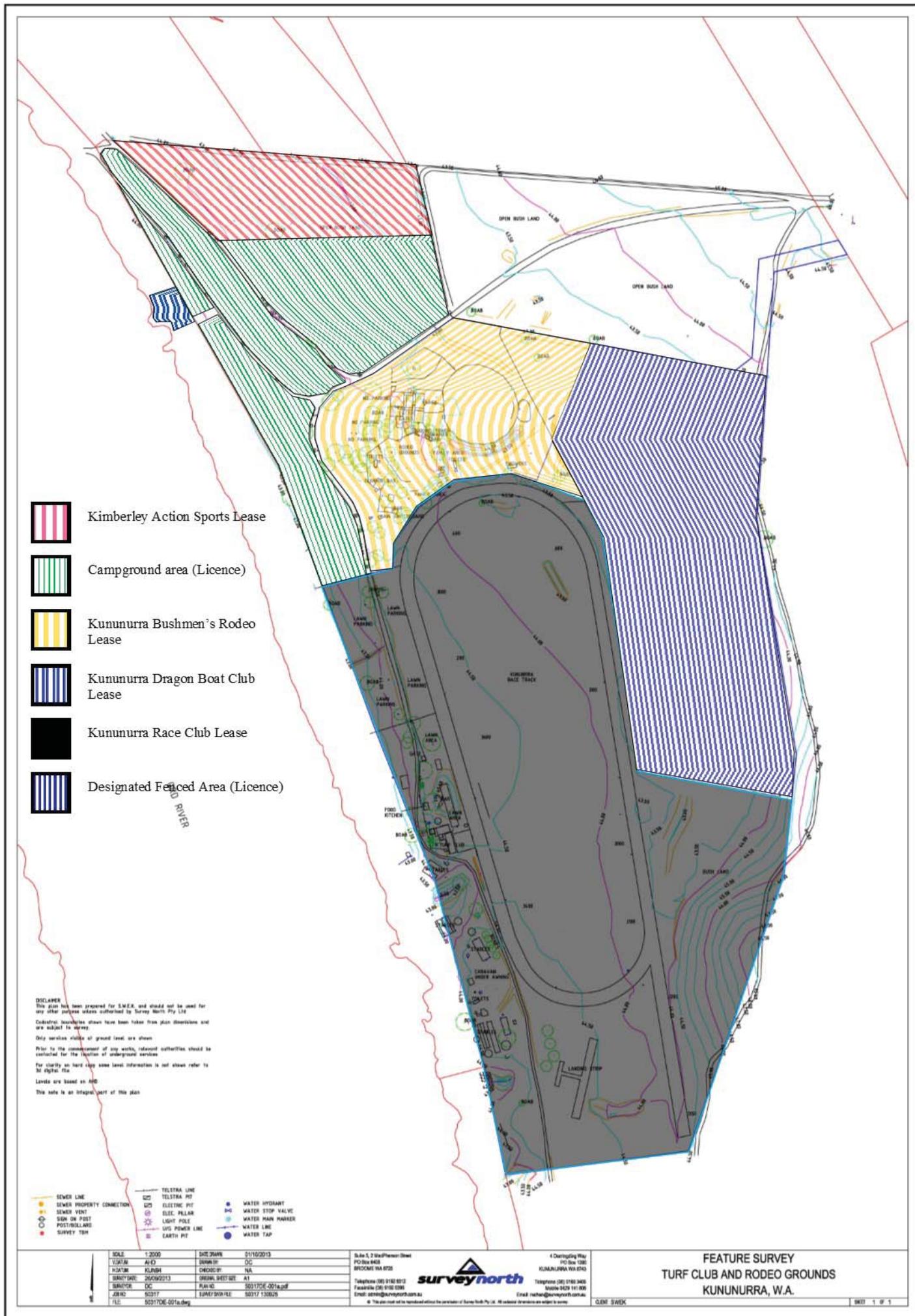
## **COMMENTS**

The Draft Lease is attached (refer Attachment 2). Amendments made to the generic community lease template have been highlighted. Once endorsed by Council the lease will be forwarded to the Department of Lands for Section 18 Approval. Upon receipt of approval the lease will be forwarded to Kimberley Action Sports Incorporated for execution.

## **ATTACHMENTS**

Attachment 1 - Map of Reserve 30290

Attachment 2 - Draft Lease for Portion of Reserve 30290 - Kimberley Action Sports



**LEASE**

RESERVE

(Part Lot -707 Part Reserve 30290 on Plan 217504)

**SHIRE OF WYNDHAM EAST KIMBERLEY**

("Lessor")

AND

**KIMBERLEY ACTION SPORTS INC**

("Lessee")

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THIS DEED is made                    day of                    2016

**BETWEEN:**

**SHIRE OF WYNDHAM EAST KIMBERLEY** of PO Box 614, Kununurra, Western Australia  
(Lessor)

AND

**KIMBERLEY ACTION SPORTS INC. ABN 97 186 507 923** of PO Box 1984,–Kununurra,  
Western Australia  
(Lessee)

**WHEREAS:**

- A. The Land is reserved to the Crown and has been placed under the care, management and control of the Lessor by the Minister for Lands with power to lease for a term not exceeding 21 years, subject to the consent of the Minister.
- B. The Land is part of Reserve 30290 known as Lot 707 on Plan 217504, Drovers Road, Kununurra and the Leased Premises forms part of the Land as depicted and hatched on the plan in "Attachment A" to this Lease
- C. The Lessor has agreed, subject to the Minister's consent, to grant the Lessee a lease of the Leased Premises in accordance with the terms and conditions contained in this Lease.
- D. The Minister for Lands indicates its approval of this Lease by endorsing its consent.

**THE PARTIES COVENANT AND AGREE AS FOLLOWS:**

**1. Definitions and Interpretation**

In this Lease, unless such an interpretation is excluded by or contrary to the context:

1.1 Definitions

The following terms are defined:

"Amounts Payable" means the Rent and any other money payable by the Lessee under this Lease.

"Approvals" means all permits, licences, approvals and consents necessary for carrying out the Lessee's Works, including but not limited to planning approval and a building permit.

"Authorised Person" means:

- (a) an agent, employee, licensee, contractor or invitee of the Lessee;
- (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 Lessee

"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 Facilities,

hereafter constructed, made, erected, installed or situated on the Leased Premises.

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

"CEO" means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease.

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

"Committee" means the management committee of the Lessee.

"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) and "CPI" has a corresponding meaning. If the CPI is discontinued or in the Lessor's opinion does not reflect the increase in the cost of living for the City of Perth, the index which will be used will be an index specified by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.

"Council" means the council of the Lessor.

"Current CPI" means the Consumer Price Index number last published before the relevant Rent Review Date.

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

"Event of Default" means the events specified in clause 18 of this Lease and clause 3.8(a) of the special clauses to this Lease.

"Facilities" means the water supply, drainage, sewerage, plumbing, gas, electrical, telecommunications and data fixtures, fittings and 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.

“Further Term” means each further term specified in item 9 of Schedule 1.

“LAA” means the *Land Administration Act 1997* (WA).

“Land” means the land described in item 4(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 Lessor, and includes, where appropriate, the First Period and the Final Period.

“Leased Premises” means that part of the Land, together with all Buildings and improvements on the Land (if any), as described in Item 4(b) of Schedule 1.

“Lessee's Fixtures” means each fixture and fitting installed by the Lessee in or on the Leased Premises with the Lessor's consent which is not, or is not re-classified as, a Lessor's Fixture in accordance with this Lease, as described in item 13 of Schedule 1.

“Lessee's Obligations” means each covenant, obligation and duty contained or implied in this Lease or required by law to be performed by the Lessee, the Guarantors, or any Authorised Persons.

“Lessee's Rights” means the Lessee's rights under this Lease or implied by law.

“Lessee's Works” means the development of the Leased Premises by the Lessee in accordance with:

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

“Lessor's Chattels” means the furniture in or on the Leased Premises, including those described in item 12 of Schedule 1.

“Lessor's Fixtures” means the Lessor's fixtures and fittings in or on the Leased Premises as described in item 11 of Schedule 1

“Lessor'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 Lessee by the Lessor from time to time.

"Lessor's Rights" means the rights of the Lessor under this Lease or implied by law, including without limitation the benefit of the Lessee's Obligations.

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

"Minister" means the Minister for Lands, a body corporate under section 7 of the LAA.

"Party" means a party to this Lease.

"Plans and Specifications" means all plans, specifications and working drawings in relation to the Lessee's Works as prepared by or on behalf of the Lessee and in the form approved by the Lessor 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.

"Policy" means the Shire of Wyndham East Kimberley's Council Policy Number CP/PMG-3780 "Leasing of Council Managed Reserve Land". This includes any superseding policy or substitute for this policy.

"Previous CPI" means the Consumer Price Index number last published before a date 12 months before the relevant CPI Rent Review Date, or if an actuary is appointed under this Lease to determine an index, the number certified by that actuary.

"Public Building" has the meaning given to it in section 173 of the *Health Act 1911* (WA).

"Rate" means the interest rate specified in item 5 of Schedule 1.

"Rates and Taxes" means:

- (a) local government rates and charges including but not limited to, rubbish removal rates and charges;
- (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; and
- (d) rates, taxes, charges, duties and fees levied, charged, assessed or imposed by a Relevant Authority in respect of any part of the Leased Premises or the ownership or occupation of any part of the Leased Premises, 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 6 of Schedule 1 as reviewed in accordance with this Lease.

“Rent Review Date” means each rent review date as specified in item 7 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, data, electricity, gas, oil, fuel, water or other 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.

“Term” means the term specified in item 8 of Schedule 1 and, where appropriate, any Further Term granted under this Lease.

“Termination” means the expiry of the Term by effluxion of time or by termination in accordance with this Lease.

“Valuer” means a valuer appointed in accordance with clause 16.

“Works Conditions” means in respect of any Maintenance or works carried out by the Lessee, the Lessee must:

- (i) do so:
  - (i) at the Lessee's cost;
  - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Lessor, 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 Lessor's consent in relation to those works;
    - (C) plans and specifications approved by the Lessor;
    - (D) all Requirements and Laws;
  - (v) using a qualified and competent contractor engaged by the Lessee (who has a public liability policy of not less than \$20,000,000.00 and appropriate contract construction risk, workers compensation and other usual insurances, which insurance must note the rights and interest of the Lessor

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

- (ii) ensure that the Lessee 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 Lessor in relation to their conduct in and access to the Leased Premises and when going to and from the 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 Lessor or any other person;
- (iii) if required by the Lessor, 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;
- (iv) 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
- (v) pay on demand to the Lessor:
  - (i) all the reasonable costs of the Lessor in connection with the relevant works including the Lessor's administrative and other reasonable costs of giving consent and the fees of any architect or other consultant used by the Lessor in connection with the relevant works EXCEPT THAT such costs do not include any costs or expenses incurred by the Lessor or entitled to be recovered by the Lessor 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 Lessee or the Lessee'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 (WA)*.

## 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 Lease undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound both jointly and jointly and severally;
- (c) a reference to this Lease includes a reference to any Schedule, recital, part, clause, sub-clause, paragraph or Annexure in or to this Lease, and in or to this Lease 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 under them;
- (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 Lease, 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 Lease 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;
- (t) a reference to “Lessor” is a reference to the Shire of Wyndham East Kimberley only in its capacity as Primary Interest Holder of the Leased Premises and not in its capacity as a Relevant Authority, and separate and distinct from its capacity as a Relevant Authority; and
- (u) covenants implied by Laws are not incorporated in the Lease, unless the relevant Law provides that certain covenants are to be implied and cannot be excluded by agreement.

### 1.3 Performance of Functions by Minister

- (a) All acts and things which the Lessor is required or empowered to do under this Lease is done under section 46 read together with section 18 of the LAA.
- (b) Where pursuant to this Lease payments and rights accrue to the Minister or obligations are imposed on the Minister the same are for the benefit and burden respectively of the Lessor unless the context otherwise requires.

### 1.4 Approval by Minister

- (a) In any case where under this Lease the doing or executing of any act matter or thing by the Lessor is dependent on the approval or consent of the Minister, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the reasonable discretion or Lessor's absolute discretion and may be given subject to such conditions as the Lessor may reasonably determine unless otherwise provided in this Lease.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under clause (a) will constitute a breach of a condition or covenant under this Lease.

### 1.5 Land Administration Act

The Lessor and the Lessee agree that the provisions of:

- (a) ~~the LAA relating to Leases of Crown land granted under section 79 of the LAA apply to the Lessee; and~~
- (b) this Lease do not in any way affect alter or derogate from the Lessor's or the Minister's rights or powers conferred under the LAA.

## **2. Operative part**

### 2.1 Lease of Leased Premises

In consideration of the Lessee agreeing to duly pay the Rent and other money payable under this Lease and to duly observe and perform the Lessee's Obligations, the Lessor leases the Leased Premises and grants the Lessee's Rights to the Lessee for the Term commencing on the Commencement Date subject to the reservation of the Lessor's Rights under this Lease.

### 2.2 Quiet enjoyment

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

### 2.3 Lessee responsible as if owner

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

### 2.4 Conditions Precedent

- (a) This Lease is subject to and expressly conditional upon:
- (i) the Lessee obtaining all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor ("Development Condition"); and
  - (ii) the Minister approving this Lease under the LAA

- (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;

#### Development Condition

- (ii) the Lessee will bear all the costs associated with satisfying or attempting to satisfy the Development Condition, including but not limited to any application fees; and

- (iii) if any Approval:

(A) is refused; or

(B) granted subject to a condition with which the Lessee in its reasonable opinion is unable to comply with, and the Lessee within twenty eight (28) days after being notified of the condition elects, by notice in writing to the Lessor, 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 Lessor in its capacity as Relevant Authority

The parties agree and acknowledge that nothing in this Lease shall fetter or be construed as an attempt to fetter the discretion or the powers of the Lessor in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Lessor in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Leased Premises or carrying out of the Lessee's Works in accordance with this Lease.

### 2.6 Lessee Buildings and- Fixtures

The parties agree and acknowledge the Lessee ~~has~~may constructed Buildings and Fixtures on the Premises as defined under clause 1.1 and ~~these will be listed as the assets~~ of the Lessee as described in item 13 of

Schedule 1.

**3. Reservation of Lessor's rights**

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

**3.1 Improvements to Leased Premises**

- (a) The Lessor may at any time carry out improvements to the Leased Premises, including, ~~without limitation~~:
  - (i) construct amenities for use by the public, including public toilets, on the Leased Premises;
  - (ii) construct other new structures on the Leased Premises;
  - (iii) alter, add to, extend, reduce the size of, or otherwise modify, structures on the Leased Premises; and
  - (iv) any other Lessor's Works,
- (b) In exercising the rights in subclause 3.1(a), the Lessor shall:
  - (i) Consult with the Lessee prior to any improvements alterations or construction being carried out; and
  - (ii) use the Lessor's reasonable endeavours not to cause any undue interference with the Authorised Use.

**3.2 Right to enter**

- (a) The Lessee shall permit the Lessor to enter the Leased Premises at all reasonable times on the giving of reasonable notice, or immediately in the case of emergency, with or without workmen and materials to:
  - (i) view the state of repair of the Leased Premises and to ensure compliance with the Lessee's Obligations;
  - (ii) comply with any requirement or order of any local government or other statutory authority;
  - (iii) carry out any Maintenance, modification, installation or extension to the Leased Premises or the Lessee's Building and Fixtures and the Plant and Equipment or cables, pipes or wires within the Leased Premises or the Lessee's Building and Fixtures; and
  - (iv) view the Leased Premises with any persons interested in the Leased Premises; except that the Lessor shall use the Lessor's reasonable endeavours not to cause any undue interference with the conduct of the Authorised Use;
- (b) the Lessor may enter the Leased Premises at any time for the purpose of doing anything which should have been done by the Lessee under this Lease but which has not been done or has not been

done properly; and

- (c) the Lessor's right of entry under this clause 3.2 allows the Lessor 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.

### 3.3 Granting easements etc.

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

### 3.4 Re-classification of fixtures and fittings

Not Applicable

### 3.5 Managing Agent

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

## **4. Rent**

The Lessee must pay the Rent to the Lessor in the manner specified in item 6 of Schedule 1 at the Lessor's address in this Lease or any other address stipulated by the Lessor or by any other method specified by the Lessor, 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 Review on Rent Review Date

- (a) On each scheduled Rent Review Date, the Rent shall be reviewed in the manner set out in the following clauses of this clause 5.

### 5.2 CPI Rent Review

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

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

Where:

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

(b) Determination of Current CPI or Previous CPI

If for the purposes of a rent review, the Consumer Price Index number is not published or, in the opinion of the Lessor 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 Rent Review Date for the purposes of determining Previous CPI, then the Lessor may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

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

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

5.3 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.
- (c) If the Lessor has not given notice of the reviewed annual Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Rent, any necessary adjustment is to be made within twenty eight (28) days of service of the rent review notice.

5.4 Not to cause Rent reduction

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

**6. Rates and Taxes**

- 6.1 The Lessee must pay to the Lessor within twenty eight (28) days, or if the demand is made to the Lessee by any Relevant Authority then to that authority on demand in full all Rates and Taxes assessed or imposed by any Relevant Authority or other service provider in respect of the Premises.
- 6.2 Except in the case of manifest error, a statement issued by the Lessor under clause 6.1 will be prima facie evidence of the matters stated in that statement.
- 6.3 If the year or other period in respect of which any particular Rate or Tax is payable does not coincide with the Lease year, the amount the Lessee is to pay in the first year and last year of the Lease will be adjusted proportionally.

## **7. Lessee to pay for Services**

### Services separately assessed

- 7.1 The Lessee must pay to the Lessor or, if demand is made by a service provider, or Relevant Authority, to that provider or Relevant Authority, all amounts separately charged or assessed in respect of the Leased Premises or the Lessee for or in connection with Services to or for the benefit of the Leased Premises or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of a Service.

### Bulk supplies Services

- 7.2 If the Lessor supplies any Services to the Leased Premises the Lessee must on demand pay to the Lessor the amount which the Lessee would have been charged by the original service provider, or Relevant Authority if the Services had been supplied to the Lessee directly together with an administrative charge of no more than twenty per cent (20%) of the amount charged by the original service provider, or Relevant Authority.
- 7.3 The Lessee must observe and comply with any conditions of supply of Services by the Lessor, or where no conditions of supply are imposed by the Lessor, observe and comply with the conditions of supply of Services imposed by the service provider or any Relevant Authority.
- 7.4 If any Service is not provided by the Lessor, the Lessee is responsible to make the Lessee's own arrangements at the Lessee's own cost for the supply of the Service to the Leased Premises and all associated Facilities. For the avoidance of doubt, the Lessor is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Leased Premises.

### Services not separately assessed

- 7.5 The Lessee must pay to the Lessor, or as the Lessor directs, the proportion of ninety per cent (90%) of all amounts charged or assessed in respect of the Land for or in connection with Services to or for the benefit of the Land or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of Service.

## **8. Use of Leased Premises and Facilities**

### 8.1 Authorised Use

The Lessee 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, Lessor's Chattels, the Lessee's Building and Fixtures for a purpose for which it was not designed or designated.

#### 8.2 Licenses and Limitations

- (a) The Lessee 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.
- (b) If the carrying on of the Authorised Use at the Leased Premises is permissible only with the consent, licence or authority under any Law, the Lessee shall obtain and maintain the currency of that consent, licence or authority and comply with that Law.
- (c) The Lessee shall not conduct any business in or from the Leased Premises which is prohibited by any Law.
- (d) The Lessee shall not contravene the provisions of the *Associations Incorporation Act 1987 (WA)*.
- (e) The Lessee agrees to comply with the Department of Health's *Guidelines for Concerts, Events & Organised Gatherings* (December 2009) including any successor or substitute documents.

#### 8.3 Comply with Directions

The Lessee:

- (a) shall comply with the Lessor's reasonable requirements for the use of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures and Lessor's Chattels;
- (b) shall not do or omit to do anything which might interfere with or impair the efficient supply or operation of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures or Lessor's Chattel;
- (c) in the conduct of the Authorised Use comply strictly with all relevant requirements imposed by any Law or Relevant Authority; and
- (d) shall comply with all rules, regulations, directions and orders made in respect of the Leased Premises by the Lessor.

### **9. Security of Leased Premises**

- 9.1 The Lessee shall securely lock all doors, gates or other openings in, to or on the Leased Premises when the Leased Premises are unoccupied.
- 9.2 The Lessor may enter the Leased Premises at any time for any purpose in relation to security, but nothing in this clause makes the Lessor responsible in any way for the security of the Leased Premises.

## 10. Maintenance and Works

### 10.1 Obligation to Maintain

The Lessee shall:

- (a) maintain the Leased Premises in a good condition and state of repair, except in respect of:
  - (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of insurance;
- (b) promptly repair any damage to the Leased Premises for which the Lessee is responsible to the satisfaction of the Lessor;
- (c) keep the Leased Premises clean and free from rubbish;
- (d) maintain the Lessor's Chattels, the Lessor's Fixtures, the Lessee's Building and Fixtures and the Facilities in good condition and where necessary, replace that Lessor's Chattel, Lessor's Fixture, Lessee's Building and Fixtures or Facility to the satisfaction of the Lessor except in respect of:
  - (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of an insurance policy;
- (e) not do or omit to do anything which might cause the Leased Premises, the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities 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;
- (f) maintain the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities in clean and good condition;
- (g) not without the Lessor'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 or any fixtures (including any Building);
- (h) keep all drains and other pipes in or connected to the Leased Premises or any fixtures (including any Building) properly cleaned and free-flowing; and
- (i) maintain all roads, driveways and access ways on the Leased Premises and keep them free of rubbish and debris and ensure that they are not obstructed.

### 10.2 Alteration and Substantial Works

The Lessee must not make any alteration to or addition to or demolish any part of the Leased Premises, the Lessor's Fixtures or the Lessee's Building and Fixtures, or remove or alter any of the Lessee's Building and Fixtures,

the Lessor's Fixtures, the Lessor's Chattels, the Plant and Equipment or any Facility or Service in or on the Leased Premises without the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority.

#### 10.3 Standard for Maintenance and Works

The Lessee must comply with the Works Conditions in carrying out all Maintenance and any other work which affects the Leased Premises, the Lessee's Building and Fixtures.

#### 10.4 Remove Non-approved Works

If the Lessee carries out any works, or erects any building or structure, on the Leased Premises which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this Lease, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle and remove any such works, building or structures and the Lessee shall carry out the same in accordance with the Lessor's directions.

#### 10.5 Structural Maintenance

- (a) The Lessee is responsible for all structural repairs and maintenance of the Lessee's Building and Fixtures in accordance with this Lease; and
- (b) The Lessor is responsible for all structural repairs and maintenance of the Lessor's Fixtures.

### **11. Positive covenants**

#### 11.1 Costs and Expenses

The Lessee must pay to the Lessor or as the Lessor directs all the Lessor's costs, charges and expenses in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Lease;
- (b) any consent, approval or exercise of any right, waiver, variation, release, surrender or discharge in connection with this Lease, including but not limited to all costs and expenses of and incidental to the preparation and service of a notice under section 81 of the *Property Law Act 1969 (WA)*;
- (c) any inspection or report concerning the Leased Premises and the Lessee's Building and Fixtures;
- ~~(d)~~ any breach of the Lessee's Obligations;
- (e) any work done at the request of the Lessee;
- (f) the exercise of attempted exercise of the Lessor's Rights; and
- ~~(g)~~ any action, suit or proceeding to which the Lessor is joined as a party as a result of the Lessee's occupation of the Leased Premises and the Lessee's Building and Fixtures, and

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such costs, charges and expenses include, but are not limited to:

- (h) taxes and fees and fines and penalties which may be payable in connection with this Lease;
- (i) all legal costs and expenses on a full indemnity basis; and
- (j) all interest which the Lessor is entitled to claim.

#### 11.2 Reimburse Lessor Expenses

The Lessee shall pay to the Lessor on demand all money paid by the Lessor on behalf of the Lessee in the discharge of any of the Lessee's Obligations.

#### 11.3 Report to Lessor

The Lessee shall report promptly to the Lessor or the Managing Agent in writing:

- (a) all structural damage or defects in the Leased Premises, the Lessee's Building and Fixtures, the Lessor's Fixtures, ~~the Plant and Equipment or the Facilities in or on the Leased Premises~~ of which the Lessee is or ought to be aware;
- ~~(b) any malfunction of any Plant and Equipment or Facility either on the Leased Premises or used by the Lessee;~~
- ~~(c)~~(b) any notice or order received from any court relating to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures; and
- ~~(d)~~(c) any circumstances likely to be a danger or cause any damage or danger to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures or any person in or on the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures of which the Lessee is aware.

#### 11.4 Comply with Laws

The Lessee shall comply promptly with all other Laws affecting the Leased Premises, the Lessee's Building and Fixtures or the use of the Leased Premises and the Lessee's Building and Fixtures including any structural work in respect of the Lessee's Works, including the *Health Act 1922 (WA)*, the *Health (Public Buildings) Regulations 1992*, the *Environmental Protection Act 1986 (WA)* and the *Environmental Protection (Noise) Regulations 1997*.

#### 11.5 Interest

The Lessee shall on demand by the Lessor, pay the Lessor 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 5 of Schedule 1 from the due date for payment until the date of actual payment.

## 12. Negative covenants

The Lessee shall not:

- (a) except for reasonable quantities for normal applications in connection with the use of the Leased Premises and in the carrying out of the Authorised Use, bring onto, store or use any chemical or inflammable substance in or the Leased Premises;
- (b) store goods on or in the Leased Premises other than those necessary in the carrying out of the Authorised Use;
- (c) except as is lawful and necessary and an ordinary incident of carrying out the Authorised Use, 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 Lessor or the owners or occupiers of any nearby properties unless with the prior consent of any Relevant Authority and the Lessor;
- (d) place any rubbish on or in any part of the Leased Premises except in a suitable receptacle;
- (e) burn any rubbish in or on the Leased Premises, unless permitted by law and a necessary and ordinary incident of the Authorised Use; and
- (f) deliver or permit to be delivered goods or materials to or from the Leased Premises except in a manner which causes minimum interference to the Lessor or the owners or occupiers of any nearby properties.

## 13. Lessee's Obligation to effect insurances

13.1 The Lessee shall effect and maintain in the names of the Lessor and the Lessee with an insurance company approved by the Lessor all policies of insurance relating to the Leased Premises, and the Lessee's Building and Fixtures or otherwise as reasonably required by the Lessor from time to time, including policies of insurance in respect of the matters referred to in item 10 of Schedule 1 and the Lessee shall:

- (a) supply to the Lessor 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;
- (b) not without the Lessor's prior consent, alter the terms or conditions of any policy; and
- (c) ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Lessor.

13.2 The Lessee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Lease or in respect of the Leased Premises and the Lessee's Building and Fixtures becoming void or voidable or which might increase the premium on any policy.

## 14. Indemnities

### 14.1 General indemnity

Except to the extent contributed to by the Lessor, the Lessee shall indemnify and keep indemnified the Lessor against all losses, claims, damages, demands, costs and expenses for which the Lessor or the Minister for Lands 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 and the Lessee's Building and Fixtures by the Lessee, an Authorised Person or any other person, except to the extent caused or contributed to by the Lessor or the Minister for Lands;
- (b) resulting from an act or omission of the Lessee; or
- (c) resulting from a notice, claim or demand against the Lessee to do or refrain from doing anything except to the extent that the Lessor or the Minister for Lands 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.

#### 14.2 Nature of indemnity

The obligation of the Lessee to indemnify the Lessor and the Minister for Lands under this Lease or at law is not affected by the obligation of the Lessee to effect insurance and all indemnities shall survive the termination of the Lease.

### **15. Assignment**

#### 15.1 No assignment

Section 18 of the LAA applies to this Lease and further the Lessee must not assign, mortgage or charge the Lessee's leasehold estate in the Leased Premises, nor sublet, part with possession or dispose of the Leased Premises in any way except where provided in the following provisions of clause 15.

#### 15.2 Property Law Act excluded

Sections 80 and 82 of the *Property Law Act 1969* (WA) are excluded.

#### 15.3 Lessor may consent to assignment

The Lessee will not be in breach of the covenant in clause 15.1 in respect of an assignment if the Lessor consents to the assignment. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor 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 Lessee 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 Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed assignee of an assignment of lease prepared by the Lessor's solicitors at the Lessee's cost which contains terms acceptable to the Lessor, including:
  - (i) a covenant by the proposed assignee with the Lessor to pay all Rent and other money payable under this Lease; and
  - (ii) a covenant by the proposed assignee to observe and perform all of the Lessee's Obligations;
- (c) if the proposed assignee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance of all of the Lessee's Obligations including payment of the Rent and other money payable under this Lease;
- (d) the Lessee agrees that the covenants of the assignee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee'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; and
- (e) the Minister consents in writing to the proposed assignment of the Lease pursuant to section 18 of the LAA.

#### 15.4 Lessor may consent to sublease

The Lessee will not be in breach of the covenant in clause 15.1 in respect of a sublease of the whole or part of the Leased Premises and the Lessee's Building and Fixtures if the Lessor consents to the sublease. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
  - (i) the proposed sub lessee 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 sub lessee 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 Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;

- (b) the Lessee procures the execution by the proposed sub lessee of a sublease approved by the Lessor or the Lessor's solicitors at the Lessee's cost which contains terms consistent in all respects with this Lease and acceptable to the Lessor;
- (c) if the proposed sub lessee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance by the proposed sub lessee of all of the Lessee's Obligations as if the proposed sub lessee were named in this Lease as the Lessee;
- (d) the Lessee agrees that the covenants of the sub lessee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the sublease of the Lease to the proposed sub lessee, particularly on the occurrence of an Event of Default by the proposed sub lessee or any other party; and
- (e) the Minister consents to the proposed sublease of the Leased Premises in accordance with section 18 of the LAA.

#### 15.5 Lessor may consent to charge

- (a) The Lessee will not be in breach of the covenant in clause 15.1 in respect of a charge or mortgage if the Lessee obtains the Lessor's and the Minister for Lands consent to that charge or mortgage.
- (b) The Lessor may consent to, or refuse to give its consent to, a charge or mortgage in its absolute discretion.
- (c) The Minister for Lands may consent to, or refuse to give consent to, a charge or mortgage with absolute discretion.

#### 15.6 Compliance with Acts

The Lessor and the Lessee acknowledge that if in granting its consent to any assignment or sublease the Lessor has to first comply with or satisfy any obligations or requirements under any Written Law, including but not limited to section 3.58 of the *Local Government Act 1995* (WA) and regulation 30(2)(b) of the *Local Government (Functions and General) Regulations 1996* ("Assignment/Sublease Condition Precedent"), then the Lessor's consent is made expressly conditional upon and subject to satisfaction of the Assignment/Sublease Condition Precedent.

#### 15.7 Requirements before approval

The Lessee agrees that the Lessor and the Minister may, before giving approval under section 18 of the LAA in writing, require such information concerning the transaction for which approval is sought as the Lessor and the Minister specify.

### **16. Damage, Destruction or Resumption**

#### 16.1 Definitions

In this clause 16:

- (a) "Reinstatement Notice" means a notice given by the Lessor to the Lessee of the Lessor'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 Lessee.

16.2 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 Lessee; or
  - (ii) inaccessible having regard to the nature and location of the Leased Premises and the normal means of access to them,

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

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

will subject to clauses 16.2(b) and 16.2(c), according to the nature and extent of the damage or destruction sustained, and the extent to which such destruction interferes with the continued operation of the Lessee's Business, abate in whole or in part as agreed by the Lessor and the Lessee or in the absence of agreement as determined pursuant to clause 16.2(c).
- (b) If clause 16.2(a) applies, then subject to clause 16.2(c) 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 Premises are:

  - (iii) restored;
  - (iv) made fit for the Lessee's occupation and use; and
  - (v) made accessible.
- (c) If the parties cannot agree on the proportion of the abatement pursuant to clause 16.2(a) or the date upon which the abatement should cease pursuant to clause 16.2(b):

- (i) that proportion of the abatement and / or the date upon which the abatement should cease shall be determined by a Valuer appointed by the president of the Australian Property Institute (WA Division);
- (ii) the costs of a Valuer appointed under clause 16.2(c)(i) shall be borne equally by the Lessor and the Lessee; and
- (iii) until any dispute over the proportion of the abatement or the date upon which the abatement should cease has been determined the Lessee will continue to pay all money due pursuant to the Lease less any abatement that the Lessor accepts should be applied.

#### 16.3 Either Party May Terminate

If clause 16.2(a) applies, either party may terminate this Lease by notice to the other unless the Lessor:

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

#### 16.4 Lessee May Terminate

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

#### 16.5 Exceptions

Clauses 16.2, 16.3 and 16.4 will not apply where:

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

#### 16.6 Lessor may Terminate

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

#### 16.7 Antecedent Breaches

No liability will attach to either party because of termination of this Lease under this clause 16 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.

#### 16.8 Dispute Resolution

- (a) Each Valuer appointed under clause 16.2 shall:
  - (i) act as an expert and not as an arbitrator; and
  - (ii) provide his or her determination and the reasons for his or her determination of the extent of an abatement and the period of abatement, in writing within ten (10) Business Days of his or her appointment.
- (b) Upon determination of the extent of an abatement and the period of abatement being finally determined then on the date upon which the immediately subsequent instalment of Rent is due and payable under this Lease:
  - (i) the Lessee shall pay the Lessor; or
  - (ii) the Lessor shall refund to the Lessee, as the case requires, the difference between what the Lessee has actually paid pursuant to the Lease from the date of service of the Damage Notice and what the Lessee is determined to have actually been liable to pay after the abatement.

**16.9 Lessor Not Obligated to Reinstate**

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

**16.10 Proceeds of Insurance**

If the Leased Premises are damaged or destroyed and the Lease is terminated under this clause 16, the Lessee will have no interest in the insurance proceeds other than those proceeds that relate to the Lessee's Building and Fixtures and contents.

**16.11 Resumption of Leased Premises**

If the Leased Premises or any part of the Leased Premises is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of the Lessee, this Lease may be terminated without compensation or other liability by either the Lessor or the Lessee 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.

**17. Limit of Lessor's liability**

**17.1 No warranties or representations**

The Lessee acknowledges and agrees that:

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

#### 17.2 Lessor Not Liable

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor 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.

#### 17.3 Lessor only liable while Primary Interest Holder

Each Lessor is only liable for any breaches under this Lease occurring while registered as the Primary Interest Holder of the Leased Premises.

#### 17.4 Lessee acts at own risk

Unless this Lease provides otherwise, whenever the Lessee is obligated or required by this Lease to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Lessee.

### **18. Default**

An Event of Default occurs if:

- (a) the Lessee fails to pay the Rent, the outgoings or other money payable under this Lease for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (b) the Lessee fails to perform any of the Lessee's Obligations other than the payment of moneys referred to in clause 18(a) for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (c) distress is levied or a judgement, order, security or encumbrance is enforced against any property of the Lessee;
- (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 Lessee's property;

- (e) a person is appointed under legislation to investigate or manage any part of the Lessee's affairs;
- (f) the Lessee ceases to carry on the Authorised Use from the Leased Premises;
- (g) where the Lessee is an incorporated association and:
  - (i) an application is made to a court for an order or an order is made that the Lessee be wound up;
  - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Lessee;
  - (iii) except for the purposes of reconstruction or amalgamation, the Lessee 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 Lessee's creditors;
  - (iv) the Lessee resolves to wind itself up or otherwise dissolve itself;
  - (v) the Lessee states that it is insolvent; or
  - (vi) the Lessee takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

## **19. Lessor's powers on default**

### 19.1 Lessor's right of possession

On the occurrence of an Event of Default, the Lessor 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.

### 19.2 Lessor may remedy Lessee's default

- (a) If an Event of Default occurs or the Lessee otherwise fails to perform any of the Lessee's Obligations, the Lessor may without prejudice to the Lessor'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 Lessor was the Lessee, at the Lessee's cost. The Lessee must pay to the Lessor all liabilities incurred by the Lessor 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 Lessor's rights to recover in full all Rent, outgoings and other money payable by the Lessee under the Lease:
  - (i) acceptance of the keys or other access devices for the Leased Premises;
  - (ii) entry to the Leased Premises by the Lessor for the purpose of inspection or for the purpose of showing the Leased Premises to prospective Lessees or to remedy an Event of Default; or

- (iii) advertising the Leased Premises for re-letting.

#### 19.3 No prejudice of Lessor's rights

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

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

#### 19.4 Exercise of rights by Lessor

The Lessor may exercise the Lessor's rights under this Lease or at law notwithstanding any delay of the Lessor in issuing proceedings or neglect or waiver in respect of any breach of the Lessee'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 Lessee or the continuance of that default.

### **20. Essential terms**

#### 20.1 Breach of Essential Terms

- (a) If the Lessee's conduct constitutes a breach of an essential term of this Lease and the Lessor elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation of this Lease, the Lessee shall compensate the Lessor for all loss or damage suffered by reason of or arising from the repudiation.
- (b) Clauses 4 ("Rent"), 5 ("Rent Review"), 6 ("Rates and Taxes"), 8 ("Use of Leased Premises and Facilities"), 10 ("Maintenance and Works"), 13 ("Lessee's Obligations to effect insurances"), 15 ("Assignment") and 27 ("Environmental Matters") of this Lease are deemed to be essential terms. This is not an exhaustive list of the essential terms of this Lease.

#### 20.2 Damage for Breach of Essential Terms

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

#### 20.3 Lessor's Entitlement to Damages

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

- (a) if the Lessee abandons or vacates the Leased Premises;
- (b) if the Lessor elects to re-enter the Leased Premises or terminate this Lease;
- (c) if the Lessor accepts the Lessee'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.

#### 20.4 Lessor to Mitigate Damages

- (a) If the Lessee vacates the Leased Premises or if the Lessor accepts the Lessee's repudiation based on the Lessee's breach of an essential term of this Lease and terminates this Lease, the Lessor 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 Lessor has observed the obligation to mitigate damages.
- (c) The Lessor's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of law.

#### 20.5 Calculation of Damages

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

### **21. Termination**

#### 21.1 Yield up Leased Premises

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

#### 21.2 Remove Lessee's Buildings and Fixtures

- (a) At the Termination of the Lease the Lessor is not required to compensate for, or purchase all or any, of the Lessee's Building and Fixtures.
- (b) The Lessor may by notice to the Lessee at any time up to the day that is ten (10) Business Days after the Termination of this Lease provide an offer to purchase the Lessee's Building and Fixtures.
- (c) If the Lessor does not purchase the Lessee's Building and Fixtures the Lessee shall unless the Lessor agrees to the contrary:
  - (i) prior to Termination or on the termination of any period of holding over, remove from the Leased Premises all of the Lessee's Building and Fixtures and other property and any Lessor's Fixtures which the Lessor requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Lessee's property;

- (ii) comply with the Works Conditions in respect of the removal of those items specified in clause 21.2(a); and
- (iii) submit details of the proposed removal works for the Lessor'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.

#### 21.3 Making Good of Leased Premises on Termination

Subject to clause 21.2, the Lessee shall, unless the Lessor agrees to the contrary, prior to Termination or on the termination of any period of holding over, make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises.

#### 21.4 Lessor Can Make Good

If the Lessee does not comply with the obligation to make good as set out in clause 21.3, the Lessee shall pay the Lessor within twenty eight (28) days after the Lessor requests payment, any costs reasonably incurred by the Lessor to make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises. The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessee's default.

#### 21.5 Dealing with Lessee's property not removed at Termination

The Lessor has the following rights in respect of the Lessee's property, including Lessee's Building and Fixtures, which are not removed at Termination:

- (a) demolish and dispose of the Lessee's property or remove and store the Lessee's property in an alternative Leased Premises at the Lessee's cost;
- (b) to sell or dispose of the Lessee'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 Lessee's property is the absolute property of the Lessor and to deal with the Lessee's property as the Lessor sees fit;

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

- (d) the Lessee failing to remove all of the Lessee's property by Termination; or
- (e) any claim against the Lessor by any person by reason of the exercise by the Lessor of its rights under this clause 21.5.

#### 21.6 Lessee to continue to pay Rent and outgoings

If the Lessee fails to make good the Leased Premises as specified in clause 21.3, or fails to remove the Lessee's property by Termination, then until the

Leased Premises are restored in accordance with this Lease or the Lessor elects to take the absolute property in the Lessee's property left after Termination, the Lessee shall continue to pay the Rent and the outgoings and other money payable as if the Lessee were holding over in the Leased Premises.

**22. Option of renewal**

Not Used

**23. Holding Over**

If after the expiry of the Term the Lessee remains in possession of the Leased Premises with the consent of the Lessor, the Lessee shall be deemed to be a monthly tenant on such of the terms of this Lease as are capable of applying to a monthly tenancy. The Lessee's right to remain in possession of the Leased Premises shall be subject to the continued performance of the Lessee's Obligations.

- (a) Subject to clause 23(d), the Rent payable during any period of holding over shall be one hundred and ten percent (110%) of the annual Rent payable immediately prior to the expiry of the Term.
- (b) The Lessor may increase the Rent payable during any period of holding over upon giving the Lessee one (1) months' notice in writing.
- (c) The monthly tenancy may be terminated by either party giving the other party one (1) months' notice of termination which notice may be given at any time.

**24. CEO and Lessor as Attorney**

The Lessee for valuable consideration:

- (a) irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally the Lessee's attorney for the purpose of
  - (i) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and
  - (ii) doing anything else the Lessee 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 Lessor in respect of:
  - (i) losses arising from any act done under this clause; and
  - (ii) the Lessor's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause.

**25. Trustee Provisions**

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

- (a) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable

for the performance of the Lessee'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 Lessor for any default by the Lessee;
- (c) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (d) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

## 26. Special clauses

- 26.1 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.
- 26.2 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.

## 27. Environmental Matters

### 27.1 Lessee's Environmental Covenants

The Lessee must:

- (a) comply with all Environmental Laws including, without limitation, obtaining all necessary permits, authorisations and approvals required for the Lessee to carry out the Authorised Use on the Leased Premises;
- (b) Develop and implement a vegetation management plan for removal of weeds and planting of regionally native plant species, this is to include the removal of weed and pest species including Neem, Leucaena and Calotropis.
- (c) take all practicable precautions to ensure that no Contamination of the Leased Premises or the Environment in the vicinity of the Leased Premises occurs;
- ~~(e)~~(d) 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)~~(e) immediately notify the Lessor if:
  - (i) a Contamination Event occurs on the Leased Premises; or
  - (ii) an Environmental Notice is served on the Lessee;
- ~~(e)~~(f) if a Contamination Event occurs and irrespective of whether an Environmental Notice has been served on the Lessee, promptly take all usual and reasonable actions at the Lessee'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)~~(g) at the Lessee's own cost, comply with every Environmental Notice issued in respect of, or arising from, the Lessee's occupation or use of the Leased Premises, whether the notice is served on the Lessor or the Lessee;

~~(g)~~(h) allow the Lessor and its employees and contractors:

- (i) after receiving reasonable notice from the Lessor, 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)~~(i) pay the reasonable costs of any reputable environmental consultant appointed by the Lessor to undertake an inspection from time to time of the Leased Premises to verify the Lessee's compliance with this clause 27.

#### 27.2 Remediate Contamination

- (a) Without limiting the Lessee's obligation under clause 27.1(e), the Lessee 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 Lessee, to the absolute satisfaction of the Lessor.
- (b) Subject to clause 27.2(e), not later than six (6) months before the expiration of the Term, the Lessee must arrange for a reputable environment consultant approved by the Lessor (whose approval must not be unreasonably withheld) to:
  - ~~(i)~~(j) 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 27.2(d), the Lessee must promptly carry out all the works specified in the Remediation Notice to the satisfaction of the Lessor, and at the Lessee's sole cost.
- (d) The Lessee 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 Lessee 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 Lessor prior to the expiration of the Term, the Lessor may:
  - (i) arrange for the investigation of Contamination referred to in clause 27.2(a) and for the preparation of a Remediation Notice (if applicable); and

(ii) carry out the works specified in the Remediation Notice, at the Lessee's expense, and the Lessee will indemnify the Lessor under clause 27.3(a).

(f) For the avoidance of doubt, this clause 27.2 is for the benefit of the Lessor and can only be waived by the Lessor.

#### 27.3 Environmental Indemnity

(a) Without limiting clause 14 of the Lease the Lessee indemnifies the Lessor and the Lessor's employees in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Lessor is or may become liable in respect of or arising from the Lessee's breach of any of the Lessee's Environmental Covenants.

(b) Without limiting clause 27.3(a) above, in the event that the Lessee fails to promptly comply with its obligations under clauses 27.1(e), 27.1(f), 27.2(a), 27.2(b) or 27.2(c) the Lessor shall be at liberty to carry out all of the said obligations at the cost of the Lessee, which cost shall be recoverable from the Lessee on demand.

#### 27.4 Event of Default and Essential Term

For the avoidance of doubt, a failure by the Lessee to perform or comply with any of its obligations under this clause 27 is an Event of Default and a breach of an essential term of the Lease.

#### 27.5 Definitions

In this clause 27:

(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:
- (i) land, air and water;
  - (ii) any layer of the atmosphere;
  - (iii) any organic or inorganic matter and any living organism including humans;
  - (iv) human made or modified structures and areas;
  - (v) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
  - (vi) 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;
- (g) "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 Laws;

- (h) "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) "Lessee's Environmental Covenants" means the Lessee's obligations under clause 27.1, together and each of them separately;
- (i) "Remediation" includes the investigation, clean up, removal, abatement, disposal, control, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of any Contamination;
- (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; and
- (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.

## 28. Caveats and registration of Lease

### 28.1 Registration

- (a) The Lessee may register this Lease but must not lodge an absolute caveat over the Leased Premises to protect the interest of the Lessee under this Deed and the Lessee must surrender any registered lease and withdraw any caveat lodged by or on behalf of the Lessee over the Leased Premises on Termination of the Lease.
- (b) In consideration of the Lessor leasing the Leased Premises to the Lessee, the Lessee irrevocably appoints the Lessor and every officer of the Lessor as defined by the *Corporations Act 2001* (Cth) to be attorney of the Lessee, in the name and on behalf of the Lessee, and as the act and deed of the Lessee to sign and lodge at Landgate, Perth, a surrender of lease and a withdrawal of any caveat lodged by or on behalf of the Lessee and not surrendered or withdrawn on Termination of the Lease, and the Lessee;
  - (i) undertakes to ratify all that the attorney does or causes to be done under or by virtue of this subclause; and
  - (ii) indemnifies the Lessor in respect of any loss arising from any act done under or by virtue of this subclause, and the Lessor's costs and expenses of and incidental to the surrendering of the Lease and withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Leased Premises.

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28.2 Lessee must withdraw Caveat and any Registered Encumbrances

- (a) The Lessee on or before the Termination of the Lease must:
  - (i) withdraw any caveat lodged by the Lessee over the Leased Premises;
  - (ii) discharge any mortgage or other registered encumbrance relating to any liability of the Lessee registered over the Leased Premises;
  - (iii) surrender any registered lease over the Leased Premises;
  - (iv) execute a withdrawal of caveat in a form approved or any other document that may be required to remove any encumbrance on the certificate of title for the Leased Premises, and to execute a deed or surrender of lease in the form approved or any other document that may be required in order to remove any lease or notification of it as an encumbrance on the Certificate of Title for the Leased Premises;
  - (v) if requested by the Lessor, do all things necessary to assist in the cancellation of any qualified title for the Leased Premises.
- (b) The Lessee hereby indemnifies, and shall keep indemnified, the Lessor against all loss or damage suffered by the Lessor as a result of the Lessee's failure to comply with section 28.2(a) on or before termination of the Lease.

**29. Termination for Community Benefit**

- 29.1 The Lessor will reserve the right to terminate the lease if it is decided by the Council that an alternate use of the land may deliver exceptional significant community benefit without the loss of services to the community.

The Council will make every effort to meet the current needs of the lessee through conducting consultation and negotiation to minimise any disadvantage to the lessee and the community.

- 29.2 Nothing in this clause 29 shall derogate from the Lessee's liability, up until the date of termination specified in the Redevelopment Notice, for payment of the Rent and all other payments due under this Lease as well as the performance or observance of the terms of the Lease on the Lessee's part to be performed up to that date.
- 29.3 The Lessee's Obligations will survive the termination of the Term until they have been fulfilled.
- 29.4 Without derogating from the Lessee's Rights in the case of misrepresentation or fraud by the Lessor or any of the Lessor's officers, employees, agents or contractors, the Lessor will not be liable in any way for loss or injury (including economic loss or loss of profit) sustained by the Tenant or arising from anything referred to in this clause 29. In particular the exercise by the Landlord of the rights conferred on it by this clause 29 will not constitute a breach of the Lessor's covenant for quiet enjoyment.

29.5 The Lessee shall deliver up the Premises to the Lessor at the expiration of the Redevelopment Notice terminating the Lease in accordance with the provisions of this Lease within a reasonable timeframe.

### **30. Miscellaneous**

#### 30.1 Lessee not to permit prohibited matters

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

#### 30.2 Cost of Complying with Obligations

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

#### 30.3 Schedules

The Schedules shall form part of this Lease.

#### 30.4 Lessor's consent

The Lessor 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.

#### 30.5 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.

#### 30.6 Time for payment

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

#### 30.7 Time of the essence

Time shall be of the essence in all respects.

#### 30.8 Certificates

A certificate signed by the Lessor or the Lessor'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.

#### 30.9 Exercise of rights by Lessor

The Lessor 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 Lessor 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 Lessor of any breach or non-observance of a Lessee's Obligation and shall not prejudice any other right of the Lessor in relation to such breach.

#### 30.10 Lessor may act by agent

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

#### 30.11 Variation

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

#### 30.12 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:
  - (i) personally; or
  - (ii) by leaving it at, or sending by pre-paid post to:
    - A. the recipient's last known personal address or place of business, in any case;
    - B. the Leased Premises, in the case of the Lessee; or
    - C. the registered office or principal place of business, in the case of a corporation;
  - (iii) by facsimile transmission sent to the recipient's facsimile number (if known);
- (c) will be deemed to be served:
  - (i) if served personally, at the time of handing the notice to the recipient;
  - (ii) if left at the recipient's last known address, last known place of business, the Leased Premises, a registered office or principal place of business, then at the time of leaving the notice;
  - (iii) if sent by pre-paid post, on the second Business Day after the date of posting;
  - (iv) 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);

- (d) if given by the Lessor, may be signed by the Lessor or a solicitor or agent of the Lessor;
- (e) where persons having the same interest in respect of the subject matter of the Lease are to notify any other party or are to be notified, notification to or by anyone of them is sufficient notification to or by all of them.

#### 30.13 No moratorium

The provisions of any Law 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.

#### 30.14 Further assurances

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

#### 30.15 Effect of execution

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

#### 30.16 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.

#### 30.17 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 Lessor and the Lessee agree that the Lessor shall be entitled to charge an additional amount if the Lessor becomes subject to GST as a result of the

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grant of this Lease or any supply to the Lessee under or in connection with this Lease, and the following provisions shall apply:

- (i) the Lessee must do everything reasonably requested by the Lessor to ensure this Lease is treated as taxable for the purposes of the GST, the Lessee must pay the GST to the Lessor 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 Lessee must pay to the Lessor on demand any GST charged on goods and services acquired or payable or paid by the Lessor 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;

#### 30.18 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 Lessee's leasehold interest in the Leased Premises.

#### 30.19 Headings

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

#### 30.20 Termination

The Termination of this Lease does not affect the Lessee'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.

### **31. PPSA (Personal Property Securities Act)**

#### 31.1 Interpretation

For the purposes of this clause:

- (a) "the Lessor's Personal Property" means all personal property the subject of a security interest granted to or held by the Lessor under the Lease; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

#### 31.2 Further assurance

If the Lessor determines that the Lease (or a transaction in connection with it) is or

contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Lessor has the priority required by it; and/or
- (c) enabling the Lessor to exercise rights in connection with the security interest.

### 31.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

### 31.4 Priority of the Lessor's interest

Nothing in the Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (a) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Lease attaches to the relevant collateral.

### 31.5 Enforcement

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) (enforcement methods) sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);

- (b) (notices) sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) (rights to remedy) sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

### 31.6 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor under the Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

### 31.7 The Lessor's interest remains unaffected

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

### 31.8 Notices to the Lessor

Without limiting clause 31, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- (a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- (c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.

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**SCHEDULE 1**

**Item 1 Authorised Use**

Authorised Use: Club Premises and Bike Track

Reserve Purpose: Race Club, Recreation and Sporting Clubs

**Item 2 Commencement Date**

1 April 2017

**Item 3 End Date**

31 March 2027

**Item 4 Land and Leased Premises**

**(a) Land**

Part Lot 707 Drovers Road,  
Part Reserve 30290 on DP217504 as depicted in Annexure 1

**(b) Leased Premises**

The Land, together with all Buildings and improvements on the Land, as depicted and hatched on the plan in "Annexure A" of this Lease

**Item 5 Interest Rate**

As adopted though the Shire of Wyndham East Kimberley Adopted budget to a maximum of Eleven per cent (11%) ~~Nine per cent (9%)~~ per annum

**Item 6 Rent**

The Rent is five hundred dollars (\$500.00) per annum plus GST, payable in advance on and thereafter on each anniversary of the Commencement Date-

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**Item 7 Rent Review Dates**

The Rent shall be reviewed every three (3) Lease Years.

1 April 2020                      1 April 2023                      1 April 2026

**Item 8 Term**

The term shall be ten (10) years commencing on the Commencement Date and ending on the End Date.

**Item 9 Further Terms**

Not applicable

**Item 10 Lessee's Insurance Obligations**

Without affecting any further insurance to be effected by the Lessee as specified by the Lessor in writing to the Lessee, the Lessee shall effect policies of

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insurance in respect of:

- (a) public liability insurance for an amount not less than twenty million dollars (\$20,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Lessor;
- (b) ~~the full insurable~~ reasonable value on a replacement or reinstatement basis of the Lessee's Building and 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 Lessee employed in or about the Leased Premises;
- (d) ~~the full insurable~~ reasonable 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 Lessor and the Commission reasonably requires by notice to the Lessee, on the terms specified in clause 13 of the Lease.

**Item 11 Lessor's Fixtures**

Nil

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**Item 12 Lessor's Chattels**

~~Not Applicable~~ Nil

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**Item 13 Lessee's Buildings and Fixtures**

Nil

## 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 Lease, shall have the same meanings respectively assigned to them in clause 1 of the Lease.

#### 2. Approvals

Should the Lessee wish to undertake any Lessee's Works, the Lessee must obtain all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor.

#### 3. Lessee's Works

##### 3.1 Lessee's Development Covenants

The Lessee must:

- (a) carry out and execute the Lessee'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 Lessor without:
  - (i) the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor 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.

##### 3.2 Access to the Leased Premises

- (a) The Lessee is entitled to take possession of the Leased Premises and to enter upon the Leased Premises and commence the Lessee's Works from and including the Commencement Date PROVIDED:
  - (i) the Lease has been executed by the Lessee and the Lessor and all other consenting parties; and
  - (ii) the Conditions Precedents have been satisfied.
- (b) For the avoidance of doubt, the Lessee is obliged to pay full Rent, outgoings and all other money payable under the Lease from the Commencement Date regardless of whether the Lessee has

commenced or completed the Lessee's Works or whether the Lessee can operate the Authorised Use from the Leased Premises.

- (c) Notwithstanding clause 3.2(a) of this Schedule, should the Lessee commence the Lessee's Works prior to the satisfaction of any Conditions Precedent, whether with or without the Lessor's prior consent, the Lessee does so at its own risk and shall have no claim against the Lessor in the event that any of the Conditions Precedent are thereafter not satisfied.

### 3.3 Facilities for Lessee's Contractors

The Lessee and the Lessee's contractors must provide and, as necessary, negotiate with the Lessor 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 Lessee or its contractors may require, and must pay to the Lessor on demand any expenses which the Lessor may thereby incur.

### 3.4 Lessee Responsible for Damage

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

### 3.5 Lessee's Insurance

- (a) Prior to the commencement of the Lessee's Works (or any associated or incidental works on the Leased Premises), the Lessee must have:
  - (i) procured the insurance policies referred to in item 10 of Schedule 1; and
  - (ii) otherwise complied with the terms of clause 13 of the Lease in respect of those insurance policies.
- (b) For the avoidance of doubt and notwithstanding or limiting clause 13 or item 10 of Schedule 1 of the Lease, the Lessee must, prior to the commencement of any Lessee'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 Lessee's Works, throughout the Lessee's Works Period insure against any liability, loss, claim or proceeding whatsoever arising by virtue of any Laws relating to workers' compensation or employer's liability, by any person employed in or about the execution of the Lessee's Works and shall also insure for the Lessee's and its contractors' common law liability to all such persons for such amount as shall be nominated by the Lessor; and

- (ii) ensure that the insurance policy referred to in item 10(b) of Schedule 1 insures the Lessee'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 Lessee's Works.

### 3.6 Assumption of Risk by Lessee

The Parties expressly acknowledge and agree that:

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

### 3.7 Property in Works

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

### 3.8 Default

- (a) For the avoidance of doubt, a failure by the Lessee 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 ("Development Default").
- (b) Without prejudice to any other rights or remedies available to the Lessor, if the Lessor terminates this Lease pursuant to clause 19 on the occurrence of a Development Default:
  - (i) the Lessee shall, unless otherwise directed by the Lessor, within sixty (60) days from the date upon which the Lessor terminates the Lease remove from the Leased Premises the

Lessee's Works in compliance with the Works Conditions and make good the Leased Premises to the satisfaction of the Lessor;

- (ii) the termination of the Lease shall be without prejudice to the obligations of the Lessee to pay the Lessor any moneys which shall be due and owing as at the date on which the Lessor terminates the Lease; and
  - (iii) the Lessee shall pay to the Lessor on demand all costs and expenses incurred by the Lessor as a consequence of the Lessee's Development Default and in the exercise of the rights of the Lessor under this clause 3.8.
- (c) Should the Lessee not comply with its obligation under clause 3.8(b)(i) above the Lessor shall be at liberty to exercise any of the rights conferred on the Lessor pursuant to clause 21.5 of the Lease.
- (d) Until the Leased Premises are restored in accordance with the Lease (whether by the Lessee or the Lessor) or until the Lessor elects to take the absolute property in the Lessee's property (which includes the Lessee's Building and Fixtures) left after termination, the Lessee shall continue to pay the Rent, outgoings and all other payments pursuant to this Lease as if the Lessee were holding over in the Leased Premises.

### 3.9 Indemnity

Without limiting the generality of clause 14 of the Lease, the Lessee indemnifies the Lessor and the Lessor's employees against all claims, demands, loss, damage, costs and expenses of every description which the Lessor may suffer or incur in connection with or arising directly or indirectly from the Lessee's entry upon and occupation of the Leased Premises for the purpose of the Lessee's Works or the construction, installation or carrying out the Lessee's Works (whether undertaken by the Lessee or the Lessor or any contractor on behalf of or at the direction of either the Lessee or the Lessor).

### 3.10 Definitions

For the purpose of this clause 3:

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

## 4. **Hire of Leased Premises to third parties**

- 4.1 The Lessee may hire out the Leased Premises or any part thereof on a casual basis only, provided:

- (a) such use is consistent at all times with the Authorised Use and relevant legislation;
- (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease;
- (c) the Lessee registers the Leased Premises as a "Public Building" with the Relevant Authority within five (5) Business Days of executing this Lease;
- (d) the Lessee observes, performs and complies with all relevant legislation; and
- (e) compiles regular risk management plans in accordance with Australian Standards.

4.2 For the purposes of this Lease, "casual hire" means any hire of the Leased Premises by the Lessee to a third party for a period of and not more than 48 hours in any calendar month and does not include any formal transfer, assignment or sublease of the Leased Premises.

4.3 The Lessee acknowledges and agrees that at all times, including when the Leased Premises are hired to a third party, it remains responsible for the Leased Premises, including without limitation any damages that may be caused or occurs during any hire period.

### **SCHEDULE THREE Access Roads and Campground Licence**

#### **1. Definitions**

(a) In this Schedule:

**Access Roads** the designated access roads as depicted on the plan attached as Annexure C being part of lot 707 on Deposited Plan 217504

**Authorised Person** has the same meaning in this Schedule as it has in the balance of the Lease;

**Campground** Is the designated space as depicted on the plan attached as Annexure B being part of lot 707 on Deposited Plan 217504

**Licence** means the Access Roads and Campground Licence created under this Schedule.

#### **2. Operative Part**

(a) In consideration of the Lessee entering into the Lease and observing the Lessee's Covenants, the Lessor grants the Lessee:

- (i) a non-exclusive right to use the access roads; and
- (ii) a non-exclusive right to use of the campground where this is in directly relation to an event held by the lessee. The lessee must comply with all relevant legislation and Shire Policies. Other lessees within the vicinity should be notified of intended campground use no less than 8 weeks prior to this use.

(b) The Lessee must at all reasonable times allow general public access to the Access Roads and Campground and accordingly may not permit any development or install any fence, gate or barricade preventing such access.

(d) This Licence continues for so long as the Lessee remains the Lessee under the Lease.

(e) This Licence does not confer upon the Lessee any estate or proprietary interest in any part of the Access Roads or Campground

(f) The legal possession and control of the Access Roads and Campground remains vested in the Lessor.

(g) This license does not confer upon the lessee any responsibility for the development, upkeep or maintenance of the access roads or the campground.

#### **3. Incorporation of Lease Clauses**

The following clauses and/or schedules contained in the Lease shall be incorporated into this Licence as if they were set out herein in full except that any reference to Premises shall mean and be a reference to the Access Roads and Campground.

a)	Clause 3	Reservation of lessors rights
b)	Clause 8	Use of leased premises and facilities
c)	Clause 10: 10.1, items b, e, h, and i 10.2 10.3 10.5	Obligation to maintain
d)	Clause 11	Positive Covenants
e)	Clause 12	Negative Covenants
f)	Clause 13	Lessee's obligation to effect insurances
g)	Clause 14	Indemnification
h)	Clause 15	Assignment
i)	Clause 16	Damage, destruction or resumption
j)	Clause 17	Limit of lessors liability
k)	Clause 21	Termination
l)	Clause 27 27.1 items a, c, d, e, f, g, i 27.2 items a, c, d, e, f 27.3 27.4 27.5	Environmental matters
m)	Clause 30	Miscellaneous
n)	Schedule 2, item 1	Interpretation
o)	Schedule 2, item 2	Approvals
p)	Schedule 2, item 3	Lessee's works

4. **Termination**

- (a) This Licence terminates when the Lease terminates unless this Licence terminates earlier under clause 4(b).
- (b) The Lessor is entitled to immediately terminate this Licence by notice to the Lessee if the Lessee:
- (i) ceases to be the Lessee under the Lease;
  - (ii) vacates the Premises it occupies under the Lease; or
  - (iii) fails to observe the Lessee's Covenants or fails to comply in any other way with this Licence.

5. **No Assignment**

The Lessee must not assign, mortgage or charge the Lessee's rights under this Licence, nor sub-licence, part with possession or dispose of its rights in any way unless it is in conjunction with the assignment or subletting of the Premises leased by the Lease.

**SIGNING PAGE**

Executed by the parties as a deed

The COMMON SEAL of the **SHIRE OF WYNDHAM EAST KIMBERLEY** was affixed by the authority of a resolution of the Council in the presence of: ] ] ] ]

\_\_\_\_\_  
Shire President Print Full Name

\_\_\_\_\_  
Chief Executive Officer Print Full Name

The COMMON SEAL of the **KIMBERLEY ACTION SPORTS INC.** was affixed by virtue of a resolution of the Committee in the presence of: ] ] ] ]

\_\_\_\_\_  
Signature of President President (Print Full Name)

\_\_\_\_\_  
Signature of Secretary Secretary (Print Full Name)

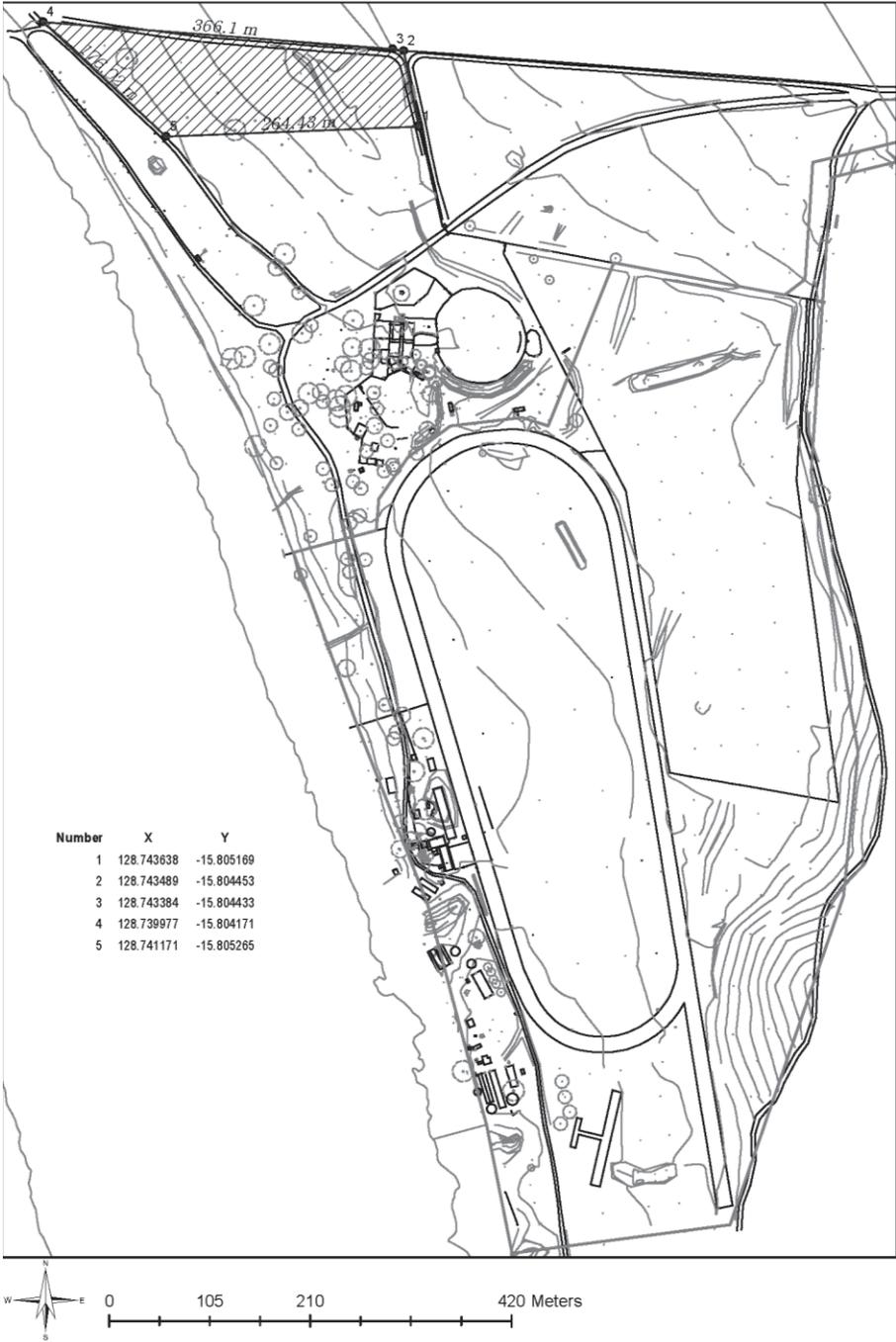
**CONSENT**

**THE MINISTER FOR LANDS** hereby consents to the within Lease pursuant to section 18 of the *Land Administration Act 1997* (WA).

Dated this        day of        2016

ANNEXURE A - PLAN

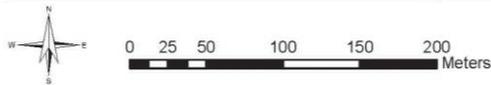
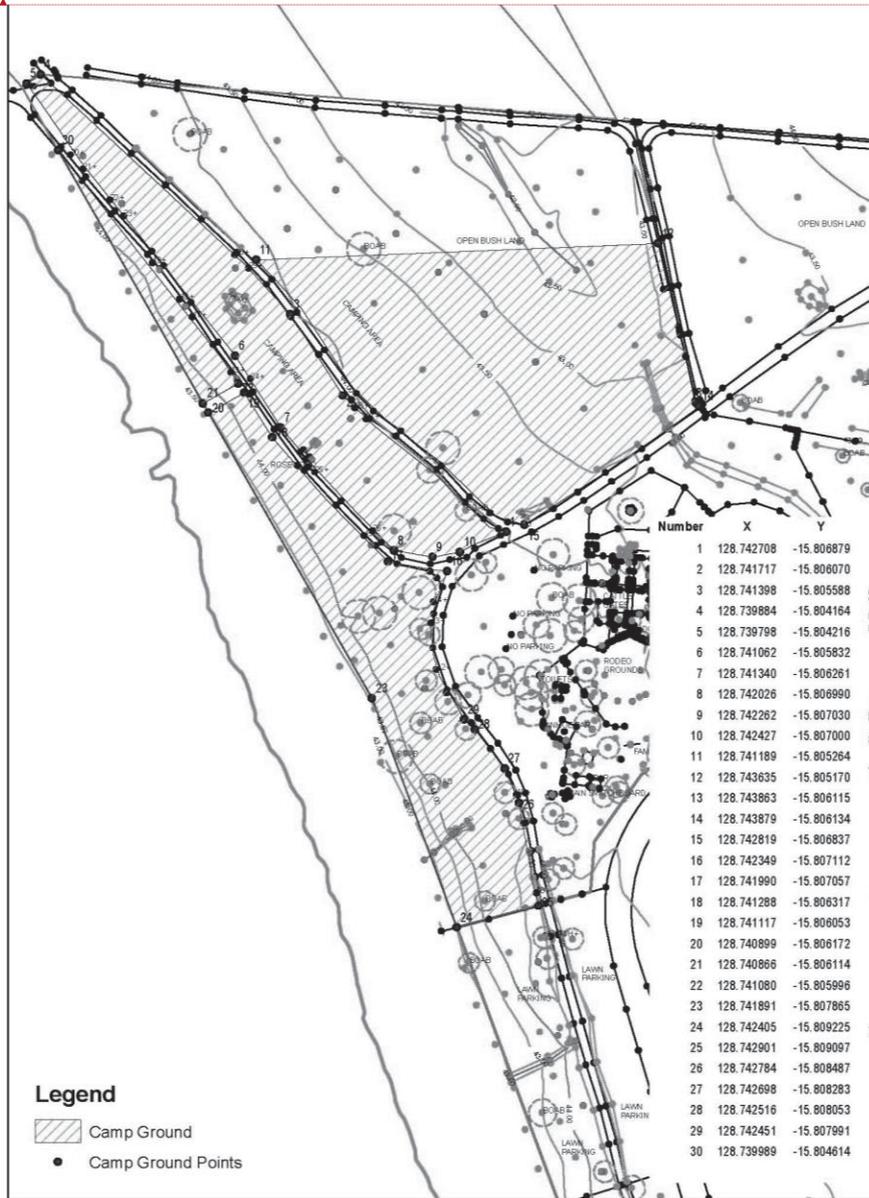
KASI Lease



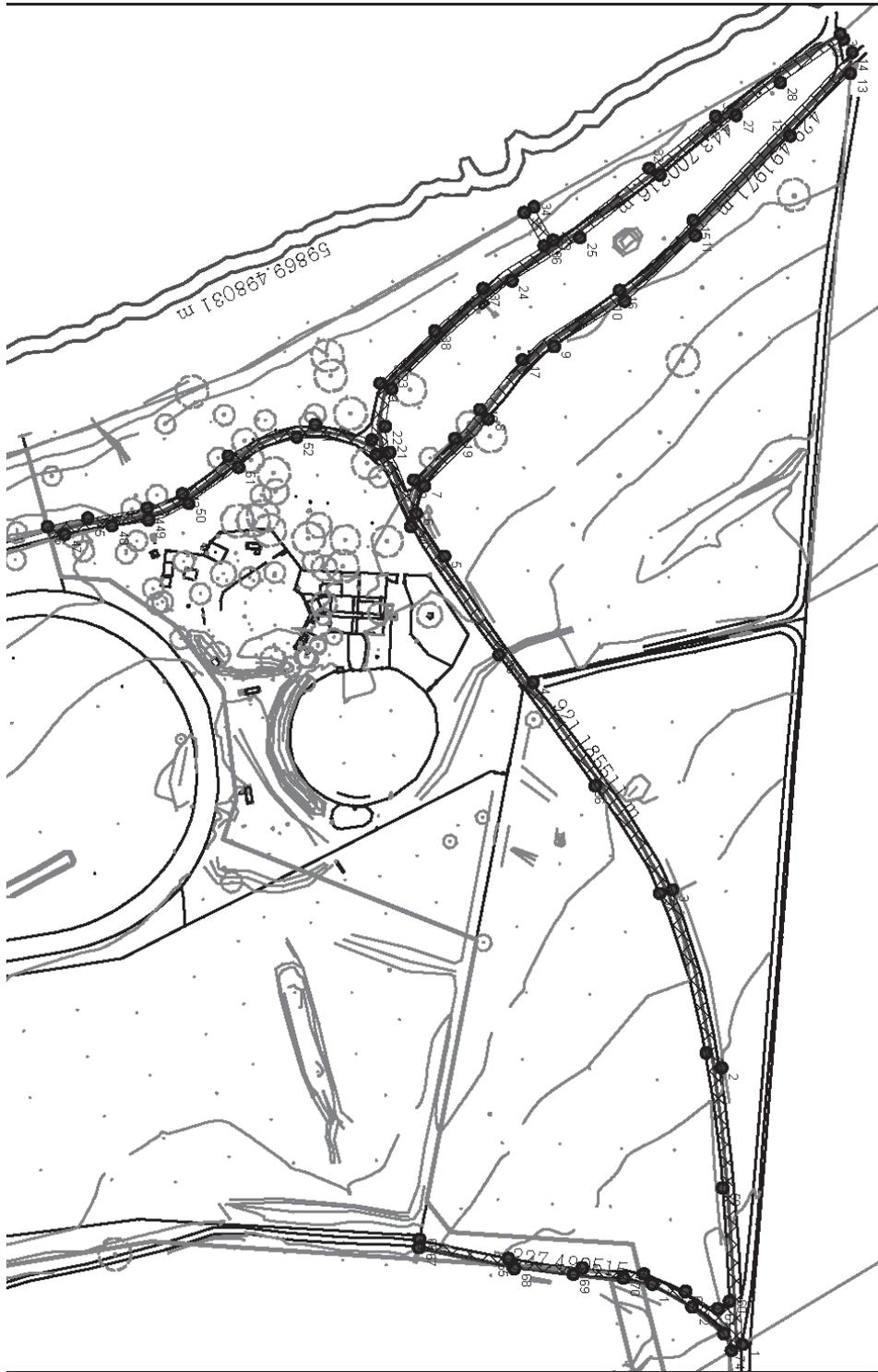
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**ANNEXURE B – CAMPGROUND PLAN**

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**Access road points**

Number	X	Y
1	128.7481	-15.8048
2	128.7464	-15.805
3	128.7452	-15.8053
4	128.7439	-15.8061
5	128.7431	-15.8067
6	128.7428	-15.8068
7	128.7426	-15.8068
8	128.7422	-15.8064
9	128.7418	-15.806
10	128.7415	-15.8056
11	128.741	-15.8051
12	128.7404	-15.8045
13	128.74	-15.8042
14	128.7399	-15.8042
15	128.741	-15.8051
16	128.7414	-15.8056
17	128.7418	-15.8062
18	128.7422	-15.8064
19	128.7423	-15.8066
20	128.7426	-15.8069
21	128.7424	-15.807
22	128.7423	-15.807
23	128.742	-15.807
24	128.7413	-15.8063
25	128.7411	-15.8058
26	128.7407	-15.8053
27	128.7403	-15.8049
28	128.7401	-15.8046
29	128.7398	-15.8042
30	128.7398	-15.8042
31	128.7403	-15.805
32	128.7406	-15.8054
33	128.7411	-15.806
34	128.7409	-15.8061
35	128.7409	-15.8062
36	128.7411	-15.8061
37	128.7414	-15.8064

38	128.7417	-15.8067
39	128.742	-15.8071
40	128.7423	-15.8071
41	128.7422	-15.8075
42	128.7425	-15.808
43	128.7427	-15.8083
44	128.7428	-15.8085
45	128.7428	-15.8089
46	128.7429	-15.8091
47	128.743	-15.809
48	128.7429	-15.8087
49	128.7429	-15.8085
50	128.7428	-15.8082
51	128.7425	-15.8079
52	128.7423	-15.8076
53	128.7424	-15.8071
54	128.7429	-15.8069
55	128.7437	-15.8063
56	128.7446	-15.8057
57	128.7452	-15.8053
58	128.7463	-15.8051
59	128.7471	-15.805
60	128.7478	-15.8049
61	128.7479	-15.805
62	128.7478	-15.8052
63	128.7477	-15.8055
64	128.7476	-15.8058
65	128.7476	-15.8063
66	128.7474	-15.8068
67	128.7475	-15.8068
68	128.7476	-15.8062
69	128.7477	-15.8059
70	128.7477	-15.8056
71	128.7477	-15.8054
72	128.7479	-15.8052
73	128.7481	-15.805
74	128.7482	-15.8049

### 12.3.5 Community Lease - Kununurra Bushmen's Rodeo Association

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Manager Community Services
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>ASSESSMENT NO:</b>	A2859
<b>FILE NO:</b>	CP.07.21
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

**That Council authorises the Chief Executive Officer to offer Kununurra Bushmen's Rodeo Association a 21 year lease for a portion of Reserve 30290, Lot 707 Drovers Road, Kununurra, as detailed in Attachment 3, subject to Minister of Lands consent.**

#### **COUNCIL DECISION**

**Minute No: 20/12/2016-11563**

**Commissioner resolved:**

**That Council authorises the Chief Executive Officer to offer Kununurra Bushmen's Rodeo Association a 21 year lease for a portion of Reserve 30290, Lot 707 Drovers Road, Kununurra, as detailed in Attachment 3, subject to Minister of Lands consent.**

**Carried 1/0**

#### **PURPOSE**

For Council to offer a lease to Kununurra Bushmen's Rodeo Association (KBRA) for the portion of Reserve 30290 as depicted in Attachment 1, for a period of 21 years.

#### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Provider - provide physical infrastructure and essential services

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

The Kununurra Bushmen's Rodeo site is located on Lot 707, Old Darwin Road, Kununurra. The Association has been sub leasing the existing site from the Kununurra Race Club. As the Kununurra Race Club (KRC) are currently negotiating a new lease, both clubs mutually agreed that with the expiry of the existing lease, the area sub leased to KBRA will be removed from the KRC Lease and a separate lease between the Shire and KBRA will be negotiated.

Discussions regarding land area between the KRC and KBRA lead to a general agreement about leased areas. There are some areas that are jointly used by both organisations including access roads, a campground area, and a fenced area at the North of the reserve (refer Attachment 1). For these joint use areas, Council Policy CP-PMG 3780 Leasing of Council Managed Reserve Land – Community, point 8.2 states that “leases will only be granted over areas required for exclusive use. Any areas that can be used jointly or by the general public i.e. for access, parking, ablutions etc., will only be licensed”.

There has been ongoing negotiation about one portion of Reserve 30290, the designated fenced area identified in Attachment 1. A meeting was held 22 November 2016 and it is believed that the licence clause developed is acceptable to both the KBRA and KRC.

## **STATUTORY IMPLICATIONS**

### Local Government Act 1995

Under section 3.58 of the *Local Government Act 1995* (LGA), the leasing of land is included as a form of disposal of property and is required to be undertaken in accordance with this section of the LGA.

However, there are exemptions from the requirements outlined in regulation 30 of the *Local Government (Functions & General) Regulations 1996*, which states that a disposition of land is an exempt disposition if –

- “(i) the land is disposed of to a body, whether incorporated or not -
- (ii) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
- (iii) the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions.”

As such, a lease to Kununurra Bushmen's Rodeo Association is considered an exempt disposition and the Shire can directly enter into a lease negotiation.

### Land Administration Act 1997

The reserve purpose for Reserve 30290 is “Racecourse, Recreation and Sporting Clubs”.

### **POLICY IMPLICATIONS**

The Lease has been drafted in accordance with Council Policy CP/PMG 3780 Leasing of Council Managed Reserve Land - Community.

Kununurra Bushmen's Rodeo Association have requested a 21 year lease. This is allowable under the Policy at the discretion of Council *"if the lessee can demonstrate the need for this extended term, as well as financial sustainability to meet this need, through the lodgement of a business plan."*

KBRA have provided a Business Plan (Attachment 2).

### **FINANCIAL IMPLICATIONS**

The lease fee will commence at \$500.00 per annum.

All costs associated with the development of the Agreement for Lease will be on costed to the Lessee.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 3: Protection and enhancement of lifestyle values, community facilities and the environment to provide safe and inviting communities.

Objective 3.5: An active outdoor lifestyle is encouraged and promoted

Strategy 3.5.2 : Encourage cooperation between sporting groups and assist them in building capacity

### **RISK IMPLICATIONS**

Non-compliance with Department of Local Government advisory standards and regulations

### **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and includes:

Ongoing communication with the Kununurra Bushmen's Rodeo Association and other organisations located on Reserve 30290.

## **COMMENTS**

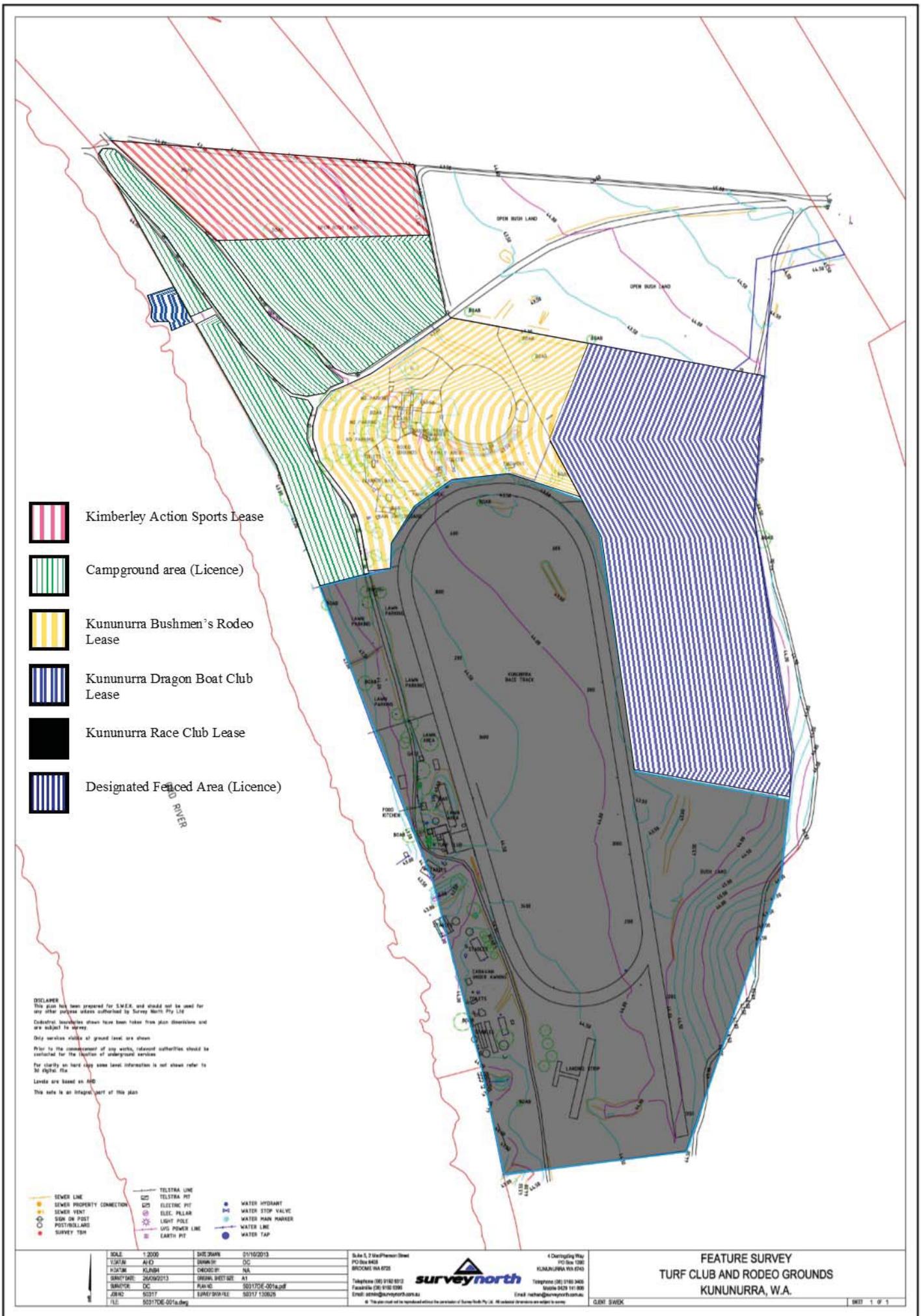
The draft lease is attached (refer Attachment 3), amendments from the generic community lease template have been highlighted. Once endorsed by Council the lease will be forwarded to Department of Lands for Section 18 Approval. Upon receipt of approval the lease will be forwarded to Kununurra Bushmen's Rodeo Association for execution.

## **ATTACHMENTS**

Attachment 1 - Map of Reserve 30290

Attachment 2 - Kununurra Bushmen's Rodeo Association Business Plan 2015

Attachment 3 - Draft Lease for Portion of Reserve 30290 - Kununurra Bushmen's Rodeo Association





December 2016

# **Kununurra Bushmen's Rodeo Association**

## **Strategic Business Plan**

*December 2016 – December 2021*

Business contact details:

PO Box: 891 Kununurra WA 6743

ABN: 50877468055

Website: [www.kununurrorodeo.com.au](http://www.kununurrorodeo.com.au)

Telephone: 0407 344 399

President: Russell Cooke

The Strategic business plan has been developed, agreed to and signed off by the following stakeholders of Kununurra Bushmen's Rodeo Association.

<b>The Management Committee</b>	<b>Portfolio</b>	<b>Signature</b>
<b>1. Russell Cooke</b>	President	
<b>2. Cameron Rasheed</b>	Vice President	
<b>3. Sophie Cooke</b>	Treasurer	
<b>4. Belinda Rasheed</b>	Secretary	
<b>5. Gemma Hocking</b>	Committee Member	
<b>6. Paul Parker</b>	Committee Member	
<b>7. Camille Camp</b>	Committee Member	
<b>8. James Camp</b>	Committee Member	
<b>9. Barb Camp</b>	Committee Member	

Date: 14/12/2016

## **Executive summary**

The Strategic business plan will play an integral role in managing the Association and achieving its goals over the next five years and beyond.

It will be used extensively by the Management Committee. It will also provide information on the Association to external parties to assist in decision making.

When necessary, it will be modified to reflect the ongoing development and needs of the association.

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# The Association

## Vision

The Kununurra Bushmen's Rodeo Association is dedicated to providing members of the community an organisation which instils sportsmanship, fair play, physical conditioning, and mental, spiritual and emotional health. Participants develop self-confidence and self-esteem while learning horsemanship and stock handling skills. The KBRA is committed to improving the facilities of their organisation for the use and enrichment of the local and broader community.

## Mission Statement

To provide quality, well organised Campdrafts, Rodeos and Gymkhana. These events will be community focussed but also of a standard to ensure the attraction on State, Interstate and National visitors and participants. We strive to maintain and continually improve and develop the facilities at the Rodeo Grounds to ensure sustainability and maximum and best use of the facilities available. To work closely with other clubs and community members to ensure fair and equitable access to the facilities for community use. To maintain the financial records in a professional manner and to an auditable standard. To promote the events as family friendly and seeking to promote a high standard of competition, safety and fun.

We aim to:

- To build at State of the Art equestrian facility to attract a very high level of competition and skill (National, Interstate and WA wide).
- To build the State of the Art Facility to be a Multi-purpose Facility to be utilised by the local and broader community.
- To offer educational programmes for youth in order to develop skills in both Campdraft and Rodeo events.
- To work with other Community organisations to provide access to our facilities for use in training programs and other community uses.
- Encourage the wider local community to become involved in the Association to ensure we have significant local input into the structure and running of the Events.

## Association Objectives

### Financial

- The KBRA has an existing solid financial base and established revenue streams through the regular and annual events schedule, we will continue to grow on this base.
- The KBRA will continue to embrace new technology to streamline the Association's financial management.
- To build on strong relationships with existing sponsors and actively work to bring on board new and diverse sponsors.
- The Association will apply for funding through many avenues including, Federal, State

and Local Government Departments. This funding will be utilised for development of the grounds, facilities and educational programmes.

- The Association will apply for funding for professional development of its committee members.

### **Governance**

- The Association's Constitution was reviewed and updated in 2016. This will be reviewed every 5 years.
- The Association will have an independent audit conducted on the Financial Records every year.
- The Association will continue to improve in areas such as, Policy & Procedures, Risk Management, Planning & Strategic Goals, Volunteer Management.
- As the facilities change and develop existing policies and procedures will be reviewed to ensure that they encompass the new developments adequately.

### **Government**

- The Association will work closely with Industry bodies to grow and develop the sports.
- The Association will work closely with State and Local Governments to develop the sports.
- The Association will liaise with the local Sport and Recreation Officer to help develop the above mentioned governance areas.
- The Association will work with state and local governments and associated Community Groups to develop a Master Plan to guide a ten-year program of infrastructure development and capital works at the shared site. Future stages are envisaged to include:
  - Commercial camp ground development.
  - Car parks and service access points.
  - Construction of a facility to cater to Dragon Boating and Mountain Biking events.
  - Tracks and trails linking back into Kununurra town central business district (CBD).

### **Infrastructure & Facilities**

- The Association is continuing to work toward improving the facilities to a National Competition Standard. We will maintain the facilities at this level.
- The Association will build a State of the Art equestrian facility which will attract a very high level of competition and skill (National, Interstate and WA wide).
- The Association will build the State of the Art Facility to be a Multi-purpose Facility to be utilised by the local and broader community. We will offer the facility for use by other community clubs, not for profit organisations and events by the start of 2018.
- The Association will work with state and local governments and associated Community Groups to develop a Master Plan to guide a ten-year program of infrastructure development and capital works at the shared site. Future stages are envisaged to include:

- Commercial camp ground development.
- Car parks and service access points.
- Construction of a facility to cater to Dragon Boating and Mountain Biking events.
- Tracks and trails linking back into Kununurra town central business district (CBD).

## Association History

The Kununurra Bushmen’s Rodeo Assoc. was founded in 1977 by a group of passionate locals who saw the value in promoting and enhancing horsemanship and cattle handling skills in the East Kimberley Region.

Cattleman and horsemanship skills have long been regarded as a valuable and honourable skill amongst both indigenous and non-indigenous Northern Communities. Kununurra Township is surrounded by pastoral properties that provide a large source of employment and skill based opportunities for young men and women. The Campdraft and Rodeo sport is a development on the skills of the cattleman across Australia and has become a national sport reaching high levels of competition across the country and overseas.

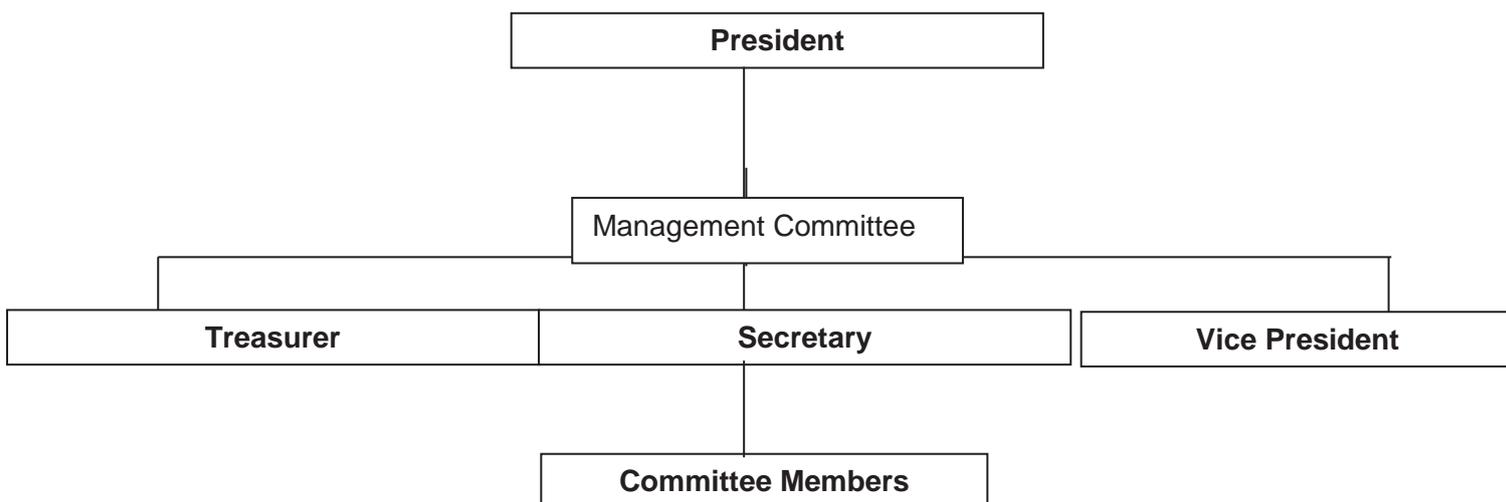
With steady increase in population expected across the whole Kimberley and events such as Rodeo and Campdraft become more and more important in the engagement and upskilling of youth.

The Assoc. is strongly committed to engaging youth within the region, working with 3<sup>rd</sup> parties to develop employment opportunities, promoting tourism opportunities and providing healthy competition and skill training for all residents and visitors to the region.

The committee is comprised of local people who have expertise in management through sound governance and business principals and this is reflected in the strong cash flow and demonstrated success of its major events.

Our Association is proud to have stood the test of time and to still be able to bring this sport to our local and wider community across the top end of Western Australia and the Northern Territory.

## Association Structure



## Licenses, Approvals, Registrations & Leases

### Licenses

- Occasional Liquor Licenses are obtained for each event.
- We hold an Event permit from the Shire of Wyndham East Kimberley

### Approvals

- Development Approval for the Multi-purpose Facility was obtained from SWEK on the 10<sup>th</sup> March 2016.
- Building Approval for the Multi-purpose Facility has been lodged and is pending approval.

### Registrations

The KBRA is a registered member of the Australian Campdraft Association.

### Leases

The Lease for the site is currently under negotiation. A 21-year lease has been sought. A 21-year lease provides reassurance to the club that development can be done for long term gain, and that future planning is secure.

## Association Activities & Event Performance

Currently the following events are held each year:

Rodeo - May

Campdraft & Rodeo – August

Over the last 3 years' attendance at these events has increased by 10% year on year. This has been mirrored on the bottom line with an increase in revenue of \$50k. With continued focus on improving the facilities and calibre of events we anticipate that spectator numbers and revenue will continue to grow.

- 2016 Gross Profit \$231k
- 2016 Nett Profit \$37k

Once construction on the Multi-purpose Facility is completed it is expected that the facility will be utilised by the local and broader community for a **minimum** of 10 additional events a year.

## Environmental analysis

The goals, objectives and strategies in this strategic business plan aim to bridge the gap between where the Kununurra Bushmen's Rodeo Association is now, and the vision of where the organisation wants to be in the future.

### Environmental analysis

	Strengths	Weaknesses
Internal Environment	<p>Our <b>STRENGTHS</b> in the internal environment:</p> <ul style="list-style-type: none"> <li>• People Management Committee</li> <li>• Skilled competitors</li> <li>• Loyal (returning) competitors</li> <li>• Skills and expertise</li> <li>• Culture</li> <li>• Good support for volunteers</li> <li>• Relationships with local businesses</li> </ul>	<p>Our <b>WEAKNESSES</b> in the internal environment:</p> <ul style="list-style-type: none"> <li>• Lack of funds to reach all areas to broaden participation</li> <li>• Not enough volunteers</li> <li>• Ineffective governance and management practices</li> <li>• Poor strategic direction, planning and review</li> </ul>
	Opportunities	Threats
External Environment	<p>Our <b>OPPORTUNITIES</b> in the external environment:</p> <ul style="list-style-type: none"> <li>• Marketing and promotion</li> <li>• Strategic alliances with other Organisations including local business, government;</li> <li>• Low cost of maintaining grounds</li> <li>• Products and services that can promote revenue</li> <li>• Increase support from government</li> <li>• New facility</li> </ul>	<p><b>THREATS</b> in the external environment:</p> <ul style="list-style-type: none"> <li>• Lack of revenue</li> <li>• Remote location</li> <li>• Distance for competitors to travel</li> <li>• Poor reputation</li> </ul>

## Industry

### Technological

The Association has embraced and incorporated the following technologies in order to streamline their operations:

Xero – with access for all committee via web based access, password protected.

Benefit: Ease of transparency, time saving, reduced accountants charges, simpler audit process.

Receipt Bank – integrated with Xero

Benefit: Paperless record keeping, transparency, simpler audit process, information all in one central position.

On line Payments of Prize Money – time saving, better record keeping, transparency

Electronically audited and managed financials

The Association will continue to look for and embrace technologies for improvement as they are developed.

### Competition

As a community, based association, the key areas for focus to address the issue of competition (defined as a competing event for the same audience) are as follows:

- Set dates for next 5 years events
- Work closely with other local community organisations and SWEK to minimise, if not totally remove, any clashes in major event timing
- Work closely with other Kimberley and NT Rodeo and Campdraft Associations to minimise, if not remove, any event clashes
- Work closely with the Australian Campdraft Association to ensure that the KBRA events are placed on the calendar early each year

### Key Success Factors

The following areas have been identified as critical to the success of the Association moving forward:

1. Completed development of the Multi-purpose Facility
2. Successful Marketing and Management of the Multi-purpose Facility
3. Granting of a 21-year lease over the grounds
4. Involvement in Master Planning for Infrastructure Development & Capital works at the currently shared site.
5. Increased membership base
6. Succession planning & training

7. An improved focus on Governance (Policy & Procedure, Risk Management, Communication, Committee Management), Culture & Leadership (Communication) & Decision Making (members) (points identified in the 2012 Australian Sports Commission 'Healthy Clubs' Checklist survey tool)

# Marketing Plan

## Communication Plan

As the Association grows and develops, communication with all stakeholders is critically important. The Communications plan below will ensure that the Association does not miss important communications and channels. This plan will be referred to around all major developments and announcements.

	Website	KBRA Committee Meetings	Face to Face Meetings	Email	Media Release	Social Media	Chamber of Commerce Events	Stakeholder Survey
X = primary communication method X = secondary communication method								
KBRA Committee	x	x		x		X		
KBRA Membership Base	x			x	x	X		x
Industry Stakeholders	x			x	x	X	x	x
Educational Partners	x		x	x	x	x	x	x
Community Groups	x			x	x	x	x	x
Broader Community	x				x	x	x	x
Local Gov - SWEK	x		x	x	x	x	x	
Funding bodies (DSR, KDC, RDA)	x			x	x	x		
Contractors			x		x	x	x	
Suppliers			x		x	x	x	
Tourism Bodies				x	x	x	x	
Key Pastoral Bodies				x	x	x		
EK Stakeholders	x			x	X	x	x	x
MP's				x		x		
Ministers				x		x		
Media	x		x		x	x	x	x

## Marketing for new facility

A cleverly executed promotional campaign will launch the Kununurra Bushmen's Rodeo and Campdraft Assoc. Multi-purpose Facility and events through stakeholder channels, Council and tourism publications, social media, local networks, direct stakeholder communications and media. This methodology can build the facility's profile, boost income and populate a database with powerful information about customers who establish a personal relationship with the park via club and/or community or visitor participation. DSR, Royalties for Regions & RDA will be consistently recognised for their substantial support for the development of the facility as part of this marketing exercise.

The Communication Plan above can be applied to this project to ensure blanket coverage of all stakeholders.

Marketing strategies should be underpinned by the following practical elements of effective

marketing:

1. The facility and event product is, and is perceived to be, valuable to customers
2. The facility and event prices of participation accord with what target markets are willing to pay
3. Council's and Tourism promotions appear in the right place at the right times
4. The benefits of participation and usage are delivered in places where customers can receive and enjoy them
5. KNX Bushman's Rodeo and Campdraft people (management, staff and volunteers) are service oriented and capable of meeting the needs of customers

A social media campaign will 'reveal' the facility funding announcement and development, creating a sense of excitement and driving early visitation and inquiry for the event. We will implement well-constructed, effectively targeted marketing and communication strategies.

## Goals and Objectives

- Grow the membership base
- Keep strong channels of communication open with the community
- Market the new Multi-purpose Facility
- Promote events
- Promote sponsors and key partners
- Communicate changes, growth and development in the Association

## **Operational Strategy**

Kununurra Bushmen's Rodeo has the physical, organisational and human infrastructure in place to support the Association and its growth into the future, and the development of the new Outdoor Multi-Purpose Facility infrastructure and its future use. The members hold adequate intellectual property and skills to manage the community use and ongoing maintenance of community infrastructure.

## Committee Roles and Responsibilities

### President

#### Requirements

- Ensure the Management Committee works towards achieving the association goals
- Work with the Treasurer to ensure all financial targets are met and to direct funds appropriately
- Provide direction to all committee members and Management committee
- Manage association meetings
- Represent association at all local, state and interstate functions as required
- Act as an association facilitator as required
- Ensure that the planning and budgeting of the club is carried out in accordance with policy.

#### Skills Required

- Highly developed people management skills
- Strong decision making capabilities
- Strong strategic vision

### Vice President

#### Requirements

- Perform president's duties when president is unavailable to
- Facilitate planning
- Provide guidance and leadership
- Chair and manage meetings
- Manage and control Annual General Meetings
- Monitor budgeting
- Represent the association in public

#### Skills Required

- Good working knowledge of the association, events, rules, constitution etc
- Ability to delegate
- Experience in a leadership role
- Good Listener
- Well-developed decision making skills
- Ability to negotiate successfully between members
- Experience with planning operations
- Ability to manage people and lead meetings

### **Treasurer**

#### Requirements

- Prepare and monitor budget
- Keep the associations books up to date
- Keep a record of all payments and monies received
- Make sure financial reports are available and understood at all committee meetings
- Show evidence that monies received is banked and documented provided for all monies paid out
- Ensure that information for an audit is prepared each year
- Arrange audit
- Give treasurer report at meetings as required
- Produce an annual financial report
- Send out accounts
- Pay the bills

#### Skills Required

- Well organised
- Able to allocate time to keep will maintained financial records
- Able to work in a logical orderly manner
- Aware of information required for audit
- Experience in creating contracts
- Negotiation skills
- Excel skills

### **Secretary**

#### Requirements

- Manage Nominations
- Maintain and manage competitor database
- Manage competitor communication
- Manage historical records
- Manage administration procedures
- Manage meeting minutes
- Manage insurance, registration and public liability insurance
- Be contact person affiliation and insurance
- Manage funding applications
- Prepare meeting agendas
- Manage mail in and out
- Ensure all volunteers know what their job requirements are before events, competitions or training.
- Prepare a Role Description booklet outlining all volunteer roles and duties

#### Skills Required

- Good communication skills
- Well organised
- Can maintain confidentiality on relevant matters
- Have good working knowledge of constitution
- Time management skills

### Sponsorship Liaison Officer

#### Requirements

- Maintain/improve/develop sponsorship arrangements
- Source new sponsorships
- Develop and present business cases for sponsorship
- Ensure sponsorship agreements are adhered to and maximised

#### Skills Required

- Good communication skills
- Well organised

## Key performance areas (KPAs) & Recommendations

Some key areas of focus that have been highlighted previously in the Healthy Club Survey were areas of Governance, Culture & Leadership & Decision Making.

*Governance* -The committee will work towards developing comprehensive policies and procedures that are used to guide decision making and provide transparency. We aim to monitor the clubs operations, risks and finances to ensure adequate control and reporting systems. The association also aims to develop a plan that can be used as a scaffold for decision making and monitoring the performance of the club in terms of its performance and financial situation.

The association will update its constitution to be in line with current practises and refer to it as a working document.

*Culture and Leadership*- The association aims to develop a communication plan that will enable us to provide information to a wide range of people in an equally wide range of formats.

*Decision Making*- The association will provide appropriate forums for members of the wider community to offer feedback that can be used in further developing and/ or decision making for the future.

The Association has developed KPA's around these, see below.

**KEY PERFORMANCE AREA:** Governance  
**Focus area:** Policy & Procedures

**Goal:** To introduce best governance and management practices

**Objectives:** To optimise the performance of the organisation

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Review current policy and procedures.	Management committee to meet to discuss policy and procedure review.	Whole Committee	X					Nil	To improve organisational effectiveness and to ensure that all members are protected under clear guidelines. Ensure that all members are aware of the policy and procedures.	HIGH

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Develop and adopt any policy and procedure manuals as required.	Management Committee to meet and discuss.	Whole Committee	X					TBA – There may be some same cost for members to attend possible workshops or development training in governance. If cost is incurred it will be possible for the association to contact Local Government or DSR for possible funding.	To have written policy available to the community.	HIGH.
Develop a Planning document that will outline the associations goals and objectives for the future.	Establish a planning subcommittee to establish and review the plan annually.	Whole Committee	X					Possible funding to be obtained from DSR to develop manual. It is perceived that there would be a limited cost of developing manual to the club. Predicted cost under \$500.	To maintain a positive relationship between the association and it's environment.	HIGH

**KEY PERFORMANCE AREA:** Governance  
**Focus area:** Risk Management

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Compile and annual budget	To compile annual budget	Whole Committee	X					NIL	To monitor the association financial health and stability	HIGH
Monitor Progress against the budget	Have regular committee meetings where profit and loss is checked against the budget.	Whole Committee	X					NIL	To constantly assess the Associations financial situation to ensure continued viability.	HIGH

**KEY PERFORMANCE AREA: GOVERNANCE**  
Focus area: Planning

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Develop a plan to regulate and review our performance	To develop a working, planning document.	Whole Committee	X					NIL	To be able to regularly review the Associations performance against the plan.	HIGH
Develop a strategy to manage access and use of new Multi-purpose Facility	To develop a working management plan for Multi-purpose Facility.	Whole Committee	X					NIL	To be able to regularly review the Associations performance (including community feedback) against the plan.	HIGH

**KEY PERFORMANCE AREA: GOVERNANCE**  
 Focus area: Committee Management

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Review constitution and update to ensure relevance to current day	Review, vote and submit appropriate modifications	Whole Committee				X		NIL	To have a solid constitution by which we can provide structure and process.	HIGH
To attract members by providing committee members with professional development opportunities	Seek and apply for funding to support professional development opportunities.	Whole Committee						\$5000	To upskill the committee members to ensure delivery of the best possible standard.	HIGH

**KEY PERFORMANCE AREA: CULTURE AND LEADERSHIP**  
Focus area: Communication

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Continue to apply communication template to all communications	Use as a working document.	Whole Committee			X			NIL	To provide a consistent communications and delivery.	HIGH
To continue to broaden the range of media sources to reach a wider sector of the community.	Consistently monitor current media avenues and introduce new sources as required.	Whole Committee	X					\$5000	To provide a broad range of community members with information regarding events and training opportunities.	HIGH
To position the new Multi-purpose Facility as the 'premium' venue for events	Develop marketing strategy to attract new events.	Whole Committee	X					\$5000	To increase utilisation of the new Multi-purpose Facility across a diverse range of uses.	HIGH
To monitor sponsor & key partner relationships and improve based on feedback	Develop and implement feedback template. Develop summary of areas for improvement.	Whole Committee	X					\$5000	To further improve relationship with sponsors & key partners, and service their investment to a high level.	HIGH

**KEY PERFORMANCE AREA: DECISION MAKING**

Focus area: Members

Strategies	Actions	Responsibility	Timeline					Cost Forecast	Performance Outcome	Priority
			01	02	03	04	05			
Monitor success of events from both competitor and spectator perspective to ensure continued improvement.	To access communication forums for feedback to make decisions about alterations to future events.	Whole Committee	X					NIL	To continually develop and grow the events to cater for the ever-changing population.	HIGH
Actively plan what State, National & International events to lobby to be held at new facility	Develop a plan and supporting strategies to attract the new events	Whole Committee	X					NIL	To improve overall standards of events. To introduce new events which will bring economic benefit to the community and region.	HIGH

## Financial strategy

The KBRA has an existing solid financial base and established revenue streams through the regular and annual events schedule, we will continue to grow on this base for the next 5 years and beyond. We demonstrate that we are able to maintain the new facility and continue to grow nett profits for future growth of the Association and increased donations into the community.

## 2016 Actuals & Budget Forecast 2016 – 2021

### Kununurra Bushmens Rodeo Association Budget Projections 2016-2021

	2016	2017	2018	2019	2020	2021
<b>Income</b>						
Bar Sales	\$53,500.00	\$56,175.00	\$58,983.75	\$61,932.94	\$65,029.58	\$68,281.06
Campdraft Bar	\$4,500.00	\$4,725.00	\$4,961.25	\$5,209.31	\$5,469.78	\$5,743.27
Gate Sales	\$40,000.00	\$42,000.00	\$44,100.00	\$46,305.00	\$48,620.25	\$51,051.26
Competitor Entry Fees	\$50,000.00	\$52,500.00	\$55,125.00	\$57,881.25	\$60,775.31	\$63,814.08
Training Schools	\$6,500.00	\$6,825.00	\$7,166.25	\$7,524.56	\$7,900.79	\$8,295.83
Sponsorship	\$32,000.00	\$33,600.00	\$35,280.00	\$37,044.00	\$38,896.20	\$40,841.01
<b>Total Income</b>	<b>\$186,500.00</b>	<b>\$195,825.00</b>	<b>\$205,616.25</b>	<b>\$215,897.06</b>	<b>\$226,691.92</b>	<b>\$238,026.51</b>
<b>Gross Profit</b>	<b>\$186,500.00</b>	<b>\$195,825.00</b>	<b>\$205,616.25</b>	<b>\$215,897.06</b>	<b>\$226,691.92</b>	<b>\$238,026.51</b>
<b>Plus Other Income</b>						
Grants, WA Tourism etc	\$15,000.00	\$15,750.00	\$16,537.50	\$17,364.38	\$18,232.59	\$19,144.22
<b>Total Other Income</b>	<b>\$15,000.00</b>	<b>\$15,750.00</b>	<b>\$16,537.50</b>	<b>\$17,364.38</b>	<b>\$18,232.59</b>	<b>\$19,144.22</b>
<b>Less Operating Expenses</b>						
Advertising	\$8,000.00	\$8,400.00	\$8,820.00	\$9,261.00	\$9,724.05	\$10,210.25
Ambulance	\$4,000.00	\$4,200.00	\$4,410.00	\$4,630.50	\$4,862.03	\$5,105.13
Bad Debt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Bank Fees	\$160.00	\$168.00	\$176.40	\$185.22	\$194.48	\$204.21
Bar Cost	\$33,000.00	\$34,650.00	\$36,382.50	\$38,201.63	\$40,111.71	\$42,117.29
Campdraft Judge	\$800.00	\$840.00	\$882.00	\$926.10	\$972.41	\$1,021.03
Campdraft School	\$3,000.00	\$3,150.00	\$3,307.50	\$3,472.88	\$3,646.52	\$3,828.84
Community Group Contributions	\$8,000.00	\$8,400.00	\$8,820.00	\$9,261.00	\$9,724.05	\$10,210.25
Consulting & Accounting	\$3,000.00	\$3,150.00	\$3,307.50	\$3,472.88	\$3,646.52	\$3,828.84
Contractors	\$13,000.00	\$13,650.00	\$14,332.50	\$15,049.13	\$15,801.58	\$16,591.66
Depreciation	\$6,800.00	\$7,140.00	\$7,497.00	\$7,871.85	\$8,265.44	\$8,678.71
Entertainment	\$1,100.00	\$1,155.00	\$1,212.75	\$1,273.39	\$1,337.06	\$1,403.91
Freight & Courier	\$15,000.00	\$15,750.00	\$16,537.50	\$17,364.38	\$18,232.59	\$19,144.22
Gate Cost	\$1,000.00	\$1,050.00	\$1,102.50	\$1,157.63	\$1,215.51	\$1,276.28
General Expenses	\$1,000.00	\$1,050.00	\$1,102.50	\$1,157.63	\$1,215.51	\$1,276.28
Grant Expenditure	\$10,000.00	\$10,500.00	\$11,025.00	\$11,576.25	\$12,155.06	\$12,762.82
Grounds and Maintenance	\$10,000.00	\$10,500.00	\$11,025.00	\$11,576.25	\$12,155.06	\$12,762.82
Asset Capital Replacement Sinking Fund	\$7,000.00	\$7,350.00	\$7,717.50	\$8,103.38	\$8,508.54	\$8,933.97
Insurance	\$10,000.00	\$10,500.00	\$11,025.00	\$11,576.25	\$12,155.06	\$12,762.82
Power	\$2,500.00	\$2,625.00	\$2,756.25	\$2,894.06	\$3,038.77	\$3,190.70

**Kununurra Bushmens Rodeo Association  
Budget Projections 2016-2021**

	2016	2017	2018	2019	2020	2021
Office Expenses	\$2,000.00	\$2,100.00	\$2,205.00	\$2,315.25	\$2,431.01	\$2,552.56
Prize Money	\$40,000.00	\$42,000.00	\$44,100.00	\$46,305.00	\$48,620.25	\$51,051.26
Repairs and Maintenance	\$7,500.00	\$7,875.00	\$8,268.75	\$8,682.19	\$9,116.30	\$9,572.11
Rodeo School	\$1,000.00	\$1,050.00	\$1,102.50	\$1,157.63	\$1,215.51	\$1,276.28
Security	\$8,000.00	\$8,400.00	\$8,820.00	\$9,261.00	\$9,724.05	\$10,210.25
<b>Total Operating Expenses</b>	<b>\$195,860.00</b>	<b>\$205,653.00</b>	<b>\$215,935.65</b>	<b>\$226,732.43</b>	<b>\$238,069.05</b>	<b>\$249,972.51</b>
<b>Net Profit</b>	<b>\$5,640.00</b>	<b>\$5,922.00</b>	<b>\$6,218.10</b>	<b>\$6,529.01</b>	<b>\$6,855.46</b>	<b>\$7,198.23</b>

NOTE: Increase of 2.5% CPI and 2.5% for growth

Projections based on historical figures from 2012-2015

## Audits

Annual audits are budgeted for and carried out. This will be continued to ensure transparency for the community, committee and funding partners.

Current Accounting Firm – Mi Fi Accounting

Current Auditor - Mi Fi Accounting

## Monitor and review of the plan

Directors of the Board will be responsible for their designated portfolio and must prepare a short-written report on the activities of their standing committees or ad hoc committees at meetings of the Board.

The Chair in accordance with the Constitution should have overall responsibility to members for the implementation and review of the Strategic business plan and other functions of the Association.

The yearly review will take place prior to the end of each financial year 30 June or calendar year as determined by the Board in accordance with the Constitution and the Act. The reviews of the plan will take place as tabled below.

Strategic business planning	Update	Total Review	Responsibility
Values, vision, mission	Six-monthly, but only if required	Annually	Committee
Environmental analysis	Six-monthly if required	Annually	Committee
Strategy formulation	Six-monthly, but only if required	Annually	Committee
Targets	Bi-Annually	Quarterly and Annually	Committee
By laws, rules & Constitution	Annually	Annually	Committee
Financial plans	Monthly	Annually	Treasurer
Resource requirements and action planning	Weekly, daily	Six Monthly	Committee
Entire business plan	Annually	Annually	Committee



**LEASE**

RESERVE

(Part Lot -707 on Plan 217504, Part Reserve 30290)

**SHIRE OF WYNDHAM EAST KIMBERLEY**

("Lessor")

AND

**KUNUNURRA BUSHMEN'S RODEO**

**ASSOCIATION -INC**

("Lessee")

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(c) any person claiming under or through the Lessee

"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 Facilities,

hereafter constructed, made, erected, installed or situated on the Leased Premises.

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

"CEO" means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease.

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

"Committee" means the management committee of the Lessee.

"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) and "CPI" has a corresponding meaning. If the CPI is discontinued or in the Lessor's opinion does not reflect the increase in the cost of living for the City of Perth, the index which will be used will be an index specified by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.

"Council" means the council of the Lessor.

"Current CPI" means the Consumer Price Index number last published before the relevant Rent Review Date.

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

"Event of Default" means the events specified in clause 18 of this Lease and clause 3.8(a) of the special clauses to this Lease.

"Facilities" means the water supply, drainage, sewerage, plumbing, gas, electrical, telecommunications and data fixtures, fittings and 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.

“Further Term” means each further term specified in item 9 of Schedule 1.

“LAA” means the *Land Administration Act 1997* (WA).

“Land” means the land described in item 4(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 Lessor, and includes, where appropriate, the First Period and the Final Period.

“Leased Premises” means that part of the Land, together with all Buildings and improvements on the Land (if any), as described in Item 4(b) of Schedule 1.

“Lessee's Fixtures” means each fixture and fitting installed by the Lessee in or on the Leased Premises with the Lessor's consent which is not, or is not re-classified as, a Lessor's Fixture in accordance with this Lease, as described in item 13 of Schedule 1.

“Lessee's Obligations” means each covenant, obligation and duty contained or implied in this Lease or required by law to be performed by the Lessee, the Guarantors, or any Authorised Persons.

“Lessee's Rights” means the Lessee's rights under this Lease or implied by law.

“Lessee's Works” means the development of the Leased Premises by the Lessee in accordance with:

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

“Lessor's Chattels” means the furniture in or on the Leased Premises, including those described in item 12 of Schedule 1.

“Lessor's Fixtures” means the Lessor's fixtures and fittings in or on the Leased Premises as described in item 11 of Schedule 1

“Lessor'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 Lessee by the Lessor from time to time.

"Lessor's Rights" means the rights of the Lessor under this Lease or implied by law, including without limitation the benefit of the Lessee's Obligations.

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

"Minister" means the Minister for Lands, a body corporate under section 7 of the LAA.

"Party" means a party to this Lease.

"Plans and Specifications" means all plans, specifications and working drawings in relation to the Lessee's Works as prepared by or on behalf of the Lessee and in the form approved by the Lessor 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.

"Policy" means the Shire of Wyndham East Kimberley's Council Policy Number CP/PMG-3780 "Leasing of Council Managed Reserve Land". This includes any superseding policy or substitute for this policy.

"Previous CPI" means the Consumer Price Index number last published before a date 12 months before the relevant CPI Rent Review Date, or if an actuary is appointed under this Lease to determine an index, the number certified by that actuary.

"Public Building" has the meaning given to it in section 173 of the *Health Act 1911* (WA).

"Rate" means the interest rate specified in item 5 of Schedule 1.

"Rates and Taxes" means:

- (a) local government rates and charges including but not limited to, rubbish removal rates and charges;
- (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; and
- (d) rates, taxes, charges, duties and fees levied, charged, assessed or imposed by a Relevant Authority in respect of any part of the Leased Premises or the ownership or occupation of any part of the Leased Premises, 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 6 of Schedule 1 as reviewed in accordance with this Lease.

“Rent Review Date” means each rent review date as specified in item 7 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, data, electricity, gas, oil, fuel, water or other 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.

“Term” means the term specified in item 8 of Schedule 1 and, where appropriate, any Further Term granted under this Lease.

“Termination” means the expiry of the Term by effluxion of time or by termination in accordance with this Lease.

“Valuer” means a valuer appointed in accordance with clause 16.

“Works Conditions” means in respect of any Maintenance or works carried out by the Lessee, the Lessee must:

- (i) do so:
  - (i) at the Lessee's cost;
  - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Lessor, 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 Lessor's consent in relation to those works;
    - (C) plans and specifications approved by the Lessor;
    - (D) all Requirements and Laws;
  - (v) using a qualified and competent contractor engaged by the Lessee (who has a public liability policy of not less than \$20,000,000.00 and appropriate contract construction risk, workers compensation and other usual insurances, which insurance must note the rights and interest of the Lessor

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

- (ii) ensure that the Lessee 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 Lessor in relation to their conduct in and access to the Leased Premises and when going to and from the 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 Lessor or any other person;
- (iii) if required by the Lessor, 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;
- (iv) 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
- (v) pay on demand to the Lessor:
  - (i) all the reasonable costs of the Lessor in connection with the relevant works including the Lessor's administrative and other reasonable costs of giving consent and the fees of any architect or other consultant used by the Lessor in connection with the relevant works EXCEPT THAT such costs do not include any costs or expenses incurred by the Lessor or entitled to be recovered by the Lessor 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 Lessee or the Lessee'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 (WA)*.

## 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 Lease undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound both jointly and jointly and severally;
- (c) a reference to this Lease includes a reference to any Schedule, recital, part, clause, sub-clause, paragraph or Annexure in or to this Lease, and in or to this Lease 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 under them;
- (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 Lease, 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 Lease 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;
- (t) a reference to “Lessor” is a reference to the Shire of Wyndham East Kimberley only in its capacity as Primary Interest Holder of the Leased Premises and not in its capacity as a Relevant Authority, and separate and distinct from its capacity as a Relevant Authority; and
- (u) covenants implied by Laws are not incorporated in the Lease, unless the relevant Law provides that certain covenants are to be implied and cannot be excluded by agreement.

### 1.3 Performance of Functions by Minister

- (a) All acts and things which the Lessor is required or empowered to do under this Lease is done under section 46 read together with section 18 of the LAA.
- (b) Where pursuant to this Lease payments and rights accrue to the Minister or obligations are imposed on the Minister the same are for the benefit and burden respectively of the Lessor unless the context otherwise requires.

### 1.4 Approval by Minister

- (a) In any case where under this Lease the doing or executing of any act matter or thing by the Lessor is dependent on the approval or consent of the Minister, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the reasonable discretion or Lessor's absolute discretion and may be given subject to such conditions as the Lessor may reasonably determine unless otherwise provided in this Lease.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under clause (a) will constitute a breach of a condition or covenant under this Lease.

### 1.5 Land Administration Act

The Lessor and the Lessee agree that the provisions of:

- (a) the LAA relating to Leases of Crown land granted under section 79 of the LAA apply to the Lessee; and
- (b) this Lease do not in any way affect alter or derogate from the Lessor's or the Minister's rights or powers conferred under the LAA.

## **2. Operative part**

### 2.1 Lease of Leased Premises

In consideration of the Lessee agreeing to duly pay the Rent and other money payable under this Lease and to duly observe and perform the Lessee's Obligations, the Lessor leases the Leased Premises and grants the Lessee's Rights to the Lessee for the Term commencing on the Commencement Date subject to the reservation of the Lessor's Rights under this Lease.

### 2.2 Quiet enjoyment

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

### 2.3 Lessee responsible as if owner

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

### 2.4 Conditions Precedent

- (a) This Lease is subject to and expressly conditional upon:
- (i) the Lessee obtaining all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor ("Development Condition"); and
  - (ii) the Minister approving this Lease under the LAA

- (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;

#### Development Condition

- (ii) the Lessee will bear all the costs associated with satisfying or attempting to satisfy the Development Condition, including but not limited to any application fees; and

- (iii) if any Approval:

(A) is refused; or

(B) granted subject to a condition with which the Lessee in its reasonable opinion is unable to comply with, and the Lessee within twenty eight (28) days after being notified of the condition elects, by notice in writing to the Lessor, 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 Lessor in its capacity as Relevant Authority

The parties agree and acknowledge that nothing in this Lease shall fetter or be construed as an attempt to fetter the discretion or the powers of the Lessor in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Lessor in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Leased Premises or carrying out of the Lessee's Works in accordance with this Lease.

### 2.6 Lessee Buildings and Fixtures

The parties agree and acknowledge the Lessee has constructed Buildings and Fixtures on the Premises as defined under clause 1.1 and are the asset of the Lessee as described in item 13 of Schedule 1.

### 3. Reservation of Lessor's rights

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

#### 3.1 Improvements to Leased Premises

- (a) The Lessor may at any time carry out improvements to the Leased Premises, including, ~~without limitation~~:
  - (i) construct amenities for use by the public, including public toilets, on the Leased Premises;
  - (ii) construct other new structures on the Leased Premises;
  - (iii) alter, add to, extend, reduce the size of, or otherwise modify, structures on the Leased Premises; and
  - (iv) any other Lessor's Works,
- (b) In exercising the rights in subclause 3.1(a), the Lessor shall:
  - (i) Consult with the Lessee prior to any improvements alterations or construction being carried out; and
  - (ii) use the Lessor's reasonable endeavours not to cause any undue interference with the Authorised Use.

#### 3.2 Right to enter

- (a) The Lessee shall permit the Lessor to enter the Leased Premises at all reasonable times on the giving of reasonable notice, or immediately in the case of emergency, with or without workmen and materials to:
  - (i) view the state of repair of the Leased Premises and to ensure compliance with the Lessee's Obligations;
  - (ii) comply with any requirement or order of any local government or other statutory authority;
  - (iii) carry out any Maintenance, modification, installation or extension to the Leased Premises or the Lessee's Building and Fixtures and the Plant and Equipment or cables, pipes or wires within the Leased Premises or the Lessee's Building and Fixtures; and
  - (iv) view the Leased Premises with any persons interested in the Leased Premises; except that the Lessor shall use the Lessor's reasonable endeavours not to cause any undue interference with the conduct of the Authorised Use;
- (b) the Lessor may enter the Leased Premises at any time for the purpose of doing anything which should have been done by the Lessee under this Lease but which has not been done or has not been done properly; and

- (c) the Lessor's right of entry under this clause 3.2 allows the Lessor 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.

### 3.3 Granting easements etc.

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

### 3.4 Re-classification of fixtures and fittings

Not Applicable

### 3.5 Managing Agent

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

## **4. Rent**

The Lessee must pay the Rent to the Lessor in the manner specified in item 6 of Schedule 1 at the Lessor's address in this Lease or any other address stipulated by the Lessor or by any other method specified by the Lessor, 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 Review on Rent Review Date

- (a) On each scheduled Rent Review Date, the Rent shall be reviewed in the manner set out in the following clauses of this clause 5.

### 5.2 CPI Rent Review

- (a) With effect from each Rent Review Date, the Rent shall be reviewed so that it is the greater of the Rent Payable immediately before the relevant Rent Review Date and the amount of Rent in 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 Rent Review Date;  
 “CCPI” = the Current CPI; and  
 “PCPI” = the Previous CPI.

(b) Determination of Current CPI or Previous CPI

If for the purposes of a rent review, the Consumer Price Index number is not published or, in the opinion of the Lessor 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 Rent Review Date for the purposes of determining Previous CPI, then the Lessor may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

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

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

5.3 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.
- (c) If the Lessor has not given notice of the reviewed annual Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Rent, any necessary adjustment is to be made within twenty eight (28) days of service of the rent review notice.

5.4 Not to cause Rent reduction

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

**6. Rates and Taxes**

- 6.1 The Lessee must pay to the Lessor within twenty eight (28) days, or if the demand is made to the Lessee by any Relevant Authority then to that authority on demand in full all Rates and Taxes assessed or imposed by any Relevant Authority or other service provider in respect of the Premises.
- 6.2 Except in the case of manifest error, a statement issued by the Lessor under clause 6.1 will be prima facie evidence of the matters stated in that statement.
- 6.3 If the year or other period in respect of which any particular Rate or Tax is payable does not coincide with the Lease year, the amount the Lessee is to pay in the first year and last year of the Lease will be adjusted proportionally.

## **7. Lessee to pay for Services**

### Services separately assessed

- 7.1 The Lessee must pay to the Lessor or, if demand is made by a service provider, or Relevant Authority, to that provider or Relevant Authority, all amounts separately charged or assessed in respect of the Leased Premises or the Lessee for or in connection with Services to or for the benefit of the Leased Premises or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of a Service.

### Bulk supplies Services

- 7.2 If the Lessor supplies any Services to the Leased Premises the Lessee must on demand pay to the Lessor the amount which the Lessee would have been charged by the original service provider, or Relevant Authority if the Services had been supplied to the Lessee directly together with an administrative charge of no more than twenty per cent (20%) of the amount charged by the original service provider, or Relevant Authority.
- 7.3 The Lessee must observe and comply with any conditions of supply of Services by the Lessor, or where no conditions of supply are imposed by the Lessor, observe and comply with the conditions of supply of Services imposed by the service provider or any Relevant Authority.
- 7.4 If any Service is not provided by the Lessor, the Lessee is responsible to make the Lessee's own arrangements at the Lessee's own cost for the supply of the Service to the Leased Premises and all associated Facilities. For the avoidance of doubt, the Lessor is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Leased Premises.

### Services not separately assessed

- 7.5 The Lessee must pay to the Lessor, or as the Lessor directs, the proportion of ninety per cent (90%) of all amounts charged or assessed in respect of the Land for or in connection with Services to or for the benefit of the Land or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of Service.

## **8. Use of Leased Premises and Facilities**

### 8.1 Authorised Use

The Lessee 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, Lessor's Chattels, the Lessee's Building and Fixtures for a purpose for which it was not designed or designated.

#### 8.2 Licenses and Limitations

- (a) The Lessee 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.
- (b) If the carrying on of the Authorised Use at the Leased Premises is permissible only with the consent, licence or authority under any Law, the Lessee shall obtain and maintain the currency of that consent, licence or authority and comply with that Law.
- (c) The Lessee shall not conduct any business in or from the Leased Premises which is prohibited by any Law.
- (d) The Lessee shall not contravene the provisions of the *Associations Incorporation Act 1987 (WA)*.
- (e) The Lessee agrees to comply with the Department of Health's *Guidelines for Concerts, Events & Organised Gatherings (December 2009)* including any successor or substitute documents.

#### 8.3 Comply with Directions

The Lessee:

- (a) shall comply with the Lessor's reasonable requirements for the use of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures and Lessor's Chattels;
- (b) shall not do or omit to do anything which might interfere with or impair the efficient supply or operation of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures or Lessor's Chattel;
- (c) in the conduct of the Authorised Use comply strictly with all relevant requirements imposed by any Law or Relevant Authority; and
- (d) shall comply with all rules, regulations, directions and orders made in respect of the Leased Premises by the Lessor.

### **9. Security of Leased Premises**

- 9.1 The Lessee shall securely lock all doors, gates or other openings in, to or on the Leased Premises when the Leased Premises are unoccupied.
- 9.2 The Lessor may enter the Leased Premises at any time for any purpose in relation to security, but nothing in this clause makes the Lessor responsible in any way for the security of the Leased Premises.

## 10. Maintenance and Works

### 10.1 Obligation to Maintain

The Lessee shall:

- (a) maintain the Leased Premises in a good condition and state of repair, except in respect of:
  - (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of insurance;
- (b) promptly repair any damage to the Leased Premises for which the Lessee is responsible to the satisfaction of the Lessor;
- (c) keep the Leased Premises clean and free from rubbish;
- (d) maintain the Lessor's Chattels, the Lessor's Fixtures, the Lessee's Building and Fixtures and the Facilities in good condition and where necessary, replace that Lessor's Chattel, Lessor's Fixture, Lessee's Building and Fixtures or Facility to the satisfaction of the Lessor except in respect of:
  - (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of an insurance policy;
- (e) not do or omit to do anything which might cause the Leased Premises, the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities 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;
- (f) maintain the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities in clean and good condition;
- (g) not without the Lessor'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 or any fixtures (including any Building);
- (h) keep all drains and other pipes in or connected to the Leased Premises or any fixtures (including any Building) properly cleaned and free-flowing; and
- (i) maintain all roads, driveways and access ways on the Leased Premises and keep them free of rubbish and debris and ensure that they are not obstructed.

### 10.2 Alteration and Substantial Works

The Lessee must not make any alteration to or addition to or demolish any part of the Leased Premises, the Lessor's Fixtures or the Lessee's Building

and Fixtures, or remove or alter any of the Lessee's Building and Fixtures, the Lessor's Fixtures, the Lessor's Chattels, the Plant and Equipment or any Facility or Service in or on the Leased Premises without the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority.

#### 10.3 Standard for Maintenance and Works

The Lessee must comply with the Works Conditions in carrying out all Maintenance and any other work which affects the Leased Premises, the Lessee's Building and Fixtures.

#### 10.4 Remove Non-approved Works

- (a) The lessee must ensure that within 12 months of execution of the lease, that all structures on the lease site are approved and documented. This may be achieved through:
  - (i) Finalisation of required documentation; or
  - (ii) Removal of all unauthorised/undocumented structures.
- (b) If the Lessee carries out any works, or erects any building or structure, on the Leased Premises which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this Lease, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle and remove any such works, building or structures and the Lessee shall carry out the same in accordance with the Lessor's directions.

#### 10.5 Structural Maintenance

- (a) The Lessee is responsible for all structural repairs and maintenance of the Lessee's Building and Fixtures in accordance with this Lease; and
- (b) The Lessor is responsible for all structural repairs and maintenance of the Lessor's Fixtures.

### **11. Positive covenants**

#### 11.1 Costs and Expenses

The Lessee must pay to the Lessor or as the Lessor directs all the Lessor's costs, charges and expenses in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Lease;
- (b) any consent, approval or exercise of any right, waiver, variation, release, surrender or discharge in connection with this Lease, including but not limited to all costs and expenses of and incidental to the preparation and service of a notice under section 81 of the *Property Law Act 1969 (WA)*;
- (c) any inspection or report concerning the Leased Premises and the

Lessee's Building and Fixtures;

- (d) any breach of the Lessee's Obligations;
- (e) any work done at the request of the Lessee;
- ~~(a)~~(f) the exercise of attempted exercise of the Lessor's Rights; and
- ~~(a)~~(g) any action, suit or proceeding to which the Lessor is joined as a party as a result of the Lessee's occupation of the Leased Premises and the Lessee's Building and Fixtures, and

such costs, charges and expenses include, but are not limited to:

- (h) taxes and fees and fines and penalties which may be payable in connection with this Lease;
- (i) all legal costs and expenses on a full indemnity basis; and
- (j) all interest which the Lessor is entitled to claim.

#### 11.2 Reimburse Lessor Expenses

The Lessee shall pay to the Lessor on demand all money paid by the Lessor on behalf of the Lessee in the discharge of any of the Lessee's Obligations.

#### 11.3 Report to Lessor

The Lessee shall report promptly to the Lessor or the Managing Agent in writing:

- (a) all structural damage or defects in the Leased Premises, the Lessee's Building and Fixtures, the Lessor's Fixtures, ~~the Plant and Equipment or the Facilities in or on the Leased Premises~~ of which the Lessee is or ought to be aware;
- ~~(b) any malfunction of any Plant and Equipment or Facility either on the Leased Premises or used by the Lessee;~~
- ~~(e)~~(b) any notice or order received from any court relating to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures; and
- ~~(d)~~(c) any circumstances likely to be a danger or cause any damage or danger to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures or any person in or on the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures of which the Lessee is aware.

#### 11.4 Comply with Laws

The Lessee shall comply promptly with all other Laws affecting the Leased Premises, the Lessee's Building and Fixtures or the use of the Leased Premises and the Lessee's Building and Fixtures including any structural work in respect of the Lessee's Works, including the *Health Act 1922 (WA)*, the *Health (Public Buildings) Regulations 1992*, the *Environmental Protection Act 1986 (WA)* and the *Environmental Protection (Noise)*

*Regulations 1997.*

#### 11.5 Interest

The Lessee shall on demand by the Lessor, pay the Lessor 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 5 of Schedule 1 from the due date for payment until the date of actual payment.

#### **12. Negative covenants**

The Lessee shall not:

- (a) except for reasonable quantities for normal applications in connection with the use of the Leased Premises and in the carrying out of the Authorised Use, bring onto, store or use any chemical or inflammable substance in or the Leased Premises;
- (b) store goods on or in the Leased Premises other than those necessary in the carrying out of the Authorised Use;
- (c) except as is lawful and necessary and an ordinary incident of carrying out the Authorised Use, 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 Lessor or the owners or occupiers of any nearby properties unless with the prior consent of any Relevant Authority and the Lessor;
- (d) place any rubbish on or in any part of the Leased Premises except in a suitable receptacle;
- (e) burn any rubbish in or on the Leased Premises, unless permitted by law and a necessary and ordinary incident of the Authorised Use; and
- (f) deliver or permit to be delivered goods or materials to or from the Leased Premises except in a manner which causes minimum interference to the Lessor or the owners or occupiers of any nearby properties.

#### **13. Lessee's Obligation to effect insurances**

13.1 The Lessee shall effect and maintain in the names of the Lessor and the Lessee with an insurance company approved by the Lessor all policies of insurance relating to the Leased Premises, and the Lessee's Building and Fixtures or otherwise as reasonably required by the Lessor from time to time, including policies of insurance in respect of the matters referred to in item 10 of Schedule 1 and the Lessee shall:

- (a) supply to the Lessor 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;
- (b) not without the Lessor's prior consent, alter the terms or conditions of any policy; and
- (c) ensure that each policy of insurance includes a provision for cross

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liability and waiver of subrogation rights in favour of the Lessor.

- 13.2 The Lessee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Lease or in respect of the Leased Premises and the Lessee's Building and Fixtures becoming void or voidable or which might increase the premium on any policy.

#### **14. Indemnities**

##### 14.1 General indemnity

Except to the extent contributed to by the Lessor, the Lessee shall indemnify and keep indemnified the Lessor against all losses, claims, damages, demands, costs and expenses for which the Lessor or the Minister for Lands 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 and the Lessee's Building and Fixtures by the Lessee, an Authorised Person or any other person, except to the extent caused or contributed to by the Lessor or the Minister for Lands;
- (b) resulting from an act or omission of the Lessee; or
- (c) resulting from a notice, claim or demand against the Lessee to do or refrain from doing anything except to the extent that the Lessor or the Minister for Lands 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.

##### 14.2 Nature of indemnity

The obligation of the Lessee to indemnify the Lessor and the Minister for Lands under this Lease or at law is not affected by the obligation of the Lessee to effect insurance and all indemnities shall survive the termination of the Lease.

#### **15. Assignment**

##### 15.1 No assignment

Section 18 of the LAA applies to this Lease and further the Lessee must not assign, mortgage or charge the Lessee's leasehold estate in the Leased Premises, nor sublet, part with possession or dispose of the Leased Premises in any way except where provided in the following provisions of clause 15.

##### 15.2 Property Law Act excluded

Sections 80 and 82 of the *Property Law Act 1969* (WA) are excluded.

##### 15.3 Lessor may consent to assignment

The Lessee will not be in breach of the covenant in clause 15.1 in respect of an assignment if the Lessor consents to the assignment. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor 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 Lessee 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 Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed assignee of an assignment of lease prepared by the Lessor's solicitors at the Lessee's cost which contains terms acceptable to the Lessor, including:
  - (i) a covenant by the proposed assignee with the Lessor to pay all Rent and other money payable under this Lease; and
  - (ii) a covenant by the proposed assignee to observe and perform all of the Lessee's Obligations;
- (c) if the proposed assignee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance of all of the Lessee's Obligations including payment of the Rent and other money payable under this Lease;
- (d) the Lessee agrees that the covenants of the assignee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee'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; and
- (e) the Minister consents in writing to the proposed assignment of the Lease pursuant to section 18 of the LAA.

#### 15.4 Lessor may consent to sublease

The Lessee will not be in breach of the covenant in clause 15.1 in respect of a sublease of the whole or part of the Leased Premises and the Lessee's Building and Fixtures if the Lessor consents to the sublease. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
  - (i) the proposed sub lessee 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 sub lessee 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 Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed sub lessee of a sublease approved by the Lessor or the Lessor's solicitors at the Lessee's cost which contains terms consistent in all respects with this Lease and acceptable to the Lessor;
  - (c) if the proposed sub lessee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance by the proposed sub lessee of all of the Lessee's Obligations as if the proposed sub lessee were named in this Lease as the Lessee;
  - (d) the Lessee agrees that the covenants of the sub lessee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the sublease of the Lease to the proposed sub lessee, particularly on the occurrence of an Event of Default by the proposed sub lessee or any other party; and
  - (e) the Minister consents to the proposed sublease of the Leased Premises in accordance with section 18 of the LAA.

#### 15.5 Lessor may consent to charge

- (a) The Lessee will not be in breach of the covenant in clause 15.1 in respect of a charge or mortgage if the Lessee obtains the Lessor's and the Minister for Lands consent to that charge or mortgage.
- (b) The Lessor may consent to, or refuse to give its consent to, a charge or mortgage in its absolute discretion.

~~(d)~~(c) The Minister for Lands may consent to, or refuse to give consent to, a charge or mortgage with absolute discretion.

#### 15.6 Compliance with Acts

The Lessor and the Lessee acknowledge that if in granting its consent to any assignment or sublease the Lessor has to first comply with or satisfy any obligations or requirements under any Written Law, including but not limited to section 3.58 of the *Local Government Act 1995 (WA)* and regulation 30(2)(b) of the *Local Government (Functions and General) Regulations 1996* ("Assignment/Sublease Condition Precedent"), then the Lessor's consent is made expressly conditional upon and subject to satisfaction of the Assignment/Sublease Condition Precedent.

#### 15.7 Requirements before approval

The Lessee agrees that the Lessor and the Minister may, before giving approval under section 18 of the LAA in writing, require such information concerning the transaction for which approval is sought as the Lessor and the Minister specify.

## 16. Damage, Destruction or Resumption

### 16.1 Definitions

In this clause 16:

- (a) "Reinstatement Notice" means a notice given by the Lessor to the Lessee of the Lessor'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 Lessee.

### 16.2 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 Lessee; or
  - (ii) inaccessible having regard to the nature and location of the Leased Premises and the normal means of access to them,THEN from the date that the Lessee notifies the Lessor of the damage or destruction ("Damage Notice"): 28
  - (iii) the Rent;
  - (iv) any other money payable by the Lessee under this Lease; and
  - (v) the covenant to repair and maintain,will subject to clauses 16.2(b) and 16.2(c), according to the nature and extent of the damage or destruction sustained, and the extent to which such destruction interferes with the continued operation of the Lessee's Business, abate in whole or in part as agreed by the Lessor and the Lessee or in the absence of agreement as determined pursuant to clause 16.2(c).
- (b) If clause 16.2(a) applies, then subject to clause 16.2(c) 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 Premises are:

- (iii) restored;
  - (iv) made fit for the Lessee's occupation and use; and
  - (v) made accessible.
- (c) If the parties cannot agree on the proportion of the abatement pursuant to clause 16.2(a) or the date upon which the abatement should cease pursuant to clause 16.2(b):
- (i) that proportion of the abatement and / or the date upon which the abatement should cease shall be determined by a Valuer appointed by the president of the Australian Property Institute (WA Division);
  - (ii) the costs of a Valuer appointed under clause 16.2(c)(i) shall be borne equally by the Lessor and the Lessee; and
  - (iii) until any dispute over the proportion of the abatement or the date upon which the abatement should cease has been determined the Lessee will continue to pay all money due pursuant to the Lease less any abatement that the Lessor accepts should be applied.

#### 16.3 Either Party May Terminate

If clause 16.2(a) applies, either party may terminate this Lease by notice to the other unless the Lessor:

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

#### 16.4 Lessee May Terminate

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

#### 16.5 Exceptions

Clauses 16.2, 16.3 and 16.4 will not apply where:

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

#### 16.6 Lessor may Terminate

If the Lessor considers the damage to the Premises renders it impractical or undesirable to carry out the Reinstatement Works, the Lessor may terminate this Lease by giving not less than thirty (30) days' notice to the Lessee and, at

the expiration of that notice, this Lease will terminate.

#### 16.7 Antecedent Breaches

No liability will attach to either party because of termination of this Lease under this clause 16 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.

#### 16.8 Dispute Resolution

- (a) Each Valuer appointed under clause 16.2 shall:
  - (i) act as an expert and not as an arbitrator; and
  - (ii) provide his or her determination and the reasons for his or her determination of the extent of an abatement and the period of abatement, in writing within ten (10) Business Days of his or her appointment.
- (b) Upon determination of the extent of an abatement and the period of abatement being finally determined then on the date upon which the immediately subsequent instalment of Rent is due and payable under this Lease:
  - (i) the Lessee shall pay the Lessor; or
  - (ii) the Lessor shall refund to the Lessee, as the case requires, the difference between what the Lessee has actually paid pursuant to the Lease from the date of service of the Damage Notice and what the Lessee is determined to have actually been liable to pay after the abatement.

#### 16.9 Lessor Not Obligated to Reinstate

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

#### 16.10 Proceeds of Insurance

If the Leased Premises are damaged or destroyed and the Lease is terminated under this clause 16, the Lessee will have no interest in the insurance proceeds other than those proceeds that relate to the Lessee's Building and Fixtures and contents.

#### 16.11 Resumption of Leased Premises

If the Leased Premises or any part of the Leased Premises is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of the Lessee, this Lease may be terminated without compensation or other liability by either the Lessor or the Lessee 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.

### **17. Limit of Lessor's liability**

#### 17.1 No warranties or representations

The Lessee acknowledges and agrees that:

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

#### 17.2 Lessor Not Liable

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor 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 the Leased Premises.

#### 17.3 Lessor only liable while Primary Interest Holder

Each Lessor is only liable for any breaches under this Lease occurring while registered as the Primary Interest Holder of the Leased Premises.

#### 17.4 Lessee acts at own risk

Unless this Lease provides otherwise, whenever the Lessee is obligated or required by this Lease to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Lessee.

### **18. Default**

An Event of Default occurs if:

- (a) the Lessee fails to pay the Rent, the outgoings or other money payable

under this Lease for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;

- (b) the Lessee fails to perform any of the Lessee's Obligations other than the payment of moneys referred to in clause 18(a) for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (c) distress is levied or a judgement, order, security or encumbrance is enforced against any property of the Lessee;
- (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 Lessee's property;
- (e) a person is appointed under legislation to investigate or manage any part of the Lessee's affairs;
- (f) the Lessee ceases to carry on the Authorised Use from the Leased Premises;
- (g) where the Lessee is an incorporated association and:
  - (i) an application is made to a court for an order or an order is made that the Lessee be wound up;
  - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Lessee;
  - (iii) except for the purposes of reconstruction or amalgamation, the Lessee 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 Lessee's creditors;
  - (iv) the Lessee resolves to wind itself up or otherwise dissolve itself;
  - (v) the Lessee states that it is insolvent; or
  - (vi) the Lessee takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

## **19. Lessor's powers on default**

### 19.1 Lessor's right of possession

On the occurrence of an Event of Default, the Lessor 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.

### 19.2 Lessor may remedy Lessee's default

- (a) If an Event of Default occurs or the Lessee otherwise fails to perform any of the Lessee's Obligations, the Lessor may without prejudice to the Lessor'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 Lessor was the Lessee, at the Lessee's cost. The Lessee must pay to the Lessor all liabilities incurred by the Lessor in remedying an Event of Default or failure to perform.
- (b) None of the following<sup>32</sup> events constitutes a re-entry or forfeiture or

waiver of the Lessor's rights to recover in full all Rent, outgoings and other money payable by the Lessee under the Lease:

- (i) acceptance of the keys or other access devices for the Leased Premises;
- (ii) entry to the Leased Premises by the Lessor for the purpose of inspection or for the purpose of showing the Leased Premises to prospective Lessees or to remedy an Event of Default; or
- (iii) advertising the Leased Premises for re-letting.

#### 19.3 No prejudice of Lessor's rights

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

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

#### 19.4 Exercise of rights by Lessor

The Lessor may exercise the Lessor's rights under this Lease or at law notwithstanding any delay of the Lessor in issuing proceedings or neglect or waiver in respect of any breach of the Lessee'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 Lessee or the continuance of that default.

### **20. Essential terms**

#### 20.1 Breach of Essential Terms

- (a) If the Lessee's conduct constitutes a breach of an essential term of this Lease and the Lessor elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation of this Lease, the Lessee shall compensate the Lessor for all loss or damage suffered by reason of or arising from the repudiation.
- (b) Clauses 4 ("Rent"), 5 ("Rent Review"), 6 ("Rates and Taxes"), 8 ("Use of Leased Premises and Facilities"), 10 ("Maintenance and Works"), 13 ("Lessee's Obligations to effect insurances"), 15 ("Assignment") and 27 ("Environmental Matters") of this Lease are deemed to be essential terms. This is not an exhaustive list of the essential terms of this Lease.

#### 20.2 Damage for Breach of Essential Terms

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

### 20.3 Lessor's Entitlement to Damages

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

- (a) if the Lessee abandons or vacates the Leased Premises;
- (b) if the Lessor elects to re-enter the Leased Premises or terminate this Lease;
- (c) if the Lessor accepts the Lessee'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.

### 20.4 Lessor to Mitigate Damages

- (a) If the Lessee vacates the Leased Premises or if the Lessor accepts the Lessee's repudiation based on the Lessee's breach of an essential term of this Lease and terminates this Lease, the Lessor 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 Lessor has observed the obligation to mitigate damages.
- (c) The Lessor's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of law.

### 20.5 Calculation of Damages

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

## **21. Termination**

### 21.1 Yield up Leased Premises

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

### 21.2 Remove Lessee's Buildings and Fixtures

- (a) At the Termination of the Lease the Lessor is not required to compensate for, or purchase all or any, of the Lessee's Building and Fixtures.
- (b) The Lessor may by notice to the Lessee at any time up to the day that is ten (10) Business Days after the Termination of this Lease provide an offer to purchase the Lessee's Building and Fixtures.

- (c) If the Lessor does not purchase the Lessee's Building and Fixtures the Lessee shall unless the Lessor agrees to the contrary:
  - (i) prior to Termination or on the termination of any period of holding over, remove from the Leased Premises all of the Lessee's Building and Fixtures and other property and any Lessor's Fixtures which the Lessor requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Lessee's property;
  - (ii) comply with the Works Conditions in respect of the removal of those items specified in clause 21.2(a); and
  - (iii) submit details of the proposed removal works for the Lessor'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.

#### 21.3 Making Good of Leased Premises on Termination

Subject to clause 21.2, the Lessee shall, unless the Lessor agrees to the contrary, prior to Termination or on the termination of any period of holding over, make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises.

#### 21.4 Lessor Can Make Good

If the Lessee does not comply with the obligation to make good as set out in clause 21.3, the Lessee shall pay the Lessor within twenty eight (28) days after the Lessor requests payment, any costs reasonably incurred by the Lessor to make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises. The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessee's default.

#### 21.5 Dealing with Lessee's property not removed at Termination

The Lessor has the following rights in respect of the Lessee's property, including Lessee's Building and Fixtures, which are not removed at Termination:

- (a) demolish and dispose of the Lessee's property or remove and store the Lessee's property in an alternative Leased Premises at the Lessee's cost;
- (b) to sell or dispose of the Lessee'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 Lessee's property is the absolute property of the Lessor and to deal with the Lessee's property as the Lessor sees fit;

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

- (d) the Lessee failing to remove all of the Lessee's property by Termination; or
- (e) any claim against the Lessor by any person by reason of the exercise by the Lessor of its rights under this clause 21.5.

**21.6 Lessee to continue to pay Rent and outgoings**

If the Lessee fails to make good the Leased Premises as specified in clause 21.3, or fails to remove the Lessee's property by Termination, then until the Leased Premises are restored in accordance with this Lease or the Lessor elects to take the absolute property in the Lessee's property left after Termination, the Lessee shall continue to pay the Rent and the outgoings and other money payable as if the Lessee were holding over in the Leased Premises.

**22. Option of renewal**

Not Used

**23. Holding Over**

If after the expiry of the Term the Lessee remains in possession of the Leased Premises with the consent of the Lessor, the Lessee shall be deemed to be a monthly tenant on such of the terms of this Lease as are capable of applying to a monthly tenancy. The Lessee's right to remain in possession of the Leased Premises shall be subject to the continued performance of the Lessee's Obligations.

- (a) Subject to clause 23(b), the Rent payable during any period of holding over shall be one hundred and ten percent (110%) of the annual Rent payable immediately prior to the expiry of the Term.
- (b) The Lessor may increase the Rent payable during any period of holding over upon giving the Lessee one (1) months' notice in writing.
- (c) The monthly tenancy may be terminated by either party giving the other party one (1) months' notice of termination which notice may be given at any time.

**24. CEO and Lessor as Attorney**

The Lessee for valuable consideration:

- (a) irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally the Lessee's attorney for the purpose of
  - (i) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and
  - (ii) doing anything else the Lessee 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 Lessor in respect of:
  - (i) losses arising from any act done under this clause; and

- (ii) the Lessor's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause.

## 25. Trustee Provisions

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

- (a) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee'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 Lessor for any default by the Lessee;
- (c) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (d) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

## 26. Special clauses

- 26.1 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.
- 26.2 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.

## 27. Environmental Matters

### 27.1 Lessee's Environmental Covenants

The Lessee must:

- (a) comply with all Environmental Laws including, without limitation, obtaining all necessary permits, authorisations and approvals required for the Lessee to carry out the Authorised Use on the Leased Premises;
- (b) Develop and implement a vegetation management plan for removal of weeds and planting of regionally native plant species, this is to include the removal of weed and pest species including Neem, Leucaena and Calotropis.
- (c) take all practicable precautions to ensure that no Contamination of the Leased Premises or the Environment in the vicinity of the Leased Premises occurs;
- (d) not discharge into any stormwater drain any trade effluent, Hazardous Material or Waste, other than that which is authorised by the relevant Government Authority;
- (e) immediately notify the Lessor if:

- (i) a Contamination Event occurs on the Leased Premises; or
  - (ii) an Environmental Notice is served on the Lessee;
- (f) if a Contamination Event occurs and irrespective of whether an Environmental Notice has been served on the Lessee, promptly take all usual and reasonable actions at the Lessee'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;
- (g) at the Lessee's own cost, comply with every Environmental Notice issued in respect of, or arising from, the Lessee's occupation or use of the Leased Premises, whether the notice is served on the Lessor or the Lessee;
- (h) allow the Lessor and its employees and contractors:
- (i) after receiving reasonable notice from the Lessor, 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
- (i) pay the reasonable costs of any reputable environmental consultant appointed by the Lessor to undertake an inspection from time to time of the Leased Premises to verify the Lessee's compliance with this clause 27.

#### 27.2 Remediate Contamination

- (a) Without limiting the Lessee's obligation under clause 27.1(e), the Lessee 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 Lessee, to the absolute satisfaction of the Lessor.
- (b) Subject to clause 27.2(e), not later than six (6) months before the expiration of the Term, the Lessee must arrange for a reputable environment consultant approved by the Lessor (whose approval must not be unreasonably withheld) to:
- (j) 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 27.2(d), the Lessee must promptly carry out all the works specified in the Remediation Notice to the satisfaction of the Lessor, and at the Lessee's sole cost.
- (d) The Lessee 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 Lessee 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 Lessor prior to the expiration of the Term, the Lessor may:
  - (i) arrange for the investigation of Contamination referred to in clause 27.2(a) and for the preparation of a Remediation Notice (if applicable); and
  - (ii) carry out the works specified in the Remediation Notice, at the Lessee's expense, and the Lessee will indemnify the Lessor under clause 27.3(a).
- (f) For the avoidance of doubt, this clause 27.2 is for the benefit of the Lessor and can only be waived by the Lessor.

#### 27.3 Environmental Indemnity

- (a) Without limiting clause 14 of the Lease the Lessee indemnifies the Lessor and the Lessor's employees in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Lessor is or may become liable in respect of or arising from the Lessee's breach of any of the Lessee's Environmental Covenants.
- (b) Without limiting clause 27.3(a) above, in the event that the Lessee fails to promptly comply with its obligations under clauses 27.1(e), 27.1(f), 27.2(a), 27.2(b) or 27.2(c) the Lessor shall be at liberty to carry out all of the said obligations at the cost of the Lessee, which cost shall be recoverable from the Lessee on demand.

#### 27.4 Event of Default and Essential Term

For the avoidance of doubt, a failure by the Lessee to perform or comply with any of its obligations under this clause 27 is an Event of Default and a breach of an essential term of the Lease.

#### 27.5 Definitions

In this clause 27:

- (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:
  - (i) land, air and water;
  - (ii) any layer of the atmosphere;
  - (iii) any organic or inorganic matter and any living organism including humans;
  - (iv) human made or modified structures and areas;
  - (v) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
  - (vi) 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 Laws;
- (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) "Lessee's Environmental Covenants" means the Lessee's obligations under clause 27.1, together and each of them separately;
- (i) "Remediation" includes the investigation, clean up, removal, abatement, disposal, control, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of any Contamination;
- (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; and
- (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.

## 28. Caveats and registration of Lease

### 28.1 Registration

- (a) The Lessee may register this Lease but must not lodge an absolute caveat over the Leased Premises to protect the interest of the Lessee under this Deed and the Lessee must surrender any registered lease and withdraw any caveat lodged by or on behalf of the Lessee over the Leased Premises on Termination of the Lease.
- (b) In consideration of the Lessor leasing the Leased Premises to the Lessee, the Lessee irrevocably appoints the Lessor and every officer of the Lessor as defined by the *Corporations Act 2001* (Cth) to be attorney of the Lessee, in the name and on behalf of the Lessee, and as the act and deed of the Lessee to sign and lodge at Landgate, Perth, a surrender of lease and a withdrawal of any caveat lodged by or on behalf of the Lessee and not surrendered or

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withdrawn on Termination of the Lease, and the Lessee;

- (i) undertakes to ratify all that the attorney does or causes to be done under or by virtue of this subclause; and
- (ii) indemnifies the Lessor in respect of any loss arising from any act done under or by virtue of this subclause, and the Lessor's costs and expenses of and incidental to the surrendering of the Lease and withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Leased Premises.

**28.2 Lessee must withdraw Caveat and any Registered Encumbrances**

- (a) The Lessee on or before the Termination of the Lease must:
  - (i) withdraw any caveat lodged by the Lessee over the Leased Premises;
  - (ii) discharge any mortgage or other registered encumbrance relating to any liability of the Lessee registered over the Leased Premises;
  - (iii) surrender any registered lease over the Leased Premises;
  - (iv) execute a withdrawal of caveat in a form approved or any other document that may be required to remove any encumbrance on the certificate of title for the Leased Premises, and to execute a deed or surrender of lease in the form approved or any other document that may be required in order to remove any lease or notification of it as an encumbrance on the Certificate of Title for the Leased Premises;
  - (v) if requested by the Lessor, do all things necessary to assist in the cancellation of any qualified title for the Leased Premises.
- (b) The Lessee hereby indemnifies, and shall keep indemnified, the Lessor against all loss or damage suffered by the Lessor as a result of the Lessee's failure to comply with section 28.2(a) on or before termination of the Lease.

**29. Termination for Community Benefit**

29.1 The Lessor will reserve the right to terminate the lease if it is decided by the Council that an alternate use of the land may deliver exceptional significant community benefit without the loss of services to the community.

The Council will make every effort to meet the current needs of the lessee through conducting consultation and negotiation to minimise any disadvantage to the lessee and the community.

29.2 Nothing in this clause 29 shall derogate from the Lessee's liability, up until the date of termination specified in the Termination Notice, for payment of the Rent and all other payments due under this Lease as well as the performance or observance of the terms of the Lease on the Lessee's part to be performed up to that date.

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- 29.3 The Lessee's Obligations will survive the termination of the Term until they have been fulfilled.
- 29.4 Without derogating from the Lessee's Rights in the case of misrepresentation or fraud by the Lessor or any of the Lessor's officers, employees, agents or contractors, the Lessor will not be liable in any way for loss or injury (including economic loss or loss of profit) sustained by the Tenant or arising from anything referred to in this clause 29. In particular the exercise by the Landlord of the rights conferred on it by this clause 29 will not constitute a breach of the Lessor's covenant for quiet enjoyment.
- 29.5 The Lessee shall deliver up the Premises to the Lessor at the expiration of the Termination Notice in accordance with the provisions of this Lease.

### **30. Miscellaneous**

#### 30.1 Lessee not to permit prohibited matters

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

#### 30.2 Cost of Complying with Obligations

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

#### 30.3 Schedules

The Schedules shall form part of this Lease.

#### 30.4 Lessor's consent

The Lessor 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.

#### 30.5 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.

#### 30.6 Time for payment

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

#### 30.7 Time of the essence

Time shall be of the essence in all respects.

#### 30.8 Certificates

A certificate signed by the Lessor or the Lessor'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.

### 30.9 Exercise of rights by Lessor

The Lessor 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 Lessor 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 Lessor of any breach or non-observance of a Lessee's Obligation and shall not prejudice any other right of the Lessor in relation to such breach.

### 30.10 Lessor may act by agent

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

### 30.11 Variation

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

### 30.12 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:
  - (i) personally; or
  - (ii) by leaving it at, or sending by pre-paid post to:
    - A. the recipient's last known personal address or place of business, in any case;
    - B. the Leased Premises, in the case of the Lessee; or
    - C. the registered office or principal place of business, in the case of a corporation;
  - (iii) by facsimile transmission sent to the recipient's facsimile number (if known);
- (c) will be deemed to be served:
  - (i) if served personally, at the time of handing the notice to the recipient;

- (ii) if left at the recipient's last known address, last known place of business, the Leased Premises, a registered office or principal place of business, then at the time of leaving the notice;
- (iii) if sent by pre-paid post, on the second Business Day after the date of posting;
- (iv) 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);
- (d) if given by the Lessor, may be signed by the Lessor or a solicitor or agent of the Lessor;
- (e) where persons having the same interest in respect of the subject matter of the Lease are to notify any other party or are to be notified, notification to or by anyone of them is sufficient notification to or by all of them.

#### 30.13 No moratorium

The provisions of any Law 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.

#### 30.14 Further assurances

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

#### 30.15 Effect of execution

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

#### 30.16 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.

#### 30.17 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 Lessor and the Lessee agree that the Lessor shall be entitled to charge an additional amount if the Lessor becomes subject to GST as a result of the grant of this Lease or any supply to the Lessee under or in connection with this Lease, and the following provisions shall apply:
  - (i) the Lessee must do everything reasonably requested by the Lessor to ensure this Lease is treated as taxable for the purposes of the GST, the Lessee must pay the GST to the Lessor 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 Lessee must pay to the Lessor on demand any GST charged on goods and services acquired or payable or paid by the Lessor 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;

#### 30.18 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 Lessee's leasehold interest in the Leased Premises.

#### 30.19 Headings

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

#### 30.20 Termination

The Termination of this Lease does not affect the Lessee'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.

### **31. PPSA (Personal Properties Securities Act)**

#### 31.1 Interpretation

For the purposes of this clause:

- (a) "the Lessor's Personal Property" means all personal property the

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subject of a security interest granted to or held by the Lessor under the Lease; and

- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

### 31.2 Further assurance

If the Lessor determines that the Lease (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Lessor has the priority required by it; and/or
- (c) enabling the Lessor to exercise rights in connection with the security interest.

### 31.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

### 31.4 Priority of the Lessor's interest

Nothing in the Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (a) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Lease attaches to the relevant collateral.

### 31.5 Enforcement

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement

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by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) (enforcement methods) sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
- (b) (notices) sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) (rights to remedy) sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

#### 31.6 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor under the Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

#### 31.7 The Lessor's interest remains unaffected

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

31.8 Notices to the Lessor

Without limiting clause 31, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- (a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- (c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.

**SCHEDULE 1**

**Item 1 Authorised Use**

Authorised Use: Recreation and Sport Club

Reserve Purpose: Race Course, Recreation and Sporting Clubs

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**Item 2 Commencement Date**

TBA

**Item 3 End Date**

TBA

**Item 4 Land and Leased Premises**

**(a) Land**

Part Lot 707 Drovers Road,  
Part Reserve 30290 on DP217504

**(b) Leased Premises**

The Land, together with all Buildings and improvements on the Land, as depicted and hatched on the plan in "Annexure A" to this Lease

**Item 5 Interest Rate**

As adopted though the Shire of Wyndham East Kimberley Adopted budget, to a maximum of Eleven per cent (11%), 11% per annum

**Item 6 Rent**

The Rent is five hundred dollars (\$500.00) per annum plus GST, payable in advance on and thereafter on each anniversary of the Commencement Date

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**Item 7 Rent Review Dates**

The Rent shall be reviewed ~~12 months from the date of signing and subsequently once~~ every three (3) Lease Years.

1 January 2020 1 January 2023 1 January 2026 1 January 2029

1 January 2032 1 January 2035

**Item 8 Term**

The term shall be twenty one (21) years commencing on the Commencement Date and ending on the End Date.

**Item 9 Further Terms**

Not applicable

**Item 10 Lessee's Insurance Obligations**

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

- (a) public liability insurance for an amount not less than twenty million dollars (\$20,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Lessor;
- (b) ~~the full insurable~~ reasonable value on a replacement or reinstatement basis of the Lessee's Building and 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 Lessee employed in or about the Leased Premises;
- (d) ~~the full insurable~~ reasonable 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 Lessor and the Commission reasonably requires by notice to the Lessee, on the terms specified in clause 13 of the Lease.

**Item 11 Lessor's Fixtures**

Nil

**Item 12 Lessor's Chattels**

Nil

**Item 13 Lessee's Buildings and Fixtures**

Campdraft Arena  
Rodeo Arena  
Yards  
Toilets  
Toilet/Shower  
Showers  
Shipping Container Office  
Shade Sails  
Stage  
Shed  
Water Pump Shed  
2 x Water Tanks  
Power Shed  
Ticket Box

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## 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 Lease, shall have the same meanings respectively assigned to them in clause 1 of the Lease.

#### 2. Approvals

Should the Lessee wish to undertake any Lessee's Works, the Lessee must obtain all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor.

#### 3. Lessee's Works

##### 3.1 Lessee's Development Covenants

The Lessee must:

- (a) carry out and execute the Lessee'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 Lessor without:
  - (i) the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor 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.

##### 3.2 Access to the Leased Premises

- (a) The Lessee is entitled to take possession of the Leased Premises and to enter upon the Leased Premises and commence the Lessee's Works from and including the Commencement Date PROVIDED:
  - (i) the Lease has been executed by the Lessee and the Lessor and all other consenting parties; and
  - (ii) the Conditions Precedents have been satisfied.
- (b) For the avoidance of doubt, the Lessee is obliged to pay full Rent, outgoings and all other money payable under the Lease from the Commencement Date regardless of whether the Lessee has

commenced or completed the Lessee's Works or whether the Lessee can operate the Authorised Use from the Leased Premises.

- (c) Notwithstanding clause 3.2(a) of this Schedule, should the Lessee commence the Lessee's Works prior to the satisfaction of any Conditions Precedent, whether with or without the Lessor's prior consent, the Lessee does so at its own risk and shall have no claim against the Lessor in the event that any of the Conditions Precedent are thereafter not satisfied.

### 3.3 Facilities for Lessee's Contractors

The Lessee and the Lessee's contractors must provide and, as necessary, negotiate with the Lessor 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 Lessee or its contractors may require, and must pay to the Lessor on demand any expenses which the Lessor may thereby incur.

### 3.4 Lessee Responsible for Damage

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

### 3.5 Lessee's Insurance

- (a) Prior to the commencement of the Lessee's Works (or any associated or incidental works on the Leased Premises), the Lessee must have:
  - (i) procured the insurance policies referred to in item 10 of Schedule 1; and
  - (ii) otherwise complied with the terms of clause 13 of the Lease in respect of those insurance policies.
- (b) For the avoidance of doubt and notwithstanding or limiting clause 13 or item 10 of Schedule 1 of the Lease, the Lessee must, prior to the commencement of any Lessee'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 Lessee's Works, throughout the Lessee's Works Period insure against any liability, loss, claim or proceeding whatsoever arising by virtue of any Laws relating to workers' compensation or employer's liability, by any person employed in or about the execution of the Lessee's Works and shall also insure for the Lessee's and its contractors' common law liability to all such persons for such amount as shall be nominated by the Lessor; and

- (ii) ensure that the insurance policy referred to in item 10(b) of Schedule 1 insures the Lessee'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 Lessee's Works.

### 3.6 Assumption of Risk by Lessee

The Parties expressly acknowledge and agree that:

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

### 3.7 Property in Works

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

### 3.8 Default

- (a) For the avoidance of doubt, a failure by the Lessee 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 ("Development Default").
- (b) Without prejudice to any other rights or remedies available to the Lessor, if the Lessor terminates this Lease pursuant to clause 19 on the occurrence of a Development Default:
  - (i) the Lessee shall, unless otherwise directed by the Lessor, within sixty (60) days from the date upon which the Lessor terminates the Lease remove from the Leased Premises the

Lessee's Works in compliance with the Works Conditions and make good the Leased Premises to the satisfaction of the Lessor;

- (ii) the termination of the Lease shall be without prejudice to the obligations of the Lessee to pay the Lessor any moneys which shall be due and owing as at the date on which the Lessor terminates the Lease; and
  - (iii) the Lessee shall pay to the Lessor on demand all costs and expenses incurred by the Lessor as a consequence of the Lessee's Development Default and in the exercise of the rights of the Lessor under this clause 3.8.
- (c) Should the Lessee not comply with its obligation under clause 3.8(b)(i) above the Lessor shall be at liberty to exercise any of the rights conferred on the Lessor pursuant to clause 21.5 of the Lease.
- (d) Until the Leased Premises are restored in accordance with the Lease (whether by the Lessee or the Lessor) or until the Lessor elects to take the absolute property in the Lessee's property (which includes the Lessee's Building and Fixtures) left after termination, the Lessee shall continue to pay the Rent, outgoings and all other payments pursuant to this Lease as if the Lessee were holding over in the Leased Premises.

### 3.9 Indemnity

Without limiting the generality of clause 14 of the Lease, the Lessee indemnifies the Lessor and the Lessor's employees against all claims, demands, loss, damage, costs and expenses of every description which the Lessor may suffer or incur in connection with or arising directly or indirectly from the Lessee's entry upon and occupation of the Leased Premises for the purpose of the Lessee's Works or the construction, installation or carrying out the Lessee's Works (whether undertaken by the Lessee or the Lessor or any contractor on behalf of or at the direction of either the Lessee or the Lessor).

### 3.10 Definitions

For the purpose of this clause 3:

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

## 4. **Hire of Leased Premises to third parties**

- 4.1 The Lessee may hire out the Leased Premises or any part thereof on a casual basis only, provided:

- (a) such use is consistent at all times with the Authorised Use and relevant legislation;
- (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease;
- (c) the Lessee registers the Leased Premises as a "Public Building" with the Relevant Authority within five (5) Business Days of executing this Lease;
- (d) the Lessee observes, performs and complies with all relevant legislation; and
- (e) compiles regular risk management plans in accordance with Australian Standards.

4.2 For the purposes of this Lease, "casual hire" means any hire of the Leased Premises by the Lessee to a third party for a period of and not more than 48 hours in any calendar month and does not include any formal transfer, assignment or sublease of the Leased Premises.

4.3 The Lessee acknowledges and agrees that at all times, including when the Leased Premises are hired to a third party, it remains responsible for the Leased Premises, including without limitation any damages that may be caused or occurs during any hire period.

**SCHEDULE THREE Access Roads, Designated Fenced Area, and Campground Licence**

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1. **Definitions**

(a) In this Schedule:

**Access Roads:** the designated access roads as depicted on the plan attached as Annexure B being part of lot 707 on Deposited Plan 217504

**Campground:** the designated space as depicted on the plan attached as Annexure C being part of lot 707 on Deposited Plan 217504

**Designated Fenced Area:** the designated fenced area as depicted on the plan attached as Annexure D being part of lot 707 on Deposited Plan 217504

**Authorised Person:** has the same meaning in this Schedule as it has in the balance of the Lease;

**Licence:** means the Access Roads, Designated Fenced Area, and Campground Licence created under this Schedule.

2. **Operative Part**

(a) In consideration of the Lessee entering into the Lease and observing the Lessee's Covenants, the Lessor grants the Lessee:

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(i) a non-exclusive right to use the access roads; and

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(ii) a non-exclusive right to use of the campground where this is in directly relation to an event held by the lessee. The lessee must comply with all relevant legislation and Shire Policies.

(iii) a right to exclusive use of the designated fenced area for a two-week period each year in alignment with scheduled rodeo events. Notification of the dates of this use must be made in writing to the Lessor and Kununurra Race Club no less than 8 weeks from the date of use.

(iv) Non-exclusive use of the designated fenced area may be arranged at all times other than a six-week period each year where the Kununurra Race Club are provided with exclusive use. Any use outside the Race Club exclusive use period is to be arranged in consultation with the Kununurra Race Club with reasonable notice provided. Support for this use is not to be unreasonably withheld.

(b) The Lessee must at all reasonable times allow general public access to the Access Roads and Campground and accordingly may not permit any development or install any fence, gate or barricade preventing such access.

(d) This Licence continues for so long as the Lessee remains the Lessee under the Lease.

(e) This Licence does not confer upon the Lessee any estate or proprietary interest in any part of the Access Roads, Campground or Designated Fenced Area

(f) The legal possession and control of the Access Roads, Campground and Designated Fenced Area remains vested in the Lessor.

(g) This license does not confer upon the lessee or lessor any responsibility for the development, upkeep or maintenance of the access roads, designated fenced area or the campground.

### 3. **Incorporation of Lease Clauses**

The following clauses and/or schedules contained in the Lease shall be incorporated into this Licence as if they were set out herein in full except that any reference to Premises shall mean and be a reference to the Access Roads, Designated Fenced Area, and Campground.

a)	<u>Clause 3</u>	<u>Reservation of lessors rights</u>
b)	<u>Clause 8</u>	<u>Use of leased premises and facilities</u>
c)	<u>Clause 10:</u> <u>10.1, items b, e, h, and i</u> <u>10.2</u> <u>10.3</u> <u>10.5</u>	<u>Maintenance and Works</u>
d)	<u>Clause 11</u>	<u>Positive Covenants</u>
e)	<u>Clause 12</u>	<u>Negative Covenants</u>
f)	<u>Clause 13</u>	<u>Lessee's obligation to effect insurances</u>
g)	<u>Clause 14</u>	<u>Indemnities</u>
h)	<u>Clause 15</u>	<u>Assignment</u>
i)	<u>Clause 16</u>	<u>Damage, destruction or resumption</u>
j)	<u>Clause 17</u>	<u>Limit of lessors liability</u>
k)	<u>Clause 21</u>	<u>Termination</u>
l)	<u>Clause 27</u> <u>27.1 items a, c, d, e, f, g, i</u> <u>27.2 items a, c, d, e, f</u> <u>27.3</u> <u>27.4</u> <u>27.5</u>	<u>Environmental matters</u>
m)	<u>Clause 30</u>	<u>Miscellaneous</u>

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n)	<a href="#">Schedule 2, item 1</a>	<a href="#">Interpretation</a>
o)	<a href="#">Schedule 2, item 2</a>	<a href="#">Approvals</a>
p)	<a href="#">Schedule 2, item 3</a>	<a href="#">Lessee's works</a>

4. **Termination**

- (a) This Licence terminates when the Lease terminates unless this Licence terminates earlier under clause 4(b).
- (b) The Lessor is entitled to immediately terminate this Licence by notice to the Lessee if the Lessee:
  - (i) ceases to be the Lessee under the Lease;
  - (ii) vacates the Premises it occupies under the Lease; or
  - (iii) fails to observe the Lessee's Covenants or fails to comply in any other way with this Licence.

5. **No Assignment**

The Lessee must not assign, mortgage or charge the Lessee's rights under this Licence, nor sub-licence, part with possession or dispose of its rights in any way unless it is in conjunction with the assignment or subletting of the Premises leased by the Lease.

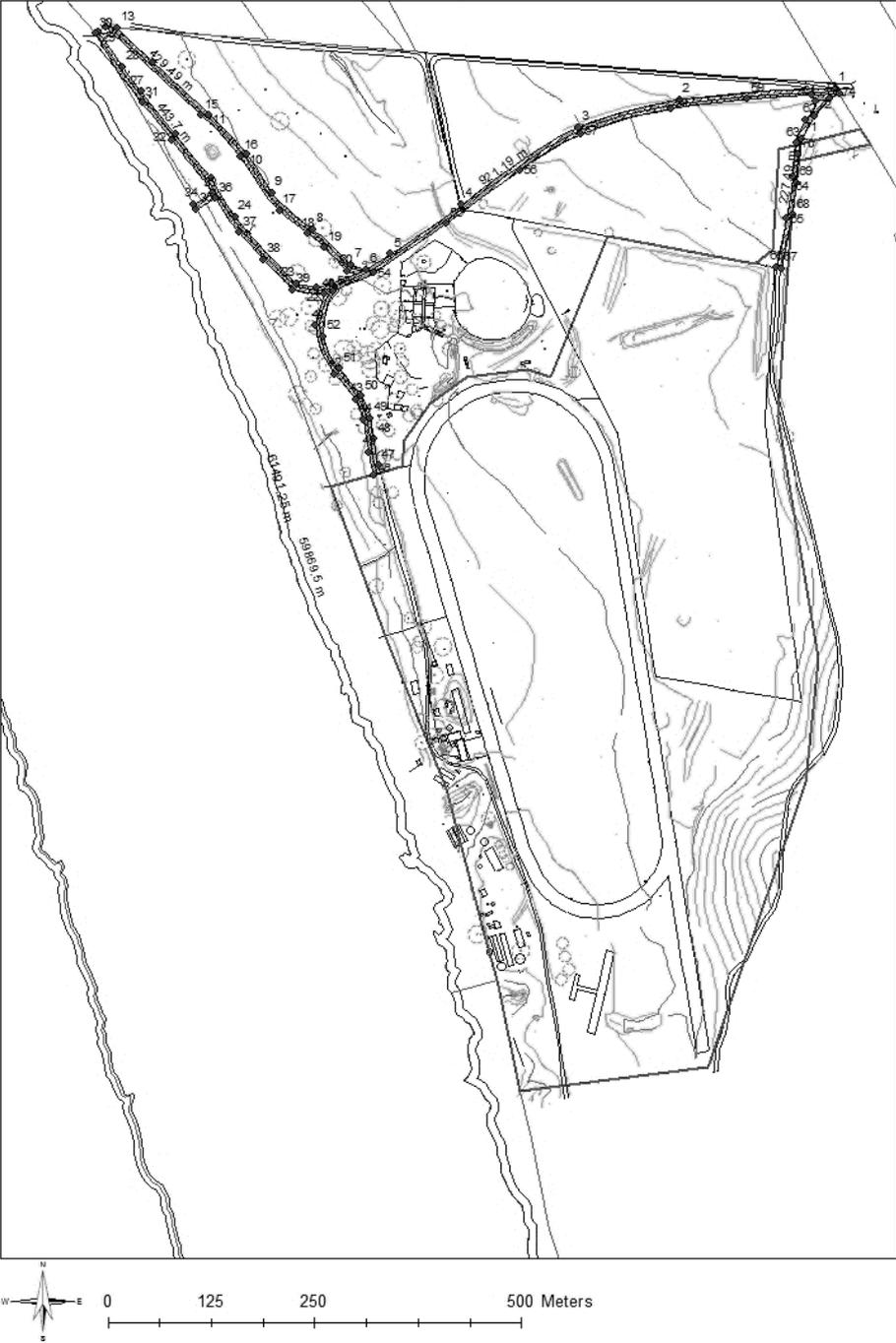


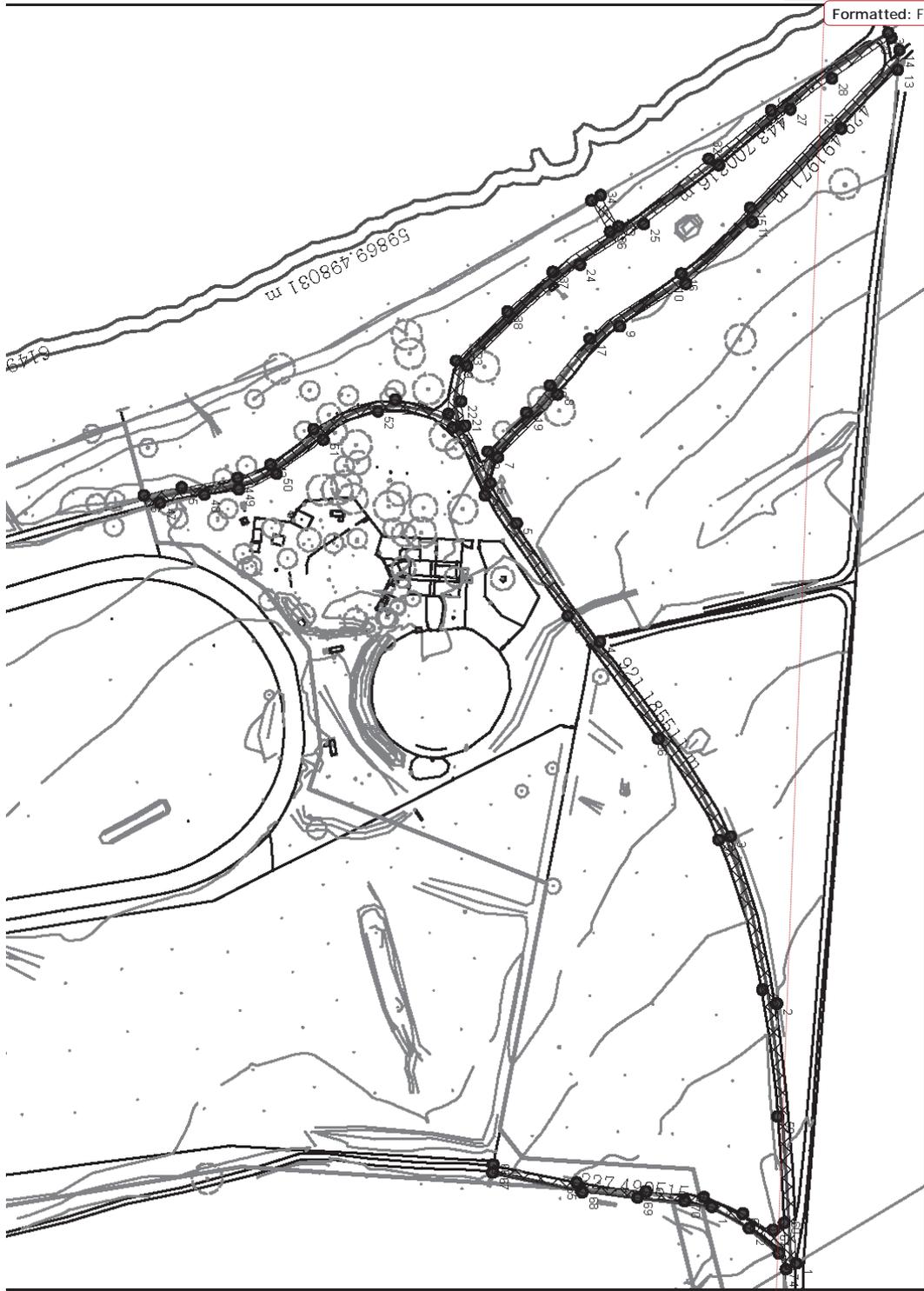
ANNEXURE A – LEASE PLAN





ANNEXURE B – ACCESS ROAD



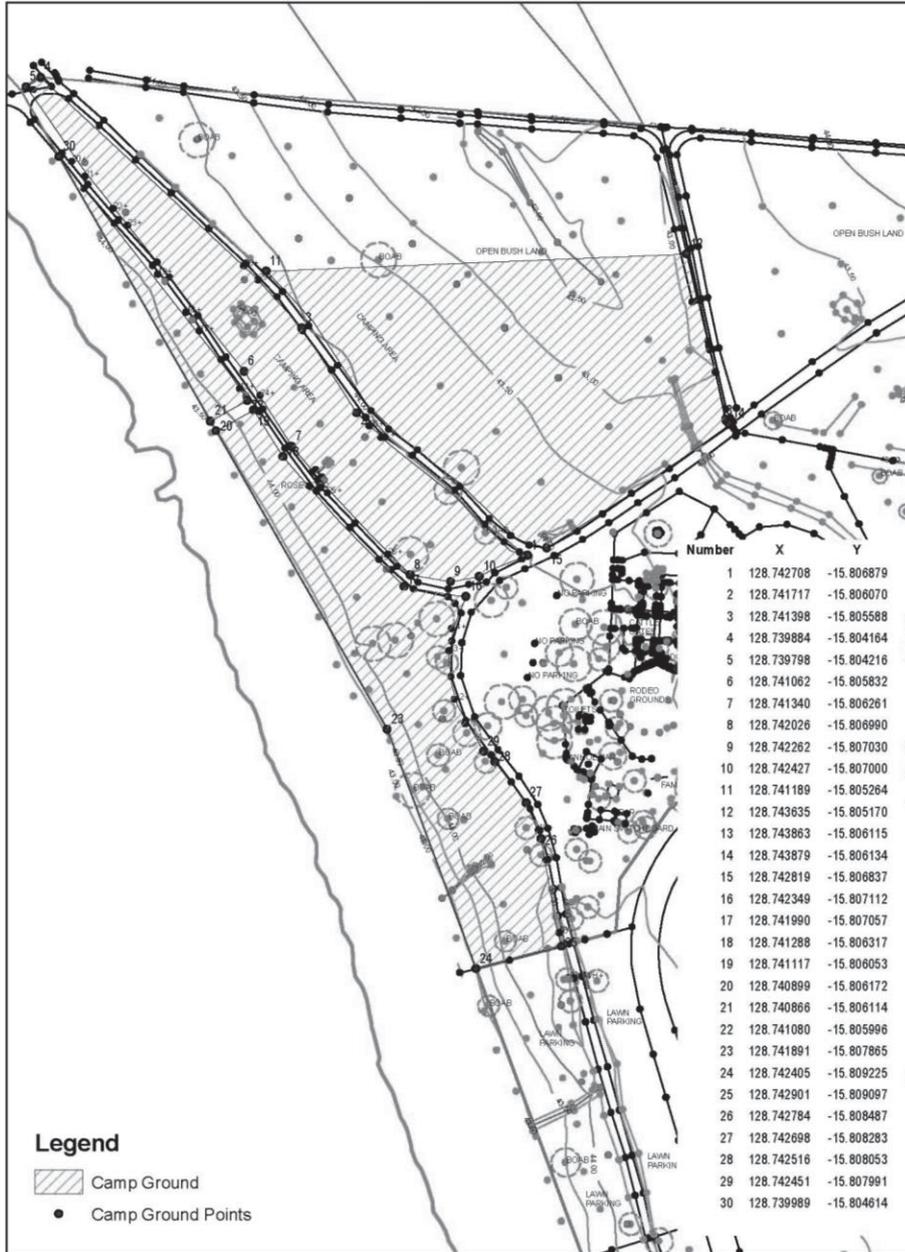


**Access Road Map Coordinates**

Number	X	Y
1	128.7481	-15.8048
2	128.7464	-15.805
3	128.7452	-15.8053
4	128.7439	-15.8061
5	128.7431	-15.8067
6	128.7428	-15.8068
7	128.7426	-15.8068
8	128.7422	-15.8064
9	128.7418	-15.806
10	128.7415	-15.8056
11	128.741	-15.8051
12	128.7404	-15.8045
13	128.74	-15.8042
14	128.7399	-15.8042
15	128.741	-15.8051
16	128.7414	-15.8056
17	128.7418	-15.8062
18	128.7422	-15.8064
19	128.7423	-15.8066
20	128.7426	-15.8069
21	128.7424	-15.807
22	128.7423	-15.807
23	128.742	-15.807
24	128.7413	-15.8063
25	128.7411	-15.8058
26	128.7407	-15.8053
27	128.7403	-15.8049
28	128.7401	-15.8046
29	128.7398	-15.8042
30	128.7398	-15.8042
31	128.7403	-15.805
32	128.7406	-15.8054
33	128.7411	-15.806
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36	128.7411	-15.8061
37	128.7414	-15.8064

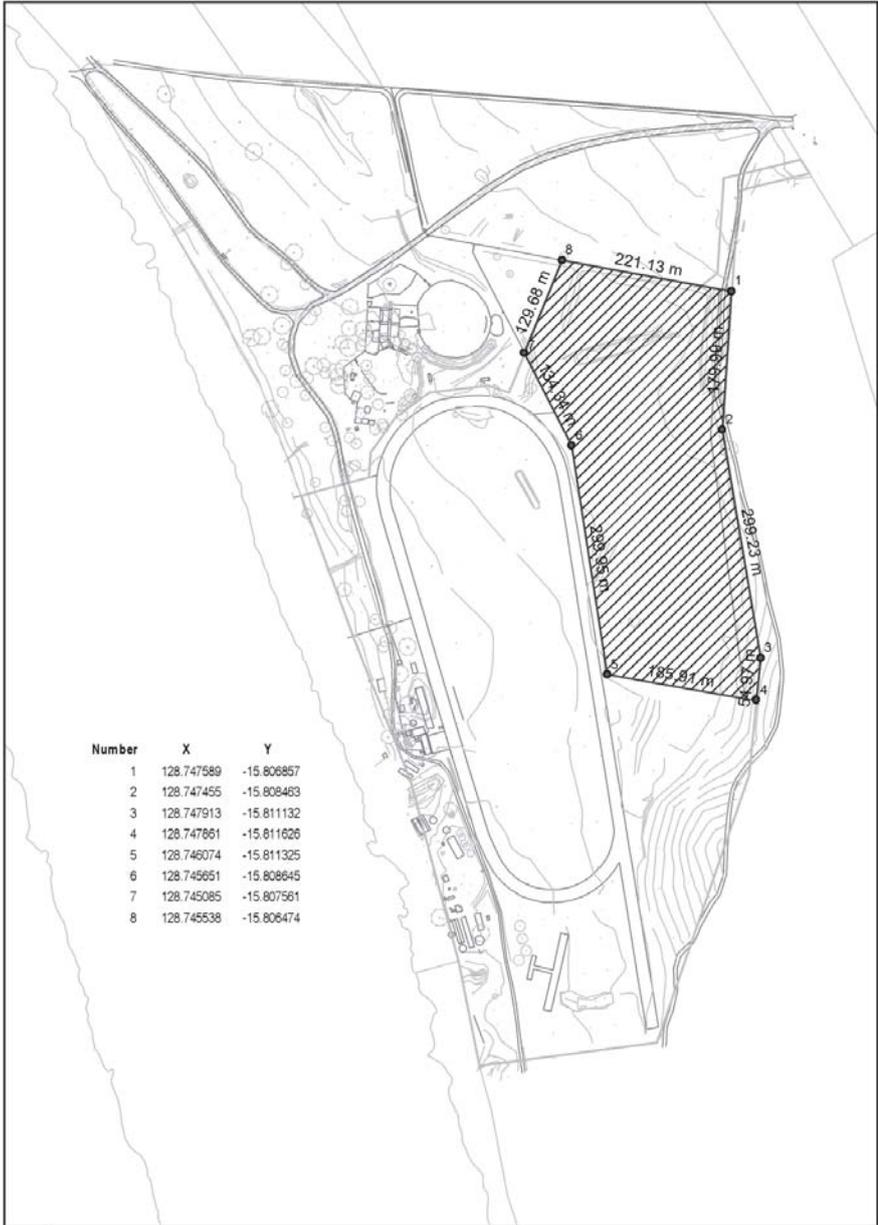
38	128.7417	-15.8067
39	128.742	-15.8071
40	128.7423	-15.8071
41	128.7422	-15.8075
42	128.7425	-15.808
43	128.7427	-15.8083
44	128.7428	-15.8085
45	128.7428	-15.8089
46	128.7429	-15.8091
47	128.743	-15.809
48	128.7429	-15.8087
49	128.7429	-15.8085
50	128.7428	-15.8082
51	128.7425	-15.8079
52	128.7423	-15.8076
53	128.7424	-15.8071
54	128.7429	-15.8069
55	128.7437	-15.8063
56	128.7446	-15.8057
57	128.7452	-15.8053
58	128.7463	-15.8051
59	128.7471	-15.805
60	128.7478	-15.8049
61	128.7479	-15.805
62	128.7478	-15.8052
63	128.7477	-15.8055
64	128.7476	-15.8058
65	128.7476	-15.8063
66	128.7474	-15.8068
67	128.7475	-15.8068
68	128.7476	-15.8062
69	128.7477	-15.8059
70	128.7477	-15.8056
71	128.7477	-15.8054
72	128.7479	-15.8052
73	128.7481	-15.805
74	128.7482	-15.8049

**ANNEXURE C – CAMPGROUND**

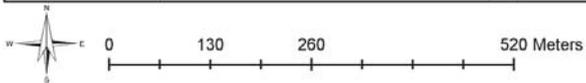


Number	X	Y
1	128.742708	-15.806879
2	128.741717	-15.806070
3	128.741398	-15.805588
4	128.739884	-15.804164
5	128.739798	-15.804216
6	128.741062	-15.805832
7	128.741340	-15.806261
8	128.742026	-15.806990
9	128.742262	-15.807030
10	128.742427	-15.807000
11	128.741189	-15.805264
12	128.743635	-15.805170
13	128.743863	-15.806115
14	128.743879	-15.806134
15	128.742819	-15.806837
16	128.742349	-15.807112
17	128.741990	-15.807057
18	128.741288	-15.806317
19	128.741117	-15.806053
20	128.740899	-15.806172
21	128.740866	-15.806114
22	128.741080	-15.805996
23	128.741891	-15.807865
24	128.742405	-15.809225
25	128.742901	-15.809097
26	128.742784	-15.808487
27	128.742698	-15.808283
28	128.742516	-15.808053
29	128.742451	-15.807991
30	128.739989	-15.804614

**ANNEXURE D – DESIGNATED FENCED AREA**



Number	X	Y
1	128.747589	-15.806857
2	128.747455	-15.808463
3	128.747913	-15.811132
4	128.747861	-15.811626
5	128.746074	-15.811325
6	128.745651	-15.808645
7	128.745085	-15.807561
8	128.745538	-15.806474



### 12.3.6 Request for Proposal - Provision of Childcare Services - Wyndham

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Manager Community Services
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>ASSESSMENT NO:</b>	A1813, A2199
<b>FILE NO:</b>	CP.07.19
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

That Council authorise the Chief Executive Officer to offer Lynette Hill a lease for the Wyndham Childcare Centre, 44 Koolama St, Wyndham, for a period of three years, with terms as listed within the proposal received, subject to the Minister of Lands consent.

#### **COUNCIL DECISION**

Minute No: 20/12/2016-11564

Commissioner resolved:

That Council authorise the Chief Executive Officer to offer Lynette Hill a lease for the Wyndham Childcare Centre, 44 Koolama St, Wyndham, for a period of three years, with terms as listed within the proposal received, subject to the Minister of Lands consent.

Carried 1/0

#### **PURPOSE**

For Council to endorse proceeding with accepting the proposal provided by Lynette Hill for the provision of child care services in Wyndham.

#### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Funder - provide funds or other resources

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

The Shire of Wyndham East Kimberley operated the Wyndham Child Care Centre for a number of years, this service was operated at a significant cost to Council. Due to this cost, in 2014 Council resolved to cease funding the direct provision of this service from 1 January 2015.

Officers explored a number of options and child care models to ensure that there was a child care service provided in Wyndham following 1 January 2015. This resulted in a lease being provided to One Tree Community Services who commenced a long day care service in April 2015.

In September 2015, correspondence was received from One Tree Community Services seeking approval to change from long day care to an in-venue care service as the long day care model was not viable. Approval was given, resulting in One Tree ceasing the provision of long day care on 8 April 2016 with the intent to reopen under an in-venue care model. Unfortunately, despite working toward this, One Tree were not able to reopen and the service remained closed.

In May 2016, Officers were approached by Lynette Hill who expressed an interest in taking over the lease for the Childcare Centre. Assignment of the existing lease to a private enterprise was not possible however this enquiry resulted in Lynette Hill sub-leasing the Childcare Centre from One Tree Community Services, with the new service opening on 11 October 2016.

On 3 October 2016, One Tree Community Service advised that they would be executing their right to terminate the head lease from 20 March 2017. While the lease terms allowed cancellation with three months notice, One Tree provided 6 months notice allowing the Shire to formalise alternate arrangements for the provision of child care services.

Due to the variety of possible options for the provision of child care services, a public request for proposal (refer Attachment 1) was conducted with a closing date of 9 November 2016.

## **STATUTORY IMPLICATIONS**

Under section 3.58 of the *Local Government Act 1995* (LGA), the leasing of land is included as a form of disposal of property and is required to be undertaken in accordance with this section of the LGA.

Officers have previously sought advice from the Department of Local Government on this matter in relation to the Wyndham Childcare Centre.

As stated in section 3.58 the Act:

*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.

3.58 (2) *Except as stated in this section, a local government can only dispose of property to*

- (a) *the highest bidder at public auction; or*
- (b) *the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

(3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*

- (a) *it gives local public notice of the proposed disposition —*
  - (i) *describing the property concerned; and*
  - (ii) *giving details of the proposed disposition; and*
  - (iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*

However under section 5:

(5) *This section does not apply to —*

(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*

The Department of Local Government and Communities have advised that:-

*“It is the Department’s opinion that the above provision could be relevant as you have indicated that you are providing the facility for the purpose of providing a daycare centre as per the management order which could be considered as the performance of a function that the Shire has under a written law. The Shire would also be providing the facility for a fee, if hired, or otherwise through a lease agreement.”*

Therefore having tested the market and provided the opportunity for any interested party to submit a proposal, the Shire may enter directly into a lease with Lynette Hill.

## **POLICY IMPLICATIONS**

The proposal for the provision of child care services in Wyndham includes the lease of the Wyndham Childcare facility. As the applicant is a private individual this constitutes a Commercial Lease.

Given the need for the service that is being provided and the difficulties the Shire has had in both providing this service and engaging a not for profit organisation to provide this service, it is considered warranted that this lease is not able to be consistent with the terms outlined in Council's Commercial Leasing Policy CP/PMG 3781 Leasing of Council Managed Owned Land - Commercial.

## **FINANCIAL IMPLICATIONS**

The proposed terms of the lease, whilst inconsistent with Council's CP/PMG Leasing of Council Managed Owned Land - Commercial, are more favourable financially than past arrangements including both the Shire's operation of the service, and the recent lease to One Tree Community Services. These terms include:

- A lease fee of 1% of revenue up to \$1200 per annum (previously \$1).
- Payment of rates (previously exempt).

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 2: Greater returns from regional investment to ensure sustainable provision of appropriate physical and social infrastructure

Objective 2.4: Access to appropriate health, family and community services

Strategy 2.4.3 : Support early childhood and family support services

## **RISK IMPLICATIONS**

Non-compliance with Department of Local Government advisory standards and regulations.

## **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and includes:

- Publically calling for proposals from service providers to provide child care services in Wyndham.

## **COMMENTS**

One submission was received from the Request for Proposal request. This proposal (refer Confidential Attachment 2) was assessed and it is recommended that the Shire proceed with leasing the Wyndham Childcare Centre to Lynette Hill under the terms outlined in the terms of the proposal. The assessment of the Request for Proposal from Lynette Hill is attached (refer Confidential Attachment 3).

## **ATTACHMENTS**

Attachment 1 - Request for proposal document  
Confidential Attachment 1 - Proposal - Lynette Hill  
Confidential Attachment 2 - Assessment Report



SHIRE of WYNDHAM | EAST KIMBERLEY

# REQUEST FOR PROPOSAL

## PROVISION OF CHILDCARE SERVICES IN WYNDHAM

RFP 01 – 16/17

<b>RFP Number:</b>	RFP 01-16/17
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<b>Request for Proposal (RFP)</b>	Provision of Childcare Services in Wyndham
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<b>Clarification Deadline:</b>	<b>2:00 pm (WST), Wednesday 2 November 2016</b>
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<b>Submission Deadline:</b>	<b>2:00 pm (WST), Wednesday 9 November 2016</b>
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<b>Address for Mail Delivery:</b>	<p>“RFP 01-16/17: Provision of Childcare Services in Wyndham”  Chief Executive Officer  Shire of Wyndham East Kimberley  PO BOX 614  KUNUNURRA WA 6743</p>
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<b>Address for Hand Delivery:</b>	<p>“RFP 01-16/17: Provision of Childcare Services in Wyndham”  Proposal Box  Shire of Wyndham East Kimberley  20 Coolibah Drive  KUNUNURRA WA 6743</p>
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C O N T E N T S

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## 1 PRINCIPAL'S REQUEST

### 1.1 REQUEST FOR PROPOSAL IN BRIEF

---

The Shire of Wyndham East Kimberley previously operated the Wyndham Childcare Centre, operating from Lots 826 and 827 Koolama St Wyndham..

This service operated at a significant net cost to Council and at the September 2014 Special Council Meeting, the Shire of Wyndham East Kimberley Council resolved to cease funding the operations of the facility. The Shire sought alternate options for the provision of this service and in February 2015 this centre was leased to an external provider.

The current lease arrangement will be ceasing in March 2017 and the Shire is now seeking proposals from suitable providers to provide child care services in Wyndham from March 2017. The service will be operated from the Wyndham Child Care Facility – Lots 826 and 827 Koolama St, Wyndham

Carefully read all parts of this document.

### 1.2 REQUEST FOR PROPOSAL DOCUMENTS

---

This Request for Proposal is comprised of the following parts:

- (a) Part 1 – Principal's Request (read and keep this part);
- (b) Part 2 – Conditions of Responding (read and keep this part);
- (c) Part 3 – Specification (read and keep this part);
- (d) Part 4 – General Conditions (read and keep this part);
- (e) Part 5 – Respondent's Offer (complete and return this part); and
- (f) Addenda issued by the Principal (if any).

## 2 CONDITIONS OF RESPONDING

### 2.1 DEFINITIONS

Below is a summary of some of the important defined terms used in this Request:

<b>Addendum:</b>	Additional information of clarification of information relating to the Request for Proposal, provided by the Shire after the initial advertising date.
<b>Attachments:</b>	The documents you attach as part of your Proposal.
<b>Canvassing:</b>	Directly or indirectly, discussing a Proposal with an elected member, or canvassing support from an employee of the Shire at any time for the purposes of trying to influence the decision making process in the award of that Proposal. Any Respondent involved in canvassing activity will result in their Proposal being rejected.
<b>Clarification Deadline:</b>	The date and time by which suppliers seeking clarification on the Specification must ask their queries. Clarifications sought after the Clarification Deadline will not be responded to by the Shire.
<b>Collusive Responding:</b>	Means the participation in or condoning of collusive activity by a Respondent including but not limited to: <ul style="list-style-type: none"> <li>• Any agreement as to who should be the successful Respondent;</li> <li>• Any meeting of Respondents to discuss their Proposals prior to submission to Council, unless Council is present at that meeting(s);</li> <li>• Any exchange of information between Respondents about their Proposals;</li> <li>• Any agreement for the payment of money or a reward or benefit for unsuccessful Respondents by the successful Respondent;</li> <li>• Any agreement or collaboration of Respondents to fix prices, rates of payment of industry association fees or conditions of contract;</li> <li>• The submission of a “cover Proposal”, being a Proposal submitted as genuine but which has been deliberately priced not to win the contract.</li> </ul>
<b>Compliance Criteria:</b>	This is a set of assessment criteria. Refer to Section 5.3.1.
<b>Conflict of Interest</b>	A conflict of interest can be pecuniary (involving financial gain or loss) or non-pecuniary (based on animosity, friendship or family connection). A conflict of interest can also arise from avoiding personal losses as well as gaining personal advantage, financial or otherwise. Conflicts of interest can be actual, perceived, or potential.
<b>Evaluation Panel:</b>	Means the person or persons appointed by the Shire to undertake the evaluation of the Respondent’s Offers. The members of the evaluation panel can be found at Section 2.17.6 of this Request.
<b>Non-Conforming Proposal:</b>	A Proposal that is not lodged prior to the Submission Deadline, or a Proposal that does not contain all the information and documents required by the Request for Proposal.
<b>Principal:</b>	The Shire of Wyndham East Kimberley or the Shire of Wyndham East Kimberley’s authorised representative as appropriate according to context.

<b>Qualitative Criteria:</b>	This is a set of assessment criteria refer to Section 5.3.2.
<b>Request:</b>	This document.
<b>RFP:</b>	Request for Proposal (this document).
<b>Requirements:</b>	The goods and/or services requested by the Principal.
<b>Selection Criteria:</b>	The criteria used by the Principal in evaluating Proposals.
<b>Shire:</b>	The Shire of Wyndham East Kimberley or the Shire of Wyndham East Kimberley's authorised representative as appropriate according to context.
<b>Special Conditions:</b>	The additional contractual terms.
<b>Specification</b>	The statement outlining the details of the performance (supply of goods and/or services).
<b>Submission:</b>	Includes prices, bids, proposals and means the lodgement of a Proposal containing all requested information and accompanying documentation.
<b>Submission Deadline:</b>	The deadline for lodgement of your Proposal.
<b>Proposal:</b>	Includes prices, bids, proposals and means the lodgement of a Proposal containing all requested information and accompanying documentation.
<b>Respondent:</b>	Someone who has or intends to submit a Proposal to the Principal.
<b>Time of Closing</b>	Is the time specified as the Submission deadline.
<b>Validity Period:</b>	A period of time for which an offer will remain open for consideration and acceptance by the Shire.

## 2.2 HOW TO PREPARE YOUR PROPOSAL

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- (a) Carefully read all parts of this document.
- (b) Ensure you understand the Requirements.
- (c) Complete and return the Offer (Part 5) in all respects and include all Attachments.
- (d) Make sure the Offer Form is signed and there are responses to all of the Selection Criteria.
- (e) Lodge the Proposal before the Deadline.
- (g) Do not alter any Proposal documents.
- (h) Any alterations to entries on Proposal forms must be in ink and initialled by the respondent.

## 2.3 CLARIFICATIONS

---

Respondents should not rely on any information provided by any person(s) other than those listed below:

Name:	Jesse Johnson	Email:	tenders@swek.wa.gov.au
Telephone:	(08) 9168 4100	Mobile:	N/A

## 2.4 CLARIFICATION DEADLINE

---

Questions and clarifications to this Request for Proposal (RFP) shall be received up to **2:00 pm (WST), Wednesday 2 November 2016**.

## 2.5 SITE INSPECTION

---

A formal site inspection **WILL NOT BE HELD** by the Principal.

## 2.6 RESPONDENTS TO INFORM THEMSELVES

---

Respondents will be deemed to have:

- (a) Examined the Request and any other information available in writing to Respondents for the purpose of submitting a Proposal;
- (b) Examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Proposal which is obtainable by the making of reasonable enquires;
- (c) Satisfied themselves as to the correctness and sufficiency of their Proposals including quoted prices which will be deemed to cover the cost of complying with all requirements and Conditions;
- (d) Acknowledged that the Principal may enter into negotiations with a chosen Respondent and that negotiations are to be carried out in good faith;
- (e) Satisfied themselves that they have a full set of the Request documents and all relevant attachments; and
- (f) Satisfied themselves that they understand the requirements and restrictions as per Section 3 "Specification" and Section 4 "General Conditions" of this document.

## 2.7 ALTERATIONS

---

The Respondent must not alter or add to the request documents unless required by these Conditions of Responding.

The Principal will issue an Addendum to all registered Respondents where matters of significance make it necessary to amend or supplement the issued Request documents.

## 2.8 FORM OF PROPOSAL

---

Respondents must ensure that they have included the Offer (Part 5) and responded to all of the selection criteria and included all Attachments.

Respondents must ensure that they have provided **4 (four)** signed copies of their Proposal (one to be marked "ORIGINAL" and unbound, the other(s) to be marked "COPY" and bound). Any brochures or pamphlets must be attached to both the original and the copies.

All unbound copies must be bulldog clipped together (not stapled). All pages must be numbered consecutively and the Proposal must include an index.

## 2.9 LODGEMENT OF PROPOSALS

---

The *Local Government (Functions and General) Regulations 1996* state that "A Tender is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for Tender". In this regard the "place" shall be the Shire Wyndham East Kimberley's Administration Centre, 20 Coolibah Drive, Kununurra and the "time" shall be before the Submission Deadline nominated in this Request for Proposal.

Only those Proposals that are within the tender box at the time of closing will be assured of being regarded as being “*submitted at a place, and within the time, specified*”, and the Principal reserves the right to reject any Proposal not within the tender box at the time of closing. It is therefore in the Respondents interest to allow sufficient time for their Proposals to be placed into the tender box by the Submission Deadline.

The Proposal is to be:

- (a) Placed in a sealed envelope clearly endorsed with the Proposal number and title as shown on the front cover of this Request; and
- (b) Delivered by hand and placed in the tender box at Shire of Wyndham East Kimberley, 20 Coolibah drive, Kununurra WA 6743 (by the Respondent or the Respondent’s private agent);  
**OR** sent through the mail to the Chief Executive Officer, Shire of Wyndham East Kimberley, PO BOX 614, Kununurra WA 6743, clearly endorsed with the Proposal number and title as shown on the front cover of this Request. Please allow sufficient time to be collected from the PO Box, on or before the date of closing.

Electronic and facsimile submissions will not be accepted.

Only in exceptional circumstances and where the Principal, at the Principal’s sole discretion, is satisfied that there is sufficient proof that a Proposal had in fact been submitted and received at the Shire of Wyndham East Kimberley’s Administration Centre, 20 Coolibah Drive, Kununurra by the time of closing, will the Principal consider a Proposal that is not within the tender box by the Submission Deadline.

## 2.10 SUBMISSION DEADLINE

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Submissions must be received in the tender box at the Shire of Wyndham East Kimberley’s Administration Centre, 20 Coolibah Drive, Kununurra by no later than **2:00 pm (WST), Wednesday 9 November 2016**.

## 2.11 COSTS OF RESPONDING

---

The Principal will not be liable for payment to the Respondent for any costs, losses or expenses incurred by the Respondent in preparing their Proposal or for providing additional information or Clarification during the evaluation of the Submission.

## 2.12 OPENING OF SUBMISSIONS

---

All Respondents and members of the public may attend or be represented at the opening of Submissions.

Submissions will be opened in the Principal’s offices, following the advertised Submission Deadline.

The names of the Respondents who submitted a Proposal by the Submission Deadline will be read out at the opening. No discussions will be entered into between Respondents and the Principal’s officers present or otherwise, concerning the Proposals submitted.

The submission opening will be held at 2:00 pm (WST) on Wednesday 9 November 2016, at the Shire of Wyndham East Kimberley Council Administration Centre, 20 Coolibah Drive, Kununurra WA 6743.

## 2.13 REJECTION OF PROPOSALS

---

A Proposal will be rejected without consideration of its merits in the event that:

- (a) It is not submitted before the deadline;

- (b) It is not submitted at the place specified in the request;
- (c) The Respondent does not submit a Respondent's Offer form which has been completed and signed together with all the required attachments;.

## 2.14 SELECTION CRITERIA

---

The Proposal will be assessed against qualitative and compliance criteria to determine the most advantageous outcome to the Principal. The extent to which a Proposal demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Proposal will be used as one of the factors in the final overall assessment.

### 2.14.1 COMPLIANCE CRITERIA

These criteria are detailed within Part 5 of this document and will not be point scored. Each Proposal will be assessed on a **Yes/No** basis as to whether the criterion is satisfactorily met.

An assessment of “No” against any criterion will eliminate the Proposal from further consideration.

### 2.14.2 QUALITATIVE CRITERIA

In determining the most advantageous Proposal, the Evaluation Panel will score each Respondent's Offer against the qualitative criteria as detailed within Part 5 of this document. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on that aspect of the goods or services being purchased.

NOTE: It is essential that Respondents address each qualitative criterion, and provide suitable evidence to satisfactorily address each criterion.

Information that is provided addressing each qualitative criterion will be point scored by the Evaluation Panel.

Failure to provide the specified information may result in elimination from the Proposal evaluation process or may result in a low score.

The Principal may use any additional information available to it in its assessment of Offers.

## 2.15 EVALUATION PROCESS

---

Proposals will be evaluated using information provided in the Proposal and using other information or experience regarding the Respondent of which the Principal may be aware.

### 2.15.1 STEP 1 – COMPLIANCE CRITERIA

The Evaluation Panel will assess Proposals for compliance with the requirements of the Conditions of Responding and all requirements.

These criteria are detailed within Section 5.3 (Respondent's Offer) of this document and will not be point scored. Each Proposal will be assessed on a **Yes/No** basis as to whether the criterion is satisfactorily met. An assessment of **No** (meaning non-conforming) against any criterion will eliminate the Proposal from further consideration.

### 2.15.2 STEP 2 – QUALITATIVE CRITERIA.

Qualitative Criteria will be assessed using a point scoring system with a score being awarded for each area of part of each criterion.

Submissions will be assessed substantially using information and evidence provided within the Submission. The score will be weighted as detailed within Section 5.3 (Respondent's Offer) of this document.

Information supplied by a Respondent will be confirmed by:

- a) Reference to documented evidence information held by the Principal relating to the Respondent's past performance; and
- b) Following up financial and performance references supplied by the Respondent.

### 2.15.3 CONSIDERATION OF PROPOSALS

The Principal anticipates to negotiate directly with the applicant with the most suitable proposal to formalise the arrangement proposed including lease of the Wyndham Childcare facility.

Should more than one satisfactory proposal be received, the Shire reserves the right to conduct a tender process with applications shortlisted to the successful RFP applicants.

Should no single proposal be to the satisfaction of the Shire, the Shire reserves the right to not proceed with any offer for lease or other management arrangement through this process.

An applicant may submit more than one proposal. The applicant's primary application is to be labelled "Primary". Alternate proposals must be labelled "Alternate (n)"

### 2.15.4 PROPOSAL EVALUATION PANEL

It is intended that the Proposal Evaluation Panel, will consist of:

- Director Community Development
- Manager Community Services
- Senior Procurement and Contracts Officer

## 2.16 RISK ASSESSMENT

---

The Principal may have access to and give consideration to:

- (a) Any risk assessment undertaken by any credit rating agency;
- (b) Any information produced by a Bank, financial institution, or accountant of a Respondent;
- (c) Any information that the Principal may have available to it; and
- (d) Any litigation history available to the Principal;

So as to assess that Proposal, and may consider such materials as tools in the Proposal assessment process.

## 2.17 ACCEPTANCE OF PROPOSALS

---

Unless otherwise stated in this Request, Proposals may be for all or part of the Requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest price offered and may reject any or all Proposals submitted.

## 2.18 NOTIFICATION OF ACCEPTANCE

---

A Proposal shall be deemed to be accepted when a notice in writing of such acceptance is handed or emailed to the Respondent or is sent by prepaid post to the address stated in this Proposal. If sent by prepaid post the time for posting shall be deemed the time of acceptance.

## 2.19 DISCLOSURE OF CONTRACT INFORMATION

---

Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992* or under a Court order.

All Respondents will be given particulars of the successful Respondent(s) or advice that no Proposal was accepted.

## 2.20 OWNERSHIP OF PROPOSALS

---

All documents, materials, articles and information submitted by the Respondent as part of or in support of a Proposal will become upon submission the absolute property of the Principal and will not be returned to the Respondent at the conclusion of the Proposal process PROVIDED that the Respondent be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

## 2.21 CANVASSING OF OFFICIALS

---

A Proposal will be rejected without consideration if the Principal is reasonably satisfied that the Respondent canvassed any elected councillor or Shire officer. This does not include a bona fide demonstration of machinery, equipment or thing connected with the Proposal.

## 2.22 IDENTITY OF THE RESPONDENT

---

The identity of the Respondent is fundamental to the Principal. The Respondent will be the person, persons, corporation or corporations named as the Respondent in Part 5 and whose execution appears on the Offer Form in Section 5.1 of this Request.

## 2.23 RESPONDENTS REGISTRATION

---

It is a statutory requirement of the State of Western Australia that a Respondent be registered or licenced to carry out the Requirements as described in the Proposal documents.

## 2.24 IN-HOUSE PROPOSALS

---

The Principal does not intend to submit an in-house Proposal.

## 3 SPECIFICATION

### 3.1 REQUEST FOR PROPOSAL

The Shire of Wyndham East Kimberley is seeking Proposals for the provision of child care services in Wyndham, Western Australia. Proposals are invited from providers with the capacity to manage and operate a child care service in a manner that is consistent, compliant, accessible, and that meets the needs of the Wyndham community.

The intent is for the Shire to negotiate directly with the applicant with the most suitable proposal to formalise the arrangement proposed including lease of the Wyndham Childcare facility.

Should more than one satisfactory proposal be received, the Shire reserves the right to conduct a tender process with applications shortlisted to the successful RFP applicants.

Should no single proposal be to the satisfaction of the Shire, the Shire reserves the right to not proceed with any offer for lease or other management arrangement through this process.

An applicant may submit more than one proposal. The applicant's primary application is to be labelled "Primary". Alternate proposals must be labelled "Alternate (n)".FR

All proposals received will be confidential.

### 3.2 SCOPE

The proposal will detail how the applicant intends to operate the service and the terms of use of the Wyndham Child Care Facility including, but not limited to:

- (a) The provision of Long Day-care service is preferred however applicants may choose to propose an alternate arrangement such as "in venue" care;
- (b) Preferred terms are:
  - i. Five days per week operation (Monday to Friday); and
  - ii. Opening hours from 7:30am to 4:30pm.
- (c) The proposal must include leasing the Wyndham Childcare Centre facility, located on Lots 826 and 827 (numbers 44 and 46), Koolama St Wyndham. The preferred lease term is a minimum of 3 years;
- (d) The Proposal is to include the proposed:
  - (a) Rental fee for the lease of the Wyndham Childcare facility;
  - (b) The Party (Principal or Respondent) responsible for the payment of rates and charges;
  - (c) The Party (Principal or Respondent) responsible for management and payment of maintenance, internal (cleaning and non-structural repairs) and external (gardens); and
  - (d) The Party (Principal or Respondent) responsible for payment of utility costs.
- (e) The Shire will maintain building insurance for the facility. The applicant may propose to reimburse the Shire for this cost;
- (f) The facility will be leased as is – there will be no modifications to the facility as a result of this proposal unless required to operate the service in accordance with legislative requirements; and
- (g) The facility contains a large amount of furniture and child care related items. The proposal is to detail whether these items will be utilised or require removal.

## 4 GENERAL CONDITIONS

### 4.1 INSURANCE REQUIREMENTS

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The Respondent is to maintain Public Liability Insurance for the term of any resultant agreement for the sum of not less than the sum of \$20,000,000.

The Respondent is to maintain workers compensation insurance for the term of any resultant agreement for the sum of not less than the sum required by law.

The respondent is to maintain insurance to cover those aspects not covered under the Principals building insurance, being;

- (a) Fixtures;
- (b) Fittings; and
- (c) Equipment.

It is the Respondents responsibility to maintain any other policy of insurance required in the performance of the services.

### 4.2 REQUIREMENT TO ENTER INTO LEASE

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Upon successful negotiations, the successful Respondent will be required to enter into a lease for the premise for the agreed term of service.

### 4.3 COMPLIANCE WITH LEGISLATION

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Childcare services are to be provided in accordance with the *Children and Community Services Act 2004* and the *Child Care Services (Child Care) Regulations 2006*.

### 4.4 LICENCE TO OPERATE

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The Respondent must maintain relevant licence(s) issued under the *Child Care Services (Child Care) Regulations 2006* as required for the performance of the services.

## 5 RESPONDENT'S OFFER

### 5.1 OFFER FORM

The Chief Executive Officer

Shire of Wyndham East Kimberley

20 Coolibah Drive, Kununurra WA 6743

I/We (Registered Entity Name) \_\_\_\_\_

**(BLOCK LETTERS)**

Of \_\_\_\_\_

**(ADDRESS)**

ABN/GST Status \_\_\_\_\_ ACN (if any) : \_\_\_\_\_

Telephone No: \_\_\_\_\_ Facsimile No: \_\_\_\_\_

Postal Address (if different): \_\_\_\_\_

E-mail (if any): \_\_\_\_\_

**In response to RFP 01-16/17 Request for Proposal: Provision of Childcare Services in Wyndham**

I/We agree that I am/We are bound by, and will comply with this Request and its associated schedules, appendices, attachments, all in accordance with the Conditions of Responding contained in this signed and completed Request.

The Proposal is valid up to ninety (90) calendar days from the date of the Proposal closing unless extended by mutual agreement between the Principal and the Respondent in writing.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Proposal irrespective of its outcome.

The Request for Proposal consideration is as provided with this Submission.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signature of authorised signatory of Respondent: \_\_\_\_\_

Name of authorised signatory (BLOCK LETTERS): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name of witness: (BLOCK LETTERS): \_\_\_\_\_

Address: \_\_\_\_\_

## 5.2 RESPONDENT'S RESPONSE

The following checklist has been formatted to assist with preparation of submissions. Where requested to provide additional information, ensure that all documents are clearly marked with the relevant attachment title to assist the evaluation panel with their assessment.

Failure to provide any of the information where requested will result in the termination of assessment and rejection of the submission.

(NOTE: All pages within Part 5 must be completed and returned to the Principal as they form part of the Proposal submission).

### 5.2.1 REFEREES

Provide details of at least two referees, in an attachment labelled " <b>Referees</b> ". Details provided are to include referee contact phone numbers.	Tick if attached <input type="checkbox"/>
---	--

### 5.2.2 AGENTS

Are you acting as an agent for another party? If so, indicate by circling <b>yes</b> in the box to the right?	Yes / No
If Yes, provide details (including name and address) of your Principal in an attachment labelled " <b>Agents</b> ".	Tick if attached <input type="checkbox"/>

### 5.2.3 CONFLICTS OF INTEREST

Would there be any actual or potential conflict of interest for your organisation in the performance of a Contract resulting from this RFP, or are any such conflicts of interest likely to arise during such a Contract? If so indicate by circling <b>yes</b> in the box to the right?	Yes / No
If Yes, please supply in an attachment labelled " <b>Conflicts of Interest</b> ", details of any actual or potential conflict of interest and the way in which any conflict would be dealt with.	Tick if attached <input type="checkbox"/>

### 5.2.4 FINANCIAL POSITION

1. Are you presently able to pay all your debts in full as and when they fall due? If so, indicate by circling <b>yes</b> in the box to the right?	Yes / No
2. Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more? If so, indicate by circling <b>yes</b> in the box to the right?	Yes / No
If Yes to 5.2.4(2), please supply in an attachment labelled " <b>Current Litigation</b> ", details of current litigation which includes supporting court documentation and expected approximate value of settlement, costs and likely disbursements.	Tick if attached <input type="checkbox"/>

<p>3. If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due? If so, indicate by circling <b>yes</b> in the box to the right?</p>	<p>Yes / No</p>
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### 5.2.5 INSURANCE COVERAGE

<p>Respondents are to supply evidence of their insurance coverage including, insurer, expiry date, value and type of insurance in an attachment labelled "<b>Insurance Coverage</b>". Insurance coverage provided my meet the requirements specified in Part 4 of the RFP.</p>	<p>Tick if attached <input type="checkbox"/></p>
<p><b>OR</b></p>	
<p>If you are the successful respondent are you able to obtain insurance in accordance with the requirements specified in Part 4 of the RFP.</p>	<p>Yes / No</p>

## 5.3 SELECTION CRITERIA

### 5.3.1 COMPLIANCE CRITERIA

Please select either **yes** or **no** below to indicate compliance with the following Compliance Criteria.

An assessment of “No” against any of the compliance criteria below will result in the termination of assessment and rejection of the submission.

Description of Compliance Criteria	
1) Have details of two <b>referees</b> been provided?	Yes / No
2) Has section <b>5.2.2 Agents</b> been complied with?	Yes / No
3) Has section <b>5.2.3 Conflicts of Interest</b> been complied with?	Yes / No
4) Has section <b>5.2.4 Financial position 1)</b> been responded to in the affirmative (Yes)?	Yes / No
5) Has section <b>5.2.4 Financial position 2)</b> been complied with?	Yes / No
6) Has section <b>5.2.4 Financial position 3)</b> been responded to in the affirmative (Yes)?	Yes / No
7) Has section <b>5.2.5 Insurance Coverage</b> been complied with?	Yes / No
8) Did the Respondent provide a properly completed <b>Offer Form</b> ?	Yes / No
9) Are the provided documents unaltered other than for the addition of requested information?	Yes / No

### 5.3.2 QUALITATIVE CRITERIA

Before responding to the following qualitative criteria, Respondents must note the following:

- All information relevant to responses to each criterion are to be contained within the Proposal;
- Respondents are to assume that the Evaluation Panel has no previous knowledge of the organisation, its activities or experience, although the Evaluation Panel may use any additional information available to it in its assessment of Proposals;
- Respondents are to provide full details in support of any claims, statements or examples used to address the qualitative criteria; and
- Respondents are to address each issue outlined within each qualitative criterion.

Failure to provide an appropriately labelled attachment for any of the qualitative criteria may result in the termination of assessment and rejection of the submission.

<p><b>1) Business Proposal</b></p> <p>Describe your organisation proposed model for the delivery of a childcare service in Wyndham, provide details as follows:</p> <p>(a) Detailed overview of your proposed management model including:</p> <ul style="list-style-type: none"> <li>i. Details of childcare service to be provided including; number of children proposed under licence, days and hours of operation</li> <li>ii. Fee model</li> <li>iii. Evidence of financial sustainability and the capacity to meet the financial obligations of the proposal for the duration of the agreement.</li> </ul> <p><i>Supply details in an attachment labelled “<b>Business Proposal</b>”.</i></p>	<p style="text-align: center;"><b>40%</b></p> <hr/> <p style="text-align: center;"><b>Tick if attached</b></p> <p style="text-align: center;"><input type="checkbox"/></p>
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<p><b>2) Capacity to Deliver</b></p> <p>Describe your organisation and provide evidence of the ability to deliver a childcare service at Wyndham.</p> <p>Provide information as follows:</p> <p>(a) Overview of your organisational structure including key personnel, including your structure, or planned structure.</p> <p>(b) Details of your organisations former experience in the delivery of childcare services</p> <p><i>Note: Supply details in an attachment labelled “<b>Capacity to Deliver</b>”.</i></p>	<p style="text-align: center;"><b>40%</b></p> <hr/> <p style="text-align: center;"><b>Tick if Attached</b></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><input type="checkbox"/></p>
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<p><b>3) Financial implications to the Principal</b> Provide information on the financial implications to the Principal, provide information as follows:</p> <p>(a) Proposed Rental fee for the lease of the Wyndham Childcare facility;</p> <p>(b) The Party (Principal or Respondent) responsible for the payment of rates and charges:</p> <p>(c) Party (Principal or Respondent) responsible for management and payment of maintenance, internal (cleaning and non-structural repairs) and external (gardens); and</p> <p>(d) Party (Principal or Respondent) responsible for payment of utility costs.</p> <p><i>Note: Supply details in an attachment labelled “Financial implications to the Principal”.</i></p>	<p style="text-align: center;"><b>20%</b></p> <p style="text-align: center;"><b>Tick if attached</b></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><input type="checkbox"/></p>
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### 12.3.7 Review of Ron Hodnett Drive Access

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Manager, Community Services
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>FILE NO:</b>	TT.12.8
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### VOTING REQUIREMENT

Simple Majority

#### OFFICER'S RECOMMENDATION

**That Council:**

- 1. Note that a Traffic Management Review for Ron Hodnett Drive is included in the adopted 2016/17 Corporate Business Plan.**
- 2. Request the Chief Executive Officer to prioritise this Traffic Management Review.**
- 3. Consider the allocation of \$5,000 to undertake the Traffic Management Review during the mid-year budget review to expedite the project.**

#### COUNCIL DECISION

**Minute No: 20/12/2016-11565**

**Commissioner resolved:**

**That Council:**

- 1. Close Ron Hodnett Drive at its intersection with Chestnut Avenue and at its intersection with the service lane off the end of Agate Lane in accordance with section 3.50 of the Local Government Act 1995.**
- 2. Consider the allocation of \$6,000 at the mid-year budget review for the construction of mountable kerbing to the road closure at the intersection of Ron Hodnett Drive and the service lane off the end of Agate Lane in accordance with Council's Road Construction Policy CP/OPS 3655.**

**Carried 1/0**

### **REASON FOR VARYING OFFICER'S RECOMMENDATION**

The current situation in relation to traffic and pedestrian movement requires addressing by the Shire in order to improve safety.

### **PURPOSE**

For Council to consider the development of a traffic management review for Ron Hodnett Drive.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices.

### **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

Ron Hodnett Drive is located within the town centre adjacent to the Kununurra Leisure Centre. The road bisects the established recreation precinct dividing the town oval from the change rooms and public toilets as well as the Youth Centre. Ron Hodnett Drive does not sit within a formal road reserve, however, the road meets all of the legal requirements to be considered dedicated at common law.

Historically Ron Hodnett Drive carried very low traffic volumes. The area south of the oval was undeveloped and therefore the road was primarily used to access the oval and sports club. Over the past 10 years however, this area has seen the development of a Childcare Centre, MG Building, Kununurra Youth Centre and Coolibah Estate housing. These developments have led to a significant increase in the use of Ron Hodnett Drive as a thoroughfare for both vehicles and foot traffic.

The concern is that Ron Hodnett Drive separates the town oval from the oval change rooms and public toilets. Therefore any oval user or spectator requiring these facilities must cross the road. The East Kimberley Football League (EKFL) have raised this as a safety concern. The EKFL have been advised that they may close the road for their events however this requirement will require the preparation and implementation of a traffic management plan. This requirement places a financial and resource burden on the League.

The existing arrangement is also a barrier for sporting groups that wish to charge entry fees for their sports. Historically the East Kimberley Football League would simply close the gates, effectively closing the road, however there was no formal approval, nor accompanying plan and signage for this road closure. The League have been advised that it is a requirement to submit and comply with a Traffic Management Plan (one submission annually) for this closure at an estimated cost of \$800. This may be a barrier to other sports wishing to charge a gate fee however no other organisation has expressed this to the Shire.

The draft Kununurra Civic Precinct Structure Plan has identified Ron Hodnett Drive as a local road for the primary distribution of 70 percent of traffic accessing the proposed residential areas within this Plan. It should be noted that this Structure Plan involves the relocation of the Town Oval to East Lily Creek.

## **STATUTORY IMPLICATIONS**

The closure of any road managed by a Local Government in Western Australia must be undertaken with the consent of the Local Government and in accordance with the *Local Government Act 1995* sections 3.50, 3.50A and 3.51.

## **POLICY IMPLICATIONS**

There are no policy implications associated with this report.

## **FINANCIAL IMPLICATIONS**

A Traffic Management Review for Ron Hodnett Drive is included in the adopted 2016/17 Corporate Business Plan. To expedite the development of a Traffic Management Review for Ron Hodnett Drive a budget allocation of \$5,000 will be required.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 2: Greater returns from regional investment to ensure sustainable provision of appropriate physical and social infrastructure

Objective 2.3: Assets are appropriate for their intended purpose and factor in whole of life costing and maintenance

Strategy 2.3.1 : Manage and maintain assets in a strategic and cost effective manner

## **RISK IMPLICATIONS**

Lack of a planned approach to project design and approvals resulting in increased costs and poor delivery.

## **COMMUNITY ENGAGEMENT**

This matter has been discussed with the East Kimberley Football League on a number of occasions. There has been no consultation with other key stakeholders nor the broader community.

## **COMMENTS**

There are a range of possible options available to mitigate the safety concerns due to increased traffic. These include:

- Prioritising the Traffic Management Review for Ron Hodnett Drive;
- Continuing to require the implementation of a Traffic Management Plan for any modification to road conditions including the closure of the road and gates;
- Constructing new abluions on the oval site;

- Installing oval fencing along Ron Hodnett Drive;
- Closing a section of Ron Hodnett Drive on a temporary basis (6-month period during the football season);
- Closing a section of Ron Hodnett Drive permanently.

As well as the safety of precinct users, any action must also consider the usability of the precinct, the impact on traffic flow on alternate routes, and access to the existing facilities including the Youth Centre and oval.

#### Prioritising the Traffic Management Review for Ron Hodnett Drive

A Traffic Management Review for Ron Hodnett Drive is included in the adopted 2016/17 Corporate Business Plan. The purpose of the review is to gain a full understanding of the traffic/pedestrian conflict in Ron Hodnett Drive, possible unintended consequences of any actions, and to determine a suitable, cost effective traffic management solution that addresses pedestrian safety concerns.

In the absence of a thorough review of the situation, the pros and cons of some options are discussed below.

#### Implement a Traffic Management Plan either closing the road or changing the road to a shared road for pedestrians and vehicles

This option could be managed by the implementation of a Traffic Management Plan either closing the road or changing the road to a shared road for pedestrians and vehicles. This would require the annual procurement of a Traffic Management Plan and its implementation two or three times per week for a few hours for 20 weeks per year. The estimated cost of the Traffic Management Plan is \$800. This option has been the Shire's advice to the East Kimberley Football Association for the last 8 years.

Shire grant funding is available to cover the costs associated with this process however to date this has not been utilised. Implementation of the Traffic Management Plan would need to be undertaken by the sporting club using suitably qualified personnel.

#### Constructing new ablution facilities on the oval site:

The development of a change room/ablution facility at the Town Oval removes the need of oval users to cross the road. This option is included in the Shire's Corporate Business Plan for 2017/18. The primary driver of this project was the conflict between oval users and youth centre users (both groups requiring the same toilets) rather than mitigating the traffic issue. In the absence of other changes to the area however, this project is expected to both reduce the foot traffic crossing Ron Hodnett Drive and allow the oval to be fenced.

#### Fencing adjacent to Ron Hodnett Drive between the road and the oval:

This would require the completion of the new ablutions above. This option would further mitigate pedestrian movement across Ron Hodnett Drive however would reduce oval parking and cause inconvenience to oval users needing to retrieve balls.

Closure of a section of Ron Hodnett Drive on a temporary basis (6-month period during the football season):

While effective at mitigating the clash between traffic and pedestrians, this clash only occurs during sporting events, predominantly football games that take place 2 to 3 times per week for approximately 4 to 6 hours. The implications of this on the flow of traffic, and nearby facilities such as the Ord River Sports Club and Kununurra Youth Centre have not yet been explored.

Closure of a section of Ron Hodnett Drive permanently:

This option requires the construction of two cul-de-sacs at an estimated cost of \$100,000 to enable traffic to turn at the point of road closure. Furthermore, the draft Kununurra Civic Precinct Structure Plan nominates this road as supporting a future Centre and Residential Zone, a permanent road closure would require a review of the draft Structure Plan and the management of traffic associated with the proposed increased development in this area. Therefore, permanent closure of a section of Ron Hodnett Drive is not supported.

The proposed actions are:

**Short Term**

1. Undertake a thorough review exploring the most effective manner to minimise risk regarding pedestrian safety including consideration of the impact on surrounding services and traffic flow.
2. In the interim, continue to require oval user groups to implement a Traffic Management Plan when modifying traffic conditions on Ron Hodnett Drive.

**Medium Term**

1. Preparation of a Town Oval and surrounds management plan in consultation with stakeholders – including traffic management; parking; amenities.
2. Plan to identify the future location of amenities/fencing to address the existing pedestrian safety issue.
3. Construct amenities adjacent to the oval and make these available to oval user groups.

**ATTACHMENTS**

Attachment 1 - Overhead view of Ron Hodnett Drive

Eastern Gate

Western Gate

Sports Club parking  
entrance



Shared Toilets/  
Changerooms

Youth Centre parking

### 12.3.8 Proposed Motor Vehicle Car Wash - Lot 40 Bandicoot Drive, Kununurra

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Planning Officer
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>ASSESSMENT NO:</b>	DA52/16
<b>FILE NO:</b>	A5885P
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### VOTING REQUIREMENT

Simple Majority

#### OFFICER'S RECOMMENDATION

That Council grant development approval to the proposed Motor Vehicle Wash Station on Lot 40 Bandicoot Drive, Kununurra subject to the following conditions:

1. Use and Development shall be in accordance with the approved plans and subject to any modifications required as a consequence of any conditions of this approval. The endorsed plans shall not be modified or altered without written consent of the local government.
2. A minimum of six (6) car parking bays shall be provided on-site and maintained to the satisfaction of the local government. This shall include one (1) bay designated as employee parking for the Coffee Truck.
3. Vehicle parking areas, access ways and crossover(s) shall be designed, constructed, (lit), sealed, kerbed, drained, line marked and thereafter maintained in accordance with Australian Standard AS 2890.1:2004, Parking facilities, Part 1: *Off-street car parking* and the Shire's standards and specifications, prior to occupation of the development.
4. Emptying of rubbish bins and deliveries to the site shall not occur outside the hours of 7am to 7pm, Monday to Friday.
5. Perimeter lighting shall be switched off after 10pm and not turned on before 6am. After hours lighting is restricted to low illuminated lighting, such as at the entry/exit and within the manoeuvring areas on site, signage on the building and fuel canopies, internal store security lighting, Vacuum Bay and Car Wash areas.
6. External lighting shall be provided and maintained to ensure the safety and security of patrons. This shall be consistent with Australian Standard 4282-1997 *Control of the obtrusive effects of outdoor lighting*.
7. All stormwater drainage shall be designed and constructed at the applicant's cost and in accordance with the requirements of the Shire and in accordance with the current Australian Rainfall and Run-off Manual. Details on the proposed method of controlling the discharge are to comply with the conditions below. The preferred method for the subject site is to be determined in consultation with the Shire prior to the submission of a building application:

- (i) Stormwater retention of run-off from roof and/or other paved/impervious areas shall be provided on site. The design is to ensure the discharge of stormwater from the developed site is so as to restrict discharge to that which existed prior to development. Design overflow from soak wells and site drainage shall ensure no discharge onto or through adjoining properties. Details on the site specific design of control and disposal of stormwater from the site are to be submitted with the submission of a building application.
  - (ii) A drainage contribution fee may be charged if the discharge into the Shire's drainage system cannot be satisfactorily controlled and necessitates upgrade of the system servicing the catchment area. The payment if required and the amount, is to be confirmed by the Applicant with the Shire prior to the submission of a building application.
- 8. An application for crossovers shall be submitted to the Shire prior to the commencement of the construction of crossovers. Crossovers shall be constructed to Shire specifications and to the satisfaction of the Shire Manager Engineering Services. Turning and manoeuvring requirements (including possible upgrades for entrances) may be considered as part of a crossover application.
- 9. The existing 52 metre concrete median strip on Bandicoot Drive shall be removed along the entire frontage of the site and the road surface remediated to the Shire's standards and specifications, prior to the occupancy of the development.
- 10. No external music shall be played at the site and on-site public announcements are to be used only for emergency announcements.
- 11. All external plant, equipment and mechanical services must be acoustically treated or placed in sound proof housing to reduce noise to a level satisfactory to the Shire.
- 12. The concreted hardstand areas of the development shall be suitably roughened to avoid tyre squeal.
- 13. Opening Hours for the Motor Vehicle Wash Station shall not exceed 6am - 10pm.
- 14. All pit covers shown as on the approved plan are to comply with Australian Standard 3996-2006: Access Covers and Grates.
- 15. Bins or other receptacles for any form of rubbish or refuse may not be placed or allowed to remain in the view of the public. Where required, a bulk waste collection bin or approved alternative may be provided, but shall be contained in a suitably screened, drained and accessible area, to the satisfaction of the Shire. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created to the satisfaction of the Shire.
- 16. The development shall be connected to the reticulated sewerage system.
- 17. Landscape Plan shall be prepared to the satisfaction of the Shire by a suitably qualified consultant and submitted to the Shire for approval prior to the commencement of works. The Landscape Plan shall be drawn to scale and show detailed landscape designs for the following:
  - a) the vegetated buffers along the northern and western boundaries of the site.
  - b) general landscaping to complement the approved development and to ensure an attractive entrance is maintained.
  - c) the location, name and mature heights of proposed trees, shrubs and

groundcovers.

d) a minimum of one (1) canopy tree per every 10m within the Bandicoot Drive landscaping area.

**ADVICE:**

1. You are advised of the need to comply with all relevant legislation and codes, including but not limited to, the *Food Act 2008*, *Health Act 1911*, the Building Code of Australia, the *Environmental Protection Act 1986* and *Dangerous Goods Safety Act 2004*.
2. In regards to Condition 11 you are advised that noise levels must adhere to the requirements of the *Environmental Protection (Noise) Regulations 1997*. Allowable noise levels are set by the Regulations for different times of the day and week.
3. In regards to Condition 16, please liaise with the Water Corporation.
4. In regards to Condition 17, please refer to the Weaber Plain Light Industrial Area Design Guidelines - Recommended Plant Species List.
5. An amended development application to DA30/16 for a Service Station is required for the relocated fuel tanks that are indicated on the site plan (in grey).

**COUNCIL DECISION**

Minute No: 20/12/2016-11566

Commissioner resolved:

That Council grant development approval to the proposed Motor Vehicle Wash Station on Lot 40 Bandicoot Drive, Kununurra subject to the following conditions:

1. Use and Development shall be in accordance with the approved plans and subject to any modifications required as a consequence of any conditions of this approval. The endorsed plans shall not be modified or altered without written consent of the local government.
2. A minimum of six (6) car parking bays shall be provided on-site and maintained to the satisfaction of the local government. This shall include one (1) bay designated as employee parking for the Coffee Truck.
3. Vehicle parking areas, access ways and crossover(s) shall be designed, constructed, (lit), sealed, kerbed, drained, line marked and thereafter maintained in accordance with Australian Standard AS 2890.1:2004, Parking facilities, Part 1: *Off-street car parking* and the Shire's standards and specifications, prior to occupation of the development.
4. Emptying of rubbish bins and deliveries to the site shall not occur outside the hours of 7am to 7pm, Monday to Friday.
5. Perimeter lighting shall be switched off after 10pm and not turned on before 6am. After hours lighting is restricted to low illuminated lighting, such as at the entry/exit and within the manoeuvring areas on site, signage on the building and fuel canopies, internal store security lighting, Vacuum Bay and Car Wash areas.
6. External lighting shall be provided and maintained to ensure the safety and security of patrons. This shall be consistent with Australian Standard 4282-1997 *Control of the obtrusive effects of outdoor lighting*.

- 7. All stormwater drainage shall be designed and constructed at the applicant's cost and in accordance with the requirements of the Shire and in accordance with the current Australian Rainfall and Run-off Manual. Details on the proposed method of controlling the discharge are to comply with the conditions below. The preferred method for the subject site is to be determined in consultation with the Shire prior to the submission of a building application:**

  - (i) Stormwater retention of run-off from roof and/or other paved/impervious areas shall be provided on site. The design is to ensure the discharge of stormwater from the developed site is so as to restrict discharge to that which existed prior to development. Design overflow from soak wells and site drainage shall ensure no discharge onto or through adjoining properties. Details on the site specific design of control and disposal of stormwater from the site are to be submitted with the submission of a building application.**
  - (ii) A drainage contribution fee may be charged if the discharge into the Shire's drainage system cannot be satisfactorily controlled and necessitates upgrade of the system servicing the catchment area. The payment if required and the amount, is to be confirmed by the Applicant with the Shire prior to the submission of a building application.**
- 8. An application for crossovers shall be submitted to the Shire prior to the commencement of the construction of crossovers. Crossovers shall be constructed to Shire specifications and to the satisfaction of the Shire Manager Engineering Services. Turning and manoeuvring requirements (including possible upgrades for entrances) may be considered as part of a crossover application.**
- 9. The existing 52 metre concrete median strip on Bandicoot Drive shall be removed along the entire frontage of the site and the road surface remediated to the Shire's standards and specifications, prior to the occupancy of the development.**
- 10. No external music shall be played at the site and on-site public announcements are to be used only for emergency announcements.**
- 11. All external plant, equipment and mechanical services must be acoustically treated or placed in sound proof housing to reduce noise to a level satisfactory to the Shire.**
- 12. The concreted hardstand areas of the development shall be suitably roughened to avoid tyre squeal.**
- 13. Opening Hours for the Motor Vehicle Wash Station shall not exceed 6am - 10pm.**
- 14. All pit covers shown as on the approved plan are to comply with Australian Standard 3996-2006: Access Covers and Grates.**
- 15. Bins or other receptacles for any form of rubbish or refuse may not be placed or allowed to remain in the view of the public. Where required, a bulk waste collection bin or approved alternative may be provided, but shall be contained in a suitably screened, drained and accessible area, to the satisfaction of the Shire. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created to the satisfaction of the Shire.**
- 16. The development shall be connected to the reticulated sewerage system.**

17. Landscape Plan shall be prepared to the satisfaction of the Shire by a suitably qualified consultant and submitted to the Shire for approval prior to the commencement of works. The Landscape Plan shall be drawn to scale and show detailed landscape designs for the following:
- a) the vegetated buffers along the northern and western boundaries of the site.
  - b) general landscaping to complement the approved development and to ensure an attractive entrance is maintained.
  - c) the location, name and mature heights of proposed trees, shrubs and groundcovers.
  - d) a minimum of one (1) canopy tree per every 10m within the Bandicoot Drive landscaping area.

**ADVICE:**

1. You are advised of the need to comply with all relevant legislation and codes, including but not limited to, the *Food Act 2008*, *Health Act 1911*, the Building Code of Australia, the *Environmental Protection Act 1986* and *Dangerous Goods Safety Act 2004*.
2. In regards to Condition 11 you are advised that noise levels must adhere to the requirements of the *Environmental Protection (Noise) Regulations 1997*. Allowable noise levels are set by the Regulations for different times of the day and week.
3. In regards to Condition 16, please liaise with the Water Corporation.
4. In regards to Condition 17, please refer to the Weaber Plain Light Industrial Area Design Guidelines - Recommended Plant Species List.
5. An amended development application to DA30/16 for a Service Station is required for the relocated fuel tanks that are indicated on the site plan (in grey).

Carried 1/0

**PURPOSE**

For Council to consider approval of Motor Vehicle Wash Station comprising Wash Bays, Vacuum Bays and Coffee Truck at Lot 40 Bandicoot Drive, Kununurra.

**NATURE OF COUNCIL'S ROLE IN THE MATTER**

Regulator - enforce state legislation and local laws

**BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

The subject site is located on the northern side of Bandicoot Drive, has an area of 4108m<sup>2</sup>, and is zoned Mixed Business under Town Planning Scheme No. 7. It is generally flat and sandy, with a minimal amount of vegetation. The site has previously been used for storage of steel and metal fabrication materials.

The surrounding area includes a mixture of light industry uses to the north, west and eastern sides of the lot. Opposite the site on the south side of Bandicoot Drive is vacant land.



*Figure 1 - Location Plan*

### Proposal

Approval is sought for the development of a Motor Vehicle Wash Station and ancillary Coffee Truck (refer Attachment 1). The development proposal (refer Attachment 2) as advertised comprises:

- One (1) automatic car wash bay and three (3) wash bays
- Four (4) vacuum bays
- Five (5) designated car parking bays
- Pop-up coffee truck/van
- Vending and change area
- Storage and plant room
- Ice machine and dog wash
- 6am-10pm, 7 day a week operation
- Access and exit points to Bandicoot Drive
- Landscaping along the front and western boundaries of the site to establish a vegetated buffer and screen.

The proposed buildings are setback a distance of 18.5 metres from the frontage of the site. The side setbacks are 2.5 metres to the eastern side boundary and 20 metres from the western boundary.

The proposal is located to the rear of a previously approved Service Station DA30/16. Thus Council may note that the Fuel Storage Tanks indicated to the rear of the site (in grey) are not part of the current application.

## **STATUTORY IMPLICATIONS**

### *Town Planning Scheme No. 7 - Kununurra and Environs (TPS 7)*

The land is zoned Mixed Business under the Scheme. The objectives of this zone are:

- (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.*

Motor Vehicle Wash Station is an 'SA' use in the Mixed Business zone, which means that *"...the Council may, at its discretion, permit the use after notice of application has been given in accordance with Clause 11.2"*.

Motor Vehicle Wash Station is defined in the Scheme as: *"means any land or buildings where in the primary use is the washing of motor vehicles"*.

#### *Additional Scheme Requirements*

Further requirements for use and development in the Mixed Business zone according with Table 2 - Development Requirements, cl. 5.10.5 (b-i), cl. 5.16.5-6 are set out:

<b>Requirement</b>	<b>Comment</b>
The colour and texture of external building materials.	The materials schedule for the proposed buildings is indicated on the site plan of the proposal. It consists of steel Colorbond sheeting or blockwork (Secure Storage room). It is considered that these materials are responsive to the prevailing built form in the vicinity, and will allow for a practical and fit-for-purpose outcome.
Building size, height, bulk, and roof pitch.	The buildings are a maximum of 6.0m in height, at the Wash Bay component. The Plant Room is 5.8m and Vacuum Bays 4.3m. These heights are in keeping with the industry and commercial development on Bandicoot Drive and surrounding lots.
Setback and location of the building on its lot.	The proposal includes setbacks that are generally consistent with those existing in the area.
Architectural style and design details of the building.	The design reflects the intended purpose of the proposal.
Function of the building.	The proposed buildings will function as outlined in the application. Clearances for vehicles and boats or similar trailers has been considered in the Wash Bay height.
Relationship to surrounding development.	Surrounding development has been constructed as commercial and industry-type buildings and the proposal is consistent with those.

<p>Parking and landscaping requirements.</p>	<p>The proposed use does not have a specific car parking requirement under the Scheme. It is considered that lanes for queuing are crucial for a development of this type, rather than longer-term parking where customers might browse/shop. In this regard, ample supply for queuing is provided on the site prior to the car wash and vacuum points. However, it is noted that the Coffee Truck will require one (1) additional employee bay to be designated on-site.</p> <p>The plan shows landscaping at the frontage using low shrubs with irrigation. It is recommended that a landscaping plan incorporating larger local shrubs, trees and reticulation be submitted to assist screening off the development from the adjoining lots.</p>
<p>Other characteristics to be considered by Council to be relevant.</p>	<p>Traffic entering and exiting the site has been considered by the applicant and the median strip/concrete kerb in Bandicoot Drive accordingly marked as "...existing kerbing to be removed to suit petrol tanker access...". It is recommended (and has been discussed with the applicant) that this median strip be removed completely to allow for clearer driver sightlines and in particular for exiting.</p> <p>Ample exit area has been provided from the wash and vacuum bays to allow for multiple vehicles in single file.</p> <p>All lanes are to be clearly marked as illustrated on the proposed site plan.</p>
<p>The Council, in assessing development applications within these zones, shall have due regard for appropriate buffers as outlined under relevant Environmental Protection Authority Guidelines and Policies and in any event, Council may impose conditions specifically on a development approval to comply with appropriate conditions in order to prevent pollution impacts on surrounding properties.</p>	<p>The EPA Guidance for the Assessment of Environmental Factors has been considered in this assessment. The application was also referred to the Dept. of Environmental Regulation for comment, no objection was received. It is noted that this document states that for "Service stations, involving vehicle cleaning/detailing facilities &amp; the retailing of spare parts &amp; foodstuffs", a separation distance of 50m be provided. In addition, State Planning Policy 4.1 State Industrial Buffer Policy has been considered. The SPP notes <i>"The use of setbacks [in light/service industry] is most effective, particularly when combined with landscaping, for reducing impacts to acceptable levels (e.g. building bulk, noise and light overspill from storage areas, car parking and servicing areas, etc).</i></p> <p>In consideration of the above, it is noted that: landscaping has been considered; sensitive uses have not been developed within 50m of the subject lot; and the 50m distance is allowed for, noting internal setbacks in Lot 40 itself as well as external separation: The car wash and cleaning facilities are 18m from the lot frontage and a 32m road reserve exists (Bandicoot Drive) to the Tourism-zoned land to the south, which is presently vacant.</p>

<p>The Council may require the first 5 metres of the front setback on any lot to be landscaped to the satisfaction of Council.</p> <p>Where a lot has frontage to two streets, the Council may vary the landscaping requirement only where the setback is reduced, in which case the whole of the setback so reduced shall be landscaped to the satisfaction of Council.</p>	<p>3m has been proposed at the lot frontage, and a further amount at the northern boundary of the lot. It is considered that this area will be suitable for screening and aesthetic purposes. Planting with recommended species per the Weaber Plains Light Industrial Area is provided as advice.</p>
--	--

Draft Local Planning Scheme No. 9 (LPS No. 9)

Under Draft LPS No. 9 the land has been advertised as Mixed Use, in which a Motor Vehicle Wash Station is an 'A' use; where "...the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions".

A possible outcome or "recommended modification" of the advertising process is that the site will be included in a Service Commercial zone. In this zone a Motor Vehicle Wash is a 'D' use; where "... the use is not permitted unless the local government has exercised its discretion by granting development approval".

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

The development application fee has been paid.

**STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 2: Greater returns from regional investment to ensure sustainable provision of appropriate physical and social infrastructure

Objective 2.2: Maintenance of economic diversity and greater community returns from investment in the region

Objective 3.2: Sustainable waste management and protection of the environment

Strategy 2.1.1 : Encourage a mix of businesses that meet community needs

Strategy 2.2.6 : Support local initiatives that promote entrepreneurial activities and a greater diversity of industries in the East Kimberley

## **RISK IMPLICATIONS**

Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

## **COMMUNITY ENGAGEMENT**

Engagement has taken place in accordance with the Shire's Community Engagement Guidelines and included a Notice being sent to nearby landowners advising them of the application and the advertising period of 14 days, per the *Planning and Development (Local Planning Schemes) Regulations 2015*.

One joint objection (5 names) was received (refer Attachment 3).

The grounds of objection are summarised as follows:-

1. Lack of necessity; Kununurra does not require an additional facility of this type.
2. Environmental impact; light, noise and fume pollution will impact all owners and occupiers in the vicinity.
3. Crime; already a problem in Kununurra, the proposal will attract more along Bandicoot Drive.
4. Traffic and safety; Bandicoot Drive and Ivanhoe Road already very busy and dangerous; no footpaths and poor lighting make it worse especially at dusk.
5. Parking; insufficient parking means customers will park along roads.
7. Reduced opportunity for residential and tourism development.
8. Reduction in property values.
9. Lack of consultation and process; rumours had been heard prior to the advertising process, development is larger than thought.

A response to these objections is provided (refer Attachment 4).

## **COMMENTS**

The application was referred to the Department of Environment and Regulation and Department of Mines and Petroleum (DMP). No objection was raised to the use and development, subject to the applicant obtaining all relevant licences from the DMP. In this regard it is noted that the related DA30/16 for Service Station - including a proposed relocation of Fuel Tanks - is capable of meeting all relevant standards (including buffers, emergency evacuation procedures, fire plans etc.) for being licensed. This will ensure that the potential for fuel spills/leaks/vapours are adequately addressed and prevented (refer Attachment 5).

In regards to the Motor Vehicle Wash Station, following the advertising period the applicant provided additional information on matters on noise mitigation and lighting, including:

- The concreted hardstand areas of the development will be suitably roughened to avoid tyre squeal.
- All pit covers will be fitted with suitable lids that comply with Australian Standard 3996.
- The vacuum equipment will be limited to a sound level of 75dB.

- The Car Wash Plant Room is to be well sealed and constructed of insulated cement/plaster board as well as steel external cladding to minimise noise.
- No music shall be played/broadcast externally, from the Coffee Truck or any other facilities.
- All external lighting will be consistent with Australian Standard 4282: Control of the obtrusive effects of outdoor lighting - with strong/bright lighting to be off 10pm-6am.

Noise impacts that are perceived as acceptable during reasonable operating hours may cause nuisance when occurring late at night. In line with information provided by the applicant several mitigating conditions are recommended to address noise levels, including that opening hours be limited. It is recommended that these hours be restricted to 6am-10pm.

In summary the proposed Motor Vehicle Wash Station is considered consistent with the zoning of the land and objectives for the zone. It is recommended it be approved subject to conditions.

### **ATTACHMENTS**

- Attachment 1 - Proposed Site Plan
- Attachment 2 - Development Approval Submission
- Attachment 3 - Joint Objection
- Attachment 4 - Response to Objections
- Attachment 5 - Revised Fuel Tank Layout

### CAR WASH COLOUR SCHEDULE

Steel Cladding	1. Cream "Summit"
Blockwork walls	2. Dark Blue "Deep Ocean"
Steel Capping & Flashing	3. Cream "Ecu Quarter" (A189)
Columns & Beams	4. Dark Blue "Deep Ocean"
Doors, Windows & Framing	5. Dark Blue "Deep Ocean" (184821)*
Roofing Sheeting	6. Dark Blue "Deep Ocean" (184821)*
Facade Purfin	7. Dark Blue "Deep Ocean"
Beams/Purfines - other	8. Dark Blue "Deep Ocean"
	9. Dust Grey
	N/A Beams/Purfines are non-ventable (Galvanneal Steel)

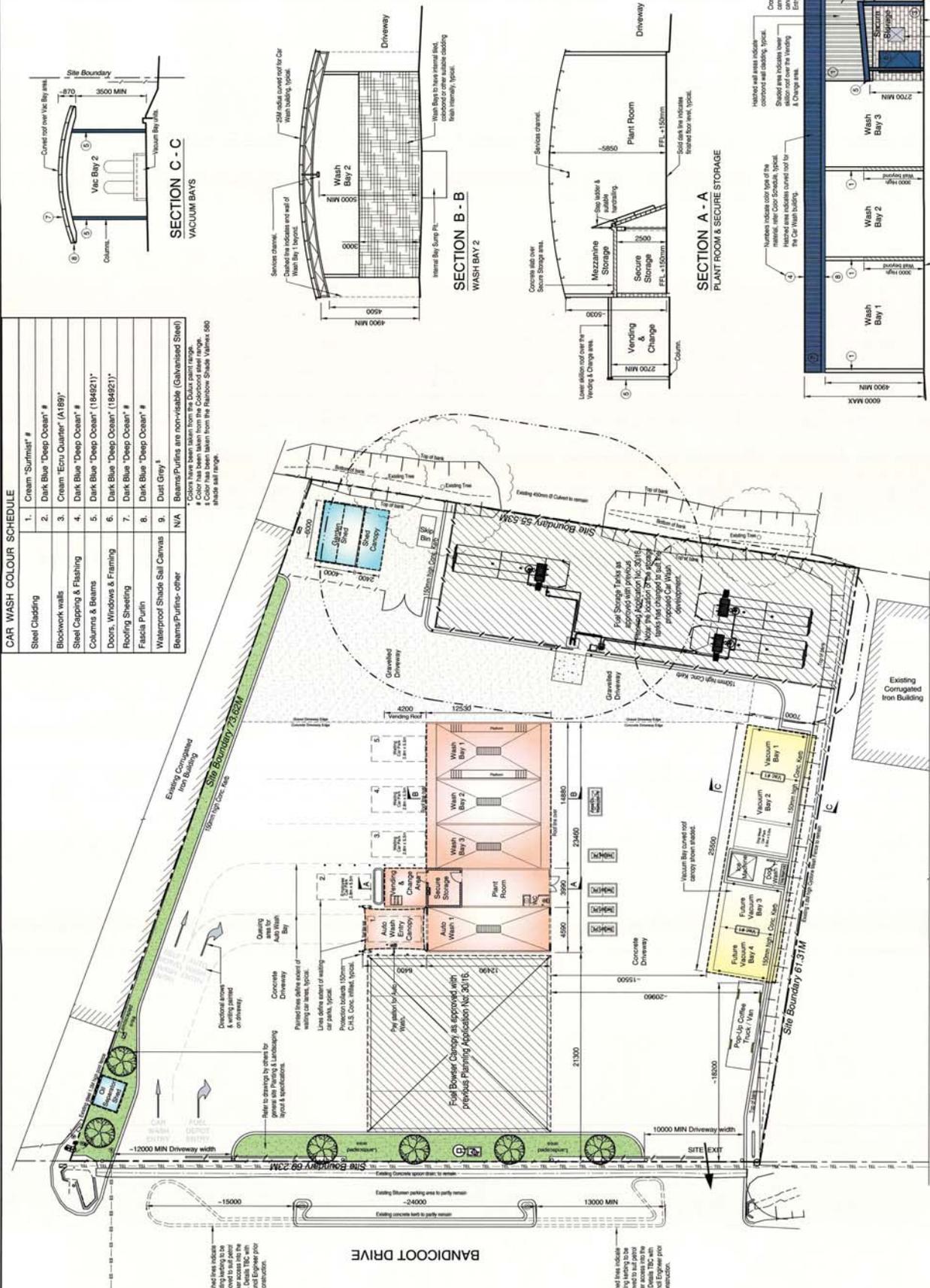
\* Colors have been taken from the Dulux paint range.  
 \* Color has been taken from the Rainbow Shade Values, 500 shade all range.

### SITE ANALYSIS

BUILDING TYPE - CAR WASH	FLOOR AREA
Self-Service + Auto Wash Bays Roofed Area	227.7 M <sup>2</sup>
Auto Wash Entry Shade Self Roofed Area	25.0 M <sup>2</sup>
Plant Room/Secure Storage Roofed Area	48.8 M <sup>2</sup>
Vending/Change Canopy Roofed Area	16.7 M <sup>2</sup>
Vacuum Bay/Dog Wash Roofed Area	178.5 M <sup>2</sup>
Garden Shed + Canopy Roofed Area	38.4 M <sup>2</sup>
Car spaces provided for Cleaners (MIN)	19 Cars
Car spaces provided in Vacuum Bays	4 Car Spaces
Car space provided for Dog Wash	1 Car Space
Car space provided for Employee	1 Car Space
Total Roofed Area	536.1 M <sup>2</sup>
Site Area	4,108 M <sup>2</sup>
Percentage Site Coverage - Car Wash	13.1%

### CARWASH & VACUUM BAY AREA MATERIALS SCHEDULE

<b>Walls</b>	Colorbond (see schedule for details) Secure Storage - Blockwork walls.
<b>Roof</b>	Steel Deck - Colorbond steel sheeting. Garden Shed - Colorbond steel sheeting. -5° pitched station roof to Vending/Change area. -4° pitched station roof to Vacuum Bays. -5° pitched station roof to Vending/Change area.
<b>Facade</b>	?
<b>Doors</b>	Commercial Security door - Solid core metal door. Solid core metal door Commercial Security door to Plant Room.
<b>Rainwater Gutter</b>	Colorbond zinc/alume as required
<b>Driveway</b>	Coloured concrete in all Wash Bays & Vac Bays. Gravel Driveway to rear of the site.



# PROPOSED SITE LAYOUT PLAN

SCALE 1 : 200

**ISSUED FOR PLANNING APPROVAL**  
 NOT TO BE USED FOR CONSTRUCTION PURPOSES

DESCRIPTION / REVISIONS	DATE



**PROPOSED CAR WASH FACILITY**

AT: LOT 40 (No. 3) BANDICOOT DRIVE,  
 KUNJUNURRA, WA, 6743  
 FOR: AGRIVISION INTERNATIONAL

Drawn: T. MICHAELS  
 Designed: T. MICHAELS

**TMC Building Design Group**  
 P.O. Box 346, Mangrove, VIC 3003, Phone No. 0411 113 127, Fax No. (03) 9481 488  
 Email: info@tmcdesigngroup.com.au

Scale: 1:100 (A1) Date: OCT 2016  
 Sheet No: 2 of 7 Job No: 16-065 DA A

# **DEVELOPMENT APPROVAL** **SUBMISSION**

***PROPOSED:***  
***MOTOR VEHICLE WASH STATION, DOG WASH***  
***& POP-UP COFFEE/DRINKS TRUCK/VAN***  
***DEVELOPMENT***

***SITE:***

DP 38115  
LOT 40 (No. 3) BANDICOOT DRIVE,  
KUNUNNURRA, WA, 6743.

***CLIENT:***

AGRIVISION INTERNATIONAL

***DATE:***

3<sup>RD</sup> OCTOBER 2016

***JOB NO.***

16-065 DA



**TMC** | Building Design Group

A.B.N. 811 428 67 114

PO Box 3494, Mornington, Vic, 3931  
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## 1. PROPOSAL

This application seeks approval for the development of a Motor Vehicle Wash Station (Car Wash) and other ancillary activities on the site comprising of:

1. One Automatic Car Wash bay,
2. Three Self-serve Car Wash bays,
3. Four Vacuum bays,
4. One Dog Wash and associated car park,
5. Change/Vending areas for customers,
6. A Plant Room with staff amenities,
7. A Secure Storage room (housing the change machine),
8. A remote Garden Shed with roof canopy to house equipment and bin area,
9. A Pop-up Coffee/Drinks Truck/Van,

The subject site is No. 3 (Lot 40) on DP 38115, King District, Kununurra Townsite, Kununurra, Western Australia, 6743.

Provisions for the above will be contained within three buildings/structures and a truck/van having a total roofed area of 531.1 M<sup>2</sup> which yields an overall site coverage of 13.1%.

The primary Car Wash building and Vacuum Bay roof canopy is located on the middle third of the site, situated behind the proposed Fuel Canopy for the Service Station (refer previous planning application Ref No: 30/16). The primary Car Wash building is orientated in a north-south direction. This building will house all of the car washing facilities, ie: all automatic and self-serve car wash bays, the Plant Room, Secure Storage (housing the change machine, computer, security cameras and other items of importance), amenities and the Vending/Change area. The Secondary structure (essentially a fully open car port structure) is located in the middle third of the site along the eastern boundary and will comprise of the Vacuum Bays, Dog Wash, Ice Machine and car parking for same. The proposed Garden Shed and bin area is located in the far northwest corner of the site, this area will have suitable fencing and an access gate. The proposed Pop-up Coffee/Drinks Truck/Van will be located to the south end of the Vacuum Bay roof canopy.

Traffic can enter and exit the site in a forward direction from Bandicoot Drive. Access to the car wash facility will be gained via the south-west corner main entrance, whereby vehicles will follow the lane markings and directional arrows painted on the concrete driveway to the car wash facility. All vehicles will exit the site via the main site exit in the south-east corner. Traffic movements, pavement grades and sight distances comply with the relevant Australian Standards and Austroads design requirements. All traffic movements to/from each dedicated area on the site have passed a swept path analysis design criteria.

Refer to the attached Application drawings detailing all aspects of the site and design requirements:

1. Existing Site Layout Plan,
2. Proposed Car Wash Site Layout, Site Analysis Summary, West Elevation (Car Wash), Sections A – C, and Car Wash Colour Schedule.

The building construction materials will primarily consist of steel Colorbond cladding, blockwork and steel Colorbond sheet roofing to main roofed areas. The architectural design of the buildings and colour selection is practical for the location and anticipated construction costs. The wash bay sizes have been designed to allow ease of traffic movement throughout the site via more than adequate turning circles, very generous queueing areas, wide wash/vacuum bays, good visibility through the structures and encouraging low speed travel of all vehicles.



The proposed development will have suitable stormwater drainage facilities installed (to be designed by others). The site will discharge in accordance with Council's nominated point of legal discharge.

The site will be suitably landscaped (to be designed by others) especially along the front 3.0M wide landscaping strip and down the western boundary side of the site. All plant species will be selected in consultation with the Council preferred plant list and selected from available stock in conjunction with the local Council recommended plant nursery to ensure that the plants are suitable for the local climate and can be readily sourced. The proposed landscaping will be well maintained and set a good standard for future development in the area. The landscaping has been carefully designed at vehicle access locations to ensure that adequate sight distances are achieved.

In accordance with the Shire of Wyndham East Kimberly (SWEK) Town Planning Scheme No.7 'Kununurra and Environs' (SWEKPS); the site is in the Mixed Business Zone. Pursuant to Table 1- Zoning Table the car wash use is listed as a 'Motor Vehicle Wash Station' and is listed as a discretionary use after notices of the application are given in accordance with Clause 11.2 of the SWEKPS. This application is being made to SWEK as the responsible authority who is permitted to grant a permit in this instance.

### 1.1. The Subject Site and Surrounding Areas:

The site comprises of an irregular shaped rectangular block covering 4,108 M<sup>2</sup> in total. The site is currently a vacant gravelled block. Access to the property is gained from Bandicoot Drive.

Figure 1 shows the sites location with regard to the surrounding area. Figure 2 shows a current (2016 image) aerial view of the site and surrounding areas.

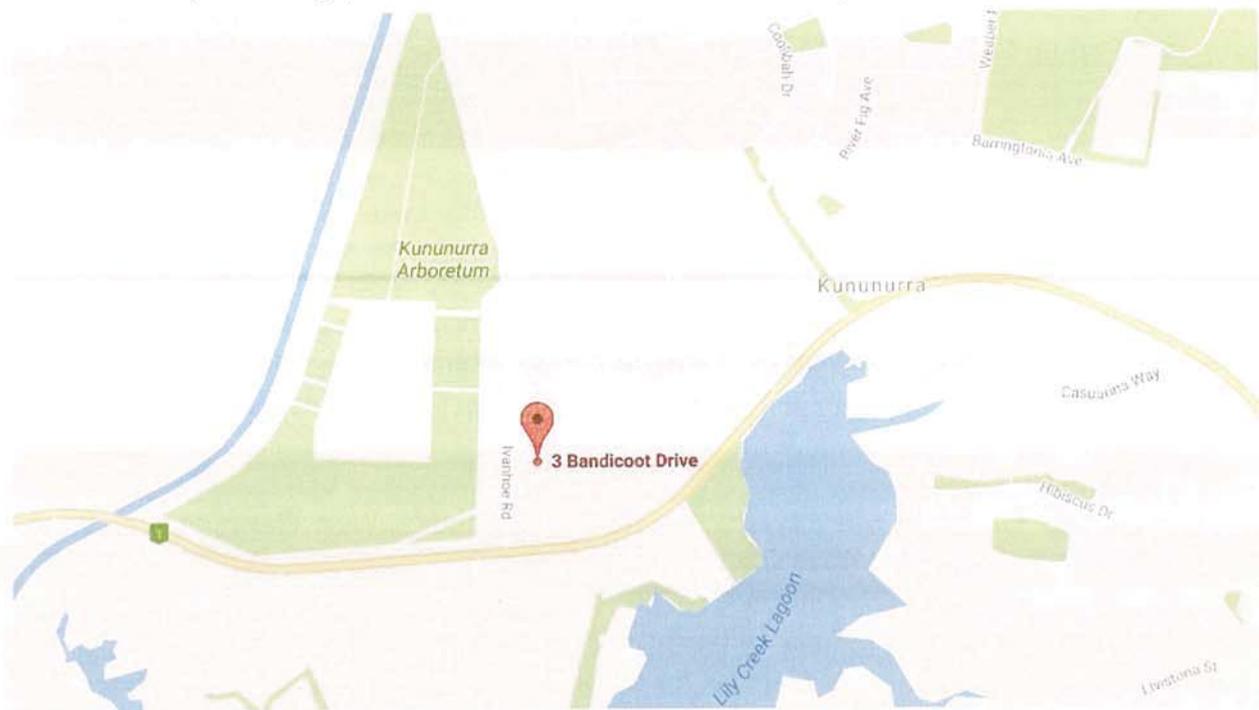


Figure 1: Street Map view of the site and surrounds. Source- Google Maps, 2016.





Figure 2: Aerial Photo of the site and surrounds. Image date 2016.  
Source- Google Maps, October 2016.

To the north of the site is the existing Metland colorbond shed and yard area.

To the east of the site is the current Honda Marine boating colorbond sheds and sales yard.

To the south of the site is a vacant block.

To the west of the site is the existing G.I. Group colorbond shed building for vehicle servicing and mechanical repairs.



## 1.2. Existing Site Features:

As seen in Figure 2 (above), Photos 1 and 2 (below) and the Existing Conditions Plan (of the submitted Application drawings); the existing site is a vacant gravelled block that is sometimes used to store various metal products and equipment.



Photo: 1, Shows the subject site from Bandicoot Drive looking northeast.  
Source- Google Maps, December 2014.



Photo: 2, Shows the subject site from Bandicoot Drive looking northwest.  
Source- Google Maps, December 2014.

The property is located on the northern side of Bandicoot Drive in Kununnurra.

The is relatively flat with a 600mm cross-fall from the northeast corner (high spot) to southwest corner (low spot) over a length of around 90M, yielding a natural slope of 1:150. Up to 2M inside both the eastern and northern boundaries there is a batter sloping

downwards which falls away up to 600mm from the finished surface levels on the subject property down into the adjoining properties.

The existing Corrugated Iron building to the west side of the site protrudes onto the subject site up to 250mm. This will have no impact on the proposed buildings and works.

The roads surrounding the site are bitumen paved with a concrete kerb and boxed culverts along the northern side of Bandicoot Drive. The site is set back approximately 60M to the east of Ivanhoe Road.

There are no other significant features or easements on the subject site.

### 1.3. Site Zone & Planning Requirements:



Figure 4: Town Planning Scheme Map No. 17 of 20.

Source- SWEK, Town Planning Scheme No 7 (District Scheme).

The subject site and the adjoining properties situated to the north of Bandicoot Drive are located in the Mixed Business Zone in accordance with the SWEKPS. There are no planning overlays affecting the subject site. Pursuant to Table 1- Zoning Table the 'Car Wash' use is listed as a 'Motor Vehicle Wash Station' and is listed as a discretionary use after notices of the application are given in accordance with Clause 11.2 of the SWEKPS.

The Motor Vehicle Wash Station 'use' is a complementary use to the currently approved "Service Station" use for the site. The proposed facilities make great use of space for the remainder of the site and provide the community with a much needed upgrade of their existing car washing facilities. The proposed Pop-up Coffee/Drinks Truck/Van is an ancillary use from the currently approved Service Station use for the site, ie: *"the retail sale of petroleum products, motor vehicle accessories and goods of an incidental/convenience retail nature"*.

The car washing facility will employ staff during construction, employ local staff part-time to maintain the site on a daily basis once the site is operational, and in other associated business areas (ie: book keeping, marketing etc...). The Pop-up Coffee/Drinks Truck/Van



will employ staff for the proposed range of operational hours from 6am to 4pm- 7 days a week (this may vary subject to customer demand).

The proposed Car Wash development does not detrimentally affect the amenity of the surrounding area. The main car wash building is set back 21.3M from Bandicoot Drive and is located behind the previously approved Fuel canopy structure. All proposed Buildings/Structures have been designed to be modern in appearance, using a pleasing array of suitable building materials, and minimise any adverse effects on the surrounding properties.

In the proposal; various design measures have been taken to mitigate any effects of noise emissions, site lighting, water over-spray, waste products, and waste water to be current or exceed the present-day car wash design standards; thus creating an environmentally friendly and safe environment for the public to wash their vehicle and/or dog.



## 2. PLANNING CONSIDERATIONS

In reference to the Clause 5.12.2 of the SWEKPS the subject site is zoned Mixed Business Zone. The subsequent paragraphs provide a successful detailed response to all necessary planning requirements in order to gain a compliant application for the proposed development.

### 2.1. Assessment under Clause 5.12.2 the SWEKPS;

The following paragraphs demonstrate compliance with the requirements of the SWEKPS.

#### 2.1.1. The colour and texture of external building materials-

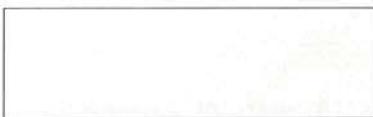
Please refer to the attached Application drawings (Sh: 1 to 2) which outline in detail all building and works aspects required for this application.

A schedule of materials for all of the building works is provided on Sh: 2 of the submitted Application drawings. All new external walls are to be constructed of steel Colorbond sheeting or blockwork (Secure Storage room only). All curved roof areas are to be constructed of non-reflective Colorbond sheeting, with the canopy over the Auto Wash Entry area to be a canvas shade sail with a 10 degree slope away from the building.

The elevations have been developed with the intention of achieving a pleasant and attractive looking building that is non-dominant, practical and fit for purpose, cost-effective to construct and maintain, maintains the current neighbourhood characteristics, and does not overshadow the neighbouring properties.

All products/materials used and colour selection made for the proposed buildings has been made with the view to minimise possible glare to all surrounding areas.

The full colour schedule for the Car Wash development is shown below. Refer to the Elevations and Sections on Sh: 2 of the submitted Application Drawings for locations of each colour as indicated on each part of the building. The building colour selection has been made to complement fuel facility structure located to the front of the car wash buildings, and complement the surrounding structures and not visually dominate the streetscape via the use of bright dominating colours. An example of the finished colour pallet is shown below.



1) Cream (Dulux Paints)  
"Ecru Quarter"



2) Dark Blue (Colorbond)  
"Deep Ocean"



3) Cream (Colorbond)  
"Surfmist"



4) Dark Grey (Rainbow Shade)  
"Dust Grey"

Note: These colours are have been taken from the Colorbond Steel and Rainbow Shade RGB colour specifications, hence the colours shown above are only an approximate of the actual colour.



### **2.1.2. Building size, height, bulk, and roof pitch.**

The submitted drawings (Sh: 2) show all the requirements with respect to the dimensions of the proposed site, the layout of the building works, vehicle parking, vehicle lane markings and landscaping areas, etc. There is a dedicated Garden Shed/Bin area proposed in the rear northwest corner of the site which will be fenced off away from public view.

Elevation drawings (Sh: 2) to 1:100 scale, show the external colour/materials of all building works, the building heights to finished floor level. The elevations have been developed with the intention of achieving a pleasant and attractive looking buildings, resulting in an improvement to the surrounding streetscape.

In this development the Secure Storage area has been specifically labelled as "Secure Storage" and not an "Office". The function of this room is to house the change machine and provide the (part time) employee with a safe environment to collect, store and count money. All of the security cameras and other valuable items are contained or connected to in this room. The room has reinforced blockwork walls, a concrete slab roof and commercial metal acoustic security doors. Typically the role of an employee on the a car wash site is to maintain and clean the Wash Bays, ensure the overall site is clean and tidy, ensure the equipment in the Plant Room is operating properly, ensure that vending items are topped up, and ensure that all soap levels etc... for the car wash equipment are adequate. Any time spent in the Secure Storage room is minimal; therefore the term "Office" has not been used in this instance as it is not a true reflection of the function of this room.

The Building heights have been kept to a practical minimum. The buildings have been set back as far as sensible (ie: standard bay sizes have been used) from the site boundaries. All fuel and car washing facility car-parking and driveway areas will be constructed of concrete and will drain to the legal point of discharge as selected by Council (to be designed by others). The overall visual amenity of the entire proposed development is highly compatible with the existing buildings in the surrounding areas of the site.

### **2.1.3. Setback and location of the building on the lot**

The site has been designed by a professional with 13 years of experience in designing all aspects of car washes (from Planning to Structural/Civil Engineering and Architectural construction documentation). It is assured that the highest standards and car wash best practices have been followed in the documentation of this proposal.

The main proposed building is located in the central part of the site, at a sufficient distance away from the adjoining property boundary lines and adjoining buildings to have no impact upon their existing amount of solar access. The Vacuum Bay structure is located midway along the eastern boundary; as this is typically a carport type structure the visual bulk of this structure is reduced.

The site orientation has been carefully selected to maximise the use of the site whilst achieving safe one way access to/from the site for all vehicles. An attractive arrangement of landscaping will be proposed which will have pleasing colour and height variations of selected plant species; further enhancing the site to customers.



#### **2.1.4. Architectural style and design details of the building.**

The building design and proposed low impact use will not have any negative effects on the surrounding area, the community or to local infrastructure currently in place. Water and power usage on the site will be minimised by the installation of the latest state of the art car washing equipment that is energy efficient to operate. Recycled water from the Automatic Wash bays will greatly reduce the fresh water required from the town mains water supply and will also reduce the sewer effluent discharge levels.

The architectural style of the proposed buildings/structure are similar to the adjoining buildings. However the main car wash building will have an attractive curved roof similar to the Fuel canopy in front of it. These curved roofs will run in opposite directions to accentuate this design feature.

#### **2.1.5. Function of the building**

The proposed car wash development will provide a safe facility for the public to wash and vacuum their car or wash their dog. All effluent water will be appropriately treated prior to entering the sewer system; as opposed to when the public washes their car at home and the effluent water is discharged into the stormwater system which causes a great deal of pollution and damage to the environment, waterways and animal habitat. This site has been carefully engineered to ensure that effluent water does not escape from the wash bays and discharge into the stormwater system.

The use of the remainder of the subject site as a car wash would be to the public's benefit. Over the past decade car washes have become increasingly popular with the public. The proposed development will provide the public with a modern facility to be able to wash their vehicles, boats and caravans as well as their dogs in a modern-day, convenient and safe location using environmentally friendly processes. This can only be a benefit to all parties, the community and all stakeholders concerned.

The subject site is capable of accepting the car wash development as a permanent use without any long term degradation to the site, its infrastructure or the adjoining areas. The site has no significant or material features that would prevent or negatively impact upon the successful operation of the proposed car wash development.

All site construction works will comply with the highest of engineering and safety standards and no negative effects are foreseen.

Only the chemicals, vending items, and cleaning products used for the car washing process will be stored on the site.



### **2.1.6. Relationship to surrounding development.**

The proposed development is designed to high standards using materials that are common to the area and suitable for the proposed use. The proposed buildings will not dominate the surrounding area in height or bulk- especially since they are well set back from Bandicoot Drive and are generally lower in height than the existing adjoining buildings. At street level passers-by will view predominately view the fuel facility roof canopy with the Car Wash building set in behind same. The proposed Vacuum Bay roof canopy set 18.2M along the eastern site boundary. As the car wash building and fuel facility roof canopy are both curved roof's; they will be viewed as being very pleasing and complementary structures which are slightly different to the neighbouring buildings. The openness of the site allows people to be able to look into the site and feel safe whilst using the facilities.

The proposed car wash development will have no negative impacts on the adjoining land. It will not affect how the adjoining properties currently operate. The overall development will be an improvement on the current vacant block.

### **2.1.7. Traffic Flow and Parking requirements**

The control of traffic flow patterns through any site is of great importance in order to maximise the sites potential, maximise the customer experience and most importantly to create a safe passage for all vehicles to manoeuvre around the site.

This site has been designed to achieve clear lines of site, clear driveway dedicated entry and exit lanes, line and directional arrow markings (so customers know what lane to be in and the direction to travel), painted lane markings stating "Car Wash Entry", "Fuel Depot Entry", "Auto Wash Bay Entry", and "Self-Serve Wash Entry". These elements can be seen on Sh: 2 of the attached Application drawings.

Currently there are no published generation rates for car wash facilities located in this area in Western Australia. Based on traffic generation rates of other similar car wash facilities and car wash facilities existing in the surrounding local areas; it is expected that the site will generate an average of 20 to 35 vpd (vehicle movements per day). During the busiest times it could be expected that the site will generate 35 to 50 vpd. During the busiest hours of operation it is expected that the car wash development would generate 10 to 15 vph (vehicles movements per hour), ie: 1 car entering/exiting the site every 4-6 minutes. The existing traffic volumes along Bandicoot Drive can easily cope with this rate of traffic movement.

The potential for traffic queueing on the site is plentiful. As can be seen from the "Proposed Site Layout Plan" (refer Sh: 2 of the Application drawings) the vehicles enter the site from the southwest driveway (~12M wide) along Bandicoot Drive and continue along the western site boundary where the car wash queuing area is located. Along the way customers are guided by line/lane markings and appropriate signage to direct them to the car wash area which they need to go. Customers can easily manoeuvre to the correct area via the minimum 18M wide driveway/queuing area (or the minimum 15.5M driveway area between the wash bays and vacuum bay structures) which is more than adequate to turn and queue all vehicles (including vehicles with boats/caravans). In the dedicated car wash lane and queuing areas the site can have a minimum of 19 vehicles queued prior to entry into the Wash bays. Customers can use the wash bays and then exit the site down the to the eastern site boundary to the southeast driveway exit onto Bandicoot Drive.



### **2.1.8. Landscaping requirements.**

Landscaped areas extend 3.0M into the site along Bandicoot Drive and continue down the western side boundary as shown on Sh: 2 of the Application drawings. The landscaping near driveway areas will be selected to maximise sight distances to allow the safe passing of vehicles and pedestrians along Bandicoot Drive.

Overall the chosen plant species and landscaping layout will be designed (by others) in accordance with Council preferred species and with consultation with the local plant nursery to ensure availability of the selected plants or suitable alternatives that are in stock at the time of planting. It is envisaged that the proposed landscaping will be a pleasing contribution to the site and local area and will be well maintained at all times.

It is requested that the Planning Permit be granted with the condition that a suitable Landscaping Plan be provided by the site owners and approved by Council prior to construction commencing.

### **2.1.9. Other characteristics to be considered by Council to be relevant.**

#### **2.1.9.1. Hours of Operation-**

The proposed operating hours for the development are:

- Monday to Sunday 6:00am to 10:00pm.

These operating hours are similar to the overall site Fuel sales operation. Automatic security gates located at the front driveway entrance/exit points will open/close after hours to prevent all access to the site.

A total of 1 employee will be in attendance on the site part time (approximately 3-6 hours per day) between 8am to 5:30pm.

#### **2.1.9.2. Discharge of Waste-**

Waste effluent disposal for the site will be via gravity feed pipe/pit system to the appropriate sewer connection with the permission of local Water Authority.

Silt pits will be installed in each self-serve Wash Bay, then ran through a Petrol/Oil Interceptor Pit, then ran into the Holding Pit prior to passing through the final Oil Separator and being discharged to the site's sewer connection point at the relevant location. Recycling of waste water from the Self-Serve Wash Bays is not encouraged or actually achievable since the effluent water that is being produced from these bays is not bacteria free; this is the common practice in car wash developments.

A Silt pit will be installed in the Automatic Wash Bay which is connected into a series (three in total) of twin Reclaim Pits, and then directed into the recycling system located in the Plant Room. Overflow effluent from the final Reclaim Pit and waste from the recycle system will be connected into the Holding Pit, and ran through the final Oil Separator prior to being discharged from site.

For the effluent recycling from the Automatic Wash Bay to occur the "Con-Serv Water Recovery System" equipment (or other similar approved recycling equipment) will be installed (refer attached brochure). The brochure outlines the primary filtration system and Ozone re-circulation system used during effluent recycling.

The car wash will operate as a five star water rated Car Wash. The car wash equipment used at this facility is rated under the Car Wash/State Government water rating scheme.



Silt pits between all Self-Serve Wash Bays are interconnected with pipes to prevent any overflow of effluent water escaping from the wash bays.

A trade waste discharge licence will be obtained from the local Water Authority after the Planning Application has been granted- and we ask that this application be issued with a condition of obtaining this Trade Waste Discharge Licence. It is impractical to apply for this licence at this stage since the proposed development (ie: the actual number of Automatic/Self-Serve Car Wash Bays) has not been approved and the application relies on knowing the actual breakdown of Automatic/Self-Serve Car Wash Bays as their discharge rate varies.

Particular attention has been given so that no effluent escapes from all wash bay areas and discharges into the stormwater system. This is achieved by giving all wash bays a 100-150mm minimum fall from outside of the bay to the silt pit in the centre of the respective bay. An additional 150-200mm wide strip drain will be located immediately inside the Automatic Wash Bay to collect any overspray and effluent water from entering into the stormwater system.



### **3. CONCLUSION**

This Planning Permit Application seeks approval for a Motor Vehicle Wash Station (Car Wash) at Lot 40 (No. 3) Bandicoot Drive, Kununurra in Western Australia. The proposed "Motor Vehicle Wash Station" use is a permitted use in the Mixed Business zone after Council has given notice of this application in accordance with SWEKPS Clause 11.2.

The proposed development is compliant and in many cases exceeds the requirements and standards set by the SWEKPS and by all other regulating authorities.

The currently vacant site is located in an older commercial area in Kununurra. The main car wash building will be set behind the Fuel Bowser Canopy approximately 21.3M from Bandicoot Drive. The site is more than suitable for the proposed development use and will add to the general amenity of the area and set a high design standard for future developments. With the latest in technology of car washing equipment being installed on the site; high energy efficiency and low water usage will be achieved; thus further minimising the environmental impacts and demands on local existing infrastructure.

The "car wash" use is a growing routine that is widely accepted by the public as an environmentally friendly and responsible, convenient, cost effective method of washing their vehicle or dog. The proposed building design and landscaping will be a positive impact in the area and will not have any negative effects on the local infrastructure or traffic flow and the overall site layout will promote safe vehicle movements in or around the subject site. The site contains a lavish amount of car parking spaces and queueing areas, wide driveway areas, wide wash bays and the open plan nature of the design will encourage safe passage for all patrons using the site.

The car wash use will not detract on future uses on adjoining properties. The site is positioned in a good location for customers that will provide an updated service to the community which is in high demand.

Given the above, we look forward to Council granting the Development Application approval.

Please contact me if there are any queries or require any further information or have any questions about the proposed development use or buildings.

Yours Faithfully,



**TRACEY MICHAELS** B.ENG (Hon), M.ENG (Mgmt)

*Designer/Director*

*TMC Building Design Group*

28 October 2016

6 Dianella Way  
KUNUNURRA WA 6743

Karl Askew  
Chief Executive Officer  
Shire of Wyndham-East Kimberley

**By hand and e-mail to: mail@swek.wa.gov.au**

Dear Mr Askew,

**Lot 40(3) Bandicoot Drive, Kununurra (Site)**  
**Your reference: A7074P: TP3643**

I write with reference to the above matter and refer to the letter addressed to Swan View Securities Pty Ltd dated 12 October 2016 (**Letter**).

Together with my business partner (the Managing Director of Swan View Securities Pty Ltd), I am the joint owner of properties at 5 and 6 Dianella Way and also 10 Ivanhoe Road. Prior to receipt of the Letter I telephoned the SWEK office and spoke to the Senior Planning Officer, Jennifer Ninyette, to express my concerns about the rumours circulating regarding the proposed works at the Site (**Proposal**). I had spoken to a number of owners and occupiers of land in the vicinity of the Proposal but no one appeared to have any robust information regarding the Proposal. Following receipt of the Letter, I telephoned Jennifer once again to reiterate those concerns and to advise that I would be making a submission regarding the Proposal as soon as possible.

I have, today, attended the SWEK office in order to view a copy of the Proposal. I have also discussed the Proposal with a number of my neighbours who have expressed similar concerns to my own.

Please be advised that our concerns about the Proposal are as follows:

**1. Lack of necessity**

There is already one BP Roadhouse at the end of Bandicoot Drive (on Messmate Way) and another half way along Bandicoot Drive. There is also a Coles petrol station along Ivanhoe Road only a few kilometres away. These stations all perform similar functions to the Proposal, including coffee/drinks provisions, car wash facilities and vacuum areas. The area does not need another facility of this nature.

**2. Environmental**

The Proposal will cause light, noise and fume pollution to all owners and occupiers in the vicinity.

My understanding of the Proposal is that it will include strong lights at all times to ensure that the Site is secure and available for use by customers at all relevant times. This will have significant impact on all residents in the area and their ability to sleep. It will also make driving along Bandicoot Drive and at the turn off to Ivanhoe Road significantly more dangerous as the lighting in that area is already poor (see below).

The noise of cars, customers and trucks travelling into and out of the Site will significantly diminish the peaceful enjoyment by owners and occupiers of their properties in the vicinity. I anticipate that the Proposal will also result in operational noises such as water spraying and fuel pumping.

The smell of food cooking, fuel being deposited and removed and car washing chemicals will also adversely affect the area and, particularly, residents in the vicinity.

### **3. Crime**

It is no secret that crime is a huge problem in Kununurra. SWEK will be aware that there are a number of people living in the long grass area along Ivanhoe Road. The Proposal will attract those and other undesirables in the community to travel along Bandicoot Drive and Dianella Way to access the Site. These streets are currently quiet, community areas along which mainly residents walk – there are very few people from town who use those roads. The Proposal will result in Dianella Way and Bandicoot Drive being thoroughfares for those walking to and from the Site.

### **4. Traffic and safety**

Bandicoot Drive and Ivanhoe Road are already very busy streets and the corner of those two access ways is already incredibly dangerous: the Proposal will significantly increase that danger as the Site is situated on the corner and along Bandicoot Drive. There are no foot paths along Bandicoot Drive or Ivanhoe Road and it is already perilous to walk from any of those streets to the footpath running alongside the Victoria Highway, which many of my neighbours and I do regularly. My family and I walk along those streets daily to access the footpath and also to go into the town centre. There is also a large number of residential blocks along Bandicoot Drive, for example Freshwater Apartments, which will be adversely affected by the increase in traffic running along Bandicoot Drive as the occupants of those blocks all use Bandicoot Drive to walk into town and to access the footpath.

There is also very poor street lighting running along Bandicoot Drive and Ivanhoe Road. The lighting is insufficient to guide any walking at night. The Proposal will cause increased traffic in an area which is already very dangerous for walkers.

The Ivanhoe Road turn off into Bandicoot Drive is also placed so that the sun is very bright at dusk which makes it very difficult for drivers to see along the road. This makes it incredibly dangerous to walk in the area during that period as drivers are blinded by the sunlight. Increased traffic will only serve to heighten that danger.

### **5. Parking**

The plans viewed earlier indicate that there is insufficient parking set out in the Proposal. This means that customers will park along Bandicoot Drive, Ivanhoe Road and Dianella Way in order to attend the site.

### **6. Reduced likelihood of much needed residential and tourism development**

SWEK is well aware that the area of the Proposal is zoned for mixed use. The land opposite has always been identified for tourism and residential developments. The construction of Freshwater Apartments along Bandicoot Drive has been a huge success and has brought much needed executive living spaces to people in Kununurra.

The Proposal will considerably reduce the likelihood of further developments taking place in the area.

**7. Reduction in property values**

The Proposal will significantly and adversely impact on property values in the area due to the:

- increase in traffic – both vehicular and human;
- increase in noise, light and smell in the area;
- likely increase in crime within the vicinity;
- increased likelihood of parking alongside adjacent streets; and
- reduced likelihood of residential and/or tourist development and/or activity in the area.

**8. Lack of consultation to date and lack of process**

Whilst hearing rumours about the Proposal over the last six months, neither my neighbours nor I have been formally advised of the Proposal until now – and works at the Site have already commenced.

Our understanding was that a fuel depot was going to be constructed at the Site but the Proposal now seems to include retail and commercial activities.

My understanding is that the Proposal has been lodged by Cambridge Gulf, which employs the husband of one of the former Shire Councillors (Emily Bolto). Another of the former Shire Councillors <sup>owns</sup> owns a block which adjoins the Site (Beau Robinson). There is clearly a great risk of conflict involved in the Proposal. When questioned about the Proposal, Beau advised me that all permissions had already been granted and that there was nothing further that could be done to stop the Proposal from taking place.

I welcome the opportunity to discuss the Proposal with Shire officers and the Shire administrator. As identified, my neighbours share the same concerns regarding the Proposal and would also welcome the chance to discuss the Proposal further with representatives from SWEK. Their support to this letter is indicated below.

I look forward to hearing from you,

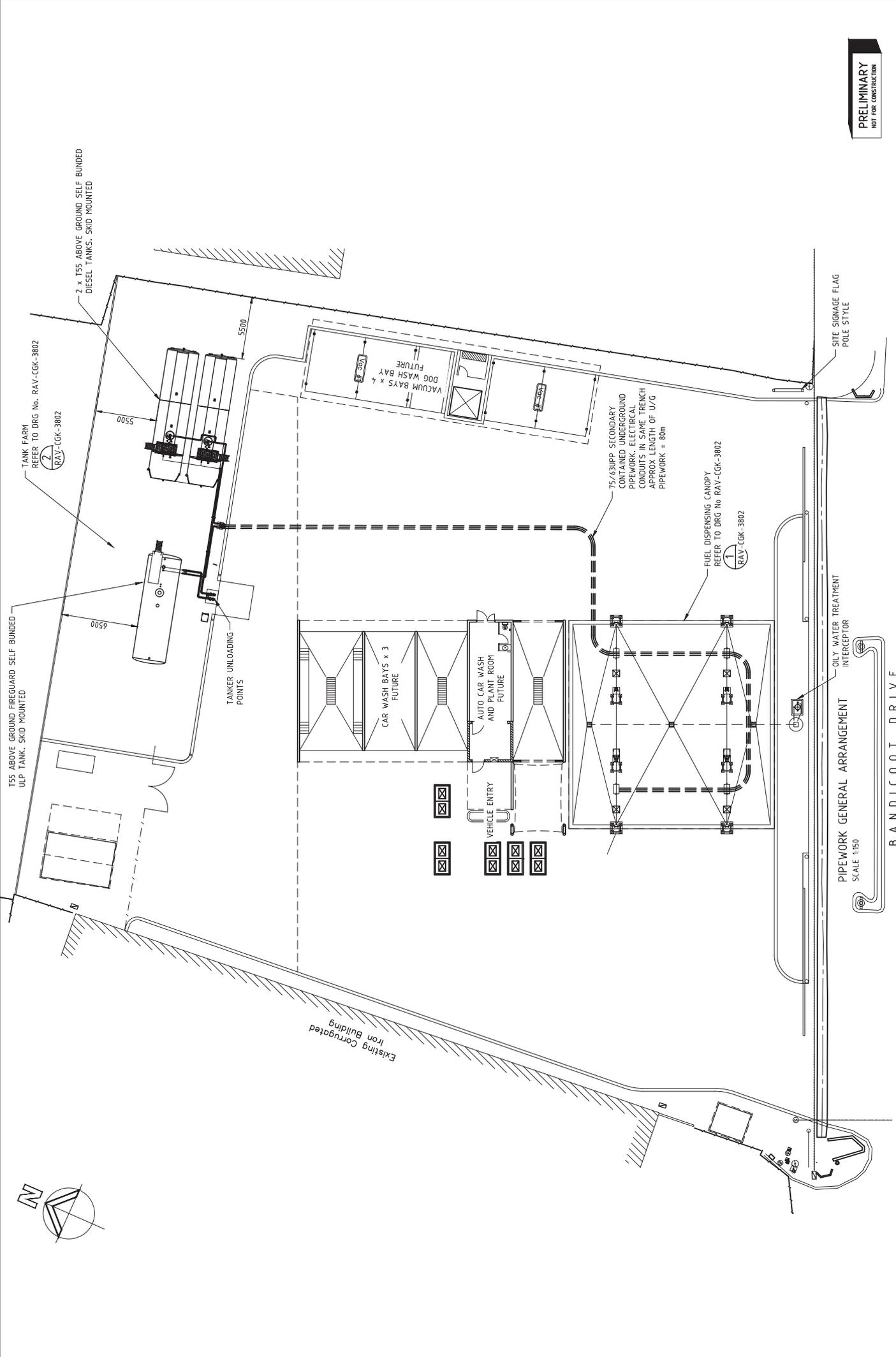
Yours sincerely 



## Response to Objections

<i>Objection</i>	<i>Comment</i>
<p>1. Lack of necessity. Kununurra does not require an additional petrol station, coffee provision, car wash and vacuum bay facility. There is already one BP roadhouse on the end of Bandicoot Drive and half way along Bandicoot Drive. There is a Coles petrol station along Ivanhoe Road.</p>	<p>The proposal is for a Motor Vehicle Wash Station with an ancillary Coffee Truck. It is noted that car wash and vacuum, and food sales do occur from the existing Shell service station site (240m) to the north and food/coffee sales from the BP roadhouse and service station (940m and 640m) to the north-east. However the “market” arising from the number of existing commercial premises is not a planning consideration.</p>
<p>2. Environmental impact; light, noise and fume pollution will impact all owners and occupiers in the vicinity. Strong lights at all times, the noise of vehicles and the smell of food and fuel will adversely affect the area and particularly residents in the vicinity.</p>	<p>Regarding residents, the site is zoned Mixed Business and sensitive residential uses are limited in the Town Planning Scheme. It is noted that Freshwater Apartments is 270m and Poinciana Lodge 290m from the subject lot. The <i>Environmental Protection Act 1987</i> and Regulations is the WA legislation that protects the environment from pollution and its effects. Under these Acts a person has a general environmental duty to minimise environmental harm or nuisance caused by their activities. The proposal has operating hours of 6am-10pm, and security gates to prevent access outside these times.</p> <p>The development of the Service Station component will meet all relevant standards (including buffers, emergency evacuation procedures, fire plans etc.) and be licensed by the relevant government agencies including the Department of Mines and Petroleum. This will ensure that the potential for fuel spills/leaks/vapours are adequately addressed and prevented.</p>
<p>3. Crime; already a huge problem in Kununurra, and there are people living in the long grass along Ivanhoe Road. The proposal will attract undesirables to travel along Bandicoot Drive. The proposal results in Bandicoot Drive becoming a thoroughfare for those walking to and from the site.</p>	<p>The development will include security measures. There is no evidence provided that shows that the proposal would lead to an increase in social issues.</p>
<p>4. Traffic and Safety; Bandicoot Drive and Ivanhoe Road are already busy streets and incredibly dangerous. The proposal will increase that danger. There are no footpaths; poor street lighting and</p>	<p>The development has incorporated sufficient parking in queuing areas to contain vehicle movements on the subject lot. Wider issues of footpaths and street lighting in the road reserve are noted.</p>

sunset/dusk is particularly dangerous.	
5. Parking; insufficient, customers will park along the roadside in Bandicoot Drive, Ivanhoe Road and Dianella Way.	<p>The numbers of bays as indicated on the attached site plan are sufficient under the Town Planning Scheme. This incorporates queueing spaces for entries and exits. Unauthorised parking on road verges is addressed in the Shire local laws.</p> <p>There is no car parking requirement for Motor Vehicle Wash Station(s) in the Town Planning Scheme and Council must therefore determine the amount. The proposal shows a total of 5 bays (including 1 for employees) excluding vehicle queueing areas, and additional open areas. This and a further one (1) bay for Coffee Truck employee parking is considered sufficient for the application.</p>
6. Reduced likelihood of much needed residential and tourism development. Land opposite is identified for tourism and residential developments.	<p>The land on the south side of Bandicoot Drive is zoned Tourist in Town Planning Scheme No. 7 and Tourism in draft Local Planning Scheme No. 9. The corner Lot 957 Bandicoot Drive is vacant. A non-conforming use is occurring on Lots 958, 1 &amp; 2 Bandicoot Drive. These do not constitute sensitive premises under the <i>Environmental Protection Act 1987</i> and Regulations. A separation distance of the Bandicoot Drive road reserve is in place at 32m. The use of landscaping and street setbacks at the subject lot, as well as future development in the Tourist zone, will add to this separation distance.</p>
7. Reduction in property values. The proposal will adversely impact property values due to: traffic; noise, light and smell; crime; parking alongside streets; reduced likelihood of residential or tourist development.	<p>This concern is noted. However property values are not a relevant planning consideration and cannot be used by the Council to determine the application.</p>
8. Lack of consultation to date and lack of process. No formal advice of the proposal until now. I had understood a fuel depot would be constructed. The proposal now includes retail and commercial activities.	<p>The previously approved development application for a Service Station is a Permitted use (P) in the Scheme's Zoning Table. A Fuel Depot was not proposed. Advertising is not required for Permitted uses. The present application does require advertising, as has been carried out. Sales of a convenience nature are proposed.</p>



**PRELIMINARY**  
NOT FOR CONSTRUCTION

PIPEWORK GENERAL ARRANGEMENT  
DRAWING No. **RAV-CGK-3801**  
SITE REVISION **A1 1**

PROPOSED FUEL FACILITY  
3 BANDICOOT DRIVE  
KUNUNURRA WA6743

RAV DC SERVICES Pty Ltd POB 847 873 PROJECT ENGINEERING AND MANAGEMENT	SCALE 1:50	NOTED DATE 02/10/18
RAVCG3802	DRAWN BY JAG	DATE 15/01/18
DWG. No. 152 891	APPD. No.	REVISION

20 December 2016  
REFERENCE DRAWINGS

NO.	DATE	BY	REVISION
1	18.08.16	SAG	ISSUED FOR COMMENT
1			PIPEWORK DET. SALES
1			PIPEWORK DET. SALES

DO NOT SCALE  
DIMENSIONS IN MM  
DRAWING PRACTICE  
TO A31 100

SCALE 1:150 (m)

Minutes Ordinary Council Meeting

### 12.3.9 Stakeholder Advisory Group - Additional Member, Tourism Industry

<b>DATE:</b>	20 December 2016
<b>AUTHOR:</b>	Senior Integrated Planning and Reporting Officer
<b>RESPONSIBLE OFFICER:</b>	Louise Gee, Director Community Development
<b>FILE NO:</b>	CR.07.3
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

**That Council amend part 5 of the Stakeholder Advisory Group Guidelines - Stakeholder Advisory Group Membership, to invite a representative from the Kununurra Visitors Centre.**

#### **COUNCIL DECISION**

**Minute No: 20/12/2016-11567**

**Commissioner resolved:**

**That Council amend part 5 of the Stakeholder Advisory Group Guidelines - Stakeholder Advisory Group Membership, to invite a representative from the Kununurra Visitors Centre.**

**Carried 1/0**

#### **PURPOSE**

For Council to consider the inclusion of another key stakeholder - Kununurra Visitors Centre as a member of the Stakeholder Advisory Group. The inclusion of the Kununurra Visitors Centre will provide representation from the local tourism industry.

#### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Facilitator - bring stakeholders together

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

At the 25 October 2016 Ordinary Council Meeting, Council resolved as follows:-

*Minute No: 25/10/16-11525*

*Commissioner resolved:*

*That Council endorse the establishment of a Stakeholder Advisory Group in accordance with the Stakeholder Advisory Group Guidelines provided in Attachment 1 with the addition to part 5 of the Stakeholder Advisory Group Membership to invite the immediate past Shire President and Deputy Shire President.*

## **STATUTORY IMPLICATIONS**

Nil

## **POLICY IMPLICATIONS**

The establishment of a Stakeholder Advisory Group is consistent with the purpose and policy statements of Council's Policy - CP GOV-3100 - Community Engagement.

## **FINANCIAL IMPLICATIONS**

Nil.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Strategy 2.2.4: Enhance and expand tourism opportunities in the East Kimberley

Action 2.2.4.1 Support the EK Tourism Plan in collaboration with the tourism sector

## **RISK IMPLICATIONS**

Issue: In order to be effective, the Stakeholder Advisory Group will rely on the goodwill of all who attend meetings.

Risk: Attempts by an action group or political party to dominate a Stakeholder Advisory Group meeting reducing the effectiveness and credibility of its outcomes.

## **COMMUNITY ENGAGEMENT**

The proposed Stakeholder Advisory Group will provide a forum for the Shire to engage with key stakeholders.

## **COMMENTS**

The Shire of Wyndham East Kimberley has identified the significance of the tourism industry to the East Kimberley economy through the East Kimberley Tourism Plan 2022 and the Strategic Community Plan 2012-2022.

### *The Strategic Community Plan*

- *Strategy 2.2.4: Enhance and expand tourism opportunities in the East Kimberley*
- *Action 2.2.4.1 Support the EK Tourism Plan in collaboration with the tourism sector*

Correspondence was received from Vivienne McEvoy General Manager Kununurra Visitors Centre requesting to be included in the Stakeholder Advisory Group to represent the tourism industry within the Shire (refer Attachment 1).

It is proposed that the Stakeholder Advisory Group membership include an additional nominated representative to represent the tourism industry. It is recommended that Council invite the Kununurra Visitors Centre, as the main Tourism Body in the community, to join the Stakeholder Advisory Group.

## **ATTACHMENTS**

Attachment 1 - Email from Kununurra Visitors Centre

**From:** Manager [<mailto:manager@visitkununurra.com>]  
**Sent:** Thursday, 1 December 2016 12:40 PM  
**To:** Louise Gee <[Louise.Gee@swek.wa.gov.au](mailto:Louise.Gee@swek.wa.gov.au)>  
**Subject:** Stakeholder Advisory Group

Hi Louise

I have had a look at the minutes and the list of invitees to form the Stakeholder Advisory Group – thank you for pointing me in that direction.

We would like to be involved in this group if it isn't too late as we are the Tourism Body in the community, with a membership base of 170+ members, representing a vast majority of our tour operators in the region I think the group is missing this contact.

Look forward to hearing from you with regards to an invitation ☺

Cheers, Viv

Kind regards

**Vivienne McEvoy** | General Manager

Kununurra Visitor Centre  
Coolibah Drive, Kununurra, WA, 6743  
**P:** (08) 9168 1177 | **F:** (08) 9168 2598  
**M:** 0409 681 177  
**E:** [manager@visitkununurra.com](mailto:manager@visitkununurra.com)  
**W:** [www.visitkununurra.com](http://www.visitkununurra.com)