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## CITY OF BUSSELTON

### MINUTES FOR THE COUNCIL MEETING HELD ON 22 FEBRUARY 2017

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## MINUTES

MINUTES OF A MEETING OF THE A MEETING OF THE BUSSELTON CITY COUNCIL HELD IN MEETING ROOM ONE, COMMUNITY RESOURCE CENTRE, 21 CAMMILLERI STREET, BUSSELTON, ON 22 FEBRUARY 2017 AT 5.30PM.

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

The Presiding Member opened the meeting at 5.34pm.

### 2. ATTENDANCE

#### Presiding Member:

Cr Grant Henley Mayor

#### Members:

Cr Ross Paine  
Cr Terry Best  
Cr John McCallum  
Cr Rob Bennett  
Cr Paul Carter  
Cr Robert Reekie  
Cr Gordon Bleechmore

#### Officers:

Mr Mike Archer, Chief Executive Officer  
Mr Oliver Darby, Director, Engineering and Works Services  
Mr Paul Needham, Director, Planning and Development Services  
Mrs Naomi Searle, Director, Community and Commercial Services  
Mr Cliff Frewing, Director, Finance and Corporate Services  
Miss Hayley Barge, Administration Officer, Governance

#### Apologies

Cr Coralie Tarbotton

#### Approved Leave of Absence

Nil

#### Media:

“Busselton-Dunsborough Times”  
“Busselton-Dunsborough Mail”

#### Public:

Nil

### 3. PRAYER

The prayer was delivered by Captain Jason Dannock of the Salvation Army.

**4. PUBLIC QUESTION TIME**

**Response to Previous Questions Taken on Notice**

Nil

**Public Question Time**

Nil

**5. ANNOUNCEMENTS WITHOUT DISCUSSION**

**Announcements by the Presiding Member**

Nil

**Announcements by other Members at the invitation of the Presiding Member**

Nil

**6. APPLICATION FOR LEAVE OF ABSENCE**

Nil

**7. PETITIONS AND PRESENTATIONS**

Nil

**8. DISCLOSURE OF INTERESTS**

Nil

**9. CONFIRMATION AND RECEIPT OF MINUTES**

**Previous Council Meetings**

**9.1 Minutes of the Council Meeting held 8 February 2017**

**Council Decision**

**C1702/026**

Moved Councillor G Bleechmore, seconded Councillor T Best

That the Minutes of the Council Meeting held 8 February 2017 be confirmed as a true and correct record.

**CARRIED 8/0**

**ITEMS BROUGHT FORWARD AND ADOPTION BY EXCEPTION RESOLUTION**

At this juncture the Mayor advised the meeting that with the exception of the items identified to be withdrawn for discussion, that the remaining reports, including the Committee and Officer Recommendations, will be adopted en bloc.

**Council Decision and Officer Recommendation**

**C1702/027** Moved Councillor G Bleechmore, seconded Councillor J McCallum

That the Committee and Officer Recommendations in relation to the following agenda items be carried en bloc:






14.1 COUNCILLORS' INFORMATION BULLETIN

**CARRIED 8/0**

**EN BLOC**

## **14. CHIEF EXECUTIVE OFFICER'S REPORT**

### **14.1 COUNCILLORS' INFORMATION BULLETIN**

|                             |   |
|-----------------------------|---|
| <b>SUBJECT INDEX:</b>       | Councillors' Information  |
| <b>STRATEGIC OBJECTIVE:</b> | A Council that engages broadly and proactively with the community.  |
| <b>BUSINESS UNIT:</b>       | Governance Services   |
| <b>ACTIVITY UNIT:</b>       | Governance Services   |
| <b>REPORTING OFFICER:</b>   | Executive Assistant to the Chief Executive Officer - Leigh Sly  |
| <b>AUTHORISING OFFICER:</b> | Chief Executive Officer - Mike Archer   |
| <b>VOTING REQUIREMENT:</b>  | Simple Majority   |
| <b>ATTACHMENTS:</b>         | Attachment A Planning Applications Received 1 January - 31 January 2017    |
|                             | Attachment B Planning Applications Determined 1 January - 31 January 2017  |
|                             | Attachment C State Administrative Tribunal Appeals as at 31 January 2017   |
|                             | Attachment D Department of Lands Appreciation                            |
|                             | Attachment E Art in the Park Letter of Appreciation                      |

### **PRÉCIS**

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each Councillor, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

### **INFORMATION BULLETIN**

#### **14.1.1 Planning and Development Statistics**

Attachment A is a report detailing all Planning Applications received by the City between 1 January, 2017 and 31 January 2017. 53 formal applications were received during this period.

Attachment B is a report detailing all Planning Applications determined by the City between 1 January, 2017 and 31 January 2017. A total of 77 applications (including subdivision referrals) were determined by the City during this period with 75 approved / supported and 2 refused / not supported.

Attachment A Planning Applications Received 1 November - 15 November 2017

Attachment B Planning Applications Determined 1 November - 15 November 2017

#### **14.1.2 State Administrative Tribunal (SAT) Appeals**

Attachment C is a list showing the current status of State Administrative Tribunal Appeals involving the City of Busselton as at 31 January, 2017.

#### **14.1.3 Department of Lands Appreciation**

Correspondence has been received from Department of Lands and is available to view in Attachment D.

#### **14.1.4 Busselton Art Society – Letter of Appreciation**

Correspondence has been received from Busselton Art Society is available to view in Attachment E.

**Council Decision and Officer Recommendation**

**C1702/028** Moved Councillor G Bleechmore, seconded Councillor J McCallum

That the items from the Councillors' Information Bulletin be noted:

- 14.1.1 Planning and Development Statistics
- 14.1.2 State Administrative Tribunal (SAT) Appeals
- 14.1.3 Department of Lands Appreciation
- 14.1.4 Busselton Art Society – Letter of Appreciation

**CARRIED 8/0**

**EN BLOC**

**ITEMS CONSIDERED BY SEPARATE RESOLUTION**

At this juncture, in accordance with Clause 5.6 (3)(a) & (b) of the Standing Orders, those items requiring an Absolute Majority or in which Councillors had declared Financial, Proximity or Impartiality Interests were considered.

**16. CONFIDENTIAL REPORTS**

The reports listed below are of a confidential nature, in accordance with section 5.23(2) of the Local Government Act 1995. These reports have been provided to Councillors, the Chief Executive Officer and Directors only.

**RECOMMENDATION**

That the meeting is closed to members of the public to discuss the following items which are confidential for the reasons as shown.

**16.1 RECOMMENDED ACQUISITION BY CITY OF BUSSELTON OF PT LOT 10 COMMONAGE ROAD, DUNSBOROUGH LAKES FOR FUTURE DEVELOPMENT AND USE AS A DISTRICT-LEVEL ACTIVE OUTDOOR RECREATION AREA**

This report contains information of a confidential nature in accordance with Section 5.23(2)(e)(ii) of the Local Government Act 1995, as it contains information relating to a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government

**16.1 RECOMMENDED ACQUISITION BY CITY OF BUSSELTON OF PT LOT 10 COMMONAGE ROAD, DUNSBOROUGH LAKES FOR FUTURE DEVELOPMENT AND USE AS A DISTRICT-LEVEL ACTIVE OUTDOOR RECREATION AREA**

|                             |  |
|-----------------------------|--|
| <b>SUBJECT INDEX:</b>       | Strategic Land Acquisition   |
| <b>STRATEGIC OBJECTIVE:</b> | A City where the community has access to quality cultural, recreation, leisure facilities and services.                  |
| <b>BUSINESS UNIT:</b>       | Strategic Planning and Development Services  |
| <b>ACTIVITY UNIT:</b>       | Strategic Planning   |
| <b>REPORTING OFFICER:</b>   | Manager, Strategic Planning and Development - Matthew Riordan  |
| <b>AUTHORISING OFFICER:</b> | Director, Planning and Development Services - Paul Needham   |
| <b>VOTING REQUIREMENT:</b>  | Simple Majority  |
| <b>ATTACHMENTS:</b>         | Attachment A Lot 10 Commonage Road (Distinct Site Areas)   |
|                             | Attachment B Pt Lot 10 Commonage Road (Conceptual Development Plan with 3 Contiguous Ovals)                              |
|                             | Attachment C Notice of Classification of Known or Suspected Contaminated Site - Reclassified 'Decontaminated' (DER 2013) |
|                             | Attachment D Notification of Withdrawal of Memorial on Title (DER 2013)  |

**This item is confidential in accordance with section 5.23(2) (e)(ii) of the Local Government Act 1995, as it contains information relating to a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government.**

**Council Decision and Officer Recommendation**

**C1702/029** Moved Councillor J McCallum, seconded Councillor G Bleechmore

That the Council, in respect to the acquisition of Pt Lot 10 Commonage Road, Dunsborough Lakes from the Water Corporation for a sum of \$1,600,000 (excluding GST), resolves:

1. To fund the acquisition by a loan taken over a period of 10 years and payable by equal payments to principal and interest.
2. To provide one month's local public notice of the proposal, in accordance with section







6.20(2) of the Local Government Act, 1995 'power to borrow'.

3. If there are no objections to the loan proposal, to then proceed to borrow the stated funds and amend the 2016/2017 Municipal budget to recognise that transaction, noting that there will be no impact on Council's projected surplus.
4. To authorize the Chief Executive Officer to execute the Contract of Sale on behalf of the City.
5. To direct the City to coordinate the sampling, analysis and ongoing monitoring of groundwater at Pt Lot 10, commencing within three months of the Date of Contract and, subject to findings, continuing for four years from the Date of Settlement, in order to ascertain if any residual or renascent contamination of the groundwater is present. Should it become evident after 12 months that there is no contamination of groundwater that could be directly attributed to the former operation, de-commissioning or site remediation of the Dunsborough Waste Water Treatment Plant by the Water Corporation, then this sampling and monitoring regime will be reconsidered.

**CARRIED 8/0**

## 10. PLANNING AND DEVELOPMENT SERVICES REPORT

### 10.1 AMENDMENT 22 TO LOCAL PLANNING SCHEME 21 TO REZONE LOT 41 (182) GEOGRAPHE BAY ROAD QUINDALUP FROM R12.5 to R20 - APPROVAL

|                             |   |
|-----------------------------|---|
| <b>SUBJECT INDEX:</b>       | Town Planning Scheme Amendments   |
| <b>STRATEGIC OBJECTIVE:</b> | Governance systems that deliver responsible, ethical and accountable decision-making.   |
| <b>BUSINESS UNIT:</b>       | Development Services and Policy   |
| <b>ACTIVITY UNIT:</b>       | Development Services and Policy   |
| <b>REPORTING OFFICER:</b>   | Manager, Development Services and Policy - Anthony Rowe   |
| <b>AUTHORISING OFFICER:</b> | Director, Planning and Development Services - Paul Needham  |
| <b>VOTING REQUIREMENT:</b>  | Simple Majority   |
| <b>ATTACHMENTS:</b>         | Attachment A Lot 41 Site Plan <br>Attachment B Summary of Submissions <br>Attachment C Schedule of Modifications <br>Attachment D Scheme Map Lot 41 Geographe Bay Road  |

#### PRÉCIS

The Council is asked to consider, after consultation, a proposal to rezone Lot 41 (182) Geographe Bay Road, Quindalup from R12.5 to R20 for the purpose of accommodating four dwellings.

The draft amendment was approved by Council for advertising and was advertised from 12 October 2016 to 23 November 2016.

Pursuant to Regulation 50(3), *Planning and Development (Local Planning Schemes) Regulations 2015* Council must now pass a resolution to either: support the amendment; support the amendment with modifications; or not support the amendment.

#### BACKGROUND

The Council is asked to consider approval of the proposal to rezone land at Lot 41 (182) Geographe Bay Road Quindalup, following its consideration of the submissions received.

The subject land is at Lot 41 (182) Geographe Bay Road, Quindalup and is 2,259 m<sup>2</sup> in area. The lot has been vacant since 2010 when a single dwelling was demolished to make way for two dwellings that did not proceed. The land is mostly cleared of vegetation except for a stand of peppermint trees in the middle of the block that separates the land into two readily developable areas.

The land is zoned 'Residential' in Scheme 21 and coded R.12.5, but it is also located in the Quindalup Special Character Area. The provision for the Quindalup Special Character Area (Schedule 4 and LPP) prevails where there is conflict with the R Code, which generally applies to residential land throughout Busselton.

The Quindalup Special Character Area policy sets the minimum lot size. The current policy allows a minimum lot size of 800m<sup>2</sup> and if the original lot exceeds 2,400m<sup>2</sup> three or more dwellings may be developed at the R12.5 density of 800m<sup>2</sup> per lot density.

The owner is proposing re-code the land to R20 (average lot size 450m<sup>2</sup>) to enable 4 dwellings to be accommodated.

The proposal is also to amend the Quindalup Special Character Area provision, at clause 1 (b) to read (addition proposed in bold) -

- (b) *The local government may only approve the development of three or more grouped dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>, **except for Lot 41 on Diagram 23175, House 182 Geographe Bay Road, Quindalup, where the development of a maximum of four dwellings may be approved.***

The proposal also involves amending the Scheme map so that the R20 code applies to the lot.

## STATUTORY ENVIRONMENT

The active statutes affecting this proposal include -

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015;* and
- *City of Busselton Local Planning Scheme No. 21.*

### ***Planning and Development Act 2005***

The *Planning and Development Act 2005* (P&D Act) outlines the relevant considerations when preparing and amending local planning schemes. The relevant provisions of the Act have been taken into account in preparing and processing this amendment.

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

The *Planning and Development (Local Planning Schemes) Regulations 2015*, which came into operational effect on 19 October 2015, identifies three different levels of amendments – basic, standard and complex. The resolution of the local government is to specify the level of the amendment and provide an explanation justifying this choice. This Amendment is deemed to be a ‘standard’ amendment.

### ***City of Busselton Local Planning Scheme No. 21.***

The City of Busselton Local Planning Scheme No. 21 allocates the spatial arrangement of the area by the Scheme Map. The Scheme text describes land uses, the residential densities (identified on the Map) by reference to the R-Codes or a development standard in certain areas, and it prescribes the development standards for works associated with land uses.

The Scheme establishes Special Character Areas which describe special controls that act in conjunction with the Scheme and the R-Codes. The Quindalup Special Character Area is identified in the Scheme (at Schedule 4).

The pertinent provision is cl.1b in Schedule 4 which provides:

- (b) *council will only permit the construction of grouped housing development of three or more dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>*

The Scheme also provides at cl. 5.3 (Special Application of Residential Design Codes) some limited circumstances that enable lots to be created less than indicated by the R-Codes classification shown on the Scheme map. These provisions do not apply to the Special Character Areas such as Quindalup.

## RELEVANT PLANS AND POLICIES

- State Planning Policy 3.1 Residential Design Codes of Western Australia

- State Planning Policy 2.6 - Coastal Management
- City of Busselton Local Planning Strategy (Draft, advertised 2015)
- City of Busselton Local Planning Policy 3 – Special Character Areas and Visual Management Policy

### ***State Planning Policy 3.1 Residential Design Codes of Western Australia***

The Residential Design Codes ('R-Codes') address development standards as well as assigning density by prescribing the minimum and average lot sizes for the coded categories, ranging from R2 at the lowest through to R80 at the highest (note that there are denser codes, but the permissible density only increases for multiple dwellings – i.e. flats/apartments – but not for single houses or grouped dwellings – i.e. houses, villas, townhouses).

In areas coded R12.5 the R-Codes prescribe a minimum site area per dwelling of 700m<sup>2</sup> and an average of 800m<sup>2</sup>. In areas coded R20 it prescribes a minimum site area per dwelling of 350m<sup>2</sup> and an average of 450m<sup>2</sup>. The area taken by internal driveways servicing grouped dwellings are counted in the average of the site area, but not the minimum.

In the development of Lot 41 an internal driveway will be required.

### ***State Planning Policy 2.6 - Coastal Management***

The purpose of this Policy (SPP2.6) is to provide guidance for decision-making within the coastal zone including managing development and land use change. The policy in summary requires development to be setback 170m from the 'horizontal shoreline datum' if not within an 'infill' area.

The subject land, whilst in a coastal location and only around 120m from the HSD, is clearly infill development. The proposal is consistent with SPP 2.6.

### ***City of Busselton Local Planning Strategy***

The purpose of the (Draft) Local Planning Strategy (LPS) is to set out the long term form (25 years) of the City and guide progressive amendments to the City's development control framework; within the next ten years. The LPS identifies the Busselton City Centre and the Dunsborough Town Centre as focal activity centres in the area. The town of Dunsborough is planned to have an ultimate population of 20,000 people, to be accommodated through both consolidation and expansion of its urban area.

The Local Planning Strategy identifies urban/residential consolidation at the Dunsborough Town Centre and for an area extending up to Elmore Road; which is specifically identified for *Urban Consolidation* (medium+ density).

The area to the east of Elmore Road, including the subject land, is identified in the Local Planning Strategy to be retained as low density. The proposal is consistent with the LPS, as R20 retains low density development.

### ***City of Busselton Local Planning Policy 3 – Special Character Areas and Visual Management - 3B Quindalup Special Character Area Provisions***

The Quindalup Special Character Area extends from Caves Road to Geographe Bay Road from east of Elmore Road through to Toby Inlet.

The background provided in the policy explains its reason:

*Increasing pressures for higher density residential and further tourist developments in recent years have prompted the City to act (1993) to preserve the highly valued character of the Quindalup Strip. Concerns with regard to the loss of special character have been particularly evident in the significant level of community reaction received to proposed re-zonings and subsequent developments within the Strip.*

The subject land is in Precinct 2 within the Quindalup Special Character Area.

The description for Precinct 2 is an area “of a mixed blend of old and new housing styles”. In other words there is no homogeneous built form.

The primary character elements therefore are the building setbacks and the street side vegetation. Accordingly, the development controls in *Precinct 2* describe a building set back of 10m from the street front and other provisions describe maintaining a heavily vegetated street line.

An important development control in the context of this amendment proposal is cl 3.3.2(d) in the Quindalup Special Character Area -

- (d) *A Residential Development Density of R12.5 will apply to all Group Housing developments involving three or more dwellings (i.e. minimum lot size of 2,100m<sup>2</sup>).*

This Development Control suggests that when the policy originated, notwithstanding the ‘policy background’, a higher density in Sector 2 was envisaged to provide 3 dwellings from 2,100m<sup>2</sup> instead of that now described in the Scheme - 3 dwellings from 2,400m<sup>2</sup> (using present day R-Codes lot sizes at R12.5). It is understood the Scheme was changed from 2,100m<sup>2</sup> to 2,400m<sup>2</sup> in response to community concern about the potential for too much redevelopment to occur.

## **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from the recommendations of this report.

### **Long-term Financial Plan Implications**

Nil

## **STRATEGIC COMMUNITY OBJECTIVES**

The Officer recommendation is consistent with community objective 5.2 of the City’s Strategic Community Plan 2013, which is: *‘Growth is managed sustainably and our environment is protected and enhanced as we develop’.*

## **RISK ASSESSMENT**

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City’s risk assessment framework. The assessment identified ‘downside’ risks only, rather than ‘upside’ risks as well. No significant risks have been identified.

## **CONSULTATION**

Consultation was undertaken in accordance with clause 47 *Planning and Development (Local Planning Schemes) Regulations 2015*.

The Amendment in a Standard Amendment and was advertised for 42 days between 12 October 2016 and 23 November 2016.

Five agency submissions were received and three public submissions were received.

The Schedule of Submissions is attached at Attachment A.

#### **OFFICER COMMENT**

There is not a strong basis for either changing or retaining the current arrangement as it now applies to lot 41 (182) Geographe Bay Road Quindalup.

The arguments against change are that the Lot is not within the town centre or identified by the recently consulted Local Planning Strategy, which identified the area 200m east of the subject land for *Urban Consolidation* (medium+ density) and this area extends 1500m to Dunn Bay Road.

The area identified *Urban Consolidation* (medium+ density) is large, providing considerable scope to increase the density of development in the town of Dunsborough over a 25 year time frame. There is therefore no pressing need to look beyond the area that has been identified *Urban Consolidation* (medium+ density).

The principal argument in support of the proposal is that the area is intended for low density development. The proposed Amendment will facilitate four lots with an average size of 500m<sup>2</sup> and by contemporary standards 500m<sup>2</sup> is a low density. Provided the front setback is maintained consistent with the policy, it is arguable that lots at 500m<sup>2</sup> can still maintain the purpose of a low density environment and therefore are consistent with the State Policy which advocates increasing density at centres – because this proposal is still low density.

The above matters were considered by Council at its meeting on 27 July 2016. These matters are finely balanced and Council resolved to approve the Amendment for community consultation.

The City has now received submissions from the community, three of the five adjoining neighbours opposing the amendment on the following grounds.

1. It is inconsistent with the low density intent of the current Scheme and Local Planning Policy for the Quindalup Special Character Area. The location is not within the town centre.
2. No change was proposed in the City's recent Local Planning Strategy.
3. The development will cause the loss of peppermint trees and Western Ringtail Possum (WRP) habitat.
4. The increased intensity (4 dwellings instead of 2) and the internal traffic arrangement will detract from the amenity (noise) to a greater extent than the current policy.
5. The increased intensity (4 dwellings instead of 2) will contribute to existing parking congestion on Geographe Bay Road.
6. Existing setbacks should be retained.

In addition to the community concern, DPaW requested an extension of the consultation period to assess the property and as a consequence has requested the retention of the peppermint trees. This request has now been heightened by the change of status for the Western Ringtail Possum to a critically endangered status.

The other agency (4) comments are classed as procedural and do not affect the content of the proposed amendment.

The initial discussions regarding the lot were based upon the fact that two, two storey dwellings had been approved at the site, that four dwellings could be placed within the same arrangement without the additional dwellings being noticeable and thereby not adversely affecting the character of the

locality. The applicant subsequently changed this to four at ground and then sought approval for five dwellings. This was on the basis that if the 'R20', as generally applies to residential land, was applied to lot 41 then the lot size could accommodate four dwellings and a fifth dwelling if using the area discount available for a single bedroom dwelling. The City indicated it would not support five dwellings.

Mixed responses have also been provided by the applicant, first that they were willing to consider an arrangement consistent with the current policy, then additional design controls to protect the character to allow a more flexible arrangement, but finally rejecting any additional design controls.

The justification for the additional dwellings, considered as 'finely balanced', was not strong. The proposal has now not been supported by the adjoining landowners, and the 'fine balance' has tipped against proceeding with the amendment.

Significantly, and since Council's consideration on 27 July 2016, the comments received by DPaW have placed an increased importance upon the retention of the peppermint trees located at the subject land. Under the current Scheme and the Quindalup Special Character Area policy the trees would not be protected if a development for two dwellings was to proceed. However, there is an opportunity through this amendment to introduce a control, to retain the peppermint trees, in return for supporting the two additional dwellings; to be a total of four dwellings at the site. It is possible through design controls to satisfy the DPaW and the neighbour's desire to retain the peppermint trees, and by also requiring space around the buildings, enhance the habitat for the Wester Ring Tail Possum and present a visually low density development consistent with the Quindalup Special Character Area policy.

It is not uncommon to vary requirements in a Scheme, outside of an LPS, if there is a community benefit in doing so. Compensation for biodiversity enhancement is often used. If the Amendment can in fact preserve the trees and enhance the WRP habitat, above that which is provided by the current policy, it is reason to tip the 'fine balance' in favour of proceeding.

Aside from the above issue the land is physically suitable for its intended use, the amendment supports residential development in a residential zone, services are available and the proposal will have a negligible impact upon local traffic and on street carparking. Other than the matter of local character, and now the retention of the peppermint trees, there are no issues impediments affecting the development of Lot 41 (182), Geographe Bay Road, Quindalup.

### **Possible way forward**

As mentioned previously the land provides two distinct developable areas. The lot is comparably deep. It is dissected in the middle by a substantial stand of peppermint trees but there is a pathway (driveway width) that lies between them. This is potentially advantageous as it also provides the opportunity to keep any increase in vehicle traffic away from the edges of the property; avoiding the potential for disturbance to neighbours which was an expressed concern.

Retaining the peppermint trees also has a number of advantages apart from retaining the WRP habitat. It would also maintain a sense of low density and also create a site amenity.

On this basis it is suggested the amendment be modified to incorporate the following features:

- The retention of the peppermint trees and additional planting locations;
- Ensuring onsite traffic movement to avoid disturbance to neighbours; and
- Specifying the dwellings to be arranged as two, two storey buildings to minimise the on-ground footprint, to maintain setbacks consistent with the locality and to enhance the space around buildings; to present as low density.

This has been put to the applicant but rejected; both the two building configuration and additional design considerations.

## **CONCLUSION**

The justification for the Amendment, considering the LPS, was finely balanced. At consultation the amendment has not been supported by 3 of the adjacent properties, and DPaW request that that peppermint trees on the site be retained, would require additional controls. The amendment in the form it was advertised is not recommended to proceed.

It is however, possible to address the neighbour concerns by careful design to achieve an outcome that maintains space around buildings to reinforce the presentation of low density that importantly can strengthen the retention of the existing peppermint trees and result in an enhanced habitat for the critically endangered Western Ringtail Possum.

An amendment facilitating the additional dwellings as incentive for retaining the peppermint trees and enhancing the habitat for the critically endangered Western Ringtail Possum is supported, subject to design controls that maintain the low density character.

## **OPTIONS**

1. Recommend refusal;
2. Recommend approval without change; or
3. Recommend approval with further or different changes.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Pursuant to Regulation 50, the Council is required to submit its decision to the WAPC within 60 days from the close of submissions. Given the DPaW requested an extension for its submission the Councils decision will be forwarded within 60 days of the last submission.

## **OFFICER RECOMMENDATION**

That the Council:

1. Pursuant to Part V of the *Planning and Development Act 2005*, adopts Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 for final approval, as modified in response to the submissions received.
  - i. Recoding Lot 41, Geographe Bay Road, Quindalup (Certificate of Title 1226-295) from 'R12.5' to 'R20';
  - ii. Amending the Scheme map accordingly; and
  - iii. Replacing clause 1 (b) of Schedule 4 of the Scheme with the following –
    - (b) *The local government may only approve the development of three or more grouped dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>, except for Lot 41 on Diagram 23175, House 182 Geographe Bay Road, Quindalup (Certificate of Title 1226-295), where the development of a maximum of four dwellings may be approved.*
2. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to endorse the Schedule of Submissions at Attachment B prepared in response to the public consultation undertaken in relation to Amendment No. 22.
3. Pursuant to r.50(3) of the *Planning and Development (Local Planning Scheme ) Regulations 2015*, resolves to support the modifications to Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 shown in the Schedule of Modifications at Attachment C, prepared to address issues raised in submissions received during public consultation.



4. Pursuant to r.52 the City confirms the incorporation of environment conditions has not been required.
5. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to forward Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 to the Western Australian Planning Commission with a request for the approval of the Hon. Minister for Planning.
6. Pursuant to r.56 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, should directions be given that modifications to Amendment No. 22 are required, those modifications being undertaken accordingly on behalf of the Council unless they are considered by Officers to be likely to significantly affect the purpose and intent of the draft Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.

Note: Officers proposed an Alternative Recommendation for Council consideration that would defer consideration of item 10.1 to the 8 March 2017 meeting.





**Council Decision and Alternative Officer Recommendation**

**C1702/030** Moved Councillor G Bleechmore, seconded Councillor P Carter

That Council defer its consideration of Item 10.1. That the report "AMENDMENT 22 –TO LOCAL PLANNING SCHEME 21 – TO REZONE LOT 41 (182) GEOGRAPHE BAY ROAD QUINDALUPFROM 12.5 TO R20 – APPROVAL" be returned for Council's consideration at its meeting to be held on 8 March 2017.

**CARRIED 8/0**

10.2 CONSIDERATION FOR INITIATION OF - 1. REZONING LOT 500 BUSSELL HWY, BROADWATER FROM 'TOURIST' TO 'RESIDENTIAL (R40)' AND 'RESERVE FOR RECREATION (HIGHWAY BUFFER RESERVE)' AND LOT 502 BUSSELL HIGHWAY, BROADWATER FROM 'TOURIST' AND 'RESERVE FOR RECREATION' TO 'RESIDENTIAL (R40)' AND 'RESERVE FOR RECREATION (HIGHWAY BUFFER RESERVE)' 2. SITE-SPECIFIC AMENDMENT TO CITY OF BUSSELTON LOCAL TOURISM PLANNING STRATEGY(2011)

|                             |   |
|-----------------------------|---|
| <b>SUBJECT INDEX:</b>       | Scheme Amendment and Amendment to City of Busselton Local Tourism Planning (2011) Strategy  |
| <b>STRATEGIC OBJECTIVE:</b> | A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.                              |
| <b>BUSINESS UNIT:</b>       | Strategic Planning and Development Services   |
| <b>ACTIVITY UNIT:</b>       | Strategic Planning  |
| <b>REPORTING OFFICER:</b>   | Strategic Planner - Nick Edwards  |
| <b>AUTHORISING OFFICER:</b> | Director, Planning and Development Services - Paul Needham  |
| <b>VOTING REQUIREMENT:</b>  | Simple Majority   |
| <b>ATTACHMENTS:</b>         | Attachment A Location Plans (Aerials)                                |
|                             | Attachment B Local Planning Scheme Map (Existing and Proposed Zoning)  |
|                             | Attachment C Proposed Special Provision 62                           |
|                             | Attachment D Broadwater Structure Plan                               |

## PRÉCIS

Council is requested to consider initiating Amendment 20 to the *Local Planning Scheme 21* (LPS21) which proposes rezoning;

- Lot 500 Bussell Highway, Broadwater (Attachment A) from 'Tourist' zone to 'Residential (R40)' zone and 'Reserve for Recreation' (Highway Buffer); and,
- Lot 502 Bussell Highway, Broadwater from 'Tourist' Zone and 'Reserve for Recreation' to 'Residential (R40)' Zone, 'Reserve for Recreation (Highway Buffer Reserve)' and 'Unzoned Land (Road Reserve)' (Attachment B).

It is further proposed that these lots will be subject to a new Special Provision Area (#62) to be added to the Local Planning Scheme 21 (LPS21), at Schedule 3, requiring a Structure Plan to be prepared, and adopted by Council, prior to any future subdivision (Attachment C). Following discussion with the Department of Planning (DOP) it was agreed that the Special Provision, as proposed, would remove any prior requirement for the overall 'Broadwater Structure Plan – Precinct 1' (BSP) (Attachment D) being amended.

Lots 500 and 502 Bussell Highway, Broadwater (subject land) are identified as a non-strategic site in the 'Local Tourism Planning Strategy 2011' (LTPS). A site-specific amendment for the subject land within the LTPS is required in order to provide a rational planning basis for, and justification of, the Scheme amendment proposal. This site-specific amendment would not extend to any policy or site beyond the subject land within the LTPS and would be prepared and coordinated by the City to run concurrently with Amendment 20.

Officers recommend that Council initiates Amendment 20 (which will include reference to the site-specific amendment of the LTPS) for public consultation and referral to the EPA. Amendment 20 is considered to be a 'standard' amendment, consistent with Part 5 of the 'Planning and Development (Local Planning Schemes) Regulations 2015' (The Regulations).

## BACKGROUND

The subject land is approximately 2.18ha in area. Lot 500 is 0.20ha and located in the north east corner of the site and Lot 502 is 1.98ha. The subject land is located 5km west of the Busselton CBD and shares a boundary with Bussell Highway to the north, developed residential (R30 and R20) land to the west, 'nature' public open space (POS) to the south and developed residential (R20) land to the east.

The subject land was rezoned in 1986 from 'General Farming' to 'Short Stay Residential and Recreation' zone following a request from the (still current) landowner who intended to develop short stay cottages. At the time, Council supported this rezoning request partly to encourage active land use and development in the predominantly farming area of Broadwater.

Since the zone changed to 'Short Stay Residential and Recreation', several tourism initiatives have been proposed by the landowner, some of which were explored in depth by the City and included:

- The provision of 12 Bavarian-styled cottages in 1986;
- A caravan park in 2001;
- A 'Park Home Village' in 2005; and
- A caravan park in 2005.

When the LTPS was being drafted ahead of Council adoption in 2011, the subject land was identified as suitable for tourism development as a result of it being zoned 'Tourist'. It was identified as "*Non-strategic Tourism Site 42 - Lot 502 (394-398), Bussell Highway, Broadwater*". This classification identifies that the land is zoned for tourism but also allows capacity for an unrestricted length of stay component (subject to Council approval).

It should be noted that, although the LTPS does not specifically mention Lot 500, it does include the corresponding street number of '398'. As lots 500 and 502 form a regularly shaped land parcel when considered together, for the purposes of the site-specific LTPS amendment it may be assumed that Lot 500 was overlooked in the original table entry and the 'Site 42' designation within the LTPS includes *both* Lot 500 and 502 Bussell Hwy, Broadwater.

It is further noted that the current 'Reserve for Recreation' at the southern end of Lot 502 does not reflect the land classification (public open space) depicted in the BSP. This is a mapping anomaly that has been incorrectly maintained on Scheme Maps following adoption of the BSP. The current Amendment proposal would rectify this situation.

## STATUTORY ENVIRONMENT

- Planning and Development Act 2005
- Planning and Development (Local Planning Schemes) Regulations 2015

## RELEVANT PLANS AND POLICIES

The relevant plans and policies that directly affect the proposed Amendment are:

- Local Tourism Planning Strategy 2011
- Draft Local Planning Strategy 2016
- Broadwater Structure Plan 2005

### **Local Tourism Planning Strategy**

The LTPS was adopted by Council on 8 December 2010 and was noted by the WAPC in 2013. It provides a planning policy framework for decisions that affect the tourism industry in the City and recognises the importance of preserving, protecting and growing strategic tourism opportunities. The LTPS identifies the subject land as one of 19 non-strategic tourism sites.

As the LTPS is, in essence, a guiding policy document, it has been 'noted' but not formally endorsed by the Western Australian Planning Commission (WAPC). The DOP has agreed that a 'site-specific' amendment for the subject land within the LTPS may be conducted, rather than undertaking a wholesale review of the entire document. The relevant processes required by the City are to:

- Advertise the proposed amendment to the LTPS in conjunction with Amendment 20;
- Report on the proposed amendment to the LTPS, and any public submissions received, for the consideration of the Council; and,
- If adopted by the Council, refer the 'site-specific' amendment to the Western Australian Planning Commission (WAPC), with a request for their consideration.

### **Draft Local Planning Strategy 2016**

The Draft Local Planning Strategy was adopted by Council on 14 September 2016 and recommends increasing residential development densities on sites close to Busselton City Centre as an identified theme for City growth. This proposal conforms to this objective through proposing urban consolidation through appropriate rezoning of unrequired and unsuitable 'Tourist' zoned land and introducing higher densities (e.g. R40) in existing urban areas.

### **Broadwater Structure Plan**

Amendment 20 will not necessitate a prior review or modification of the BSP as the proposed land use changes are relatively minor and generally consistent with already existing residential development in the vicinity. In discussions with the DOP however, it was agreed that a Special Provision Area (Special Provision 62) be added to Schedule 3 of LPS21 as a requirement of the proposed Amendment. This Special Provision will necessitate a Structure Plan being prepared and approved prior to any subsequent subdivision of the subject land. This requirement will allow land use to be determined once the landowner has decided whether to develop aged care facilities on the subject land, develop it as a residential estate, or a combination of both.

### **FINANCIAL IMPLICATIONS**

There are no significant financial implications arising from the recommendations of this report.

#### **Long-term Financial Plan Implications**

There are no significant Long-term Financial Plan implications.

### **STRATEGIC COMMUNITY OBJECTIVES**

The recommendations of this report are consistent with the *Strategic Community Plan 2013*, Community Objective 2.2 – “A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.”

## **RISK ASSESSMENT**

A risk assessment of the potential implications of implementing the officer recommendations has been undertaken using the City's risk assessment framework. Given the implementation of the officer recommendations involves adopting the Amendment for advertising, there were no significant risks identified.

## **CONSULTATION**

There is no requirement under the *Planning and Development Act 2005* to advertise a proposed Scheme amendment prior to it being initiated by Council and accordingly, no advertising has occurred to date.

Preliminary discussions with the DOP indicate that the Amendment proposal and site-specific amendment of the LTPS (to provide planning justification and context to the Scheme amendment) along with no prior requirement to modify the BSP, are supported by the Regulations. The DOP has indicated informal support for the current approach to this Amendment 20 proposal.

If the Council resolves to initiate Amendment 20, the related documentation will be referred to the Environmental Protection Authority (EPA) to consider the need for formal review under Part 4 of the *Environmental Protection Act 1986*. If the EPA determines that formal review is unnecessary, it will be advertised for a period of 42 days in accordance with the Regulations and include referral to relevant state government agencies. In the event that the EPA determines that the proposal is to be formally reviewed, the City shall cause such review to be undertaken in accordance with s82 of the *Planning and Development Act 2005*.

## **OFFICER COMMENT**

### *The Replacement of Tourism-Zoned Land for Residential Use*

Since the time that the subject land has been zoned for tourism purposes, attempts to develop a viable commercial tourism enterprise have been unsuccessful, generally due to the location, lack of attractive local tourism attributes and surrounding residential development. Due to the general lack of suitability for tourism uses and the fact that a related commercial enterprise has been unable to be successfully developed since 1986, alternate land uses should now be considered to allow integrated residential development at Broadwater to be facilitated. Rezoning the subject land for residential (R40) will be more compatible with the existing development pattern and continued growth of the Broadwater area than the prevailing status quo.

The original change of zone from 'General Farming' to 'Tourist' zone was a response to the landowner's request and as a means to help stimulate growth and development within the Broadwater area. However, viable tourism opportunities on the subject land have proven elusive and have not been realised. This suggests that the subject land is not an appropriate site for this type of development, whereas residential development has continued to occur in the vicinity.

The subject land is not in close or direct proximity to features and attractions that would normally be sought by visitors on holiday. Aside from its suburban location, any potential guests at a tourist development there would have to cross the Bussell Highway and walk through Mandalay Resort to access the beach. This is less convenient than nearby established tourism resorts which have direct access to the beach and coastline, making the development of a competitive tourism facility on the subject land more complex and less desirable.

The subject land is not large enough to provide facilities that could realistically compete with some of the established tourism uses in the area that can provide a significant range of guest services. The

nearby resorts provide these resources (e.g. pool, bouncing pillow, playgrounds) to enhance the natural attractions for their guests. The subject land does not have the space to provide these amenities and so will need to focus on a different section of the tourism market. While these types of smaller, 'boutique' tourism businesses can have a specific niche quality, typically they need to be located closer to the town centre or other attractions so guests can readily access activities off site, for example the Busselton Jetty.

The proposed 'Residential (R40)' zone and density for the subject land is considered appropriate for the site as it would help meet the City's objectives in providing infill development closer to the City at a higher density. The dwellings that could be built on this site would use the general proximity to the beach and shops as selling points, despite being further away than many of the already established and larger-scale tourism resorts.

#### *Local Tourism Planning Strategy*

The proposed site-specific amendment of the LTPS will be focussed on removing the subject land from the list of non-strategic tourism sites without affecting any other site or policy within the document. This amendment would not create any undesirable precedent due to the particular background context and proven lack of any commercial opportunity to develop that site for tourism purposes over an extended period of time. Therefore, it is apparent that the 'Tourist' zone over the subject land remains in place for historic reasons rather than to satisfy or enable any valid strategic intent.

It is proposed that the LTPS amendment is processed concurrently with Amendment 20 despite it being a related, but separate, process. The LTPS review and proposed modification to remove the subject land (non-strategic site 42) will follow the Amendment process timeframes and be similarly advertised for 42 days. Only submissions that address the role, function and appropriateness of the subject land's being listed in the LTPS will be considered and no other comments that relate to any other aspect of the LTPS would be addressed.

#### *Broadwater Structure Plan and Special Provision Area (#62)*

Should Amendment 20 be initiated by Council, the zones over the subject land as depicted in the BSP will change, which could normally require a review of that overall structure plan. Advice provided by the DOP specifically states that, provided a Structure Plan that addresses future land use and development on the subject land is adopted prior to subdivision, then a prior review of the overall BSP will be unnecessary given the essentially minor nature of the rezoning proposal and the historical context of the site. The proposed Special Provision Area (#62) to be incorporated in Schedule 3 of LPS21 will address this requirement and states:

*"Prior to subdivision, a structure plan shall be approved pursuant to the Scheme."*

Any Structure Plan for the subject land must provide for critical 'neighbourhood' design features, including the 20m buffer running parallel to the Bussell Highway and the required integrated road connections to the south. The Structure Plan must be approved prior to any proposed subdivision of the subject land.

The Bussell Highway buffer extends approximately 20m into the property adjacent to the road reserve. This buffer is recognised on the proposed Amendment Maps as 'Reserve for Recreation'. There is currently one dwelling situated within this buffer area. Should the subject land be subdivided in the future, then this highway buffer must be ceded to the Crown at that time and the dwelling removed.

The POS directly south of the subject land was part of an original 'parent' lot and already previously ceded to the City following the adoption of the BSP. The current 'Reserve for Recreation' across the southern portion of Lot 502 is actually, therefore, anomalous and does not accord with the BSP. No POS 'legacy' or contribution requirement is necessary as part of this rezoning amendment, and the current reserve zoning across the southern end of Lot 502 will, appropriately, be removed and replaced with 'Residential (R40)' and 'Unzoned Land (Road Reserve)' in Amendment 20.

## **CONCLUSION**

The Amendment seeks to replace the 'Tourist' zone over the subject land with a 'Residential (R40)' zone as it is a more appropriate use of the site. Following several attempts to develop the land for tourism over the past 30 years, the subject land has proven to have had little tourism value or marketable development potential. Considering the location, the surrounding urban development patterns and limited size of the subject land, it is apparent that integrated residential land use and development would be a far more effective and practical outcome.

Amendment 20 will necessitate a site-specific review of the LTPS to remove 'non-strategic site 42' (the land subject to that Amendment) and justify its proposed conversion to residential. This amendment process for the LTPS will be run concurrently with the Scheme amendment.

The proposed Amendment represents a desirable rationalisation of current zoning and will promote the orderly growth and planning of the City of Busselton within the Broadwater area.

## **OPTIONS**

Should the Council not support the Officer Recommendation the Council could instead resolve –

1. To decline the request to initiate Amendment 20 in its entirety (and provide a reason for such a decision). It should be noted that under the relevant legislation there is no right of appeal against a Council decision not to initiate an amendment.
2. To seek further information before making a determination in relation to Amendment 20 (or the separate, but related, site-specific amendment to the LTPS).
3. To initiate Amendment 20 subject to further modification(s) as described.

Officer assessment has not revealed any substantive issue or reasonable grounds that would support any of these options.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The implementation of the Officer Recommendation would include advising the applicant of the Council resolution and referring the proposal to the Environmental Protection Authority, which will occur within one month of the resolution (prior to advertising the Amendment in accordance with the provisions of the Regulations).

## **OFFICER RECOMMENDATION**

1. That the Council:
  - a) In pursuance of Part 5 of the *Planning and Development Act 2005*, adopts draft Amendment No. 20 to the City of Busselton Local Planning Scheme No. 21 for public consultation for the purpose of:

- i. Rezoning Lot 500 Bussell Highway, Broadwater from 'Tourist' zone to 'Residential (R40)' zone and 'Reserve for Recreation (Highway Buffer)';
  - ii. Rezoning Lot 502 Bussell Highway, Broadwater from 'Tourist' Zone and 'Reserve for Recreation' to 'Residential (R40)' Zone, 'Reserve for Recreation (Highway Buffer Reserve)' and 'Unzoned Land (Road Reserve)';
  - iii. Introducing Special Provision Area # 62 to Schedule 3 of LPS21, to state:  
"Prior to subdivision, a structure plan shall be approved pursuant to the Scheme";  
and
  - iv. Amending the Scheme Maps accordingly.
- b) In accordance with regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, specifies that it is the opinion of the Council that Amendment 20 is a 'standard amendment', given:
  - i. It is an amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve.
  - ii. R.34 (b) does not apply as the WAPC has not yet endorsed the City's Draft Local Planning Strategy.
  - iii. It is an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment.
  - iv. It is an amendment that does not result in significant environmental, social, economic or governance impacts on land in the scheme area.
2. In accordance with the interests of orderly and proper planning, the City is to prepare and advertise for public consultation a site-specific amendment of the Local Tourism Planning Strategy 2011 to provide justification in planning terms for the removal of Lots 500 and 502 Bussell Highway, Broadwater (being 'non-strategic tourism site 42') from that strategy document. Such an amendment to the LTPS is required, in turn, to justify the subsequent rezoning of the subject land through the Amendment 20 process.
3. That, as Amendment 20 is consistent with Part 5 of the *Planning and Development Act 2005*, and Regulations made pursuant to that Act, upon preparation of the necessary documentation Amendment 20 be referred to the Environmental Protection Authority (EPA). Upon receipt of a response from the EPA stating that Amendment 20 is not required to be subject to a formal environmental review, it be advertised for public consultation for a period of 42 days. In the event that the EPA determines that Amendment 20 is to be subject to formal environmental review, the City shall cause such review to be undertaken, in accordance with s.82 of the *Planning and Development Act 2005*.

Note: Officers proposed an Alternative Recommendation for Council consideration that would provide further clarity in respect to specific portions of the land to be rezoned for which proposed Special Provision Area # 62 shall apply.

### **Council Decision and Alternative Officer Recommendation**

**C1702/031**

Moved Councillor P Carter, seconded Councillor T Best

1. That the Council:
  - a) In pursuance of Part 5 of the *Planning and Development Act 2005*, adopts Amendment No. 20 to the City of Busselton Local Planning Scheme No. 21 for public consultation for the purpose of:



- i. Rezoning Lot 500 Bussell Highway, Broadwater from 'Tourist' zone to 'Residential (R40)' zone and 'Reserve for Recreation (Highway Buffer)';
- ii. Rezoning Lot 502 Bussell Highway, Broadwater from 'Tourist' Zone and 'Reserve for Recreation' to 'Residential (R40)' Zone, 'Reserve for Recreation (Highway Buffer Reserve)' and 'Unzoned Land (Road Reserve)';
- iii. Introducing Special Provision Area # 62 over those portions of Lot 500 and Lot 502 Bussell Highway, Broadwater that are to be rezoned to 'Residential (R40)', with the following to be inserted into Schedule 3 of the Scheme:

| No. | PARTICULARS OF LAND              | ZONE            | SPECIAL PROVISIONS  |
|-----|----------------------------------|-----------------|---|
| 62  | Lots 500 and 502 Bussell Highway | Residential R40 | Prior to subdivision, a structure plan shall be approved pursuant to the Scheme |

and

- iv. Amending the Scheme Maps accordingly *and as depicted at Attachment B*.
- b) In accordance with regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, specifies that it is the opinion of the Council that Amendment 20 is a 'standard amendment', given:
- i. It is an amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve.
  - ii. R.34 (b) does not apply as the WAPC has not yet endorsed the City's Draft Local Planning Strategy.
  - iii. It is an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment.
  - iv. It is an amendment that does not result in significant environmental, social, economic or governance impacts on land in the scheme area.
2. In accordance with the interests of orderly and proper planning, the City is to prepare and advertise for public consultation a site-specific amendment of the Local Tourism Planning Strategy 2011 to provide justification in planning terms for the removal of Lots 500 and 502 Bussell Highway, Broadwater (being 'non-strategic tourism site 42') from that strategy document. Such an amendment to the LTPS is required, in turn, to justify the subsequent rezoning of the subject land through the Amendment 20 process.
  3. That, as Amendment 20 is consistent with Part 5 of the *Planning and Development Act 2005*, and Regulations made pursuant to that Act, upon preparation of the necessary documentation Amendment 20 be referred to the Environmental Protection Authority (EPA). Upon receipt of a response from the EPA stating that Amendment 20 is not required to be subject to a formal environmental review, it be advertised for public consultation for a period of 42 days. In the event that the EPA determines that Amendment 20 is to be subject to formal environmental review, the City shall cause such review to be undertaken, in accordance with s.82 of the *Planning and Development Act 2005*.

**CARRIED 8/0**

**11. ENGINEERING AND WORKS SERVICES REPORT**

Nil

**12. FINANCE AND CORPORATE SERVICES REPORT**

Nil

At this time the Mayor requested Councillors indicate the acceptance of late items 9.2 for consideration.

The Council indicated their acceptance with a show of hands.

**Committee Meetings****9.2 Minutes of the Busselton Settlement Art Project Steering Committee Meeting held 2 February 2017****Council Decision****C1702/032**

Moved Councillor J McCallum, seconded Councillor R Bennett

- 1) That the minutes of the Busselton Settlement Art Project Steering Committee Meeting held 2 February 2017 be received.
- 2) That the Council notes the outcome from the Busselton Settlement Art Project Steering Committee Meeting held 2 February 2017 being:
  - a) The Heritage: Local History; Busselton Settlement Art Project Steering Committee item is presented for Council consideration at item 6.1 of the late agenda.

**CARRIED 8/0**

**15. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

At this time the Mayor requested Councillors indicate the acceptance of late item 6.1 subsequently renumbered 12.1 for consideration.

The Council indicated their acceptance with a show of hands.

**16. COMMUNITY AND COMMERCIAL SERVICES REPORT****12.1 Settlement Art Project Steering Committee - 2/02/2017 - HERITAGE: LOCAL HISTORY; BUSSELTON SETTLEMENT ART PROJECT STEERING COMMITTEE**

|                             |   |
|-----------------------------|---|
| <b>SUBJECT INDEX:</b>       | Cultural Planning   |
| <b>STRATEGIC OBJECTIVE:</b> | A City where the community has access to quality cultural, recreation, leisure facilities and services. |
| <b>BUSINESS UNIT:</b>       | Community Services  |
| <b>ACTIVITY UNIT:</b>       | Cultural Services   |
| <b>REPORTING OFFICER:</b>   | Cultural Development Officer - Jacquie Happ   |
| <b>AUTHORISING OFFICER:</b> | Director, Community and Commercial Services - Naomi Searle  |
| <b>VOTING REQUIREMENT:</b>  | Simple Majority   |
| <b>ATTACHMENTS:</b>         | Nil   |

**This item was considered by the Settlement Art Project Steering Committee at its meeting on 2 February 2017, the recommendations from which have been included in this report.**

**PRÉCIS**

The Busselton Settlement Art Project (BSAP) is a public art initiative commemorating the successful establishment of Busselton as one of the first settlements outside Perth. The project involves the commissioning of six (6) life-sized bronze sculptures (one per year) at a total cost of approximately \$770,000 (inc GST).

The project is overseen by a committee of Council, the Busselton Settlement Art Project Steering Committee (BSAPSC). At its informal meeting in January 2017, the BSAPSC voted to recommend the commencement of work on the Aboriginal sculpture by engaging a professional Aboriginal consultancy firm to assist with the process of developing a sculpture concept.

The purpose of this report is to seek Council endorsement for the Aboriginal sculpture to be the fifth in the series and to expend funds from the National Trust Appeal account as a means to engage a consultant to work with Artist, Greg James and the Aboriginal community on the development of a finalised concept for the Aboriginal sculpture.

**BACKGROUND**

In November 2011 Council awarded Tender 1/11 to Greg James (C1111/342) for the commissioning of BSAP sculptures. In June 2013, the BSAPSC was established (C1306/139) to provide a vehicle by which the commissioning of the sculptures could be overseen; and to initiate and coordinate fundraising activities.

At a formal meeting of the BSAPSC on 9 January 2014 (BSA1401/010) the Committee recommended that the order of commissioning for the first three sculptures be changed to:

1. Whaler's Wife

2. Timber Worker
3. John Garrett (JG) Bussell

These three sculptures have been completed, installed and unveiled. The fourth sculpture which is the Spanish Settler has been commissioned, and is due to be installed in September 2017, leaving two sculptures to be completed; the Pioneer Woman and the Aboriginal sculpture.

The original concept for the Aboriginal sculpture developed in 2011, was of a small child, alone, feeling stories in timber sleepers. There was strong concern from key Aboriginal stakeholders that there should be an elder included and as such the Artist developed a marquette that included the figure of a naked woman observing the child. The marquette depicting the naked woman caused some frustration and concern to the Aboriginal community, and as such it was subsequently removed from display.

There is an expectation by the Aboriginal community that there will be an Aboriginal sculpture, and a hope that it won't be the last one commissioned. There is no expectation about the delivery of the Pioneer Woman. The City's recent attempts to engage the Aboriginal community in projects of this nature, whilst good intentioned, have not been fruitful. In order to obtain an Aboriginal sculpture that is truly representative of the local Aboriginal communities' desires, it is recommended that the City engages an Aboriginal consultancy firm to coordinate the consultation process. In light of this, at its informal meeting of 12 January 2017, the BSPASC recommended that it would seek approval from Council to engage a professional Aboriginal consultant to work with the community to provide design concepts to the artist, Greg James.

In order to commission the development of the Aboriginal sculpture in September 2017 (and completion in 2018), consultation with the local Aboriginal community needs to commence in March 2017. The current project plan allows for a consultation timeframe of approximately 3 to 4 months, allowing for unexpected issues or room for discussion and negotiation.

A local Aboriginal artist has offered to donate four paintings for auction at a BSAPSC event with the money raised directed towards the Aboriginal sculpture and the consultation process. This event is expected to raise approximately \$5,000, however there is some risk that the paintings will not sell and what is raised will not cover the expected costs of \$8,500 for the Aboriginal consultation.

The City was recently notified of a \$52,000 Percent for Art Policy Cash-in-lieu contribution from Bunnings for their redevelopment project in Busselton, which will be specifically allocated to the BSAP. Bunnings, when presented with options on how to address their Percent for Art obligations were supportive of the cash-in-lieu option, recognising the Aboriginal sculpture as a way for the City to recognise its local Aboriginal people and providing a positive step towards the development of a City of Busselton Reconciliation Action Plan.

## **STATUTORY ENVIRONMENT**

Under Section 5.8 of the *Local Government Act 1995* (the Act), a local government, by absolute majority, may establish Committees of three or more persons to assist the Council, and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

Authority can be delegated to formally constituted Committees of Council in accordance with Sections 5.16 and 5.17 of the Act.

## **RELEVANT PLANS AND POLICIES**

### Social Plan 2015-2025

It is a goal of the City's Social Plan (2015-2025) that our culture is celebrated, valued and retained.

The installation of the BSAP is in line with this goal.

#### City of Busselton's Ten Year Financial and Corporate Business Plans

The BSAP has been identified in the City's four year Corporate Business Plan. It has also been included as an allocation of \$85,000 in the City's Long Term Financial Plan for the 2016/2017 and 2017/18 Financial Years.

#### **FINANCIAL IMPLICATIONS**

The balance of the National Trust Appeal Funds after consideration of payments required for the Spanish Settler in the 2016/17 financial year is \$11,343.23. This is represented below as follows:

Table 1. National Trust Appeal Funds Balance

| <b>National Trust Appeal Funds</b> |             |
|------------------------------------|-------------|
| 01 January 2017 opening balance    | \$43,589.23 |
| Spanish Settler                    | \$32,246.00 |
| Closing balance                    | \$11,343.23 |

The National Trust has advised the City that the Aboriginal sculpture consultation process is a permissible use of the Busselton Settlement Art Project Appeal funds. In response to this advice, the City issued an expression of interest to three (3) Aboriginal consultancy firms, with a list of key deliverables required out of the consultation process. In response, quotes have been received from 2 of the 3 consultants, including a local Aboriginal business. These quotes were as follows:

Table 2. Quotes received Aboriginal Consultation Process

| <b>Quotes: Business</b>     | <b>Description</b>         | <b>Cost</b> |
|-----------------------------|----------------------------|-------------|
| Indigenous Consulting Group | \$2,000 per day for 9 days | \$18,000.00 |
| Mundumung                   | \$400 per day for 20 days  | \$8,500.00  |

Should the Council endorse the Committee's recommendation, then the consultancy will be divided up into key milestones of achievement, with payments linked to the achievement of these.

The cost of the Aboriginal sculpture and the Pioneer Woman will be \$100,000 (ex GST) each. The City's Long Term Financial Plan currently has a provision of \$85,000 in each of the 2017/18 and 2018/19 financial years as a means to complete the BSAP. There are no additional financial implications to the City and a summary of the total financials for the remainder of the BSAP, should it progress as recommended, is as follows:

Table 3. Busselton Settlement Art Project Financials

| <b>SETTLEMENT ART TOTAL PROJECT BUDGET (EX GST)</b> |               |                         |               |
|---|---------------|-------------------------|---------------|
| <b>Revenue</b>                                      |               | <b>Expenditure</b>      |               |
| <b>2017/18</b>                                      |               |                         |               |
| Municipal Funds 2017/18                             | \$ 85,000.00  | Aboriginal Consultation | \$ 8,500.00   |
| Previous Fundraisers (City Reserve)                 | \$ 2,156.36   |                         |               |
| Percent for Art (City Reserve)                      | \$ 3,000.00   | Aboriginal Sculpture    | \$ 100,000.00 |
| Jasper Jones Movie Fundraiser (City Reserve) *      | \$ 2,000.41   |                         |               |
| National Trust Appeal Funds                         | \$ 11,343.23  |                         |               |
| Art Auction (National Trust Appeal Funds) *         | \$ 5,000.00   |                         |               |
|   | \$ 108,500.00 |                         | \$ 108,500.00 |

|                                |               |                         |               |
|--------------------------------|---------------|-------------------------|---------------|
| <b>2018/19</b>                 |               |                         |               |
| Municipal Funds 2018/19        | \$ 85,000.00  |                         |               |
| Percent for Art (City Reserve) | \$ 15,000.00  | Pioneer Woman Sculpture | \$ 100,000.00 |
|                                | \$ 100,000.00 |                         | \$ 100,000.00 |

### **Long-term Financial Plan Implications**

Nil

### **STRATEGIC COMMUNITY OBJECTIVES**

This matter aligns with the City of Busselton Strategic Community Plan 2013 and principally with the following strategic goal:

A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.

### **RISK ASSESSMENT**

An assessment of the potential implications of implementing the Officer recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks as well. The table below describes two identified risks where the residual risk, once controls have been identified, is identified as 'medium' or greater;

| <i>Risk</i>   | <i>Controls</i>   | <i>Consequence</i>  | <i>Likelihood</i>                   | <i>Risk Level</i> |
|---|---|---|-------------------------------------|-------------------|
| Consultation on Aboriginal statue not complete in required timeframe for next commissioning in September 2017 | BSAPSC can make a recommendation to the Council in August 2017 to reverse order of commissioning and the Pioneer woman as the fifth in the series | Moderate - Significant delays service delivery with unacceptable recovery time or inconvenient delays to major deliverables | Unlikely - Could occur at some time | M9                |
| Insufficient funds raised from Art Auction  | Additional funds from the City's Percent for Art Reserve funds can be allocated to the project  | Moderate - Significant delays service delivery with unacceptable recovery time or inconvenient delays to major deliverables | Unlikely - Could occur at some time | M9                |

### **CONSULTATION**

The BSAPSC considers that it is important to undertake consultation with local Aboriginal people to ensure that the Aboriginal sculpture is appropriate. In order to do this, it is recommended that an Aboriginal consultancy firm be engaged to facilitate this. It is proposed that three nominated members of the Aboriginal community would be responsible for working with the Consultant and the Artist in the final stages of the clay model of the sculpture to refine the facial features and position of the body.

The consultation timeframe is approximately 4 months and can be successfully achieved for August 2017 if it commences in March 2017.

The consultant is responsible for providing the concept design to the Artist and the expectation will be a written majority agreement on the concept design for the Aboriginal sculpture to the City signed by the consultant and nominated Aboriginal community members.

#### **OFFICER COMMENT**

All items within this report were discussed at an informal meeting of the BSAPSC held on 12 January 2017.

The cost of a consultant is approximately \$8,500 which would see concepts and themes raised by the Aboriginal community provided to the artist, fed back to the community, and refined by the artist. This concept would then be commented on by the Aboriginal community and the artist has recommended using live modelling to arrange the positioning and shape of the sculpture. Interested Aboriginal community members would be invited to participate in this part of the process as a group. The consultant would also be responsible for providing a signed agreement to the City with the Aboriginal community on the final concept design.

The final location of the Aboriginal sculpture in the Cultural Precinct is yet to be confirmed. The consultation process will provide a mechanism by which a recommendation can be made to the Council at the same time the Council endorses the final concept for the sculpture.

#### **CONCLUSION**

The BSAPSC recommends that the Aboriginal sculpture be the next sculpture to be commissioned in the 2017/18 financial year. In addition it is recommended that a consultant undertake engagement with the Aboriginal community to create a final concept for the Aboriginal sculpture of the Busselton Settlement Art Project.

There is adequate funding currently for the completion of the consultation and the sculptures over the 2017/18 and 2018/19 financial years. The consultation is proposed to be funded from the National Trust Appeal Funds. If the \$5,000 required to complete the entire project is not met by the sale of paintings at the Art Auction, there is sufficient additional funds in the City's Percent for Art reserve account that can be allocated for this project.

#### **OPTIONS**

The Council may choose not to authorise the expenditure of funds on the consultation for the Aboriginal sculpture. This would increase significantly the chance of the sculpture not being completed at all or experience significant delays.

The Council may choose to reverse the order of the sculptures and commission the Pioneer Woman as the fifth sculpture in the series.

#### **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Subject to Council endorsement, the consultation for the Aboriginal sculpture should commence in March 2017 and be completed in August 2017, in time for the City to engage the Artist Greg James on the next sculpture.

**Council Decision and Officer Recommendation**

**C1702/033** Moved Councillor R Paine, seconded Councillor R Bennett

That the Council endorses:

1. National Trust Appeal Funds to be expended to engage the consultant Mundumung to work with the Aboriginal community and the Artist to assist in the process of developing an Aboriginal sculpture concept.
2. The Aboriginal sculpture is the fifth to be commissioned.

**CARRIED 8/0**



**17. QUESTIONS FROM MEMBERS**

Nil

**18. PUBLIC QUESTION TIME**

Nil

**19. NEXT MEETING DATE**

Wednesday, 8 March 2017

**20. CLOSURE**

The meeting closed at 5.43pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 33 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 8 MARCH 2017.

DATE: \_\_\_\_\_

PRESIDING MEMBER: \_\_\_\_\_