

## **Bunbury City Council**

### **Notice of Meeting and Agenda 17 February 2015**



**CITY OF BUNBURY**  
4 Stephen Street  
Bunbury WA 6230  
Western Australia  
*Correspondence to:*  
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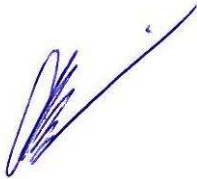
## Nature of Council's Role in Decision Making

- Advocacy:** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive/Strategic:** The substantial direction setting and oversight role of the Council, e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative:** Includes adopting local laws, town planning schemes and policies.
- Review:** When Council reviews decisions made by Officers.
- Quasi-Judicial:** When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.

Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

## Bunbury City Council Notice of Meeting

The next Ordinary Meeting of the Bunbury City Council will be held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 17 February 2015 at 5.30pm.



Andrew Brien  
Chief Executive Officer  
(Date of Issue: 13 February 2015)

### Agenda 17 February 2015

Note: The recommendations contained in this document are not final and are subject to adoption, amendment (or otherwise) at the meeting.

#### Council Members:

Mayor Gary Brennan  
Deputy Mayor Councillor Brendan Kelly  
Councillor Murray Cook  
Councillor Wendy Giles  
Councillor James Hayward  
Councillor Judy Jones  
Councillor Betty McCleary  
Councillor Neville McNeill  
Councillor Jaysen Miguel  
Councillor Sam Morris  
Councillor David Prosser  
Councillor Michelle Steck  
Councillor Karen Steele

#### **1. Declaration of Opening / Announcements of Visitors**

## 2. Disclaimer

All persons present are advised that the proceedings of this meeting will be recorded for record keeping purposes and to ensure accuracy in the minute taking process, and will also be streamed live via the internet to the public.

## 3. Announcements from the Presiding Member

## 4. Attendance

### 4.1 Apologies

### 4.2 Approved Leave of Absence

Nil.

## 5. Declaration of Interest

Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences.

Section 5.60A: *“a person has a **financial interest** in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.”*

Section 5.60B: *“a person has a **proximity interest** in a matter if the matter concerns –*

- (a) a proposed change to a planning scheme affecting land that adjoins the person’s land; or*
- (b) a proposed change to the zoning or use of land that adjoins the person’s land; or*
- (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person’s land.”*

Regulation 34C (Impartiality): *“**interest** means an interest that could, or could reasonably be perceived to, adversely affect the **impartiality** of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.”*

## **6. Public Question Time**

In accordance with Reg. 7(4)(a) of the Local Government (Administration) Regulations 1996, members of the public in attendance at the meeting may stand, state aloud their name and address, and ask a question in relation to any matter over which the municipality of Bunbury has jurisdiction or involvement.

In accordance with Standing Order 6.7(3)(a) a person wishing to ask a question, must complete a question form which is provided in the trays at the back of the public gallery and on the City's website. The completed form must include your name and address and contain no more than three (3) questions. If your question requires research or cannot be answered at the meeting, it will be taken on notice and you will receive a written response and a summary of your question (and any responses provided) will be printed in the minutes of the meeting.

### **6.1 Public Question Time**

### **6.2 Responses to Public Questions Taken 'On Notice'**

Nil.

## **7. Confirmation of Previous Minutes and other Meetings under Clause 19.1**

### **7.1 Minutes**

#### **7.1.1 Minutes – Ordinary Council Meeting**

The minutes of the Ordinary meeting of the Bunbury City Council held 3 February 2015 have been circulated.

#### **Recommendation**

The minutes of the Ordinary meeting of the Bunbury City Council held 3 February 2015 be confirmed as a true and accurate record.

#### **7.1.2 Minutes – Council Advisory Committees and Working/Project Groups**

<b>File Ref:</b>	Various
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Various
<b>Executive:</b>	Various
<b>Attachments:</b>	Appendix MTBN-1: Youth Advisory Council Committee Minutes - 14 January 2015

#### **Summary**

The following Advisory Committee Meetings were held and the minutes are presented for noting:

1. Title: Youth Advisory Council Committee Minutes – 14 January 2015  
Author: Elizabeth Larkin, Community Development Officer  
Appendix: MTBN-1

#### **Council Committee Recommendation**

The following Advisory Committee meeting minutes listed in the report be accepted and noted:

1. Youth Advisory Council Committee Minutes – 14 January 2015



## **8. Petitions, Presentations, Deputations and Delegations**

### **8.1 *Petitions***

Pursuant to clause 6.10(2) of the City of Bunbury Standing Orders 2012, upon receiving a petition, the Council is to

- a) Receive the petition and refer to the relevant officer for a report to be submitted within the next two (2) rounds of Council meetings; or
- b) Reject the petition

### **8.2 *Presentations***

Nil.

### **8.3 *Deputations***

### **8.4 *Council Delegates' Reports***

Nil.

### **8.5 *Conference Delegates' Reports***

Nil.

## **9. Method of Dealing with Agenda Business**

## **10. Reports**

### **10.1 *Recommendations from Advisory Committees***

Nil.

## **10.2 Chief Executive Officer Reports**

### **10.2.1 Deregulation of Trading Hours**

<b>Applicant/Proponent:</b>	Bunbury Chamber of Commerce and Industries
<b>Author:</b>	Greg Golinski, Manager Governance
<b>Executive:</b>	Andrew Brien, Chief Executive Officer
<b>Attachments:</b>	Appendix CEO-1: Letter from BCCI

#### **Summary**

The purpose of this report is for Council to consider a request from the Bunbury Chamber of Commerce and Industries (BCCI) to support the deregulation of trading hours within the City of Bunbury.

#### **Executive Recommendation**

That Council:

1. Support in principle the deregulation of trading hours for business within the City of Bunbury.
2. Write to the Minister for Commerce, the Hon Michael Mischin MLC requesting the full deregulation of trading hours within the City of Bunbury.

#### **Background**

The BCCI has written to the City of Bunbury seeking support for the full deregulation of trading hours within the City of Bunbury (**attached** at Appendix CEO-1).

Trading hours for businesses within the City of Bunbury are already partially deregulated by virtue of an Exemption Order that was published in the Government Gazette on 21 November 2008 and came into effect on 4 January 2009. The exemption order enables a seven day trading regime for business within the City, although hours of operation are still restricted.

#### **Council Policy Compliance**

Whilst not directly related to the recommendation contained within this report, Council does have a current policy regarding applications for extended trading hours for the Christmas/New Year period.

#### **Legislative Compliance**

The *Retail Trading Hours Act 1987* regulates business trading hours in Western Australia.

#### **Officer Comments**

Although Council does not have any jurisdiction in the implementation of the *Retail Trading Hours Act 1987*, it does have the power to advocate on behalf of its community to other levels of government.

In this instance, and should Council be supportive of having trading hours deregulated for businesses within the City, the request should be made to the Minister for Commerce.

Council has previously sought community feedback on the matter of deregulated trading hours, where in August 2014 the matter was raised through the Household Panel, City Focus, and the City's Facebook page.

Of the 43 responses received, 12 were against deregulated hours, and 31 for (28% and 72% respectively).

The BCCI on behalf of its members has sought Council support for deregulation of trading hours and it is considered appropriate for support for this change. The decision on whether to open and trade is still a matter for the individual businesses to decide however the flexibility of deregulated hours enables businesses to act independently.

**Analysis of Financial and Budget Implications**

Nil

**Councillor/Officer Consultation**

This matter has been brought to Council by the peak industry group for business in Bunbury, and is therefore considered to be representative of the majority of BCCI members.

### 10.2.2 Proposed TravelSmart Officer Application – Bunbury Wellington Group of Councils

<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Phil Harris, Director Works and Services
<b>Executive:</b>	Andrew Brien, Chief Executive Officer
<b>Attachments:</b>	Appendix CEO-2: TravelSmart Officer – Seed Funding Grant 2015-18 Expressions of Interest Guidelines and Application Form

#### Summary

The Department of Transport (DoT) is seeking expressions of interest from selected local governments to participate in the Local Government Travel Change program by appointing a TravelSmart Officer (TSO) between 2015 and 2018.

The role of the TSO is to work with the community and across Council functions to integrate sustainable transport options such as public transport, walking and cycling with local transport, land use and community development opportunities in the area. A copy of the Seed Funding Grant 2015-18 Expressions of Interest Guidelines and Application Form is attached at Appendix CEO-2.

#### Executive Recommendation

That Council provides in-principle support for the Bunbury Wellington Group of Councils (BWGC) to participate in the Department of Transport Local Government Travel Change program as a consortium and submit a joint Expression of Interest/application form to appoint a TravelSmart Officer to serve the Region.

#### Background

The City of Bunbury has written to members of the Bunbury Wellington Group of Council's to gauge the level of interest from the other Councils in the Greater Bunbury Regions Scheme (GBRS) to participate in this program as a consortium and employ one TSO to work across the all member Councils.

A TSO will be expected to achieve a number of outputs and outcomes during the term of the grant including:

- Establishing a work plan for adoption by Council(s);
- On-going learning and development by participating in the TravelSmart Local Government Officer network and professional development by the DoT;
- Integrating TravelSmart (travel information and behavioural approaches) into the broad transport, land use planning and community development policies of Council(s);
- Developing local travel information and events based opportunities for the local community;
- Developing a Workplace Travel Plan targeting Council employees, with the assistance of those employees;
- Promoting and assisting the local community to engage in TravelSmart initiatives such as TravelSmart to Schools and TravelSmart Workplace programs; and
- Developing innovations in the promotion of travel alternatives such as walking, cycling and public transport.

Should Council and other BWGC Councils agree to proceed the City of Bunbury can prepare the application on behalf of Bunbury Wellington Group of Council

**Council Policy Compliance**

Not applicable

**Legislative Compliance**

Not applicable

**Officer Comments**

As the next BWGC Meeting is not until Monday 9 March 2015, members of the BWGC have been approached to consider submitting a joint EOI to the Department of Transport to participate in the Local Government Travel Change program by engaging a TravelSmart Officer to service the BWGC regions.

The City of Bunbury is prepared to house the TravelSmart Officer and provide the appropriate IT, communications and transport resources to enable him/her to effectively engage and work with the relevant people and places.

As expressions of interest addressing the selection criteria must be submitted by 27 February 2015 (and be supported by Council approval for the contributions), the proposal is being submitted to seek Council's in-principle support for the position, should other members do the same.

It is felt this is a model opportunity to work with local governments to work towards a regional and integrated approach to the project.

**Analysis of Financial and Budget Implications**

The City of Bunbury proposes utilising the Rateable Properties (RPs) method as a simple and highly identifiable way of splitting costs across local governments.

The below table outlines the cost allocations that could apply to the engagement of a TSO to support the Councils in the GBRS. The calculations are based on a salary of \$65,000 plus superannuation of 9.5% (\$71,175 salary + super), and includes an annual operating budget of \$5,000.

Authority	# of RPs	% of RPs	Year 1	Year 2	Year 3	Total
City of Bunbury	16,067	40.0%	\$10,970.00	\$20,590.00	\$30,470.00	\$62,030.00
Shire of Capel	6,864*	17.1%	\$4,689.67	\$8,802.23	\$13,025.93	\$26,517.83
Shire of Harvey	11,706	29.2%	\$8,008.10	\$15,030.70	\$22,243.10	\$45,281.90
Shire of Dardanup	5,518	13.7%	\$3,757.23	\$7,052.07	\$10,435.97	\$21,245.27
DoT	N/A	N/A	\$48,750.00	\$24,700.00	\$0.00	\$73,450.00
	40155		\$76,175.00	\$76,175.00	\$76,175.00	

\*Capel 2013-14 Budget, Harvey 2013-14 Annual Report, Dardanup 2013-14 Annual Report,

Participation in the program will require a commitment to engage a TSO for an initial period of 36 months. The DoT is offering a grant of 75% of the salary cost (up to \$48,750) in the first year and 38% (up to \$24,700) in the second year of the scheme. The third and final year of the scheme will be fully funded by the local governments.

There is also a requirement to commit to providing an operational budget of at least \$5,000 for TravelSmart initiatives. DoT recommends that a minimum starting salary of \$65,000 be allocated for a full time TSO, in order to attract and maintain quality personnel.

**Community Consultation**

Not applicable

**Councillor/Officer Consultation**

This report serves to bring the matter to the attention of all elected members.

### 10.2.3 Australian Local Government Association – 2015 National General Assembly of Local Government Conference – Canberra 14 to 17 June Inclusive

<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Andrew Brien, Chief Executive Officer
<b>Executive:</b>	Andrew Brien, Chief Executive Officer
<b>Attachments:</b>	Nil

#### Summary

The Australian Local Government Association (ALGA) Annual National General Assembly of Local Government Conference is held in Canberra annually.

The National General Assembly (NGA) brings together hundreds of delegates from councils across Australia to debate issues of national significance to local government. It provides an opportunity for local councils to develop and express a united voice on core issues affecting their communities with access to influential decision-makers of the federal government, at both the political and departmental levels.

In addition the opportunity is taken to meet with Ministers and key Ministerial staff to progress projects and initiatives relevant to the City of Bunbury.

The 2015 National General Assembly will be held from Sunday 14 June to Wednesday 17 June inclusive.

#### Executive Recommendation

1. Council identify any issues/motions that it wishes to see included on the agenda for the NGA to enable background reports and draft motions to be prepared and considered by Council.
2. Subject to endorsement of any relevant motions as per Point 1 above, Council approve the attendance of the Mayor (or delegate) and the Chief Executive Officer at the Australian Local Government Association National General Assembly of Local Government Conference to be held in Canberra from Sunday 14 June to Wednesday 17 June 2015 inclusive.
3. Subject to Point 2 above, Council arrange meetings with relevant Government Ministers to seek support for major projects and initiatives that require federal government support.

#### Background

All Mayors, Shire Presidents and Chief Executive Officers from Australian Local Governments are invited to the Annual Australian Local Government Association National General Assembly to be held in Canberra from Sunday 14 June to Wednesday 17 June 2014.

Previous conference programs have explored issues relevant to the City of Bunbury including Financing Local Government, Financial Assistance Grants, Expenditure Priorities and Constitutional Recognition of Local Government.



The NGA attracts in excess of 900 mayors and councillors from across Australia and has been running almost 20 years.

### **Council Policy Compliance**

Attendance at this conference will be facilitated through the provisions and conditions of Council Policy CEO1 *“Conferences, Seminars, Training and Induction Courses – Attendance by Elected Members.”*

### **Legislative Compliance**

The endorsement of this proposal will ensure that compliance has been met with all legislative matters including policy.

### **Officer Comments**

It is expected that Council’s continued attendance at this national conference will only serve to benefit the determining of future long-term strategic economic, social, environmental and sustainability issues including infrastructure. It will contribute to the potential development of policy and future planning processes to assist the City’s strategic capacity to provide good governance, service and facilities for its greater community.

The conference coincides with sitting dates for the federal parliament and this provides an opportunity to meet with Federal Government Ministers whilst in Canberra. This is an opportunity that should not be missed and preliminary arrangements may be made to meet with relevant Ministers to put Bunbury’s position on the Federal stage in relation to major projects and funding requirements.

Council has approved the attendance of the Mayor and Chief Executive Officer to this conference in previous years.

In the past, Council has elected to send an alternative Elected Member should the Mayor not be able to attend however Council determined not to send any representatives to the 2014 National General Assembly.

It is considered appropriate in sending representatives to the 2015 conference in assisting the Australian Local Government Association to maintain the renewed focus on local government and to drive improved outcomes for the sector at the national level, along with the opportunity to meet with Ministers and Ministerial Staff.

### **Analysis of Financial and Budget Implications**

Council’s 2014/2015 Budget contains sufficient funding allocations to accommodate attendance at this conference.

### **Community Consultation**

There is no requirement for community consultation on this proposal.

**Councillor/Officer Consultation**

The Mayor and Chief Executive Officer are aware of this proposal. This report serves to bring the matter to the attention of all elected members.

#### 10.2.4 Land Rationalisation - Lot 21 being 89 Beach Road

<b>Applicant/Proponent:</b>	Internal
<b>Author:</b>	Felicity Anderson, Manager Major Projects
<b>Executive:</b>	Andrew Brien, Chief Executive Officer
<b>Attachments:</b>	Appendix CEO-3: Site Plan Appendix CRUSC-1: Landgate Valuation Report

#### Summary

Following a review of the feedback from elected members of land held by the City, approval is now sought to proceed with the process for the disposal of Lot 21 being 89 Beach Road, Bunbury. Refer to plan **attached** as CEO-3.

Details of the land are identified in the Landgate Valuation Report (**attached** at Confidential Appendix CRUSC-1).

#### Executive Recommendation

1. Council authorise the Chief Executive Officer to consult with the residents and property owners immediately surrounding the land.
2. Subject to outcomes of the consultation the Chief Executive Officer to Commence the process to rezone Lot 21, 89 Beach Road from “Parks and Recreation Reserve” to “Residential Zone” and to undertake all steps necessary to dispose of Lot 21, 89 Beach Road Bunbury in accordance with Section 3.58 of the *Local Government Act*.

#### Background

On Wednesday 3 December 2014 Councillors undertook a tour of specific lots being land owned in freehold by the City of Bunbury. The purpose of the tour was to review and consider rationalisation of freehold land held by the City.

Councillors were issued with a comprehensive list identifying each of the lots and were asked to provide comment.

During the tour a number of Councillors identified the potential to dispose Lot 21, 89 Beach Road, Bunbury.

Seven of the eight Councillors that responded, supported the disposal of Lot 21 being 89 Beach Road, while the remaining Councillor indicated they had “no real problems” with the list of land for review.

Lot 21, 89 Beach Road is currently a “Parks and Recreation Reserve” however advice is that this can be rezoned to “Residential Zone”.

A valuation has being provided by Landgate valuing the land at \$500,000 once zoned residential.

### **Legislative Compliance**

Section 3.58 of the *Local Government Act 1995* (“the Act”) deals this with the matter of disposing of property.

### **Officer Comments**

During internal investigations the Manager Sustainability, Planning and Development advised that the lot can be rezoned from “Parks and Recreation Reserve” to “Residential Zone” with a residential density coding of R40 under a revised new Scheme (or at any time as an amendment to the existing Scheme).

### **Analysis of Financial and Budget Implications**

There is no direct cost or implication to budget at present.

The land is valued at \$500,000. It has the potential to provide an initial capital income upon sale and then provide recurring revenue through rates.

Should the City choose to undertake the strata development of the Lot there would be some costs incurred that would be offset from the sale of the lots.

### **Community Consultation**

There has been no community consultation as this item seeks Councils authority to consult and discuss the proposal with the immediate residents and land owners should council support the disposal of the Lot.

### **Councillor/Officer Consultation**

Councillors have been involved through the site tour and review of land held in freehold. Eight Councillors provided comment and feedback between 3 December 2014 and 13 January 2015.

The Executive Leadership Team, Manager Sustainability, Planning and Development, Manager Contracts and Property, Property and Procurement Officer and Manager Major Projects, have all been involved in investigations and consultation relating to this item.

### 10.2.5 Request Waiver of Planning and Building Fees – South West Refuge Inc.

<b>Applicant/Proponent:</b>	South West Refuge Inc.
<b>Author:</b>	Andrew Brien, Chief Executive Officer
<b>Executive:</b>	Andrew Brien, Chief Executive Officer
<b>Attachments:</b>	Appendix CEO-4: Request received from SW Refuge

#### Summary

A request has been received from South West Refuge Inc. for Council's consideration to the waiver of Development Application and Building Application lodgement fees to expand the refuge facility.

A copy of the South West Refuge Inc correspondence is **attached** at Appendix CEO-4.

#### Executive Recommendation

That Council approves the reimbursement of the Development and Building Fees totalling \$2,272.14 (excluding levies) payable by South West Refuge Inc. associated with development and building approval to undertake improvement works at the premises.

#### Background

South West Refuge Inc. has secured funding via Lotterywest to undertake works at the property. South West Refuge Inc. are a charitable organisation recognised by the ATO as a "not for profit" organisation, accordingly it has requested waiving fees and payable.

In order for a valid Planning and Building application to be assessed and processed there is a requirement for the payment of associated fees. Rather than waive the fees, it is recommended that the South West Refuge Inc. be advised that those statutory fees are required to be paid. Should the Council support the waiver of fees it is done so through reimbursement of those fees to the South West Refuge Inc.

In relation to State Government building levies, the applicant would be normally be required to pay \$812.00 (\$252.00 + \$560.00) to the WA Building Commission.

The Council is able to consider if it wishes to waive the income normally derived from statutory fees.

#### Council Policy Compliance

Schedule of Fees and Charges, as adopted by Council.

#### Legislative Compliance

Not applicable.

#### Officer Comments

As detailed in the adopted City of Bunbury schedule, the total cost of fees (excluding levies) for a development of \$280,000 is \$2,272.14.

At present, the Executive Recommendation does not include Council covering the levies payable being \$812.00.

This figure is comprised of:

		<u>Fee Payable</u>	<u>Levy Payable</u>	<u>Fee Type</u>
<u>Planning Fees</u>	Development Application fee	\$814.54		Regulatory
<u>Building Fees</u>	Certificate of Design Compliance	\$696.80		Council
	Building Permit	\$252.00		Regulatory
	Builder Service Levy		\$252.00*	Regulatory
	Construction Training Fund Levy		\$560.00*	Regulatory
	Certificate of Construction Compliance	\$416.80		Council
	Occupancy Permit	\$92.00		Regulatory
		\$2,272.14	\$812.00*	

*\* external levies payable. NOTE: If council waive the fees, the levies are still payable.*

The Chief Executive Officer does not have delegated authority to waive this fee, hence the requirement to submit to Council for consideration.

**Analysis of Financial and Budget Implications**

It is felt that the reimbursement of the fees for this “not for profit” organisation would have little impact on the City’s budgeted income, and would show the City’s support for this valued service to the community.

**Community Consultation**

Not Applicable.

**Councillor/Officer Consultation**

City executive and operations officers support the waiver of the statutory planning and building fees associated with the development.

### **10.3 Director Corporate and Community Services**

#### **10.3.1 Proposed Deed of License – Portion of Reserve 40486, Lot 681 Koombana Drive, Bunbury to Tracey Joanne Pitts and Steven John Rigney**

<b>File Ref:</b>	CAP-COBO-00014
<b>Applicant/Proponent:</b>	Tracey Joanne Pitts and Steven John Rigney, Portion Reserve 40486, Lot 681 Koombana Drive, Bunbury
<b>Author:</b>	Kristen Anderson, Administration Officer Property and Procurement
<b>Executive:</b>	Stephanie Addison-Brown, Director Corporate and Community Services
<b>Attachments:</b>	Appendix DCCS-1: Location Plan Lot 681 Koombana Drive

#### **Summary**

The Deed of License between the City of Bunbury (the “City”) and Tracey Joanne Pitts and Steven John Rigney of Dolphin Aquatic Hire (the “Applicants”) will terminate on 9<sup>th</sup> March 2015. The Applicants have expressed their desire to enter into a new Deed of License over a portion of Lot 681 Koombana Drive, Bunbury (the “Licensed Premises”) to continue the operation of their recreational bicycle and water craft hire business. A location plan is **attached** at Appendix DCCS-1.

The proposed Deed of License is now referred to Council for consideration.

#### **Executive Recommendation**

Council agrees to grant a Deed of License over a portion of Reserve 40486, Lot 681 Koombana Drive, Bunbury to Tracey Joanne Pitts and Steven John Rigney of Dolphin Aquatic Hire, for use of recreational hire of bicycles and light water craft, for a period of three (3) years with a further option of three (3) years, subject to the terms and conditions as specified in the report, and the following:

1. Advertising in accordance with the provisions of Section 3.58 of the Local Government Act 1995;
2. The Applicant to pay all costs associated with the License application including document preparation and advertising; and
3. Consent of the Minister of Lands being attained.

#### **Background**

The Applicants were granted a Deed of License in 2014 for a period of one (1) year at the Licensed Premises to operate a recreational bicycle and watercraft hire business called Dolphin Aquatic Hire.

A short-term License was granted to enable the Applicants to assess the feasibility of the business and to allow the City to ensure the business was well received by the community. A venture of this nature had not yet been established in Bunbury on City-managed land so the need for a short-term approval was necessary at the time.

Since the original Deed of License was granted by Council, the business has been well received by local residents and tourists alike, creating a draw card for the area and utilising the businesses

website and Facebook pages to promote the Leschenault Inlet and the City of Bunbury as a place to visit.

The Applicants have also been involved with City of Bunbury events including the Australia Day Fair and Celebrations and the Aqua Spectacular and have also participated as an attraction in the City of Bunbury Unleashed School Holiday Programme which has proved to be a success.

Current License Details

Commencement:	10 March 2014
Term:	One (1) year
Expiry Date:	9 March 2015
Rental:	\$1,000.00 + GST per annum
Rent Review:	Not Applicable
Outgoings:	Responsibility of the Licensee
Insurance:	Licensee to maintain Public Risk and General Insurance cover over the premises with Public Liability to be set at \$10 million

Proposed New License Details

Commencement:	10 March 2015
Term:	Three (3) years with a further option of three (3) years
Expiry Date:	9 March 2018
Rental:	\$1,500.00 + GST per annum
Rent Review:	CPI annually, Market Rent Review every third year
Outgoings:	Responsibility of the Licensee
Insurance:	Licensee to maintain Public Risk and General Insurance cover over the premises with Public Liability to be set at \$10 million
Special Conditions:	<p>The Redevelopment Clause, which is standard in all Leases and Licenses includes provision for the City to Terminate the agreement with six (6) months written notice to the Licensee, should the land be required for rationalisation or development. This has been included in the Lease documentation.</p> <p><b>Activities in and Around the Licensed Premises that may Affect Operation:</b>                      In conjunction with this License, the Licensee has been made aware of the events, proceedings, occasions and circumstances (Events) where one or more of such Events may cause delay disruption interference or constitute an immediate stop to any operation of the Licensee or the Licensee’s Permitted Use under this License.                      The Licensor will at all times make best effort to keep notified the Licensee of any Events that may take place at any time but cannot guarantee that all Events that may cause any delay, disruption or interference to the operation of the Licensee’s Permitted Use can be notified to the Licensee within appropriate time frames.</p> <p><b>Other Users of the Leschenault Inlet</b>                      The Licensee must at all times take in to consideration Events that other users of the Leschenault Inlet may hold from time to time. The Licensee also agrees to make every effort to consult with other users</p>



	of the Leschenault Inlet so as not to cause delay or disruption to their goings on.
Document preparation:	The Licensee to pay full cost of document preparation and advertising.

### **Legislative Compliance**

Section 3.58 of the Local Government Act 1995

### **Officer Comments**

The Applicants have successfully conducted their business for the past twelve months and have complied with the terms and conditions as set out in their current Deed of License.

The Applicants have contributed to the overall amenity of the area and created a tourist attraction within the Bunbury Central Business District whilst also working with City of Bunbury Officer's to establish a cohesive working relationship for City programmes and events.

### **Analysis of Financial and Budget Implications**

A fair market rental valuation was carried out by Landgate which determined an annual fee of \$1,500.00 ex-GST be payable to the City. It is the Officer's intention to charge the full valuation figure and the Applicant has agreed to the amount payable.

The annual rental fee will increase in line with the Consumer Price Index annually with a rent review to be conducted every third anniversary, which would also extend to any further option taken up in future.

### **Community Consultation**

Advertising in accordance with the provisions of Section 3.58 of the Local Government Act 1995, inviting public submissions to be made.

The proposed Deed of License was referred to the Department of Water ("DOW") for comment and their response noted no objections. The DOW did, however, recommend the use of pollution preventions and risk management measures, to minimise the risk of any land or waterway contamination from the Applicants activities.

To facilitate this recommendation, further consultation was undertaken with the City's Environment Officer and established that the standard clauses in the License regarding cleanliness and accumulation of rubbish on the site, would be adequate to meet this recommendation. The DOW was subsequently advised of this course of action.

### **Councillor/Officer Consultation**

The City's Development Coordination Unit (DCU) were consulted as part of the application process with no objections to the proposal having been received.

Further consultation with the City's Environment Officer was also concluded in order to refer the proposal to the DOW and ensure recommendations were met.

**10.4 Director Planning and Development Services Reports**

Nil.

## 10.5 Director Works and Services Reports

### 10.5.1 Petition Report – Objection to Footpath Ince Road, Glen Iris

<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Phil Harris, Director Works and Services
<b>Executive:</b>	Phil Harris, Director Works and Services
<b>Attachments:</b>	Appendix DWS1: Petition accepted 20-01-2015 Pathway Ince Road to Shell Service Station

#### Summary

At the Council Meeting held 20 January 2015, Council Decision 4/15 resolved:

*Pursuant to Clause 6.10(2) of the City of Bunbury Standing Orders 2012, the petition received relating to the construction of a proposed footpath to link Ince Road to the Shell Gateway Garage in Glen Iris, is to be received and referred to the relevant officer for a report to be submitted within the next two (2) rounds of Council meetings.*

A copy of the petition is **attached** at DWS-1.

#### Executive Recommendation

That Council:

1. Proceed with the project to construct a footpath, including solar lighting this financial year.
2. Request the CEO write to the primary petitioner of the Council's decision with the request that all other signatories to the petition be advised of the outcome

#### Background

In 1995, the Shell Gateway was constructed that included a pedestrian linkage to Claughton Way. Being the only '24 hour' convenience store in Glen Iris it attracted customers at all times of the day and night. Due to the presence of the pedestrian access to the rear of the Shell Gateway Claughton Way was subject to above normal amount of non-residential traffic.

On 20 December 2011, correspondence was received from consultants acting on behalf of the owner of the Shell Gateway suggesting the possibility of the dual use path being extended along the frontage of Forrest Highway adjacent to the Child Care Centre and closure of the existing formal and informal (openings in damaged fence) access points.

In the period 2011/12 the City has been in negotiations with the owners of the Shell Gateway regarding Planning Approval requirements for a Noise Management Plan. The Council at its meeting on 21 May 2013 approval of the Noise Management Plan. The plan included closure of the Claughton Way pedestrian link and the construction of a new tall fence on the southern boundary to the Shell Gateway premises to address noise issues.

### **Council Policy Compliance**

Not Applicable

### **Legislative Compliance**

Not Applicable

### **Officer Comments**

City officers support funding the footpath from Ince Road to Shell Gateway as it provides an improved pedestrian access with natural public surveillance, as well as, reinforcing the provision of a pedestrian/ cycle link between Australind and the City.

The route is currently being used informally for pedestrian access.

### **Analysis of Financial and Budget Implications**

The cost of construction of the footpath including the installation of solar lights is funded as PR-3733 to the value of \$40,000.

### **Community Consultation**

As a result of complaints from residents in Cloughton Way regarding hooning, unlawful parking of vehicles, antisocial behaviour and property damage, the potential for the closure of the Cloughton Way pedestrian linkage was raised at the Council Meeting on 3 November 2009.

The Council, in support of the community representations initiated procedures to close the Cloughton Way public access way and provide a design and cost estimate for the extension of the wall and streetscaping in Cloughton Way. A number of other recommendations were made to improve street lighting; restriction of occasional vehicle use; and no parking signage.

The City sought advice from legal counsel that confirmed a legal right to close the pedestrian link.

### **Councillor/Officer Consultation**

On Monday 2 February 2015, Elected Members were invited to attend the site for the purposes of officers providing further briefing and background on the proposed path. Cr Cook was the only elected member to attend.

**11. Applications for Leave of Absence**

No requests for Leave of Absence had been received at the time of printing.

**12. Motions on Notice**

No Motions on Notice had been received at the time of printing.

**13. Questions on Notice**

***13.1 Response to Previous Questions from Members taken on Notice***

Nil.

***13.2 Questions from Members***

## 14. New Business of an Urgent Nature Introduced by Decision of the Meeting

It is requested that this matter be dealt with as urgent business as a the Petition was accepted at the meeting of 20 January 2015 and pursuant to clause 6.10(2) of the City of Bunbury Standing Orders 2012 the petition is to be referred back for consideration within two (2) rounds of Council Meetings.

### Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item 14.1 entitled “*Vittoria Rd/Jeffrey Rd – Proposed Acquisition of Land*” as a matter of urgent business.

### 14.1 Vittoria Rd/Jeffrey Rd – Proposed Acquisition of Land

<b>File Ref:</b>	A04445
<b>Applicant/Proponent:</b>	Internal
<b>Author:</b>	Nigel Archibald, Team Leader Airport & Design
<b>Executive:</b>	Phil Harris, Director Works & Services
<b>Attachments:</b>	Appendix DWS-2 – Vittoria Road Plan Appendix CRUSC-2-1 Confidential Appendix CRUSC-2-2 Confidential Appendix CRUSC-2-3 Confidential

### Summary

It is proposed to formally acquire a truncation from land owned by the Apostolic Church Trust (Grace Christian School) to facilitate the construction of a roundabout at the intersection of Vittoria Rd and Jeffrey Rd. The agenda item was first presented to Council on 20 January 2015 where Council Decided (31/15):

*“That the matter of Vittoria Road/ Jeffery Road – Proposed Compulsory Acquisition of Land be referred back to Council to be dealt with at the Council meeting to be held on 17 February 2015.”*

### Executive Recommendation

That

1. The City of Bunbury enter into an agreement with the Apostolic Church Trust to purchase four hundred and forty eight (448) square metres of Lot 36 for an amount of sixty five thousand, six hundred and twenty dollars (\$65,620) for the purposes of widening Vittoria and Jeffery Roads”.
2. Council agrees to indemnify the Minister for Lands against any compensation claim made under the Land Administration Act 1997 on account of taking such land.
3. Council agrees to work with representatives of the School to incorporate the construction of a Kiss and Drop zone on Jeffery Road and a footpath connection from Jeffery Road to the school entrance as part of Vittoria Road upgrade.

4. Council approve the use of \$100,000 to fund the construction of the Kiss and Drop Zone and footpath from the Glen Iris Developers Contribution scheme.

### **Background**

The Acting Manager Engineering and Civil Operations Nigel Archibald and the Director Works and Services met with Colin Stillman Business Manager, Paster Dale Hewitt and Principal Hugo de Ridder on Thursday 5 February 2015 to enter into negotiations to address the concerns of the schools board relating to the proposed compulsory acquisition. While the meeting was able to achieve in-principal agreement between the parties both the School Board and Council need to endorse the revised conditions of the land acquisition.

It is anticipated that significant residential growth will occur in Glen Iris over the next decade resulting in a commensurate increase in traffic volumes on Vittoria Rd. The Glen Iris Structure Plan, adopted by Council in 2010, details the installation of three (3) roundabouts at the intersections of Vittoria Rd with Jeffrey Rd, Woodley Rd and Erica Entrance to manage and control the increase in traffic.

The detailed design of a roundabout at the intersection of Vittoria Rd and Jeffrey Rd has been undertaken which satisfies the existing road layout whilst also catering for the ultimate road layout. The north eastern corner of this intersection is not currently truncated and it is proposed that a 448m<sup>2</sup> truncation be acquired from land currently owned by the Apostolic Church Trust (Grace Christian School) to facilitate construction of the roundabout and also house a Western Power pad mounted transformer.

Landgate has provided Council with a valuation of \$45,000 based on the site's current zoning of 'Development Zone – Residential' (**attached** at CRUSC-1-3).

Grace Christian School have engaged Opteon Property Group which has provided a valuation of \$86,240 based on the site's potential rezoning to 'Neighbourhood Centre (Mixed Use)' (**attached** at Appendix CRUSC-1-1). Grace Christian School have also stipulated six (6) conditions they require Council agreement too (**attached** at Appendix CRUSC-1-2). Grace Christian School initially provided written advice that their valuation and Council agreement to the six conditions is not negotiable.

### **Council Policy Compliance**

No Council policy applies

### **Legislative Compliance**

Pursuant to Part 9, Division 3, Subdivision 2 of the Land Administration Act 1997 the Council is required to request the Minister for Lands (by formal Council Decision) to compulsorily acquire land for public works should negotiations fail.

### **Officer Comments**

Council Officers had originally tried to reach a negotiated agreement with Grace Christian School, however with the school's alternative valuation and six conditions being not negotiable, this was not possible. During the meeting of 5 February 2015 in principal agreement was made of the value of the compensation and the six conditions.

Condition 1. The City of Bunbury reimburses the Apostolic Church for the cost of the alternate valuation.

Response Agreed subject to Council approval on receipt of a copy of the Opteon invoice for the valuation.

Condition 2. The City of Bunbury will reinstate all boundary fencing on the new boundary and make good any reticulation and Landscaping or turf which may be damaged as a result of the proposed works.

Response – This is a standard condition for all city works and will occur. Subject to a joint inspection prior to and at completion of the works.

Condition 3. As part of the proposed road widening project the City will design and construct a slip lane in Jeffery Road suitable for a bus stop and Kiss and Drop zone which will meet the need for on street parking.

Response - Agreed subject to Council approval to design this component and construct when funds become available for a portion of the Jeffery Road frontage.

Condition 4. As part of the proposed road widening project the City will construct a dual use footpath/cycleway from Vittoria Road to entrance to Grace Christian School southward to Jeffery Road and then eastward to the existing bus stop.

Response - Agreed subject to Council approval that the City will design this and construct as the Vittoria Road is upgraded. At this stage until a final decision is made by WAPC the City of Bunbury is unable to complete design works for this section of Vittoria Road.

Condition 5. The City will replace all street trees removed to allow the road widening.

Response - Agreed subject to Council approval that this request as it is standard practice.

Condition 6. The City will pay all Land dealing ad legal costs associated with the land acquisition.

Response - Agreed subject to Council approval that this request as it is standard practice.

It is noted that the cost associated with Condition 3 is estimated to be in the vicinity of \$70,000 while Condition 4 is estimated to be in the vicinity of \$30,000.

Compulsory acquisition of the truncation will likely have a longer timeframe for resolution in comparison to reaching a negotiated settlement.

The land acquisition requirements have only recently been confirmed with Western Power service relocation requirements.

### **Analysis of Financial and Budget Implications**

The land acquisition will be funded from project PR-1195, which relates to the creation of the roundabout at the Jeffrey Road/Vittoria Road intersection.



Grace Christian School have nominated six conditions it requires Council to agree upon. Several conditions are low obligation/low cost, however Condition 3 which stipulates the construction of an indented bus bay and Kiss and Drop Zone has an estimated value of \$50,000 - \$70,000. Condition 4 stipulating construction of a footpath linking Vittoria Rd to the Kiss and Drop Zone has an estimated value of \$30,000.

Funding for the additional works could be sourced from the Glen Iris Developers Contribution Scheme.

### **Community Consultation**

A meeting was held with Grace Christian School on the 7<sup>th</sup> March 2014 to discuss the proposed land resumption. A formal offer was made by letter dated the 9<sup>th</sup> June 2014 following receipt of the Landgate valuation. A secondary meeting was held with Grace Christian School on the 10<sup>th</sup> December 2014 at which they advised their valuation and conditions were not negotiable.

### **Councillor/Officer Consultation**

This issue was discussed at the ELT Meeting held on Monday 15<sup>th</sup> December 2014 at which it was determined that Grace Christian School's valuation and conditions needed to be referred to Council.

A further meeting was held with representatives from the School on 5 February 2015. On 10 February 2015 the Grace Christian School Board endorsed the revised City offer with the main concerns being the timing of the construction of the Kiss and Drop Zone and Footpath and potential impact of the development on the western side of Vittoria Road.

Elected members were advised at the Briefing of 10 February 2015 of the status of negotiations with the Grace Christian School.

### **Relevant Precedents**

At the Council Meeting held on the 22<sup>nd</sup> May 2007, Council Decision 105/07 resolved to request the compulsory acquisition of two parcels of land to allow the upgrade of Stuart St to two-way traffic. Council officers are not aware of instances where land acquisitions have been paid at rates above Landgate valuations.

Council recently acquired approximately 428 square meters of land from the Bunbury Primary School for the Lovegrove Avenue project.

## 14. New Business of an Urgent Nature Introduced by Decision of the Meeting

It is requested that this matter be dealt with as urgent business due to time constraints to complete the works associated with the Lease of Portion of Lot 3 Blair Street.

### Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item entitled “Proposed Deed of License to Heather MacFarlane Pty Ltd as Trustee for the Jenny Spencer Trust Trading as Yours or Mine over a portion of Lot 3 Blair Street, Bunbury” as a matter of urgent business.

### 14.2 Proposed Deed of License to Heather MacFarlane Pty Ltd as Trustee for the Jenny Spencer Trust Trading as Yours or Mine over a portion of Lot 3 Blair Street, Bunbury

<b>File Ref:</b>	L239
<b>Applicant/Proponent:</b>	John and Julie George
<b>Author:</b>	Kristen Anderson – Administration Officer Property and Procurement
<b>Executive:</b>	Andrew Brien, Chief Executive Officer
<b>Attachments:</b>	Appendix CEO-5: Location Plan Yours or Mine

### Summary

The City of Bunbury (the “City”), by way of Council Decision 22/15, has granted a Deed of License to Heather MacFarlane Pty Ltd as Trustee for the Jenny Spencer Trust Trading as Yours or Mine (“Heather MacFarlane Pty Ltd”) to License a portion of Lot 3 Blair Street, Bunbury to enable a grease trap and bin storage compound to be built.

However, due to Water Corporation requirements that were unforeseen, the Licensed Premises is now required to be in the name of the owners of the adjoining property located at 26 Victoria Street, Bunbury (the “Adjoining Property”).

The owners of the adjoining property John and Julie George have agreed to enter into an agreement with the City to enable the grease trap and bin storage compound to receive Water Corporation approval.

A location plan is **attached** at Appendix CEO-5.

### Executive Recommendation

Council approves the transfer of the deed of licence to John and Julie George over a portion of Lot 3 Blair Street, Bunbury for the purpose of grease trap and bin storage compound for a period of five (5) years with a further option of five (5) years, subject to the terms and conditions as specified in the report, and the applicant to pay all costs associated with the license application including document preparation and advertising.

## **Background**

Council resolved at the Council Meeting held 20 January 2015, Decision 22/15, to grant a Deed of License to Heather MacFarlane Pty Ltd as Trustee for the Jenny Spencer Trust Trading as Yours or Mine (“Heather MacFarlane Pty Ltd”), for the purpose of grease trap and bin storage compound.

Since Council’s endorsement of the License between the City and Heather MacFarlane Pty Ltd, the Water Corporation have rejected the layout and location of the grease trap within the Licensed Premises on the basis that the land is not owned by the same party that has applied.

Several discussions held between Heather MacFarlane Pty Ltd, the City’s Director Planning and Development Services and the Manager Environmental Health provided an alternative method to receive Water Corporation approval.

The Water Corporation have agreed to approve the layout which was originally proposed, so long as the owner of the Adjoining Property, John and Julie George, enter into an agreement to license the land required for the grease trap and bin storage compound, from the City.

All conditions originally proposed and endorsed by Council under Decision 22/15 are still applicable, however, the applicant has changed from Heather MacFarlane Pty Ltd to John and Julie George.

## **Officer Comments**

The Applicant has agreed to meet all ‘Special Conditions’ as set out in the Deed of License, and that all health related legislative requirements are also met to ensure the operation of their business located at the Adjoining Property can be conducted in a compliant manner.

## **Analysis of Financial and Budget Implications**

Council has previously resolved to charge the applicant the full rental rate of the 36sqm area at \$875.00 per annum excluding GST.

The rent payable will increase by CPI on an annual basis with a market rent review to be conducted every three (3) years during the term of the license.

## **Community Consultation**

In accordance with the original license for Heather MacFarlane Pty Ltd, consultation has been undertaken with the Management Board for the Bunbury Regional Entertainment Centre (“BREC”) to ensure there is minimal impact and disruption to the operation of BREC.

The Water Corporation have been involved in several discussions surrounding the license and have provided the City with an alternative method to achieve the outcome that all parties have worked towards.

**Councillor/Officer Consultation**

The proposed Deed of License was tabled with the City’s Development Coordination Unit (“DCU”) with no objections having been received, so long as, parking issues and health regulations were complied with.

The Officer, in conjunction with the Community Law, Safety and Emergency Management Department and Environmental Health Department, has drafted conditions specifically addressing the layout of the licensed premises to ensure minimal impact on the surrounding area including the BREC, and so that the relevant health regulations are complied with.

Further internal consultation has been undertaken with the Director of Planning and Development Services to ensure a satisfactory outcome can be reached, enabling Heather MacFarlane Pty Ltd to continue the pursuit of establishing the restaurant within the Adjoining Property.

Whilst the CEO has delegated authority to undertake this transfer, it was requested by Councillor McCleary that the matter be brought before Council for consideration.

**15. Meeting Closed to Public**

***15.1 Matters for which the Meeting may be Closed***

***15.2 Public Reading of Resolutions that may be made Public***

**16. Closure**