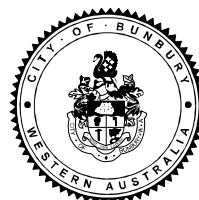


Bunbury City Council

Notice of Meeting and Agenda 7 July 2015



CITY OF BUNBURY

4 Stephen Street
Bunbury WA 6230
Western Australia

Correspondence to:
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Bunbury WA 6231

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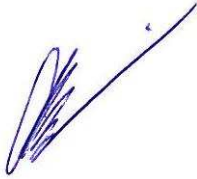
Nature of Council's Role in Decision Making

- 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, 7 July 2015 at 5.30pm.



Andrew Brien
Chief Executive Officer
(Date of Issue: 3 July 2015)

Agenda 7 July 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*

Nil.

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 23 June 2015 have been circulated.

Recommendation

The minutes of the Ordinary meeting of the Bunbury City Council held 23 June 2015 be confirmed as a true and accurate record.

7.1.2 Minutes – Council Advisory Committees and Working/Project Groups

Applicant/Proponent:	Internal Report
Author:	Various
Executive:	Various
Attachments:	Appendix MTBN-1: Withers Advisory Committee Minutes 12/06/2015 Appendix MTBN-2: Youth Advisory Committee Minutes 10/06/2015 Appendix MTBN-3: Community Access Committee Minutes 05/06/2015 Appendix MTBN-4: Policy Review and Development Committee Minutes 18/06/2016

Summary

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

1. Title: Withers Advisory Committee Minutes 12/06/2015
Author: Melinda Whiteley
Appendix: MTBN-1
2. Title: Youth Advisory Committee Minutes 10/06/2015
Author: Michele Grimston
Appendix: MTBN-2
3. Title: Community Access Committee Minutes 05/06/2015
Author: Elle Dixon
Appendix: MTBN-3
4. Title: Policy Review and Development Committee Minutes 18/06/2016
Author: Greg Golinski
Appendix: MTBN-4

Council Committee Recommendation

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

1. Withers Advisory Committee Minutes 12/06/2015
2. Youth Advisory Committee Minutes 10/06/2015
3. Community Access Committee Minutes 05/06/2015
4. Policy Review and Development Committee Minutes 18/06/2016

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

8.4.1 Council Delegates Report – Councillor Murray Cook – Peron Naturaliste Partnership Board Meeting held 5 June 2015

Applicant/Proponent:	Internal Report
Author:	Councillor Murray Cook
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix DEL-1: Peron Naturaliste Partnership Board Meeting Minutes – 5 June 2015 Appendix DEL-2: Council Contributions Summary 2013-17 Appendix DEL-3: WALGA AGM Notice of Motion – Impact of Erosion from Inland Waterbodies

Councillor Murray Cook represented the City of Bunbury at the Peron Naturaliste Partnership (PNP) Board Meeting held at the Bunbury Regional Entertainment Centre on 5 June 2015. The Minutes of the Meeting are **attached** at Appendix DEL-1, Council Contribution breakdown for 2013-2017 is **attached** at Appendix DEL-2 and the WALGA AGM Notice of Motion – Impact of Erosion from Inland Waterbodies is **attached** at Appendix DEL-3..

Cr Cook's Comments

This meeting was the first for PNP as an Incorporated Body and the main item on the Agenda was to introduce new Board members and elect a Chair and Deputy Chair.

The election resulted in Cr Tanya Jackson (President Harvey Shire Council) becoming the Chairman and Cr Caroline Knight (City of Mandurah) becoming Deputy Chair.

I attach the following documents:

- * PNP Board meeting 5th June 2015- Draft Meeting Minutes
- * WALGA AGM City of Mandurah Notice of Motion re Inland Waterways
- * Financial Contributions by member Councils

You will note that the City of Bunbury contributions are anticipated to be:

2014/15:	\$14,671.23
2015/16:	\$14,431.02
2016/17:	\$14,775.01

Recommendation

The report from Cr Murray Cook on the Peron Naturaliste Partnership Board Meeting held 5 June 2015 be received and noted.

8.5 Conference Delegates' Reports

Nil.

9. Method of Dealing with Agenda Business

10. Reports

10.1 Recommendations from Advisory Committees

10.1.1 Decisions from Withers Advisory Committee Meeting 12 June 2015

Applicant/Proponent:	Withers Advisory Committee
Author:	Phil Harris, Director Works and Services
Executive:	Phil Harris, Director Works and Services
Attachments:	Nil

Summary

At the Withers Advisory Committee Meeting held on 12 June 2015 the committee endorsed the transfer from the Withers Reserve of \$37,320 which represented various additional expenditure requested as outlined in the report.

Withers Advisory Committee Recommendation

1. That Council note WAC decision 12/15 made under delegation at the Withers Advisory Committee Meeting 12 June 2015, which reads:

The Withers Advisory Committee

1. *Approve \$4,320 PR-2851 for Concept design and costing for Ashrose Reserve*
 2. *Approve \$10,000 increase to PR-3618 Install CCTV to cover maintenance/replacement costs.*
 3. *Approve \$20,000 Closure of Laneways – survey and legal costs*
 4. *Approve \$3,000 increase to PR-3740 Construct pedestrian crossing on Ocean Drive.*
 5. *Recommend to Council that \$37,320 be withdrawn for the Withers Reserve*
2. That Council approve the transfer of \$37,320 from the Withers Reserve for this purpose.

*** Absolute Majority Vote Required**

Background

The Financial Report presented to the Withers Advisory Committee Meeting held 12 June 2015 advised that there were several project variations for which additional funds would be required.

PR-2851 Design and Upgrade Ashrose Reserve

Refer to Item 9.2 – Withers Action Plan Projects 2014/2015 –Preparation of Concept design and costing for Ashrose Reserve to the value of \$4,320.

PR-3618 Install CCTV

Council has received invoices totalling \$5,928 for replacement cameras, camera repair and purchase of monitor for Withers Library. It is recommended to increase the budget for PR-3618 Install CCTV is to cover invoices received and allow the balance of \$4,072 to cover any additional maintenance / repairs / replacements required until hand over to Council on 22 January 2016. New project budget \$267,000 with \$100,000 contribution from South West Development Commission

PR-3888 Closure of Laneways – Survey and legal costs

To complete the closure of identified laneways it is recommended that a new project be created to fund the necessary survey and legal costs to permanently close the laneways. It is expected that the cost would be \$20,000 and that the project will continue into next financial year. City staff have been allocated to this task effective 1 July 2015.

PR-3740 Construct pedestrian crossing on Ocean Drive

The final Western Power quote for the lighting has been received. The quote is \$3,000 more than anticipated as Western Power have advised that the pole that was suggested by Council is not suitable. New project budget \$98,000

Council Policy Compliance

Not Applicable

Legislative Compliance

Section 5.16 of the *Local Government Act 1995* allows delegation to committees and section 5.17 (1)(c)(i) allows delegation to committees comprising of elected members and other persons (Community Members) for the proper management of Local Government property.

Officer Comments

The transfer of funds to and from reserve requires Council approval.

Subject to Council endorsement a new project will be created for the Withers Laneway closures to the closure by way of survey and land transfer where applicable.

Analysis of Financial and Budget Implications

There is \$104,643 is held in Withers Reserve.

PR-2851 Design and Upgrade Ashrose Reserve	\$4,320
PR-3618 Install CCTV increase	\$10,000
PR-3888 Closure of Laneways – Survey and Legal costs	\$20,000
PR-3740 Construct pedestrian crossing on Ocean Drive	\$ 3,000
Total	\$37,320
Less Balance of Withers Reserve	\$104,643
Remaining Balance of Withers Reserve 2014/2015	\$67,323

Community Consultation

The Withers Advisory Committee 'Terms of Reference' include reference to:

The recommendations within the report have been made by the Withers Advisory Committee.

Councillor/Officer Consultation

The Withers Advisory Committee comprises three (3) Councillors and five (5) Community members with the Executive Officer being the Director Works and Services.

10.1.2 New Council Policy – Shark Hazard Management

Applicant/Proponent:	Policy Review and Development Committee
Author:	Chris Widmer, Team Leader Community Safety and Emergency Management
Executive:	Bob Karaszekwych, Director Planning, Development and Regulatory Services
Appendix	Appendix RAC-1: Council Policy: Shark Hazard Management Appendix RAC-2: Corporate Guideline: Shark Hazard Management

Summary

The purpose of this report is for Council to consider a new Council Policy relating to the Shark Management, as applicable to the City of Bunbury.

It is proposed that Council endorses the Shark Hazard Management Policy which contains appropriate attachments being response protocols, Signage, Beach Categories and responsibility matrix.

It is envisaged that upon adoption this would then be provided to other local governments and relevant state agencies, to declare the City's response to shark sightings and incidents, to encourage consistency of response.

Policy Review and Development Committee Recommendation

That Council:

1. Adopt the new Council Policy and associated attachments titled "Shark Hazard Management" as **attached** at Appendix RAC-1.
2. Request the Chief Executive Officer provide the Policy to other local governments and relevant state agencies to encourage consistency of response.

Strategic Relevance

Key Priority Area 5 Corporate
Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

Shark attacks have the potential to negatively impact upon Bunbury's image as a preferred destination for marine-based activities and therefore may significantly impact on both the economic and community viability of the City.

There is currently no agency that is charged with the responsibility to manage community engagement/information for this hazard, therefore the media currently play a significant role in distributing information to the public that is obtained from various sources. In July of 2012, the Department of Fisheries (DoF) developed a shark hazard plan that placed significant responsibility

onto local governments within the South West region. The five (5) impacted Local Governments were not engaged in the development of this plan, despite having significant responsibilities.

As a result, the Chief Executive Officer wrote to the local governments involved, seeking a collaborative response to this situation. This collaboration ultimately led all local governments to an agreed shark hazard response flowchart and responsibility matrix. This collaboration sought the involvement of DoF, Department of Premier and Cabinet, Police and Department of Parks and Wildlife (DPaW) to ensure a workable, universally acceptable solution was developed. This included a multi-agency workshop that was held in Bunbury, which included senior managers of the above-mentioned departments.

The DoF and DPC did not show active interest in accepting the locally developed agreements. Rather, they appeared to be adamant that the responsibility sat with the local government, even though much of the coast within the region is within DPaW jurisdiction. This impasse made it all but impossible to reach some meaningful, commonly agreed outcomes.

The response flowchart and responsibility matrix are the result of a careful risk analysis and consultation with other South West local governments. It is felt the process is prescriptive yet, flexible enough to enable an effective decision making environment, while providing minimal risk to those taking the prescribed actions. It is now suggested that the City of Bunbury adopt the process in concert with the other south west local governments and define its own decision framework, so that the community and city staff are afforded the best protection.

Council Policy Compliance

This report proposes the adoption of a new Council Policy – *Shark Hazard Management*.

Legislative Compliance

Currently there is no legislation that deals with the issues surrounding shark sightings and shark attacks. If there is a fatality from a shark attack, WA Police (WAPOL) immediately take charge. In accordance with the Emergency Management Act 2005 (EM Act), WAPOL are also responsible for any “hazard” that is not a declared hazard under the EM Act.

Officer Comments

It is proposed to use the risk based assessment to underpin decisions and actions of City of Bunbury staff, in response to and management of shark sightings and incidents. The DoF is presuming City responses that leave the City and staff with unreasonable exposure to risk, as a result of inferred actions or inaction.

The current arrangements do not allow City staff to be involved in shark hazard without the request of police. It is felt this may leave the City at risk of criticism for not working to provide for community safety, especially as other South West local governments have now developed interim protocols for the management of shark hazard.

Officers of the City do not have any jurisdiction over the marine environment beyond the high water mark, nor would they be considered to be subject matter experts in shark behaviour. Therefore, any response protocol must use a risk management ‘due diligence’ basis, to prescribe the correct responses to protect staff and the City from the risk of their decisions and actions, in the event of misadventure.

It is felt the community would expect that the City would do what it could, to minimise any risk to them. A policy framework from the City would assist with community engagement to ensure only the correct information was provided to the public via the media and other outlets to ensure community confidence was maintained.

It has been our experience that the shark hazard has the potential to create a media frenzy that may result in some public hysteria. The result of which may potentially impact tourist orientated businesses and activities including the Dolphin Discovery Centre, cruises, surfing, fishing and diving.

Analysis of Financial and Budget Implications

The cost of the management of beach closures (staff time and signage) over the summer season of 2012/13, was approximately \$10,000. This response was largely ad-hoc and difficult, if not impossible to forecast a budget.

The policy would streamline the process, if agreement can be reached whereby the other agencies would follow these arrangements. That would give some surety that the City would only respond to situations that were found to be credible and therefore, a community safety risk was known to exist, as a result of the previous stages of the process.

Community Consultation

Under the current situation there is no policy or framework to advise the community in relation to shark activity or lead agency responsible for shark hazard communication.

If the City proposes to formalise this policy leading to an agreed shark hazard management protocol and procedure which may then provide the basis for information to be provided to the community. The City would also promote the City's new shark hazard management protocols via a community communications strategy.

External consultation has occurred with the various government agencies associated with this hazard as with WALGA and LGIS risk managers. In February of 2014, the Chief Executive Officer wrote to the Director General of the DoF, with the endorsement of the five South West local government Chief Executive Officer's, advising him that collectively, they were dissatisfied with the presumption that local government should be involved in decision-making, with respect to the shark hazard.

Councillor/Officer Consultation

At the Ordinary Council Meeting held 26 May 2015 Council resolved to endorse the response flowchart and responsibility matrix which are attachments to the proposed policy. At the same meeting, Council also resolved to list the matter on the Western Australian Local Government Association Annual General Meeting Agenda.

The City of Bunbury Executive Leadership Team and staff have consulted over the potential impacts of managing this hazard. All parties are in agreement that a risk management focus needed to be adopted, to provide the necessary outcomes.

This policy was considered by the Policy Review and Development Committee at its meeting held on 18 June 2015.

10.1.3 Revocation of Council Policy – Integrated Planning

Applicant/Proponent:	Policy Review and Development Committee
Author:	Greg Golinski, Manager Governance
Executive:	Andrew Brien, Chief Executive Officer
Appendix:	Appendix RAC-3: Council Policy: Integrated Planning

Summary

The purpose of this report is for Council to consider revoking Council’s current policy relating to *Integrated Planning*.

Policy Review and Development Committee Recommendation

That Council revoke its policy *Integrated Planning* as **attached** at Appendix RAC-3.

Strategic Relevance

City of Bunbury Strategic Community Plan

Key Priority Area 5 Corporate

Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

Council adopted the *Integrated Planning* policy as part of the decision to disband the Strategic Plan Review Committee in April 2012 (refer decision 117/12).

Council Policy Compliance

This report proposes the revocation of an existing Council Policy.

Legislative Compliance

Division 3 of Part 5 of the *Local Government (Administration) Regulations 1996* deals with Planning for the Future.

Officer Comments

The Policy Review and Development Committee has undertaken a review of the *Integrated Planning* policy, the content of which essentially replicates the integrated planning requirements contained within the relevant legislation, namely *Local Government (Administration) Regulations 1996*.

To this extent it is not considered necessary to have this policy in place, as all such requirements are covered by statute.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendations of this report.

Councillor/Officer Consultation

This policy was reviewed by the Policy Review and Development Committee at its meeting held on 18 June 2015.

10.1.4 Revocation of Council Policy – Application for Extended Trading Hours

Applicant/Proponent:	Policy Review and Development Committee
Author:	Greg Golinski, Manager Governance
Executive:	Andrew Brien, Chief Executive Officer
Appendix:	Appendix RAC-4: Council Policy: Application for Extended Trading Hours

Summary

The purpose of this report is for Council to consider revoking Council’s current policy entitled *Application for Extended Trading Hours*.

Policy Review and Development Committee Recommendation

That Council revoke its policy *Application for Extended Trading Hours* as **attached** at Appendix RAC-4.

Strategic Relevance

Key Priority Area 5 Corporate
Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

The *Application for Extended Trading Hours* policy was last reviewed in November 2013. The *Retail Trading Hours (City of Bunbury) Variation Order 2015* was gazetted on 8 May 2015, and facilitated the full deregulation of retail trading hours within the City of Bunbury from 9 May 2015.

Council Policy Compliance

This report proposes the revocation of an existing Council Policy.

Legislative Compliance

The *Retail Trading Hours (City of Bunbury) Variation Order 2015* gazetted on 8 May 2015 effectively renders this policy redundant.

Officer Comments

Following the proclamation of the variation order, the Council policy relating to extended trading hour applications is now redundant, and it is therefore recommended that the policy be revoked.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendations of this report.

Councillor/Officer Consultation

This report was presented to the Policy Review and Development Committee for consideration at its meeting held on 18 June 2015.

10.1.5 Revocation of Council Policy – Establishment and Operation of Council Committees

Applicant/Proponent:	Policy Review and Development Committee
Author:	Greg Golinski, Manager Governance
Executive:	Andrew Brien, Chief Executive Officer
Appendix:	Appendix RAC-5: Council Policy: Establishment and Operation of Council Committees

Summary

The purpose of this report is for Council to consider revoking Council's current policy entitled *Establishment and Operation of Council Committees*.

Policy Review and Development Committee Recommendation

That Council revoke its policy *Establishment and Operation of Council Committees* as **attached** at Appendix RAC-5

Strategic Relevance

City of Bunbury Strategic Community Plan

Key Priority Area 5 Corporate

Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

Council Policy *Establishment and Operation of Council Committees* was last reviewed in March 2013.

Council Policy Compliance

This report proposes the revocation of an existing Council Policy.

Legislative Compliance

Subdivision 2 of Division 2 of Part 5 of the *Local Government Act 1995* (the Act) deals with committees and their meetings.

Officer Comments

The Policy Review and Development Committee have undertaken a review of Council Policy *Establishment and Operation of Council Committees*, which provides parameters for the establishment and operation of Council committees established under the *Local Government Act 1995*.

Upon review, it has become apparent that such a policy is unnecessary, as it merely duplicates the procedures outlined in Subdivision 2 of Division 2 of Part 5 of the Act, in relation to the establishment and operation of Council committees. To this extent, revocation of this policy is recommended, as all such requirements are covered by statute.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendations of this report.

Councillor/Officer Consultation

This policy was reviewed by the Policy Review and Development Committee at its meeting held on 18 June 2015.

10.1.6 Review of Council Policy – Media Statements

Applicant/Proponent:	Policy Review and Development Committee
Author:	Greg Golinski, Manager Governance
Executive:	Andrew Brien, Chief Executive Officer
Appendix:	Appendix RAC-6: Council Policy: Media Statements

Summary

The purpose of this report is for Council to review Council's current policy relating to *Media Statements*.

Policy Review and Development Committee Recommendation

That Council:

1. Note the review of Council Policy *Media Statements* as **attached** at Appendix RAC-6.
2. Note that no changes have been proposed.

Strategic Relevance

City of Bunbury Strategic Community Plan

Key Priority Area 5 Corporate

Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

The *Media Statements* policy was last reviewed in March 2013, and provides guidance and procedures for persons wishing to conduct business with the City in a media capacity.

Council Policy Compliance

This report facilitates a review of an existing Council Policy.

Legislative Compliance

Section 2.8 of the *Local Government Act 1995* defines the role of a Mayor, which in part extends to speaking on behalf of the local government.

Officer Comments

The Policy Review and Development Committee have reviewed the Council Policy *Media Statements*.

Although the *Local Government Act 1995* already prescribes that the Mayor will be the spokesperson for the local government, it is considered that the policy is a useful resource for external parties wishing to undertake media-related enquiries with the City. It is therefore recommended that the policy be reaffirmed in its current form.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendations of this report.

Councillor/Officer Consultation

This policy was reviewed by the Policy Review and Development Committee at its meeting held on 18 June 2015.

10.1.7 Review of Council Policy – Self-Supporting Loans

Applicant/Proponent:	Policy Review and Development Committee
Author:	David Ransom, Manager Finance
Executive:	Andrew Brien, Chief Executive Officer
Appendix:	Appendix RAC-7: Council Policy: Self Supporting Loans

Summary

The purpose of this report is for Council to review the Council policy relating to Self-Supporting Loans.

Policy Review and Development Committee Recommendation

That Council:

1. Note the review of Council Policy *Self Supporting Loans* as **attached** at Appendix RAC-7.
2. Note that no changes have been proposed.

Strategic Relevance

City of Bunbury Strategic Community Plan

Key Priority Area 5 Corporate

Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

The Self-Supporting Loan Policy was originally adopted by Council on 25 September 2012. This policy has been reviewed by the Policy Review and Development Committee and no changes are considered necessary.

Council Policy Compliance

This report proposes no change to the existing Council Policy.

Legislative Compliance

There is no legislation which regulates who a local government may lend money to, however council must comply with section 6.20 of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996* regarding the borrowing of monies.

Officer Comments

The Policy Review and Development Committee have undertaken a review of the Council Policy Self-Supporting Loans.

The Policy is still considered consistent with the City's current processes and procedures and no changes are recommended.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendation of this report, as the existing Policy has not been altered.

Councillor/Officer Consultation

The Chief Executive Officer has been consulted in the creation of this Policy, which is recommended to Council by the Policy Review and Development Committee.

10.1.8 New Council Policy – Registration of Freehold Commercial Leases

Applicant/Proponent:	Policy Review and Development Committee
Author:	Jane Dawson, Senior Property Officer
Executive:	Andrew Brien, Chief Executive Officer
Appendix:	Appendix RAC-8: Council Policy Registration of Freehold Commercial Leases

Summary

The purpose of this report is for Council to consider a new Policy relating to the *Registration of Freehold Commercial Leases*, which has been commended by the Policy Review and Development Committee. The policy proposes that “substantial” commercial leases on freehold land owned by the City be registered on the Certificate of Title.

Policy Review and Development Committee Recommendation

That Council adopt a new Council Policy *Registration of Freehold Commercial Leases* as **attached** at Appendix RAC-8.

Strategic Relevance

City of Bunbury Strategic Community Plan

Key Priority Area 5 Corporate

Objective 5.2 Maintain a high standard of corporate governance.

Background

Currently freehold commercial leases over land owned by the City are not registered on the Certificate of Title.

Council Policy Compliance

Not Applicable.

Legislative Compliance

Transfer of Land Act 1893

Officer Comments

The Policy has been created to maintain consistency with the City’s current processes and procedures, and to ensure that applicable commercial leases on freehold land owned by the City are registered on the Certificate of Title.

The registration with Landgate for “substantial” commercial leases confirms best practice and transparency on behalf the City, whilst providing assurance of continuity of occupancy for both landlord and lessee and consistent asset value, should the property ever be considered for sale. Based on existing leases, \$40,000 per annum appears to be an appropriate threshold to define a “substantial” lease.

Analysis of Financial and Budget Implications

There are minimal fees payable to Landgate on lodgement of registration forms and associated Western Australian Planning Commission approvals, which can be accommodated from within each year's operating budget.

Councillor/Officer Consultation

The Chief Executive Officer has been consulted in the creation of this Policy, which is recommended to Council by the Policy Review and Development Committee.

10.2 Chief Executive Officer Reports

10.2.1 Proposed Lease: Portion of Lot 5 Carmody Place, Bunbury – Old Railway Station Coffee Lounge

Applicant/Proponent:	VB Novello Family Trust
Author:	Jane Dawson, Senior Property Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Appendix CEO-1: Location Plan Lot 5 Carmody Place

Summary

An application has been received from VB Novello Family Trust (the Applicant) seeking consent for a Deed of Lease over the Old Railway Station Coffee Lounge, Portion of Lot 5 Carmody Place, Bunbury. A location plan is attached at Appendix CEO-1.

Executive Recommendation

That Council:

1. Grants a Deed of Lease to VB Novello Family Trust over the Old Railway Station Coffee Lounge Portion of Lot 5 Carmody Place, Bunbury, for a term of five (5) years, subject to:
 - (a) the terms and conditions specified in this report, and
 - (b) advertising in accordance with section 3.58 of the *Local Government Act 1995*.

Background

A lease over this property was previously granted to Deborah Henderson for a period of five years from 1 July 2011. At the request of Deborah Henderson, the lease was assigned to the VB Novello Family Trust on 18 December 2014.

The Applicant, in accordance with the *Commercial Tenancy (Retail Shops) Agreements Act 1985*, has given the City twelve months' notice in writing that they wish to apply for a new Lease.

Current Lease Details

Commencement:	1 July 2011
Term:	Five (5) years
Expiry Date:	30 June 2016
Rental:	\$9,430.00 plus GST per annum
Outgoings:	Responsibility of the Lessee
Insurance:	The Lessee to maintain Public Risk and General Insurance Policies, Workers compensation over the premises with Public Liability to be set at \$10(m)
Use of Premises:	Tearoom cafeteria for the sale of tea, coffee and similar take-away cool drinks, foodstuffs and confectionary.
Document Preparation:	Not applicable.

Proposed New Lease Details

Commencement:	1 July 2016
Term:	Five (5) years
Expiry Date:	30 June 2021
Rental:	\$11,097.98 + GST per annum currently, an updated valuation has been requested from Landgate
Outgoings:	Responsibility of the Lessee
Insurance:	The Lessee to maintain Public Risk and General Insurance Policies, Workers compensation over the premises with Public Liability to be set at \$10(m)
Use of Premises:	Tearoom cafeteria for the sale of tea, coffee and similar take-away cool drinks, foodstuffs and confectionary.
Special Conditions:	Heritage listed building, any alterations including painting to be approved by the City's Heritage Officer.
Document Preparation:	Not applicable.

Council Policy Compliance

Council Policy: Commercial Leases.

Legislative Compliance

Section 3.58 of the *Local Government Act 1995*
Commercial Tenancy (Retail Shops) Agreements Act 1985

Officer Comments

The applicant has complied with all current terms and conditions of the existing lease.

Analysis of Financial and Budget Implications

The applicant to pay the Commercial rent based on the updated Landgate Market Valuation.

Community Consultation

Advertising will be required in accordance with the provisions of Section 3.58 of the *Local Government Act 1995*.

Councillor/Officer Consultation

This matter was discussed by the Development Coordination Unit on 2 June 2015. No objections were received, comments as follows:

- * Health - The applicant will need to comply with the *Food Act 2008, Food Regulations 2009* and *Australian Food Safety Standards*
- * Community Law & Safety (Parking) – The City will continue to provide the parking permit annually.

10.2.2 Council Committees

Applicant/Proponent:	Internal
Author:	Greg Golinski, Manager Governance
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Nil

Summary

The purpose of this report is to provide Council with information relating to the operational aspects of each of its committees, and for Council to consider whether it wishes to retain the status quo in relation to the continuance of each committee following the 2015 City of Bunbury election.

Executive Recommendation

That Council:

1. Endorses the continuation of the following committees post 17 October 2015:
 - (a) Audit Committee
 - (b) Bunbury Roadwise Committee
 - (c) CEO Performance Review Panel
 - (d) Community Access Committee
 - (e) Policy Review and Development Committee
 - (f) Youth Advisory Council
2. Disbands the Art Collection Management Committee.
3. Disbands the Bunbury-Setagaya Sister Cities Committee and requests the Chief Executive Officer prepare a report before the end of August to support an International Relations Committee, including the new Terms of Reference.
4. Endorse the continuation of the Withers Advisory Committee until all funds in the Withers Reserve have been allocated, at which time the Committee will be disbanded.
5. Requests the CEO prepare a report to the 10 November 2015 meeting of Council to formalise appointments to Council committees.

Strategic Relevance

Key Priority Area 5 Corporate
Objective 5.2 Maintain a high standard of corporate governance and improve access to information.

Background

Council currently operates with the assistance of nine (9) committees, which have been established in accordance with section 5.8 of the *Local Government Act 1995* (the Act). These are as follows:

1. Art Collection Management Committee*
2. Audit Committee

3. Bunbury Roadwise Committee
4. Bunbury-Setagaya Sister Cities Committee
5. CEO Performance Review Panel
6. Community Access Committee
7. Policy Review and Development Committee
8. Withers Advisory Committee
9. Youth Advisory Council

**Note the Art Collection Management Committee has been suspended since 4 February 2014.*

Point 5 of decision 335/13 from the Ordinary Council Meeting held on 26 November 2013 required Council Committees to review their terms of reference from March 2015. This process has been completed over the past three (3) months, and Council direction is now sought as to the continuation of each committee post 17 October 2015 (at which point all positions on committees will become vacant pursuant to section 5.11(1)(d) of the Act).

Council's determination in relation to this matter will also enable Officers to seek community nominations for committees (where applicable), in advance of the October election. A subsequent report will be presented to Council to facilitate appointments to each continuing committee following the October election.

Council Policy Compliance

Not applicable

Legislative Compliance

Subdivision 2 of Division 2 of Part 5 of the *Local Government Act 1995* deals with committees.

Officer Comments

Art Collection Management Committee

The Art Collection Management Committee has been suspended since 4 February 2014, following a review of the operational structures and functions of the Bunbury Regional Art Galleries.

The management of the City's art collection is undertaken by professional curatorial staff, and the revised Art Collection Policy and Guidelines include provisions for expert community members to be involved in collection acquisition processes. As relevant expertise can be secured through alternate means, there is limited benefit in re-establishing this committee.

Officers are in the process of researching best practice governance models as required per Council decision 35/14, which will be reported to Council by February 2016. Any new governance structures resulting from this review can be considered following further direction from Council, post February 2016.

Audit Committee

The Audit Committee is a statutory committee of Council, required pursuant to the provisions of section 7.1A of the Act. The Audit Committee meets a minimum of quarterly each year.

Council reviewed the terms of reference for this committee on 17 March 2015, adopting a model terms of reference produced by the Department of Local Government. The composition of the committee was also considered as part of the review, which currently comprises 3 Councillors and 2 community members as voting members of the Committee. There were no changes proposed to membership composition.

As this is a statutory committee, the committee is required to remain in place post 17 October 2015.

Bunbury Roadwise Committee

Council reviewed the terms of reference for the Bunbury Roadwise Committee on 3 March 2015. As a result of the review, the terms of reference were left un-changed with only a change of name for the committee enacted. The composition of the committee was also considered as part of the review, which currently comprises 2 Councillors and up to 12 community representatives as voting members of the Committee. There were no changes proposed to membership composition.

The Bunbury Roadwise Committee is a committee that the Council is obligated to establish in order to meet the objectives of the Local Government Road Safety Strategy (issued by the State Government's Office of Road Safety). Accordingly, it is recommended that this committee continue post 17 October 2015 in its current format.

Bunbury Setagaya Sister City Committee

Following discussions with the Mayor and the Chair of the Bunbury-Setagaya Sister Cities Committee, Cr McCleary, and in the light of the fact that Council has endorsed the signing of a new Friendship Agreement with Vietnam, it is felt that a renewed focus on international relations should be recognised through the establishment of an International Relations Committee to provide advice and support in the ongoing development of relationships and strategic opportunities with Setagaya, Japan, Jia Xing, China and Nha Trang, Vietnam. This new Committee will have similar Terms of Reference based on the current Committee's purpose and intent, but be extended to include Bunbury's three established internal relationships and any new ones that may be formed into the future. The intent is that this new Committee will replace the existing Bunbury-Setagaya Sister Cities Committee.

CEO Performance Review Panel

The CEO Performance Review Panel meets as required to undertake the annual performance and salary review of the City's Chief Executive Officer. As this Committee did not meet during the terms of reference review period, these have not been reviewed for this Committee. Notwithstanding, given the nature of this Committee, it is recommended that this committee continue post 17 October 2015 in its current format.

Community Access Committee

The Community Access Committee meets every two months, and had its terms of reference reviewed by Council on 3 March 2015. Some minor amendments to the terms of reference were made at that time. The composition of the committee was also considered as part of the review, which currently comprises 2 Councillors and up to 10 community representatives as voting members of the Committee. There were no changes proposed to membership composition.

In adopting a revised Strategic Community Plan in March 2015, Council endorsed an additional Strategic Objective to *establish Bunbury as the most accessible regional City in Australia by 2020*. It is considered that the Access Committee will play an integral role in realising this Objective, and it is therefore recommended that this committee continue post 17 October 2015 in its current format.

Policy Review and Development Committee

The Policy Review and Development Committee continues to undertake a recurring review of all Council policies, as well as giving consideration to any new policies in areas that fall under Council's jurisdiction.

The Committee meets every two months, and had its terms of reference reviewed by Council on 17 March 2015. The composition of the committee was also considered as part of the review, which currently comprises 5 Councillors as voting members of the Committee. There were no changes proposed to membership composition.

It is recommended that this committee continue post 17 October 2015 in its current format.

Withers Advisory Committee

The Withers Advisory Committee meets every two (2) months and had its terms of reference reviewed by Council on 3 March 2015. Some minor amendments to the terms of reference were made at that time. The composition of the committee was also previously reviewed by Council, in the context of removing specific reference to the Withers Action Group. The Committee comprises 3 Councillors and 5 Community representatives as voting members.

The Committee also has some delegated powers enabling it to prioritise and authorise certain works.

It is recommended that this committee continue post 17 October 2015 in its current format until such time as the Withers Reserve has been allocated in its entirety, at which point the committee will automatically disband.

Youth Advisory Council

The Youth Advisory Council meets every month and had its terms of reference reviewed by Council on 3 March 2015. Some minor amendments to the terms of reference were made at that time. The composition of the committee was also considered as part of the review, which currently comprises 3 Councillors and up to 12 youth representatives as voting members of the Committee. There were no changes proposed to membership composition.

It is recommended that this committee continue post 17 October 2015 in its current format.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendations of this report.

Councillor/Officer Consultation

Each relevant Committee Executive Officer has been consulted in the preparation of this report, which is now presented to Council for consideration.

10.2.3 Proposed Deed of Lease over Lot 555, 246 South Western Highway, Picton known as the ‘Picton Hall’

Applicant/Proponent:	South West Seniors Expo Inc. and United Ancient Order of Druids
Author:	Kristen Anderson, Administration Officer Property and Procurement
Executive:	Andrew Brien – Chief Executive Officer
Attachments:	Appendix CEO-2: Location Plan

Summary

The Deed of License between the City of Bunbury (the City) and South West Seniors Expo Incorporated (the SWSE), over Lot 555, 246 South Western Highway, Picton, known as the ‘Picton Hall’ (the Premises), expired on 25 November 2014.

Council was briefed in late February that the License between the City and the SWSE had come to an end, and that the City had received a request from the United Ancient Order of Druids (the “UAOD”) advising their request for a facility.

The City sought Expressions of Interest (EOIs) be sought to maximise the use of the facility as a ‘Community Building’. An EOI was prepared and advertised for a period of thirty (30) days, and although five (5) requests for the EOI Guidelines were sought, only two (2) applications were received.

The two (2) applications received were from the SWSE and the UAOD, with both applicants outlining in their respective submissions that they could share the Premises with another group. Upon further assessment it is noted that the two applicants are amenable to joint use of the Premises.

A new Deed of Lease for each applicant has been prepared and a location plan of the Premises is **attached** at Appendix DCS-CEO-2.

The proposed Deed of Lease is now referred to Council for consideration, with Officers recommending that Council’s Lease and License Policy be applied, and the annual rental fee charged in accordance with the Rent Tier Matrix.

Executive Recommendation

That Council agrees to grant a new Deed of Lease to the South West Senior Expo Inc and the United Ancient Order of Druids over Lot 555, 246 South Western Highway, Picton, also known as ‘Picton Hall’, for a period of five (5) years with a further option of five (5) years, subject to the terms and conditions specified in this report and the approval of the Minister for Lands.

Background

The SWSE has held a Licence over a portion of the Premises from the City since 2009 for the permitted use of storing goods and equipment associated with the Seniors Expo. The building has been placed on the State Heritage Register and forms part of a Conservation Plan entitling the City to seek funding from Lotterywest.

At its meeting held on 23 August 2011, Council resolved as follows (refer decision 198/11):

1. *The Picton Agricultural Hall Conservation Plan and the Schedule of Conservation Works be endorsed by Council.*
2. *A business plan be developed for the future management of the Picton Agricultural Hall.*

The roof to the building was subsequently replaced using funds from the Lotterywest 2009/10 Heritage Grants Program, and has since undergone several other upgrades and repairs to remedy heritage and building issues associated with the Premises.

Such repairs have included an electrical upgrade to ensure the building is compliant with relevant legislation and safety protocols, removal of asbestos, installation of exit lights, repairs to external brick work and an upgrade of the front façade to return the building to its original front elevation.

The works that have been carried out, along with future planned works such as repairs and upgrades to the windows and repainting of the building, have enabled the Premises to be leased for a purpose other than that of a 'storage facility'.

The UAOD was established in Bunbury in 1895 and investigations indicate that they are the oldest club or organisation in Bunbury and are held in high esteem within the Bunbury community.

The UAOD is a not-for-profit fraternal organisation which practises under the main principles of justice, benevolence and friendship and is not a religious organisation. The UAOD currently consists of approximately 30 members and is categorised into two groups of 15 people that meet fortnightly respectively.

The UAOD are currently based at 1 Stuart Street, Bunbury behind Geographe Ford, where weekly meetings are held for the members. Due to financial circumstances the property must now be sold leaving the UAOD with no premises.

The City has received an application from the UAOD to enter into a concurrent lease agreement over the Premises for use as a lodge and to conduct regular meetings. This use is supported by the City's Heritage Officer and is consistent with the intended purpose of the Picton Hall.

The SWSE and the UAOD have been consulted extensively, with the City facilitating all conversations surrounding the shared use of the Premises. The SWSE and the UAOD have agreed on all pertinent aspects regarding shared use of the Premises, specifically frequency and times of use, hours of operation and apportionment of utilities.

Current License Details

Licensee:	South West Seniors Expo Inc.
Commencement:	26 th November 2012
Term:	One (1) year with a further one (1) year option
Expiry Date:	25 th November 2014
Rental:	Peppercorn
Outgoings:	Responsibility of the Lessee
Insurance:	Licensee to maintain Public Risk and General Insurance cover over the Premises with Public Liability to be set at \$10 million

Proposed New Lease Details

Lessee/s:	South West Seniors Expo Inc. and United Ancient Order of Druids
Commencement:	31 st July 2015
Term:	Five (5) years with a further five (5) year option
Expiry Date:	30 th July 2019
Rental:	South West Seniors Expo Inc - \$156.00 EX GST payable per annum United Ancient Order of Druids - \$390.00 ex GST payable per annum
Outgoings:	Responsibility of the Lessee
Insurance:	Lessee to maintain Public Risk and General Insurance cover over the Premises with Public Liability to be set at \$10 million
Special Conditions:	The Redevelopment Clause has been included, a schedule of use to be included in the Lease as an appendix, outlining the days and times for use of the hall.

Legislative Compliance

Section 18 of the *Land Administration Act 1997* refers to transactions that require the Minister for Lands approval. The Lease will be subject to the Ministers Approval and endorsement thereof.

Officer Comments

The SWSE have satisfactorily fulfilled their obligations and responsibilities under the current License. The SWSE is a not-for-profit group who provides like-minded participation from local community members and visitors and runs a coordinated event programme within the community for the specific benefit of senior citizens in Bunbury.

The UAOD are also a not-for-profit group who are willing to utilise the Premises as a shared facility. The increased activity at the hall will continue to reach a broader proportion of the Bunbury community and will allow the Picton Hall to be utilised for its intended purpose and within keeping of its heritage nature.

The Premises has been upgraded to cater for a use other than storage and, if approved by Council, the Premises may be shared ensuring beneficial utilisation of the funding that has been spent on the Premises to date.

Analysis of Financial and Budget Implications

A market rental valuation was procured through Landgate and received in April 2015. The valuation was requested to outline the individual areas available to be utilised by any applicant for the purpose of the EOI, and are broken down as follows:

Hall Only:	\$3,120.00 ex GST per annum
Hall, kitchenette and toilet block:	\$4,680.00 ex GST per annum
Storage Sheds (1 x large, 1 x small):	\$780.00 ex GST per annum

The SWSE have requested utilisation of the storage shed including the continued use of their City approved shipping container already on site, whilst also utilising on occasion the hall, kitchenette and toilet block for use while at the hall.

The UAOD have requested use of the hall, kitchenette and toilet block and the small storage shed adjoining the toilet block.

Assuming the UAOD would be utilising the hall, kitchenette and the toilet block 80% of the time, the cost would be \$3744.00 ex GST per annum, with the SWSE utilising these same amenities for 20% of the time, at a cost of \$936.00 ex GST per annum.

Assuming the SWSE utilised 80% of the outdoor storage space, the cost would be \$624.00 ex GST per annum, with the UAOD utilising 20% of the outdoor storage at a cost of \$156.00 ex GST per annum.

In total the UAOD would be required to pay \$3900.00 ex GST per annum, and the SWSE would be required to pay \$1560.00 ex GST per annum, prior to the implementation of the City's Leases and Licenses Policy and the application of the Rent Tier Matrix.

Currently the SWSE have a 'Peppercorn' rental rate and have done so since 2009. Should the Rent Tier Matrix be applied to the applicable fee of \$1560.00, the rent payable per annum would be \$156.00 ex GST per annum which incorporates a reduction of 90% of the overall figure.

With the Rent Tier Matrix applied to the UAOD fee of \$3900.00, the rent payable by the UAOD would be \$390.00 ex GST per annum, which incorporates a reduction of 90% of the overall figure.

Although both applicants have requested the rent payable be Peppercorn in keeping with the existing licence, it is recommended the Rent Tier Matrix be applied.

Community Consultation

An advertisement was placed for 30 days inviting submissions from community groups and organisations to apply for the shared use of the Picton Hall. In total five (5) groups requested the documentation for the EOI, however, only two (2) applications were received.

Councillor/Officer Consultation

Consultation with several City departments has taken place including Environmental Health and Planning and Development Services. The proposed new lease conditions including the potential for use by more than one lessee for a purpose other than storage has been positively received.

10.2.4 Proposed Deed of Lease to South West Academy of Sport Inc for Office Space at the South West Sports Centre

Applicant/Proponent:	South West Academy of Sport Inc.
Author:	Jane Dawson, Senior Property Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Nil

Summary

Following discussions between the City of Bunbury (the City) and the South West Development Commission (SWDC), it was agreed that the City would assist with the relocation of the South West Academy of Sport Inc (SWAS), by finding an alternative location for their office.

It was identified that there is office space of approximately 74sqm available at the South West Sports Centre (SWSC) that could be utilised by SWAS. As such, an application has been received from SWAS, to enter into a lease over that portion of the SWSC.

Council's consideration of the proposed lease is now sought.

Executive Recommendation

That Council agrees to grant a Deed of Lease for Office Space at the South West Sports Centre, subject to the terms and conditions specified in the report, and the approval of the Minister for Lands.

Background

The SWAS was established as a not for profit organisation in 2007, to enable and provide incentive for talented young athletes in the region and to encourage those athletes to develop their skills and continue training to an advanced or elite level.

The SWAS, through the SWDC, approached the City in May this year, enquiring as to whether the City had any available office space for lease. It was identified that office space currently occupied by the City's Sport and Recreation team within the SWSC could be utilised for the purpose of accommodating SWAS.

SWAS have since entered into a Memorandum of Understanding (MOU) with the City, to allow immediate access to the office facility whilst also permitting time for a Deed of Lease to be prepared and considered by Council.

Basic office furniture has been supplied to the SWAS including desks and chairs, however the SWAS are utilising their own IT hardware and software, including phones, computers and printers.

Proposed Lease Details

Lessee:	South West Academy of Sport Inc
Commencement:	1 st July 2015
Term:	One (1) year with a further two (2) year option
Expiry Date:	30 th June 2016

Rental:	\$10,800.00 ex GST payable per annum
Outgoings:	A flat rate fee of \$150.00 ex GST per month is payable by the Applicant. The total outgoings payable for the year are \$1,800.00 ex GST per annum
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>Redevelopment In the event that the Lessor requires the whole or part thereof of the leased area, for rationalisation/ redevelopment to alter, extend or redevelop the Land or any part thereof or carry out any works in the Land or any part thereof which will prevent access or safe access to the Leased Premises, then the Lessor may terminate the Lease giving the Lessee written notice ("Termination Notice") herein before granted by Six (6) months, of the termination of the Lease. The Lessee shall grant vacant possession to the Lessor upon the date determined in the Lessor's written termination notice. In the event of redevelopment delays or cancellation of proposed works the Lessor may advise the Lessee of the delays and negotiate any potential extensions until such time as the development or proposed works are to commence.</p> <p>Security Keys The Lessee will be responsible for the distribution of keys for their Leased Premises access. Keys will be supplied and invoiced by the South West Sports Centre and replacements will be at the cost of the Lessee.</p> <p>Furniture Supplied by City The City is providing use of the Leased Premises with the inclusion of basic office furniture. An inventory is attached at Appendix A. The City does not provide any other equipment such as computers, phones, printers or supplies of any kind. The Lessee is responsible for providing these items and all consumables such as stationery, printer ink and paper supplies.</p> <p>Lessee to Greet Guests The Lessee is to ensure that all of the Lessee's visitors or guests to the Leased Premises are greeted at reception in a timely manner so as not to disturb the City's staff working in the area or obstruct any Common Area.</p> <p>Confidentiality The Lessee is made suitably aware that the Premises is located within an area used for the City's operations and therefore any information that is obtained either intentionally or unintentionally by the Lessee, that is not directly addressed to the Lessee, must be kept in the strictest confidence. For the purpose of this clause the Lessee includes but is not limited to its members, guests, visitors, contractors or any other person attending the Premises in relation to the Lessee. This clause is an essential term and as such, failure to adhere to this condition may lead to an immediate termination of the Agreement.</p> <p>Termination of Lease The Termination Notice must state the date ("Early Termination</p>

	Date”) on which the Lease will be terminated which must be at least 6 months after the Lessee is given the Termination Notice. This Lease will terminate on the Early Termination Date.
Document Preparation:	The Lessee to pay full cost of document preparation and advertising.

Policy Implications

Council’s policy relating to Commercial Leases applies.

Legislative Compliance

Section 18 of the *Land Administration Act 1997* refers to transactions that require approval by the Minister for Lands. The proposed Lease will be subject to the Minister’s Approval and endorsement.

Officer Comments

Having the SWAS utilising office space at the SWSC generates additional revenue for the City, whilst also reducing the cash contribution the City makes to SWAS by \$5,000.00 (per draft 2015/16 budget).

The SWAS being located at the SWSC is ideal for their clients, coaches and athletes, whom utilise the SWSC on a regular basis and provide like-minded participation from members of the public.

Analysis of Financial and Budget Implications

Under the terms of the proposed Lease, the SWAS will pay the City an annual rental of \$10,800.00 ex GST. The SWAS will also be required to pay annually in advance an outgoing fee of \$150.00 ex GST per month (\$1,800.00 ex GST per annum) and a bond of \$500.00 will be held for the term of the Lease.

The rental rate was initially assessed as being \$15,800.00 ex GST per annum, which was the rate that the SWAS paid previously when located at the SWSC, and is the rate charged to other office space currently leased within the SWSC. This rate is consistent with a commercial valuation provided by Landgate in June 2012.

It is proposed however, to reduce this amount by \$5,000.00, being the proposed cash subsidy provided to SWAS by the City in the draft 2015/16 budget, resulting in the proposed fee of \$10,800 per annum.

The additional in-kind contribution of \$5,220 provided to SWAS by the City to cover SWSC memberships should be considered independently of this proposed Lease, so as not to have any impact on the proposed lease rate.

Community Consultation

No community consultation is required for the purpose of this Lease. The SWAS have been consulted in this regard and have agreed in-principle to the rental rate and terms of the proposed lease.

Councillor/Officer Consultation

The proposed Deed of Lease has been discussed with the City's Executive Leadership Team and the City's Development Coordination Unit. No objections have been received.

10.2.5 Reporting of Council Policy – Infringement Withdrawal – Requests received

Applicant/Proponent:	Internal
Author:	Andrew Brien, Chief Executive Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Nil.

Summary

At the Council Meeting held 8 July 2014, Council adopted the new Council Policy “Infringement Withdrawal”.

The purpose of this report is for Council to be informed of any requests received, and the outcomes of each, relating to infringement withdrawal.

Executive Recommendation

That in accordance with the Council Policy “Infringement Withdrawal”, Council notes that one (1) request from a Council Officer for the withdrawal of infringement was received in the month of June 2015 and the outcome of the request determined that the infringement notice would stand.

Background

As part of the decision-making for item 15.1.2 Withdrawal of Parking Infringements at the Ordinary Council meeting held on 6 August 2013, Council resolved (Decision 253/13) as follows:

“That Council will develop a policy whereby any request to withdraw or otherwise alter an infringement notice issued to a City of Bunbury staff member or Elected Members by the City of Bunbury will be referred to the Council.”

The Policy Review and Development Committee considered this draft policy at its meeting held on 19 June 2014, which was subsequently adopted by Council at the meeting of 8 July 2014.

Council Policy Compliance

This report is in accordance with the Council Policy.

Legislative Compliance

Division 2 of Part 9 of the Local Government Act 1995 deals with Enforcement and Legal Proceedings.

Section 9.10 of the Act enables a local government to appoint authorised persons to perform particular functions. The City’s local laws define an authorised person as a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under the local law.

Officer Comments

Council's Policy requires that Council be informed of any decisions made to withdraw an infringement issued under any of the City's local laws, where the application for withdrawal was made by an Elected Member or City Officer.

For the month of June 2015, one (1) request was received from a staff member wherein they parked their private vehicle in the South's Carpark exceeding the two (2) hour free parking and was issued an infringement.

The outcome of the investigation is that the infringement would stand, due to the vehicle exceeding the allowed period of two hours and 45 minutes and therefore, the appropriate ticket was not obtained.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications arising from this report.

Community Consultation

There is no community consultation impacting on this report.

Councillor/Officer Consultation

This report is presented to Council in compliance with Council's policy on this matter.

10.3 Director Corporate and Community Services

Nil

10.4 Director Planning, Development and Regulatory Services Reports

10.4.1 Ranger/Fire Control Officer Authorisation

Applicant/Proponent:	Internal
Author:	John Kowal, Manager Community Law, Safety and Emergency Management
Executive:	Bob Karaszewych, Director Building, Planning and Regulatory Services
Attachments:	Nil

Summary

Council Rangers/Fire Control Officers are required to be authorised by Council to enable them to perform their respective duties.

Executive Recommendation

That Council:

1. Appoints Philip John Lloyd and Greg Anthony Stover as Authorised Officers and individually an Authorised Person in accordance with the following legislation.
 - 1.1 *Dog Act 1976*, Dog Act Regulations, Dog (Restricted Breeds) Regulations (No. 2) and Dog Local Laws (as amended);
 - 1.2 *Local Government Act 1995*;
 - 1.3 *Local Government (Miscellaneous Provisions) Act 1995* as amended;
 - 1.4 *Litter Act 1979* and Litter Regulations (as amended);
 - 1.5 *Control of Vehicles (Off-road Areas) Act 1978* and Control of Vehicles (Off Road Areas) Regulations (as amended);
 - 1.6 Administer and enforce the Local Laws of the City of Bunbury Council;
 - 1.7 *Bush Fires Act 1954* and *Bush Fires Act Regulations (as amended)*;
 - 1.8 *Cat Act 2011* and *Cat Regulations 2012*.
2. Appoints Philip John Lloyd and Greg Anthony Stover as a:
 - 2.1 Registration Officer in accordance with the *Dog Act 1976*;
 - 2.2 Fire Control Officer in accordance with Section 38 and 59 of the *Bush Fires Act 1954* (as amended);
 - 2.3 Pound Keeper/Ranger pursuant to the provision of *Part XX – Cattle Trespass, Pounds, Poundkeepers and Rangers* of the *Local Government (Miscellaneous Provisions) Act 1995*.
3. Requests the Chief Executive Officer advertise as required by the abovementioned legislations.

Background

Philip John Lloyd and Gregory Anthony Stover have recently commenced employment with the City of Bunbury as Ranger/Fire Control Officers. Their position requires that they be authorised in accordance with various legislations, enabling them to administer and enforce the provisions of legislations.

Council Policy Compliance

The Authorisation of Ranger/Fire control Officers is a standard requirement to allow relevant staff to perform, as required, duties.

Legislative Compliance

The aforementioned legislations requires that the Council authorise officers who are employed for the purpose of exercising the powers as conferred under each statute.

Officer Comments

Refer above

Analysis of Financial and Budget Implications

Nil

Community Consultation

Nil

Councillor/Officer Consultation

Nil

10.5 Director Works and Services Reports

Nil.

11. Applications for Leave of Absence

11.1 Request for Leave of Absence – Cr Murray Cook

Applicant/Proponent:	Internal
Author:	Andrew Brien, Chief Executive Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Nil

Summary/Background

Cr Cook requests leave of absence from all Council-related business from 5 August 2015 to 12 August 2015 inclusive.

Section 2.25 of the *Local Government Act 1995*, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six (6) consecutive ordinary meetings of the Council.

Executive Recommendation

Pursuant to Section 2.25 of the *Local Government Act 1995*, Cr Cook is granted leave of absence from all Council-related business from 5 August 2015 to 12 August 2015 inclusive.

11.2 Request for Leave of Absence – Mayor Gary Brennan

Applicant/Proponent:	Internal
Author:	Andrew Brien, Chief Executive Officer
Executive:	Andrew Brien, Chief Executive Officer
Attachments:	Nil

Summary/Background

Mayor Gary Brennan requests leave of absence from all Council-related business from 5 August 2015 to 10 August 2015 inclusive.

Section 2.25 of the *Local Government Act 1995*, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six (6) consecutive ordinary meetings of the Council.

Executive Recommendation

Pursuant to Section 2.25 of the *Local Government Act 1995*, Mayor Gary Brennan is granted leave of absence from all Council-related business from 5 August 2015 to 10 August 2015 inclusive.

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

Following discussions with each of the three parties this matter is now referred to Council for consideration.

Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item entitled “*Alfresco Shade Structures – Café 140, Caf-fez and Mojos Restaurant and Café*” as a matter of urgent business.

14.1 *Alfresco Shade Structures - Café 140, Caf-fez and Mojos Restaurant and Café*

Applicant/Proponent:	- Café 140 - Caf-fez - Mojos Restaurant and Café
Author:	Andrew Brien, Chief Executive Officer
Executive:	Phil Harris, Director Works and Services
Attachments:	Nil

Summary

At the Ordinary Council Meeting held 26 May 2015, Council considered three (3) items relating to Alfresco Shade Structures for the properties being Café 140, Caf-fez and Mojos Restaurant and Café.

Following the Council Meeting, the Mayor and Chief Executive Officer met with the owners to discuss additional options. It was requested by the proponents that Council consider a proposal to fund 100% of the costs of the installation of the alfresco structures on a prefunding basis, with the repayments to be made over a five (5) year period incorporating principal and interest.

The interest rate would be based on WA Treasury Rate, which is currently around 3.5%. Based on this the repayment on a \$15,000 loan would be \$3,300 a year over the five (5) year period.

This is a different option to that previously approved by Council in May wherein the Council agreed to fund 50% of the costs with repayments to be made over a five (5) year period without interest.

Executive Recommendation

That Council offer Café 140, Caf-fez and Mojos Restaurant and Café:

1. The option to retain the existing arrangements being Council fund 50% of the costs (with each business to fund the other 50%) with repayments to be made over a five (5) year period without interest .

OR

2. The option for Council fund 100% of the costs of the installation of the alfresco structures on a prefunding basis with the repayments to be made over a five (5) year period incorporating principal and interest.

Background

Following the Council Meeting of 25 May, meetings were held on Tuesday 16 June (Mojos), Wednesday 17 June (Café 140) and Thursday 18 June (Caf-fez) to discuss the proposals.

A further meeting was then held on Thursday 25 June 2015 with the three (3) property owners, the Mayor and Chief Executive Officer to discuss progressing each of their proposals. From discussions at the meeting, the following two (2) options were provided:

OPTION		Initial Payment from Business	Annual Repayment (over 5 year period)	Total cost to business
1	Council fund 100% with repayments to be made over 5 year period (including principle and interest)	\$0	\$3,330	\$16,500
2	Council fund 50% of the initial costs with repayments to be made over 5 year period	\$7,500	\$1,500	\$15,000

****The above figures are calculated on the amount of \$15,000**

Following consideration by each of the parties, it was determined that the preferred position was Option 1, thus the matter is being returned to Council for consideration.

Council Policy Compliance

Council Policy Use of Car Parking Bays for Outdoor Eating Areas in the CBD Policy was endorsed at the 12 May 2015 Ordinary Council Meeting. Caf-fez on road dining was approved as per Council Decision 455/14.

Legislative Compliance

Schedule 9.1 of the Local Government Act and the Local Government (Uniform Local Provisions) Regulations apply.

Officer Comments

Each of the structures will complement work that Council is doing to establish the alfresco area.

It is advised that the maintenance of the structures shall remain vested with the business and the business shall keep the structure adequately insured with the City jointly named as the loss payee and on request, the business shall provide the City with proof of insurance.

The City will remain part owner of the structures until all monies due have been repaid and should there be a desire to make any alterations to the structures, approval will be required to be sought from the City and alterations incorporated into insurance.

Analysis of Financial and Budget Implications

Subject to Council endorsement it is proposed that the costs of each of the structures would be funded from the existing project being PR-3725 - Establishment of Alfresco Dining in CBD from savings achieved in other 2014/15 projects.

Community Consultation

No Community consultation has occurred relating to this matter however the BCCI were engaged in consultation during the development of the policy.

Councillor/Officer Consultation

Councillors considered the matter of Alfresco Dining in the past and as recent as the Ordinary Meeting of 25 May 2015.

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

At its meeting held 23 June 2015 Council requested Decided to adjourn discussion on the item for one round to enable further discussion between Council Officers and the applicants/proponents to work towards a solution. Accordingly this matter is now referred to Council for consideration.

Recommendation

That Council pursuant to section 5.4 of Councils Standing Orders, agree to receive the item entitled “Development Application Seeking Planning Approval for a Change of Use – Unit 3 Lot 501 #15 Sandridge Road, East Bunbury” as a matter of urgent business.

14.2 Development Application Seeking Planning Approval for a Change of Use – Unit 3 Lot 501 #15 Sandridge Road, East Bunbury

File Ref:	P054367, DA/2015/111/1
Applicant/Proponent:	SPBY Pty Ltd (trading as SportsPower Bunbury) Land Owner: Citygate Properties Pty Ltd
Author:	Bob Karaszekwych, Director Planning, Development and Regulatory Services
Executive:	Bob Karaszekwych, Director Planning, Development and Regulatory Services
Attachments:	Appendix DPDS-1: Location Plan Appendix DPDS-2: Letter and Floor Plan Appendix DPDS-3: Revised Floor Plan Appendix DPDS-4: Comparison ‘Bulky Goods’ vs ‘Shop’ areas Appendix DPDS-5: SAT decision on The Rusticana ‘Shop’

Previous Council Resolution

At the Council meeting of 23 June 2015, Council resolved to defer this matter, which is now returned to Council for further consideration and decision.

Council Decision 221/15

In accordance with clause 11.1(b) of the City of Bunbury’s Standing Orders Local Law 2012 the discussion on the item titled “Development Application seeking Planning Approval for a Change of Use - Unit 3 Lot 501 #15 Sandridge Road, East Bunbury” be adjourned and the item be deferred for one round to enable further discussion to work with the owners towards a solution.

CARRIED
10 votes “for” / 1 vote “against”

Summary

The application for planning approval is for the proposed change of use of the subject site, Unit 3 Lot 501 #15 Sandridge Road, East Bunbury to enable the relocation of the SportsPower Bunbury from its current location in the Eaton Fair Shopping Centre.

The subject site currently has planning approval for a 'showroom'/ 'warehouse' use previously tenanted by a hardware store (Mitre 10) in the 'Mixed Business Zone'.

An earlier proposal was subject to a State Administrative Tribunal (SAT) appeal, which the applicant at the time, the landowner, Citygate Properties Pty. Ltd. withdrew the appeal before the matter proceeded to hearing for a decision. The applicant for the new application for planning approval for a change of use is the business owner of the SportsPower Bunbury store, which is part of a nation-wide sporting footwear, apparel and equipment retailing group.

SportsPower stores in Western Australia are typically located in areas where other shops are permitted, such as in shopping centres in metropolitan areas and on the main-street of regional town centres. As such, the format of SportsPower stores are classified as being a 'shop/retail' Planning Land Use Category (PLUC) under the Western Australian Planning Commission's (WAPC) Commercial Land Use Survey (1997).

Consequently, the proposal being predominantly a 'shop' use is deemed by the City of Bunbury Town Planning Scheme No. 7 (the Scheme) is an 'X' prohibited use in the 'Mixed Business Zone'. Accordingly, the Scheme requires that the local government must refuse to approve any 'X' use of land.

For the reasons outlined above, the application is recommended for refusal.

Procedural Motion

In accordance with clause 11.1(b) of the City of Bunbury's Standing Orders Local Law 2012 that discussion on the item titled "*Development Application Seeking Planning Approval for a Change of Use – Unit 3 Lot 501 #15 Sandridge Road, East Bunbury*" recommence.

Executive Recommendation

That Council:

1. Refuse the application for planning approval for the proposed change of use of Unit 3, Lot 501 #15 Sandridge Road, East Bunbury, (application reference DA/2015/111/1) in accordance with City of Bunbury Town Planning Scheme No. 7, for the following reasons:
 - (a) The proposal falls within the definition of 'shop' use class as contained in Schedule 1 of the Scheme. The use class of 'shop' is listed in Table No. 1 – Zoning Table of the Scheme, as an 'X' (not permitted) use in the 'Mixed Business Zone'.
 - (b) The proposal is contrary to the intent of the City of Bunbury Local Planning Strategy for Activity Centres and Neighbourhoods (December 2010).
 - (c) The proposal is contrary to the objectives of the Western Australian Planning Commission's Activity Centres for the Greater Bunbury Policy (April 2012), and as such, is not in accordance with Clause 10.2.1(e) of the Scheme.
 - (d) The proposal does not represent "orderly and proper planning", and as such is not in accordance with Clause 10.2.1(b) of the Scheme.
2. Advise the applicant and landowner of Council's decision.

Background

The application for planning approval for the proposed change of use of Unit 3, Lot 501 #15 Sandridge Road, East Bunbury (the subject site), was received on 30 April 2015. A summary table of the details relating to the subject site are as follows:

Property Address:	Lot 501 #U3/15 Sandridge Road, East Bunbury
Zoning:	Mixed Business Zone
Existing Land Use:	Showroom/Warehouse
Lot Area:	3,769m ²
Floor Area (Unit 3):	874m ² approximately

The subject site contains three (3) attached units fronting on to Sandridge Road situated near the traffic light controlled intersection of Sandridge Road, Picton Road and King Road. The previous tenant of Unit 3 was the hardware store Mitre 10. A location plan showing the subject site is **attached** at Appendix DPDS-1.

The application for planning approval is for the change of use of Unit 3, with no proposed changes to the existing building, landscaping or car parking configuration. Additionally, no signage or details on advertising is proposed with the application.

The proposed tenant of Unit 3, SportsPower Bunbury describes the business as “selling sporting footwear, apparel and equipment”. SportsPower stores currently operate in metropolitan and regional locations nationwide, including in the south-west region where they are currently operating in Eaton Fair Shopping Centre, and within the Busselton, Margaret River and Manjimup shopping centres.

The proposed floor plan and supporting letter from the applicant are **attached** at Appendix DPDS-2.

The proposal for a SportsPower store to operate out of Unit 3 was subject to a previous SAT appeal submitted in October 2014 on behalf the landowner Citygate Properties Pty. Ltd. Prior to this, the City of Bunbury had advised the applicant that as the “responsible authority” under the *Planning and Development Act 2005* having responsibility for the enforcement of the Scheme, it could not support the proposal. At that time, it was indicated that the primary reason for this was that the proposal conformed to the definition of a ‘shop’ land use class, which is an ‘X’ use ‘not permitted’ in the ‘Mixed Business Zone’.

If the proposal was able to be approved in the ‘Mixed Business Zone’, it can be expected that other existing sporting goods retailers within the City would seek to relocate to similar fringe areas where commercial floor space rents are usually cheaper. The proposal does not represent “orderly and proper planning”, and would likely undermine the retail primacy of the city centre and economic viability and competitiveness of other activity centres (where ‘shop’ use is permitted in both the ‘City Centre Zone’ and ‘Shopping Centre Zone’).

Below is a summary table outlining the chronology of events relating to the proposal leading up to the lodgement of the latest application for planning approval for the change of use of the subject site:

Date	Event
15 May 2009	The subject site received planning approval for a 'showroom' / 'warehouse' use.
07 Aug 2014	A written planning advice application was submitted (by a planning consultancy on behalf of the landowner) seeking written confirmation that 'SportsPower' could operate at the subject unit under the planning approval granted in 2009.
19 Aug 2014	The City of Bunbury provide written planning advice, advising that in its opinion the SportsPower proposal would be classified as a 'shop' use which is an 'X' not permitted use in the 'Mixed Business Zone'; and therefore, a SportsPower could not operate under the 2009 approval for a 'showroom' / 'warehouse' use.
02 Sept 2014	A change of use application (lodged by a planning consultancy on behalf of the landowner) for a change of use to 'showroom' / 'warehouse' use for a SportsPower was submitted.
04 Sept 2014	The City of Bunbury wrote to the applicant advising that the change of use application could not be accepted, as no change of use is proposed, and reiterated the opinion that SportsPower would be classified as a 'shop' use which is an 'X' use not permitted in the zone.
08 Sept 2014	A change of use application (by a planning consultancy on behalf of the landowner) for a change of use to 'showroom' / 'warehouse' uses and incidental use of 'shop' for a SportsPower was submitted.
10 Sept 2014	The City of Bunbury wrote to the applicant advising that the change of use application with the addition of the incidental use could not be accepted, as no change of use is proposed, and advised that incidental uses do not require planning approval. Additionally, the City of Bunbury reiterated that a SportsPower would be classified as a 'shop' use and refuted the assertion that the 'shop' use would be incidental.
12 Sept 2014	A change of use application (by a planning consultancy on behalf of the landowner) which did not nominate the proposed use was submitted.
23 Sept 2014	The City of Bunbury wrote to the applicant again advising that a SportsPower is classified as a 'shop' use which is an 'X' not permitted use in the zone and returned the application.
23 Oct 2014	An application for review of the City of Bunbury's decision was made on behalf of the landowner to the SAT.
01 Dec 2014	A SAT directions hearing was held, the outcome of which was that the matter would be referred to a hearing for a decision.
15 Jan 2015	Applicant (the landowner) decides to vacate the SAT hearing for a decision and proceed with mediation to resolve matter.
19 Feb 2015	SAT mediation session, with the outcome being that the applicant was to provide within specified timeframe additional information for the City of Bunbury's consideration.
17 Mar 2015	SAT mediation session where the additional information provided was discussed. Resolution between the City of Bunbury and the applicant did not occur. The outcome being that the matter would be referred back to a SAT hearing for a decision.
23 Apr 2015	SAT appeal was withdrawn by the then applicant (the landowner) prior to the matter being referred to hearing for a decision.
30 Apr 2015	A new change of use application was submitted, with the applicant being the proprietors of SportsPower Bunbury.
07 May 2015	The new application for planning approval for a change of use was accepted by the City of Bunbury for assessment, after legal advice from City's solicitor was obtained due to the previous history of the proposal.

Council Policy Compliance

An application for planning approval to permit a change of use is required to be in compliance with the Scheme and applicable provisions of both the State and Local Planning Policy Framework.

The proposal is not compliant for the following reasons:

- * In accordance with the Scheme definitions, the proposal is classified as being predominantly a 'shop' use. The use class of 'shop' is listed in Table No. 1 – Zoning Table of the Scheme as an 'X' (not permitted) use in the 'Mixed Business Zone'. The explanatory note to clause 4.3.2 of the Scheme states that the local government must refuse to approve any 'X' use of land.
- * The proposal may not be considered to represent orderly and proper planning, as required under clause 10.2.1(b) of the Scheme, due to the fact that approving development not permitted in a zone undermines the specific objectives of that zone and other affected zones.
- * The proposal does not satisfy the objectives of the WAPC's Activity Centres for Greater Bunbury Policy (April 2012), which is contrary to the Scheme at clause 10.2.(e).
- * The proposal does not accord with the intent of the City of Bunbury Local Planning Strategy for Activity Centres and Neighbourhoods (December 2010).

Officer Comments

At the Council meeting of 23 June 2015, the Mayor commented that Officers, the Owner and the Applicant needed to work together towards a solution that allowed for a maximum 20% retail floor space.

Prior to the meeting on 23 June 2015, Planning Solutions (acting on behalf of the applicant) was requested to consider the Kalgoorlie model of the SportsPower store. That store predominantly sold bulky sports goods with incidental clothing apparel and items associated with bulky sports equipment. Planning Solutions had intimated that that was the intended model. However, this is not reflected in the information provided or plan submitted with the application.

On 26 June, the City wrote to Planning Solutions on Council's resolution requesting to modify the application to reflect the requested maximum 20% retail floor space that is categorised as a Shop. Consideration was to be given to arguments presented at the SAT during mediation on the previous SportsPower DA, and the SAT decision on The Rusticana 'Shop' as representing the preferred outcome for the City.

The response from Planning Solutions for the applicant was in summary as follows:

"Specifically I have requested a plan from SportsPower to show the maximum 20% apparel floor area as discussed on Tuesday.....I noted in the agenda there were some comments about incidental items associated with the bulky good which are offered, as being (if I understand it correctly) acceptable, so we are specifically referring to the apparel which was the area of contention."

Planning Solutions sought clarification from the applicant on the scenario someone seeking to purchase a bike, for example would have the ability to purchase a light, panniers or similar

accessories in the same shop rather than have to go elsewhere to do so. Similarly, with regard to chains, bandages, elastic bands for boxing equipment.

Planning Solutions has mistakenly come to the view that ***“incidental items associated with bulky goods as being acceptable”***.

Planning Solutions has provided a modified plan. Those modifications include:

- * Moving the shoes to the rear wall.
- * Moving the rear wall closer to the front of the store, to increase the size of the storeroom.
- * Introducing a central corridor through the apparel to provide access between the rear store and the bulky shopfloor displays.
- * Replacing the central service counter with seasonal bulky sports goods.
- * The apparel and clothing now has a floor area of 170m² – 19.5% of the tenancy area.

The City sought information on the composite area of all areas set aside for incidental items, such as bike/fitness/sports/bulky sports' accessories, boxing and fitness equipment. Further, the term *“seasonal bulky sports equipment”* requires clarification, as well as, what is intended for that area located along the frontage of the premises identified for 'fitness accessories' also what is intended for the area behind the Service Desk.

A calculation of the floor areas of the above represents some 64% floor area as a retail 'Shop' use, whereas 20% for bulky goods. A revised floor plan is **attached** at Appendix DPDS-3. A generalised comparison of 'Bulky Goods' (coloured Orange) vs 'Shop' (coloured Blue) floor areas is **attached** at Appendix DPDS-4.

Total area of the premises (as calculated on the submitted Plan) is 720sqm, comprising:

- * Apparel/accessories/ sports equipment/ boxing equipment/ fitness equipment/shoes 463m² (64.30%), retail Shop.
- * Bulky goods 140sqm (20%)
- * Change Rooms 9.72sqm
- * Service Desk 32.43sqm
- * Back of House/ Storage 192.48sqm

Total floor area comprising the above elements is approximately 837.63m² exceeding the total area of the premises as calculated on the submitted Plan by some 117.63m², without explanation.

The proposition that the sale of “bulky goods” must be sold with incidental accessories to make a sale is not persuading reasoning. The sale of bulky goods with accessories was not supported by the SAT in previous similar applications in the Mixed Business Zone. It was made clear that 20% is to relate to the display and sale of non-bulky goods, as being the benchmark of acceptability within the Mixed Business Zone. For a planning authority to make a reasoned and practical planning decision it is appropriate to refer to precedents and discussions at the SAT.

Planning Solutions has stated that it believes the City has not properly or correctly interpreted its representations and submissions.

The City's view is that there is insufficient reasoning to appreciate that there may be a 'point of difference'. To allow the proposal is to allow an unfettered retail 'Shop' activity in the Mixed Business Zone as the proposed conditions of approval are so nebulous to be meaningless in terms

of future enforcement as nothing could be ‘measured’ by area or % floor area of the premises distinguishing bulky goods from incidental accessories.

The application, as has been amended since the Council meeting, is still predominantly a “Shop”, and as such, should be refused. The correct way of looking at this is to see the SportsPower proposal as an application to change the use from the approved Showroom use to the not permitted Shop use, unless further modified as is suggested below.

If the applicant was prepared to modify the ‘change of use’ application in such manner that on Plan demonstrates the premises is predominantly for the display and sale of ‘bulky (sports) goods’ incorporating incidental accessories, a conditional approval is only then, possible.

It is noted that no Planning Approval is required for the display and sale of ‘bulky goods’, with incidental accessories to an acceptable maximum 20% floor area within the existing Showroom in the Mixed Business Zone.

The reference to 20% is founded in the decision of the SAT in relation to the matter that granted approval for The Rusticana ‘Shop’ in the Mixed Business Zone. The SAT decision is attached at Appendix DPDS-5.

Should the applicant press for a Planning Approval for the “change of use”, this calls up the requirement for a new Plan with specific floor areas for the ‘bulky (sports) goods’ and incidental equipment, accessories and items expressed in square metres and as a percentage % of the floor area of the entire premises on the same principle as the SAT decision, for The Rusticana ‘Shop’.

Such a Plan would specifically distinguish between ‘bulky (sports) goods’ and limiting the floor space for incidental items and accessories that represent a ‘Shop’ use. Only in those circumstances, could the application be considered to satisfy the requirements of the planning scheme and State and local planning policy framework.

An approval, incorporating conditions of approval, should require:

That Council:

1. Grant the application for Planning Approval for a change of use of the Showroom at Unit 3, Lot 501 #15 Sandridge Road, East Bunbury, (application reference DA/2015/111/1), in accordance with City of Bunbury Town Planning Scheme No. 7, subject to the following conditions:
 - (a) The development (Change of Use) is approved on the condition that it will be conducted as a ‘Showroom’ for the display and sale of ‘Bulky (sports) Goods’ and incidental accessories and items, such as clothing apparel/ accessories/ sports equipment/ boxing equipment/ fitness equipment and shoes associated with the sale of ‘Bulky (sports) Goods’, and only associated with those uses and activities shown on the approved Plan. References in these conditions to areas of the premises are references to the areas as shown on the Plan.
 - (b) Development (Change of Use) shall be in accordance with the approved Plan of development that forms part of this approval.
 - (c) The floor area that defines incidental accessories and items (referred to in 1.a.) associated with the display and sale of ‘Bulky (sports) Goods’, is not to exceed 144m² (20%) of the total floor area of the premises of the 720m² in area.

- (d) The retail sale of incidental accessories and items (referred to in 1.a.) shall be carried out only within the defined floor area of 144m² (20%), and is to be maintained at a level and form that is manifestly ancillary and incidental to the sale of 'Bulky (sports) Goods'.
- (e) The 144m² (20%) of the total floor area of the premises defined for the sale of bulky goods are not to be used for any other purpose.
- (f) Those areas defined on the approved plan as Service Desks, Office/ Amenities, Bike and Fitness Repairs, Storage and Change Rooms is not to reduce below 234.18m² (32.5%) of the total floor area of the premises.
- (g) The floor area defined as Access for Bulky Goods is not to reduce below 27.27m². Reference in this condition includes the entire floor area depicted for access through to the front of the premises on the Plan.
- (h) Customers and members of the public generally are not to have access to the Storage area.
- (i) The layout of the premises and the activities conducted on the premises are not to be changed from what is shown in the Plan, including discontinuance of any element, without the planning approval of the City.
- (j) This approval will expire if the approved development (change of use) has not substantially commenced within two (2) years, from the date of issue of this approval, or within any extended period of time the City has granted prior written consent.

2. Advise the applicant and submitters of Council's decision.

Officer's previous comments

The main point of contention concerning this proposal centres on the appropriate land use classification, and subsequently whether or not the proposed use is permitted in the relevant zone.

When considering the appropriateness of the proposed land use classification, reference must be made to the land use definitions provided in Schedule 1 of the Scheme in order to determine which land use class the activity most reasonably falls within. Interpretation of the land use definitions is further guided by established planning law principles and precedents in case law set by previous SAT decisions.

From assessing the provided floor plan and the applicant's supporting letter (**attached** at Appendices DPDS-2) detailing the types of goods to be sold, estimated percentage of floor area for the sale and display of goods and estimated percentage of sales between different types of goods – it is reasonably concluded that the proposal represents a distinct and predominate 'shop' use, hence is a 'not permitted' use in the zone.

The applicant puts forward that the proposal should be classified as being predominantly a 'showroom' use with an incidental 'shop' use. The applicant's justification for the proposal is **attached** at Appendix DPDS-2, which can be summarised as follows:

"The predominate use of the SportsPower premises will be as a 'showroom' comprising of the sale and hire of bulky goods – a use which Council has the ability to approve. The sale of sporting footwear and apparel and sporting accessories, and the repair of bicycles and fitness equipment, is incidental".

By way of context, the Scheme at Schedule 1 defines a 'shop' use as:

"... means a premises used to sell goods by retail, hire goods, or provide services of a personal nature (including a hairdresser or beauty therapist) but does not include a showroom or a fast food outlet".

Whereas, a 'showroom' use is defined under Schedule 1 of the Scheme as:

"... means a premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light facilities, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools or goods of a bulky nature".

Furthermore, an 'incidental use' is defined under Schedule 1 of the Scheme as:

"... means a use of premises which is ancillary and subordinate to the predominate use".

Therefore, as the nature of products sold in SportsPower stores (i.e. the retail sale of "sporting footwear, apparel and equipment") are not explicitly referenced in the Scheme's definition for a 'showroom' use - in order for a premises to be classed as such - it must predominately display and sell 'goods of a bulky nature'.

The expanded definition of 'bulky goods retail or showroom' given in the WAPC's Activity Centres for the Greater Bunbury Policy (April 2012) provides some clarification as to the meaning of the term 'goods of a bulky nature' as that requiring:

"... a large area for handling, display or storage; or direct vehicle access to the site of the premises by the public for the purpose of loading goods into a vehicle after purchase or hire, but does not include Shop/retail."

The subject site is located within the 'Mixed Business Zone', which primarily serves the purpose of catering for large format trading, including bulky goods retailing.

As is clearly articulated in the WAPC's policy, bulky goods are displayed and sold from showrooms that typically comprise extensive display and storage areas with direct vehicle access and car parking. Bulky goods retailing does not include the sale of food, clothing or personal effects goods. Moreover, the Commission's policy states that areas dedicated for bulky goods retailing or showrooming do not reflect pedestrian friendly characteristics, and hence, locating such development in an adhoc manner or as ribbon development along regional roads should be discouraged.

Although 'shop' use, in accordance with the Scheme's zoning table, is listed as an 'X' use 'not permitted' in the 'Mixed Business Zone', the premises may have an incidental 'shop' use element. An incidental use does not need to be considered under the Zoning Table of the Scheme or explicitly referenced in the determination notice.

The determination that a 'shop' use may be incidental and therefore permissibility is based on fact and degree, and there is no prescribed standard for establishing the relative proportion of floor space area that can be relied upon. Nevertheless, the following factors are to be assessed when considering if a use is in fact incidental to the predominant use of a premises:

- (a) whether the incidental use relies on the predominate use or can operate independently;
- (b) the type and proportionate breakdown of floor space areas;
- (c) the proportion of sales and/or profit between the uses; and
- (d) the number of bulky goods and non-bulky goods displayed and sold.

For the following reasons, the proposal predominantly falls into the 'shop' land use Class, as opposed to being an incidental use:

- * The 'shop' use could operate independently and does not rely on the 'showroom' use.
- * The floor plan provided by the applicant references 'bulk apparel', 'bulk stack hardware', 'bulk ball and product display' and 'ball bins bulk'. Whilst the word 'bulk' is used frequently, this term can be deceiving, as these items individually are not bulky in nature (i.e. a T-shirt or football) and would therefore be classified as items normally sold in a 'shop/ retail' premises, as defined under the Planning Land Use Category (PLUC) of the WAPC's Commercial Land Use Survey (1997).
- * The applicant states that 25% of the total floor area will be allocated to the display and sale of non-bulky items. From reviewing the provided table of floor area breakdown and percentage figures, it can be determined that approximately 50% of the total floor area would be allocated to 'shop/ retail' activity (i.e. a floor space area calculation of 40.7% being dedicated to the display and sale of non-bulky items and a proportion of floor area dedicated to the associated storage, administration and service desks). As this figure is approximately half of the total floor area, it cannot reasonably be considered as representing an incidental use of the premises.
- * On face value, it cannot be determined that the "associated accessories" referred to in the application can be classified within the 'showroom' use definition. It is assumed that the term "associated accessories" refers to items, such as bicycle helmets, table tennis paddles, boxing gloves, etcetera.
- * Further to the floor space area calculation, there needs to be consideration given to the number of items displayed for retail sale. For example, there would only be a relatively small number of basketball hoops (a bulky item) displayed in the same amount of area that a relatively large number of T-shirts (a non-bulky item) would be displayed in.
- * In relation to projected sales calculations in dollar amounts for the 'shop' use, the applicant states that 23% of total sales will be related to non-bulky items. From reviewing the provided table of projected sales breakdown and percentage figures, it can be determined that approximately 44.2% of the total projected sales will be related to non-bulky items. Again, this is nearly half of the total projected sales and cannot be considered to be akin to an incidental use. Notwithstanding, a consideration of the volume of sales alone is problematic, as bulky items are generally higher in price than non-bulky items.
- * The repair of fitness equipment and bicycles is incidental to the 'showroom' use, being an 'industry-service' use (1.7% of total floor area and 3.7% in total projected sales). Therefore, this activity has not been included in the City of Bunbury's assessment calculations for 'showroom' use.

Albeit that the applicant has provided an estimated percentage breakdown of floor space areas and projected sales figures between bulky goods and other shop/ retail items, the ongoing operation of the business as a 'showroom' use in accordance to those estimations would be problematic to enforce, due to exposure to unavoidable market forces (i.e. changing customer demands, prices, trends, etc.).

In the circumstance where the grant of planning approval was possible, the ‘responsible authority’ would need to be certain that the proposal demonstrated beyond reasonable doubt:

- * veracity of land use classification as a ‘showroom’; and
- * that the floorspace estimates for predominate and incidental uses were correct and fixed, and not subject to significant variation, over time, as this would potentially invalidate any planning approval.

Also, as outlined above, there are discrepancies between the classification of items and percentage breakdowns. There would need to be consensus between the “responsible authority” granting planning approval and the applicant on what type of goods would be established as being bulky and non-bulky items.

At the time of writing this report, there are number sports and surf equipment/ apparel retailers in the Bunbury city centre. Those retailers are classified under the Scheme as a ‘shop’ use, and are located in the ‘City Centre Zone’ where a ‘shop’ use is permitted. Site visits have established that those retailers normally display and sell a range of bulky and non-bulky products similar to the proposal in question (e.g. basketball hoops, trampolines, gym weight machines, kayaks, surfboards, etc.).

If operated as a ‘shop’ use in the ‘Mixed Business Zone’, the proposal would be contrary to the Scheme, as well as, the objectives of the WAPC’s Greater Bunbury and City of Bunbury strategic planning documents, particularly as a ‘shop’ use in the ‘Mixed Business Zone’ is likely to have a marked adverse economic impact on the future mix of retailers in the city centre and other suburban activity centres. Conversely, the function and affordability of land in the ‘Mixed Business Zone’ may be compromised as large format traders, such as genuine showrooming and warehousing business, are priced out of this dedicated area due to market forces, if shops were permitted to compete for the same tenancies.

It is recommended that the change of use application should be refused, due to the land use being ‘not permitted’ in the zone and contrary to the objectives of both Commission and Council adopted planning frameworks.

Analysis of Financial and Budget Implications

The application for planning approval to permit the change of use relates to a private lot, and therefore, the development and or use of the land itself has no direct budgetary or financial implications for the City of Bunbury.

The City of Bunbury has incurred legal costs for advice and representation in relation to a very similar application the subject of a previous SAT appeal withdrawn by the then applicant (the landowner) in April 2015.

Should the current applicant be aggrieved by the Council decision to refuse the application then they may seek an appeal for a review of the decision by the SAT. If the decision is forwarded to SAT for an appeal, the City of Bunbury may incur some legal costs.

The Development Application was lodged on the 30 April 2015. The City is required to determine the application within 60 days (29 June 2015). If the application had been advertised this would have extended the period for decision to 90 days. The applicant can regarded this application as a deemed refusal as the timeframe for decision has expired. The applicant has not advised of an

extension of time for Council's consideration, hence the opportunity to refer this matter to the SAT, regardless of Council's decision on 7 July.

Should a third party, for example a business competitor, government agency or a person be aggrieved by the Council decision to approve an application "beyond its powers", they may challenge that decision in the Supreme Court by way of a *Writ of Certiorari*, a form of judicial review to the Supreme Court, whereby a person may seek an order to be issued by the Court against a tribunal, local government, public body or official, requiring it to perform a duty that it has failed to perform (i.e. the Council failing to implement the Scheme correctly). Should judicial review of Council's decision occur then the City of Bunbury would incur significant legal costs.

The City of Bunbury has a statutory duty under the *Planning and Development Act 2005* to properly administer its Local Planning Scheme by making "orderly and proper" planning decisions.

Community Consultation

The recommendation is to refuse the application for planning approval for a change of use of the subject site as proposed. Accordingly, the application has not been advertised for public comment.

Councillor/Officer Consultation

The proposal has been referred to the City of Bunbury's Development Coordination Unit (DCU) for professional advice and technical assessment, prior to the finalisation of this report.

Delegation of Authority

The proposed change of use is referred to the Council for decision, as officers of the City of Bunbury do not have delegation to refuse applications for planning approval.

Relevant Precedents

In 2014, an application for planning approval (reference DA/2013/289/1) was lodged for the proposed change of use of a tenancy to support the relocation of the business Rusticana to the Homemaker Centre, which is located in the 'Mixed Business Zone'. The application was refused at the Ordinary Council Meeting on 18 February 2014, as the proposal:

- * fell within the definition of 'shop' use class, and in accordance with the Scheme's zoning table, was an 'X' a 'not permitted use' in the 'Mixed Business Zone'; and
- * was considered to be contrary to strategic land use policy objectives, and hence, not consistent with "orderly and proper planning".

The decision was appealed at the SAT, resulting in the tribunal directing the Council to reconsider the application with the benefit of additional information supplied by the applicant to the Ordinary Council Meeting on 19 August 2014, where the previous decision of refusal was upheld.

In 2010, an application for planning approval (reference number: DA/2010/88/1) was lodged for the proposed establishment of an additional use class not listed, namely 'other retail – apparel' in the 'Mixed Business Zone'. This application was refused at the Ordinary Council Meeting on 08 June 2010 as the proposal involved a retailing element that fell within the 'shop' use class, and in accordance with the Scheme's zoning table, was deemed to be an 'X' 'not permitted use' in the 'Mixed Business Zone'.

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