



Agenda

Ordinary Council Meeting

25 May 2023

Notice of Meeting

Notice is hereby given that the next Ordinary Council Meeting of the Shire of Exmouth will be held on 25 May 2023, in the Mandu Function Room, Ningaloo Centre, 2 Truscott Crescent, Exmouth commencing at 4.00 pm.

A handwritten signature in black ink, appearing to be 'Ben Lewis', with a long horizontal stroke extending to the right.

Ben Lewis
CHIEF EXECUTIVE OFFICER

25 May 2023

Disclaimer

The advice and information contained herein are given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note that this agenda contains recommendations which have not yet been adopted by Council.

No responsibility whatsoever is implied or accepted by the Shire of Exmouth for any act, omission, statement or intimation occurring during the Council/Committee meetings or during formal/informal conversations with staff. The Shire of Exmouth disclaims any liability for any loss whatsoever and however caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broader disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of Exmouth during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of Exmouth. The Shire of Exmouth warns that anyone who has an application lodged with the Shire of Exmouth must obtain and should only rely on written confirmation of the outcome of the application, and any conditions attached to the decision made by the Shire of Exmouth in respect of the application.

SNAPSHOT

Strategic Community Plan 2023-2033



Your Choice. Our Future.

VISION

A globally recognised community of guardians for our unique environment and culture as we pursue innovations for sustainable growth.

GOALS

The goals are organised in five strategic pillars: Social, Natural Environment, Built Environment, Economy, and Governance and Leadership.

SOCIAL

Nurture a friendly, safe and inclusive community spirit.

- Improve local community and visitor experiences.
- Ensure a full suite of services to meet the needs of families and individuals at all ages and stages of life.
- Build community cohesion and connectedness.



GOVERNANCE & LEADERSHIP

Foster open, transparent & accountable leadership, working collaboratively & in partnership with our community & stakeholders.

- Forward-thinking leadership for efficient & sustainable operations.
- Continued focus on transparent, accountable leadership & community & stakeholder engagement.
- Council & administration plan & lead with good governance.



ECONOMY

Enhance a robust, resilient & diversified economy that champions innovation.

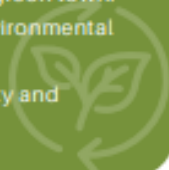
- Increase opportunities for smart and sustainable business ideas.
- Establish Exmouth as a vibrant, welcoming and environmentally aware destination.
- Promote Exmouth as a thriving economy based on its regional strength as a global environmental hotspot.



NATURAL ENVIRONMENT

Embrace natural sensitivities and promote positive change.

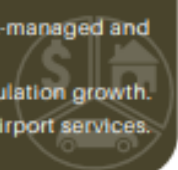
- Establish Exmouth as a clean and green town.
- Prepare Exmouth for changing environmental conditions.
- Increase awareness of sustainability and environmental issues.



BUILT ENVIRONMENT

Enable sustainable development and infrastructure that meets the needs of the community, visitors and industry.

- Infrastructure and assets are well-managed and maintained.
- Plan and cater for increased population growth.
- Revitalisation and expansion of airport services.



Disclosure of Interest Form

(Elected Members/Committee Members/Employees/Contractors)
Local Government Act 1995 (Section 5.65, 5.70, 5.71 & 5.71(B))

To: Chief Executive Officer

Name [Click here to enter text.](#)

Elected Member Committee Member Employee Contractor

Ordinary Council Meeting held on [Click here to enter text.](#)

Special Council Meeting held on [Click here to enter text.](#)

Committee Meeting held on [Click here to enter text.](#)

Other [Click here to enter text.](#)

Report No [Click here to enter text.](#)

Report Title [Click here to enter text.](#)

Type of Interest (*see overleaf for further information)

Proximity Financial Impartiality

Nature of Interest

[Click here to enter text.](#)

Extent of Interest (if intending to seek Council approval to be involved with debate and/or vote)

[Click here to enter text.](#)

Signed: _____ Date: [Click here to enter text.](#)

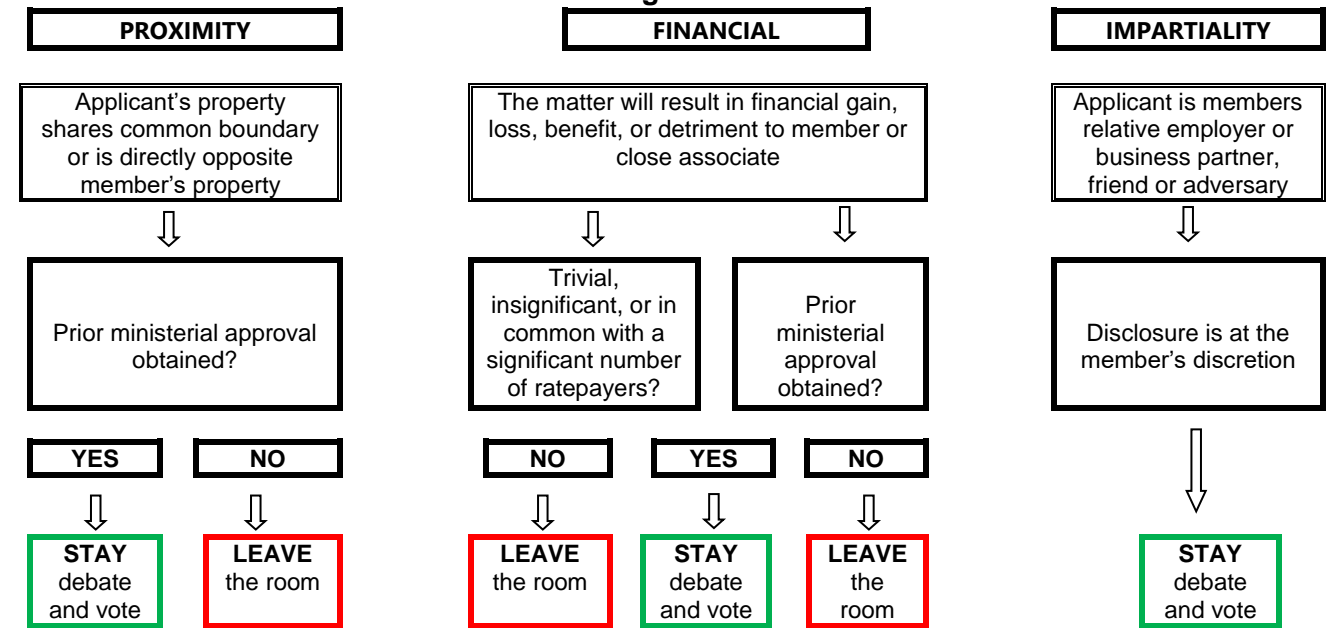
- **Note 1** - Elected Members/ Committee Members/Employees refer to the Disclosure of Interest Declaration card when disclosure is being read out at Council or Committee Meeting.
- **Note 2:** For Ordinary meetings of the Council, elected members and employees are requested to submit this completed form to the Chief Executive Officer prior to the meeting. Where this is not practicable, disclosure(s) must be given to the Chief Executive Officer prior to the matter being discussed.
- **Note 3:** Employees or Contractors disclosing an interest in any matter apart from at meetings, where there is a conflict of interest including disclosures required by s5.71 are required to submit this form to the CEO as soon as practicable.

CEO: _____ Signed: _____ Date: _____

OFFICE USE ONLY

Particulars recorded in Minutes Particulars recorded in Register

*** Declaring an Interest**



Local Government Act 1995 – Extract

s.5.60A - Financial Interest

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.

s.5.60B – Proximity Interest

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.

5.65 - Members' interests in matters to be discussed at meetings to be disclosed.

(1) A member who has an interest in any matter to be discussed at a council or committee meeting that will be attended by the member must disclose the nature of the interest:

(a) in a written notice given to the CEO before the meeting; or (b) at the meeting immediately before the matter is discussed. (Penalties apply).

(2) It is a defence to a prosecution under this section if the member proves that he or she did not know: (a) that he or she had an interest in the matter; or (b) that the matter in which he or she had an interest would be discussed at the meeting.

(3) This section does not apply to a person who is a member of a committee referred to in section 5.9(2)(f).

5.70 - Employees to disclose interests relating to advice or reports.

(1) In this section: 'employee' includes a person who, under a contract for services with the local government, provides advice or a report on a matter.

(2) An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.

(3) An employee who discloses an interest under this section must if required to do so by the council or committee, as the case may be, disclose the extent of the interest. (Penalties apply).

5.71 - Employees to disclose interests relating to delegated functions.

If, under Division 4, an employee has been delegated a power or duty relating to a matter and the employee has an interest in the matter, the employee must not exercise the power or discharge the duty and:

- (a) in the case of the CEO, must disclose to the mayor or president the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter; and (b) in the case of any other employee, must disclose to the CEO the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter. (Penalties apply)

5.71A. - CEOs to disclose interests relating to gifts in connection with advice or reports

(1) A CEO who has an interest relating to a gift in a matter in respect of which the CEO proposes to provide advice or a report, directly or indirectly, to the council or a committee must disclose the nature of the interest in a written notice given to the council.

(2) A CEO who makes a disclosure under subsection (1) must not provide the advice or report unless the CEO is allowed to do so under section 5.71B(2) or (6).

(3) A CEO who has an interest relating to a gift in a matter in respect of which another employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when the advice or report is provided.

Local Government (Administration) Regulations 1996 – Extract - In this clause and in accordance with Regulation 19AA "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.

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1. Declaration of Opening and Announcements

2. Attendance, Apologies and Approved Leave of Absence

Councillor D (Darlene) Allston	Shire President
Councillor J (Jackie) Brooks	Deputy Shire President
Councillor H (Heather) Lake	
Councillor D (David) Gillespie	
Councillor M (Matthew) Niikkula	
Mr Ben Lewis	Chief Executive Officer
Mr Chris McNamara	Deputy CEO/Community and Economic Growth
Mr Mike Richardson	Executive Manager Infrastructure Services
Mr Gollie Coetzee	Executive Manager Corporate Services
Ms Michelle Head	Minute Taker

Gallery

<u>Apologies</u>	Councillor M (Mark) Lucas Gollie Coetzee, Executive Manager Corporate Services
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3. Response to Previous Public Questions Taken on Notice

Nil.

4. Public Question Time

In accordance with section 5.24 of the *Local Government Act 1995*, a 15-minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them.

Council Consideration Towards Public

When public questions necessitate resolutions of Council, out of courtesy and at the Shire President's discretion the matter is to be dealt with immediately to allow the public to observe the determination of the matter (obviates the need for the public to wait an undetermined period of time).

When a matter is listed on the Agenda and member/s of the public are in attendance to observe the determination of the matter, out of courtesy and at the discretion of the Shire President the matter is to be brought forward on the agenda and dealt with immediately to allow the public to observe the determination of the matter (again this obviates the need for the public to wait an indeterminate period of time).

5. Declarations of Interest

Nil.

6. Applications for Leave of Absence

The *Local Government Act 1995* (Section 2.25) provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. A member who is absent, without first obtaining leave of the Council, throughout three consecutive Ordinary meetings of the Council is disqualified from continuing his or her membership of the Council.

Disqualification from membership of the Council for failure to attend Ordinary Meetings of the Council will be avoided so long as the Council grants leave prior to the member being absent. The

leave cannot be granted retrospectively. An apology for non-attendance at a meeting is not an application for a leave of absence.

7. Confirmation of Minutes of Previous Meetings

That the Minutes and associated attachments of the Ordinary Council Meeting of the Shire of Exmouth held on 23 March 2023 be confirmed as a true and correct record of proceedings

8. Announcements/ Reports of Elected Members

Shire President Allston	
Councillor Brooks	16/05 Tourism Awards
Councillor Gillespie	
Councillor Lake	
Councillor Lucas	
Councillor Niikkula	

9. Announcements by the Presiding Person without Discussion

10. Petitions/ Deputation/Presentations/ Submissions

Nil.

11. Matters Arising from Committees of Council

Nil.

12. Reports of Officers

EXECUTIVE SERVICES

12.1.1 ADVOCACY PRIORITY LIST

File Reference	GR.SL.0
Reporting Officer	Chief Executive Officer
Responsible Officer	As above
Date of Report	12 April 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachment	1. Advocacy Priority List

Purpose

1. That Council endorse the Advocacy Priority List in Attachment 1.

Background

2. Council at its Ordinary Council meeting in 15 December 2022 adopted the new Strategic Community Plan 2023 – 2033 (SCP). Following the adoption, the administration then reviewed the existing advocacy infrastructure document to determine its relevance to the new SCP.
3. On review, there were several items that had been completed and some items that did not align with the new SCP.
4. Following the Ordinary Council meeting held on 23 March 2023, the administration held a workshop with Council to determine the priority list for Council to adopt.

Comment

5. The new priority list is made up of a number of previous as well as new items that align with the new SCP.
6. The intent of adopting the priority list is so that the administration can then create a glossy brochure which can be used as a marketing tool to leave with Ministers and other dignitaries when advocating for projects.
7. Having a document that clearly articulates the priorities of the Shire of Exmouth is critical and has proved successful in the past.

Consultation

8. The administration has been in discussions with GRA Partners regarding the advocacy list and preparations for lobbying both state and federal government ministers.
9. GRA Partners have advised that once Council has endorsed the priority list, they will run a workshop to prioritise the top three items that are shovel ready within Council's responsibility.

Statutory Environment

10. Nil.

Policy Implications

11. Nil.

Financial Implications

12. There is no financial implication to adopt the priority list. However, there will be costs associated with engaging GRA Partners to provide support and assistance when lobbying commences. There will also be costs associated with travel to meet with Ministers which has been included in the current and draft 2023/24 budget.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Performance – not having an endorsed list Council runs the risk of not performing at an optimal level when advocating to Ministers on behalf of the community	Possible	Moderate	Moderate	Endorse the priority list which will provide clear direction for the administration
Reputational – Reputational damage in the eyes of the community by not advocating on behalf of the wider community	Possible	Minor	Moderate	Endorse the priority list which is in accordance with the SCP and the resolution minuted in the public forum for the community

Risk Matrix

Consequence \ Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

13. Council could resolve not to endorse the priority list or could amend the priority list.

Strategic Alignment

14. This item is relevant to the Council's approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Social	<p>Nurture a friendly, safe and inclusive community spirit</p> <p>1.1 Improve local community and visitor experiences.</p> <p>1.2 Ensure a full suite of services to meet the needs of families and individuals at all ages and stages of life</p>
Natural Environment	<p>Embrace natural sensitivities and promote positive change</p> <p>2.2 Prepare Exmouth for changing environmental conditions</p> <p>2.3 Increase awareness of sustainability and environmental issues</p>
Built Environment	<p>Enable sustainable development and infrastructure that meets the needs of the community, visitors and industry</p> <p>3.1 Infrastructure and assets are well-managed and maintained</p> <p>3.2 Plan and cater for increased population growth</p>
Economy	<p>Enhance a robust, resilient and diversified economy that champions innovation</p>

- 4.2 Establish Exmouth as a vibrant, welcoming and environmentally aware destination
- 4.3 Promote Exmouth as a thriving economy based on its regional strength as a global environmental hotspot

Governance &
Leadership

Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders

- 5.1 Forward-thinking leadership for efficient and sustainable operations
- 5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement
- 5.3 Council and administration plan and lead with good governance

Voting Requirements

15. Simple Majority.

Officers Recommendation

Item 12.1.1

That Council ENDORSE the Advocacy Priority List in Attachment 1 to this report.

12.1.2 AFFIXING COMMON SEAL UNDER DELEGATED AUTHORITY

File Reference	GV.AU.1
Reporting Officer	Chief Executive Officer
Responsible Officer	Chief Executive Officer
Date of Report	15 May 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachment	Nil

Purpose

- To advise Council of the documents that have had the Shire of Exmouth common seal affixed under delegated authority since the last council meeting on the 23 March 2023.

Background

- There have been 7 documents that have had the Shire's common seal affixed under delegated authority since the last Council meeting.

Comment

3.

Document	Details	Parties
Sub Lease	Exmouth Business Hub: 05/01/23 – 05/07/23 05/07/23 – 05/01/24	Shire of Exmouth, Exmouth Chamber of Commerce and Di Candilo Steel City
Licence to Occupy Crown Land	Total Solar Eclipse Event. Licence 03415/1965_A12437259	Shire of Exmouth and Department of Planning
Sub Lease	Exmouth Business Hub: 02/12/22 – 01/06/23 02/06/23 – 16/04/24	Shire of Exmouth, Exmouth Chamber of Commerce and Patches Therapy Services
Licence to Occupy Crown Land	Total Solar Eclipse Event Licence 00596/2010_A12461571	Shire of Exmouth and Department of Planning
Instrument of Agreement	Supply and installations of ablutions	Shire of Exmouth and Abrolhos Steel Pty Ltd
Memorandum of Understanding	Digital Information Kiosk at Ross Street Mall	Shire of Exmouth and Exmouth IGA
Instrument of Agreement	Supply of Earthmoving Plant Equipment and Road Base Materials	Shire of Exmouth and Exmouth Civil Pty Ltd

Consultation

- Nil

Statutory Environment

- Local Government Act 1995*, Part 9, Division 3, s9.49A (1)(2) *Execution of Documents*

(1) *A document is duly executed by a local government if —*

(a) *the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or*

(b) *it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.*

(2) *The common seal of a local government is not to be affixed to any document except as authorised by the local government.*

- (3) The common seal of the local government is to be affixed to a document in the presence of —
(a) the mayor or president; and
(b) the CEO,
each of whom is to sign the document to attest that the common seal was so affixed.

Policy Implications

6. Nil.

Financial Implications

7. Nil

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Performance (operational) – That executed documents would be void if the common seal was not affixed in accordance with the requirements of the Local Government Act 1995	Almost Certain	Major	High	Council to endorse the use of the common seal

Risk Matrix

Consequence \ Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

8. Nil.

Strategic Alignment

9. This item is relevant to the Council's approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Governance & Leadership	<p>Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders</p> <p>5.1 Forward-thinking leadership for efficient and sustainable operations</p> <p>5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement</p> <p>5.3 Council and administration plan and lead with good governance</p>
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Voting Requirements

10. Simple Majority.

Officers Recommendation		Item 12.1.2
That Council ACCEPT that the common seal has been affixed under delegated authority to the following documents:		
Document	Details	Parties
Sub Lease	Exmouth Business Hub: 05/01/23 – 05/07/23 05/07/23 – 05/01/24	Shire of Exmouth, Exmouth Chamber of Commerce and Di Candilo Steel City

Licence to Occupy Crown Land	Total Solar Eclipse Event. Licence 03415/1965_A12437259	Shire of Exmouth and Department of Planning
Sub Lease	Exmouth Business Hub: 02/12/22 – 01/06/23 02/06/23 – 16/04/24	Shire of Exmouth, Exmouth Chamber of Commerce and Patches Therapy Services
Licence to Occupy Crown Land	Total Solar Eclipse Event Licence 00596/2010_A12461571	Shire of Exmouth and Department of Planning
Instrument of Agreement	Supply and installations of ablutions	Shire of Exmouth and Abrolhos Steel Pty Ltd
Memorandum of Understanding	Digital Information Kiosk at Ross Street Mall	Shire of Exmouth and Exmouth IGA
Instrument of Agreement	Supply of Earthmoving Plant Equipment and Road Base Materials	Shire of Exmouth and Exmouth Civil Pty Ltd

INFRASTRUCTURE SERVICES

12.2.1 APPLICATION TO KEEP MORE THAN TWO DOGS

File Reference	LE.LO.4/A1233
Reporting Officer	Compliance and Emergency Services Coordinator
Responsible Officer	Executive Manager Infrastructure Services
Date of Report	06/04/2023
Applicant/Proponent	Darren Mossman
Disclosure of Interest	Nil
Attachment	1. Property Inspection Report

Purpose

1. That Council consider an application to keep more than two dogs at 114 Madaffari Drive, Exmouth.

Background

2. Section 26 of the *Dog Act 1976* allows a local government to limit the number of dogs kept on a property by a local law.
3. On 23 January 2015, the Shire of Exmouth Dog Local Law was gazetted. The local law limits the number of dogs allowed to be kept on a property within the townsite to 2 dogs (Section 3.2 (2)(a)). The local law came into effect on 6 February 2015.

Comment

4. On 29 November 2022 Council received an application to keep more than two dogs (Section 26 Exemption) at 114 Madaffari Drive Exmouth.
5. As per council policy IS001- Multiple Dogs, a request for comment was sent to all adjoining land owners allowing 14 days for the owners to reply to the proposed application to keep a third dog with an affirmative or negative response.
6. At the end of the comment period one positive response and one nil response was received.
7. Council policy IS001-Multiple Dogs states that nil responses received after 14 days are to be considered as receiving a no objection.
8. Under current delegations, Shire staff do not have authority to approve multiple dog applications so must be referred to council for determination.
9. Rangers have met with the applicant and undertaken a property inspection and completed the report and recommendation on the 19 December 2022 (Attachment 1).
10. If Council approve this application, Ranger Services still have the authorisation to cancel a registration at any time for breaches under the *Dog Act 1976*.

Consultation

11. Resident 116 Madaffari Drive
12. Resident 114 Madaffari Drive

Statutory Environment

13. *Dog Act 1976*
14. Shire of Exmouth Dog Local Law 2015

Policy Implications

15. Council Policy IS001 Multiple Dogs

Financial Implications

16. Nil.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Environmental Too many dogs approved within the town boundary could create noise and hygiene impacts	Possible	Minor	Moderate	Rangers to complete inspection of the property to deem appropriate before approval then continue to monitor and cancel the dogs registration if the situation changes or it is warranted.
Reputational Council perceived as not being adaptable to community values	Possible	Minor	Moderate	Council to consider exemption applications and approve where appropriate

Risk Matrix

Consequence Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

17. Council can resolve to not approve the application to keep more than two dogs at the property.

Strategic Alignment

18. This item is relevant to the Council’s approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

- Social | **Nurture a friendly, safe and inclusive community spirit**
- 1.1 Improve local community and visitor experiences.
 - 1.3 Building Community cohesion and connectedness

Voting Requirements

19. Simple Majority.

Officers Recommendation	Item 12.2.1
That Council approve the application to keep more than two dogs at 114 Madaffari Drive, Exmouth.	

COMMUNITY AND ECONOMIC GROWTH

12.3.1 PROPOSED GRANT OF SECTION 91 - LICENCE TO SUPPORT NON-GROUND-DISTURBING INVESTIGATORY WORKS – GASCOYNE GATEWAY LIMITED

File Reference	LP.PL.4.8
Reporting Officer	Strategic Planning Officer
Responsible Officer	Deputy CEO/Community and Economic Growth
Date of Report	16 May 2023
Applicant/Proponent	Department of Planning Lands and Heritage Gascoyne Gateway Limited
Disclosure of Interest	Nil
Attachment	1. Correspondence from Department of Planning Lands and Heritage

Purpose

1. On 9 May 2023 Council received a request from the Department Planning Lands and Heritage (DPLH) for it to provide comments to DPLH in respect of a new proposed grant of Section 91 *Land Administration Act 1997* (LAA) Licence to support non-ground disturbing investigatory works – Gascoyne Gateway Limited-Shire of Exmouth (Attachment 1).
2. The DPLH has received a request from Gascoyne Gateway Limited (GGL) to investigate the grant of a Section 91 Licence over multiple Crown land parcels in the Exmouth Gulf to support the progression of a proposal to privately fund, build and operate a regenerative multi-use jetty and renewables hub approximately 10kms south of Exmouth.
3. It is advised from DPLH that the proposed investigatory studies will support the Environmental Protection Authority's (EPA) Public Environmental Review for the project whereby it is proposed to grant the licence for a 24-month term for the purpose of "*non-ground disturbing investigatory works including Aboriginal cultural heritage surveys in the presence of Traditional Owners and environmental and engineering studies related to the projects feasibility*".
4. It is noted that this request is limited to a section 91 Licence to access land to conduct non-ground-disturbing studies as opposed to a request considered by Council in May 22 for a section 91 licence for all studies, lease option and lease. (See Background for further details).

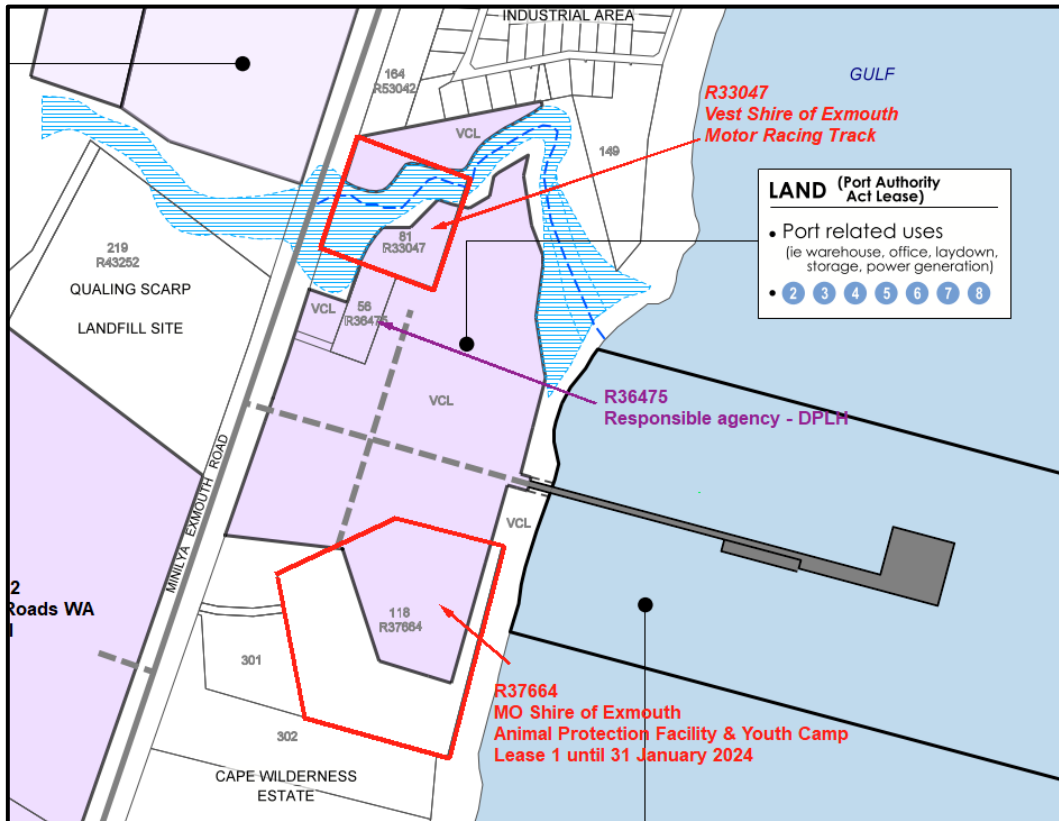


Figure 1: Project Area subject s91 Licence Request. Red boundaries show Shire Managed Reserves R33047 and R37664.



Figure 2: Aerial Imagery Green boundaries showing Shire Managed Reserves.

Background

5. On 12 December 2018 the then Shire President indicated support for a port development in the vicinity to Oropesa Port Management Pty Ltd.
6. In June of 2020, the Department of Jobs, Tourism, Science and Innovation was allocated lead agency status for the project from the State Government.
7. GGL has indicated that the Port would;
 - Be "Multi-use" and include use for cruise ships, defence, rare earth mineral and commercial use. It will regulate current marine traffic in the Gulf and provide opportunities for import and export. See website at <https://gascoynegateway.com.au>;
 - Provide regulatory oversight to ensure vessels are taking care to protect the coastline and marine life; and
 - Be powered by renewable energy and water supplied by desalination for community use also.
8. In June 2021 Minister Transport, Planning and Ports issued correspondence to Noel Hart, Chair of Mid-West Port Authority (MWPA) indicating support for port facility being under the governance of MWPA. Advice is also provided to the extent that new commercial ports are created under the *Port Authorities Act 1999*, therefore if any port proposal in Exmouth is deemed viable the MWPA will need to obtain Ministerial approval for the declaration of a new port with the placement of the port under the governance of the MWPA.
9. On 3 November 2021, staff from MWPA advises Shire Staff in respect of a port reservation process that;
 - The MPWA needs to initiate the process of defining the port and its associated port lands with a letter to the Minister.
 - Department of Transport then draft the boundaries of the Port area and provide Ministerial review.
 - The Executive Council of Parliament then review the proposal prior to the Minister declaring the port.
 - Land defined as a Port circumvents ordinary planning processes undertaken on most land holdings/zones whereby the reservation of the Port removes the land from the general provisions of the Shire's Local Planning Scheme requirements. (albeit the scheme map would need to be amendment to show the reservation for "Strategic Infrastructure-Port" reserve).
10. GGL are currently having the Proposal considered by the Environmental Protection Authority (EPA) under s38 of the EPA Act. On 30 June 2021 the EPA published its extract of determination with respect to the level of environmental assessment required resulting in a Public Environmental Review and listed the key environmental factors and the potential significant environmental impacts.
11. In response to the EPA Public Environmental Review the Proponent (GGL) prepared a scoping document for which comments closed on 13 December 2021. The Scoping Document was subsequently approved by the EPA on 31 May 2022 for which studies required are determined. (all reference material re EPA can be accessed online at epa.wa.gov.au)
12. In December 2021 the Premier advised that "Qualing Pool", located at the site, is proposed to become an "A" Class reserve, however boundaries for that Reserve have not been defined at this time and are subject to extensive discussions with Traditional Owners and government as recently advised to Shire CEO on 16 May 2023.
13. The Shires Local Planning Strategy (2019) designates the land, to the east of Minilya – Exmouth Road for conservation. This conflicts directly with the proposal at this time albeit the Western

Australian Planning Commission Structure Plan (2013) allocates the vicinity for industrial land use generally.

14. The Shires superseded Strategic Community Plan 2030 (SCP) previously stated "The consideration of a deep-water wharf would also attract additional investment in existing and new industry in Exmouth. A new Shire of Exmouth Strategic Community Plan 2023-2033 was endorsed in December 2022 however makes no mention of such wharf development specifically.
15. It is shown that Lease area 2 and 3 are strategically placed for general industrial whereby land uses of hydrogen production, fuel storage and renewable energy generation would be generally compatible, subject to regulatory approvals process if applicable.
16. Cape Wilderness Estate is located directly south of the proposal whereby one of the five residential homes are at a minimum separation distance of 200m boundary to boundary in the current format.
17. The project area includes 2 crown reserves that are currently vested to the Shire being R37664 (23.43Ha) and is set aside for camping and animal rehabilitation purpose and R33047 (8.3Ha) set aside for motor racing track.
18. Lot 118 or R37664 is located between the Cape Wilderness Estate and the proposed site.
19. Of the 23Ha on R37664 approx. 13.5Ha is under leasehold with options for renewal and in one case until 2034.
20. In May 2021 the Shire initiated a survey in relation to the development which was then considered by Council at its Ordinary Council Meeting held on 26 August 2021. The Shires Corporate Business Plan includes action 1.3.2 which states "*Lobby state government to fast track a cruise solution at the existing marina site and for council to initiate its own community/public consultation to determine if construction of a multi-use deep water port would be supported by current community members with the Shire of Exmouth, post the Gascoyne Gateway community engagement program for a deep water port.*" The Survey occurred between 10 May-30 May 2021 and resulted in 467 responses being achieved. This figure included 255 residents/ratepayers and 212 non-residents. The results indicated that 1 in 2 were concerned in relation to environmental issues and 1 in 6 were concerned with local economy.
21. Upon consideration of the Survey Council resolved to;
 - Receive the report of the 2021 Community Survey conducted by Painted Dog Research;
 - Consider the results during the internal business planning and review process and include the raw data be attached to the main report.
22. On 21 July 2021 the Proponent requested the Shire to revoke its management orders on its reserves to provide land for the project.
23. On 17 December 2021 DPLH seeks Shires comments in relation to licenses and future leases. Responses due 28 January 2022. Shire indicates it does not have sufficient information to respond. An extension was sought and granted in order for the request to be now considered by Council to provide responses appropriate at this time.
24. Council considered the subject DPLH requests at its Ordinary Meeting in May 2022 including request for grant of a Licence, Option to Lease and Lease and resolves as follows:

(Council Decision 04-0522)

Recommendation 2

2. That Council, in relation to a direct request from Gascoyne Gateway Limited to revoke Shire of Exmouth Management Orders for Crown Reserves R37664 and R 33047, advise Directors of Gascoyne Gateway Limited and the Department Planning Lands and Heritage that it:

- a) Will consider the matter at a time when, and if, a formal request to do so is received by the Shire from the Department Planning, Lands and Heritage.**
- b) Advises that R37664 is currently under leasehold and is being used by two separate parties and as such due consideration for Lessees rights under the leasehold on R37664 would be required in future.**

CARRIED 4/0

- 25. It is noted that the original Proposal is still under consideration by DPLH and this Proposal, the subject of this Council Report, pertains to the proposal for the DPLH to issue a Section 91 only for non-disturbing investigations.
- 26. March 2023 GGL released its Sustainability Report which is available on line at <https://gascoynegateway.com.au/sustainability/>.

Comment

Section 91, Miscellaneous License to investigate the site

- 27. A licence granted over the proposed development envelope would provide legal access to the site/s to enable non-ground disturbing including low impact activities for engineering investigations, cultural heritage and environmental studies for a period of 24 months. The licence is a contractual right and not an interest in land. This is ultimately required to provide information and studies required by the EPA and other agencies, at this time.
- 28. Access to the site is also requested for the two crown reserves for which are under management orders of the Shire. Reserve 33047 is reserved for a motor racing track and Reserve 37664 is reserved for Animal Protection Facility and Youth Camp. It appears that R33047 is not being used however the R37664 is being leased by two separate parties. Access to that land would require liaison and permission granted by the Lessees.
- 29. Previously Council were requested to consider several matters including an option to lease the project area and resolved generally to not support the application/s referring to community and requesting boundaries to Qualing Pool to be established and formalized prior to any further consideration.
- 30. It is noted that this Application is restricted to requesting permission to access the land to conduct non-ground disturbing studies and also noted that since this time the Proponent advises that the Qualing Pool A class reserve, will not be included in the development area but proposed to be included in the "study area" at this time. See <https://gascoynegateway.com.au/sustainability/>
- 31. Access to the Shire's Reserves, particularly to conduct environmental studies, as required by the EPA will provide greater intelligence in respect of the level of biodiversity and ecology on the land.
- 32. This access permission, whilst permitted conditional access, does not provide any determination or support to the Proponent or government in relation to future land use or any such consideration for any revocation of the Shire managed reserves.

33. It is noted that the land east road side is reserved for foreshore and conservation reserve, including R33047 and R37664 is a community and civic reserve in the Shires Local Planning Scheme.



Figure 3- Local Planning Scheme zoning map.

34. DPLH has advised that the proposed investigatory studies will support the EPA's Public Environmental Review which has been referred under the *Environmental Protection Act 1986*.

Planning Matters

35. Advice has previously been provided to the DPLH that the subject land is:
- In a declared bushfire prone area.
 - That Cape Range Subterranean waterways of national environmental significance are located adjacent and within the project area requiring referral under the *Environmental Protection Biodiversity Conservation Act 1999*.
 - Scheme amendment/s would be required for Port reservation areas on scheme maps and industrial zones in accordance with the Shire's Local Planning Scheme No.4 to be prepared at the cost to the Proponent once areas are detailed.
 - The Proposal does not indicate a regulated water service provider at the site.
 - Close to sensitive land uses and therefore the project should demonstrate that there is limited to impact on nearby residential sensitive land uses.
 - Notes, Qualing Pool is adjacent the project site and notes that the Premier considers that this will become an A class reserve of which boundaries have not been defined.
 - A portion of the land under consideration for Port development is identified as conservation reserve under the Shires Local Planning Scheme.

Consultation

36. This Application, for proposed Grant of a Section 91 *Land Administration Act 1997* (LAA) Licence to support non-ground disturbing investigatory works to the Proponent being GGL for a period of 24

months has been referred to all stage agencies and service providers. To facilitate the DPLH further consideration of this matter comments are required to be received by them by close of business on Thursday 8 June 2023.

37. Additionally, it would appear that a determination has not yet been made with respect to an earlier request regarding request for Section 91 Licence, Options to Lease and Lease of Land as previously considered by Council. See Background Section.

Statutory Environment

38. The following statutory provisions apply directly to all land proposed to be included in the s91 Licence under the provisions of the *Land Administration Act 1997*.

LAND ADMINISTRATION ACT 1997

91. Licences and profits à prendre over Crown land, grant of

- (1) *The Minister may grant a licence or profit à prendre in respect of Crown land for any purpose.*
- (2) *The Minister may —*
 1. *fix or extend the duration of; or*
 2. *determine fees and conditions in respect of; or*
 3. *review; or*
 4. *with the consent of its holder, amend the provisions of, any licence or profit à prendre granted under subsection (1).*
- (3) *The Minister may on the breach of any condition to which a licence granted under subsection (1) is subject, terminate that licence.*
- (4) *The Minister may accept the surrender of a profit à prendre granted under subsection (1) from its holder in respect of the whole or any part of the area to which that profit à prendre applies.*
- (5) *Nothing in this Act prevents the simultaneous existence on the same area of Crown land of —*
 1. *a licence or profit à prendre granted under subsection (1); and*
 2. *a mining, petroleum or geothermal energy right,*
*if the Minister to whom the administration of the relevant Act referred to in the definition of **mining, petroleum or geothermal energy right** in [section 3\(1\)](#) is for the time being committed by the Governor, or a public service officer of the department that is principally assisting in the administration of the relevant Act, who is authorised in writing by that Minister to do so, approves of that area being used both for the purposes of that licence or profit à prendre and the purposes of the mining, petroleum or geothermal energy right.*
- (6) *If a licence granted under subsection (1) is transferable by the licensee, in accordance with the [Personal Property Securities Act 2009](#) (Commonwealth) [section 10](#) the definition of **licence** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.*
- (7) *The operation of this section is affected by the [Land Administration \(South West Native Title Settlement\) Act 2016](#) Part 4.*
[Section 91 amended: No. 35 of 2007 [s. 98\(6\)](#); No. 8 of 2010 [s. 13](#); No. 42 of 2011 [s. 81](#); No. 10 of 2016 [s. 28](#).]

39. The multi user wharf Proposal has been referred to the Environmental Protection Authority under s38 for environmental assessment of which statutory provision is below. More information on the stages of this referral assessment process and the Proponents approved Scoping Document can be found online at <https://www.epa.wa.gov.au/proponent-name/gascoyne-gateway-ltd>.

ENVIRONMENTAL PROTECTION ACT 1986

39. Referral of proposals to Authority

- (1) *Subject to subsections (2) and (5j), any person may refer a significant proposal to the Authority*
- (2) *In the case of a proposal under an assessed scheme, only the proponent can refer the proposal to the Authority under subsection (1).*
- (3) *Subject to subsection (5j), the proponent of a strategic proposal may refer the proposal to the Authority.*
- (4) *If it appears to the Minister that there is public concern about the likely effect of a proposal, if implemented, on the environment, the Minister may refer the proposal to the Authority.*
- (5) *Subject to subsection (5j), as soon as a decision-making authority has notice of a proposal that appears to it to be*
 - (a) *a significant proposal; or Environmental Protection Act 1986 Environmental impact assessment Part IV Referral and assessment of proposals Division 1 s.38*
 - (b) *a proposal of a prescribed class, the decision-making authority is to refer the proposal to the Authority.*
- (5a) *Subsection (5) does not apply if the proposal has been referred to the Authority under subsection (1) or (4).*
- (5b) *In the case of a proposal under an assessed scheme, the application of subsection (5)(a) is subject to section 48I.*
- (5c) *If the Authority considers that a proposal that is (a) a significant proposal; or (b) a proposal of a prescribed class, has not been referred to it under subsection (1), (4) or (5), the Authority is to require the proponent or a decision-making authority to refer the proposal to the Authority.*
- (5d) *A requirement under subsection (5c) is to be in writing and is to specify the period within which it has to be complied with.*
- (5e) *In the case of a proposal under an assessed scheme, the Authority can only require the referral of the proposal under subsection (5c) if it did not, when it assessed the assessed scheme under Division 3, have sufficient scientific or technical information to enable it to assess the environmental issues raised by the proposal.*
- (5f) *A requirement under subsection (5c) has effect despite section 48I(2).*
- (5g) *In subsections (5)(b) and (5c)(b), a reference to a proposal of a prescribed class includes a reference to a proposal of a prescribed class under an assessed scheme.*
- (5h) *A proponent or decision-making authority that has to refer a proposal to the Authority under a requirement under subsection (5c) is to do so within the period specified in the requirement.*
- (5i) *A referral under this section is to be in writing.*
- (5j) *Subject to section 46B(2), a proposal cannot be referred to the Authority under this section more than once unless assessment of it has been terminated under section 40A.*
- (6) *Except when the responsibility for a proposal is imposed on a public authority under another written law, the Minister shall, after consulting the Authority, nominate by notice in writing served on —*
 - (a) *the person concerned; and*
 - (b) *the Authority; and*
 - (c) *any relevant decision-making authority, a person as being responsible for each proposal which is referred or required to be referred, or which ought to be referred, under this section and which the Authority considers should be assessed by it under this Part.*

- (6a) *If the person nominated under subsection (6) ceases to have responsibility for a proposal, that person is to give the Authority written notice advising the name of the person to whom or which responsibility for the proposal will pass or has passed.*
- (7) *The Minister may, if he considers that a nomination made under subsection (6) should be revoked and after consulting the Authority, by notice in writing served on —*
 - (a) *the person to whom or which that nomination relates;*
 - and*
 - (b) *the Authority; and*
 - (c) *any relevant decision-making authority, revoke that nomination and nominate another person under that subsection in respect of that proposal.*
- (7a) *Subsections (6a) and (7) apply even if a report on the proposal has been published under section 44(3) but do not apply if the assessment of the proposal has been terminated under section 40A.*
- (8) *For the purposes of subsections (6) and (7), a person who is an individual may be nominated as being responsible for a proposal by reference to his name or by reference to his being the person for the time being holding or acting in a particular office or position.*
- (9) *For the purposes of subsections (6a) and (7) and section 3(2b), a person that has been notified under section 39A(3)(a) that the Authority is going to assess a proposal is to be regarded as having been nominated under subsection (6) as being responsible for the proposal whether or not such a nomination has been made.*

PORT AUTHORITIES ACT 1999

The following provisions included in the *Port Authorities Act 1999*, although not exhaustive, demonstrate the powers of the state government in relation to the reservation and declaration process for a port reservation on crown land.

24. Port areas defined

- (1) *A port consists of the area or areas described in relation to that port by order made by the Governor and published in the Gazette.*
- (2) *The Governor may, by order published in the Gazette, amend the description of a port so as to —*
 - (a) *include an area in, or exclude an area from, that description; or*
 - (b) *correct any error in that description.*
- (3) *In this section —*
area *means an area of land, water or seabed.*

25. Port authority, property vested in

- (1) *The following property is vested in a port authority for the purposes of this Act —(a) all Crown land in the port, including the seabed and shores;*
 - (b) *in the case of a port that was named in Schedule 1 before the coming into operation of the Ports and Marine Legislation Amendment Act 2003 section 4, all navigational aids that, immediately before the coming into operation of that section - (i) were in the port, or used in connection with navigation into or out of the port; and*
 - (ii) *belonged to the State;*
 - (c) *all fixtures on land in the port that belong to the State.*
- (2) *The property of a port authority also includes the following —*
 - (a) *any improvements effected on vested land leased to another person that have been acquired on the termination of the lease concerned;*
 - (b) *any real or personal property (other than property referred to in subsection (1) or paragraph (a)) that —*
 - (i) *is acquired by the port authority; or*

(ii) is vested in the port authority by the Governor for the purposes of this Act; or
(iii) is vested in, or becomes the property of, the port authority under this Act. [Section 25 amended: No. 71 of 2003 [s. 4\(1\)](#)¹; No. 2 of 2019 [s. 44.](#)]

29A. Operation of Planning and Development Act 2005 section 136 modified

A port authority does not have to obtain approval under the [Planning and Development Act 2005 section 136](#) in order to grant a lease or licence in respect of port land.

[Section 29A inserted: No. 9 of 2014 [s. 11.](#)]

Other Relevant Legislation

- 40. Planning and Development Act 2005
- 41. Planning and Development (Local Planning Scheme) Regulations 2015
- 42. Shire of Exmouth Local Planning Scheme No. 4

Financial Implications

- 43. Nil.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Performance	Possible	Minor	Moderate	Ensure good governance by ensuring DPLH understands R37664 is leased by third parties which will have implications relating to access.
Financial	Unlikely	Insignificant	Low	No Financial risks are evident due to such request for s91, providing indemnification is sought by state government from the Proponent and or third party in relation to access.
Environmental	Unlikely	Minor	Low	S91 permission sought for non-ground disturbing activities with Traditional Owners present. EPA is the decision-making agency in relation to environmental matters for which the project is currently being considered.
Reputational	Possible	Moderate	Moderate	If Council supports a s91 licence on its management reserves, it may be seen to be supporting the project. Granting a s91 enables the Proponent to access site only to conduct investigations including those that are required by the EPA. This request is limited to access to land for studies only. Additionally, environmental investigations on the site would benefit with future management of environmental values identified for which is currently unknown. It is prudent to convey that Council does not at this time support any of its managed reserves be included in the port reservation area.

Risk Matrix

Consequence \ Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

44. Council has been asked to provide comment to DPLH in respect of issuing a section 91 for access to land to undertake investigations on land that is under its Management which include Reserves R37664 and R33047. In this regard, Council can consider to support, not support and or provide comment in relation to this matter.
45. The current Recommendation provided is based on the Application before the DPLH for access to land to conduct low impact activities which will inform the preparation of further detailed plans and studies, engineering investigations associated with the project and hydrological, environmental and social and cultural investigation as advised by DPLH. Alternatively, if Council does not support that DPLH issue a s91 it should provide reasons as to why does not support such proposal.

Strategic Alignment

46. This item is relevant to the Council's approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Economy	Enhance a robust, resilient and diversified economy that champions innovation 4.1 Increase opportunities for smart and sustainable business ideas 4.3 Promote Exmouth as a thriving economy based on its regional strength as a global environmental hotspot
Governance & Leadership	Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders 5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement 5.3 Council and administration plan and lead with good governance

Voting Requirements

47. Simple Majority

Officers Recommendation	Item 12.3.1
That Council:	
1. Receive the request from the Department of Planning, Lands and Heritage (Appendix 1) to consider an Application from Gascoyne Gateway Limited for a proposed grant of section 91, <i>Land Administration Act 1997</i> Licence, pertinent to Shire managed Reserves 33047 and 37664, for non-ground disturbing investigatory works to support the progression of GGL's proposal to privately fund, build and operate a regenerative multi-use jetty and renewables hub investigations to support the progression of their proposal to construct a multi-use jetty and renewables hub.	
2. Advise that granting of a section 91 Licence by the Minister for Lands on Shire managed reserves 33047 and 37664 should be conditional on the following basis;	
a) That the proposal includes two shire managed reserves R33047 and R37664 of which are reserved for foreshore/conservation and civic and community use under the Shire's Local Planning Scheme. R37664 is currently identified as a strategic reserve for outdoor education and animal welfare in the Shires Local Planning Strategy.	
b) R37664 is the subject of two current lease agreements which include provisions for quiet enjoyment of a portion of the subject land. Any access will also require the permission of the Lessees of which details have been provided. DPLH should ensure such permission has been received prior to granting such licence.	

- c) Advise that the site is in close proximity to the Wilderness Estate and any consultants or their agents should have due regard to maintain the amenity of nearby residences whilst conducting any investigations.
- d) Requests that any research and investigation related to the shires managed reserves are provided to the Shire for information purposes.
- e) The site is on land that is situated in a bushfire prone area.
- f) The area is located in Cape Range Subterranean waterways of national environmental significance are located adjacent and within the project area requiring referral under the Environmental Protection Biodiversity Conservation Act will require referral under the Act to the Commonwealth Government.
- g) The Proposal is currently under Public Environmental Review by the Environmental Protection Authority due to significant environmental matters raised and in this regard may/may not be approved by the Minister for Environment.
- h) It is acknowledged that granted permission to access the subject land is to also assist the Proponent prepare environmental reports as referred to in the Scoping document approved by the EPA.
- i) Is adjacent to Qualing Pool and notes that the Premier considers that this will become an A class reserve/s of which boundaries have not yet been defined. It is further acknowledged that this reserve, once established will not form the development footprint as stated by the Proponent.
- j) Ensure the Proponent undertakes all necessary actions to ensure the protection of any heritage sites including all necessary permissions required and consultations required as appropriate with the Traditional Owners.
- k) Whilst undertaking any studies and investigations at the site the Proponent and or its agents to have due regard for the ecological values of the Exmouth Gulf and its associated marine and terrestrial environs to ensure best management practices to protect those values are maintained, in consultation with Department Water Environment and Regulation.
- l) Notes the land proposed as lease area 2 and 3 are included in the Shire's Local Planning Strategy 2019 as an Industrial Investigation Area and hydraulic modelling may be required at the northern boundary to determine the 1 in 100 year floodplain boundary.
- m) In the event a Section 91 licence is granted Council advises that it does not indicate its preparedness or willingness to revoke its management order/s on subject reserves or have any part of that land included in the development footprint.
- n) Access to the Shire managed reserves is limited to investigations studies only.
- o) The DPLH must ensure that the Proponent provides it with full indemnity in respect of any claim for liability which may arise from the Proponent or its agents accessing the land to the Shire of Exmouth and to the satisfaction of the Shire's Chief Executive Officer.

12.3.2 DEVELOPMENT APPLICATION – SINGLE HOUSE AND ADDITIONS LOT 100 (31) KESTREL PLACE EXMOUTH

File Reference	A2157 (DA69/22)
Reporting Officer	Senior Planning Officer
Responsible Officer	Deputy Chief Executive Officer - – Community and Economic Growth
Date of Report	16 May 2023
Applicant/Proponent	Taylor Burrell Barnett
Disclosure of Interest	Nil
Attachments	1. Planning report 2. Architectural Drawings 3. Response to further information request 22 March 2023 4. Site photographs

Purpose

1. That Council consider a development application for a single house and additions at Lot 100, 31 Kestrel Place, Exmouth.

Background

2. The Shire of Exmouth has received a development application (DA69/22) at Lot 100 (31) Kestrel Place, Exmouth (the subject site), which proposes the following key elements:

- Two-storey house
- Detached two storey entertaining area
- Detached carport
- Swimming pool
- Outbuildings (storage and pump rooms)
- Earthworks, retaining and landscaping



Figure 1 – The subject site

3. The subject site is 3703m² and is the result of a 3-lot amalgamation (previous Lots 347, 348 and 349) at the northern eastern end of the Kestrel Place cul-de-sac. The site is shown in Figure 1 above.
4. The subject site is mostly vacant with scattered areas of revegetation, primarily found around the existing tiered retaining walls. Additionally, a jetty is present in the northern finger canal of the site.
5. The subject site is zoned 'Special Use 6 – Area A – Canal Lots', with a designated residential density code of R20 under the Shire of Exmouth Local Planning Scheme No.4 (LPS 4).
6. The application is requesting a number of variations to LPS 4, which are further detailed below.
7. The application and variations were advertised to surrounding landowners for comment. A total of 3 submissions were received, 2 in support and 1 raising objections.
8. Due to the variations and as a result of the objections, the application is required to be determined by Council.

Comment

Description of the site and existing context

9. The current built form along the street is a mixture of single and two storey development. Two storey dwellings predominantly have the first-floor setback from the ground floor, reducing building bulk on the streetscape. The streetscape is also open, there is no fencing on the front boundary. Front gardens and trees are also prevalent. A photo of the streetscape is shown below and further examples and photos by Shire Officers are included in Attachment 4.



View looking west along Kestrel Place

10. Lots in the area include both a Net Developable Area (NDA) and Conditional Development Area (CDA). The NDA is essentially treated as the effective lot area for the purpose of calculating development and subdivision potential and has little design controls. The CDA is forward of the

NDA towards the canal, where open structures, such as verandas, balconies and decks etc. are permitted subject to setbacks from the upper retaining wall.

11. Development within the CDA is required to be open sided structures, such as verandahs, balconies and outdoor living areas. The intent of the provisions being that the bulk of development occurs within the NDA, with "incidental" structuring in the CDA. The idea behind that sightlines along the canals are maintained in perpetuity.
12. Due to the 3-lot amalgamation, the subject site (3703m²) is the largest site in the precinct. Lot sizes in the area are predominantly 900m² – 1050m². The subject sites NDA is approximately 1460m², there are only 4 other lots in the area that have a larger total lot size (inclusive of NDA, CDA and waterway). The proposed development footprint uses only 395m² of the NDA, leaving 72% of this area undeveloped, proposed with large gardens and landscaping. A significant proportion of the proposed footprint (97.4m²) which could otherwise be located within the NDA is proposed within the CDA.
13. A copy of the site plan is shown in Figure 2 below. The carport and attached storage space are proposed in the front western corner of the of the site, with a boundary setback of 5.5m. Vehicle access to the carport is via a 7m wide crossover. To the north east is the large entertaining area and where the applicant proposes to remove the existing upper retaining wall to provide a sunken landscaped area with a swimming pool and various landscaping. The two-storey residence is proposed in the eastern portion of the site, in line with the neighbouring dwelling to the south at Lot 346. A 1.8m high fence is proposed along the entire length of the front boundary. Refer to Attachment 2 for the full set of architectural drawings.

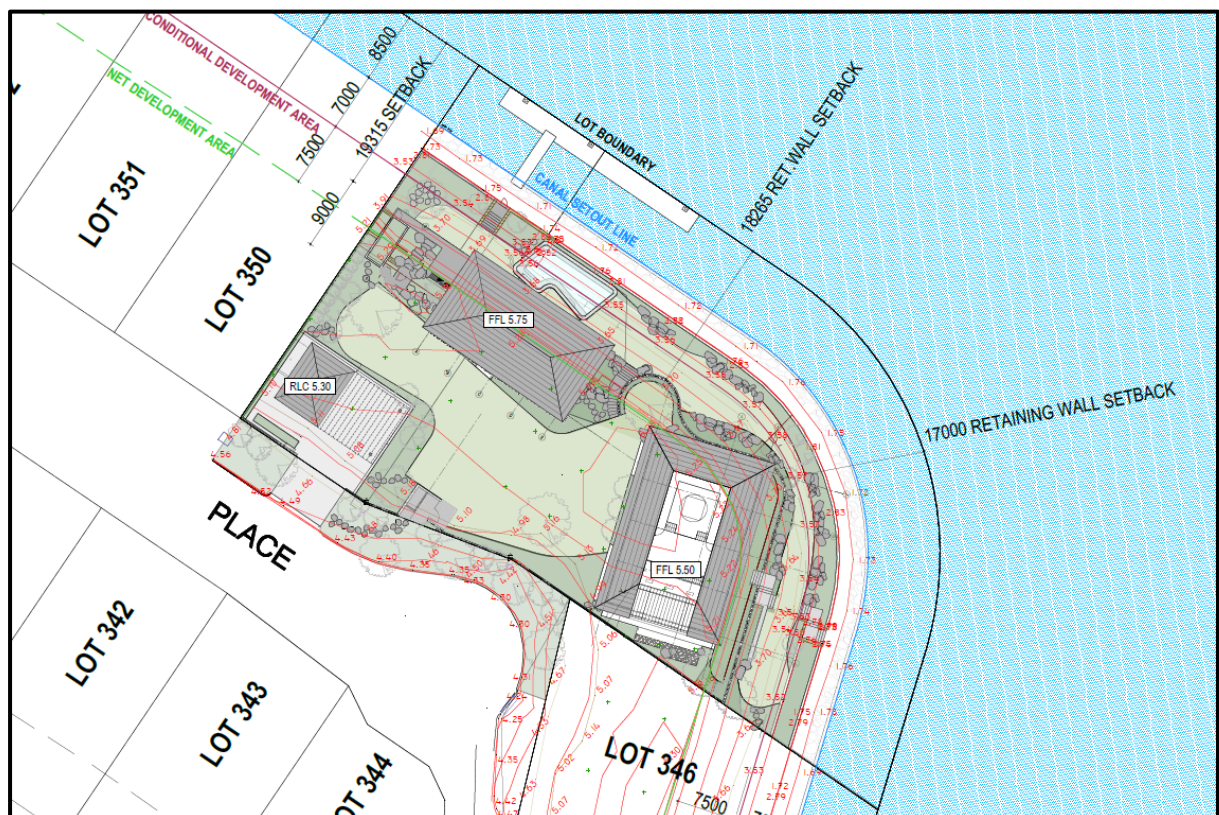


Figure 2 – Site/location plan

Applicable framework

14. The table below outlines the variations to LPS 4 and State Planning Policy 7.3 – Residential Design Codes (R-codes):

Item	Requirement	Variation proposed
Retaining walls	All fences and retaining walls provided as part of the subdivision should not be altered.	The application proposes to remove most of the upper retaining wall to create a levelled space from the first wall adjacent to the path and canal and to install swimming pool adjacent to the primary retaining wall.
	Retaining walls over 0.75metres to be setback 4 metres from the canal side of the upper retaining wall.	North-eastern section of rock retaining wall within 2.5m of wall.
	Retaining walls and fill should be 1.5m from lot boundaries.	Retaining walls proposed adjacent to lot boundaries.
Development and setbacks in Conditional Development Area (CDA)	Dwellings are permitted to have a nil setback to the (CDA).	The north-eastern corner of the dwelling (18.6m ²) protrudes up to 4m in the CDA area towards the canals. The remainder of dwelling maintains nil or greater setback to the CDA.
	Development within the CDA shall be open sided and maintain view lines to the canal from neighbouring dwellings and be setback 6m from upper retaining wall.	The entertaining area, dwelling and store are proposed within the CDA area. Entertaining area within 4.9m and dwelling within 5.2m from the northern upper retaining wall.
Building height	The maximum wall height is 6.2m from natural ground level	Wall height up to 7.052m.
Outbuildings	Not to exceed 32m ² in area	46.7m ²
Fencing	Fencing to be a maximum 0.9m in height along the front street boundary.	0.6m solid with visually permeable above up to 1.8m in height.
	Fence to be truncated within 1.5m of driveway.	The front fencing is proposed up to 1.8m in height.

15. The application was referred to surrounding landowners for comment, with one objection being received, raising the following:

- The height of the boundary fence
- Noise from the location of the pool and services locations
- Obstructing the sight lines along the canal
- Restriction of canal access

16. The matters raised are discussed further below and a response to all of the items is included in the Consultation section of this report.

Retaining Walls & Swimming Pool

17. Under LPS 4, Overall development requirement 11 for the Exmouth Marina states:

All fences and retaining walls where provided by the developer shall not be altered with all maintenance such as fences being the responsibility of the landowner.

18. The applicant intends to modify the site by removing the upper retaining wall, which would result in a levelled area adjacent to the primary retaining wall. However, this approach contradicts the relevant scheme requirement. Therefore, careful consideration should be given to assess the suitability and appropriateness of the proposed alterations in light of this inconsistency.
19. As part of the Marina estate, the existing retaining walls were designed to provide a combination of erosion protection and slope stability. While cutting in generally has a lower visual impact, structural impacts on the retaining design and the interactions with neighbouring properties need to be considered. There is an also increase risk of flooding and damage.
20. The swimming pool is proposed in front of the entertaining area as close as 400mm from the existing primary retaining wall adjacent to the lower path.
21. There is no precedent for removing the upper retaining wall in the area nor any swimming pool in this location. Existing swimming pools are setback over 2m from the upper retaining wall, over 4m further into the lot than the proposed design. There is limited justification for this variation.
22. Retaining walls higher than 1.5m require a 4m setback from the upper retaining wall. The proposed retaining wall around the north-eastern corner of the dwelling is 1.25m in height with a setback of 2.5m from the upper retaining wall. The portion of wall where this non-compliance occurs is only a small 6m, see figure 3 below. Setting the house marginally into the lot to increase the setback by only 1.6m could easily be done This would bring the wall in compliance with the scheme requirements and be consistent with the prevailing development.

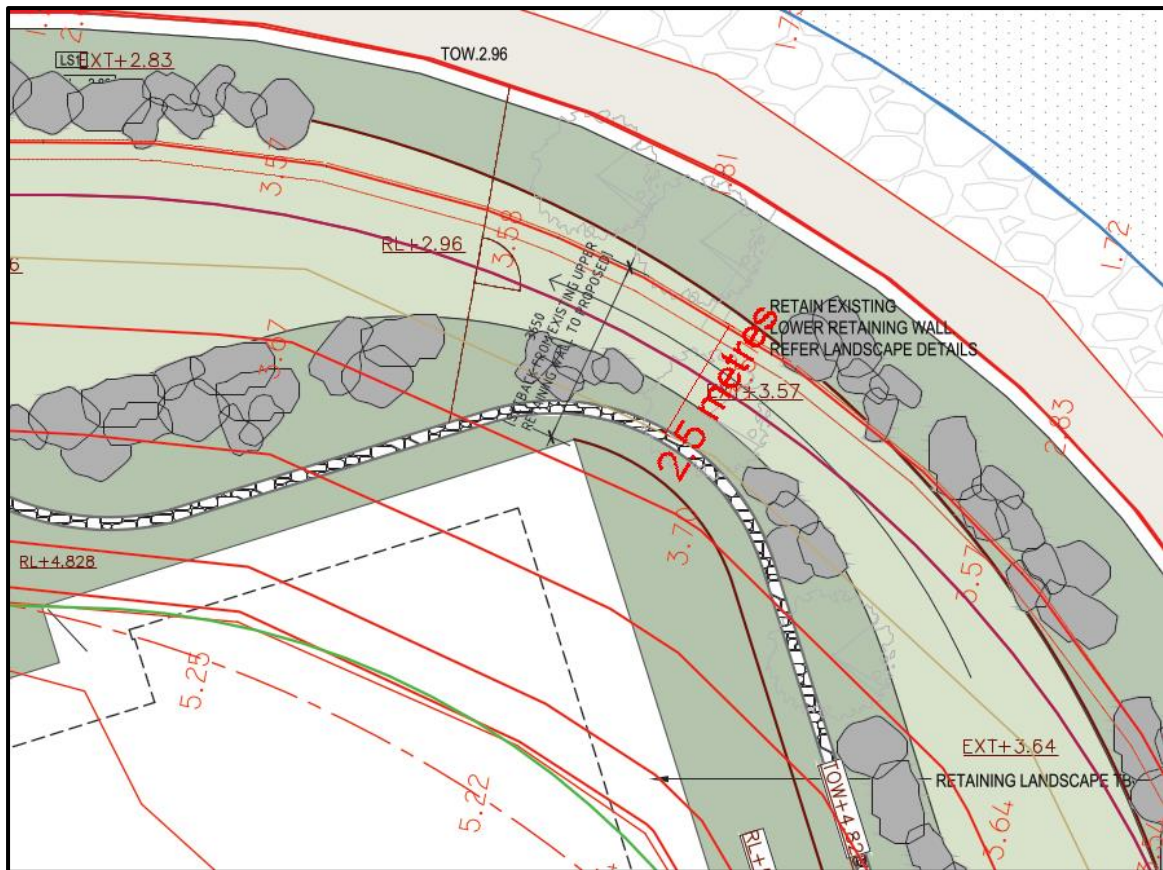


Figure 3 – North-eastern retaining wall

23. If the application were to be approved, then prior to construction, a qualified structural engineer would need to certify the design. This would include a geotechnical assessment, to consider; the loss/removal of the revetment, repair works to the revetment; general slope stability, with consideration of a range of water levels (tidal range and storm surge). The applicant is aware that in the event no engineering solution could be found, then revisions to the design would be required.

Development within the CDA

24. The development requirements within the CDA are primarily to provide:
- Uniformity and continuity of the view from the canal;
 - A buffer between the canal and the building;
 - Open canal waterway;
 - Consistent setbacks to the canal;
 - Prevent the boxing out of adjoining property owners; and
 - Open views and sight lines by allowing open sided and visually permeable structures and avoiding solid obstructions, such as walls and screening within the CDA.
25. To assist with views and sightlines, and to allow casual surveillance over the canals, dwellings are permitted to have a nil setback to the CDA. Open structures such as verandahs, balconies and outdoor living areas are permitted within the CDA, subject to being setback 6m from the upper retaining wall. This can be reduced to 4m where the finished floor level (FFL) is 5.00m AHD or less.
26. The north eastern corner of the dwelling (18.6m² footprint) protrudes up to 4m into the CDA area towards the canal.

27. The 2-storey entertaining area, dwelling and store are all enclosed and have reduced setbacks (from the upper retaining wall):
- 'Entertaining' area - 4.9m
 - Dwelling – 5.2m
 - Store – 6m
28. Figures 4 and 5 below outline the building envelope context of the proposed development, development within the CDA and view line comparisons.



Figure 4 – Building Envelope Context – Proposed Development

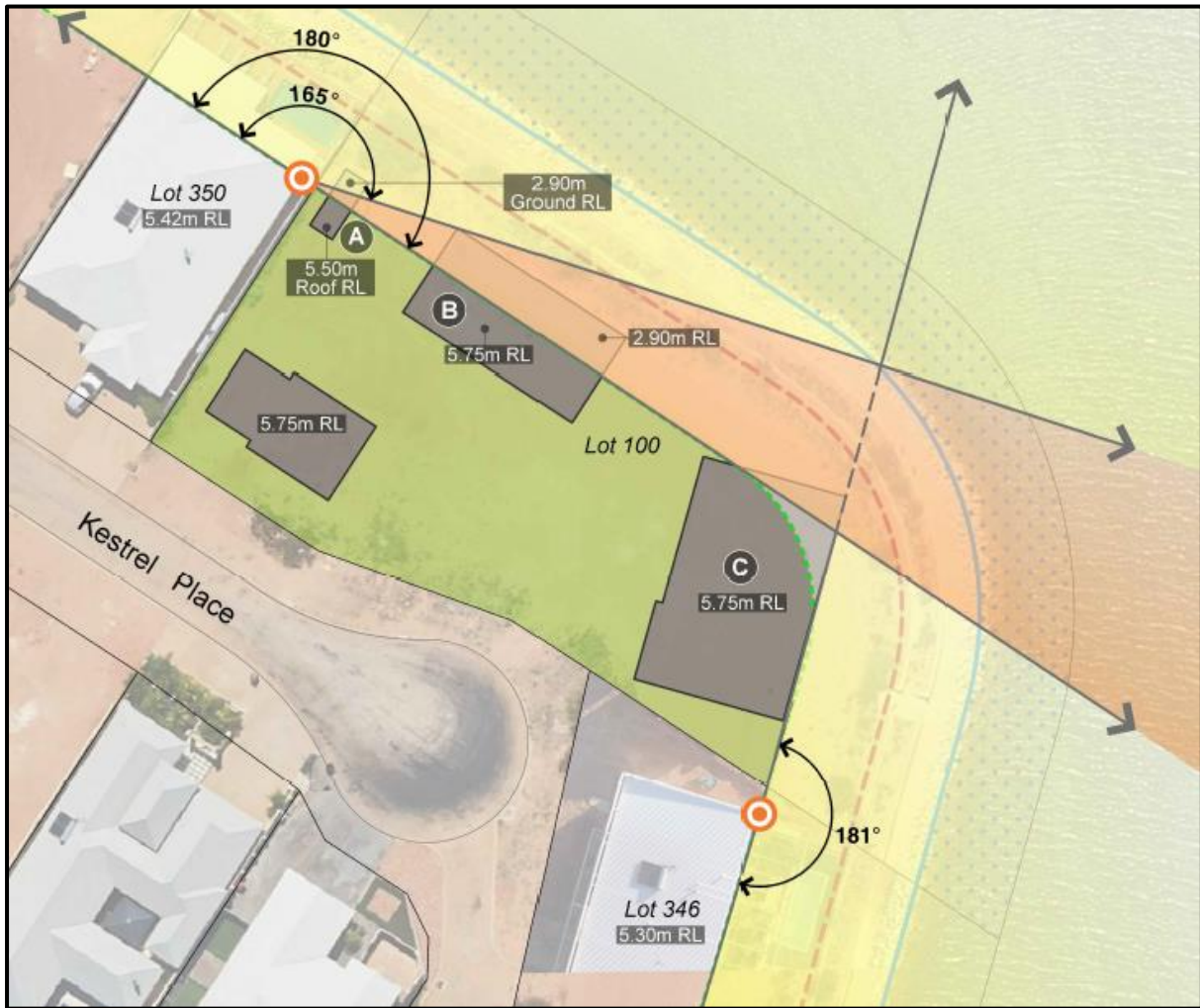


Figure 5 – Building Envelope Comparison – Individual Development

29. While the store is solid, it has a flat roof and due to the earthworks sits mostly below ground level, the roof height protrudes only 100mm above the natural ground level.
30. Shire Officers concerns are primarily with the dwelling and entertaining area protruding north into the CDA.
31. The entertaining area is extensive, being 144m² on the lower level and 160m² on the upper ground floor level with obscure glass bricks and screening, 45% of the development is proposed within the CDA. It is noted that there is over 10m between the proposed entertaining building and the carport at the front of the lot.
32. It is noted that the sightlines from neighbouring lots to the north-west are not completely unobstructed. However, the development will still impact on views, refer to Attachment 4. The above figures also outline the extensive amount of undeveloped and vacant land within the NDA that could be developed. Setting the entertaining area back 1.1m into the lot and removing sections of the screen wall would improve the sightlines, be consistent with the adjoining lot and still meet the proponents' aspiration of extensive and uninterrupted panoramic views over the canal.
33. There is ample space within the NDA that could be developed. Overall the application has presented no compelling basis for the enclosed buildings, earthworks and retaining, and extending so far into the CDA and should not be supported in its current form.

Building Height

34. In accordance with the LPS4, the maximum permissible wall height is 6.2m measured from natural ground level. The proposed building measures 7.052m to the walls and just over 9m to the top of the ridge. The large walls and relatively small roof envelope and pitch, presents a building bulk that is inconsistent with the existing built form of the area.
35. The proposed dwelling doesn't follow the same building line of the neighbouring lots on the north side of Kestrel Place. It is proposed to be built in line with the adjoining southern lot at the end of the cul-de-sac. The proposal will be 5m higher (more than double) than the dwelling at 35 Kestrel Place, which only measures 4m to the top of the roof. The image below shows the development context.



Neighbouring lot, 35 Kestrel Place & building location

36. While the applicant has proposed landscaping to act as screening, it is considered that the proposal will still result in a large bulk and mass when viewed from the street, neighbouring lots, the canal, POS areas and other streets (refer to images in Attachment 4 for further details). It is not consistent with the neighbouring or prevailing development and should not be supported.
37. The dwelling has large ceilings and again the applicant has not adequately demonstrated sufficient reasonings for why the wall height cannot be reduced.

Outbuildings

38. The maximum permissible floor area for outbuildings is 32m². Two outbuildings are proposed on site, a 31m² storage shed to the west of the carport and a 15.7m² pump and store room to the west of the entertaining area. Given their locations, the size of the subject site and as these are individually less than 32m², Shire Officers consider this variation is acceptable.

Fencing

39. Fencing in the area is to be a maximum of 0.9m in height along the street boundary. The applicant proposes fencing up to 1.8m in height, which includes both solid and visually permeable sections and a solid entrance gate.
40. For safety and sightlines for people and vehicles, the R-codes requires walls and fences to be truncated or reduced to no higher than 0.75m in height where they adjoin a driveway.
41. The applicants reasoning is primarily for privacy and security given the lot orientation. They contend that other lots are built boundary to boundary, whereas the subject site is 75m wide and development is spread out. If the owner has specific concerns regarding security, there means other than fencing that could assist with security and surveillance such as cameras, alarm, lights and motion detectors etc.
42. The primary outdoor space is the entertaining area and the lower level garden area and pool. The entertaining area is to the rear, and over 19m from the street. The lower level would not be visible from the street. As the proposed fencing is partially obscure it also wouldn't serve to completely protect privacy from the upper ground floor area. It is considered that lower fencing along with landscaping could achieve the same intent.
43. As mentioned above, in accordance the LPS4, there is no front boundary fencing along the street or in the precinct. The streetscape within the area is open. With the exception of small garden walls, there are no other examples of fencing within the area up to 1.8m in height along the street boundary, Shire Officers consider the fencing as proposed will have a negative impact on the streetscape and is not supported.
44. The objectives of the Special Use Zone 6 under LPS 4 are:
 - (a) *To provide for public marina uses, tourist, commercial and residential components for the local and visiting community, which has strong links to the existing cultural and town precincts, in recognition of the strategic location of the site in its local regional context.*
 - (b) *To ensure a consistently high standard of development with quality design that provides visual interest through detail and scale, and positively contributes to the streetscape and canal environments.*
 - (c) *To complement and not compete with other zones for civic, tourist and commercial use.*
45. The proposal varies a number of the Scheme requirements and is not considered to positively contribute to the streetscape and canal environment. It is therefore considered to be inconsistent with Objective (b) for the zone.
46. The applicant's full justification and responses to Shire Officers comments are included in the Planning Report and Response to further information request dated 22 March 2023 (refer Attachments 1 and 3).
47. Despites Shire Officers attempts, the applicant was unwilling to consider changing any aspects of the design and requested a determination of the application on the proposed design.

Principles for decision making

48. LPS 4 was originally gazetted on 12 March 2019. Prior to the adoption of LPS 4, development in the area was assessed against the Shires previous *Local Planning Policy 6.16 – Design Guidelines for the Exmouth Marina Village Precinct 'A'* (now rescinded). A number of developments were approved that were not compliant with the Policy, resulting in inconsistent decisions and varying built form. The design and development control provisions were adopted as part of LPS 4 to give more weight

to the provisions, and to ensure high quality design along with consistent built form and setbacks. The terminology of the LPS 4 provisions also includes clear wording such as 'shall be/not' or 'maximum' providing a clear direction that variations should only be supported in exceptional circumstances.

49. The Department of Planning, Lands and Heritage (DPLH) has prepared an Action Plan for Planning Reform, which includes a number of initiations to improve the planning system. One of which relates to the use and application of discretion on development applications.
50. As noted in the Supreme Court's decision of *Marshall v Metropolitan Redevelopment Authority* [2015] WASC 226:

*"While the exercise of discretion will involve a judgment about what is suitable, appropriate, or apt or correct in a particular case, that judgment must (if it is to be 'orderly') be an objective one. If the exercise of discretion is to be an orderly one, the planning principles identified as relevant to an application **should not be lightly departed from without the demonstration of a sound basis for doing so**, which basis is itself grounded in planning law or principle."*

51. Baseline development controls are the 'default' position and should not be varied without strong planning reasons to do so. There must be clear and cogent reasons for a decision maker to depart from the development standards.
52. As a decision maker it is critical to ensure that decisions are made consistently. There is a distinct risk that if variations to the scheme provisions are granted against limited planning grounds, that the Shire of Exmouth will prejudice its position in being able to apply the scheme provisions consistently in the future and could set a precedent for future developments.
53. While some of the design elements and variations in isolation could be appropriate, the cumulative impacts of the variations need to be considered. The subject property, nor the development proposed are considered to pose exceptional circumstances which warrant the proposed variations. The applicants desired outcomes for the subject proposal, which have been used as justification for the proposed variations can be achieved through a development which complies with LPS 4.
54. Shire Officers are of the view that the variations requested by the proposal do not represent proper and orderly planning and it is recommended that Council refuse to grant development approval for the reasons outlined in the Officer's Recommendation.

Consultation

55. The application and variations were referred to surrounding landowners seeking public comment for a period of twenty-one (21) days. In closing of the advertising period, 3 submissions were received, 1 objection and 2 providing support.
56. The objections along with Shire Officers comments are outlined in the table. The relevant matters have also broadly been addressed in the preceding Comment section of this report.

Submitters response	Officer Comments.
<p>OBJECTION</p> <p>We have a few concerns regarding the proposal for development at 31 Kestrel Place.</p> <p>The 1.8 M boundary wall should not be allowed along the street frontage as we all have to have a visually pleasant front façade and a compound wall is hardly going to meet those regulations and be an eyesore for the neighbours that live opposite them and look out to that.</p> <p>We have all paid considerable money for our blocks, so we can enjoy the views and surrounds, not feel like we are living next door to a prison.</p> <p>The location of the bin facilities and pool pump etc is right against the boundary of their neighbour's residence, which is not acceptable when they have three lots of land to locate the noisy services stuff on, it should not be put against their neighbours' residential fence.</p> <p>They have 3 residential blocks to build their buildings and pool facilities, why are they being allowed to encroach out so far over the retaining walls into the sight of neighbour's views along the canals? It is a large 2 storey building, they do not need to be hanging out over the boundaries obstructing their neighbours' views of the canals.</p> <p>If their pool facilities are so far down the block, will this stop access to the pathways around the canal row? We would like there to be no obstruction to access for walkways around the canal row.</p> <p>I hope this can be taken into consideration for the planning and building at 31 Kestrel Place and that money does not override, regulations and building codes in place, as this would set a dangerous precedence.</p>	<p>Objections noted.</p> <p>Officers agree with the submitter's response. There is no front boundary fencing along the street or in the precinct. Officers are not supportive of the 1.8m high fencing, and consider this will have a negative impact on the streetscape and could create an undesirable precedent.</p> <p>The pool and service locations are within 1.5m from the adjoining western property (which is not owned by the submitter). Any services would be subject to the relevant noise regulations.</p> <p>Shire Officers agree with the submitter's response. The subject site is the largest in the precinct and has an NDA larger than the total <u>lot size</u> (inclusive of NDA, CDA and waterway). 72% of the NDA is currently undeveloped. There doesn't appear to be any sound planning reasoning for all of the variations.</p> <p>The development would not impact or restrict any access on the walkway adjacent to the canal.</p> <p>Approving the development could set a precedent for future applications. It is not considered that the subject property or the development proposed pose exceptional circumstances which warrant the proposed variations. The outcomes of the subject proposal that the applicant has used as justification for the proposed variations can be achieved through a development which complies with LPS 4.</p>

Statutory Environment

- 57. Shire of Exmouth Local Planning Scheme No.4
- 58. *Planning and Development (Local Planning Schemes) Regulations 2015*
- 59. *Planning and Development Act 2005*

Policy Implications

- 60. Local Planning Policy 6.2 Colour Palette for Developments
- 61. State Planning Policy 7.3 – Residential Design Codes (Volume 1)

Financial Implications

- 62. Nil.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputational – Supporting the development could be used to set a precedent for other developments	Likely	Moderate	High	The application has been assessed against the relevant statutory framework. Not supporting the development would uphold the Shires position on the application of the provisions of LPS 4.

Risk Matrix

Consequence \ Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

- 63. Council has the following alternate options in relation to this item, which are:
 - To resolve to refuse the proposal with additional or modified reasons; or
 - To resolve to approve the proposal subject to conditions and/or modifications.

Strategic Alignment

- 64. This item is relevant to the Council’s approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Social	Nurture a friendly, safe and inclusive community spirit
	1.3 Building Community cohesion and connectedness
Built Environment	Enable sustainable development and infrastructure that meets the needs of the community, visitors and industry
	3.1 Infrastructure and assets are well-managed and maintained
	3.2 Plan and cater for increased population growth
Economy	Enhance a robust, resilient and diversified economy that champions innovation
	4.2 Establish Exmouth as a vibrant, welcoming and environmentally aware destination
	4.3 Promote Exmouth as a thriving economy based on its regional strength as a global environmental hotspot
Governance & Leadership	Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders
	5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement
	5.3 Council and administration plan and lead with good governance

Voting Requirements

65. Simple Majority

Officers Recommendation

Item 12.3.2

That Council resolves to ISSUE a notice of determination REFUSING development approval for a Single House and Additions at Lot 100, 31 Kestrel Place, Exmouth for the following reasons:

1. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of *the Planning and Development (Local Planning Schemes) Regulations 2015*, namely;
 - (a) *the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
 - (b) *the requirements of orderly and proper planning;*
 - (m) *the compatibility of the development with its setting including –*
 - (i) *the compatibility of the development with the desired future character of its setting.*
 - (n) *the amenity of the locality including the following –*
 - (ii) *the character of the locality.*
2. The proposal does not comply with the objectives of the Special Use 6, of Local Planning Scheme No.4 as it would have an undesirable impact on the streetscape and canals.
3. The proposal does not comply with overall development requirement 11 listed for *Special Use 6*, under Local Planning Scheme No.4 as the application seeks to remove the existing upper retaining wall.
4. The proposed dwelling has a maximum wall height of 7.052m exceeding the maximum height listed under development requirement 8. for *Special Use 6, Area A – Canal Lots* of Local Planning Scheme No.4 resulting in large bulk and mass when viewed from the street, canals and area.
5. The proposed front fence is 1.8m in height exceeding the maximum height listed under development requirement 14(a) for *Special Use 6, Area A – Canal Lots* of Local Planning Scheme No.4 and would have a negative impact on the streetscape and precinct.
6. The dwelling is proposed within the Conditional Development Area (CDA), the 'entertaining' is enclosed and the retaining walls are not appropriately setback, which does not comply with the required setbacks under development requirement 1 and 13 for *Special Use 6, Area A – Canal Lots* of Local Planning Scheme No.4.

12.3.3 NINGALOO TOURISM ADVISORY GROUP - COMMITTEE DISSOLUTION

File Reference	ED.PJ.58
Reporting Officer	Deputy CEO – Community and Economic Growth
Responsible Officer	As above
Date of Report	15 May 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachments	1. NTAG Terms of Reference Final Version 2. DLGSC Letter

Purpose

1. That Council dissolve the Ningaloo Tourism Advisory Group (NTAG) Committee.

Background

2. At the March 2019 Ordinary Council Meeting Council adopted resolution number 12-0319 which approved the Shire of Exmouth to take ownership for the delivery of visitor centre services and to authorise the Chief Executive Officer to prepare and present to Council for consideration a new governance and operational model to lead the development of tourism in the region.
3. It was recommended that the Shire of Exmouth establish the Ningaloo Tourism Advisory Group as a committee of Council with a dedicated destination development Reserve Fund.
4. The primary purpose of the Committee was to effectively develop the Exmouth and Ningaloo visitor destination so that greater economic and social returns are delivered to the rate payers of the Shire of Exmouth.
5. Council approved the establishment of NTAG as a committee of Council at the Ordinary Council meeting held on the 26 September 2019, (*Council Resolution 10-0919*) to operate under the Terms of Reference (TOR) (Attachment 1).
6. The TOR includes;
 - A minimum of 5 and a maximum of 9 voting members that are made up of industry representation.
 - Non-voting members that are made up of stakeholder representation.
 - Positions are for a 2-year tenure that is aligned with the council election cycle.
7. As per the TOR the purpose of the NTAG was to The Ningaloo Tourism Advisory Group was established to provide;
 - Advice and strategic oversight of the tourism development and marketing of the Ningaloo destination, and support the ongoing development and implementation of initiatives (infrastructure, marketing, events, tourism experiences) to achieve the strategic tourism and economic objectives of the Shire of Exmouth.
 - Support the marketing success and financial sustainability of the Ningaloo Aquarium and Discovery Centre and ensure engagement with the broader region in driving the success of this important tourism asset.
8. Since the establishment of NTAG the committee has undertaken a strategy workshop on 21 October and had a 2-year action plan in draft format which had not been finalised or adopted.
9. During the advertisement for nominations only 2 nominations were received.

10. NTAG has not met the frequency of meetings required under the TOR and has stalled with the strategic direction of the sub-committee.
11. Department of Local Government, Sport and Communities has advised the Shire of Exmouth to resolve NTAG (Attachment 2).

Comment

12. The NTAG has had two meetings since its establishment with the second meeting minutes still unconfirmed due to not quorum being met at the third meeting and it being cancelled.
13. Since taking on the visitor services the Shire of Exmouth has established networks with the key stakeholders in the tourism industry in Exmouth and the surrounding areas.
14. The Shire of Exmouth Community Strategic Plan and Corporate Business Plan has identified Outcomes and Strategic Priorities 4.2 Establish Exmouth as a vibrant, welcoming and environmentally aware destination.
15. Currently the Shire of Exmouth staff undertake the work that should have been done by NTAG and moving forward will take responsibility for;
 - a. Facilitating the exchange of information; providing advice and the development of relationships that assist in identifying potential pathways and synergies with National, State and Local Government organisations.
 - b. Ensuring appropriate expertise is sourced on destination marketing; event; infrastructure and tourism product development initiatives and programs that support and promote the tourism, cultural and heritage values of the Ningaloo region.
 - c. Identify and facilitate engagement and leverage opportunities with surrounding local government authorities and key partners to assist with the development of packages and promotional activities.
 - d. Assist with identifying funding opportunities to enhance the product offering by providing new and refreshing existing experiences.
 - e. Raise the profile of the Ningaloo Centre and the broader Ningaloo destination brand as an iconic tourism asset and build upon its current success in increasing visitation to the region.
 - f. Ensure the Ningaloo Aquarium and Discovery Centre interpretative component remains relevant, refreshed and consistent with a high-quality contemporary museum standard.
16. Funds currently held in Tourism Reserve for use by NTAG will be used by Shire of Exmouth to meet the Strategic Priorities 4.2 Establish Exmouth as a vibrant, welcoming and environmentally aware destination.

Consultation

17. Shire of Exmouth Councillors who were on the committee
18. McLeod's Solicitors
19. Department of Local Government, Sport and Communities

Statutory Environment

20. All Committees are established under provisions of Subdivision 2 – Committees and their meetings s 5.8 to 5.18 of the *Local Government Act 1995*.

Policy Implications

21. Nil.

Financial Implications

22. There is no financial implication to Council by dissolving the NTAG Committee.
23. Tourism Reserve currently has funds of \$360,134.35 which could be accessed by NTAG for the strategic direction, to appoint and apply resources deemed necessary including allocated funding for the effective marketing and promotion of the Ningaloo region.
24. With the dissolution of NTAG and subject to budget adoption, these funds could be used for the purpose of strategic direction for tourism and economic development, to appoint and apply resources deemed necessary including allocated funding for the effective marketing and promotion of the Ningaloo region.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Financial	Unlikely	Major	Moderate	NADC & Tourism currently form part of the annual budget
Reputational	Unlikely	Minor	Low	Shire to continue to grow the Ningaloo brand and drive Tourism in the area.

Risk Matrix

Consequence Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

25. Council could resolve not to dissolve the Ningaloo Tourism Advisory Group (NTAG) and re-advertise for nominations to fill the positions on the NTAG Committee.

Strategic Alignment

26. This item is relevant to the Council's approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Social	Nurture a friendly, safe and inclusive community spirit
	1.1 Improve local community and visitor experiences.
Built Environment	Enable sustainable development and infrastructure that meets the needs of the community, visitors and industry
	3.3 Revitalisation and expansion of airport services
Economy	Enhance a robust, resilient and diversified economy that champions innovation
	4.1 Increase opportunities for smart and sustainable business ideas
	4.2 Establish Exmouth as a vibrant, welcoming and environmentally aware destination
	4.3 Promote Exmouth as a thriving economy based on its regional strength as a global environmental hotspot
Governance & Leadership	Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders
	5.1 Forward-thinking leadership for efficient and sustainable operations
	5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement
	5.3 Council and administration plan and lead with good governance

Voting Requirements

27. Absolute Majority.

Officers Recommendation

Item 12.3.3

That Council APPROVE to dissolve the Ningaloo Tourism Advisory Group (NTAG) Committee.

CORPORATE SERVICES

12.4.1 FINANCIAL STATEMENT FOR PERIOD ENDING 31 MARCH 2023

File Reference	FM.FI.0
Reporting Officer	Manager Finance
Responsible Officer	Executive Manager Corporate Services
Date of Report	15 May 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachment	1. Monthly Financial Report as at 31 March 2023

Purpose

1. That Council accepts the financial report for the financial period ending 31 March 2023.

Background

2. The provisions of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996* Regulation 34 requires a statement of financial activity be presented at ordinary meeting of council within 2 months of the period end date (refer Attachment 1).

Comment

3. As at 31 March 2023, the operating revenue is below target by \$264,349 (1.95%). Interest earnings are currently tracking under budget due to the timing of investment maturities. Aviation operations are currently tracking over budget. However, there is a timing variance between operating grants and fees & charges for the airport screening grant funding, which will be processed in May.
4. Operating expenditure is under budget by \$2,046,425 (13.92%). Variances are due to the timing of maintenance, operational projects and our software licences. There is a variance for depreciation on right of use asset. Employee costs are tracking under budget as a result of vacancies.
5. The capital expenditure program is under way and is tracking under budget. Council has expended \$2,401,893 of the proposed capital budget of \$8m. The timing and milestone requirements also impact our capital revenue which is tracking under budget.
6. Rate notices were issued on 28 July 2022. Rates collected as at 31 March 2023 were 89.2% compared to 91.6% for the same period last year.

Consultation

7. Nil.

Statutory Environment

8. Section 6.4 of the *Local Government Act 1995* provides for the preparation of financial reports.
9. In accordance with *Local Government (Financial Management) Regulations 1996* Regulation 34 (5), a report must be compiled on variances greater than the materiality threshold adopted by Council of \$25,000 or 10% whichever is greater. As this report is composed at a nature/type level, variance commentary considers the most significant items that comprise the variance.

Policy Implications

10. Nil.

Financial Implications

11. Nil

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputational – That Council does not receive the financial activity statements as required by S6.4 of the LG Act 1995.	Rare	Insignificant	Very Low	That Council receives the financial activity statements as required by legislation.

Risk Matrix

Consequence Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

12. Nil.

Strategic Alignment

13. This item is relevant to the Council's approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Governance & Leadership	<p>Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders</p> <p>5.1 Forward-thinking leadership for efficient and sustainable operations</p> <p>5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement</p> <p>5.3 Council and administration plan and lead with good governance</p>
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Voting Requirements

14. Simple Majority

Officers Recommendation	Item 12.4.1
That Council RECEIVES the financial report for the financial period ending 31 March 2023.	

12.4.2 LIST OF ACCOUNTS FOR PERIOD ENDING 31 MARCH 2023

File Reference	FM.FI.0
Reporting Officer	Manager Finance
Responsible Officer	Executive Manager Corporate Services
Date of Report	15 May 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachment	1. List of Accounts for period ending 31 March 2023

Purpose

1. That Council receives payments made since the previous Ordinary Council Meeting.

Background

2. *Local Government (Financial Management) Regulations 1996*, Regulation 13 (3) requires a list of payments is to be presented at the next ordinary meeting of Council.
3. It has been customary practice that whilst being a leader in the community, we meet our terms of credit as established between suppliers and aspire to obtain discounts where practicable. Payments have been approved by authorised officers in accordance with agreed delegations and policy frameworks.

Comment

4. Council has given delegated authority that allows the Chief Executive Officer to approve payments from Council's bank accounts either via cheque or through electronic lodgement (refer Attachment 1).

Payments

Municipal Fund totalling \$3,292,448.71
Incorporating cheques, direct debits, electronic payments and credit cards.

Trust Fund totalling \$NIL
Incorporating electronic payments.

Total Payments: \$3,292,448.71

Consultation

5. Nil.

Statutory Environment

6. Payments are to be made in accordance with Part 6, Division 4 of the *Local Government Act 1995* and as per the *Local Government (Financial Management) Regulations 1996*. Payments are to be made through the municipal fund, trust fund or reserve funds. Payments are to be in accordance with approved systems as authorised by the Chief Executive Officer.

Policy Implications

7. Council Policy CS001 Procurement
8. Council Policy CS002 Regional Price Preference Policy
9. Council Policy CS004 Corporate Transaction Cards
10. Council Policy CS008 Investments
11. Council Policy CS012 Reserve Funds

Financial Implications

12. Payments are made under delegated authority and are within defined and approved budgets.
Payment is made within agreed trade terms and in a timely manner.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputational – That Council does not receive the list of payments.	Rare	Insignificant	Very Low	That Council receives the list of payments as required by legislation.

Risk Matrix

Consequence \ Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

13. Nil.

Strategic Alignment

14. This item is relevant to the Council’s approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Governance & Leadership	<p>Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders</p> <p>5.1 Forward-thinking leadership for efficient and sustainable operations</p> <p>5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement</p> <p>5.3 Council and administration plan and lead with good governance</p>
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Voting Requirements

15. Simple Majority.

Officers Recommendation	Item 12.4.2
That Council RECEIVES the report of payments made from the Municipal and Trust bank accounts during the month of March 2023 (totalling \$3,292,448.71).	

12.4.3 FINANCIAL STATEMENT FOR PERIOD ENDING 30 APRIL 2023

File Reference	FM.FI.0
Reporting Officer	Manager Finance
Responsible Officer	Executive Manager Corporate Services
Date of Report	15 May 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachment	1. Monthly Financial Report as at 30 April 2023

Purpose

1. That Council accepts the financial report for the financial period ending 30 April 2023.

Background

2. The provisions of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996* Regulation 34 requires a statement of financial activity be presented at ordinary meeting of council within 2 months of the period end date (refer Attachment 1).

Comment

3. As at 30 April 2023, the operating revenue is below target by \$254,157 (1.76%). Interest earnings are currently tracking under budget due to the timing of investment maturities. Aviation operations are currently tracking over budget. However, there is a timing variance between operating grants and fees & charges for the airport screening grant funding, which will be processed in May.
4. Operating expenditure is under budget by \$2,257,286 (13.86%). Variances are due to the timing of maintenance, operational projects and our software licences. There is a variance for depreciation on right of use asset. Employee costs are tracking under budget as a result of vacancies.
5. The capital expenditure program is under way and is tracking under budget. Council has expended \$3,167,628 of the proposed capital budget of \$8m. The timing and milestone requirements also impact our capital revenue which is tracking under budget.
6. Rate notices were issued on 28 July 2022. Rates collected as at 30 April 2023 were 91.5% compared to 94% for the same period last year.

Consultation

7. Nil

Statutory Environment

8. Section 6.4 of the *Local Government Act 1995* provides for the preparation of financial reports.
9. In accordance with *Local Government (Financial Management) Regulations 1996* Regulation 34 (5), a report must be compiled on variances greater than the materiality threshold adopted by Council of \$25,000 or 10% whichever is greater. As this report is composed at a nature/type level, variance commentary considers the most significant items that comprise the variance.

Policy Implications

10. Nil

Financial Implications

11. Nil

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputational – That Council does not receive the financial activity statements as required by S6.4 of the LG Act 1995.	Rare	Insignificant	Very Low	That Council receives the financial activity statements as required by legislation.

Risk Matrix

Consequence Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

12. Nil.

Strategic Alignment

13. This item is relevant to the Council’s approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Governance & Leadership	<p>Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders</p> <p>5.1 Forward-thinking leadership for efficient and sustainable operations</p> <p>5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement</p> <p>5.3 Council and administration plan and lead with good governance</p>
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Voting Requirements

14. Simple Majority

Officers Recommendation	Item 12.4.3
That Council RECEIVES the financial report for the financial period ending 30 April 2023.	

12.4.4 LIST OF ACCOUNTS FOR PERIOD ENDING 30 APRIL 2023

File Reference	FM.FI.0
Reporting Officer	Manager Finance
Responsible Officer	Executive Manager Corporate Services
Date of Report	15 May 2023
Applicant/Proponent	Nil
Disclosure of Interest	Nil
Attachment	1. List of Accounts for period ending 30 April 2023

Purpose

1. That Council receives payments made since the previous Ordinary Council Meeting.

Background

2. *Local Government (Financial Management) Regulations 1996*, Regulation 13 (3) requires a list of payments is to be presented at the next ordinary meeting of council.
3. It has been customary practice that whilst being a leader in the community, we meet our terms of credit as established between suppliers and aspire to obtain discounts where practicable. Payments have been approved by authorised officers in accordance with agreed delegations and policy frameworks.

Comment

4. Council has given delegated authority that allows the Chief Executive Officer to approve payments from Council's bank accounts either via cheque or through electronic lodgement. (refer Attachment 1).

Payments

Municipal Fund totalling \$1,555,299.31
Incorporating cheques, direct debits, electronic payments and credit cards.

Trust Fund totalling \$NIL
Incorporating electronic payments.

Total Payments: \$1,555,299.31

Consultation

5. Nil.

Statutory Environment

6. Payments are to be made in accordance with Part 6, Division 4 of the *Local Government Act 1995* and as per the *Local Government (Financial Management) Regulations 1996*. Payments are to be made through the municipal fund, trust fund or reserve funds. Payments are to be in accordance with approved systems as authorised by the Chief Executive Officer.

Policy Implications

7. Council Policy CS001 Procurement
8. Council Policy CS002 Regional Price Preference Policy
9. Council Policy CS004 Corporate Transaction Cards
10. Council Policy CS008 Investments
11. Council Policy CS012 Reserve Funds

Financial Implications

12. Payments are made under delegated authority and are within defined and approved budgets.
Payment is made within agreed trade terms and in a timely manner.

Risk Management

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputational – That Council does not receive the list of payments.	Rare	Insignificant	Very Low	That Council receives the list of payments as required by legislation.

Risk Matrix

Consequence \ Likelihood	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (5)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Alternate Options

13. Nil.

Strategic Alignment

14. This item is relevant to the Council’s approved Strategic Community Plan and Corporate Business Plan 2023 – 2033.

Governance & Leadership	<p>Foster open, transparent & accountable leadership, working collaboratively and in partnership with our community and stakeholders</p> <p>5.1 Forward-thinking leadership for efficient and sustainable operations</p> <p>5.2 Continued focus on transparent, accountable leadership and community stakeholder engagement</p> <p>5.3 Council and administration plan and lead with good governance</p>
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Voting Requirements

15. Simple Majority.

Officers Recommendation	Item 12.4.4
That Council RECEIVES the report of payments made from the Municipal and Trust bank accounts during the month of April 2023 (totalling \$1,555,299.31).	

13. Elected Members Motions of which previous Notice has Been Given

14. New Business of an Urgent nature introduced by Decision of Meeting

15. Matters to be considered Behind Closed Doors

16. Closure of Meeting