

**MINUTES FOR  
ORDINARY MEETING OF COUNCIL**

WEDNESDAY 15 MAY 2019

Council Chambers  
6177 Great Northern Highway  
Bindoon

Commencement: 7:02PM

Closure: 10:30PM



### Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following Ordinary Meeting of Council, where the minutes will be confirmed subject to any amendments.

The "Confirmed" Minutes are then signed off by the Presiding Member.

Attachments that formed part of the agenda, in addition to those tabled at the Ordinary Meeting of Council are put together as an addendum to these Minutes.

### Unconfirmed Minutes

These minutes were approved for distribution on 24 May 2019.



**Neil Hartley**  
Acting Chief Executive Officer  
Shire of Chittering

### Confirmed Minutes

These minutes were confirmed at a meeting held on 19 June 2019.

Signed .....



*Note: The Presiding Member at the meeting at which the minutes were confirmed is the person who signs above.*

### Disclaimer

The purpose of this Council meeting is to discuss and, where possible, make resolutions about items appearing on the agenda.

Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a member or officer, or on the content of any discussion occurring, during the course of the meeting.

Persons should be aware that the provisions of the *Local Government Act 1995* (section 5-25 (e)) establish procedures for revocation or rescission of a Council decision. No person should rely on the decisions made by Council until formal advice of the Council decision is received by that person.

The Shire of Chittering expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of Council, or any advice or information provided by a member or officer, or the content of any discussion occurring, during the course of the Council meeting.

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\* indicates separate attachments

## 1. DECLARATION OF OPENING OF MEETING / ANNOUNCEMENTS OF VISITORS

The Presiding Member declared the meeting open at 7:02PM.

## 2. RECORD OF ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE / ANNOUNCEMENTS

### 2.1 Attendance

The following Members were in attendance:

Member: Cr Gordon Houston President (Presiding Member)  
Cr Peter Osborn  
Cr Aaron King  
Cr George Tilbury  
Cr Don Gibson  
Cr Carmel Ross  
Cr Mary Angus

Quorum – 4 members

The following Shire staff were in attendance:

Neil Hartley Acting Chief Executive Officer  
Peter Stuart Executive Manager Development Services  
Jake Whistler Senior Planning Officer *left the meeting at 8.30pm*  
Natasha Mossman Executive Support Officer (Minute Secretary)

Members of  
the public: 49

Media: 0

### 2.2 Apologies

Nil

### 2.3 Approved leave of absence

Nil

## 2.4 Announcements

*Councillors are to advise of their attendance in their role as an Elected Member at community activities and meetings. As the Chief Executive Officer's office looks after some (not all) appointments for the President and Deputy President; the Agenda includes only those meetings. Councillors are therefore requested to provide additional information at the Ordinary Council Meeting for inclusion in the Council Minutes.*

### Cr Gordon Houston

25 April – ANZAC Day ceremony, Bindoon

29 April – Ellen Brockman Integrated Planning Group meeting, Chittering Landcare, Muchea

2 May – Supercars Gala Dinner, Barbagallo Raceway, Wanneroo

3 May – WALGA Avon Midland Country Zone meeting, Goomalling

### Cr Peter Osborn

7 May – Agenda Forum, Bindoon

### Cr Aaron King

7 May – Agenda Forum, Bindoon

### Cr George Tilbury

7 May – Agenda Forum, Bindoon

### Cr Carmel Ross

25 April – ANZAC Day ceremony, Bindoon

30 April – Lower Chittering Recreation Centre meeting, Lower Chittering

7 May – Agenda Forum, Bindoon

8 May – Chittering Residents and Ratepayers Association meeting, Bindoon

### Cr Mary Angus

7 May – Agenda Forum, Bindoon

### Cr Don Gibson

7 May – Agenda Forum, Bindoon

## 3. DISCLOSURE OF INTEREST

<i>Item 14.1.1 "CONFIDENTIAL ITEM: Request for Reimbursement of Legal, Travel, and Parking Expenses – Councillor Don Gibson"</i>		
<b>Councillor/Officer</b>	<b>Type of Interest</b>	<b>Nature/Extent of Interest</b>
Cr Don Gibson	Financial	<b>Nature:</b> Claim for expenses.

<i>Item 14.1.2 "CONFIDENTIAL ITEM: Email Communications and Legal Advice – Councillor Don Gibson"</i>		
<i>Councillor/Officer</i>	<i>Type of Interest</i>	<i>Nature/Extent of Interest</i>
Cr Don Gibson	Impartiality	<b>Nature:</b> Email in support of 14.1.1.
Cr Gordon Houston	Impartiality	<b>Nature:</b> Named in the correspondence.

## 4. PUBLIC QUESTION TIME

### 4.1 Response to previous public questions taken on notice

#### 4.1.1 John Curtis, Bindoon

**Question:** When does the contract for Avon Waste expire?

*Answer:* The current contract with Avon Waste expires on 30 June 2019. There is however a renewal option within the contract where the Shire may approve Avon Waste to be provided with the option of a two year extension period. That extension will be the subject of a future Council Meeting report.

#### 4.1.2 John Nagel, Bindoon

**Question:** At the Ordinary Council Meeting held on 20 March 2019, Item 9.4.3 'Lower Chittering Sport & Recreation Facility – Stage 1' and the amendments to the officer recommendation on conditions 10 and 11 – who is responsible for doing this?

*Answer:* The wording of the two resolutions were "10. Authorise the Chief Executive Officer to seek an agreement with Immaculate Heart College for its \$2m contribution for Council's consideration"; and "11. Authorises the Chief Executive Officer to commence the process of securing a (up to) \$3m loan facility from WA Treasury."

*As per the resolutions, the Chief Executive Officer is responsible for progressing the Council decisions.*

*Resolution #10 has been undertaken and is the subject of a report to the May Council Meeting.*

*Resolution #11 has been commenced and WA Treasury has advised that they do not foresee any reason why a Loan would not be granted. The process for establishing a loan is to have it endorsed during the Budget process, this endorsement forms the supporting evidence required by Treasury in order to assess an application.*

## 4.2 Public question time

### 4.2.1 Lyn Borg, Bindoon

**Question 1. Is the cost of Stage 1 and Stage 2 of the Sporting Complex expected to be in the region of \$20 million dollars?**

*Answer 1: No. The Long Term Financial Plan lists Stage 2 as costing \$6m, with revenue (grants and contributions) of \$3.5m. The nett cost to the Shire for Stage 2 therefore being \$2.5m. The total cost of both stages would therefore be \$15.7m (\$9.7 Stage 1 + \$6m Stage 2) less grants and contributions of \$10.2m (\$6.7 - \$3.5m) resulting in the Shire's nett contribution of \$5.5m (approximately) for both Stages. The Long Term Financial Plan is on the Shire's Web Page if you wish to peruse it in more detail but please note that in this answer we have substituted more accurate currently known figures for the Stage 1 component.*

**Question 2: Have the Shire of Chittering given Immaculate Heart College land to the value of \$275,000?**

*Answer: No. The Shire of Chittering has sold land (approximately 3ha) to Immaculate Heart College for \$275,000. This land was the 3ha part of a 10ha parcel of land the Shire recently purchased from the state government for approximately \$15,000 (3ha will therefore be transferred to the College, and the Shire will retain 7ha for the purposes of the Lower Chittering Sports & Recreation Facility). The reason the Shire's purchase price is so low, is that local governments can (on occasion) purchase Crown Land from the State Government at below market value for community purposes. The \$275,000 to be paid to the Shire will in effect, from part of Immaculate Heart College's \$2m contribution towards the Lower Chittering Sports & Recreation Facility (\$275,000 [land payment] + \$1.725m [loan and cash] = \$2m).*

*We understand that as part of the grant application process, the original contribution proposed as a College contribution was \$2.275m (vis. \$2m for the capital contribution towards the Facility, plus \$275,000 for the land). The College however at the end of the day, could only commit to a final contribution of \$2m inclusive of the \$275,000 land payment. We understand some people might therefore conclude that the land is being "given away". It is accurate to say that the College contribution is \$275,000 less than first thought was going to be the case (and therefore the Shire's contribution is \$275,000 more than first thought), however it is not technically accurate to say that the land is being given away for free.*

**Question 3: Will Immaculate Heart College have exclusive day time use of the Sporting Complex?**

*Answer: No. It is not expected that the College will have "exclusive day time use" of the Facility, but there will be a requirement to ensure that the safety of students is adequately accommodated as part of the sharing of this Facility between the community and the College. This aspect will be one of the challenges we will need to overcome as we progress with this project and the Council has (March 2019) established a Lower Chittering Sports & Recreation Facility Reference Group to assist with progressing this and other matters. The Reference Group will have Shire (2); Immaculate Heart College (1); and community (3) representatives as its membership. The Reference Group will have numerous responsibilities, one of which is to establish an Agreement of*



*Operational Use and Costs Responsibility for the various Stakeholder Groups and for the various parts of the Facility. It is expected that the Reference Group will need to liaise with for example, the WA Education Department as part of its consideration process, to best consider how to ensure community members can use the facility for the widest possible timeframes, whilst still ensuring that student safety is not unreasonably compromised.*

*Whilst it is not anticipated that the community would be totally restricted from utilising the Facility during school hours, to accommodate student safety, there is expected to be restrictions on some areas at some times. For example, having a casual user just want to practice their basketball skills for an hour or so whilst school children were also conducting sporting activities at the same basketball court location will likely not be appropriate. On the other hand, an organised community yoga class in the separate reception area/meeting rooms to the basketball courts will it is expected, be quite acceptable.*

#### 4.2.2 Lachlan Chilman, Muchea

**Question 1:** If the Council votes in favour of reducing the school's maintenance contribution for the new school sports complex from \$200,000 to \$100,000 per year, will this increase in rate payers funds, reduce the Council's financial support or ability for the Muchea Hall User Sports Groups in carrying out maintenance and building much needed infrastructure?

*Answer 1:* The Shire's budget is balanced each financial year. Any increase therefore in Shire expenditure for a particular component of the budget has an impact that must be addressed. That impact can be accommodated through a similar reduction in expenditure for another component(s) of the budget, or can be accommodated by an equivalent increase in revenue. It is not possible at this point in time to conclude exactly how the increase outlined in the question can be accommodated. That will be a matter for Council's consideration between now and the adoption of the 2021/21 budget.

**Question 2:** If it will reduce the Shire's ability to fund the maintenance and building of much needed infrastructure for the Muchea User Sports Groups, where will the funds come from to help these clubs out from the Shire that has over 500 participants using this facility?

*Answer 2:* The Long Term Financial Plan plots a planned way forward for the Shire and that Plan includes estimates for all of the Shire's activities, including the Muchea Hall Facility. It shows that the Shire's overall operational expenditure for recreation and culture area will gradually increase each year. This increase would accommodate inflationary effects on the Muchea Hall Facility expenses and so therefore, day-to-day maintenance activities should remain consistent with current levels. The Long Term Financial Plan also includes capital expenditure projections. The Plan (2018 – 28) shows funds in different years for change rooms upgrade, a gymnasium, lighting and reticulation upgrades, netball courts resurfacing, and minor pavilion upgrades, for the Muchea Hall Facility area.

4.2.3 John Curtis, Bindoon

**Question 1:** Further question relating to the community power network; this has been developed in Fremantle, what is happening in Chittering?

*Answer 1:* Through the Chair, the Chief Executive Officer advised that Port Pirie Regional Council were contacted and provided the Shire with information. This was in turn forwarded to the Western Australian Local Government Association's environmental department. The response that the Shire received from WALGA is that each Australian state has slightly different arrangements. The information that the Shire received from WALGA has been passed to the Economic Development Coordinator as an opportunity for the Shire to pursue.

**Question 2:** How will the Shire fund this study in Chittering?

*Answer 2:* Through the Chair, the Chief Executive Officer advised that the Shire would welcome suggestions and will take all suggestions on board and present to Council for their decision, once the research had been completed.

4.2.4 Daniel Jurkovic, Lower Chittering

**Question 1:** How is the Lower Chittering Sport and Recreation Facilities projected income of \$600,000 been reached, with the school having access to the facility?

*Answer 1:* The President advised that the projection has been based on similar facilities (as outlined in the grant application). One of the objectives of the Reference Group is to discuss the matter of income/expenditure of the Facility.

*Through the Chair, the Chief Executive Officer further advised that projected income referred to had come from the economic study submitted with the grant application. That part of the study was undertaken by the University of Adelaide, where a dozen or so recreation centres were surveyed, and the survey results were then divided into different sizes of centre by actual attendance usage. The income/expenditure amounts included the area of cafés, and probably also gymnasiums and function centres, etc. The income levels for the Lower Chittering Facility are not expected to reach these levels unless the Facility is operated similarly to the study examples used.*

**Question 2:** Has there been case studies undertaken in nearby authorities, as the shire is going to be closer to the city when the new Highway and NorthLink are completed?

*Answer 2:* Through the Chair, the Chief Executive Officer advised that consultation may have occurred through the Community Consultation undertaken as part of the grant application.

4.2.5 **Kylie Hughes, Muchea**

**Question 1:** Has Council complied with the statutory requirements under section 3.59 (Commercial Enterprises by a Local Government) of the Local Government Act 1995, in relation to the Lower Chittering Sports Facility proposal including those referring to the necessary steps if a local government wishes to commence an undertaking which is significantly different (i.e. altered funding arrangements) from that which was originally proposed?

*Answer 1:* Through the Chair, the Chief Executive Officer advised that the total budget is too small and therefore does not fit into this requirement. A 'major land transaction' is classified by value (dollars and percentages relevant to the size of the local government) and relates to business ventures not recreation centres like the Lower Chittering Sports & Recreation Facility. If the Shire was undertaking for example, a refuse disposal facility, then yes, the Shire might need to comply with this legislation. The Chief Executive Officer advised Ms Hughes that she might like to contact the Department of Local Government to seek confirmation.

The President informed the meeting that the Shire will be conducting a public information session to answer all questions relating to this matter.

4.2.6 **John Nagel, Bindoon**

**Question 1:** Asked the President if he was prepared to hold a Special Electors Meeting to discuss the facility?

*Answer 1:* The President advised that yes, Council is going to be conducting an information session so that all residents can ask questions on this matter.

Mr Nagel then handed the President a "Request for a Special Meeting of Electors" to discuss the following items:

1. Lower Chittering Sports Complex
2. Muchea Sports Complex
3. Bindoon Oval
4. Funds for the sale or purchase of the proposed lifestyle village
5. Whereabouts of cash back reserve funds set aside for the proposed Gray Road Recreation Complex.
6. Financial management of monies with sport and recreation within the Shire of Chittering
7. The absolute full disclosure of all documentation regarding loans, contracts, securities or other correspondence relating to any of these matters.

This Request was signed by 134 residents of the Shire.

4.2.7 **Josephine Fern, Bindoon**

**Question 1:** The research that was provided by South Australia, Council has visited several areas in similar local governments; wouldn't you be best to go back to those local governments to find out more on their financial status on their recreation centres?

*Answer 1:* Through the Chair, the Chief Executive Officer advised that this has been undertaken. The budget of other WA local governments with similar type facilities is in the vicinity of \$4,000,000. An operating cost for the Lower Chittering Sports & Recreation Facility

*was not included in the Shire's Long Term Financial Plan, so this figure has been used as a comparison estimate.*

**4.2.8 Dennis Boyanich, Bindoon**

**Question 1:** Asked the President if he received an invitation to attend the recent Muchea Hall Facility meeting in Muchea?

*Answer 1: The President advised that he was not able attend this meeting but his apology was given by the Chief Executive Officer on the night.*

*The CEO confirmed that he attended the meeting and advised that the President was working away from the district and therefore not able to be present.*

**Question 2:** The log books of the community bus, there is a discrepancy on trips in the region of 50/60kms for the same trip, has the Shire investigated this?

*Answer 2: Through the Chair, the Chief Executive Officer advised that this matter has been investigated and there was only two or three occasions where the log book was not filled out. Administration have been reminded to ensure that people who are using the community bus need to complete all bus hire/driver requirements.*

## 5. PRESENTATIONS / PETITIONS / DEPUTATIONS

### 5.1 Petitions

A Petition requesting a Special Meeting of Electors was presented to the Shire President by Mr John Nagel (and signed by 134 residents) as follows:

- "1. Under section 5.28 of the Local Government Act 1995, the electors of Chittering whose names, addresses and signatures are set out in the attached list and who compromise 100 electors/5% of the number of electors request that a special meeting of the electors of the district be held.
2. The details of the matter to be discussed at the special meeting are—
  - \* Financial management of monies with sport and recreation within the Shire of Chittering.
  - \* The absolute full disclosure of all documentation regarding loans, contracts, sureties or other correspondence relating to any of these matters.
    - (1) Lower Chittering Sports Complex;
    - (2) Muchea Sports Complex;
    - (3) Bindoon Oval;
    - (4) Funds for the sale or purchase of the proposed lifestyle village; and
    - (5) Whereabouts of cash back reserve funds set aside for the proposed Gray Road recreation complex."

### 5.2 Presentations

Nil

### 5.3 Deputations

#### 5.3.1 Item 9.1.1 "Application for Development Approval "Extractive Industry (Gravel)": Lot 203 Wandena Road, Chittering"

##### Deputation

1. Mr Jadd Brown speaking IN SUPPORT of the Recommendation

##### Summary of deputations

- Property is zoned 'Agricultural Resource'.
- Original Development Application in March 2016 with no formal complaints received.
- Adjoining neighbours only concern was the beeping of reversing loader, which has been rectified by changing the alarm.
- Applicant has installed a slip lane and acceleration lane.
- Maximum truck movements per day is highest is 40, 20 in and 20 out.
- Concerns raised during public consultation have been addressed, namely additional bunding, new screen, new jaw crusher and a Dust Management Plan.
- Department has issued a 'draft' licence which is waiting on Council approval.

Points/Request for Clarification by Councillors:

- The truck movements on adjoining properties is five or six on average, but some days there is 20.

**5.3.2 Item 9.1.2 “Reconsideration of Development Application Refusal – Statewest Planning (on behalf of Mr. Rodney Pearce): Storage of Equipment and Vehicles on Lot 38 Great Northern Highway, Chittering”**

Deputations

1. Mr Jason Hunt to speak AGAINST the Recommendation

Summary of deputations

- The original application in 2015 was for storage of equipment, it did not specify the type of equipment.
- Condition 2 of the 2015 approval stated that the approval “is for storage purposes only and not for residential habitation”, which is what the facility is being used for.
- The land owner has obtained valid approval and undertaken requirements outlined in the approved Development Approval.
- Seeking Council to add the site to the non-conforming use register or amend the existing approval adding the condition that less than 50% of the existing shed area is to be used for storage.

**5.3.3 Item 9.4.2 “Lower Chittering Sport & Recreation Facility: Immaculate Heart College Self-Supporting Loan”**

Deputations

1. Mr Lucas Hurley to speak IN SUPPORT of the Recommendation
2. Mrs Kerrie Read to speak IN SUPPORT of the Recommendation

Summary of deputations

- Facility represents fantastic opportunity for children of the Shire.
- Other uses of the facility include balls, competitions, weddings, wakes, conferences.
- College is contributing \$1.725m and this facility will enable the school to expand their extracurricular activities, i.e. music, award nights, etc.
- In 2019 the College’s cash surplus was approximately \$500,000.
- Lower Chittering is the fastest growing area in the Shire and has one of the largest populations with the least infrastructure.

## 6. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

## 7. CONFIRMATION OF MINUTES

### 7.1 Ordinary Meeting of Council: 17 April 2019

**OFFICER RECOMMENDATION / COUNCIL RESOLUTION 010519**

**Moved Cr Ross / Seconded Cr Angus**

**That the minutes of the Ordinary Meeting of Council held on Wednesday 17 April 2019 be confirmed as a true and correct record of proceedings.**

**CARRIED 5/2**  
8:17PM

## 8. ANNOUNCEMENT FROM THE PRESIDING MEMBER

### Alex Douglas

On 24 April Chittering lost a pillar of their community. Alex Douglas was a man who dedicated much of his life to supporting and counselling others and in service to his community. His contribution commenced when he arrived in the area around 33 years ago and we express our deepest sympathy to his wife, Ruth, family and friends. Alex is remembered as a 'champion bloke', 'Bindoon's rough diamond; and 'one of lifes's gentlemen'. He was clever, quick witted and a thinker, visionary and writer with a good sense of humour who stood for what he believed in and called a spade a spade.

Alex was an Elected Member for the shire of Chittering for over 13 years, retiring in 2015. During his time on Council, he also served as President between 2009 and 2013. He advocated for things to improve the Shire and Bindoon, such as the first local doctor, extended library opening hours to Saturdays, campaigned for the future retirement village and tourism. The Shire is left with fond memories of him as a kind and caring man, for the smile on his face and the way he would brighten up the office. Alex participated on many committees including the Bindoon Theatre Inc, having recently steered this group into the more broadly based Bindoon Entertainment, Arts and Theatre Group (BEAT). He was also involved in and had roles with the Bindoon Men's Shed, Retirees, Progress Association, Arts and Crafts, Agricultural Society as well as the Chittering Tourism Association.

Somewhere in amongst those commitments, Alex also found time to spend countless hours travelling with the tourism promotional trailer within the Chittering region to promote the Shire. He was also a regular contribution to the Northern Valleys News, sharing his thoughts and wisdom in his 'Ponderings' column. Alex's involvement in the community was most recently recognized when he was awarded the 2016 Premier's Australia Day Active Citizenship Award. This special man has left a significant legacy and his send of community spirit will be missed.

A moment of silence was observed as a mark of respect.

### Special Electors Meeting

The President informed the meeting that in accordance with the *Local Government Act 1995, s5.28* a special electors meeting must be held no more than 35 days after receiving the request. A suitable date will be selected and notice will be published accordingly.

## 9. REPORTS

### 9.1 DEVELOPMENT SERVICES

#### 9.1.1 Application for Development Approval "Extractive Industry (Gravel)": Lot 203 Wandena Road, Chittering\*

Report date	2 May 2019
Applicant	Swan Waste Solutions Pty Ltd
File ref	A11587
Prepared by	Senior Planning Officer
Supervised by	Executive Manager Development Services
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	<ol style="list-style-type: none"><li>1. Application document</li><li>2. Schedule of submission</li><li>3. Traffic Assessment</li></ol>

#### Executive Summary

Council is requested to consider an application for Development Approval for a gravel extractive industry on Lot 203 Wandena Road, Chittering. The extraction area relates to a previously uncut area of an allotment historically used for extraction purposes. Concerns from nearby landowners have been raised during the advertising of the application and as such, the application is presented to Council for determination.

IMAGE 1: Location Plan

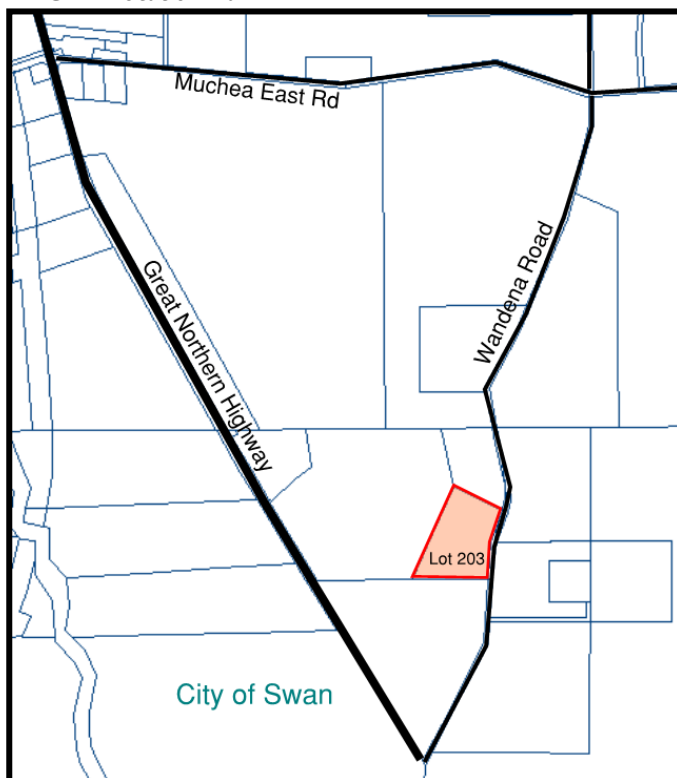




IMAGE 2: Site Plan



### Background

An application for Development Approval has been received for the development of a gravel extractive industry on Lot 203 Wandena Road, Chittering. A summary of the application details is provided in the below table with a full copy of the application document provided in **Attachment 1**:

<b>PROPOSAL</b>	
Material	Gravel
Total area of excavation	2.7ha
Total material to be extracted	122,000 tonne
Life of project	5 years
Total area to be cleared	1ha (30 trees)
Maximum depth of excavation	2.5m – 3.0m
Stockpiling	Stockpiling to occur on pit floor to a height of 7m.
<b>PROCESSING</b>	
Equipment	Screening and crushing equipment to be used on site
<b>TRANSPORT</b>	
Truck Movements	40 truck movements per day
Access	Wandena Road
<b>WORKFORCE</b>	
Hours of Operation	7.00am to 4.45pm hours Monday to Friday 7.00am to 11.45am Saturday

The proposed extraction area is setback a minimum of 50m from the western and eastern boundary of Lot 203. Two residences on adjoining land holdings are estimated to be approximately 130m and 400m respectively from the proposed extraction areas.

Lot 203 is approximately 12.6ha in area, slopes gently downwards in a south-westerly direction and contains a moderate coverage of native trees with a relatively degraded understorey. The proposed 2.7ha extraction area contains approximately 30 native trees that are required to be removed to enable the extractive operations to occur.

The lot is zoned 'Agricultural Resource' under the Shire of Chittering *Local Planning Scheme No. 6* (LPS6) and is located within the following special control areas of LPS6:

- Water Prone;
- Muchea Employment Node;
- Military Considerations; and
- Basic Raw Materials.

Lot 203 adjoins Lot 202 directly to the north which is currently operating a construction and demolition recycling business. The applicant to this extractive industry application (Swan Waste Solutions) is the owner and operator of the construction and demolition business on Lot 202. The extractive industry proposal will utilise the existing access point onto Wandena Road, in conjunction with the business on Lot 202.

### **Consultation/Communication Implications**

#### Local

LPS6 identifies the use class of 'Industry – Extractive' as an 'A' permissibility within the 'Agricultural Resource' zone which means that the use is not permitted unless the local government has exercised its discretion by granting development approval after advertising.

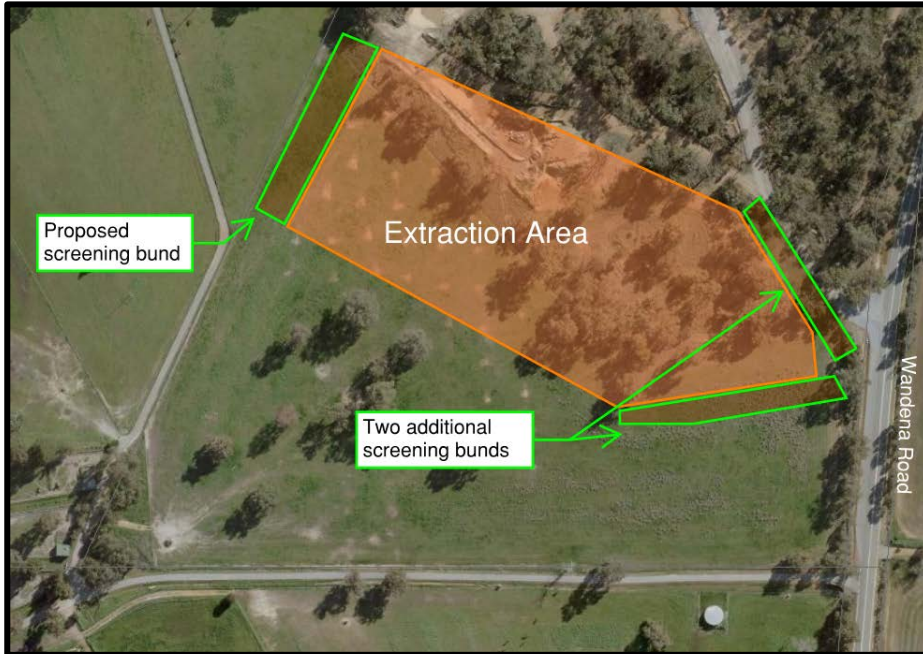
The application was advertised to all nearby landowners within 1000m of the extraction area, giving 21 days to provide a response, exceeding the 14 day minimum stipulated by the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations).

Four responses were received from nearby landowners, two of which had no objections to the proposal, however two raised objections justified by several matters of concern.

Shire staff notified the applicant of the concerns raised and provided an opportunity for the proposal to be modified to address these concerns. This was of importance as one of the objectors owns a residence within 500m of the extraction area. In accordance with the *Shire of Chittering Extractive Industry Local Law 2014*, written consent must be given from an affected landowner if extraction is to occur within 500m of their residence.

The original proposal was modified to include two additional 4m high screening soil bunds on the eastern boundaries of the extraction site as illustrated by the below diagram. This is in addition to the screening bund originally proposed on the western boundary.

IMAGE 3: Screening of the extraction site



The modified proposal was re-advertised to the two objecting landowners. The landowner within 500m of the extraction area agreed to the proposal but still maintained some concerns regarding vehicle movements and traffic safety on Wandena Road. The other objector welcomed the inclusion of the two additional screening bunds, however also maintained their initial concerns.

All submissions received during the advertising period have been listed in a schedule of submissions provided within **Attachment 2** of this report. The schedule also includes commentary from the applicant on the concerns raised.

### State

A period of advertising to government agencies was undertaken for a minimum of 42 days as prescribed by the Regulations, with the following agencies afforded the opportunity to comment on the proposal:

- Department of Planning, Lands and Heritage (Aboriginal Affairs);
- Department of Mines, Industry Regulation and Safety (Mines and Petroleum);
- Department of Biodiversity, Conservation and Attractions;
- Department of Primary Industries and Regional Development;
- Department of Water and Environmental Regulation; and
- Main Roads WA.

Responses were provided by each of the government agencies; no objections were raised with regard to the proposal. The responses are listed in the schedule of submissions provided in **Attachment 2**.

## Legislative Implications

### State

- Planning and Development (Local Planning Schemes) Regulations

In considering an application for development approval the local government is to have due regard to Sch. 2, Pt. 9, Cl. 67 of the Regulations – ‘Matters to be Considered’. The primary matters of consideration relevant to the application have been listed and discussed below:

(g) *any local planning policy for the Scheme Area.*

*Local Planning Policy No. 10 – Basic Raw Materials and Extractive Industries* is addressed later in this report.

m) *the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*

The locality is mostly characterised by rural living and general farming activities. The proposed extraction will be set back 50m from the road reserve and property boundaries, and screened with landscaped bunds from Wandena Road. Therefore the proposal is considered to be compatible with the rural area given it will be considerably screened.

n) *the amenity of the locality including the following —*  
(i) *environmental impacts of the development;*  
(ii) *the character of the locality;*  
(iii) *social impacts of the development;*

One submission received raised concerns regarding the impact of the development on the amenity of the area with particular reference to noise and dust emissions.

The creation of dust is a common component of extractive operations and needs to be managed appropriately to avoid becoming a nuisance to adjoining landowners and occupiers. A comprehensive Dust Management Plan has been prepared with the subject application, which details measures for dust mitigation during extractive operations. If this application is approved, a condition can be imposed on the approval that requires the implementation of the Dust Management Plan for the life of the extractive industry. Officers consider this to be a satisfactory approach to mitigate any dust nuisance that may be caused by the development and is standard practice for this type of industry.

Noise emissions are typically generated within extractive operations from the machinery and vehicles used to extract and haul the material. The subject application also includes the screening and crushing of the gravel material which may generate some additional noise. The application predicts that “minimal noise impact is envisaged to occur at the proposed site due to the rising topography to the east”. Additionally, basic noise mitigating measures have been proposed in the application (i.e. maintaining vehicle mufflers, managing speeds of vehicles on internal roads etc.). Despite this information, the application does not provide any acoustic modelling or any statements from a qualified acoustic consultant qualifying the impact noise may have on nearby sensitive receivers. The Shire needs to be given the confidence that the proposed operations are not going to adversely impact the nearby landowners, and affect their amenity, in regard to noise emissions. The *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) is the guiding legislation that provides the acceptable levels of noise that can be experienced by a noise sensitive receiver (residence).

To ensure that the operations are not going to adversely impact the surrounding landowners, it is recommended that a condition of approval be imposed that requires a report from a suitably qualified acoustic consultant advising whether the proposal can achieve compliance with the Noise Regulations, and if not, what mitigating measures need to be implemented to do so. This noise report would need to be provided to the Shire prior to an extractive industry licence being issued.

(t) *the amount of traffic likely to be generated by the development, particularly in relation to the road system in the locality and the probably effect on traffic flow and safety;*

Two submissions received raised concerns over the impact the development may have on the safety of traffic on Wandena Road.

The application estimates that a maximum of 40 truck movements could occur in one day (20 laden and 20 unladen) however, over a five year period an average daily truck movement of eight is estimated. The truck movements will be concentrated at an access point on Wandena Road which is shared with the construction and demolition recycling (C&D) facility on Lot 202.

A Traffic Impact Assessment (TIA) was prepared in 2015 for the operation of the C&D facility, which estimated an average of 16 truck movements per day for this operation. From the TIA, it was determined that the existing road network could sufficiently cater for the development however, the applicant still constructed an auxiliary left turn treatment on Wandena Road (see image below).

IMAGE 4: Auxiliary left turn treatment on Wandena Road



Following liaison with the applicant regarding the concerns raised from the advertising period, an additional Traffic Assessment was prepared by an engineering consultant and provided to the Shire. The Assessment is provided in **Attachment 3** and concludes that:

*'an increase of two truck movement in the peak period will not have any impacts for turning trucks and the provision of an acceleration lane and any other improvement is still not considered warranted. In addition, it is most likely that the traffic volumes along Wandena Road will decrease in the future with the opening of the Northlink Project, for commuters travelling west of the Tonkin Highway.'*

From the above Assessment, it has been justified by the applicant that the increase of up to 40 truck movements per day (during peak extraction times) does not warrant any modifications to the property's access treatments with Wandena Road.

### Local

- Local Planning Scheme – Part 5.1-Special Control Areas

Lot 203 is located within four separate special control areas as defined by LPS6. They are listed below and addressed individually:

#### Water Prone Special Control Area

The purpose of the Water Prone Special Control Area is to manage development where there is a high risk of inundation, to preclude development which may increase the amount of nutrients from entering the surface and/or sub-surface water systems and to ensure that wetland environmental values and ecological integrity are preserved.

The application indicates that the recorded depth of groundwater on site is 14m below the surface of the ground. As the gravel resource is proposed to be excavated to approximately 3m below the ground's surface, there is considered to be ample separation to mitigate any risk of the groundwater being intercepted and potentially contaminated. In the instance that the gravel resource is found deeper than 3m, excavation can still occur knowing that this separation distance to the groundwater level exists. However, in order to protect the groundwater and to avoid interception, a condition of approval can be imposed that requires a minimum of 2m separation from the extraction pit floor to the highest known groundwater level. The onus is then placed on the applicant to ensure that this occurs throughout extractive operations.

#### Muchea Employment Node

The key purpose of the Muchea Employment Node Special Control Area is to provide guidance on zoning, subdivision and development proposals within the Muchea Industrial Park (MIP), to protect and manage the natural environment to result in a high quality industrial estate and to limit the development of land uses that might compromise the intended purpose of the MIP.

An extractive industry operation is not considered to limit the future development of the MIP as it is not a land use that would sterilise the industrial development around it. In the context of industrial development, the natural environment is expected to be protected to a suitable level through the protection of ground and surface water and with the implementation of a rehabilitation plan. From a long term perspective, and once the gravel resource has been removed from the site, the site has a greater potential to be utilised for commercial/industrial purposes consistent with the objectives of the MIP, as the site is not constrained by an underlying gravel resource.

### Military Considerations

The purpose of the Military Considerations Special Control Area is to protect the operations of the RAAF against noise sensitive development in its flight paths. The proposal does not include any development that may be sensitive to excessive amounts of noise from aircraft and is therefore not considered to be an issue.

### Basic Raw Materials

The purpose of the Basic Raw Materials Special Control Area is to identify and protect future resources by discouraging development that would inhibit the resource being extracted. As the application is for the extraction of a basic raw material (gravel), it is achieving the primary objective of this special control area. It should be given a high level of regard that this gravel extraction is proposed within a special control area solely designated for that purpose.

- Shire of Chittering Extractive Industries Local Law 2014

The *Shire of Chittering Extractive Industries Local Law 2014* (Local Law) stipulates the requirements for an extractive industry licence to be issued. An extractive industry licence is required to be sought following receipt of a development approval, prior to any extraction occurring.

It is not necessary for the requirements of the Local Law to be complied with at the planning stage of an extractive industry proposal. It does however, give the Shire the guidance whether a future licence application can be approved, or whether there are fatal flaws that need to be addressed at the earliest possible stage.

The proposal on Lot 203 is generally consistent with primary aspects of the Local Law. The Local Law does require that written consent be gained from landowners with residences within 500m of the extraction site, which has been sought through this planning process. Appropriate conditions can be imposed on the development approval to ensure all of the requirements of the Local Law are met prior to an extractive industry licence being issued. These conditions are within the officer recommendation at the end of the report.

## **Policy Implications**

### State

- Draft State Planning Policy 2.4 – 'Basic Raw Materials'

The Draft State Planning Policy 2.4 – 'Basic Raw Materials' (SPP2.4) guides the development of extractive industries with an aim to avoid land use conflict and the sterilisation of basic raw material resources.

The proposal is for extraction to occur within a designated special control area under LPS6, specifically for this activity. This ensures that the extraction operations are given precedence over other sensitive type land uses that may hinder the extractive industries. It is considered that the proposal achieves consistency with SPP2.4.

- State Planning Policy 2.5 – 'Rural Planning'

*State Planning Policy 2.5 – 'Rural Planning'* (SPP2.5) provides a broad level of guidance for the protection of significant geological supplies whilst acknowledging the importance of protecting environmental values.

While SPP2.5 does not provide specific guidance on the assessment of extractive industry applications, as is the case with SPP2.4, the proposed activities on Lot 203 are considered to be consistent with this Policy, particularly as Lot 203 is located within an identified area under LPS6 for Basic Raw Materials.

Local

- Local Planning Policy 10 – Basic Raw Materials and Extractive Industries

*Local Planning Policy No. 10 – 'Basic Raw Materials and Extractive Industries'* (LPP10) provides guidance on the assessment and determination of applications for extractive industries. The subject proposal is considered to be generally compliant with LPP10 with the exception of clause 5.4(b)v) which states:

*'Council will not approve extractive industries that are situated within 500m of the nearest house.'*

The proposed extraction area on Lot 203 is within 500m of two houses on adjoining landholdings (130m and 400m). Contrary to this requirement, the *Shire of Chittering Extractive Industry Local Law 2014* provides an opportunity for extractive industries to occur within 500m of a house if written consent from the affected parties is gained.

It is noted that in accordance with the Regulations, a Local Planning Policy is to be given regard when determining an application whereas a Local Law shall be complied with.

As written consent has been provided by the two affected landowners and that LPP10 is inconsistent with the Local Law, it is considered that the extractive operations can be considered for approval within 500m of the nearest residences.

## Financial Implications

Nil

## Strategic Implications

Local

- Strategic Community Plan 2017-2027

Focus area: Economic Growth  
Objective: S4.2 Protective environment  
Strategy: S4.2.1 Ensure the protection of our local biodiversity

The proposal may increase local employment in the area. There are no known impacts on local biodiversity, and the rehabilitation plans ensure the long term use of the site is environmentally sound.



- Draft Local Planning Strategy 2019

3.3.6 Basic raw materials

Objective Secure the extraction of basic raw materials, including 'significant geological supplies'.

Strategy b) Minimise impacts of basic raw materials extraction on the Shire's natural areas and rural character.

The draft Local Planning Strategy sets out actions in which basic raw materials extractions are to occur. This extractive industry is consistent with part 3.3.6 of the draft as the locality is designated for future industry zoning, while also being located within the designated area of Figure 9. The strategy suggests the material should be protected for extraction provided sensitive land uses surrounding are appropriately accounted for.

State

Nil

**Site Inspection**

Site inspection undertaken: Yes.

A site inspection was undertaken primarily to understand the issues surrounding the traffic concerns raised during the advertising period.

**Triple Bottom Line Assessment**

Economic implications

The proposal may create employment opportunities for the local community and contract businesses. It may also assist in providing a local construction resource to local infrastructure projects.

Social implications

Extractive industries often generate amenity concerns due to the potential for dust and noise emissions. These issues however, can be effectively managed during the operation of the industry to a level where the amenity of neighbouring property owners is not adversely affected. A Dust Management Plan was provided with the application which outlines several measures and contingencies in the event that weather conditions promote a dusty operation. A noise report has been recommended as a condition of approval to ensure the operations of the extractive industry can comply with the Noise Regulations and the nearby noise sensitive receivers are not affected by noise pollution outside the prescribed levels.

Environmental implications

The proposal does include the removal of approximately 30 native trees which have been considered to be included in a vegetation complex of a degraded state. The property is located within the MIP and as such, the ultimate intent for this property is to support industrial development. Notwithstanding its future use, the clearing of native vegetation may require a clearing permit from the Department of Water and Environmental Regulation which the applicant will need to obtain.

### Officer Comment/Details

The application raised three primary matters of concern during the advertising period being the potential generation of noise, dust, and the potential for traffic issues on Wandena Road.

As described in the body of this report, dust can be managed through the implementation of the Dust Management Plan which is standard industry practice.

With screening and crushing proposing to take place on-site and the absence of any acoustic modelling in the application, the emission of noise pollution is an element of the application that needs addressing. The Shire needs to be confident that the operations can comply with the Noise Regulations to ensure neighbouring landowners are not affected above the permitted prescribed levels. As such, an acoustic report from a suitably qualified consultant is recommended to be imposed as a condition of approval that either demonstrates the activities will comply with the Noise Regulations, or will prescribe measures to be applied to ensure this compliance is achieved. This would need to be presented to the Shire prior to an extractive industry licence being issued.

Following concerns raised during advertising regarding the development's impact on traffic safety on Wandena Road, the Traffic Report prepared by an engineering consultant verifies that the development can operate with no modifications required to the existing road and access conditions.

The proposal for gravel extraction is located within the Basic Raw Material Special Control Area, which designates the area of land within the Shire that this activity is encouraged to occur and is protected from the influences of other future sensitive land uses.

It is recommended that the application be approved subject to appropriate conditions.

#### **9.1.1 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 020519**

**Moved Cr Gibson / Seconded Cr Osborn**

**That Council grant Development Approval for an extractive industry (gravel) on Lot 203 Wandena Road, Chittering subject to the following conditions:**

- 1. Prior to the issue of an extractive industry licence, a current public liability insurance policy shall be taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum not less than \$10,000,000 in respect of any one claim relating to any of the extractive industry operations.**
- 2. Prior to the issue of an extractive industry licence, a cash bond or bank guarantee shall be submitted to the Shire as security for the restoration and rehabilitation of the extraction site in accordance with the *Shire of Chittering Extractive Industries Local Law 2014*.**
- 3. Prior to the issue of an extractive industry licence, plans of excavation shall be prepared by a licensed surveyor, submitted to and approved by the Shire indicating the existing and proposed land contours of the extraction site and providing all other details listed within Part 2.2(a) of the *Shire of Chittering Extractive Industries Local Law 2014*. The Plans of Excavation shall be generally in accordance with the approved development plans and shall include 4m high earth screening bunds on the western and eastern portions of the extraction site and vegetated screening on the eastern side of the north-eastern most bund.**

4. Prior to the issue of an extractive industry licence, dieback certification from an accredited dieback interpreter shall be submitted to and approved by the Shire identifying any presence of dieback within the proposed extraction areas. If dieback is identified to be present within the proposed extraction areas, a dieback management plan shall be submitted to and approved by the Shire prior to the issue of an extractive industry licence.
5. Prior to the issue of an extractive industry licence, a refuelling management plan shall be submitted to and approved by the Shire to identify means of refuelling on-site vehicles and plant, and remediation measures in the event of a fuel spill.
6. Prior to the issue of an extractive industry licence, an acoustic report prepared by a suitably qualified acoustic consultant shall be submitted to and approved in writing by the Shire. The Plan shall demonstrate how compliance with the *Environmental Protection (Noise) Regulations 1997* is achieved and provide any mitigating measures necessary to achieve compliance.
7. Prior to the issue of an extractive industry licence, a weed management plan shall be submitted and approved by the Shire to the specifications of the Department of Primary Industries and Regional Development.
8. This approval is for a term of 10 years, commencing from the date of issue of an extractive industry licence for the subject site.
9. All extractive operations shall be in accordance with the approved Plans of Excavation at all times to the satisfaction of the Shire.
10. Rehabilitation and decommissioning of the extractive industry site shall be in accordance with Section 5.1 of the Gravel Pit Operations Management Plan dated 26 July 2018 to the satisfaction of the Shire and shall be commenced within 12 months of the cessation of the extractive industry or cancellation of the Extractive Industry Licence, whichever occurs first.
11. An approved Dieback Management Plan shall be implemented for the life of the development to the satisfaction of the Shire.
12. The approved Refuelling Management Plan shall be implemented for the life of the development to the satisfaction of the Shire.
13. All noise mitigating measures prescribed as necessary by the approved Acoustic Report shall be implemented for the life of the development to the satisfaction of the Shire.
14. The approved Weed Management Plan shall be implemented for the life of the development to the satisfaction of the Shire.
15. The Dust Management Plan dated 2 August 2018 shall be implemented for the life of the development to the satisfaction of the Shire.
16. The Gravel Pit Operations Management Plan dated 26 July 2018 shall be implemented for the life of the development to the satisfaction of the Shire.

17. The hours of operation including vehicle movements within the site shall be limited to:
  - a. Monday to Friday - 0700 to 1700 hours;
  - b. Saturday - 0700 to 1200 hours; and
  - c. Sunday and public holidays not permitted.
18. Extractive operations shall not occur less than two metres from the highest known water table level at any time to the satisfaction of the Shire.
19. A progress report/annual report shall be submitted to the Shire every 12 months from the date of issue of an Extractive Industry Licence for the life of the Extractive Industry Licence to the satisfaction of the Shire that identifies the following:
  - a. The progress of excavation;
  - b. The progress of rehabilitation; and
  - c. Community complaints and responses/actions.
20. All extractive activities shall comply with the *Shire of Chittering Extractive Industry Local Law 2014* at all times to the satisfaction of the Shire unless otherwise stipulated by a condition of Development Approval or a condition on the Extractive Industry Licence.

#### Advice Notes

1. If the development the subject of this approval is not substantially commenced within a period of two years, or another period specified in the approval after the date of the determination, the approval will lapse and be of no further effect.
2. Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.
3. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005 Part 14*. An application must be made within 28 days of the determination.
4. With regard to Condition No. 2, the 2018/2019 adopted Fees and Charges requires a security sum of \$17,900 per hectare. This rate may change depending on the timing of the extractive industry licence being issued.
5. With regard to Condition No. 3, the applicant is recommended to consult with the Part 2.2 (a) of the *Shire of Chittering Extractive Industries Local Law 2014* which can be sourced from the Shire of Chittering website.
6. The applicant is advised to ensure that an appropriate Works Approval' is in place from the Department of Water and Environmental Regulation, for the crushing and screening activities proposed. The applicant is also advised to contact that Department to ascertain whether a 'Clearing Permit' for the proposed vegetation removal is required.

CARRIED 7/0  
8:21PM

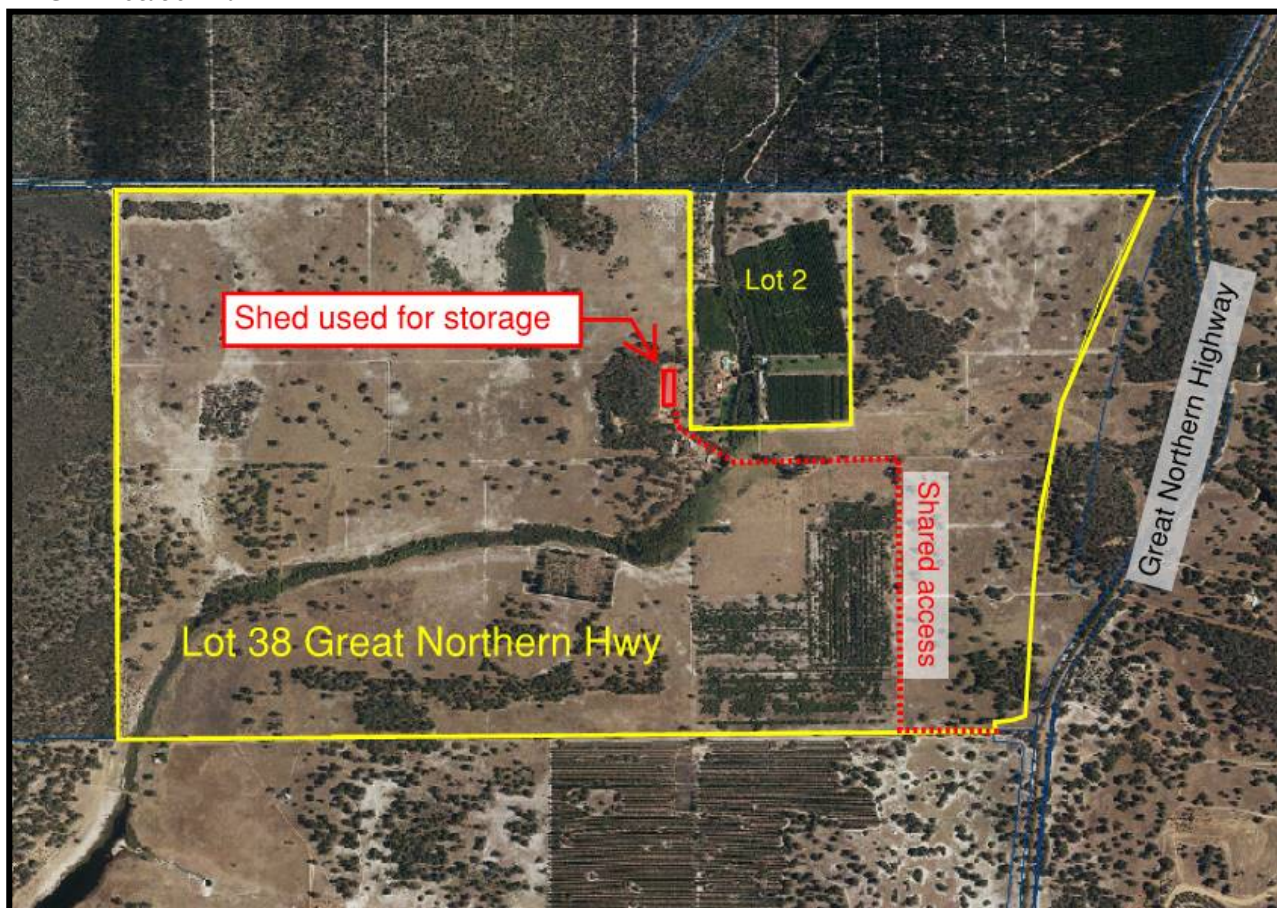
9.1.2 Reconsideration of Development Application Refusal – Statewest Planning (on behalf of Mr. Rodney Pearce): Storage of Equipment and Vehicles on Lot 38 Great Northern Highway, Chittering\*

Report date	2 May 2019
Applicant	Rod Pearce
File ref	A10885
Prepared by	Senior Planning Officer
Supervised by	Executive Manager Development Services
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	1. Council report – 20 February 2019; 2. Request for reconsideration; 3. May 2015 Development Approval for Farm Shed

### Executive Summary

Council is requested to reconsider its decision of 20 February 2019 to refuse a retrospective application for Development Approval for the storage of non-rural equipment, plant and vehicles in a shed on Lot 38 Great Northern Highway, Chittering. The request contends that the land-use of 'storage' was already permitted in 2015 when the farm shed was approved by the Shire.

IMAGE 1: Location Plan



## Background

At its meeting held 20 February 2019, Council resolved the following:

9.1.6 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 130219

Moved Cr Osborn / Seconded Cr Ross

That Council:

1. Refuse to grant Development Approval for the storage of non-rural equipment, plant and vehicles on Lot 38 Great Northern Highway, Chittering for the following reason:
  - a. The activities proposed are considered to be categorised as 'Warehouse/Storage' and 'Transport Depot' under the Shire's of Chittering Local Planning Scheme No. 6. Consistent with Scheme Amendment No. 65, 'Warehouse/Storage' and 'Transport Depot' are 'X' uses within the Agricultural Resource zone.
2. Advise the landowner of Lot 38 Great Northern Highway, Chittering that all equipment/plant and vehicles not associated with the agricultural activities on Lot 38 Great Northern Highway, Chittering shall be removed from the property within three months of this resolution.

THE MOTION WAS PUT AND DECLARED CARRIED 4/3  
8:46 PM

A full copy of this Council report is provided in **Attachment 1**.

Following notice of the above resolution being received, the applicant/landowner engaged a planning consultant (Statewest Planning) to lodge an appeal of the resolution with the State Administrative Tribunal (SAT). With the agreement of Shire staff, the initial SAT direction hearing was vacated and relisted to invite Council with an opportunity to reconsider its decision.

Formal justification has since been received from Statewest Planning for Council to reconsider its decision. A summary of the reasons for request are provided below with a full copy provided in **Attachment 2**:

- The shed was already approved for storage in 2015;
- The original application for the shed in 2015 specified that the shed was proposed for "storage of equip." and the approval did not restrict the type of equipment;
- A condition on the 2015 shed approval states: 'The proposed shed is for storage purposes only and not for residential habitation.'
- At the time of the 2015 approval, the land uses of 'warehouse' and 'transport depot' could be considered for approval in the 'Agricultural Resource' zone;
- The land use 'storage' was an 'X' use in the Agricultural Resource zone meaning it could not have been permitted; and
- The existing approved shed with approved 'storage' use should have been included in Scheme Amendment No. 65 as a property that can continue to be used for 'Warehouse/Storage';

Since the SAT appeal was lodged, but prior to the above formal justification being received, formal notification has been received for the Minister's approval of Scheme Amendment No. 65, with gazettal of the Scheme Amendment occurring on 18 April 2019. Scheme Amendment No. 65 changed the permissibility of both 'Warehouse/Storage' and 'Transport Depot' to an 'X' within the 'Agricultural Resource' zone.

Further to the above, Council is made aware that the applicant/landowner (Mr. Rodney Pearce) was not formally advised that the application was going to be presented to the 20 February 2019 Ordinary Council Meeting. Although numerous attempts to contact Mr. Pearce during the processing of the application, and leading up to the Council Meeting were unsuccessful, a formal invitation to attend the Council meeting was not sent. This was an administrative oversight. To have the matter re-considered by Council (with the applicant represented) is considered to be a fair and equitable approach, giving the applicant the opportunity to address Council, before having the matter further considered by SAT, if necessary.

Accordingly because of the approval of Amendment 65, Council is able to only consider whether it deems the approval of 2015 included the land-use approval for 'warehouse', and is thus a 'non-conforming' use.

### Consultation/Communication Implications

#### Local

The original retrospective application was advertised to the adjoining landowner (Lot 2) given the proximity of the proposed activity to the boundary (50m) and the two properties sharing an access way through an access easement burdening Lot 38. As a result of the advertising, an objection was received. This objection was addressed in the original report to Council and does not need to be further addressed in this report.

#### State

Nil

### Legislative Implications

#### State

- Planning and Development (Local Planning Schemes) Regulations

In considering an application for development approval, or reconsideration thereof, the local government is to have due regard to Sch. 2, Pt. 9, Cl. 67 of the Regulations – 'Matters to be Considered'. The primary matter of consideration relevant to the application has been discussed below:

- (b) *the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving.*

At the time of Council's resolution to refuse the application, LPS6 listed a 'Warehouse/Storage' and 'Transport Depot' land uses as 'D' (can be approved by the local government) within the 'Agricultural Resource' zone. However, Scheme Amendment No. 65 (which was significantly progressed) proposed to limit these industrial type land uses from the 'Agricultural Resource' zone by making them an 'X' (prohibited) under LPS6. It was on the basis of Scheme Amendment 65's imminent approval that the application was recommended to be refused.

As noted in the background of this report, Scheme Amendment No. 65 has been gazetted and now forms part of the LPS6. As such, 'Warehouse/Storage' and 'Transport Depot' are 'X' uses within the 'Agricultural Resource' zone, cannot be approved as new uses.

Local

• Local Planning Scheme No. 6 - Schedule 2 (Zoning Table)

Lot 38 is zoned 'Agricultural Resource' under LPS6. The proposed activities of storing drilling equipment and associated vehicles in an outbuilding can be regarded as falling within the land use categories of 'Transport Depot' and 'Warehouse Storage' which are respectively defined as;

**Transport Depot**

*'means premises used or intended for use for the parking or garaging of:*

- (a) *two or more motorised commercial vehicles with or without any number of non-motorised commercial vehicles; or*
- (b) *two or more non-motorised commercial vehicles with or without any number of motorised commercial vehicles*

**Warehouse/Storage**

*'means premises including indoor or outdoor facilities used for –*

- (a) *the storage of goods, equipment, plant or materials; or*
- (b) *the display or sale by wholesale of goods.*

As indicated above, Scheme Amendment No. 65 has modified both the above land uses as an 'X' within the 'Agricultural Resource' zone. An 'X' use cannot be approved by Council.

• Local Planning Scheme No. 6 – Clause 3.8 'Non-Conforming Uses'

Clause 3.8 of LPS6 states:

*'Except as otherwise provided in the Scheme, no provision of the Scheme is to be taken to prevent-*

- (a) *the continued use of any land or building for the purpose for which it was being lawfully used at the Gazettal date;'*

Interpretation of the above means that if a Development Approval was granted for a particular development prior to the Local Planning Scheme being amended, the development (including use) can lawfully continue despite its non-compliance with the new Local Planning Scheme.

As such, if it is determined that the activities currently being undertaken within the shed on Lot 38 are consistent with the 2015 Development Approval granted, these activities can lawfully continue to occur. The parameters around the 2015 Development Approval are discussed in the officer comment section of this report.

**Policy Implications**

State

Nil

Local

Nil

**Financial Implications**

Nil



### Strategic Implications

The original report to Council in February 2019 indicated that approval of this application could set an undesirable precedent for industrial type businesses to establish themselves within the 'Agricultural Resource' zone prior to Scheme Amendment No. 65 being gazetted. As Scheme Amendment No. 65 has now been gazetted, any applications for industrial type activities within this zone can now be outright refused.

### Site Inspection

Site inspection undertaken: Yes

An inspection was undertaken as part of the original application process. A follow-up inspection relating to this reconsideration request was not considered necessary and has not been conducted.

### Triple Bottom Line Assessment

#### Economic implications

There are no known significant economic implications associated with this proposal.

#### Social implications

The development itself is not considered to have an impact on the social environment of the area as the off-site impacts are minimal.

#### Environmental implications

The storage of drilling equipment and vehicles in a covered area is not considered to have a notable impact on the environment as the application does not entail any servicing or maintenance of the equipment and/or vehicles.

### Officer Comment/Details

The reconsideration request is centred around a development approval issued by the Shire in May 2015 for the construction of a farm shed. The approval was granted by planning staff at the time, under delegated authority from Council. A copy of the conditional Development Approval is contained within **Attachment 3**.

The applicant has argued that the 2015 Development Approval for the construction of a farm shed included its use for the purpose of 'storage'. It is acknowledged that a condition of approval was imposed on the development which states the following:

2. *The proposed shed is for storage purposes only and not residential habitation.*

This condition read in isolation may misconstrue the approval being for storage purposes in accordance with the 'storage' definition of LPS6 at the time. It is contended by officers however, that this condition is to be read in the context of the whole application and approval notice. The application form submitted in April 2015 stated the proposed development to be a '*farm shed for storage of equip.*'. The Development Approval Notice (**Attachment 3**) also provides a description of the approved development being 'Farm Storage Shed'. This provides enough justification to suggest that Condition No. 2 of the Development Approval refers to the storage of farming equipment and vehicles in conjunction with the farming activities that take place on the property, not a separate 'storage' land use that can be used for other commercial purposes.

The reconsideration request also acknowledges that the 'Storage' land use under the LPS6 at the time was an 'X' use within the 'Agricultural Resource' zone. It is then suggested that as this could not be approved, the use of the 'Warehouse' definition is appropriate, as 'Warehouse' could be considered for approval ('D' permissibility).

Clause 3.4.1 of LPS6 (or Cl. 4.4.1 of LPS6 in the 2015 version) states:

*'Where a specific use is mentioned in the Zoning Table, it is to be deemed to be excluded from the general terms used to describe any other use.'*

The above requires a proposed development/activity to be categorised into one defined land use of LPS6. That is, the land use definition that best, and most closely describes the proposed activity, regardless of whether the zoning table permits the activity or not. It is indicated in the reconsideration request that as the land use of 'Storage' could not be considered, the land use of 'Warehouse' is appropriate for the assessment of application. This is contrary to Clause 3.4.1 of LPS6 and how the permissibilities of the zoning table are to be used.

The 2015 LPS6 definitions of 'Storage' and 'Warehouse' are provided below:

**'Storage** – means premises used for the commercial storage of goods, equipment, plant or materials.'

**'Warehouse** – means premises used to store or display goods and may include sale by wholesale.'

It is considered that if officers had considered the 2015 application for a land use other than those incidental to farming practices, it would have to be categorised as 'Storage' as its definition best represents the activities occurring on site. The 'Storage' land use in the 'Agricultural Resource' zone in 2015 had an 'X' permissibility. As such, it was not legally possible for officers or Council at the time to approve a 'Storage' land use on this property and therefore, it should not be construed that the approval granted in 2015 was for a 'Storage' land use.

For Council's information, the land uses of 'Storage' and 'Warehouse' were later combined through Amendment No. 62 which was gazetted in February 2017, in order to be consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015*. At this time, the combined land use was given a permissibility of 'D'. Amendment No. 65 has now modified the permissibility to an 'X'.

It is considered that the approval granted in 2015 was for the construction of a farm shed, and for it to be used for activities associated with the farming activities occurring on the land, including storage of farming equipment and vehicles. As such, it is recommended that Council maintain its decision to refuse the retrospective application for the storage of non-rural equipment, plant and vehicles on Lot 38 Great Northern Highway, Chittering.

9.1.2 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 030519

Moved Cr Gibson / Seconded Cr Osborn

That Council:

1. Uphold resolution 130219 of the 20 February 2019 Ordinary Council Meeting for the following reasons:
  - a. The Development Approval granted by the Shire on 27 May 2015 for Lot 38 Great Northern Highway, Chittering does not permit the storage of non-agricultural equipment, plant and vehicles;
  - b. At the time the application for a farm storage shed was made in April 2015, the 'Storage' land use under the *Local Planning Scheme No. 6* was an 'X' permissibility and could not be legally considered for approval by the Shire;
  - c. The current *Local Planning Scheme No. 6* does not permit the land use of 'Warehouse/Storage' and/or 'Transport Depot' on a lot zoned 'Agricultural Resource'.
2. Advise Statewest Planning that Council has again considered the retrospective application for storage of non-agricultural equipment, plant and vehicles but maintains its decision to refuse the application as per Resolution 130219 of the 20 February 2019 Ordinary Council Meeting.

CARRIED 4/3  
8:27PM

9.1.3 Management Order 'Public Recreation Reserve 35610': Lot 9858 Chittering Road, Bindoon (Department of Planning, Lands and Heritage)\*

Report date	2 May 2019
Applicant	Department of Planning, Lands and Heritage
File ref	A10096
Prepared by	Planning Officer
Supervised by	Executive Manager Development Services
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	1. Letter from Department of Planning, Lands and Heritage 2. Copy of Plans from Landgate

**Executive Summary**

Council is requested to consider a letter received from the Department of Planning, Lands and Heritage advising that Reserve 35610, Lot 9858 Chittering Road, Bindoon has been created as a condition of a freehold subdivision for the purpose of "Drainage Reserve". DPLH is seeking Council's advice as to whether the Shire is prepared to accept a management order over the reserve.

IMAGE 1: Location Plan



## Background

A letter that was sent to the Shire on 31 August 2018 from the Department of Planning, Lands and Heritage (**Attachment 1**) advises that Reserve 35610, Lot 9858 Chittering Road, Bindoon was ceded to the Crown subject to section 152 of the *Planning and Development Act 2005* for the purpose of 'Public Recreation'.

Reserve 35610 is a Crown Allotment Reserve under the Shire's *Local Planning Scheme No.6* (LPS6). Reserve 35610 is 4,933m<sup>2</sup> in area, narrow in area, sparsely vegetated, carries a body of water and forms part of the Brockman River.

Diagram No. 51659 (**Attachment 2**) is the approved deposited plan relevant to the lot signed by the Chairman of the Swan Town Planning Board on 30 November 1976. Reserve 35610 was therefore subdivided over 40 years ago as a reserve for recreation to vest in the Crown under section 20A of the *Town Planning and Development Act 1928*. The Shire has received no correspondence regarding Reserve 35610, since the land has been subdivided. The Reserve is currently regarded as Unallocated Crown Land and falls under the control of the Department of Planning, Lands and Heritage.

## Consultation/Communication Implications

### Local

Nil

### State

Nil

## Legislative Implications

### State

- Land Administration Act 1997

The *Land Administration Act 1997* provides the legislative mechanism for Crown land to be managed by another agency/ authority such as a local government.

### Local

Nil

## Policy Implications

### State

Nil

### Local

Nil

## Financial Implications

Managing a reserve is an expensive ongoing cost that is difficult to estimate. There would be budget implications in the inclusion of future reserve maintenance fund.

### Strategic Implications

Nil

### Site Inspection

Not applicable

### Triple Bottom Line Assessment

#### Economic implications

It is not considered to be an economic benefit if Shire of Chittering is to manage Reserve 35610.

#### Social implications

There are no known significant social implications associated with this proposal.

#### Environmental implications

There are no known significant environmental implications associated with this proposal.

### Officer Comment/Details

The Shire is not obliged to accept management of the Reserve and officers are of the opinion it is not prudent to accept management of a reserve which contains no infrastructure, serves limited public purpose and will create a further drain on finance and resources. Additionally there are State grants available for reducing the fire risk for Unallocated Crown Lands. Accordingly acceptance of management over the reserve services no benefit to the community or the Shire generally.

It is recommended that Council not accept the Management Order.

#### **9.1.3 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 040519**

**Moved Cr Osborn / Seconded Cr King**

**That Council advise the Department of Planning, Lands and Heritage that the Shire of Chittering is not prepared to accept a Management Order over Public Recreation Reserve 35610, Lot 9858 Chittering Road, Bindoon as it serves limited public purpose and the Shire does not have the resources to manage Reserve 35610.**

**CARRIED 7/0**  
8:28PM

## 9.2 TECHNICAL SERVICES

Nil

## 9.3 CORPORATE SERVICES

### 9.3.1 List of Accounts Paid for the period ending 30 April 2019\*

Report Date	2 May 2019
Applicant	Shire of Chittering
File ref	12/03/4
Prepared by	Finance Officer Accounts
Supervised by	Executive Manager Corporate Services
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	1. List of Accounts Paid as at 30 April 2019

#### Executive Summary

Council is requested to endorse payments presented in the List of Accounts Paid for the period ending 30 April 2019.

#### Background

Pursuant to *Local Government Act 1995*, Section 6.8 (2)(b), where expenditure has been incurred by a local government, it is to be reported to the next Ordinary Meeting of Council.

#### Consultation/Communication Implications

##### Local

Executive Manager Corporate Services

##### State

Nil

#### Legislative Implications

##### State

- *Local Government Act 1995*
- *Local Government (Financial Management) Regulations*

##### Local

Nil

#### Policy Implications

Nil

### Financial Implications

All expenditure has been approved via adoption of the 2018/19 Annual Budget, or resulting from a Council resolution for a budget amendment.

### Strategic Implications

Nil

### Site Inspection

Not applicable

### Triple Bottom Line Assessment

#### Economic implications

There are no known significant economic implications associated with this proposal.

#### Social implications

There are no known significant social implications associated with this proposal.

#### Environmental implications

There are no known significant environmental implications associated with this proposal.

### Officer Comment/Details

The attached "List of Accounts Paid as at 30 April 2019" is presented to Council for endorsement.

#### 9.3.1 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 050519

Moved Cr Tilbury / Seconded Cr Gibson

That Council:

1. Endorse the Accounts Paid:

- a. PR4886, PR4888
- b. EFT17763 – EFT17877
- c. Cheque 14346
- d. Direct Debits and Transfers as listed
- e. Trust Fund payments as listed

Totalling \$778,278.49 for the period ending 30 April 2019.

CARRIED 7/0  
8:28PM



### 9.3.2 Monthly Financial Reports for the Period Ending 30 April 2019\*

<b>Report Date</b>	2 May 2019
<b>Applicant</b>	Shire of Chittering
<b>File ref</b>	12/03/4
<b>Prepared by</b>	Finance Officer Accounts
<b>Supervised by</b>	Executive Manager Corporate Services
<b>Disclosure of interest</b>	Nil
<b>Voting requirements</b>	Simple Majority
<b>Attachments</b>	1. Monthly Financial Report for period ending 30 April 2019 <sup>1</sup>

#### Executive Summary

Council is requested to receive the Monthly Financial Report (containing the Statement of Financial Activity) for the period ending 30 April 2019.

#### Background

In accordance with *Local Government (Financial Management), Regulation 34(1)*, local governments are required to prepare, each month, a statement of financial activity reporting on revenue and expenditure for the month in question.

The statement of financial activity is to be presented at an Ordinary Meeting of Council within two months after the end of the month to which the statement relates.

#### Consultation/Communication Implications

Nil

#### Legislative Implications

##### State

- *Local Government Act 1995*
- *Local Government (Financial Management) Regulations*

##### Local

Nil

#### Policy Implications

Nil

#### Financial Implications

Nil

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<sup>1</sup> Attachment not available at time of Agenda distribution

### Strategic Implications

Nil

### Site Inspection

Not applicable

### Triple Bottom Line Assessment

#### Economic implications

There are no known significant economic implications associated with this proposal.

#### Social implications

There are no known significant social implications associated with this proposal.

#### Environmental implications

There are no known significant environmental implications associated with this proposal.

### Officer Comment/Details

The attached "Monthly financial Report for period ending 30 April 2019" is presented to Council for endorsement.

**9.3.2 OFFICER RECOMMENDATION / COUNCIL RESOLUTION o6o519**  
**Moved Cr Osborn / Seconded Cr King**  
**That Council receives the Monthly Financial Reports for period ending 30 April 2019.**

**CARRIED 7/0**  
8:29PM

## 9.4 CHIEF EXECUTIVE OFFICER

### 9.4.1 WALGA Annual General Meeting 2019 Voting Delegates\*

<b>Report date</b>	2 May 2018
<b>Applicant</b>	Western Australian Local Government Association (WALGA)
<b>File ref</b>	14/01/0004
<b>Prepared by</b>	Executive Support Officer
<b>Supervised by</b>	Acting Chief Executive Officer
<b>Voting requirements</b>	Simple Majority
<b>Attachments</b>	1. Correspondence received from WALGA (dated 11 April 2019)

#### Executive Summary

Council's consideration is requested to determine the voting delegates for the 2019 Annual General Meeting for the Western Australian Local Government Association (WALGA). The Annual General Meeting will be held on Wednesday, 7 August 2019 during the Local Government Convention at the Perth Convention and Exhibition Centre in Perth.

Member local governments are also invited to submit any motions for inclusion on the Agenda for consideration at the 2019 Annual General Meeting. Motions should be submitted in writing to the Chief Executive Officer of WALGA. The closing date for submissions of motions is close of business on Tuesday 4 June 2019.

#### Background

Pursuant to the WALGA Constitution, all member councils are entitled to be represented by two voting delegates. Voting delegates may be either Elected Members or serving officers. In the event that a voting delegate is unable to attend, provision is made for proxy delegates to be registered.

The Shire of Chittering must notify WALGA of its voting delegates by Friday 5 July 2019.

#### Consultation

##### State

Nil

##### Local

Nil

#### Statutory Environment

##### State

- *Local Government Act 1995, s9.58*

##### Local

Nil

## Policy Implications

### State

Nil

### Local

- Elected Member Policy 4.3 – Elected Members’ Fees, Allowances, Reimbursements and Benefits  
**Professional conferences**

*To enable Elected Members to develop and maintain skills and knowledge relevant to their role as a representative of the Shire, provision is made for a dedicated budget allocation for Councillors to attend conferences. The policy outlines inter alia, the expenses claimable, booking arrangements, and the requirement for a follow-up report to Council.*

## Financial Implications

Attendance at the WALGA Annual General Meeting is free of charge to all member local governments; lunch is not provided. All Convention delegates must register their attendance in advance. Registration for the Opening Welcome Reception that evening must also be notified in advance and will incur a cost for those not registered as a Full Delegate.

Elected Members are allocated an individual amount in the Shire’s Annual Budget that is used for their professional development (i.e. training, conferences, seminars, etc.).

## Strategic Implications

### State

Nil

### Local

- Strategic Community Plan 2017-2027  
Focus area: Strong leadership  
Objective: S5.1 Strong partnerships and relationships  
Strategy: S5.1.1 Build effective partnerships with stakeholders

## Site Inspection

Not applicable

## Triple Bottom Line Assessment

### Economic implications

There are no known significant economic implications associated with this proposal.

### Social implications

There are no known significant social implications associated with this proposal.

### Environmental implications

There are no known significant environmental implications associated with this proposal.

### Comment

In accordance in the Shire's nominated Delegates for WALGA Avon Midland Country Zone the Shire President and Deputy President are required to attend the meeting.

Council is requested to appoint two proxy voting delegates for the 2019 Annual General Meeting for WALGA.

#### 9.4.1 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 070519

Moved Cr Osborn / Seconded Cr Ross

That Council advise the Western Australian Local Government Association that the voting delegates and proxy voting delegates for the 2019 Annual General Meeting are:

VOTING DELEGATES		PROXY VOTING DELGATES	
1.	Cr Gordon Houston	1.	Cr George Tilbury
2.	Cr Peter Osborn	2.	Cr Mary Angus

CARRIED 7/0  
8:30PM

#### 9.4.2 Lower Chittering Sport & Recreation Facility: Immaculate Heart College Self-Supporting Loan

Report date	2 May 2019
Applicant	Shire of Chittering
File ref	A11560; 15/01/16
Prepared by	Acting Chief Executive Officer
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	Nil

#### Executive Summary

Following Council's April resolution, discussions have occurred with Immaculate Heart College (IHC) in regard to the principles of and security for, a Self-Supporting Loan Agreement.

Whilst the ideal security of some freehold College land with a caveat in the Shire's favour would be preferred from a risk perspective, such a requirement would limit the College's future borrowing capacity for its ongoing growth, and therefor potentially be self-defeating in the context of the College being more profitable, the larger it grows its student numbers. Whilst noting the inherent risk of any self supporting loan arrangement, in light of the fact that the asset is situated on Shire land, and that a portion of the ongoing operating costs will be met by the College, it is considered that the arrangements negotiated offers a suitable level of security for the loan funds provided by the Shire, in exchange for the College's contribution towards the Lower Chittering Sport & Recreation Facility.

The above discussions with the College have however drawn out that if the annual operating and renewal costs do reach the previously estimated level of \$400,000pa, then a 50/50 split may not be able to be accommodated by the College, at least for the next several years. It is possible therefore, that the Shire's annual costs may be higher than recently predicted.

#### Background

The Council at its 17 April 2019 Meeting, committed to using its best endeavours to bringing the Lower Chittering Sport & Recreation Facility project to realisation as soon as reasonably possible, in order that the Chittering community and the Immaculate Heart College students and families can benefit from the facility. Council also required that a workable and sustainable contract be developed for a self-supporting Loan to the College (up to \$2m) for its contribution to the Lower Chittering Sport & Recreation Facility, incorporating at least the following security conditions–

- a) A maximum sum of \$2,000,000;
- b) A suitable loan debt security;
- c) That any supplementary grants received by the College that link to its use of loan expenditure, are to be remitted to the Shire as "advance principle repayments" to be held in the Shire's Trust Account until it can be remitted to WA Treasury as such; and
- d) A preference for the \$275,000 land payment to be remitted in cash to the Shire upon transfer of the land, and a \$1,725,000 self supporting loan as the College's contribution to the Lower Chittering Sport & Recreation Facility; but endorses (if the College can adequately prove that option is unsustainable) that a \$2,000,000 self-supporting loan be provided and made up of two components, a contribution to the Lower Chittering Sport & Recreation Facility itself (\$1,725,000) plus the purchase price of the land (approximately 3ha) to be sold by the Shire to the Immaculate Heart College (\$275,000);

Immaculate Heart College is an incorporated Catholic school and classified as an Australian Public Company, Limited by Guarantee. A company limited by guarantee is a specialised form of public company designed for non-profit organisations. Companies limited by guarantee are subject to the Corporations Act 2001 (Cth) and administered to by the Australian Securities and Investments Commission (ASIC). Like incorporated associations, this legal structure designates an organisation as a separate legal entity. A company limited by guarantee can for example, be sued, legally lease a property, borrow money, enter into contracts, or hold assets in its name. Like many corporate structures however, a company limited by guarantee is only as financial as its current operations and the limit of the liability of the company's members. Immaculate Heart College Limited has the power within its Constitution to ... *"(g) to borrow, raise or secure the payment of money as the Company may think fit; to secure the same or the repayment or performance of any debt liability, contract guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by mortgages or the issue of debentures perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off any such securities."*

The Shire borrows its funds through WA Treasury and a "self supporting loan" is effectively a Shire loan that a third party (in this case the IHC) has agreed to meet the repayments for. WA Treasury sets limits for local government borrowings to guard against defaults, and to also manage the State's financial credit rating. Chittering has the capacity to borrow \$5m from the WA Treasury (\$3m for its contribution and up to \$2m as a Immaculate Heart College Self-Supporting Loan) but the Shire's ongoing authority to lift that borrowing level for other future projects may meet stricter Treasury application guidelines.

The Councillor representatives of the Lower Chittering Sport & Recreation Facility Reference Group, the CEO, and representatives from the Immaculate Heart College, met on Tuesday 30 April to discuss the principles of an Agreement between the Shire and the College. The agreed principles will then be developed into a formal Agreement that will bind the Shire and the College. The self-supporting loan through the Shire of Chittering is suggested to be on the following basis-

Details	Self-Supporting Loan Conditions
<b>Loan amount</b>	\$1,625,000  \$625,000 drawn down on 15 June 2020 (project due to be 30% complete); \$500,000 on 15 December 2020 (project due to be 60% complete); and \$500,000 on 15 March 2021 (project due to be 90% complete).
<b>Loan term</b>	20 years (15/06/2020 – 14/06/2040)
<b>Borrower Details</b>	Immaculate Heart College Ltd (ACN: 147 801 590)
<b>Loan repayments (at 3.65% interest)</b>	\$115,500pa (estimated)

Details	Self-Supporting Loan Conditions
<b>Loan Security Offered</b>	<p>By contractual agreement, the Immaculate Heart College will be responsible to service the loan's repayments.</p> <p>In the event of dissolution of the College, the full balance of the loan shall become payable.</p> <p>Annual Budgets, and End of Year Financial Statements to be provided to the Shire within 15 days of IHC Board endorsement (noting that some information contained within these documents might need to be acknowledging as being "business in confidence" information.</p> <p>\$275,000 cash payment for the land (portion of Lot 8017, Muchea East Road) to be made upon land transfer (and not be part of the loan).</p> <p>A \$100,000 cash contribution towards the Facility's capital costs is to be made on 15 June 2020.</p> <p>(Note: the above two cash payments effectively reducing the loan requirement from its initial \$2m expectation).</p>

The College's net assets were almost \$2.35m at 30 June 2017 and its budgeted end of year operating surplus position for 30 June 2019 is projected to be \$626,690 (note: "operating" does not include capital expenditure or \$23,208 in loan principal repayments).

The Immaculate Heart College Business Plan 2019 – 2024, incorporates a loan commitment for \$1.725m and outlines three scenarios. One is based on its original projected growth (415 students by 2024), one is based on a lower than projected growth rate (380 students), and one is based on a higher student fee growth rate than originally projected scenarios (all options are inclusive of the self supporting loan repayments). The least optimistic of the above three scenarios predicts a (generally) continuously annually improving operational result, from \$626,690 (2019) to \$1,325,013 (2024) with net assets continuously increasing from \$2,661,530 (2019) to \$10,715,234 (2024). The minimum cash-on-hand position at the end of each of the six financial years is \$405,777 (2021) and the greatest is \$997,983 (2024).

As part of the Self Supporting Loan discussions, the matter of ongoing operational costs were discussed. Whilst ongoing operational costs are not relevant to the loan itself, the fact that those discussions led towards the potential of the Shire's operating costs rising beyond previous expectations is however a situation warranted to be drawn to Council's attention. By way of history, the proposal put forward with the grant application was that the operational and renewal costs were to be split between the Shire and the IHC. An exact calculation methodology for that "split" was never finalised, but the April 2019 Council Meeting resolving that the ongoing sharing of operational costs are to be based on the following principle - .... *to share up to 50% of the Operation / Maintenance costs of the Lower Chittering Sports Facility in consideration of payment of a-*

- a. *Fixed annual costs of 25% of the Operation / Maintenance costs of the Lower Chittering Sports Facility, regardless of use; and*
- b. *Variable annual cost of up to 25% of the Operation / Maintenance costs of the Lower Chittering Sports Facility based on percent use of the school.*



The above Council resolution does not in itself require that the College immediately meet 50% of the costs, however it is an indication to the Reference Group (which is charged with the responsibility to develop a workable cost share model between our two organisations) of the direction desired.

Discussions with IHC in regard to the loan indicate that (at least for the next several years) if the College is required to make a 50% contribution towards operational costs, and if that cost share is in the range of the estimated \$200,000pa, it will not be able to meet that cost and either a lower cost operating budget would be required, or some form of alternative style of contribution would need to be found (like a "phased in" contributions, a "user pays" methodology, or a system where the College contracts with the Shire to undertake some of the operational work, like arranging cleaning/gardens/ovals works, etc.). For the point of these loan considerations, it would be prudent therefore for Council to be cognisant of the potential that the College's operational costs contribution might for at least the first several years, be more in the order of third of the total operating costs, than half.

### **Consultation/Communication Implications**

#### Local

Immaculate Heart College.

McLeods – Barristers & Solicitors

Councillor representatives of the Lower Chittering Sport & Recreation Facility Reference Group.

#### State and Federal

Nil

### **Legislative Implications**

#### State/Federal

If self-supporting loan funds are required, that loan will be accessed through WA Treasury. There is no other know legislation applicable (with the Self Supporting Agreement being completed under the authority of the WA Local Government Act 1995).

#### Local

- *Local Government Act 1995* S6.20 outlines the power of the local government to borrow funds.
- *Local Government (Financial Management) Regulations 1996* (Reg 29) outlines regulations relating to borrowings information required in accounting notes.

### **Policy Implications**

#### State

Nil

#### Local

Nil

### Financial Implications

The Immaculate Heart College commitment is \$1.625m and is suggested to be provided in three separate draw-downs, namely, \$625,000 on 15 June 2020 (project due to be 30% complete); \$500,000 on 15 December 2020 (project due to be 60% complete; and \$500,000 on 15 March 2021 (project estimated to be 90% complete). This should provide an equitable contribution towards the cash-flow requirements of the project.

The financial impact of this loan on the Shire is planned to be \$nil, with the IHC meeting all of the Shire's loan costs for the \$1.7625m self supporting loan. However, the financial impact of any operational costs contribution of a proportion less than 50% will adversely impact upon the Shire's financials. If total costs eventuate to be in the order of \$400,000 and the IHC's contribution towards that is not \$200,000 but is in the order of \$100 - 150,000 then the Shire's contribution will rise by the equivalent gap (vis. \$50 - 100,000). Noting of course that this Facility operation cost is an estimate and is yet to be confirmed by actual costs.

### Strategic Implications

#### Local

- Strategic Community Plan 2017-2027

Focus area: Our community

Objective: S1.1 An active and supportive community

Strategy: S1.1.1 Develop and enhance existing recreation and social facilities for local communities (recreational and sporting facilities to service the growing population in the Lower Chittering/Muchea area)

#### State

Nil

### Site Inspection

Not applicable

### Triple Bottom Line Assessment

#### Economic implications

The Shire may have a lower ongoing borrowing capacity at Treasury if it provides a self-supporting loan to the Immaculate Heart College.

#### Social implications

On the basis that the project proceeds, there will be positive social and health benefits associated with sporting and recreation facilities to service the growing population in Lower Chittering.

#### Environmental implications

Environmental implications (if any) will be dealt with as part of the planning and building approval process.

### Officer Comment/Details

Discussions have occurred with Immaculate Heart College in regard to the principles of a Self Supporting Loan Agreement. The preference of securing some freehold College land via a caveat in the Shire's favour was proposed as the preferred risk mitigation strategy, however the College outlined that such a requirement would limit its future borrowing capacity for its proposed infrastructure growth.

Whilst the College's potential growth need not restrict the Shire from demanding such a level of loan security, if that demand were to result in the restriction of the College's growth potential, such a requirement might potentially be self-defeating (in the context that restricting the College's student growth might similarly restricting its potential to be more profitable and more ably meet ongoing loan repayments and operational costs).

The existing financials for the Immaculate Heart College are positive, and its Business Plan (2019 – 2024) incorporates the proposed self supporting loan commitment. The Business Plan indicates a capacity to meet the loan repayment commitments, but does highlight that its capital development plan may need to be reviewed downwards should the number of students fall; or capital income/donations/grants not eventuate (in which case loans would need to be secured to enable those capital projects to progress as projected).

Notwithstanding that the eventual operational cost for this Facility cannot be confirmed by actual costs until well after it has been constructed, there would seem to be at least the potential of a negative financial impact on the Shire in regard to its previous expectations of equally shared operational costs. Again, that figure is also unknown, but could be in the order of \$50 - 100,000pa. It is not insignificant (representing 1 – 2% of rates) but by the same token is not insurmountable either as the cost will not eventuate until 2021/22 and can therefore be planned for.

In conclusion therefore, and in light of all of the risks and circumstances, suitable loan conditions are considered to have been secured, particularly as the loan is now reduced to just above 80% of the original expectation; the asset will provide a community service, be situated on Shire land and be controlled by the Shire; and it will have a portion of its ongoing operating costs met by the College.

9.4.2 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 080519

Moved Cr Tilbury / Seconded Cr Osborn

That Council:

1. Authorises the Chief Executive Officer to finalise a Self Supporting Loan Agreement with Immaculate Heart College Ltd, incorporating the following principles:
  - a. A loan sum of \$1,625,000;
  - b. \$625,000 drawn down on 15 June 2020; \$500,000 on 15 December 2020; and \$500,000 on 15 March 2021;
  - c. Loan term to be 20 years (15 June 2020 – 14 June 2040);
  - d. Immaculate Heart College to service the loan's repayments (all payments to be received on or prior to the respective loan repayment date);
  - e. In the event of dissolution of the College, the full balance of the loan shall become payable; and
  - f. The College's Annual Budget, and End of Year Financial Statements are to be provided to the Shire annually and within 15 days of IHC Board endorsement.
2. Notes that:
  - a. The \$275,000 payment for the land is to be made to the Shire of Chittering upon transfer of the land (and will not be part of the loan); and
  - b. A \$100,000 cash payment is to be made on 15 June 2020 by Immaculate Heart College as a capital contribution towards the Lower Chittering Sport & Recreation Facility.

CARRIED 4/3  
8:49PM

**10. REPORTS OF COMMITTEES**

Nil

**11. MOTIONS, OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**12. QUESTIONS FROM MEMBERS WITHOUT NOTICE**

Nil

**13. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING**

Nil

## 14. MEETING CLOSED TO THE PUBLIC

### 14.1 Matters for which the meeting may be closed

2

#### OFFICER RECOMMENDATION / COUNCIL RESOLUTION 090519

Moved Cr Tilbury / Seconded Cr Osborn

That Council moves into a confidential session to discuss items:

- 14.1.1 "Request for Reimbursement of Legal, Travel, and Parking Expenses – Councillor Don Gibson";
- 14.1.2 "Email Communications and Legal Advice – Councillor Don Gibson";
- 14.1.3 "Purchasing of a Portion of Lot 9 (RN 11) Binda Place, Bindoon";
- 14.1.4 "Lower Chittering Sport & Recreation Facility Project Advisory Group"; and
- 14.1.5 "New Administration Policy 1.20 Reimbursement of Volunteers for Damaged Personal Equipment"

under the terms of the *Local Government Act 1995, Section 5.23(2)*:

- (2) *If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following—*
  - (b) *the personal affairs of any person; and*
  - (c) *a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and*
  - (d) *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;*
  - (e) *a matter that if disclosed, would reveal—*
    - (i) *a trade secret; or*
    - (ii) *information that has a commercial value to a person; or*
    - (iii) *information about the business, professional, commercial or financial affairs of a person,*

**CARRIED 7/0**  
8:51PM

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<sup>2</sup> Previous Items 14.1.3 "Request for Reimbursement of Legal, Travel, and Parking Expenses – Councillor Don Gibson" was withdrawn and reinserted as two separate items (14.1.1 "Request for Reimbursement of Legal, Travel, and Parking Expenses – Councillor Don Gibson" and 14.1.2 "Email Communications and Legal Advice – Councillor Don Gibson" with the remainder reports renumbered in consecutive order

Cr Gibson having earlier declared a financial interest, left the meeting at 8:52PM

**14.1.1 CONFIDENTIAL ITEM: Request for Reimbursement of Legal, Travel, and Parking Expenses – Councillor Don Gibson\***

Report date	8 May 2019
Applicant	Shire of Chittering
File ref	13/03/0007
Prepared by	Acting Chief Executive Officer
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	<ol style="list-style-type: none"> <li>1. Elected Member Policy 4.5 Legal representation and Costs Indemnification</li> <li>2. Reasons for Decision - State Administrative Tribunal Matter (CC 1904/2018) Sheridan/Gibson</li> </ol>

Cr Gibson returned to the meeting at 9:13PM

**14.1.2 CONFIDENTIAL ITEM: Email Communications and Legal Advice – Councillor Don Gibson**

Report date	8 May 2019
Applicant	Shire of Chittering
File ref	13/03/0007
Prepared by	Acting Chief Executive Officer
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	Nil

**14.1.3 CONFIDENTIAL ITEM: Purchasing of a Portion of Lot 9 (RN 11) Binda Place, Bindoon**

Report date	2 May 2019
Applicant	Shire of Chittering
File ref	A9536; 04/18/91
Prepared by	Governance Support Officer
Supervised by	Acting Chief Executive Officer
Disclosure of interest	Nil
Voting requirements	<b>Absolute Majority</b>
Attachments	Nil

**14.1.4 CONFIDENTIAL ITEM: Lower Chittering Sport & Recreation Facility Project Advisory Group\***

Report date	2 May 2019
Applicant	Shire of Chittering
File ref	A11560; 15/01/16
Prepared by	Community Development Coordinator
Supervised by	Acting Chief Executive Officer
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	<ol style="list-style-type: none"> <li>1. Expressions of Interest received</li> </ol>

**14.1.5 CONFIDENTIAL ITEM: New Administration Policy 1.20 Reimbursement of Volunteers for Damaged Personal Equipment\***

Report date	2 May 2019
Applicant	Chittering Bushfire Advisory Committee and Mr David Wilson
File ref	04/03/1
Prepared by	Acting Chief Executive Officer
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	1. Draft Administration Policy 1.20 Reimbursement of Volunteers for Damaged Personal Equipment

**14.2 Public reading of resolution that may be made public**

***Local Government (Council Meetings) Local Law 2014***

***6.2 Meetings not open to the public***

- (7) *Unless the Council resolves otherwise, once the meeting is reopened to members of the public, the Presiding Member is to ensure that any resolution of the council made while the meeting was closed is to be read out including a vote of a Member to be included in the minutes.*

No members from the general public returned to the meeting at 11.04pm and therefore the resolutions from behind closed doors were not read aloud at the meeting.

**14.1.1 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 120519**

Moved Cr Osborn / Seconded Cr Ross

That on the basis that the application does not satisfy the requirements of *Policy 4.5 Legal Representation and Costs Indemnification*, that Council:

1. Refuse the application for reimbursement of legal expenses by Cr Gibson; and
2. Refuse the application for travel and parking expenses by Cr Gibson.

**CARRIED 6/0**  
9:12PM

**FORESHADOWED MOTION / COUNCIL RESOLUTION 150519**

Moved Cr Angus / Seconded Cr Tilbury

That Council:

1. Accepts Cr Gibson's withdrawal of the offending comments contained within emails sent to the Acting Chief Executive Officer;
2. Accepts Cr Gibson's written apology for causing offence; and
3. Considers the matter finalised.

**CARRIED 7/0**  
9:40PM



**14.1.3 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 160519**

Moved Cr Osborn / Seconded Cr Tilbury

That Council:

1. Confirms its decision to purchase the portion of land at the rear of Lot 9 (RN 11) Binda Place, Bindoon;
2. Authorises the Chief Executive Officer to offer to purchase the land for the valuation price, and to facilitate all necessary purchase/subdivision/amalgamation arrangements on the Shire's behalf; and
3. Authorises as per *Administration Policy 1.5 Execution of Documents* in regard to the processing of this land purchase/subdivision/amalgamation, the Shire President and the Chief Executive Officer, or their deputies, to place the Shire's Common Seal upon and to sign all relevant land purchase and other relevant subdivision/amalgamation documentation.

CARRIED 7/0  
9:40PM

**14.1.4 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 210519**

Moved Cr Tilbury / Seconded Cr Osborn

That Council:

1. appoints the following three community representatives:
  - a. Kerrie Read;
  - b. Kathryn Mizzi; and
  - c. Michelle Rossouw; and
2. recommends that the Principal (currently Lucas Hurley) be the representative from Immaculate Heart College (noting that a proxy representative might be appropriate on occasion);

to the Lower Chittering Sport and Recreation Facility Reference Group.

CARRIED 7/0  
10:05PM

**PROCEDURAL MOTION / COUNCIL RESOLUTION 240519**

Moved Cr King / Seconded Cr Tilbury

That Item 14.1.5 be laid on the table so that the draft "*Reimbursement of Volunteers for Damaged Personal Equipment*" can be further developed through future Council Workshops, and then returned to the next available Ordinary Meeting of Council for its consideration.

CARRIED 7/0  
10:26PM

**15. CLOSURE**

The Presiding Member declared the meeting closed at 10:30PM.



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