

Shire of Moora
Ordinary Council Meeting
15th December 2010

NOTICE OF MEETING

Dear Elected Member

The next Ordinary Council Meeting of the Shire of Moora
will be held on **Wednesday 15th December 2010**
in the Council Chambers, 34 Padbury Street, Moora
commencing at **3.30 pm**

LM O'Reilly
Chief Executive Officer
9th December 2010

The Shire of Moora Vision and Mission Statement

Vision

Our vision is that:

The Moora region will be a place of brilliant opportunity over the next twenty years. Sustainable growth will result in a vibrant, healthy, wealthy and diverse community.

Mission

Our mission is:

To identify and stimulate growth through creative leadership and a willingness to get things done.

SHIRE OF MOORA**WRITTEN DECLARATION OF INTEREST IN MATTER BEFORE COUNCIL**

Chief Executive Officer
 Shire of Moora
 PO Box 211
 MOORA WA 6510

Dear Sir/Madam,

Re: Written Declaration of Interest in Matter Before Council

I, ⁽¹⁾ _____ wish to
 declare an interest in the following item to be considered by Council at its meeting to be held on
⁽²⁾ _____.

Agenda Item ⁽³⁾ _____

The type of interest I wish to declare is: ⁽⁴⁾

- Financial pursuant to Section 5.60A of the Local Government Act 1995
- Proximity pursuant to Section 5.60B of the Local Government Act 1995
- Indirect Financial pursuant to Section 5.61 of the Local Government Act 1995
- Impartiality pursuant to Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007.

The nature of my interest is ⁽⁵⁾

The extent of my interest is ⁽⁶⁾

I understand that the above information will be recorded in the Minutes of the meeting and recorded by the Chief Executive Officer in an appropriate Register.

Yours faithfully,

 Signed

 Date

1. Insert your name.
2. Insert the date of the Council Meeting at which the item is to be considered.
3. Insert the Agenda Item Number and Title.
4. Tick box to indicate type of interest.
5. Describe the nature of your interest.
6. Describe the extent of your interest (if seeking to participate in the matter under S. 5.68 of the Act).

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SHIRE OF MOORA
ORDINARY COUNCIL MEETING AGENDA
15 DECEMBER 2010
COMMENCING AT 3.30PM

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Item 11.1.1 Minutes of Electors Meeting held 8 December 2010

Item 11.2.1 List of Payments Authorised Under Delegation 1.31

Item 11.2.2 Statement of Financial Activity for the Period Ended 30 November 2010

Item 11.2.4 Audit Committee Meeting Minutes – 1 December 2010

Item 11.3.1 Realignment Map showing adjustments to Location 3382 & M1914, Coomberdale West/ Prices Road

Item 11.4.1 Application & Plan of Premises

1. DECLARATION OF OPENING & WELCOME OF VISITORS***“Acknowledging of Country”***

I would like to show my respect and acknowledge the traditional owners of this land and acknowledge their contribution to the Shire of Moora as I do for all its people.

2. DISCLAIMER READING

To be read by the Shire President should members of the public be present at the meeting.

No responsibility whatsoever is implied or accepted by the Shire of Moora for any act, omission or statement or intimation occurring during this meeting.

It is strongly advised that persons do not act on what is heard at this meeting and should only rely on written confirmation of Council's decision, which will be provided within fourteen (14) days of this meeting.

3. ATTENDANCE**APOLOGIES****PUBLIC****4. DECLARATIONS OF INTEREST****5. QUESTIONS BY THE PUBLIC IN ACCORDANCE WITH SECTION 5.24 OF THE ACT****6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE****7. APPLICATIONS FOR LEAVE OF ABSENCE****8. PETITIONS AND MEMORIALS****9. ANNOUNCEMENTS BY THE SHIRE PRESIDENT**

10. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

10.1 ORDINARY COUNCIL MEETING - 24 NOVEMBER 2010

That the Minutes of the Ordinary Meeting of Council held on 24 November 2010, be confirmed as a true and correct record of the meeting.

10.2 SPECIAL COUNCIL MEETING - 1 DECEMBER 2010

That the Minutes of the Special Meeting of Council held on 1 December 2010, be confirmed as a true and correct record of the meeting.

11. REPORTS OF OFFICERS

11.1 ADMINISTRATION

11.1.1 MINUTES OF ANNUAL GENERAL MEETING OF ELECTORS HELD ON 8 DECEMBER 2010

LOCATION: Moora
FILE: EM/ANMI
AUTHOR: Lynnette O'Reilly, Chief Executive Officer
REPORT DATE: 9 December 2010
DECLARATION: The author has no financial interest in this matter
ATTACHMENTS: Minutes of Electors Meeting held 8 December 2010

BACKGROUND

The Annual General Meeting of Electors, in respect to the year ended 30 June 2010, was held in the Moora Performing Arts Centre on Wednesday 8 December 2010.

The provisions of the Local Government Act 1995 require that the minutes of the Electors Meeting must be presented to Council for consideration at the next available Ordinary Meeting.

The minutes of the meeting are now presented to Council and are appended for reference.

COMMENT

The minutes of the Annual Electors meeting contain a number of procedural resolutions that do not require any further action by Council.

STATUTORY ENVIRONMENT

Sections 5.32 and 5.33 of the Local Government Act 1995, deal with the recording of Minutes of the Annual Electors Meeting and the requirement for Council to consider any decisions made.

POLICY IMPLICATIONS

There are no policy implications in respect to the recommendation of this report.

BUDGET IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Demonstrating to the electors that Council has listened to their request enhances Council's standing and respect within the community.

PRECEDENT

The adoption of the recommendation of this report does not set a precedence.

VOTING REQUIREMENTS

Simple Majority Required

MANEX RECOMMENDATION

That Council receives the minutes of the Annual General Meeting of Electors for the Year Ended 30 June 2010 held on 8 December 2010, and note the contents.

11.2 FINANCIAL DEVELOPMENT

11.2.1 LIST OF PAYMENTS AUTHORISED UNDER DELEGATION 1.31

REPORT DATE: 9 December 2010
OFFICER DISCLOSURE OF INTEREST: Nil
AUTHOR: Leanne Parola, Manager Finance & Corporate Services
ATTACHMENTS: Accounts Paid Under Delegated Authority

PURPOSE OF REPORT

Payments have been made under delegated authority and a listing of these payments is attached for Council to note and endorse.

BACKGROUND

At the December 2005 Ordinary Meeting of Council resolution 276/2005 delegated the authority of payments from Municipal and Trust Funds to the Chief Executive Officer.

COMMENT

Accounts Paid under delegated authority are periodically presented to Council.

POLICY REQUIREMENTS

Delegation 1.31 – Payments from Municipal and Trust Funds.

LEGISLATIVE REQUIREMENTS:

Local Government Act 1995 - Section 6.10

Local Government (Financial Management) Regulations 1996 – Regulations 12 & 13.

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

SUSTAINABILITY IMPLICATIONS

- **Environment**
There are no known significant environmental implications associated with this proposal.
- **Economic**
There are no known significant economic implications associated with this proposal.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

Payments are in accordance with the adopted budget.

VOTING REQUIREMENTS

Simple Majority Required

MANEX RECOMMENDATION

That Council notes and endorses the Payments from the Municipal and Trust Funds made under delegation 1.31

Municipal Fund	Chqs 60130 to 60170	\$40,189.63
	EFT 5205 to 5452	764,304.73
	Net Pays – PPE 24/11/10	79,078.20
	Net Pays – PPE 8/12/10	81,908.08
Trust Fund	Chqs 4658 to 4661	224.00
Total		<u>\$965,704.64</u>

11.2.2 STATEMENT OF FINANCIAL ACTIVITY FOR PERIOD ENDED 30 NOVEMBER 2010

REPORT DATE: 8 November 2010
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: Leanne Parola, Manager Finance & Corporate Services
ATTACHMENTS: Statement of Financial Activity for the Period Ended 30 November 2010

PURPOSE OF REPORT:

To note and receive the Statement of Financial Activity for the period ended 30 November 2010.

BACKGROUND:

Council is provided with monthly financial reports to enable monitoring of revenues and expenditures against the adopted budget.

COMMENT:

The Statement of Financial Activity for the Period Ended is provided as a separate attachment in Program format.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

Local Government Act 1995, Section 6.4
Local Government (Financial Management) Regulations 1996, Clause 34

STRATEGIC IMPLICATIONS:

Monitoring of actual revenues and expenditures against the adopted budget assists Council in being informed as to the financial health of the organisation.

SUSTAINABILITY IMPLICATIONS:

- **Environment**
There are no known significant environmental implications associated with this proposal.
- **Economic**
There are no known significant economic implications associated with this proposal.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS:

Year to date income and expenditure is provided by program to enable comparison to 2010/11 adopted budget.

VOTING REQUIREMENTS

Simple Majority Required

MANEX RECOMMENDATION

That Council notes and receives the Statement of Financial Activity for the period ended 30 November 2010.

11.2.3 BUDGET VARIATIONS

REPORT DATE: 29 November 2010

OFFICER DISCLOSURE OF INTEREST: Nil

AUTHOR: Leanne Parola, Manager Finance & Corporate Services

ATTACHMENTS: Nil

PURPOSE OF REPORT

For Council to consider variations to the budget to match the income received for Bush Fire Brigades with appropriate expenditure.

BACKGROUND

When setting the 2010/11 budget, the expenditure for the Bush Fire Brigades was almost \$12,000 less than the income expected for the brigades.

After a petition was received from a number of farmers, Council resolved to amend the road program to accommodate reshouldering various sections of the Miling North Road, to be offset by reducing regravelling projects elsewhere in the Shire.

COMMENT

The purpose of this variation is to match budgeted expenditure with income by increasing brigade expenditure, and reducing the depreciation and wages budget, include the Miling North Road shoulders and the reduce the level of expenditure on four regravelling projects for the year.

The following budget variations are recommended:

Account	Current Budget	Amended Budget	Impact
10501 – Communications/Equipment Maintenance	4,500	4,150	(350)
10502 – Fire Insurance	2,372	7,705	5,333
10503 – Fire Control Expenses	2,500	3,700	1,200
10504 – Land & Building Maintenance	3,300	3,745	445
10505 – Fire Control Vehicle Expenses	1,663	7,000	5,337
10508 – Control Officer – Wages	10,175	7,205	(2,970)
10509 – Depreciation – Fire Prevention	30,817	21,822	(8,995)
Job REG06 – Old Geraldton Road	61,290	53,225	(8,065)
Job REG08 – Namban West Road	52,193	44,130	(8,063)
Job REG10 – Coomberdale East Road	56,451	48,386	(8,065)
Job REG15 – Lyons East Road	56,451	48,386	(8,065)
Job REG17 – Miling North Road	0	32,258	32,258
TOTAL	281,712	281,712	0

POLICY REQUIREMENTS

Nil

LEGISLATIVE REQUIREMENTS:

Nil

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environment**
There are no known significant environmental implications associated with this proposal.
- **Economic**
There are no known significant economic implications associated with this proposal.
- **Social**
There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

There will be no impact to the bottom line.

VOTING REQUIREMENTS

Absolute Majority Required

MANEX RECOMMENDATION

That Council approve the following budget variations:

Account	Current Budget	Amended Budget	Impact
10501 – Communications/Equipment Maintenance	4,500	4,150	(350)
10502 – Fire Insurance	2,372	7,705	5,333
10503 – Fire Control Expenses	2,500	3,700	1,200
10504 – Land & Building Maintenance	3,300	3,745	445
10505 – Fire Control Vehicle Expenses	1,663	7,000	5,337
10508 – Control Officer – Wages	10,175	7,205	(2,970)
10509 – Depreciation – Fire Prevention	30,817	21,822	(8,995)
Job REG06 – Old Geraldton Road	61,290	53,225	(8,065)
Job REG08 – Namban West Road	52,193	44,130	(8,063)
Job REG10 – Coomberdale East Road	56,451	48,386	(8,065)
Job REG15 – Lyons East Road	56,451	48,386	(8,065)
Job REG17 – Miling North Road	0	32,258	32,258
TOTAL	281,712	281,712	0

11.2.4 AUDIT COMMITTEE MEETING HELD 1 DECEMBER 2010

FILE REFERENCE: F/AUDI
REPORT DATE: 6 December 2010
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Audit Committee – 1 December 2010
AUTHOR: Leanne Parola, Manager Finance & Corporate Services
ATTACHMENTS: Audit Committee Minutes – 1 December 2010

PURPOSE OF REPORT:

To receive the minutes of the Audit Committee meeting held on 1 December 2010.

BACKGROUND:

In accordance with the Local Government Act 1995 and the Local Government (Audit) Regulations 1996, Council has appointed an Audit Committee to handle the legislative requirements in respect to audits.

The Audit Committee held a meeting on 1 December 2010 in Moora, prior to a Special Meeting of Council.

The minutes of the Audit Committee Meeting are now presented to Council so that Council can consider the recommendations contained within the minutes for adoption.

COMMENT:

The Audit Committee, while appointed by Council to fulfil its statutory obligations in respect to audits, has no delegated authority. Therefore the Committee cannot make decisions on behalf of Council, but instead makes recommendations for Council's consideration. In considering the recommendations of the Committee, Council may adopt the recommendations as decisions of Council either with or without amendment or may reject the recommendations.

The minutes of the Audit Committee Meeting held on 1 December 2010 contain the following recommendations for Council's consideration:

- a) that it be recommended to Council to note and receive the Independent Audit Report for the year ended 30 June 2010; and to conduct a Shire operational systems review including a financial management systems review.
- b) that it be recommended to Council to note and receive the Management Report for the year ended 30 June 2010 and for Council to respond to its Auditors, UHY Haines Norton using the Officer's comments provided.

The background and detail supporting these recommendations can be found in the Agenda and Minutes of the Audit Committee Meeting.

POLICY REQUIREMENTS:

There is no current policy or future policy implications in respect to the recommendation of this report.

LEGISLATIVE REQUIREMENTS:

Local Government Act 1995 (as amended)
Local Government (Audit) Regulations 1996

STRATEGIC IMPLICATIONS:

Meeting statutory compliance and obtaining an independent audit of Council's books of account assists the Shire in achieving its strategic goals.

SUSTAINABILITY IMPLICATIONS:**➤ Environment**

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

➤ Economic

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

➤ Social

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

FINANCIAL IMPLICATIONS:

There are no financial implications to Council in relation to this item.

VOTING REQUIREMENTS

Simple majority

AUDIT COMMITTEE & MANEX RECOMMENDATIONS***That Council:***

- 1. Receives the minutes of the Shire of Moora Audit Committee Meeting held on 1 December 2010, as appended;***
- 2. Adopts the recommendations contained within the minutes of the Audit Committee Meeting held on 1 December 2010 as decisions of Council, namely:***
 - i) to note and receive the Independent Audit Report for the year ended 30 June 2010; and
to conduct a Shire operational systems review including a financial management systems review;***
and
 - ii) to note and receive the Management Report for the year ended 30 June 2010 and for Council to respond to its Auditors, UHY Haines Norton using the Officer's comments provided.***

11.3 OPERATIONAL DEVELOPMENT

11.3.1 LAND RESUMPTIONS – COOMBERDALE WEST ROAD

FILE REFERENCE: S/ROAI
REPORT DATE: 2 December 2010
APPLICANT/PROPONENT: Shire of Moora
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: John Greay, Manager of Engineering Services
ATTACHMENTS: Realignment Map showing adjustments to Location 3382 & M1914, Coomberdale West/ Prices Road

PURPOSE OF REPORT:

Proposed road improvements at the intersection of Prices / Coomberdale West Road requires Councils confirmation / recommendation to the Department of Regional Development and Lands for the realignment of the roads through Mr Lyndon Browns property for the purpose of road improvements.

BACKGROUND:

At the above intersection there have been reported some near miss vehicle accidents that have resulted in some further investigation. It has been identified at the above intersection that the potential of serious injury could occur if with the existing intersection remained unchanged. A Road Safety Audit was carried out by RSA Works which confirmed Council's concerns and this has been confirmed by Main Roads Western Australia. We have engaged Mr Frank Rodda, licensed surveyor, to carry out survey work to identify the new centreline through the above lots.

COMMENT:

Council has received some blackspot funding from Main Roads this year to allow this upgrade to proceed.

We have contacted the owner and he has signed the appropriate forms to allow the truncations to take place. Service providers (e.g. Western Power, Telstra) will be notified in due course advising them of the realignment of the intersection.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

Local Government Act 1995 – S168
Land Administrative Act 1997 – (part 5)

STRATEGIC IMPLICATIONS:

Nil

SUSTAINABILITY IMPLICATIONS:

➤ **Environment**

There are no known significant environmental implications other than the removal of approximately eight trees which will be replaced with a 10:1 offset planting ratio. There is no known declared rare flora within the vicinity.

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

- **Social**
There are no known significant social implications associated with the proposal.

FINANCIAL IMPLICATIONS:

An allocation of \$147,795 has been allowed for in this year's budget

VOTING REQUIREMENTS

Simple Majority Required

MANEX RECOMMENDATIONS*That Council*

- 1. agrees to initiate road closures to allow for the realignment of the Coomberdale West Road through Lots 3382 & M 1914 and the realignment of Prices road (South) through M1914 of which all lots are currently owned by Mr Lyndon Brown ; and*

- 2. advertise in the Central Midlands Coastal Advocate for a period of 35 days indicating councils intent as indicated on plans submitted, with the boundaries of the truncated portions of those Lots to the north of the new road alignment, be included into the road reserve and the closed portion of Prices road-south along with the truncated section of Lot M1914, be included into Lot 3382.*

11.3.2 USE OF 2, 4-D ESTER

FILE REFERENCE: C/CHSI
REPORT DATE: 9 December 2010
APPLICANT/PROPONENT: Mr Scott Piper, Merchandise Manager - Landmark
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: John Greay, Manager of Engineering Services
ATTACHMENTS: Nil

PURPOSE OF REPORT:

Mr Piper has requested permission to sell 2, 4-D Ester to his clients.

BACKGROUND:

Each year it appears that council receive a request from Chemical sales companies to be given approval for the sale of 2, 4-D Ester for the purpose of controlling summer weeds etc on broad acre farming.

COMMENT:

Council has given approval in previous years with certain conditions applying to the application. Managers have discussed this matter recently and believe that council may again approve of the sale and use as they have done previously by applying the following conditions:-

- **NO** use of 2,4-D (High Volatile Esters) HVE's within 5km of the towns of Moora, Watheroo, Miling, Watheroo, Coomberdale and Bindi Bindi.
- **NO** use of 2,4-D HVEs within 10km of the Orchard/Horticulture activities located on the Western part of the Shire and Grapes in the Koojan Area.
- **NO** use of 2, 4-D HVEs within 1km of Reserves & natural waterways.
- Users must observe wind conditions before spraying.
- Permit users/landowners should contact their neighbours to ensure the 2, 4-D will not affect neighbours' operations.

In previous times concern has been expressed by the Managers of Moora Citrus and Agrifresh Citrus orchards, and Managers have placed a 10km buffer in the vicinity of these operations to protect the orchards from any spray drift. The previous manager of Community Services (Mr Mike Prunster) had discussed the matter with Mr Don Telfer of Agriculture WA and he stated that the chemical has been used in the district for some years. He said that farmers are aware of the conditions relating to weather etc. Information on weather conditions can be obtained from the Agriculture WA web site www.agric.wa.gov.au.

We understand that Nufarm Australia Ltd was to provide ongoing support to the Australian Pesticides & Veterinary Medicines Authority (A.P.V.M.A.) to enable the permits to continue to be re-issued, and we understand will be conducting further field monitoring studies as a condition of a permit. The permits would be issued for the summer months from November/December through to the end of May 2011.

Council gave permission for use of the chemical in December 2009 with the conditions that have been identified above.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

There are no known legislative requirements associated with this proposal.

STRATEGIC IMPLICATIONS:

There are no known strategic implications associated with this proposal.

SUSTAINABILITY IMPLICATIONS:**➤ Environment**

It is important to the farming community that they be able to control summer weeds before they become unmanageable. The use of 2, 4-D Ester will partly allow them to do that.

➤ Economic

Uncontrolled weeds could have a detrimental economic impact on farm production with reductions in crop yields .

➤ Social

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

FINANCIAL IMPLICATIONS:

There are no financial implications to Council in relation to this item.

VOTING REQUIREMENTS

Simple Majority Required

MANEX RECOMMENDATION

That Council supports the use of 2,4-D Ester, within the shire of Moora district for the present summer period between November/ December through to May 2011, subject to the following conditions:-

- ***NO use of 2,4-D (High Volatile Esters) HVE's within 5km of the towns of Moora, Watheroo, Miling, Watheroo, Coomberdale and Bindi Bindi.***
- ***NO use of 2,4-D HVEs within 10km of the Orchard/Horticulture activities located on the Western part of the Shire and Grapes in the Koojan Area.***
- ***NO use of 2, 4-D HVEs within 1km of Reserves & natural waterways.***
- ***Users must observe wind conditions before spraying.***
- ***Permit users/landowners should contact their neighbours to ensure the 2, 4-D will not affect neighbours' operations.***

11.4 COMMUNITY DEVELOPMENT

11.4.1 APPLICATION FOR LIQUOR LICENCE (RESTAURANT LICENCE): LOT 6 PADBURY STREET, MOORA

FILE REFERENCE: A74

REPORT DATE: 6 December 2010

APPLICANT/PROPONENT: Denise Clydesdale-Gebert via Bronwyn Fox

OFFICER DISCLOSURE OF INTEREST: Gray & Lewis receive planning fees for advice to the Shire therefore declare a Financial Interest – Section 5.65 of *Local Government Act 1995*

PREVIOUS MEETING REFERENCES: Nil

AUTHOR: Gray & Lewis Landuse Planners (Liz Bushby)

ATTACHMENTS:

1. Application
2. Plan of premises

PURPOSE OF REPORT:

An application has been lodged seeking a Section 39 and Section 40 Certificate from the Shire of Moora for a 'Restaurant licence' for the premises known as 'Moora Gallery' located at Lot 6 Padbury Street, Moora.

This report recommends that a Section 40 Certificate be issued for the restaurant building only, and that additional information be requested from the applicant to demonstrate compliance with all relevant legislation.

Note: In the event that Council overturns the officer recommendation, then the Council would need to authorise a Shire Officer to issue and sign the Section 39 and Section 40 Certificates.

In that case Gray & Lewis would recommend that the Council Officer be consulted as they would be certifying that the premises comply with planning, health and other legislation. It would also be recommended that the Council officer have some knowledge in dealing with the relevant legislation, as false certification should not be provided to the Department of Racing, Gaming and Liquor.

BACKGROUND:

Gray & Lewis is of the understanding that the Moora Gallery has been operating as an eating house (including alfresco dining) for some time, and provides a limited range of food.

The Department of Racing, Gaming and Liquor ('the Department') are the responsible authority for the issue of liquor licences. The applicant has applied for a 'restaurant licence' which allows for the sale and supply of liquor ancillary to a meal to a patron seated at a dining table.

Under a 'Restaurant licence' a restaurateur may supply liquor without a meal to customers but only if they apply for, and are granted an extended trading permit to do so by the Department. Any application for 'Liquor without a meal permits' and subject to a public interest test and may require advertising by the Department.

The purpose of the Public Interest Test is based on the principle that all licensed premises operate within the interests of the affected individual community. To satisfy the public interest test, an applicant has to consider and find solutions to any negative impact that may be suffered by sections of the community through the operation of their licensed premises.

It should be noted that the Department has wide controls over liquor licences. If a licensee is found in breach of the conditions of their permit, or if it is determined that the permit is no longer in the best interest of the public, the permit can be cancelled immediately by the Department.

For a restaurant licence to be considered, the Department requires that the venue has a kitchen equipped to provide meals, sufficient toilet facilities and a dining area.

COMMENT:

Description of application

The applicant has provided limited information and the application is summarised below;

- The licence includes an alfresco area of 10 seats, and a lounge area of 22 seats.
- Approximately 50% of the seats are lounge seating not table and chairs.
- The tables provided are 10 standard outside and 7 inside which are tall tables serviced by stools.
- Trading hours are Tuesday - Thursday 9am till 9pm, Friday & Saturday 9am to 12pm and closed Mondays, Sundays and Christmas Day. Trading on Good Friday & Anzac Day. No off license premises sales. The statement "*the owner/manager will stay open as long as demand there & will not stay open all night unless customers are still present.*" Should be noted.

On face value it appears the applicant may be applying for a 'Liquor without a meal permit' as a portion of the licence area will be lounge. This needs to be clarified with the applicant and a plan should be provided that shows the area of the liquor licence being applied for.

It should also be noted that no fee has been paid with the application, and will be requested as part of the officer recommendation.

Section 40 Certificate – Restaurant Building

Under the Liquor Licensing Act, a certificate is required from the Local Government basically to covenant if a premises has planning consent, would be granted planning consent or does not comply with relevant planning requirements.

The main purpose is to ensure that any business which applies for a liquor licence has the necessary and relevant planning approvals. It would otherwise result in an undesirable situation if a liquor licence was granted by the Department for a use that required, but had not been granted, planning approval by the local government.

There are no accessible records on the existing use, however it has been in operation for an extended period.

The subject property is zoned 'Town Centre' under the Shire of Moora Town Planning Scheme No 4 ('the Scheme').

A 'restaurant' is defined under the Scheme as '*means a building wherein food is prepared for sale and consumption within the building and the expression shall include a licensed restaurant*'.

A 'restaurant' is a permitted use in the Town Centre and does not require planning approval in accordance with Clause 7.1.2 (c) provided that it does not involve the carrying out of any building or other works.

It is therefore considered that the Shire can issue a Section 40 certificate for the restaurant building confirming that it will comply with the written laws relating to planning, with additional advice that the premises operates as a 'restaurant' which is permitted in the relevant 'Town Centre' zone. However, the proposed 'lounge' area raises questions over whether change in landuse is proposed to allow for a bar. Confirmation is also required as to whether any works are involved. This needs to be clarified with the applicant.

It is important to note that the permitted restaurant use does not include alfresco dining which requires separate planning approval as it is within a scheme reserve area. This is discussed separately below.

Section 40 Certificate – Alfresco Area

It appears the application proposes for the liquor licence to also apply to the alfresco area which is contained within the road reserve.

Road Reserves are shown in white on the Scheme map, and are included in the map legend as 'Local Scheme Reserves' for road. 'Road' is also listed as an official Scheme Reserve under Clause 2.1 of the Scheme.

Technically, development in any Local Scheme Reserve (including the road) requires planning approval, including alfresco dining.

Clause 2.3.1 of the Scheme states that "*..a person must not (a) use a local reserve; or (b) commence or carry out a development on a local reserve, without first having obtained planning approval under Part VII of the Scheme.*"

Gray & Lewis have liaised with Council officers and there is no record of any planning approval for the 'alfresco' component of the existing use.

Gray & Lewis are unable to recommend that any Council Officer sign a Section 40 Certificate for the alfresco area unless it can be confirmed that:

1. The use has been granted planning approval and there is written evidence of a planning approval being granted or;
2. The owners lodge a planning application which can be referred to Council for formal determination.

An application for a liquor licence can't be approved by the Department if local government planning approval has not been granted for the alfresco area. The use of road reserve also raises issues regarding pedestrian safety (as pedestrian paths need to be maintained), indemnity insurance, and whether the owners/ operator has a permit for the alfresco area. The Shire of Moora Local laws 2006 s9.15 refers to "Facility" and outlines requirements for a permit and matters to be considered.

This needs to be further investigated and confirmed if a Council officer is to covenant in a certificate that the alfresco use does comply with all relevant planning requirements.

If the alfresco area does not have planning approval and has simply been operating from the site, then issues such as pedestrian safety, amenity, social impact (for drinking areas without food), parking and the like will need to be considered.

Accordingly it is recommended that further information be obtained from the applicant. In regards to social amenity, this issue is also largely scrutinised by the Department in dealing with liquor licences and the 'public interest' test.

The applicant may be able to provide information about the history of the alfresco area which may assist Council officers to research its records.

Section 39 Certificate

A Section 39 certificate has to advise whether the premises comply with the Health Act 1911, the Food Act 2008, the Local Government Act 1995, the Local Government (Miscellaneous Provisions) Act 1960 and any written law applying to the sewerage or drainage of those premises.

No records relating to this premises have been located, therefore the premises was recently inspected by a Shire Officer who advised that;

"The current premises is well managed and in a good state of repair and there would be no difficulty in providing a certificate of registration on application. A number of minor matters would need to be addressed, the main being the provision of a wash hand basin in the kitchen or food preparation area and improving wheelchair access to the toilets is recommended. This is a "low risk" food premises currently.

With regards to increasing the facility it is capable of operating as a restaurant, although there would be limitation in seating (35 persons) and the extent of the menu. As this is a change in use, in addition the provision of a grease trap, improved ventilation in the kitchen is required and parking would be recommended."

It appears that some minor works are required to comply with the relevant acts. The Section 39 Certificate is not a planning matter however it appears Council has several options in dealing with it as follows;

Option 1 Issue a Section 39 Certificate and advise that premises could be made to comply with the relevant Acts with minor works to be completed including and not limited to provision of a wash hand basin in the kitchen or food preparation area, improved wheelchair access to the toilets, a seating limitation, provision of a grease trap and improved ventilation.

- Option 2 Require the owners / operators to undertake works as required ‘up front;’ and authorise a Shire Officer to issue a Section 39 once the works are completed.
- Option 3 Resolve issues pertaining to the planning approval for the alfresco area prior to issuing a Section 39 Certificate, and then pursue option 1 and outline the required works to comply with legislation in the Certificate.

Option 3 is recommended as it is not considered desirable to issue a Section 39 until the planning matters have been resolved through consultation with the applicant. In addition it is understood that some works are required as the premises is a ‘public building’.

The applicant is required under the Food Act 2008 to notify the Council and to have a certificate of registration. This will be required prior to approving of any s39 application.

In the interim Shire officers can take the opportunity to advise the applicant of works required to bring the premises into full compliance with the relevant legislation, and the public building requirements. Regardless of the liquor licence applications, if the Shire is aware of any legislative requirements that need to be met, it has some obligation to ensure the works are completed.

Public Building Requirements

Public building requirements are not a planning issue, however Shire officers have advised that the building has to be brought up to the standard of a public building under the Health (Public Building) Regulations 1992.

The Shire has indicated that the applicant will need to address:

- Compliance with Australian/New Zealand Standard AS/NZ 2293 — Emergency Evacuation Lighting in Buildings;
- A risk management plan being developed in accordance with AS/NZS 4360; and a evacuation plan that complies with the Australian Standard AS 3745:1995 — Emergency Control Organization and Procedures for Buildings;
- Notice of completion referred to in regulation 52 of the Electricity (Licensing) Regulations 1991 made under the Electricity Act 1945 has issued a certificate in the form of Form 5 in Schedule 2 certifying that the electrical work of the public building conforms to the relevant provisions of these regulations, the Building Regulations and the Electricity (Licensing) Regulations 1991

Gray & Lewis has been advised that this would mean that a hard wire smoke alarm is required, illuminated exit signs for the main exit, no exit sign for the toilet, and permanent effective safety lighting for the passage to the toilet facilities.

POLICY REQUIREMENTS:

Gray & Lewis are of the understanding that the Shire has no Local Planning Policy on alfresco dining or liquor licence certificates. Council may consider developing Local Planning Policies or Information Sheets to give guidance to applicants.

LEGISLATIVE REQUIREMENTS:

- **Liquor Control Act 1988 (“the Act”)**

Section 39 and 40 of the Act requires a certificate from the local planning authority to be submitted for the grant or removal of a licence, or for a change in the use or condition of any premises, unless otherwise determined in accordance with the Liquor Licence.

A Section 40 certificate shall state that the proposed use of the premises –

- (a) will comply with the requirements of the written laws relating to planning specified;
- (b) would comply with the requirements specified if consent were to be given by a specified authority, if it is known whether that authority will give the consent, and what specified conditions or specifications should be, or are likely to be, imposed; or
- (c) will not comply with the requirements specified for the reasons specified.

A Section 39 certificate shall state –

- (a) whether or not the premises comply with all relevant requirements of —
 - (i) the Health Act 1911;
 - (ia) the Food Act 2008;
 - (ii) any written law applying to the sewerage or drainage of those premises;
 - (iii) the Local Government Act 1995; and
 - (iv) the Local Government (Miscellaneous Provisions) Act 1960; and
- (b) where the premises do not so comply, the manner in which the premises could be made to comply or that the premises could not reasonably be made to comply.

- **Other relevant legislation listed below;**

- Planning and Development Act 2005
- Health (Public Buildings) Regulations 1992
- Health Act 1911
- Food Act 2008
- Food Regulations 2009
- Local Government Act 1995
- Local Government (Miscellaneous Provisions) Act 1960
- Liquor Control Act 1988:

STRATEGIC IMPLICATIONS:

There are no known strategic implications associated with this proposal.

SUSTAINABILITY IMPLICATIONS:

- **Environment**

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

➤ **Economic**

It is noted that the business appears to have been operating for an extended time period without any known problems, and it appears that the premises can be brought into compliance with relevant health and building legislation with some works. There may be positive economic outcomes from any liquor licence if it improves local patronage and business viability, as that can result in increased local employment opportunities.

➤ **Social**

There may be arguments regarding negative social implications in regards to serving alcohol without food (especially in the alfresco area), however it largely depends on management of the premises. This issue will be closely scrutinised by the Department who assess the public's interest.

There may also be positive social implications, as the premises will provide a place where people can informally gather which fosters a sense of community. The use may also result in increased liveliness in the Town Centre at night.

FINANCIAL IMPLICATIONS:

A fee needs to be paid for the assessment and processing of the Section 39 and 40 certificate. It should also be noted that the Shire pays fees to Gray & Lewis for planning advice.

In regards to the alfresco area, it is crown land under the control and management of the Shire. There may need to be public liability insurance by the operator for the alfresco area to protect the Shires interests.

Council may need to consider improving its records system to track historic (and current) planning approvals. Planning approvals run with the land and it is difficult to administer the Town Planning Scheme in the absence of good record keeping and access to approvals.

VOTING REQUIREMENTS:

Simple Majority Required

STAFF RECOMMENDATION (Gray & Lewis Landuse Planners)

That Council request additional information from the applicant and advise as follows;

- 1. In order to fully assess the request for a liquor licence, the Shire requires payment of a \$100.00 application fee for the Section 39 certificate, and a clear site plan which outlines the area to which the liquor licence is to apply.*
- 2. The existing 'restaurant' use (in the building) is permitted in the 'Town Centre' zone and therefore does not require specific planning approval unless it involves building or other works. It is therefore considered that the Shire can consider issuing Section 40 certificate for the restaurant building confirming that it will comply with the written laws relating to planning. However, the proposed 'lounge' area raises questions over whether change in landuse is proposed to allow for a bar area and additional written advice is sought to clarify;*

- (i) **Whether liquor is only proposed to be served with food or whether a 'Liquor without a meal permit' is being pursued with a restaurant liquor licence.**
 - (ii) **Clarify whether any building or works are proposed to the existing premises in the form of alterations, changes of colours, installation of bar areas, internal fitout, signage, or any changes/alterations to the building.**
3. **The alfresco area is located in the road reserve so requires specific planning approval. Whilst it is recognised that the use may have been operating for some time, in issuing any Section 40 for the alfresco area Council officers have to certify that a planning approval has been granted for the use.**

Unfortunately the Shire has no locatable record of any such planning approval having been granted. The Shire seeks any written evidence by the owner/ operator that the use has been granted planning approval. Alternatively the owners can lodge a planning application seeking approval for the alfresco area, which can be referred to Council for formal determination. Any application should be accompanied by a detailed plan and advice on;

- (i) **The existing and proposed hours of operation.**
 - (ii) **The proposed number of alfresco seats and whether the entire alfresco area will be included in the liquor licence.**
 - (iii) **Opportunities for on site car parking.**
 - (iv) **Advice on how the premises will be managed in terms of operation, type of food preparation and meals, addressing social behaviour etc**
4. **In regards to the Section 39 certificate, the premises has been inspected by a Shire officer and is generally considered to be well managed. A Section 39 Certificate could be issued however is currently being withheld whilst the planning matters relating to approvals for the alfresco dining area are being resolved. There are some minor works which will be required and these may be conditions of any Section 39 certificate. Some works are also required to meet the Public Building requirements.**
5. **Authorise the Environment Health Officer to write to the applicant advising of the Council decision and outlining the works required to the building and need for any permits required for the relevant health / building legislation.**
6. **Authorise the Shire records / administration section to continue to research Council records and historical minutes to try and locate any information that will assist the applicant to verify whether any planning consent has been obtained for alfresco dining.**
7. **Advise the applicant that the Shire is generally not opposed to the liquor licence, however needs to provide official certificates and is reluctant to do so until full satisfied that all legislation is complied with. Additional information will likely assist with this process.**

11.5 ENVIRONMENTAL DEVELOPMENT

Nil

11.6 ECONOMIC DEVELOPMENT

Nil

11.7 SPORT AND RECREATION

Nil

12. ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

13. MOTIONS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL**14. NOTICE ON MOTIONS FOR THE NEXT COUNCIL MEETING****15. MATTERS BEHIND CLOSED DOORS****RECOMMENDATION**

That the meeting move behind closed doors to discuss:

Item 15.1, Legal Action – Outstanding Rates as it is a matter regarding proposed legal action against a person/s to be taken pursuant to Section 5.23(2)(d) of the Local Government Act 1995.

15.1 RECOVERY ACTION - OUTSTANDING RATES

Provided to Councillors under confidential cover.

16. CLOSURE OF MEETING