

**Shire of Moora
Ordinary Council Meeting
18th March 2020**

NOTICE OF MEETING

Dear Elected Member

The next Ordinary Council Meeting of the Shire of Moora
will be held on **Wednesday 18th March 2020**
in the Council Chambers, 34 Padbury Street, Moora
commencing at **5.30 pm**



AJ Leeson
Chief Executive Officer

13th March 2020

The Shire of Moora Vision and Mission Statement

Vision

Our vision is:

Shire of Moora - a vibrant, affordable Regional Centre with a growing, caring community.

Mission

Our mission is:

To provide the leadership, services and infrastructure that will meet the needs of the community and surrounds.

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
18 MARCH 2020
 COMMENCING AT 5.30PM

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Separate Attachments

- 9.1.1 *List of Payments Authorised Under Delegation 1.31*
- 9.1.2 *Statement of Financial Activity for Period Ended 29 February 2020*
- 9.2.1 *Attachment 1*
- 9.2.2 *Attachment 1*
- 9.2.3 *Attachments 1 to 4*
- 10.1 *Application Letter and Location Diagram*
- 10.2 *Email from WALGA CEO, Deed of Variation (Draft), Clause 12 of Trust Deed 1994*

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**1.1 DECLARATION OF OPENING****1.2 DISCLAIMER READING**

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.

2. ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE**3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE****4. PUBLIC QUESTION TIME****5. PETITIONS AND PRESENTATIONS****6. APPLICATIONS FOR LEAVE OF ABSENCE****7. ANNOUNCEMENTS BY THE PRESIDING MEMBER****8. CONFIRMATION OF MINUTES****8.1 ORDINARY COUNCIL MEETING - 19 FEBRUARY 2020**

That the Minutes of the Ordinary Meeting of Council held on 19 February 2020 be confirmed as a true and correct record of the meeting.

9. REPORTS OF OFFICERS

9.1 GOVERNANCE AND CORPORATE SERVICES

9.1.1 LIST OF PAYMENTS AUTHORISED UNDER DELEGATION 1.31

REPORT DATE: 13 March 2020

OFFICER DISCLOSURE OF INTEREST: Nil

AUTHOR: Alan Leeson, Chief Executive Officer

SCHEDULE PREPARED BY: Alida Fitzpatrick, Finance Officer

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

RECOMMENDATION

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

<i>Municipal Fund</i>	<i>Cheques 62438 to 62439</i>	<i>\$3,074.00</i>
	<i>EFT 22915 to 23082</i>	<i>\$290,104.82</i>
	<i>Credit Card 03/01/20 to 03/02/20</i>	<i>\$886.42</i>
	<i>Net Pays – PPE 04/02/2020</i>	<i>\$93,115.56</i>
	<i>Net Pays – PPE 18/02/2020</i>	<i>\$94,726.37</i>
	<i>DD 13059.1 to 13087.14</i>	<i>\$47,380.98</i>
<i>Trust Fund</i>	<i>Cheques 5525 to 5526</i>	<i>\$61.65</i>
<i>Total</i>		<i><u>\$529,349.80</u></i>

9.1.2 STATEMENT OF FINANCIAL ACTIVITY FOR PERIOD ENDED 29 FEBRUARY 2020

REPORT DATE: 13 March 2020

OFFICER DISCLOSURE OF INTEREST: Nil

PREVIOUS MEETING REFERENCES: Nil

AUTHOR: Martin Whitely, Financial Consultant (LG Corporate Solutions)

ATTACHMENTS: Statement of Financial Activity for the Period Ended 29 February 2020

PURPOSE OF REPORT:

To note and receive the Statement of Financial Activity for the period ended 29 February 2020.

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 2019/20 adopted budget.

VOTING REQUIREMENTS

Simple Majority Required

RECOMMENDATION

That Council notes and receives the Statement of Financial Activity for the period ended 29 February 2020.

9.2 **DEVELOPMENT SERVICES**

9.2.1 **APPLICATION FOR DEVELOPMENT APPROVAL – PROPOSED REPURPOSED DWELLING, NEW OUTBUILDING (SHED) & REPURPOSED ANCILLARY ACCOMMODATION BUILDING FOR SHORT-TERM ACCOMMODATION PURPOSES ON LOT 37 (NO.4) COOMBERDALE EAST ROAD, COOMBERDALE**

FILE REFERENCE: TP/DA19/1920
REPORT DATE: 12 March 2020
APPLICANT/PROPONENT: Ms Danica-Lea Larcombe (Landowner)
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: Mr Joe Douglas, Town Planning Consultant
ATTACHMENTS: Attachment I

PURPOSE OF REPORT:

Consideration and final determination of an Application for Development Approval for the construction of a repurposed dwelling, new outbuilding (i.e. domestic storage shed) and repurposed ancillary accommodation building on Lot 37 (No.4) Coomberdale East Road, Coomberdale for residential and short-term accommodation purposes.

BACKGROUND:

The applicant is seeking Council's development approval for the following improvements and uses on Lot 37 (No.4) Coomberdale East Road, Coomberdale:

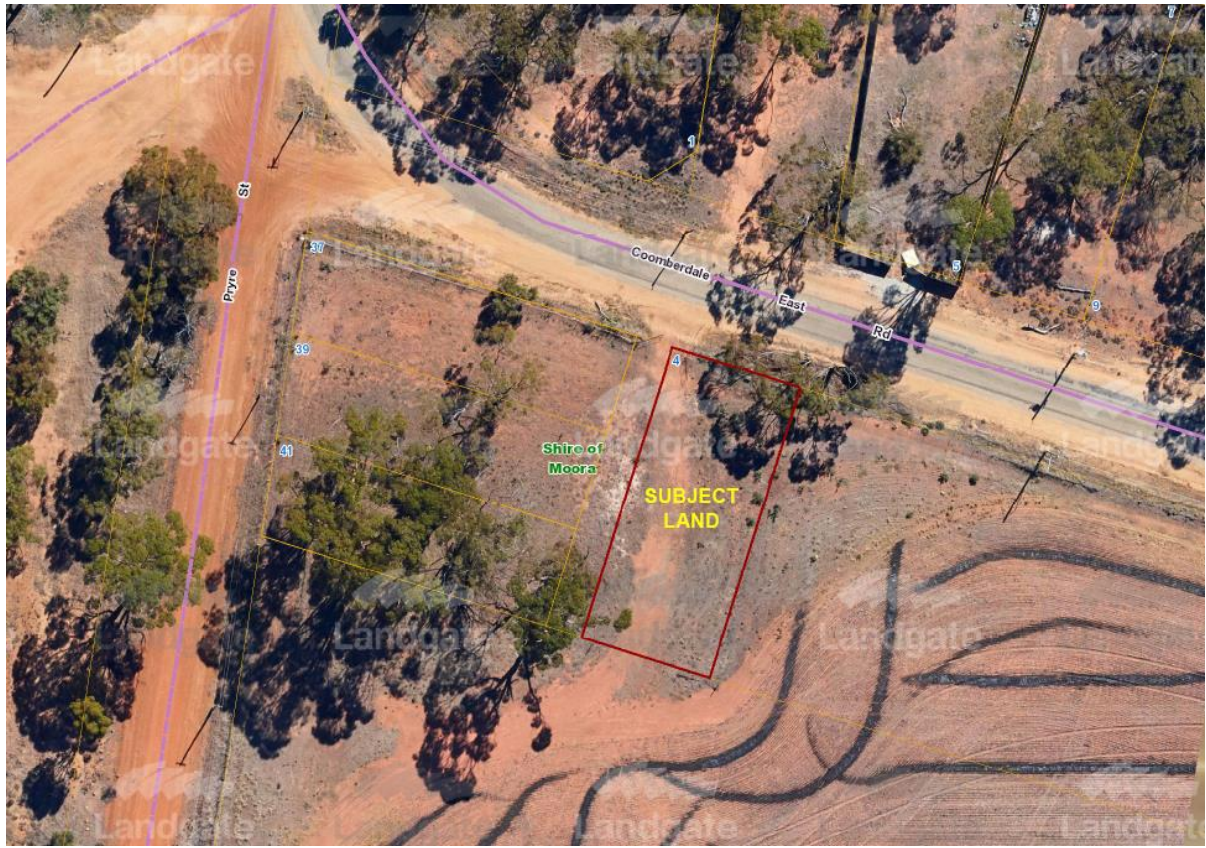
- i) construction of a 229.94m² repurposed double storey dwelling, including portico, patios and carport, using a number of second-hand sea containers and other light weight building materials on the front portion of the property for occupation and use by the landowner;
- ii) construction of a new 7.6m² outbuilding (i.e. shed) behind and adjacent to the proposed repurposed, double storey dwelling for domestic storage purposes; and
- iii) construction of a 76.52m² repurposed single storey ancillary accommodation building, including patio, using one second-hand sea container and other light weight building materials at the rear of the property which is proposed to be used for short-term accommodation purposes.

A full copy of the development application submitted, including supporting documentation and plans, is provided in Attachment I.

Lot 37 is located on the southern edge of the Coomberdale townsite and has direct frontage and access to Coomberdale East Road along its northern boundary which is an unsealed local road under the care, control and management of the Shire of Moora. The land also abuts an unconstructed public right-of-way along its western boundary that was originally created to provide rear access to Nos.37 to 41 Pryre Street, Coomberdale as well as Lot 37 if ever required.

Lot 37 comprises a total area of approximately 740m² and is generally flat throughout with the natural ground level being approximately 217 metres AHD. The subject land has been extensively cleared and is not located in close proximity to any significant environmental features (e.g. large stands of native vegetation, rivers, creek lines or wetlands).

Lot 37 is currently vacant and has not been developed or used for any specific purpose/s (i.e. there are no other notable physical improvements or uses on the land). It is significant to also note the land has not been designated as being flood and/or bushfire prone.



Location & Lot Configuration Plan (Source: Landgate 2020)

Immediately adjoining and other nearby land uses include:

- broadacre agriculture (i.e. cropping and grazing) immediately east and south;
- the Coomberdale Road road reserve and vacant, undeveloped residential lots immediately north with a mix of low density residential, commercial and public uses beyond; and
- an unconstructed public right-of-way and vacant, undeveloped residential lots immediately west with a CBH grain handling and storage facility, Midlands Road and an operational railway reserve beyond.

COMMENT:

Lot 37 is classified 'Rural Townsite' zone in the Shire of Moora Local Planning Scheme No.4 (LPS4).

Council's stated objective for the development and use of any land classified 'Rural Townsite' zone is to allow for a wide range of land uses such as may be found in a small country town subject to the preservation of local amenities.

The use classes 'repurposed dwelling' and 'short-term accommodation' are not specifically listed in the Zoning Table in LPS4. As such Council must decide when determining the application whether these proposed uses on Lot 37 are:

- a) **consistent** with the objectives of the land's 'Rural Townsite' zoning classification and is therefore permitted; or
- b) **possibly consistent** with the objectives of the land's 'Rural Townsite' zoning classification and must therefore be advertised for public comment prior to final determination of the

- application; or
- c) **not consistent** with the objectives of the land's 'Rural Townsite' zoning classification and therefore not permitted.

It is the reporting officer's view that the proposed development and use of Lot 37 for the intended purposes is **consistent** with the objectives of the land's current 'Rural Townsite' zoning classification for the following reasons:

- i) The proposed uses are low intensity activities commonly found in small county towns throughout Western Australia;
- ii) The subject land is considered to be suitable and capable of accommodating the proposed development, including on-site effluent disposal;
- iii) The proposed development has been designed in a manner that is generally consistent with the deemed-to-comply requirements of the Residential Design Codes of Western Australia and will provide for the efficient and effective use of the land for the stated purposes; and
- iv) Suitable conditions can be imposed on any approval that may ultimately be granted to ensure the amenity of the immediate locality is suitably protected.

The application has been assessed with due regard for the specific objectives and standards of the Shire's local planning framework including LPS4 and all relevant local planning policies as well as the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This assessment, which included consultation with the Shire's Environmental Health and Building Surveyor, has confirmed the proposal is generally compliant or capable of compliance with the following requirements:

- Land capability and suitability;
- Lot boundary setbacks except the rear boundary (see comments below);
- Building location, size, height, bulk, scale, orientation and appearance except the appearance of the proposed repurposed ancillary accommodation building at the rear of the property (see comments below);
- Amenity of the locality including potential environmental, visual and social impacts;
- Vehicle access and parking;
- Open space;
- Essential services including on-site effluent disposal; and
- Stormwater drainage management.

Notwithstanding the above conclusion, Council should note the following issues have been identified during assessment of the proposal that require consideration when determining the application:

i) Buffer Separation Distance to Sensitive Land Uses

Lot 37 is located within the buffer area surrounding Cooperative Bulk Handling's (CBH's) existing grain handling and storage facility located approximately 190 metres to the south-west. The Environmental Protection Authority's (EPA's) Guidance Statement No.3 entitled 'Separation Distances between Industrial and Sensitive Land Uses' recommends a minimum buffer separation distance of 500 metres between grain elevators and any form of sensitive land use, including single houses and holiday accommodation, to help minimise any potential conflicts / impacts (i.e. gas, noise, dust, odour or risk).

Despite this non-compliance issue, it is significant to note there are a number of existing approved dwellings (i.e. sensitive uses) in the Coomberdale townsite located less than 500 metres from the grain elevators used at the CBH facility with no record of any formal

complaints from their owners / occupants. It's fair to say people are generally accepting of CBH's operations in small country towns like Coomberdale given they were developed prior to the introduction of contemporary planning controls and the significant economic benefits they provide to local communities.

It should also be noted CBH are known to be responsible corporate citizens and go to great lengths to ensure their operations are managed in accordance with all relevant regulatory requirements to minimise any external impacts. In circumstances where complaints have been received, CBH have proven open and responsive to people's concerns and taken the necessary action to address them as quickly as possible.

Should Council choose to exercise its discretion in this matter and approve the application despite the proposal's non-compliance with the minimum buffer separation distance recommendation in the EPA's guidance statement (which it should be noted is not binding), it is recommended an advice note be included to inform the applicant / landowner of the potential impacts associated with CBH's existing long established operations in the immediate locality.

ii) Potential Noise Impacts

When considering and determining the application Council is required to have due regard for the requirements of State Planning Policy 5.4 entitled 'Road and Rail Noise' due to the subject land's close proximity to an existing operational railway line which is primarily used for the transportation of freight.

An initial screening assessment against the noise exposure forecast matrix in the 'Road and Rail Noise Guidelines' prepared in support of SPP 5.4 has confirmed the proposed development could be expected to be exposed to noise levels of 52dB at the time a freight train is passing. This is below the day-time noise target of 55dB but slightly higher than the night-time target of 50dB recommended by SPP 5.4 which places it in noise exposure category 'A' under which any development is deemed acceptable subject to mitigation measures in accordance with an approved noise management plan or the 'quiet house design' measures specified in the guidelines.

The applicant/landowner has not submitted a noise management plan in support of the application. As such Council must consider whether it is reasonable and practicable to require the implementation of the noise mitigation measures for the 'quiet house design' measures specified in the guidelines for exposure category 'A' in order to achieve the abovementioned night-time noise target (e.g. building orientation, wall construction materials, solid core doors, glazing, window and door seals etc.).

In this particular instance it is considered unnecessary to impose conditions on any development approval that may be granted requiring the implementation of noise mitigation measures in accordance with the relevant guidelines for the following reasons:

- The 2dB variation to the night-time noise target of 50dB recommended by SPP 5.4 is only minor in nature;
- The infrequency of freight movements along the railway line to the west of the subject land and the limited impact the proposed development will have on the operational capacity of this freight route;
- The noise screening benefits afforded by the various measures proposed by the applicant / landowner in the documentation and plans submitted in support of the application which, if approved, will become legally binding;

- The noise screening benefits to be afforded by the future possible development of the three vacant lots located immediately west of the subject land;
- The limited number of people that will benefit from any noise mitigation measures;
- The significant cost of implementing noise mitigation measures in accordance with the guidelines and the risk it may discourage the applicant / landowner proceeding with the development which is considered to have considerable merit both economically and socially; and
- The applicant's / landowner's vested interest in ensuring the new short-term accommodation to be provided is user-friendly and doesn't give rise to noise complaints which could undermine their investment in the project (i.e. if noise does become an issue for guests it's expected the applicant / landowner will seek to ameliorate any negative impacts as quickly as possible to maintain the attractiveness and commercial viability of the development).

iii) Potential Visual Impact

Clause 67 of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* expressly states that in considering an application for development approval the local government is required to have due regard to, amongst other things:

- a) the compatibility of a proposed 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; and
- b) the amenity of the locality including the following:
 - i) environmental impacts of the development;
 - ii) the character of the locality; and
 - iii) social impacts of the development.

Both dwellings on the land will be constructed using second-hand sea containers which, due to their appearance, have significant potential to have a negative impact on the visual amenity of the immediate locality.

The information submitted in support of the application indicates the repurposed double storey dwelling, including portico, patios and carport, in the front portion of the land will make a positive contribution to the local streetscape due to the tasteful and thoughtful combination of external building materials and colours, all of which will be complemented by landscaping.

There is however some concern with the visual appearance of the repurposed single storey ancillary accommodation building proposed to be sited at the rear of the property for the following reasons:

- The 'bright orange' paint colour to be used on the external walls of the structure which, in the reporting officer's view, will be highly prominent in the land's rural setting and not in keeping with the visual landscape character of the immediate locality;
- The potential visual impact on other nearby properties and concerns that may be raised by their owners in the future once the development is complete; and
- No screening measures, including solid boundary fencing, are proposed to help screen the structure from public view.

It is the reporting officer's view that the walls of the ancillary accommodation building should be finished using similar materials and colours to the proposed double storey dwelling in the front portion of the land to ensure the development may be evident, but not visually prominent in its local setting (i.e. it borrows from and blends with its existing landscape setting rather than draws attention to itself). A condition has therefore been included in the recommendation for approval to reflect this preferred design outcome. It is acknowledged that this is a subjective matter. As such Council can choose to remove the relevant condition and associated advice note (i.e. Condition 5 & Advice Note 3) if it considers the officer's views and concerns are unwarranted.



View of Subject Land from its Street Frontage to the South-East (Source: Google Maps 2020)

iv) Rear Boundary Setback

Clause 3.8.2 of LPS4 requires all development on any land classified 'Rural Townsite' zone to be in accordance with the Residential Design Codes of Western Australia (i.e. the R-Codes). In this instance the application must be assessed in accordance with the standards applicable to the R10 density coding applicable to all land in the Coomberdale townsite including Lot 37.

Table 1 and clause C3.1 of the R-Codes under design element 5.1.3 entitled 'Lot Boundary Setback' require all buildings on land with a density coding of R10 to have a minimum setback of 6 metres from a rear boundary.

Under the terms of the information and plans submitted in support of the application for Lot 37 the repurposed single storey ancillary accommodation building to be sited at the rear of the property will have a setback of only 2.5 metres from its southern rear boundary which is 3.5 metres less than that required by the R-Codes as stated above.

Having regard for the design principles prescribed in clause C3.1 of the R-Codes under design element 5.1.3, it is contended the proposed variation to the rear boundary setback requirement of 6 metres is in this case acceptable and may therefore be supported and approved by Council for the following reasons:

- There will be minimal impacts associated with building bulk on any adjoining properties;
- It will not compromise opportunities for adequate access to direct sun and ventilation to any buildings and open spaces on the site and any adjoining properties; and
- It will not increase the extent of overlooking and result in the loss of privacy on any

adjoining properties.

In light of the above findings it is concluded the proposal for Lot 37 is acceptable and unlikely to have any negative impact on the general amenity, character, functionality and safety of the immediate locality subject to compliance with a number of conditions. As such it is recommended Council exercise its discretion and grant conditional approval to the application to ensure the development proceeds generally in accordance with the information and plans submitted in support of the proposal and the relevant standards and requirements of the Shire's local planning framework.

POLICY REQUIREMENTS:

- State Planning Policy 7.3 - Residential Design Codes Volume I
- State Planning Policy 4.1 – State Industrial Buffer
- EPA Guidance Statement No.3 – Separation Distances between Industrial and Sensitive Land Uses
- State Planning Policy 5.4 - Road and Rail Noise
- WAPC Road and Rail Noise Guidelines 2019

LEGISLATIVE REQUIREMENTS:

- Planning and Development Act 2015
- Planning and Development (Local Planning Schemes) Regulations 2015
- Shire of Moora Local Planning Scheme No.4

STRATEGIC IMPLICATIONS:

- Shire of Moora Strategic Community Plan 2012-2022

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 known financial implications in relation to this item. All costs associated with the proposed development are the responsibility of and will be met by the applicant / landowner.

VOTING REQUIREMENTS:

Simple Majority Required

OFFICER RECOMMENDATION

That Council APPROVE the development application submitted by Ms Danica-Lea Larcombe (Landowner) for the construction of a repurposed dwelling, new outbuilding (i.e. domestic storage shed) and repurposed ancillary accommodation building on Lot 37 (No.4) Coomberdale East Road, Coomberdale for residential and short-term

accommodation purposes subject to the following conditions and advice notes:

Conditions

- 1. The proposed development shall be undertaken strictly in accordance with the information and plans submitted in support of the application subject to any modifications required as a consequence of any condition/s of this approval or otherwise approved by Council.**
- 2. Any additional development which is not in accordance with the application the subject of this approval or any condition of approval will require the further approval of Council.**
- 3. The proposed development shall be substantially commenced within a period of two (2) years from the date of this approval. If the development is not substantially commenced within this period, this approval shall lapse and be of no further effect. Where an approval has so lapsed, the proposed development shall not be carried out without the further approval of Council having first being sought and obtained.**
- 4. All external surfaces of the proposed structures on the land shall be clad with new materials only.**
- 5. The external surface of the proposed 76.52m² repurposed single storey ancillary accommodation building at the rear of the property shall be finished using the same materials and colours as the repurposed double storey dwelling to be constructed in the front portion of the land.**
- 6. The sub-floor area around the periphery of proposed repurposed double storey dwelling and single storey ancillary accommodation building (i.e. the space between the natural ground level and each building's final finished floor level) shall be enclosed with brick, stone, vermin proof battens or other means acceptable to the Shire's Chief Executive Officer within six (6) months of the buildings being positioned on the land.**
- 7. The proposed new driveway crossover along the land's Coomberdale East Road frontage shall be constructed and maintained to the specifications and satisfaction of the Shire's Chief Executive Officer.**
- 8. The proposed repurposed double storey dwelling, and single storey ancillary accommodation building shall be connected to the existing electricity and water supply infrastructure servicing the land prior to their occupation and use unless otherwise approved by Council.**
- 9. The proposed repurposed double storey dwelling, and single storey ancillary accommodation building shall be provided with an adequate on-site effluent disposal system as determined by the Shire's Environmental Health Officer with all such work to be undertaken to the specifications and satisfaction of the Shire's Chief Executive Officer prior to their occupation and use.**
- 10. All stormwater drainage generated by the proposed development shall be managed and disposed of to the specifications and satisfaction of the Shire's Chief Executive Officer.**
- 11. The proposed 7.6m² outbuilding (i.e. shed) shall comply with the following deemed-to-comply requirements of the Residential Design Codes of Western Australia unless otherwise approved by Council:**
 - The wall height shall not exceed 2.4 metres; and**
 - The ridge height shall not exceed 4.2 metres.**

Advice Notes

1. ***This approval is not an authority to ignore any constraint to development on the land which may exist through contract or on title, such as an easement, memorial or restrictive covenant. It is the responsibility of the applicant and landowner and not the Shire to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the Shire's attention.***
2. ***This is a development approval of the Shire of Moora under its Local Planning Scheme No.4. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/landowner to obtain any other necessary approvals, consents, permits and licenses required under any other law, and to commence and carry out development in accordance with all relevant laws.***
3. ***In relation to Condition 5 please note Council does not support the proposal to paint the external walls of the repurposed single storey ancillary accommodation building to be sited at the rear of the land in 'orange' due to concerns regarding its potential negative visual impact and the fact it will be highly prominent in the land's rural setting and not in keeping with the visual landscape character of the immediate locality.***
4. ***In accordance with the Building Act 2011 and Building Regulations 2012, a building permit application must be submitted to and approved by the Shire's Building Surveyor prior to the commencement of any construction or earthworks on the land.***
5. ***All proposed structures on the land are required to comply in all respects with the National Construction Code of Australia. Plans and specifications which reflect these requirements must be submitted to the Shire with the building permit application.***
6. ***The noise generated by any activities on-site including machinery motors or vehicles shall not exceed the levels as set out under the Environmental (Noise) Regulations 1997.***
7. ***The applicant / landowner should note the proposed development is located in close proximity to Cooperative Bulk Handling Limited's existing grain handling and storage facility on the southern edge of the Coomberdale as well as an operational railway line to the west which may give rise to noise, dust and/or odour impacts that could be beyond the local government's ability to control.***
8. ***No construction works shall commence on the land prior to 7am without the Shire's written approval.***
9. ***Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the Planning and Development Act 2005 and the Shire of Moora Local Planning Scheme No.4 and may result in legal action being initiated by the local government.***
10. ***If the applicant/landowner 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 submitted within 28 days of the determination.***

9.2.2 APPLICATION FOR DEVELOPMENT APPROVAL – PROPOSED COTTAGE INDUSTRY (SIGNWRITING BUSINESS) ON LOT 51 BEASLEY STREET, MOORA

FILE REFERENCE: TP/DA23/1920
REPORT DATE: 12 March 2020
APPLICANT/PROPONENT: Wayne & Rosslyn Stevens (Landowners)
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: Mr Joe Douglas, Town Planning Consultant
ATTACHMENTS: Attachment 1

PURPOSE OF REPORT:

Consideration and final determination of an Application for Development Approval to establish and operate a cottage industry (i.e. a signwriting business) within an existing outbuilding on Lot 51 Beasley Street, Moora.

BACKGROUND:

The applicants are seeking Council's development approval to establish and operate a 'cottage industry' within a 49m² portion of an existing 155m² outbuilding (i.e. domestic storage shed) on Lot 51 Beasley Street, Moora.

Under the terms of the application received (see Attachment 1) the proposed 'cottage industry' will be conducted by the owners/occupants of the existing single house on the land and will involve the manufacturing and distribution of various types of signs on a commercial basis (i.e. a signwriting business).

The applicants have confirmed via email that the proposed use will operate two (2) to three (3) days per week (exact days not specified) from 8am to 4pm. A full copy of the development application, including supporting documentation and plans, is provided in Attachment 1.

Council should note the applicants originally sought approval for a 'home occupation' however following further investigation by the reporting officer and subsequent advice received from the applicant, it was concluded a 'home occupation' is not the appropriate use class for the activities proposed and that the most suitable use class is 'cottage industry'.

Lot 51 is located centrally in the northern half of the Moora townsite in a well-established 'special residential' precinct comprising larger sized lots and has direct frontage and access to Beasley Street along its northern front boundary and Bishop Street along its western side boundary, both of which are sealed and drained local roads under the care, control and management of the Shire of Moora.

Lot 51 comprises a total area of approximately 6,489m² and has been extensively developed and used for low density residential purposes over a number of years. The land contains an existing single house located in its northern half, two (2) large domestic storage sheds at the rear as well as areas set aside for open space/landscaping, vehicle access and parking.

Immediately adjoining and other nearby land uses are predominantly residential in nature comprising single houses and incidental outbuildings on large lots.



Location & Lot Configuration Plan (Source: Landgate 2020)

COMMENT:

Lot 51 is classified 'Residential' zone in the Shire of Moora Local Planning Scheme No.4 (LPS4) with a density coding of R2.5.

Council's stated objectives for the development and use of any land classified 'Residential' zone are as follows:

- a) to provide for the predominant form of residential development to be single houses whilst providing for diversity with higher density close to the town centre;
- b) to provide for diversity of lifestyle choice with a range of residential densities; and
- c) to allow for the establishment of non-residential uses which are compatible with the predominant residential use and which will not adversely affect local amenities.

Under the terms of the Zoning Table in LPS4 the development and/or use of any land classified 'Residential' zone for the purposes of a 'cottage industry' is listed as a discretionary (i.e. 'D') use meaning it is not permitted unless the local government has exercised its discretion by granting development approval. Council's development approval is also required due to the land's location within Special Control Area I of LPS4 entitled 'Land Subject to Flooding'.

The application has been assessed with due regard for the specific objectives and standards of the Shire's local planning framework including LPS4 and all relevant local planning policies as well as the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This assessment, which included formal consultation with the Department of Water and Environmental Regulation as required, has confirmed the proposal is compliant with the following requirements:

- Land use compatibility;
- Amenity of the locality including potential environmental, visual and social impacts;
- Vehicle access and parking;
- Maximum permitted floor area;
- Persons permitted to be employed on the land (i.e. occupiers of the existing dwelling).

Notwithstanding the above conclusion, the Department of Water and Environmental Regulation has advised as follows:

- i) the minimum *habitable* floor level recommended for any built form improvements on Lot 51 to ensure an adequate level of flood protection is 202.9 metres AHD being 0.3 metres above the March 1999 flood level of 202.6 metres AHD;
- ii) The outbuilding within which the proposed use will be established is *not habitable* which means a lower level of flood protection may be considered by Council; and
- iii) It is recommended all electrical installations associated with the proposed use should be located above 202.9 metres AHD and suitably insulated.

In light of the above advice and the discretion afforded to Council under clause 4.11.3.1(e)(ii) of LPS No.4 as it applies to existing buildings or structures already approved and constructed with a minimum finished floor level less than 300mm above the March 1999 flood levels as is the case here, it is concluded the proposal is acceptable, compliant with the requirements of LPS4 and may therefore be conditionally approved.

POLICY REQUIREMENTS:

Nil

LEGISLATIVE REQUIREMENTS:

- Planning and Development Act 2015
- Planning and Development (Local Planning Schemes) Regulations 2015
- Shire of Moora Local Planning Scheme No.4

STRATEGIC IMPLICATIONS:

- Moora Flood Management Strategy 2000
- Shire of Moora Strategic Community Plan 2012-2022

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 known financial implications in relation to this item. All costs associated with the proposed development are the responsibility of and will be met by the applicants / landowners.

VOTING REQUIREMENTS:

Simple Majority Required

OFFICER RECOMMENDATION

That Council APPROVE the development application submitted by Wayne & Rosslyn Stevens (Landowners) to establish and operate a 'cottage industry' (sign writing business) within a 49m² portion of an existing 155m² outbuilding (i.e. domestic storage shed) on Lot 51 Beasley Street, Moora subject to the following conditions and advice

notes:**Conditions**

- 1. The proposed development shall be undertaken strictly in accordance with the information and plans submitted in support of the application subject to any modifications required as a consequence of any condition/s of this approval or otherwise approved by Council.**
- 2. Any additional development which is not in accordance with the application the subject of this approval or any condition of approval will require the further approval of Council.**
- 3. The proposed use shall be substantially commenced within a period of two (2) years from the date of this approval. If the use is not substantially commenced within this period this approval shall lapse and be of no further effect. Where an approval has so lapsed, the proposed use shall not be carried out without the further approval of Council having first being sought and obtained.**
- 4. In order to ensure compliance with the specific requirements of the Shire of Moora Local Planning Scheme No.4 as it applies to all cottage industries, the proposed use shall:**
 - i) not comprise an area greater than 50m²;**
 - ii) not employ any person other than a member of the occupier's household;**
 - iii) not display an advertising sign exceeding 0.2m² in area; and**
 - iv) not cause injury to or adversely affect the amenity of the immediate locality.**
- 5. Any solid wastes generated by the proposed use of the land for cottage industry purposes shall be managed and disposed of at an appropriate, suitably approved landfill site.**
- 6. All electrical installations in that portion of the existing outbuilding (i.e. domestic storage shed) where the proposed cottage industry use is to be conducted shall be located above 202.9 metres AHD and suitably insulated.**

Advice Notes

- 1. This approval is not an authority to ignore any constraint to development on the land which may exist through contract or on title, such as an easement, memorial or restrictive covenant. It is the responsibility of the applicant and landowner and not the Shire to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the Shire's attention.**
- 2. The noise generated by any activities on-site including machinery motors or vehicles shall not exceed the levels as set out under the Environmental (Noise) Regulations 1997.**
- 3. An application pursuant to the requirements of the Building Act 2011 and Building Regulations 2012 may be required to change the classification of all or portion of the existing outbuilding within which the proposed cottage industry use is to be conducted. The applicant/landowner should liaise with the Shire's Building Surveyor to confirm the necessary requirements in this regard prior to occupation and use of the existing outbuilding for the intended purpose.**
- 4. Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the Planning and Development Act 2005 and the Shire of Moora Local Planning Scheme No.4 and may result in legal**

action being initiated by the local government.

- 5. If the applicant/landowner 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 submitted within 28 days of the determination.***

9.2.3 PROPOSED AMENDMENT NO.13 TO SHIRE OF MOORA LOCAL PLANNING SCHEME NO.4 – REZONING OF LOT 115 PADBURY STREET, MOORA FROM ‘RURAL RESIDENTIAL RR2’ TO ‘INDUSTRIAL’

FILE REFERENCE: TP/TPS4-13
REPORT DATE: 12 March 2020
APPLICANT/PROPONENT: Statewest Planning on behalf of McIntosh Holdings Pty Ltd and MT & PB Barnes (Landowners)
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: Nil
AUTHOR: Mr Joe Douglas, Town Planning Consultant
ATTACHMENTS: Attachments 1 to 4

PURPOSE OF REPORT:

Consideration and determination of a request to initiate Amendment No.13 to the Shire of Moora Local Planning Scheme No.4 to rezone Lot 115 Padbury Street, Moora from ‘Rural Residential’ to ‘Industrial’.

BACKGROUND:

The applicant is seeking Council’s consideration and support for the initiation of a standard amendment to the Shire of Moora Local Planning Scheme No.4 (LPS4) to rezone Lot 115 Padbury Street, Moora from ‘Rural Residential RR2’ to ‘Industrial’.

It is understood McIntosh Holdings Pty Ltd T/as McIntosh & Son have entered into a contract with the current landowners MT & PB Barnes to purchase Lot 115 subject to the property being rezoned from ‘Rural Residential RR2’ to ‘Industrial’ in LPS4.

An ‘Industrial’ zoning is proposed and required to enable the land to be developed and used by McIntosh & Son for the purposes of an agricultural and construction machinery dealership which is most appropriately described / classified as a ‘general industry’ type use given its proposed scale and potential impacts. It is understood the company is planning to relocate from its existing facility at No.125 Gardiner Street, Moora which was opened in 1975 and is no longer suitable from an operational perspective due to its limited size.

Lot 115 is located centrally in the southern portion of the Moora townsite and comprises a total area of approximately 30.74 hectares. The land has direct frontage to Padbury Street along its eastern front boundary which is a sealed and drained State road under the care, control and management of Main Roads WA. The land also fronts Cooper, Stack and Long Streets along its southern, northern and western boundaries respectively which are local roads controlled by the Shire, of which Long Street is the only one that has been constructed to a trafficable standard.

Lot 115 has been extensively cleared, is generally flat throughout its entire area and is currently used for broadacre agricultural purposes (i.e. cropping & grazing). The land also contains a fenced area in its north-eastern portion that contains some large stands of native vegetation and has historically been used for the keeping of horses.

It is significant to note the land has not been designated by the Fire and Emergency Services Commissioner as being bushfire prone and has not been identified by the Department of Water and Environmental Regulation as being located in a High Flood Hazard area. The land does however contain an area along its southern boundary which forms part of the local floodplain that is susceptible to inundation during winter months.



Location & Lot Configuration Plan (Source: Landgate 2020)

Immediately adjoining and other nearby land uses include:

- Light and service industry type development as well as vacant undeveloped 'Light Industrial' and 'Rural Residential' zoned land immediately north and beyond to Drummond Street;
- The Padbury Street road reserve and operational railway line immediately east with a mix of rural living, broadacre agriculture and low density residential development beyond as well as a vacant undeveloped public recreation area and low density residential lots further afield;
- A mix of rural living and broadacre agriculture uses immediately south through to Webb Street; and
- A mix of rural living and broadacre agriculture uses immediately west and beyond including vacant undeveloped public recreation reserves.

COMMENT:

The rezoning proposal for Lot 115 has been the subject of ongoing meetings and discussions between McIntosh & Son, the current landowners, the Shire and the Department of Planning, Lands and Heritage. It is understood McIntosh & Son have also discussed the proposal with surrounding landowners to gauge their thoughts and views and that the feedback received thus far has been positive.

From a strategic planning perspective, the proposal appears to be consistent with the aims and objectives of the Shire's Strategic Community Plan 2018-2028 and Corporate Business Plan 2019-2023 as they apply to economic development and growth and the provision of additional, suitably serviced industrial land.

Furthermore, the proposal appears to be consistent with the aims and objectives of the Economic Development and Implementation Strategy for Midlands Centres published by Landcorp and the Wheatbelt Development Commission in May 2016 as well as the Western Australian Planning Commission's Wheatbelt Regional Planning and Infrastructure

Framework 2015.

Notwithstanding the above, it should be noted the proposal is not entirely consistent with the Townsite Expansion Strategy for the Moora townsite as it applies to the eastern portion of the subject land which is proposed to be rezoned in the medium-to-long-term future for low density residential purposes. Despite this fact, it is understood the Townsite Expansion Strategy has not been formally adopted / endorsed by Council or the Western Australian Planning Commission and may therefore only be used as a general guide.

Consideration of the proposal in the context of other relevant elements of the State and local planning frameworks as well as the various information and justifications provided by the applicant (see Attachments 1 to 4) suggests any future development of the land for industrial purposes is capable of compliance with most regulatory requirements and standards. The only immediate concerns are:

- i) the safety of vehicle access to/from the land via Padbury Street which is a State road controlled by Main Roads WA;
- ii) the potential noise impacts arising from McIntosh & Son's proposed use of the land which are understood to have proven problematic in Wongan Hills;
- iii) the potential amenity impacts on adjoining and other nearby properties if the land were to be further subdivided and developed for general industrial purposes following completion of the rezoning process;
- iv) the land's capability and suitability for on-site effluent disposal, particularly in the event of any further subdivision development; and
- v) stormwater drainage management given the land is flanked by areas prone to inundation and flooding during extreme storm events which are expected to become more frequent and intense over time.

These potential issues will be considered and assessed in greater detail through the scheme amendment process which, if initiated by Council, will involve the following key steps:

- i) referral to the Environmental Protection Authority for environmental clearance;
- ii) community consultation for a period of 42 days including referral to all relevant government agencies and essential service providers inviting feedback and comment;
- iii) review and assessment of all submissions received and a further report to Council regarding the outcomes from public advertising and agency referrals, key issues of concern and a recommendation regarding final adoption of the scheme amendment proposal;
- iv) referral to the Western Australian Planning Commission for review, assessment and determination with respect to a final recommendation to the Minister for Planning; and
- v) Final determination by the Minister for Planning.

As can be seen from the above, the process is comprehensive and affords significant opportunity for input by the local community, State government agencies and essential service providers.

On balance, having regard for the scheme amendment proposal's consistency with the aims and objectives of key strategic planning documents and the potential to develop and use the land for industrial purposes in accordance with most regulatory requirements and standards, it is concluded the proposal is well founded and worthy of Council's initial support. As such it is recommended Council exercise its discretion and resolve to initiate the proposed amendment to LPS4 and follow due process thereafter.

POLICY REQUIREMENTS:

The scheme amendment proposal will be assessed and determined with due regard for all relevant elements of the State Planning Framework including, but not limited to, the following:

- State Planning Policy 3.0 – Urban Growth and Settlement
- State Planning Policy 3.4 - Natural Hazards and disasters
- State Planning Policy 4.1 – State Industrial Buffer
- State Planning Policy 5.4 - Road and Rail Noise
- Government Sewerage Policy 2019
- WAPC Development Control Policy 5.1 - Regional Roads (Vehicular Access)

LEGISLATIVE REQUIREMENTS:

- Planning and Development Act 2015
- Planning and Development (Local Planning Schemes) Regulations 2015
- Shire of Moora Local Planning Scheme No.4

STRATEGIC IMPLICATIONS:

- Shire of Moora Strategic Community Plan 2018-2028

SUSTAINABILITY IMPLICATIONS:**➤ Environment**

There are no known significant environmental implications associated with this proposal however this will be tested and confirmed during the scheme amendment process.

➤ Economic

There are no known significant economic implications associated with this proposal. It is consistent with the economic development objectives prescribed in several strategic planning documents and has potential to be of significant benefit to the local economy.

➤ Social

There are no known significant social implications associated with this proposal however this will be tested and confirmed during the scheme amendment process.

FINANCIAL IMPLICATIONS:

There are no known financial implications in relation to this item. All costs associated with the scheme amendment process and any future development of the land as proposed will be the responsibility of and will be met by the applicant / landowner.

VOTING REQUIREMENTS:

Simple Majority Required

OFFICER RECOMMENDATIONS

1. *That the local government resolve, in pursuance of Section 75 of the Planning and Development Act 2005, to amend the Shire of Moora Local Planning Scheme No.4 by:*
 - i) *Rezoning Lot 115 on Deposited Plan 89798 Padbury Street, Moora from 'Rural Residential RR2' to 'Industrial'; and*

ii) Amending the Scheme Map accordingly.

2. That the local government resolve that this amendment is standard under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 for the following reasons:

- i) The amendment, in the absence of an endorsed Local Planning Strategy, is consistent with the local government’s Strategic Community Plan 2018-2028 and Corporate Business Plan 2019-2023, the Economic Development and Implementation Strategy for Midlands Centres published by Landcorp and the Wheatbelt Development Commission in May 2016 as well as the Western Australian Planning Commission’s Wheatbelt Regional Planning and Infrastructure Framework 2015 which all:
 - a) seek to promote opportunities for economic development;**
 - b) identify agricultural industries as a key driver of sustained population growth and economic development; and**
 - c) support and encourage the growth of existing businesses.****
- ii) The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and**
- iii) The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.**

10. REPORTS OF COMMITTEES

GENERAL PURPOSE COMMITTEE MEETING – 4 MARCH 2020

10.1 APPLICATION TO OPERATE FOOD VAN

FILE REFERENCE: TP/DA21/1920
REPORT DATE: 17 February 2020
APPLICANT/PROPONENT: Peter Wood
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: N/A
AUTHOR: Felix Neuweiler, Principal Environmental Health Officer
ATTACHMENTS: Application Letter and Location Diagram

PURPOSE OF REPORT:

For Council to consider an application to operate a mobile food business at the Moora swimming pool carpark on weekends.

BACKGROUND:

Peter Wood operates a mobile food van under the name of 'Monty's Kitchen'. Mr Wood resides in Carnamah and generally attends events and fairs. He recently saw an opportunity to trade on a regular basis on weekends in Moora and subsequently submitted the attached application. Mr Wood has registered his food business with the Shire of Moora.

The proposed location is adjacent to the Moora swimming pool and across the road from the Gull petrol station (please refer to the attached diagram). The proposed trading hours are from 6 am to midnight on Saturdays and Sundays, with the initial trading hours being 7 am to 9 pm on Saturdays; and 7 am to 8 pm on Sundays.

COMMENT:

The zoning of the proposed trading location is 'Recreation and Open Space' and properties in the vicinity are zoned 'Town Centre', 'Public Purpose' and 'Caravan Park'. Therefore, operating a mobile food van at this location will not be in conflict with noise sensitive premises other than caravan park residents.

To ensure that caravan park residents are not inconvenienced it is recommended that trading hours are restricted to 6 am to 9 pm on Saturdays; and 6 am to 8 pm on Sundays.

POLICY REQUIREMENTS:

There are no known policy implications associated with this proposal.

LEGISLATIVE REQUIREMENTS:

Compliance with the Food Act 2008; and

The Shire of Moora Activities in Thoroughfares and Public Places and Trading Local Law 2016:

6.3 Trader's permit

(1) A person shall not carry on trading unless that person is the holder of a valid trader's permit; or an assistant specified in a valid trader's permit.

(2) Every application for a trader's permit shall—

(a) state the full name and address of the applicant;

- (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
- (c) specify the location or locations in which the applicant proposes to trade;
- (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
- (e) specify the proposed goods or services which will be traded; and
- (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.

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**
Mobile Food vans bring customers into communities, can complement existing businesses, and liven up quiet areas, particularly after other businesses close their doors. Territorial conflicts with existing food business operators that fear food vans will be an unwelcome competition can be a challenge and need to be considered by Council.
- **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.

The current annual Trading in a Public Place fee is \$600. All application fees have been paid by the proponent.

VOTING REQUIREMENTS:

Simple Majority Required

COMMITTEE RECOMMENDATION

That Council approve the application submitted by Mr Peter Wood to operate a mobile food van, 'Monty's Kitchen' at the carpark adjacent to the Moora swimming pool as per map attached, and subject to the following conditions:

- *Indemnify Council against any claims that could arise from the operation of the business;*
- *Hold a current public liability insurance to the value of \$10,000,000 at all times;*
- *Maintain the food business registration in accordance with the Food Act 2008;*
- *Renew the traders permit annually;*
- *Trading is restricted to 6 am - 9 pm on Saturdays and 6 am - 8 pm on Sundays;*
- *Amplified music is not permitted before 8 am and after 7 pm;*
- *No signs or street furniture to be installed unless prior Shire approval has been obtained;*
- *No alcohol to be consumed on the public reserve;*
- *An application for the transfer of this permit is to be made in writing;*

- ***This trading permit may be revoked if the operator fails to comply with permit conditions or other legislative requirements.***

10.2 WALGA - LOCAL GOVERNMENT HOUSE TRUST – DEED OF VARIATION

FILE REFERENCE: GA/WAL3-2
REPORT DATE: 20 February 2020
OFFICER DISCLOSURE OF INTEREST: Nil
PREVIOUS MEETING REFERENCES: N/a
AUTHOR: Alan Leeson, Chief Executive Officer
ATTACHMENTS: Email from WALGA CEO Nick Sloan
 Deed of Variation (Draft)
 Clause 12 of Trust Deed 1994

PURPOSE OF REPORT:

Council's consent is sought, to a variation to the Trust Deed for the Local Government House Trust (The Trust) as the Shire of Moora is a unit holder and beneficiary to the Local Government House Trust, holding 5 unit/s as advised in WALGA's recent Quarterly Report Q4 2019.

BACKGROUND:

The Trust's Board of Management is seeking to vary the Trust Deed in order to assist the Trust's income tax exempt status. As stipulated by the Deed, the Trust requires consent of at least 75 per cent of all beneficiaries in order to execute this variation.

As a beneficiary, the Shire of Moora is requested to consent to the enclosed Deed of Variation supported by a resolution of Council; and to communicate this consent in writing, to consent for the Trustee to formally execute the Deed of Variation (Attachment 2).

The Local Government House Trust ("The Trust") exists primarily to provide building accommodation for the Western Australian Local Government Association. Since January 2014, the Trust has provided WALGA with accommodation at 170 Railway Parade West Leederville.

The current trust deed commenced in 1993 and was amended in 2002 to reflect the merger of the metropolitan and country associations into WALGA. The current Trust Deed pronounces WALGA as Trustee and unit holders as Beneficiaries, with the Trustee holding property and associated monies "upon Trust" and in proportion to the units provided.

Commencement date of the current deed is 17 February 1993, with a vesting date 79 years from commencement - which means that the Trust ends in 2072.

The Trust is exempt from income tax on the basis of being a State / Territory Body (STB) pursuant to *Division IAB of the Income Tax Assessment Act 1936*.

Trust Deed Variation

1. removing the existing Trustee's power to retire and appoint a new Trustee (Clause 2.1 and 2.2 (22.3) of the Deed of Variation)
2. enabling the beneficiaries to appoint and remove a Trustee (Clause 2.2 (22.4) of the Deed of Variation), and
3. ensuring that the Board of Management is the 'governing body' of the Trust (Clause 2.3 of the Deed of Variation)

The three proposed amendments when applied to the relevant clauses inserted by the Deed of Variation dated 5 June 2002 will subsequently read as follows (proposed amendments shown in red text):

1. Variation 2.1 amends clause 22.1 to point to additional clause:

22.1 Any Trustee of the Trust may retire as Trustee of the Trust: ~~The Subject to clause 22.3,~~ the right to appoint any new or additional trustee or trustees of the Trust is hereby vested in the retiring or continuing trustee. A corporation or incorporated association may be appointed as Trustee of the Trust.

2. Variation 2.2 inserts two new clauses:

~~22.3 The retiring or continuing trustee shall only be entitled to appoint any new or additional trustee of the Trust with the consent of not less than 75% of the Beneficiaries.~~

~~22.4 The Beneficiaries may at any time by Special Resolution:~~

- ~~(a) remove a Trustee from the office as Trustee of the Trust; and~~
- ~~(b) appoint such new or additional Trustee.~~

3. Variation 2.3 insert a new clause 13A

~~13A Delegation to the Board of Management~~

~~Unless the Beneficiaries otherwise direct (such direction to be given by not less than 75% of the Beneficiaries), the Trustees shall delegate all of the powers authorities and discretions contained in subclauses (a) to (x) of clause 12 to the Board of Management. The Trustees shall, at the direction of the Board of Management, do such things as may be necessary to give effect to the exercise of a power, authority or discretion by the Board of Management.~~

COMMENT:

The first two amendments outlined above remove powers granted to the Trustee in the 2002 Deed Variation resulting from the merger to a single Association representing WA Local Governments. These amendments which previously facilitated the transfer of trusteeship to the then new Western Australian Local Government Association are removed, but with the clarification that any appointment must be with the consent of the beneficiaries.

The final amendment intends to confirm that power rests with the Board of Management. As the Board of Management comprises Local Governments, this satisfies the requirements of a STB for tax purposes. This amendment reflects the actual operation of the Trustee in implementing the decisions of the Board of Management whilst retaining sufficient operational discretion to place and renew investments and pay suppliers.

These amendments provide greater power to beneficiaries through the Board of Management, and as such it is anticipated they will be considered acceptable.

POLICY REQUIREMENTS:

There are no known policy requirements related to this matter.

LEGISLATIVE REQUIREMENTS:

There are no known legislative requirements related to this matter.

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:

There are no relevant financial implications upon the Council's Budget or Long-Term Financial Plan.

One Seventy (170) Railway Parade, (local government house), where WALGA is located, is owned by the Association. The Shire of Moora owns five (5) units in the Trust that owns the 'local government house', which were valued at \$17,517.20 each (as per Shire of Moora Financial Report for the year ended 30 June 2019).

Supporting the Deed of Variation will only strengthen WALGA's financial position, of which the Shire of Moora is a financial member.

VOTING REQUIREMENTS:

Simple Majority Required

COMMITTEE RECOMMENDATION

- That, with respect to the Local Government House Trust – Deed of Variation, Council:*
- 1. Consent to a variation to the Trust Deed for the Local Government House Trust (The Trust) as detailed in attachment 1; and*
 - 2. Communicate this consent in writing to the Local Government House Trust's Board of Management.*

11. **ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

12. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL**

13. **MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

RECOMMENDATION

The meeting moves behind closed doors to discuss a matter that if disclosed would reveal information that has a commercial value to Council pursuant to Section 5.23 (2) (c)(e) of the Local Government Act 1995.

- 13.1 **PROPOSED LEASE EXTENSION – BBB REMOTE SITE SERVICES – LOT 101 LEFROY STREET, MOORA**

Provided to Councillors under confidential cover.

14. **CLOSURE OF MEETING**