



**Minutes
Ordinary Council Meeting
Council Chambers, 99 Shepperton Road, Victoria Park
Tuesday, 20 September 2011
6.30pm**

TABLE OF CONTENTS

ITEM	TITLE	PAGE NO
1.	OPENING AND PRAYER	3
2.	ATTENDANCE AND APOLOGIES	3
3.	DECLARATION OF INTEREST	4
4.	PUBLIC QUESTION AND PUBLIC STATEMENT TIME	4
5.	CONFIRMATION OF MINUTES	5
6.	APPLICATIONS FOR LEAVE OF ABSENCE	5
7.	ANNOUNCEMENTS BY THE MAYOR WITHOUT DISCUSSION	5
8.	URGENT BUSINESS NOT LISTED ON THE AGENDA	6
9.	MATTERS FOR WHICH THE MEETING MAY BE CLOSED	6
10.	PETITIONS	6
11.	CHIEF EXECUTIVE OFFICER REPORTS	7
11.1	(Unconfirmed) Minutes of Committees to be Received and Committee Recommendation to be adopted.....	7
11.2	Chief Executive Officer Annual Performance Review (Confidential Report)	11
12.	FUTURE LIFE AND BUILT LIFE PROGRAMS REPORTS	12
12.1	61 (Lot 501) Kitchener Avenue & 45 (Lot 502) Duncan Street, Victoria Park – Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment).....	12
12.2	834 (Lots 7& 10) Albany Highway, East Victoria Park – Change of Use to Unlisted Use (Small Bar)	32

12.3 Amendment No. 54 to Town Planning Scheme No. 1 – Reclassification of 31 (Lots 62, 63, 64 and 100) Rushton Street, Victoria Park from “Local Scheme Reserve – Parks and Recreation” to “Office/Residential” zone	50
12.4 Review of Provisions of Council’s Local Planning Policy – Boundary Walls	59
13. RENEW LIFE PROGRAM REPORTS	68
13.1 Movies by Burswood - Request to Occupy Council Property – Former Lathlain Pre-Primary School, 6-8 Planet Street, Lathlain	68
13.2 Mindarie Regional Council - Sublease to Landfill Gas and Power.....	74
14. COMMUNITY LIFE PROGRAM REPORTS.....	77
15. BUSINESS LIFE PROGRAM REPORTS	78
15.1 Schedule of Accounts for the Period 1 July 2011 to 31 July 2011	78
15.2 Financial Statements for the Period Between 1 July and 31 July 2011	81
15.3 Town Centre Redevelopment – Probity Plan (Item Withdrawn).....	83
16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	83
17. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN	83
18. PUBLIC QUESTION AND PUBLIC STATEMENT TIME.....	83
19. MATTERS BEHIND CLOSED DOORS	83
20. CLOSURE.....	85

1. OPENING AND PRAYER

Almighty God, under whose providence we hold responsibility for this Town, grant us wisdom to understand its present needs, foresight to anticipate its future growth and grace to serve our fellow citizens with integrity and selfless devotion.

And to Thee, be all blessing and glory forever.

AMEN

Acknowledgement of Country *(by Mayor)*

I would like to acknowledge the traditional custodians of this land the Noongar people and pay my respects to the Elders both past, present and future for they hold the memories, the traditions, the culture and hopes of Indigenous Australians.

2. ATTENDANCE AND APOLOGIES

Attendance:

Mayor: Mr T (Trevor) Vaughan

Carlisle Ward: Cr J (John) Bissett
Cr K (Keith) Hayes
Cr R (Rowena) Skinner

Victoria Park Ward: Cr J (Julie) Armstrong
Cr D (David) Ashton (Deputy Mayor)
Cr A (Adam) Vilaca

Acting Chief Executive Officer: Mr B (Brian) Callander

Directors: Ms R (Rochelle) Lavery
Mr A (Anthony) Vuleta
Ms T (Tina) Ackerman Acting

Executive Manager Built Life: Mr R (Robert) Cruickshank

Executive Manager HR/Executive Support Mr G (Graham) Olson

Secretary: Ms K (Kathleen) Highfield

Public: 14

Apologies: Mr A (Arthur) Kyron
Cr C (Claire) Anderson
Cr D V (Vin) Nairn

3. DECLARATION OF INTEREST

Name/Position	Cr C (Claire) Anderson
Item No/Subject	Item 12.1 61 (Lot 501) Kitchener Avenue & 45 (Lot 502) Duncan Street, Victoria Park – Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment)
Nature of Interest	Financial Interest
Extent of Interest	Neighbouring Property

Name/Position	Cr K (Keith) Hayes
Item No/Subject	Item 12.1 61 (Lot 501) Kitchener Avenue & 45 (Lot 502) Duncan Street, Victoria Park – Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment)
Nature of Interest	Interest that may affect impartiality
Extent of Interest	Member of Association for the Blind

Name/Position	Cr D (David) Ashton
Item No/Subject	Item 12.1 61 (Lot 501) Kitchener Avenue & 45 (Lot 502) Duncan Street, Victoria Park – Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment)
Nature of Interest	Interest that may affect impartiality
Extent of Interest	Director of Company “employed” by is a Director of Uniting Care West

4. PUBLIC QUESTION AND PUBLIC STATEMENT TIME

Mr Aldo Zaffino, 12B Manchester Street, VICTORIA PARK, 6100

Q1. Mr Zaffino enquired about where the Council was at with the Traffic Management treatment for the intersection of Hordern Street and Manchester Road.

Response

The Director of Renew Life Program, Mr Vuleta responded that the Council at the last meeting endorsed to receive the Black Spot funding for progressive project. The projects undertaken are currently under the formal design process and it won't be installed till early part of the next calendar year.

Mr Benjamin Hill, 17 Butler Lane, VICTORIA PARK, 6100

Q1. Enquired about the lighting to Butler lane right of way, and why it was only allocated 1 light compared to another right of way?

Response

The Director of Renew Life Program, Mr Vuleta responded that Council endorsed a right of way upgrade a few years ago and in recent years have installed lights as part of the Right of Way Project.

The Mayor Trevor Vaughan then responded that due to budget restraints Council allocated 1 Light instead of no lighting to Butler Lane.

5. CONFIRMATION OF MINUTES

RESOLVED:

Moved: Councillor Hayes Seconded: Councillor Armstrong

That the minutes of the Ordinary Council Meeting held on Tuesday, 30 August 2011 be confirmed.

CARRIED (7-0)

6. APPLICATIONS FOR LEAVE OF ABSENCE

RESOLVED:

Moved: Councillor Ashton Seconded: Councillor Hayes

An application for leave of absence has been received from Councillor John Bissett for the period from 3 November 2011 to 19 December 2011 inclusive.

CARRIED (7-0)

7. ANNOUNCEMENTS BY THE MAYOR WITHOUT DISCUSSION

Elected Members Workshop will be held next week on the 27 September 2011, the items for the workshop will be:

- Edward Millen - Stage 1;
- Review of Committees;
- Town Centre Redevelopment Property Plan;
- Asset Management Plan;
- Stakeholder Relationship; and
- Retrospective Approvals.

The Mayor expressed his thanks to Gloria Jeans for donating their time and money in holding the R U Ok? Day event on Thursday 15 September 2011 which he attended.

The Town is trialing LED lighting at 6.30pm tonight on Isaia Corner.

8. URGENT BUSINESS NOT LISTED ON THE AGENDA

Nil

9. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

11.2 Chief Executive Officer Annual Performance Review (Confidential Report)

Refer to Item 19

10. PETITIONS

Nil

11. CHIEF EXECUTIVE OFFICER REPORTS

11.1 (Unconfirmed) Minutes of Committees to be Received and Committee Recommendation to be adopted

File Ref:	ADM0034	In Brief <ul style="list-style-type: none">Minutes of the unconfirmed Committee Meetings as detailed in the appendices to be received.
Appendices:	Yes	
Date:	9 September 2011	
Reporting Officer:	K. Highfield	
Responsible Officer:	A. Kyron	

1. Sport and Recreational Advisory Committee (appendices page 2).
2. Integrated Transport Advisory Committee (appendices page 7).
3. Community Environmental Advisory Committee (appendices page 24).

ADDITIONAL OFFICER'S COMMENT

Following the Elected Members Briefing Session of 13 September 2011 consideration has been given to enabling the existing artificial turf installations within the Town to remain in-situ, subject to the property owners maintaining the artificial turf to the satisfaction of the Town.

Furthermore, changes have been recommended to the subsidised plant purchase scheme, whereby the cost implications of the scheme are examined and the Town's existing verge landscaping guide are referenced. This matter is also to be reported back to CEAC, and for such a scheme referred to Council during 2012/2013 budget deliberations.

The recommendations of the CEAC Committee shown in italics below are therefore not supported and have been amended to reflect the above comments in the recommendation section of this report:

That the Community Environmental Advisory Committee recommendations regarding the use of artificial turf on the Town's verges be adopted:

1. *Council receives the results of the community consultation regarding the use of artificial turf on street verges within the Town of Victoria Park.*
 2. *Council classifies the use of artificial turf on verges within the Town of Victoria Park as not permissible under the provisions of the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.*
 3. *The Administration amend the "Your Street Verge Sustainable Landscaping Guide" to specifically reference artificial turf as an "unacceptable material" for use as a verge treatment and update the list of "acceptable material" verge treatments.*
 4. *Council requires the removal of existing installations of artificial turf within the Town, providing property owners with 60 days in which to comply, prior to the commencement of legal action.*
 5. *Council progress the development of a subsidised local native plant scheme, to be implemented and budgeted for in 2012/2013 financial year.*
4. Disability Access Advisory Committee (appendices page 42).
 5. Local History Advisory Committee (appendices page 49).

RESPONSIBLE OFFICER RECOMMENDATION:

1. The Unconfirmed Minutes of the Sport and Recreational Advisory Committee dated 10 August 2011, Integrated Transport Advisory Committee dated 15 August 2011, Community Environmental Advisory Committee dated 17 August 2011, Disability Access Advisory Committee dated 22 August 2011, and the Local History Advisory Committee dated 24 August 2011 be received.
2. That the Officers recommendations below relating to the use of artificial turf on the Town's verges be adopted:
 - 2.1. Council receives the results of the community consultation regarding the use of artificial turf on street verges within the Town of Victoria Park.
 - 2.2. Council classifies the use of artificial turf on verges within the Town of Victoria Park as not permissible under the provisions of the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.
 - 2.3. The Administration amend the "Your Street Verge Sustainable Landscaping Guide" to specifically reference artificial turf as an "unacceptable material" for use as a verge treatment and update the list of "acceptable material" verge treatments.
 - 2.4. Staff undertake an audit of the entire Town and identify and maintain a register of all existing installations of artificial turf on street verges.
 - 2.5. Staff write to all property owners identified as having artificial turf on their street verge and for property owners to be advised that no action to remove their artificial turf will be undertaken by Council, subject to the owners maintaining the artificial turf to the satisfaction of the Director Renew Life Program, and that Council reserves the right to remove the artificial turf if maintenance standards are not maintained.
 - 2.6. Staff develop a subsidised plant-purchase scheme, based on "waterwise" and sustainability principles, in accordance with the "Your Street Verge Sustainable Landscaping Guide", and for the scheme to be referred back to CEAC and be considered as part 2012/2013 budget process.
3. That the Community Environmental Advisory Committee recommendation regarding the achievement of Milestone 1 of the ICLEI Water Campaign™ be adopted:
 - 3.1. That the achievement of Milestone 1 of the ICLEI Water Campaign™ is noted.
4. That the Disability Access Advisory Committee recommendation be adopted:
 - 4.1. That Council write to the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy in the event that there is no written response from Telstra Services by the 14 September 2011 in relation to the enquiry on infrastructure pit maintenance regimes.

RESOLVED:

Moved: Councillor Bissett

Seconded: Councillor Ashton

1. That Clause 2 of the Officers recommendation being:

"That the Officers recommendation below relating to the use of artificial turf on the Town's verges be adopted:

- 2.1. *Council receives the results of the community consultation regarding the use of artificial turf on street verges within the Town of Victoria Park.*
- 2.2. *Council classifies the use of artificial turf on verges within the Town of Victoria Park as not permissible under the provisions of the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.*
- 2.3. *The Administration amend the "Your Street Verge Sustainable Landscaping Guide" to specifically reference artificial turf as an "unacceptable material" for use as a verge treatment and update the list of "acceptable material" verge treatments.*
- 2.4. *Staff undertake an audit of the entire Town and identify and maintain a register of all existing installations of artificial turf on street verges.*
- 2.5. *Staff write to all property owners identified as having artificial turf on their street verge and for property owners to be advised that no action to remove their artificial turf will be undertaken by Council, subject to the owners maintaining the artificial turf to the satisfaction of the Director Renew Life Program, and that Council reserves the right to remove the artificial turf if maintenance standards are not maintained.*
- 2.6. *Staff develop a subsidised plant-purchase scheme, based on "waterwise" and sustainability principles, in accordance with the "Your Street Verge Sustainable Landscaping Guide", and for the scheme to be referred back to CEAC and be considered as part 2012/2013 budget process."*

Be referred back to the Community Environmental Advisory Committee for Further consideration.

REASON:

Not enough information to justify the recommendation.

2. The Unconfirmed Minutes of the Sport and Recreational Advisory Committee dated 10 August 2011, Integrated Transport Advisory Committee dated 15 August 2011, Community Environmental Advisory Committee dated 17 August 2011, Disability Access Advisory Committee dated 22 August 2011, and the Local History Advisory Committee dated 24 August 2011 be received.
3. That the Community Environmental Advisory Committee recommendation regarding the achievement of Milestone 1 of the ICLEI Water Campaign™ be adopted:

- 3.1 That the achievement of Milestone 1 of the ICLEI Water Campaign™ is noted.**
- 4. That the Disability Access Advisory Committee recommendation be adopted:**
- 4.1 That Council write to the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy in the event that there is no written response from Telstra Services by the 14 September 2011 in relation to the enquiry on infrastructure pit maintenance regimes.**

CARRIED (7-0)

**11.2 Chief Executive Officer Annual Performance Review
(Confidential Report)**

This Report is issued under a separate cover. The Council Resolution is detailed in Part 19 on page 83.

Cr. Ashton left the meeting at 7.00pm.

12. FUTURE LIFE AND BUILT LIFE PROGRAMS REPORTS

12.1 61 (Lot 501) Kitchener Avenue & 45 (Lot 502) Duncan Street, Victoria Park – Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment)

File Ref:	KITC61; DUNC45	In Brief <ul style="list-style-type: none"> • Application for retrospective approval for the use of the existing building fronting Sunbury Road at 61 Kitchener Avenue as the administrative headquarters for Uniting Care West, and the operation of an educational establishment and office accommodation at 45 Duncan Street. • Application also proposes new landscaping, front fence and minor external alterations to the existing building at 45 Duncan Street. • The proposed use is an Unlisted Use under Town Planning Scheme No. 1. • Consultation in accordance with Council Policy GEN3 “Community Consultation” for 21 days. 1 letter of concern and 2 objections were received during the consultation period. • Recommended for Approval by Absolute Majority subject to conditions.
Appendices:	No	
DA/BA or WAPC Ref:	10/0005	
Date:	1 September 2011	
Reporting Officer:	L Parker	
Responsible Officer:	L Parker	

TABLED ITEMS:

- Development application form dated 23 December 2010;
- Plans and elevations dated received 24 December 2010 and 25 February 2011;
- Correspondence from applicant dated 24 December 2010 and 25 February 2011;
- Correspondence to applicant (advertising process letter) dated 14 February 2011;
- Consultation with adjoining owners & occupiers dated 24 February 2011;
- Submissions (3) from adjoining owners/occupiers received 1 March 2011 and 21 March 2011.
- Minutes of Ordinary Council Meeting held on 14 December 2004 relating to the redevelopment of the Association for the Blind Site;
- Minutes of Ordinary Council Meeting held on 4 May 2010 relating to car parking restrictions along Duncan Street;
- Correspondence from applicant dated 24 August 2011.

APPLICATION:

Landowner: Association for the Blind WA
Applicant: Taylor Burrell Barnett
Zoning: MRS: Urban
TPS: Residential R40
Precinct Plan P6 'Victoria Park' Precinct

BACKGROUND:

Redevelopment of Association for the Blind site

Planning Approval was granted on 14 December 2004 for the Redevelopment of the Association for the Blind Site – Unlisted Use (DA 04/0640) at Nos. 8, 10, 16, 18 and 20 Sunbury Road, Nos. 53-57 Kitchener Avenue and No. 45 Duncan Street.

The planning approval comprised the demolition of the majority of existing buildings on the site and their replacement with a modern, purpose built building designed to cater for the needs of blind and vision impaired clients. The only buildings proposed to be retained were the existing building fronting Sunbury Road, the Library building on Duncan Street and 'Burswood House' fronting Sunbury Road. The Sunbury Road building would be retained as an office building for the Association for the Blind (for the purpose of an Early Intervention Centre) and a complementary service provider, Therapy Focus, an organisation providing joint programmes with the Association for the Blind and sharing staff and facilities. Condition No. 6 of the planning approval limited the occupation of the building as follows:

- "6. *The tenant for the proposed "complementary services offices" located in the existing retained building on Sunbury Road to be Therapy Focus. Any prospective tenant other than Therapy Focus requires the approval of the Executive Manager Planning and Development Services."*

The library at 45 Duncan Street was approved for conversion to Information Radio and Caretaker's Accommodation. The conversion comprised modifications to the external façade of the building to restore its residential character to Duncan Street. A carport designed in sympathy with the building was also approved, in addition to a small timber pergola to help shade the outdoor living area to the front of the building. Information Radio would have been sited within the rear portion of the building, accessed via the main Association for the Blind site to the rear. Information Radio was described as "*providing equity through access for Western Australians with an inability to read printed materials*", with broadcasts 24 hours per day, seven days per week with pre-recorded material broadcast outside normal office hours.

Application for Retrospective Change of Use to Office

In June 2009 an application for retrospective approval was received for the use of the existing building at 45 Duncan Street (Lot 502) as an Educational Establishment and Offices. A summary of the assessment of this application by Council's Planning Services at the time is provided below:

- An office use is an 'X' use in the Residential zone and can therefore not be approved by Council.
- The previous approval required the appearance of the building to be restored to a more residential appearance.
- Non-Confirming use rights no-longer exist in relation to the former library at 45 Duncan Street as the planning approval for the site and that adjoining it at 16-18 Sunbury Road has been implemented.
- The use at the street frontage was for a caretaker's residence which was effectively a residential use, with the Information Radio being located at the rear, adjacent to the Association for the Blind site. This restored the residential use to the front of the site.
- The proposed office and educational establishment use does not seem to be linked to the Association for the Blind in any way.
- The occupier of the building at No. 16 Sunbury Road (on the Association for the Blind site) is the same as the occupier of No. 45 Duncan Street. However, that tenant was not approved and a link between Uniting Care West and the Association for the Blind has not been established by the applicant.

Based on this assessment, Council's Planning Services resolved to refuse the application under delegated authority from the Council on 11 May 2010 as an 'Office' use is an 'X' (prohibited) use within a Residential zone, and is inconsistent with the Statement of Intent outlined in Precinct Plan P6 for the Victoria Park Precinct.

Following the refusal of this application discussions were held between Uniting Care West, the Association for the Blind and Council's Planning Services, where it was considered that the proposed occupation of the 45 Duncan Street building could potentially be considered if the complementary nature of their operations with those of the Association for the Blind could be established, and if so that the use of 45 Duncan Street (Lot 502) together with the Association for the Blind site (Lot 501) could be considered together by the Council as an 'Unlisted Use' under Town Planning Scheme No. 1, as the use of the land could not reasonably be considered to fall within the interpretation of one of the Use Class categories listed within Town Planning Scheme No. 1. Following further discussions between Uniting Care West and the Council an application was received on 23 December 2010 for Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment). The consideration of this application forms the subject of this report.

The application was considered at the Elected Members Briefing Session held on 29 April 2011. At that meeting some Elected Members expressed concerns regarding some aspects of the application. In response to these concerns, the applicant requested that the item be deferred from determination at the Ordinary Council Meeting on 5 April 2011 in order to provide them with an opportunity to address the issues that had been raised. The applicant has now considered the matters raised and has responded to these issues in correspondence dated 24 August 2011.

DETAILS:

Council has received an application seeking retrospective approval for the occupation of the existing office building fronting Sunbury Road at 61 Kitchener Avenue as the administrative headquarters for Uniting Care West. The application also seeks retrospective approval for the operation of an educational establishment and the provision of office accommodation within the existing building at 45 Duncan Street by Uniting Care West. No changes are proposed to the operation of the approved crèche/day care facility currently operating from the Sunbury Road building.

The educational establishment operating within the existing building at 45 Duncan Street includes the delivery of training and education services for up to 12 students/clients by 3 staff members at any one time, within a single training room located to the rear of the building. The remainder of the building is occupied by office accommodation associated with the administration of the educational establishment and the delivery of community services provided by Uniting Care West.

The proposed plans also detail the provision of new landscaping, a timber picket front fence and minor external alterations to the existing building at 45 Duncan Street. These will improve the external appearance of the building and reinstate its residential appearance and character. The works include repainting of the building, provision of an above-window awning to match the existing awning on the building and replacement of the sliding doors on the front façade of the building with a window of matching style to the existing windows of the building.

No changes are proposed to the existing vehicular access or the number of on-site car bays available to the buildings.

Complementary nature of services provided by Uniting Care West

The applicant has argued that the condition of the 2004 planning approval restricting the occupation of the Sunbury Road office building to the then proposed tenant, Therapy Focus, was intended to ensure that the Sunbury Road office building be occupied by a 'complementary service provider'. The tenant that now occupies the building is Uniting Care West, which the applicant also considers to be a 'complementary service provider' in keeping with the intended use of the building. The applicant has contended that 'complementary uses' do not, by definition, require the sharing of common resources or facilities, merely that they be required to complement each other in their various activities.

Uniting Care West is a not-for-profit, community services agency of the Uniting Church in Western Australia. The organisation delivers programs and services to persons in significant need in the community in the areas of independent living and accommodation, mental health and disability, and community and family support.

The applicants submitted additional correspondence on 25 February 2011 providing a comprehensive comparison of the services provided by the Association of the Blind with Uniting Care West and the previously approved tenants, Therapy Focus.

Correlation between the programmes provided by the various organisations and in particular between Uniting Care West and the Association for the Blind has been demonstrated by the applicant in the following areas:

- Counselling services;
- Early intervention programs for young families;
- Provision of training and resource materials;
- Active recreational programs;
- Lifelong learning;
- Indigenous support;
- Fund raising appeals;
- Community based living options and support programs for people with disabilities;

Given the similarity in provision of services and programmes offered by the Association of the Blind and Uniting Care West, Council's Planning Services consider that both the occupation of the Sunbury Road office building and the building at 45 Duncan Street are 'complementary' in nature to the services and operations of the Association for the Blind. Accordingly it is considered reasonable that the subject application for Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment) be contemplated for approval by the Council. This is in agreement with the applicant's assertion that the community focus and services provided by the organisations are like in nature and would logically co-exist in a precinct of community service provision and administration.

Community Consultation

In accordance with Council Policy GEN3 'Community Consultation' for applications involving an 'Unlisted Use', the applicant was requested to advertise the development in the Southern Gazette and Victoria Park Examiner for three consecutive weeks, and to erect signs on the site (Duncan Street and Sunbury Road frontages) for the duration of the 21 day advertising period. The applicant has conducted the necessary advertising.

The owners and occupiers of adjoining and surrounding properties were given 21 days to comment on the application, with the consultation period commencing on 25 February 2011 and closing on 21 March 2011. Two objections and one letter of concern were received during the consultation period.

The matters raised in the submissions are summarised below and include an assessment by Planning Services having regard to the requirements of Council's Town Planning Scheme No. 1, and the potential for impact on the amenity of adjoining properties and the surrounding locality. The submissions are also included in full as a tabled item.

Consultation Submissions	
Letter of concern from owner of 46 Duncan Street	Officer Comments
<ul style="list-style-type: none"> • I have concerns about parking due to railway commuters and workers at the Association for the Blind. Overflow car parking currently exists on both Duncan Street and Sunbury Road, this may increase traffic and parking problems in the area. • Have an issue with parking on Sunbury Road and Duncan Street near the park [Duncan Reserve]. There are spots available early in the morning at the Kitchener Avenue train station car park opposite the Association for the Blind. 	<ul style="list-style-type: none"> • Not supported – the application is compliant with on-site car parking requirements and the application is for retrospective approval. As such, it is not anticipated that any increase in traffic and parking problems within the vicinity of the site will be experienced as result of any approval of the application. • Concerns noted – the applicants have noted the availability of car parking within the railway car park located on Kitchener Avenue opposite the Association for the Blind. Unavailability of on-street car parking is largely due to proximity to the Victoria Park Train Station. Parking restrictions are currently in place along Kitchener Avenue, Duncan Street and Sunbury Road limiting the hours of car parking to improve the availability of on-street car parking within the area.
Objection from owner of 22B Sunbury Road (adjoins 45 Duncan Street)	Officer Comments
<ul style="list-style-type: none"> • There was very little noise when the building was used as a library. • It was my understanding that Duncan Street between Kitchener Avenue and Sunbury Road would become a residential precinct. 	<ul style="list-style-type: none"> • Noted and supported in part – The nature of the prior use of the building at 45 Duncan Street does not preclude the Council from considering an alternative use on the site. Conditions of approval have been recommended to minimise the risk of noise and other negative impacts from adversely affecting adjoining and surrounding properties. • Supported in Part – Whilst it is considered that the Council may contemplate approval for the use of 45 Duncan Street for non-residential purposes, it is considered that the Duncan Street frontage be upgraded and improved to reflect a residential appearance and character. The proposed works to modify the front façade of the building, provide new landscaping and install a low 1.2m high timber picket front fence are considered to achieve this end, and a condition of planning approval has been recommended requiring

<ul style="list-style-type: none"> • I have been disturbed by constant noise as “clients” and staff wander/walk along the pathway between the properties. • There are often gatherings outside properties in Duncan Street and Sunbury Road which are noisy and invariably leave behind litter. • I was very upset when workmen arrived early on a recent weekend. They were very noisy. • It seems the owners have changed the use of the building without Council approval. They have shown little concern for neighbours or regard for Council regulations. What guarantee is there that they will abide by Council directives as precedent would suggest otherwise? 	<p>these works to be undertaken within 3 months (120 days) of the date of any approval of the application.</p> <ul style="list-style-type: none"> • Supported – Conditions of approval have been recommended to minimise noise generation and potential conflict between the non-residential uses carried out at 45 Duncan Street with adjoining residential properties. • Supported in part – Council has little control of the gathering of people in public places and it is unknown whether those persons who may be gathering within the immediate vicinity of the site are clients/students of the educational establishment at 45 Duncan Street, train commuters, or both. Conditions of approval have been recommended to minimise noise generation and adverse impacts on adjoining residential properties. • Not supported – This is not a relevant planning consideration and does not relate to any ongoing nuisance or presence that would potentially be caused by approval of the application. • Supported in part – It is acknowledged that the occupants of the premises have commenced their use of the building without first obtaining planning approval from the Council. Whilst this is the case, they are still entitled to make an application for retrospective planning approval. Compliance with any decision of the Council or conditions of planning approval for any approval issued by the Council are a legal responsibility of the applicant/owner and a matter for Council’s administration to administer/enforce.
---	--

Anonymous objection	Officer Comments
<ul style="list-style-type: none"> • The operation of Office and Educational Establishment is in direct violation of Council's planning approval. • I would like to see the property [45 Duncan Street] returned to residential use. 	<ul style="list-style-type: none"> • Noted – Comment as above. • Supported in part - The Council has discretion to contemplate approval for the use of 45 Duncan Street for non-residential purposes. It is agreed however that the façade and building surrounds should be upgraded to reflect a residential appearance and character as has been proposed by the applicant.

Legal Compliance:

Relevant General Provisions of TPS

- Statement of Intent contained in Precinct Plan P6.
- Clause 16 of the Scheme Text – 'Unlisted Uses'
- Clause 36 of the Scheme Text – 'Determination of Application – General Provisions'
- Clause 37 of the Scheme Text – 'Determination of Application for an Unlisted Use'

Compliance with Development Requirements

The proposal has been assessed for compliance with the following statutory documents and policies :

- TPS 1 Scheme Text, Policy Manual and Precinct Plan.
- TPS 1 Policy 3.5 'Non-Residential Uses in or Adjacent to Residential Areas'
- TPS 1 Policy 5.1 'Parking and Access Policy'.

The following is a summary of compliance with the key development requirements :

Issue	Relevant provision	Requirement	Proposed	Comments
Car Parking	Policy 5.1 'Parking Policy'	126 bays (whole of uses contained on site at 61 Kitchener Avenue and 45 Duncan Street.	134 bays (surplus of 8 bays remains)	Complies
Design and appearance	Clause 36 of Scheme	Consideration to be given to	No external changes are	Complies

of buildings	Text	the design and relationship of the development to existing buildings and surroundings.	<p>proposed to the existing Sunbury Road office building.</p> <p>The Duncan Street building is proposed to be repainted and the existing sliding doors on the front elevation removed to reflect a more traditional residential appearance.</p>	Complies – A condition of planning approval has been recommended to ensure that the upgrade works the existing building and its surrounds at 45 Duncan Street are undertaken.
Proposed Use	Clause 37 & 36 of Scheme Text	The orderly and proper planning of the locality	Educational Establishment and Offices operated by Uniting Care West	Complies – The proposed use of 45 Duncan Street is of a scale and intensity not dissimilar to other non-residential uses such as schools and community organisations which may be located within residential areas. The application complies with on-site car parking requirements and is not considered to result in any significant increase in traffic generation than what was approved and anticipated under the 2004 approval for the overall redevelopment of the site. Conditions of planning approval have been recommended to reduce the potential impact on nearby residential properties in proximity to 45 Duncan Street and the use of the existing Sunbury Road office buildings is consistent with

				its approval for office/administration purposes albeit an alternate 'complementary services' provider is now proposed to occupy the premises.
Traffic, parking, noise or other impacts	Clause 36 of Scheme Text and Policy 3.5 'Non-Residential Uses in or Adjacent to Residential Areas'	The conservation of the amenities of the locality	As above	Complies – As above. In addition conditions of planning approval have been recommended to ensure that the continued occupation of the buildings at 61 Kitchener Avenue and 45 Duncan Street are occupied only by a 'complementary services' provider at all times and to reduce the impact of staff/visitor car parking and pedestrians visiting the site on adjoining residential properties through restrictions on access and staff/student numbers.

Policy Implications:

Nil.

Strategic Plan Implications:

Nil.

Sustainability Assessment:

External Economic Implications:

Nil.

Social Issues:

The subject application seeks formal approval for the operation of an educational establishment and the administrative headquarters of a not-for-profit community based organisation providing services to the financially, mentally and physically disadvantaged. These services are considered complementary to the services provided by the Association for the Blind and further reinforce the community based nature of the facilities and operations carried out on the site.

Cultural Issues:

Nil.

Environmental Issues:

Nil.

COMMENT:

Traffic and Car Parking

With regard to on-site car parking requirements, the use of the Sunbury Road building at 61 Kitchener Avenue (also known as 16-18 Sunbury Road) by Uniting Care West has not resulted in any increase in car parking requirements as the floor area utilised for office/administration purposes remains the same. The car parking requirement for the use of the 45 Duncan Street building is 5 bays for the office/administration component and 6 bays for the Educational Establishment giving a total parking requirement of 11 bays for the retrospective change of use. In comparison with the original 2004 approval of the site an additional requirement of 6 bays is proposed, however with an overall surplus of 14 bays under the 2004 planning approval for the entire Association for the Blind site, the surplus is reduced to 8 bays and remains acceptable and in compliance with the intent of the original planning approval.

Traffic and on-street car parking is in high demand in the immediate vicinity of the site, namely due to proximity to the Victoria Park Train at the termination of Duncan Street with Kitchener Avenue. The availability of on-street car parking within the immediate vicinity is further compounded by proximity to the Ursula Frayne School, Centro Shopping complex and the Albany Highway commercial strip. The applicant's have confirmed that Uniting Care West entered into a lease agreement with the Association for the Blind and have occupied the premises at 61 Kitchener Avenue (Sunbury Road building) and 45 Duncan Street since April 2008. Accordingly, approval of the subject application for retrospective approval is not anticipated to result in any increase in traffic or car parking demand within the surrounding locality given the established operations on the site of Uniting Care West, and the restrictions proposed to be placed upon the operations of the organisation by way of recommended conditions of planning approval.

Duncan Street and Kitchener Avenue are high volume distributor roads which act as major thoroughfares and connections to public transport, commercial centres and other places of interest and high volume traffic generation within the Town. On-street parking restrictions are currently in place along Kitchener Avenue, Sunbury Road and Duncan Street, with recent upgrades and improvements being implemented in 2009 and early 2010 to improve through access and traffic flow to Victoria Park Train Station, increase the availability of on-street car parking and improve safety for pedestrians and vehicles. These measures include the upgrade and installation of the signalised intersection where Duncan Street meets Kitchener Avenue, the installation of 'No Stopping' restrictions and 3 hour parking limits, and improvements to pedestrian connections to the Victoria Park Train Station. These restrictions are currently being enforced by Council's Rangers and it has been confirmed that there has recently been no significant or noticeable increase in the number of complaints regarding traffic and car parking within the immediate vicinity of the site (i.e. along Duncan Street and Sunbury Road). The letters of concern and objections received during the community consultation period are considered to be symptomatic of broader concerns and the frustrations of local residents with regard to traffic and availability of on-street car parking rather than any direct or demonstrable correlation to the operations of Uniting Care West. Accordingly the approval or otherwise of the subject application for retrospective

planning approval is not considered to result in any change or alteration to existing traffic and car parking conditions. It is likely that any future increase in traffic generation and pedestrian volumes along Duncan Street will be due to the increasing trend in the patronisation of public transport services by surrounding residents and visitors to the Town rather than the uses carried out at 61 Kitchener Avenue and 45 Duncan Street.

Land Use and Amenity of Adjoining Residential Properties

61 Kitchener Avenue and 45 Duncan Street have a well established history of use associated with the provision of health and community services, namely by the Association for the Blind. The 2004 redevelopment of the site has further reinforced and cemented the use of the site for these purposes for the foreseeable future and it is considered that adjoining and surrounding residents would similarly expect and be accustomed to the operation of such services from the site. The occupation of the Sunbury Road and Duncan Street buildings by Uniting Care West is considered to satisfy the intent of Council's prior approval for the redevelopment of the site to ensure that only tenants/occupiers of the retained buildings fronting Sunbury Road and at 45 Duncan Street are complementary in nature to the predominant operations and services provided by the Association for the Blind.

Having demonstrated that the retrospective approval of the subject proposal will not result in an increase in car parking demand or traffic generation within the locality given the established operations of the use and the restrictions proposed to be placed on its operations by the recommended conditions of planning approval, there remain only the direct impacts that may be caused by the use on the amenity of adjoining residential properties. The occupation of the Sunbury Road building is not considered to result in any increase or potential for adverse impacts on surrounding residents given the historical use of the building for administration/office purposes. With regard to the use of 45 Duncan Street it is recognised that the location of entries to the building, noise generation and access arrangements for pedestrians and vehicles all have potential to adversely impact upon the amenity of the adjoining residential properties at 22A and 22B Sunbury Road, and 43 and 47 Duncan Street.

In order to minimise this risk and to promote the interest of good neighbourliness and consideration of noise and other factors which may cause nuisance or disturbance to local residents strict conditions of planning approval have been recommended to minimise conflict between non-residential activities with adjoining residential properties, including the requirement that all visitors and students to 45 Duncan Street utilise the rear access to the building at all times from the Sunbury Street entry to 61 Kitchener Avenue, rather than the Duncan Street frontage. The external modifications, removal of the front sliding doors and installation of new landscaping and front fence are considered to reinstate the residential appearance of the Duncan Street building and its surrounds, and a condition of planning approval has been recommended to ensure that these works occur. These measures will reduce the number of persons entering the site from Duncan Street and traversing the side of the property adjacent to the residential properties along the south west common boundary with the site. The works and restricted access arrangements will also reduce the recognition and visibility of the site as the location of a non-residential use as viewed from Duncan Street.

In view of the above, it is recommended that the Council approve the application for Retrospective Change of Use to Unlisted Use (Association for the Blind Site &

Complementary Services – Offices & Educational Establishment) at 61 Kitchener Avenue and 45 Duncan Street, East Victoria Park by an Absolute Majority subject to the conditions as outlined below.

Further Comments:

In response to the concerns raised at the Elected Members Briefing Session on 29 March 2011, the applicant has identified three issues that they consider require consideration, which they have addressed in correspondence dated 24 August 2011 (copy in tabled items) as follows:

Management and scheduling of parking demand

- The Association recognises that its activities and those of Uniting Care West do generate parking on the street, however it is considered that this is only one of a number of street parking generators (ie. Railway station, Centro Shopping Centre, Ursula Frayne College).
- The Association has been undertaking a monitoring program and management review in order to establish the impact of its various activities.
- The review has highlighted that there are particular times during the week where there is a heightened demand for car parking (particularly on Tuesday and Wednesdays). In response the Association is developing strategy to schedule services and activities so as to more evenly distribute the movement of people and vehicles.
- Additionally the Association is considering strategies to encourage staff use of car pooling and alternative transport modes.

Duncan Street frontage

- Confirmation provided that the external façade of the building will be upgraded to improve its residential character, which can include additional landscaping treatments.
- An artists impression will be provided of the design intent.

Staff congregation in Duncan Street frontage

- Investigations have been undertaken into staff movements in this area, and the matter has been discussed with staff. As a result, the problem no longer exists. However the matter will continue to be monitored.

OFFICER RECOMMENDATION:

Moved: Councillor Armstrong

Seconded: Mayor Vaughan

- 1. In accordance with the provisions of the Town of Victoria Park Town Planning Scheme No. 1 and the Metropolitan Region Scheme, the application submitted by Taylor Burrell Barnett on behalf of Association for the Blind WA (BA/DA Ref: 11/0005) for Retrospective Change of Use to Unlisted Use (Association for the Blind Site & Complementary Services – Offices & Educational Establishment) at No. 61 (Lot 501) Kitchener Avenue and No. 45 (Lot 502) Duncan Street, Victoria Park as indicated on the plans and written information dated received 23 December 2010 and 25 February 2011 be approved by Absolute Majority subject to the following conditions:**
 - 1.1 This approval is for the use of the existing building at No. 45 (Lot 502) Duncan Street for Educational Establishment and “complimentary services offices”, as annotated on the approved plans, by a “complementary services” provider, only as determined acceptable in writing by the Manager Planning Services. The use, lease or occupation of the building must at all times be by a “complementary services” provider as determined acceptable in writing by the Manager Planning Services. Should the written approval of the Manager Planning Services be unable to be obtained or it be determined by the Manager Planning Services that a proposed user, tenant or occupant of the building is not the provider of uses considered complementary to those carried out by the Association for the Blind at 61 Kitchener Avenue, then an application for approval to Council for a change of use will be required. Any alternative use of the premises will require the submission of an application for approval to Council for a change of use.**
 - 1.2 The use, lease or occupation of the existing building at No. 61 (Lot 501) Kitchener Avenue must at all times be by a “complementary services” provider as determined acceptable in writing by the Manager Planning Services. Should the written approval of the Manager Planning Services be unable to be obtained or it be determined by the Manager Planning Services that a proposed user, tenant or occupant of the building is not the provider of uses considered complementary to those carried out by the Association for the Blind at 61 Kitchener Avenue, then an application for approval to Council for a change of use will be required. Any alternative use of the premises will require the submission of an application for approval to Council for a change of use.**
 - 1.3 The approved Educational Establishment at No. 45 (Lot 502) Duncan Street operating at all times in accordance with the applicant’s written information dated received 23 December 2010 and 25 February 2011. The number of staff providing teaching/tutorial services is limited to three (3) persons at any time and the total number of students is limited to 12 students at any one time. Any change to the student or**

staff numbers of the Educational Establishment will require further planning approval to be obtained from the Council.

- 1.4 **Parking of vehicles within the approved car bays located forward of the existing building at No. 45 (Lot 502) Duncan Street and accessed from Duncan Street is restricted to the parking of staff vehicles only. No student or visitor car parking to the site is permitted in this location and the approved gates located along the Duncan Street boundary of the site shall be kept closed at all times to prevent this from occurring except where required for the access or egress of staff vehicles from the site or in the case of emergencies or to provide access for people with disabilities.**
- 1.5 **Vehicular access for students and visitors to the approved “complimentary services offices” and Educational Establishment at No. 45 (Lot 502) Duncan Street shall at all times be taken from the Sunbury Road access to No. 61 (Lot 501) Kitchener Avenue. Student and visitor car parking shall at all times be located either to the rear of the existing building at No. 45 (Lot 502) Duncan Street or within the existing car parking area at No. 61 (Lot 501) Kitchener Avenue adjacent to the retained Sunbury road building. Access to the car parking areas to the rear of No. 45 (Lot 502) Duncan Street and adjacent to the retained Sunbury Road building shall be maintained and kept open at all times whilst the approved “complimentary services offices” and Educational Establishment at No. 45 (Lot 502) Duncan Street is operating.**
- 1.6 **Students and visitors to the approved “complimentary services offices” and Educational Establishment at No. 45 (Lot 502) Duncan Street shall at all times utilise the rear entry to the building, accessed from Sunbury Road via the car park at No. 61 (Lot 501) Kitchener Avenue. Students and visitors to the “complimentary services offices” and Educational Establishment shall at no times utilise the side entry to the building adjacent to the residential properties at Nos. 22A and 22B Sunbury Road or access or exit the site via Duncan Street, except in case of emergencies or if necessary to provide access for people with disabilities.**
- 1.7 **A Memorandum of Understanding being prepared and entered into between the Association for the Blind, Uniting Care West and the Town of Victoria Park and executed by all parties to the satisfaction of the Director Future Life and Built Life Programs within 30 days of the date of this approval or such further time as agreed, in relation to the following matters:**
 - (i) **The written undertaking of the Association of the Blind and Uniting Care West outlining the measures to be taken to ensure that all the conditions of this planning approval regarding vehicular access, car parking, pedestrian access, noise, and the use of the buildings at No. 61 (Lot 501) Kitchener Avenue and No.**

- 45 (Lot 502) Duncan Street as “complimentary services offices” by Uniting Care West are satisfied;
- (ii) The written undertaking of the Association for the Blind and Uniting Care West that staff, students and visitors are to be made aware at all times and be directed to park within the on-site car parking areas provided at No. 61 (Lot 501) Kitchener Avenue and No. 45 (Lot 502) Duncan Street, as allowed for by the conditions of this planning approval. In the event that on-site car parking is fully occupied then staff, students and visitors to the site shall additionally be made aware and advised at all times to utilise the Association for the Blind car parking area accessed from Kitchener Avenue and the railway station car park accessed from Kitchener Avenue, if available. The Association for the Blind and Uniting Care West to provide details of management measures and procedures of how staff, students and visitors to the site will be made aware at all times and directed to park vehicles on-site (i.e. off-street) in accordance with these requirements.
 - (iii) An undertaking by the Association for the Blind and Uniting Care West that should the ownership of the premises at No. 45 (lot 502) Duncan Street change or the tenancy of the Sunbury Road building located at No. 61 (Lot 501) Kitchener Avenue or the existing building at No. 45 (Lot 502) Duncan Street change, that the Association for the Blind and/or Uniting Care West (as applicable to any change in ownership or change in tenancy) is to inform the purchaser or new tenant of the need to enter into the same or similar Memorandum of Understanding with the Town.
 - (iv) An undertaking that the Association for the Blind and Uniting Care West will develop and implement strategies for a reduction in the number of vehicles generated by staff and visitors to the facility.
- 1.8 The external modifications, front fencing and landscaping works proposed to the existing building and its surrounds at No. 45 (Lot 502) Duncan Street being completed within 120 days of the date of this approval in accordance with the approved plans and specifications and maintained thereafter, to the satisfaction of the Manager Planning Services.
- 1.9 The façade improvements to the existing building at No. 45 (Lot 502) Duncan Street is to include the replacement of the existing doors and windows with three piece windows to the satisfaction of the Manager Planning Services. Details are to be provided at the building licence stage.

- 1.10 Sound levels created are not to exceed the provisions of the Environmental Protection (Noise) Regulations 1997. Staff of the approved “complimentary services offices” and Educational Establishment at No. 45 (Lot 502) Duncan Street shall at all times make reasonable efforts to minimise external noise and gatherings of staff, students or visitors to the site which may disrupt or cause nuisance to the amenity of the adjoining residential properties at Nos. 22A and 22B Sunbury Road, No. 43 Duncan Street and No. 47 Duncan Street.
- 1.11 External areas surrounding the existing building at No. 45 (Lot 502) Duncan Street to be maintained in a clean and tidy state of repair at all times to the satisfaction of the Manager Planning Services.
- 1.12 No advertising material or signage with respect to or in connection with the approved “complimentary services offices” and Educational Establishment at No. 45 (Lot 502) Duncan Street is to be displayed or erected on the site on the Duncan Street façade of the building or in a location visible from Duncan Street. Any other external signage is subject to a separate sign licence application being submitted to and approved by the Council in accordance with Council’s Signs Local Law.
- 1.13 Fencing forward of the building line to be ‘open style’ construction in accordance with the approved drawings.
- 1.14 Pickets to be of a maximum width of 80mm being spaced a minimum gap of 30mm and maximum 80% of the width of the picket, except where pickets are proposed within any visual truncation area at the intersection of any driveway and the front property boundary, in which case the pickets of the entire front fence shall have dimensions and be spaced in accordance with Condition No. 5 (iii), below.
- 1.15 Any letterbox, structure, wall or fence located within a 1.5 metre x 1.5 metre visual truncation at the intersection of any driveway and the front property boundary, is not to exceed a height of 750mm with the exception of:
- (v) one brick pier (maximum dimensions 350mm by 350mm);
 - (vi) wrought iron infill fencing; and/or
 - (vii) pickets having a maximum thickness of 20mm, maximum width of 80mm and being spaced a minimum gap of 40mm and maximum 80% of the width of the picket.
- 1.16 The dimensions of the new/modified car parking bays and reversing area at No. 45 (Lot 502) Duncan Street being to the satisfaction of the Manager Street Life, with the car bays having the following minimum dimensions: 5.4 metres in length and 2.4 metres in width, unless where abutting a wall, column or pier where they must be a minimum of 2.7 metres in width.

- 1.17 Paved access ways and/or turning areas being so arranged that all vehicles may at all times leave or enter Duncan Street in forward gear from No. 45 (Lot 502) Duncan Street.
- 1.18 During excavations, all necessary precautions to be taken to prevent damage or collapse of any adjacent streets, right-of-way or adjoining properties. It is the responsibility of the builder to liaise with adjoining owners and if necessary obtain consent prior to carrying out work.
- 1.19 All building works to be carried out under this planning approval are required to be contained within the boundaries of the subject lot.
- 1.20 Proposed development complying with setbacks, fencing, driveways, landscaping and other details and amendments as shown in red on the approved plans and elevations.
- 1.21 Compliance with Council's Building, Health and Technical Services requirements.

Advice to Applicant:

- 1.22 Failure to maintain the verge by current or future owners or occupiers will render the offender liable to infringement under Section 2.9 of the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law – Modified penalty \$100.
 - 1.23 Any modifications to the approved drawings forming part of this planning approval may require the submission of an application for modification to planning approval and reassessment of the proposal.
 - 1.24 Should the applicant be aggrieved by this decision a right of appeal may exist under the provisions of the Town Planning Scheme or the Metropolitan Region Scheme and the applicant may apply for a review of the determination of Council by the State Administrative Tribunal within 28 days of the date of this decision.
2. Those persons who lodged a submission regarding the application be advised of the Council's decision.

ABSOLUTE MAJORITY REQUIRED - LOST (3-3)

ALTERNATIVE RECOMMENDATION:

Moved: Councillor Bissett

Seconded: Councillor Skinner

In accordance with the provisions of the Town of Victoria Park Planning Scheme No 1 and the Metropolitan Region Scheme, the application submitted by Taylor Burrell Barnett on behalf of Association for the Blind WA (BA/DA Ref: 11/0005) for Retrospective Change of Use of unlisted Use (Association for the Blind Site and Complementary Services - Offices and Educational Establishment) at 61 (Lot 501) Kitchener Avenue and No. 456 (LOT 502) Duncan Street, Victoria Park as

indicated on the plans and written information dated receive 23 December 2010 and 25 February be refused on the grounds that:

1. The development application would have and adverse influence on the amenity of the area.
2. The development application does not comply with the Council decision 13 December 2004.
3. The proposed use is a prohibited use. X use, as determined by the council officer 11 May 2010.
4. The development application would lead to the expansion of a non-conforming use.

LOST ON MAYOR'S CASTING VOTE (3-4)

Cr Ashton returned to the meeting at 7:08pm



12.2 834 (Lots 7& 10) Albany Highway, East Victoria Park – Change of Use to Unlisted Use (Small Bar)

File Ref:	ALBA834	In Brief <ul style="list-style-type: none"> • Application for a change of use to Unlisted Use (Small Bar). • Non-compliance with Council's Town Planning Scheme No. 1 regarding the number of on-site car parking bays. • Consultation undertaken for 21 days in accordance with Council Policy GEN3 'Community Consultation' with three (3) submissions received. • Recommended for Approval by Absolute Majority subject to conditions. • Recommended that the car parking requirements of Council Policy PLNG16 be amended for Restaurants.
Appendices:	No	
DA/BA or WAPC Ref:	11/0419	
Date:	2 September 2011	
Reporting Officer:	L Parker	
Responsible Officer:	R Cruickshank	

TABLED ITEMS:

- Development application form dated 11 July 2011;
- Amended plans and elevations dated received 15 July 2011;
- Applicant's 'Business Proposal' report dated received 11 July 2011;
- Applicant's 'Alcohol Management Policy' dated received 11 July 2011;
- Superseded plans and elevations dated received 11 July 2011;
- Correspondence to applicant (advertising process letter) dated 12 August 2011;
- Correspondence from applicant dated 10 August 2011 regarding universal access, emergency exits and operations of the business;
- Correspondence from applicant dated 16 August 2011 regarding operating hours;
- Consultation with adjoining owners & occupiers dated 22 August 2011;
- Submissions (including one (1) objection and two letters of support) dated received 26 August 2011, 2 August 2011 and 9 September 2011;
- Analysis of prior applications for Change of Use to Restaurant and Fast Food Outlet comparing car parking requirements of Policy 5.1 with PLNG16; and
- Existing Council Policy PLNG16

APPLICATION:

Landowner: L, M & M Guazelli and F Valdrighi
 Applicant: Barrio Enoteca Pty Ltd
 Zoning: MRS: Urban
 TPS: District Centre
 Precinct Plan P11 'Albany Highway Precinct'

DETAILS:

An application has been received seeking approval for the change of use of part of the existing building at 834 Albany Highway, East Victoria Park to operate a small bar. The existing building currently comprises half of the 'Balmoral Cycles' store, which occupies the adjoining and currently connected building at 838-840 Albany Highway.

The property is located approximately 25m from the Albany Highway – Mint Street intersection with vehicular access provided from a rear right-of-way which abuts the Hubert Street public car park.

The application involves the extensive refit of the premises and new internal walls to separate the proposed business from 'Balmoral Cycles'. A total of four car parking bays, including one universal access bay, are provided at the rear of the building and accessed via the adjoining right of way, for the use of staff and visitors. This is the same number of car parking bays as currently provided for this half of the existing Balmoral Cycles business on the exclusive lot area of the subject site. Access to the proposed premises is to be provided primarily from the Albany Highway entry to the building with the existing rear door serving only as an exit for customers in the case of emergencies. Accordingly, patrons who park to the rear of the building will access the premises by travelling along the rear right away to Mint Street and around the corner of the street block onto Albany Highway.

The applicants have prepared a comprehensive 'Business Proposal' and 'Alcohol Management Policy' which are included as Tabled Items. In essence the applicant's propose a food centred business in an urban and contemporary setting offering main meals throughout the day to its patrons. It is also intended to serve small tapas style dishes and alcoholic beverages with or without a meal within casual and relaxed surroundings.

In the event that planning approval for the use is obtained, the applicant's propose to apply for and obtain a Small Bar Licence from the Department of Racing, Gaming and Liquor in order to provide for the flexibility to serve alcohol to its patrons with or without a meal either seated at dining tables or from its proposed bar area. The main difference between this type of licence and a licensed Restaurant with an Extended Trading (Liquor Without a Meal) Permit is that a Small Bar Licence does not restrict alcohol consumption to table service (i.e. seated patrons) only. Unlike a Hotel or Tavern Licence, a Small Bar Licence prohibits the sale of any packaged/takeaway liquor and restricts the number of persons who may be on the licensed premises to a maximum of 120.

Aside from the proposed internal fit out of the premises the applicants have already submitted an application and been granted approval for the upgrade and reinstatement of the shopfront of the building. These works comprise the removal of the existing 'Balmoral Cycles' signage from its façade, new doors, windows and repainting.

Operating Hours

The applicant has confirmed the proposed operating of hours of the 'Small Bar' to be the following:

Monday	7.30am - 12.00am
Tuesday	7.30am - 4.00pm
Wednesday	7.30am - 12.00am
Thursday	7.30am - 12.00am
Friday	7.30am - 12.00am
Saturday	7.30am - 12.00am
Sunday	7.30pm - 10.00pm

These hours are consistent with Council's prior approvals limiting the opening hours for night time drinking and entertainment venues to 12 o'clock midnight.

Noise Attenuation Issues

Whilst the proposed use does not share the same noise issues and potential for antisocial behaviour generally associated with night clubs, hotels and other drinking establishments due to its private and enclosed nature, the applicant was also informed of the likely requirement for an independent acoustic report demonstrating compliance with the Environmental Protection (Noise) Regulations 1997, as a condition of any forthcoming planning approval. This was due to the absence of any detailed information on the construction and sound proofing measures to be incorporated into the development and the predominant nature of the venue which comprises the playing (and singing) of amplified music on the premises. Given the potential for very wide variation in sound generation by virtue of varying patron numbers and the types of music played, Council's Environmental Health Services have recommended that such a requirement is essential and will enable the applicant to identify the maximum extent and range of activities which can be carried out on the premises and of any required works or management measures to ensure the development's compliance.

Community Consultation

In accordance with Clause 35 of Town Planning Scheme No. 1 and Council Policy GEN3 'Community Consultation', the applicant was requested to advertise the development in the Southern Gazette and Examiner newspapers for three consecutive weeks, and to erect signs on the Albany Highway and rear right-of-way frontages of the site for the duration of the required 21 day advertising period. The applicant has conducted the necessary advertising.

Letters were also sent to surrounding owners and occupiers with a 21 day period to comment on the application, commencing on 23 August 2011 and closing on 13 September 2011. A total of three (3) submissions were received during the consultation period, comprising one (1) letter of objection and two (2) letters of support. The matters raised in the submissions are summarised below and include an assessment by Planning Services having regard to the requirements of Council's Town Planning Scheme No. 1, and the potential for impact on the amenity of adjoining properties and the surrounding locality. The submissions are also included in full as tabled items.

Consultation Submissions	
Objection from occupier of 6 Mint Street	Officer Comments
<ul style="list-style-type: none"> • There are already 5 licensed bars in this area of East Victoria Park. • Car parking is a problem in the area and I object to people who are not my patients or tenants parking in my private parking area. • Patrons of the small bar would drive over my lawn and break my sprinklers. 	<ul style="list-style-type: none"> • Not supported – there are no planning provisions which control the number of licensed premises within a particular area. • Not supported - It would not be expected that patrons of the small bar would park on the private property. Parking is available not only on the site (4 bays) but also within the Hubert Street car park as well as on-street. • Not supported – it is not anticipated that this will occur as patrons of the bar will park in alternative locations.
Letters of Support from owner of 838-840 Albany Highway	Officer Comments
<ul style="list-style-type: none"> • The change of use will have a positive impact on the locality and create a vibrant atmosphere. • The change of use will generate more interest and more business for other businesses in the area. • The change of use will lift the profile of the area and put East Victoria Park on the map. 	<p>Supported - The proposal will increase the level of vibrancy and activity of this portion of Albany Highway, particularly during the evening, and serve as an additional attraction for the enjoyment of incoming visitors, local residents and workers within the Town. It will also encourage further investment in and upgrade of buildings along Albany Highway consistent with the intended future development of the locality.</p>
Letter of support from owner of 16 Alvah Street, St James	Officer Comments
<ul style="list-style-type: none"> • I believe that Albany Highway is currently lacking sufficient activation/activity that is normally provided through small boutique bars, cafes and retail outlets. This opportunity should be embraced and favourably facilitated by the Town 	<p>Supported</p>

Legal Compliance:

Relevant General Provisions of Town Planning Scheme No. 1

- Statement of Intent for Precinct P11 'Albany Highway Precinct'
- Clause 16 'Unlisted Uses'
- Clause 36 'Determination of Applications – General Provisions'
- Clause 37 'Determination of Application for an Unlisted Use'
- Clause 38 'Determination of Non-Complying Applications'

Compliance with Development Requirements

The proposal has been assessed for compliance with the following statutory documents and policies :

- TPS 1 Scheme Text
- TPS 1 Policy Manual:
 - Policy 5.1 'Parking and Access'
 - Policy 5.2 'Loading and Unloading'
- PLNG16 'Car Parking Standards for Developments along Albany Highway'

Aside from car parking requirements, the extent to which the application is considered to meet the requirements of the above documents and policies is discussed in the Comments section of this report.

PLNG16 'Car Parking Standards for Developments along Albany Highway'

It should be noted that Policy 5.1 'Parking Policy' stipulates a car parking requirement for licensed drinking areas of 1 bay per 2m² of bar/standing area and 1 bay per 4.5m² of sit down dining area. However, the subject provisions were formulated prior to the introduction of Small Bar Licences under the Liquor Control Act in May 2007 and it is considered inappropriate to apply this requirement to the subject proposal which is of a lesser intensity and wholly different nature to a typical Hotel or Tavern use (i.e. food-focused venue rather than primarily the consumption of alcohol). It should also be noted that the car parking requirement for the sit down dining area of a licensed premises (i.e. 1 bay per 4.5m²) is the same as that for a Restaurant under Policy 5.1 in any case.

The majority of floor space for patrons of the proposed Small Bar will be occupied by chairs and tables similar to a Restaurant use, with the majority of patrons having a meal and for the most part being seated rather than standing at the proposed bar area, which forms only a minor portion of the floor area of the premises. The bar area is proposed to include bar stools/seating in any case, and is not considered to generate a demand for car parking significantly in excess of that of the main sit down dining area of the

premises. In view of this and the food-focused nature of the proposed business, it is considered appropriate that the same car parking requirement for a Restaurant be applied to 'Small Bar' applications where the majority of their licenced/public areas comprises a traditional restaurant/'tables and chairs' format as is the case for the subject application.

On the above basis the following car parking requirements of Policy PLNG16, which applies to developments along Albany Highway for Restaurant and Shop uses, is applicable to the proposed development:

ACTIVITY/USE	NUMBER OF PARKING BAYS
Restaurant	1 for every 5m ² of net lettable area of sit down dining area including all walkways and counter queuing space, excluding queuing spaces for drive through. No additional parking is required for a Fast Food Outlet component of a Restaurant use or for alfresco dining areas.

Calculation of Existing Car Parking Shortfall:

- Council's records indicate that the most recent approval issued in relation to the use of the premises was for Light Industry, granted on 21 February 1994. In accordance with Clause 3 of Policy PLNG16 the existing car parking for the site may be calculated on the basis that the approved use for the purposes of parking is 'Shop'.
- In determining the existing parking shortfall it is appropriate to apply the car parking standards applicable under Policy 5.1 'Parking Policy' as this was the Policy applicable to the site prior to the coming into operation of PLNG16. Under Policy 5.1 a Shop requires on-site car parking to be provided at a ratio of 1 bay per 10m² of retail floor area.
- The existing building has a total floor area of 340m². Where the public retail floor area of the premises is unknown however one third is assumed as storage/staff area. This equates to 226.7m² of retail floor space. Accordingly, a requirement of 22.67 (23) bays is applicable for the existing tenancy. This results in an existing car parking shortfall of 19 bays as only 4 bays are currently provided on the exclusive lot area of the subject site.

Car Parking Requirement for Proposed Use under Policy PLNG16:

Sit down dining area incl. bar area (100.91m ²)	
Area of public access ways/walkways (69.29m ²)	
TOTAL area of 170m ²	34 bays (1 bay per 5m ²)
Total Bays provided	4 bays
Total parking shortfall	30 bays
Minus existing parking shortfall	19 bays
Additional Shortfall in Parking	11 bay increase
The acceptability of the proposed car parking shortfall and the resultant	

recommendation to amend PLNG16 is discussed in the Comments section of this report.

Sustainability Assessment:

External Economic Implications:

The proposed Small Bar will utilise an existing commercial building and will generate direct income through the sale of food and beverages to the public. The business will contribute to the level of activity and vibrancy of this portion of Albany Highway during the day but particularly at night, generating indirect income and positive economic benefits to surrounding commercial premises. In particular the proposed Small Bar will act as a destination for incoming visitors, local residents and workers within the Town as well as one of several complementary activity generating uses such as shops, restaurants and hotels/drinking establishments and other night time uses which may be frequented during a single trip by visitors to the Albany Highway strip.

Social Issues:

The proposed use is not considered to harbour the potential for antisocial behaviour generally associated with drinking and night-time entertainment venues of an open or public nature given the majority of patrons will be seated and the focus of the proposed business around high quality food and dining in a relaxed, casual atmosphere. The nature of the use will increase the activity and vibrancy of this portion of the Albany Highway commercial strip with associated positive benefits to surrounding businesses, pedestrians and members of the community.

Cultural Issues:

Nil impact.

Environmental Issues:

The proposal is not considered to result in any negative environmental impacts, subject to appropriate conditions of approval being applied to ensure the development's compliance with the Environmental Protection (Noise) Regulations 1997.

COMMENT:

A 'Small Bar' is an Unlisted Use as it is not listed within the Zoning Table of Town Planning Scheme No. 1. Consultation for the change of use is being carried out in accordance with Council Policy GEN3 'Community Consultation' with one (1) letter of concern being received during the consultation period to date. The concerns raised in the submissions are considered to have been adequately addressed by this report, and through the recommendation of appropriate conditions of planning approval, where necessary.

Noise Attenuation

The proposed use is not considered to share the same potential for noise and antisocial behaviour generally associated with public drinking houses and night clubs given the enclosed and food-focused nature of the business, as well as the licensing restrictions applicable to Small Bars.

Council's Environmental Health Services has indicated its satisfaction with the

conditions recommended to be applied to this approval, and is confident they will help to ensure that the proposed development will comply with the Environmental Protection (Noise) Regulations 1997 on an ongoing basis. This is in addition to the powers conferred on local government to enforce the provisions of the Environmental Protection Act and its subsidiary regulations.

Vehicular Access

The applicant proposes to utilise the current hardstand area to the rear of the building to provide car parking for four vehicles, including one bay for the use of persons with disabilities. Whilst the proposed layout and configuration of the car parking area is considered acceptable it relies on the ability for vehicles to drive and manoeuvre over a portion of the adjoining property at 838-840 Albany Highway ('Balmoral Cycles' site). Given both sites are under the same ownership this does not currently present an issue, however it may should the ownership of either sites change in the future. Accordingly, a condition of approval is recommended requiring suitable arrangements being made to secure rights-of-access over both lots for parking, which may include amalgamation or an easement.

PLNG16 'Car Parking Standards for Developments along Albany Highway'

The intent of Policy PLNG16, which was recently adopted by the Council on 19 July 2011, is to reduce the car parking provisions for Shops and Restaurants in District Centre zones along Albany Highway. Parts 1, 2 and 3 of Policy PLNG16 outline the following requirements:

- "1. A reduced car parking ratio for "Shop" of 1 bay for every 20 square metres of net floor area;*
- 2. A reduced ratio for "Restaurant" of 1 bay for every 5 square metres of net lettable area of sit down dining areas including walkways and counter queuing space, excluding queuing spaces for drive through. No additional parking is required for a Fast Food Outlet component of a Restaurant use or for alfresco dining areas;*
- 3. The following exceptions to the car parking requirement shall apply:
 - (i) Residential dwellings (excluding Single Bedroom Dwellings) - 1 bay per dwelling, with no visitor parking requirement;*
 - (ii) All existing ground floor development (with the exception of Hotels/Taverns) approved prior to 30 September 1998 within the District Centre zone will be assessed on the basis that the approved use for the purposes of parking is 'Shop'; and*
 - (iii) All existing development above ground floor (with the exception of Hotels/Taverns) approved prior to 30 September 1998 within the District Centre zone will be assessed on the basis that the approved use for the purposes of parking is 'Office'."**

With respect to Part 1, this represents a halving of the car parking required for a Shop compared with Policy 5.1 'Parking Policy'.

With respect to Part 2, this represents an 11% relaxation in the ratio of car bays required for a Restaurant, which in this case is the same standard determined appropriate for application to the subject proposed Unlisted Use of ‘Small Bar’. However, the area to be included for the purposes of calculating the car parking requirements has altered from the area of exclusive sit down dining area (under Policy 5.1) to the entirety of the public accessible dining area, including portions used for access ways/walkways (under Policy PLNG16).

Calculation of Restaurant Car Parking Requirement under PLNG16

As noted above the car parking calculation for a Restaurant use has altered in that the entirety of the public accessible dining area, including portions used for access ways/walkways now attracts a car parking requirement. Whilst certainly not the intention of this Policy, this requirement results in an 11 bay increase in the number of car parking bays required for the proposed Small Bar prior to taking into account the existing car parking shortfall on the site, compared with formerly applicable Policy 5.1 as follows:

	Policy 5.1 ‘Parking Policy’	Policy PLNG16
Requirement:	1 bay per 4.5m ² of sit down dining area.	1 bay per 5m ² of net lettable area of sit down dining area including all walkways and counter queuing space.
Area:	100.91m ²	170m ²
No. Bays:	22.6 (23)	34

This represents a 68% increase in the area to be included in the car parking calculation and a 48% increase in the number of car bays required for the use compared with that under Policy 5.1.

In view of the above and given a similar scenario resulted for a recent application for change of use to Restaurant approved by the Council for 315-319 Albany Highway, where the Council resolved to instead apply the lesser car parking requirement of Policy 5.1 ‘Parking Policy’ at its Ordinary Meeting on 9 August 2011, a broader review of the impacts of this new altered car parking requirement was considered necessary. A comparison has therefore been completed of relevant change of use applications received between January 2007 and July 2011, the outcomes of which are presented below.

Comparison of Policy 5.1 & PLNG 16 Parking Requirements as Applied to Past Applications for Change of Use

Given the relatively low volume of applications received for Change of Use to Restaurant, applications for Change of Use to Fast Outlet were also included in the comparison, although the floor areas dedicated to counter/takeaway queuing areas of these applications were removed (owing to the higher car parking requirement for these areas under Policy 5.1). This allowed for the isolation and inclusion of the respective restaurant/dine-in components of these uses in the analysis. A total of 23 relevant applications were identified during the period between 2007 and July 2011, however only 16 were included in the analysis. This was due to the remaining applications being either of a format inconsistent with the general layout of a traditional restaurant/café, or

where they incorporated a variety of uses which could not easily be separated into their constituent parts, or where floor areas could not be accurately determined. The comparison chart/spread sheet of results are included as a Tabled Item to this report.

The results of the analysis concluded the following:

- On average 31% of the publicly accessible floor areas/main dining areas of such uses is comprised of walkways/access ways (i.e. not sit-down dining area).
- The parking requirement of PLNG16 results in an increase in the number of required car parking bays, prior to taking into account the existing car parking shortfall on the respective sites, in all instances.
- On average the new requirement would result in a 53.8% increase to the floor area to be included in the calculation of required car bays compared with that under Policy 5.1.
- On average 31.9% of the total dining area(s) of such uses is comprised of public accessways/walkways, which would now attract a car parking requirement under PLNG16. This contrasts markedly to the only 11% relaxation applied to the car parking requirement for a Restaurant use under PLNG16 (i.e. change from 1 bay per 4.5m² to only 1 bay per 5m²).
- On average the new car parking requirement would increase the number of bays required prior to taking into account the existing shortfalls on their respective sites by 38.4% or an average of 4.2 bays, if it were applied retrospectively.

It is worth noting that the size and internal layout of buildings have significant implications on the proportion of public dining areas used for access ways/walkways. This is particularly so for many of the existing premises along Albany Highway, which traditionally consist of relatively long buildings with a narrow internal layout and frontage to Albany Highway. This results in a relatively high proportion of floor area dedicated to internal access ways/walkways as is the case for the subject 'Small Bar' application.

Consequently, PLNG16 in its current format unduly favours applications for change of use to Shop rather than Restaurants as the increase in calculated floor area for a Restaurant has not been matched by a corresponding relaxation in the ratio of car bays required. This is not considered to be consistent with the intent of Policy PLNG16, which is to encourage the establishment and location of a variety of active uses including both Shop and Restaurants, rather than favouring the establishment of a particular use at the expense of another.

Recommendation to Amend Policy PLNG16

Based on the average 53.8% increase to the floor area which now attracts a car parking requirement under Policy PLNG16 for a Restaurant use compared with that required under Policy 5.1, it would seem logical that a corresponding relaxation (i.e. approx. 50%) to the requirement under Policy 5.1 should occur. This would equate to a change from 1 bay per 4.5m² under Policy 5.1 to 1 bay per 6.75m². However, it is important to recognise that the analysis revealed a high proportion of applications which featured increases significantly below and significantly higher than this average. Given this wide variation it is considered more appropriate to instead base any further relaxation in the car parking requirement on the average floor area of such uses which is occupied by walkways/accessways – 31.9% or an approximate one third relaxation. This results in a relaxation from 1 bay per 4.5m² under Policy 5.1 to 1 bay per 6m² under Policy PLNG16.

Application of this recommended 1 bay per 6m² requirement to the applications included in the analysis resulted in the following:

- Either a modest increase or decrease in the number of required car parking bays, prior to taking into account the existing car parking shortfall on the respective sites, in most instances.
- An average increase of 1.51 bays, with results ranging from -2 to +12 bays.

Given the modest sample size of the analysis and as the suggested change results in modest reductions to a number of applications included in the analysis, it is considered premature to relax the car parking requirement any further until such time as a more comprehensive review of Council's car parking requirements is undertaken, as per the conclusions reached during the adoption of PLNG16 at Council's Ordinary Meeting held on 19 July 2011.

However, in order to maintain the same benefit gained by applications for change of use to Shop with regard to the revised existing car parking shortfall calculation under PLNG16 for applications for change of use to Restaurant, it is considered that the policy should also be amended to state that where the car parking requirement under Policy 5.1 (i.e. 1 bay per 4.5m² of exclusive sit it down dining area) is less than that required by the ratio of 1 bay per 6m² of net lettable area of sit down dining area including all walkways and counter queuing space, that the lesser car parking requirement shall apply.

This will maintain the modest reduction which may occur to the required number of car parking bays for some applications, without disadvantaging other applications which would have otherwise required a lesser car parking requirement under Policy 5.1, prior to taking into account the existing car parking shortfall applicable to the site.

Accordingly, clause 2 of Policy PLNG16 "Car Parking Standards for Developments within the District Centre Zone Along Albany Highway" is proposed to be amended as follows:

“2. The following car parking requirements for a Restaurant use shall apply:

- (i) A reduced ratio for “Restaurant” of 1 bay for every 6 square metres of net lettable area of sit down dining areas including walkways and counter queuing space, excluding queuing spaces for drive through. No additional parking is required for a Fast Food Outlet component of a Restaurant use or for alfresco dining areas; OR
- (ii) 1 bay per 4.5 square meters of exclusive sit down dining area and publicly accessible counter/queuing areas (measured at a depth of 1.0 metre for the full length of any counter/bar areas where food/beverages are provided to queuing customers);

whichever is the lesser.”

Revised Car Parking Assessment

Based on the above recommended amendment to Policy PLNG16 the car parking requirement for the subject ‘Small Bar’ use is as follows:

	Policy PLNG16 – Calculation 2(i)	Policy PLNG16 – Calculation 2(ii)
Requirements:	1 bay per 4.5m ² of [exclusive] sit down dining area incl. bar area	1 bay per 6m ² of net lettable area of sit down dining area including all walkways and counter queuing space.
Area:	100.91m ²	170m ²
No. Bays:	22.6 (23) bays	28.3 (28) bays
Minus Existing Shortfall	-19 bays	-19 bays
Total Bays Required	4 bays	9 bays
The lesser requirement of 4 bays applies		
Bays Provided	4 bays	

Application of the above recommended change to PLNG16 results in the subject proposal not increasing the existing car parking shortfall applicable to the site. The application is therefore compliant (assuming the recommended change to PLNG16 is duly adopted) with car parking requirements.

Clauses 36, 37 & 38 of Town Planning Scheme No. 1

Having regard to the acceptability of the proposed Unlisted Use, regard must be given to the general matters listed under Clause 36 of the Scheme as well as those matters listed under Clause 38 for non-complying applications, given the car parking shortfall (as calculated under current PLNG16) proposed by the development. These include general matters concerning the orderly and proper planning of the locality, the conservation of the amenities of the locality and whether the proposed development would have an adverse impact on the development’s occupiers/users, the inhabitants of

the locality or the future development of the locality. More specifically these matters include the development's consistency with the Statement of Intent contained in Precinct Plan P11 for the Albany Highway Precinct, and the intent of PLNG16 and Policy 5.1 'Parking and Access'.

In light of the development's compliance with the recommended changes to PLNG 16 the proposed development is considered acceptable and to not present any significant potential for adverse impact to occur as a result of car parking demand generated by the use. Additionally, any potential impacts are lessened by the location of the public car park at 55-63 Hubert Street directly behind the subject building, which can be accessed from the same right-of-way as the subject site.

The proposed 'Small Bar' is consistent with the intent for the 'District Centre' zone contained in Precinct Plan P11, which seeks to redevelop this portion of Albany Highway by offering a wide range of retail and activity generating uses at street level, including shops, restaurants, cafes and other active uses. The proposal will increase the level of vibrancy and activity of this portion of Albany Highway, particularly during the evening, and serve as an additional attraction for the enjoyment of incoming visitors, local residents and workers within the Town. It will also encourage further investment in and upgrade of buildings along Albany Highway consistent with the intended future development of the locality.

In view of the above, the proposed change of use to Unlisted Use (Small Bar) is considered to be consistent with the requirements and matters that the Council is required to have regard to in its determination of the application by Clauses 36, 37 and 38 of the Scheme.

Conclusion

On the basis that the recommended conditions in relation to hours of operation, noise attenuation, car parking and the operations of the premises are applied to the development, it is considered that the application for Change of Use to Unlisted Use (Small Bar) at 834 Albany Highway, East Victoria Park is consistent with the intent of Town Planning Scheme No. 1 and is therefore recommended for Approval by Absolute Majority.

The amendment proposed to Policy PLNG16 'Car Parking Standards for Developments along Albany Highway' is considered justified and to represent a more balanced and fairer approach in terms of the encouragement of Shop uses versus Restaurants or other similar uses (such as the subject application for 'Small Bar') where the same car parking standards are considered appropriate. These changes are consistent with Council's intention to encourage more active uses such as 'Shops' or 'Restaurants' along Albany Highway which result in positive streetscape activation outcomes and serve to enhance the reputation and desirability of Albany Highway as a vibrant shopping, eating and entertainment destination.

Further Comments:

At the Elected Members Briefing Session on 13 September 2011, a question was raised in relation to the use of the rear door of the premises adjacent to the 4 on-site car bays, including a disabled car bay. The rear door is not to be used for entry to the

building for any patrons. The rear door is to be used as an emergency exit only. Given that there are differences in floor levels within the building, if the rear door were to be available for use by patrons, then there would be a need for the building to be designed with disabled access ramps etc in order to avoid any claims of discrimination by a disabled patron. Disabled access ramps would consume a significant amount of the floor area of the building.

In relation to access to the front of the building for disabled patrons from the disabled car bay at the rear of the property, access would be via the right-of-way to either Mint Street or the right-of-way adjacent to IGA, and then along Albany Highway to the front of the building.

RESOLVED:

Moved: Councillor Armstrong

Seconded: Councillor Vilaca

- 1. In accordance with the provisions of the Town of Victoria Park Town Planning Scheme No. 1 and the Metropolitan Region Scheme, the application submitted by Barrio Enoteca (BA/DA Ref: 11/0419) for Change of Use to Unlisted Use (Small Bar) at No. 834 (Lot 7 & 10) Albany Highway, Victoria Park as indicated on the plans dated received 15 August 2011 be Approved by Absolute Majority subject to the following conditions:**
 - 1.1 Prior to submission of an application for building licence for the internal fit out of the premises and/or first occupation or commencement of the development, whichever is the sooner, arrangements being made to the satisfaction of the Town to ensure permanent reciprocal rights of access for parking over both 834 (Lots 7 and 10) and 838-940 (Lots 8 and 9) Albany Highway. Such arrangements may include amalgamation of lots or an easement, or any other suitable alternative.**
 - 1.2 In the event that. Condition 1 cannot be achieved, the applicant/owner is required to apply for a modification to this planning approval demonstrating an alternative car parking configuration which allows all vehicle movements and manoeuvring to occur wholly within the exclusive lot area of the subject site prior to submission of an application for building licence for the internal fit out of the premises and/or first occupation or commencement of the development, whichever is the sooner. Should such application be made to the Council, a reassessment of the car parking requirements applicable to the proposed use will occur which may result in alterations to the proposed floor area and layout of the premises being required.**
 - 1.3 Any application for building licence for the internal fit out of the premises is to be consistent with the approved plans dated received 15 August 2011 and the conditions of this planning approval, except as otherwise allowed for by any application for modification to**

planning approval approved by the Council, to the satisfaction of the Executive Manager Built Life.

- 1.4 All development, including the location of all car parking bays, is to be setback a minimum of 1.0 metre from the right-of-way for the length of the common boundary with the right-of-way to allow for the future widening of the right-of-way.**
- 1.5 Before the subject development is first occupied or commences operation, a minimum of 4 on site car bays (including 1 universal access bay) being provided on Lot 10, lined-marked and designed, together with their access aisles, in accordance with AS2890.1. Should the applicant seek an alternate car parking layout than that illustrated on the approved plans, this shall be demonstrated in a revised car parking plan/site plan for the development prior to the issue of a building licence to the satisfaction of the Executive Manager Street Life , and in accordance with Conditions 1 and 2 of this approval to the satisfaction of the Executive Manager Built Life.**
- 1.6 Disabled parking bay(s) are to be provided in accordance with the Building Code of Australia.**
- 1.7 Development to operate in accordance with the written information dated received 11 July 2011 accompanying the development application, except as otherwise altered by the approved plans or conditions of this approval, or any subsequent application for planning approval approved by the Council.**
- 1.8 The operating hours of the Small Bar shall not commence prior to 7:00am and shall not exceed 12 o'clock midnight, in any instance.**
- 1.9 The movement of delivery vehicles and activities outside buildings are to be limited to the hours of 7:00am to 7:00pm Monday to Friday and 8:00am to 12 noon Saturday.**
- 1.10 The development to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 at all times.**
- 1.11 Prior to the issue of a building license for the internal fit out of the premises, the applicant/owner is to submit an Acoustic Consultant's Report that details acoustic modelling on the proposed installations, activities and processes, to the satisfaction of the Manager Building Unit. The report shall include proposed sound level measurements of equipment both individually and in combination. The acoustic report shall also give modelling on the impact of noise on adjoining and surrounding residences. The report shall include the presence of tonal components, amplitude or frequency modulations or impulses to ensure the noise emissions are in compliance with the requirements of the Environmental Protection Act 1986 and the Environmental Protection (Noise) Regulations.**

- 1.12 Prior to first occupation or commencement of the development, the applicant/owner is to arrange and submit an Acoustic Consultant's Report on the installations, activities and processes, giving actual sound level measurements of equipment, both individually and in combination, to the satisfaction of the Manager Building Unit. The acoustic report shall give actual measurements of the impact of noise on adjoining and surrounding residences. The report shall include the presence of tonal components, amplitude or frequency modulations or impulses to ensure the noise emissions are in compliance with the requirements of the Environmental Protection Act 1986 and the Environmental Protection (Noise) Regulations.
- 1.13 Council's Environmental Health Services reserves the right to request modifications to the venue to attenuate noise when and if required to ensure continued compliance with the Environmental Protection (Noise) Regulations 1997.
- 1.14 This approval does not include any modifications to the external appearance of the building. Any changes to the external appearance of the building are subject to a separate application for planning approval.
- 1.15 This approval does not include the approval of any signage. Any signage for the development to be the subject of a separate sign licence application.
- 1.16 This approval is for the use of the building as 'Small Bar' only. Any alternative use of the premises will require the submission of an application to Council for a change of use.
- 1.17 This approval is valid for a period of twenty four months only. If development is not commenced within this period, a fresh approval must be obtained before commencing or continuing the development.
- 1.18 Compliance with Council's Building, Environmental Health and Technical Services requirements.

Advice to Applicant:

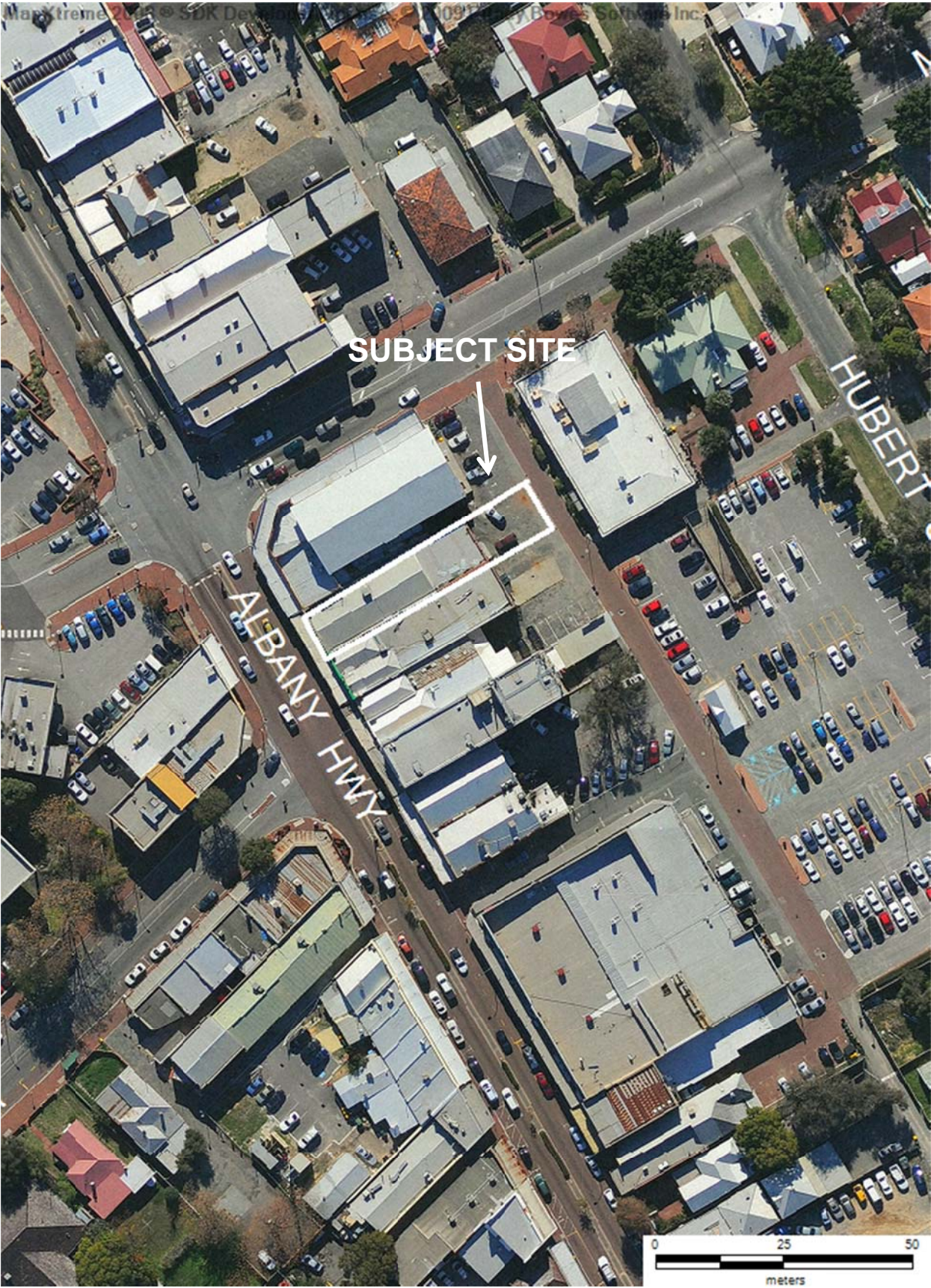
- 1.19 Should the applicant be aggrieved by this decision a right of appeal may exist under the provisions of the Town Planning Scheme or the Metropolitan Region Scheme and the applicant may apply for a review of the determination of Council by the State Administrative Tribunal within 28 days of the date of this decision.
- 1.20 Any modifications to the approved drawings forming part of this planning approval may require the submission of an application for modification to planning approval and reassessment of the proposal.

(Absolute Majority Required)

2. The owners and occupiers of surrounding properties who made submissions in respect of the development be advised of Council's decision.
 3. Clause 2 of Council Policy PLNG16 being amended to reflect the following:
 - “2. The following car parking requirements for a Restaurant use shall apply:
 - (i) A reduced ratio of 1 bay for every 6 square metres of net lettable area of sit down dining areas including walkways and counter queuing space, excluding queuing spaces for drive through. No additional parking is required for a Fast Food Outlet component of a Restaurant use or for alfresco dining areas; OR
 - (ii) A ratio of 1 bay per 4.5 square meters of exclusive sit down dining area and publicly accessible counter/queuing areas (measured at a depth of 1.0 metre for the full length of any counter/bar areas where food/beverages are provided to queuing customers);
- whichever is the lesser.”
4. Council acknowledge that applications for Small Bars within the Town will be assessed based upon the car parking requirements being the same as for a Restaurant.

Note: Administration writes to the WA Small Bars Association to advise that the Council have approved for a small bar to operate in the Town of Victoria Park.

CARRIED (7-0)



**12.3 Amendment No. 54 to Town Planning Scheme No. 1 –
Reclassification of 31 (Lots 62, 63, 64 and 100) Rushton Street,
Victoria Park from “Local Scheme Reserve – Parks and
Recreation” to “Office/Residential” zone**

File Ref:	PLA0003/54	In Brief <ul style="list-style-type: none"> • Proposed reclassification of land occupied by the Victoria Park Croquet Club from Local Scheme Reserve “Parks and Recreation” to “Office/Residential” zone. • A portion of the site which is reserved “Primary Regional Roads” under the Metropolitan Region Scheme is not proposed to be reclassified. • Proposed realignment of the Precinct Plan boundaries to locate the entire site within Precinct Plan P6 ‘Victoria Park Precinct’. • Provision of new development standards for the site within Policy 4.14. • Recommended that Council initiate Amendment No. 54 to Town Planning Scheme No. 1.
Appendices:	No	
DA/BA or WAPC Ref:	N/A	
Date:	31 August 2011	
Reporting Officer:	H Gleeson	
Responsible Officer:	R Cruickshank	

TABLED ITEMS:

- Town of Victoria Park Town Planning Scheme No. 1 Precinct Plan P6 ‘Victoria Park Precinct’;
- Town of Victoria Park Town Planning Scheme No. 1 Precinct Plan P3 ‘Causeway Precinct’;
- Amendment No. 54 Plan;
- Proposed Area 6B development standards within Policy No. 4.14; and
- Municipal Heritage Inventory Place Record Form – Victoria Park Croquet Club

BACKGROUND:

At the Ordinary Council Meeting dated 15 March 2011, Council adopted the Lathlain Park Precinct Master Plan, which explores opportunities and rationalisation of land uses located on and around Lathlain Park in Lathlain, to ensure that an appropriate, best use and sustainable development of the precinct would occur.

At the Ordinary Council Meeting dated 17 May 2011, Council resolved to consider the possibility of rezoning of several properties in Victoria Park, including 31 Rushton Street, Victoria Park (Victoria Park Croquet Club) in view of the rationalisation of community and sporting groups at the proposed Multi-Purpose Sports Facility at Carlisle and in order to make best use of the subject site.

DETAILS:

The subject site is occupied by the Victoria Park Croquet Club and owned in fee simple by the Town. The site is comprised of five lots and has a total area of 3898.8m². The majority of the land is located within the Victoria Park Precinct and is classified as a Local Scheme Reserve “Parks and Recreation” with a 398m² portion adjacent to Shepperton Road reserved “Primary Regional Roads” under the Metropolitan Region Scheme. A 23.3m² portion is zoned “Office/Residential” and is located within the Causeway Precinct.

The proposed Amendment involves reclassification of the land from Local Scheme Reserve “Parks and Recreation” to “Office/Residential” zone, realigning the Precinct Plan boundaries to excise the site from the Victoria Park Precinct and include it within the Causeway Precinct and adopt specific development provisions for the site within Policy 4.14 – Development Standards for the Causeway Precinct.

The site is occupied by established trees along the Shepperton Road frontage which fall within the “Primary Regional Roads” reserve and a clubhouse comprised of two buildings and associated croquet greens sited on the “Parks and Recreation” reserve and “Office/Residential” zone. The clubhouse is listed on the Town’s Municipal Heritage Inventory as having aesthetic, historic and social significance.

The site abuts “Office/Residential” zoned land to the west and grouped and single dwelling sites zoned “Residential R40” to the north and to the east along Rushton Street.

Legal Compliance:

Town of Victoria Park Town Planning Scheme No. 1

Clause 47 (1) of the Town Planning Scheme Text states that:

“Council may only amend or revoke a Scheme Document with the exception of a Council Register in accordance with the procedures applying to a Town Planning Scheme Amendment set out in Section 7 of the Act.”

Under regulations 17(1) & (2) and 25(fb) of the Town Planning Regulations 1967, the Council must consider all submissions received on the amendment and resolve whether the amendment will be adopted with or without modifications or whether it does not wish to proceed with the amendment within 42 days of the end of the advertising period or such longer period as the Minister may approve.

Under regulation 18(1) of the Town Planning Regulations 1967, the Council must forward the amendment to the Western Australian Planning Commission for a decision on final approval within 28 days of passing a resolution under regulation 17(2).

The Western Australian Planning Commission will consider the Amendment and any submissions received and make a recommendation to the Hon Minister for Planning concerning determination. Upon receipt of the Western Australian Planning Commission's recommendation the Hon Minister will consider the matter then make a determination on the outcome of the Amendment, which may include finalisation of the Amendment, modifications to the Amendment that may or may not require readvertising or refusal to finalise the Amendment.

Policy Implications:

Nil

Strategic Plan Implications:

Nil

Financial Implications:

Internal Budget:

Nil

Total Asset Management:

New croquet facilities could be accommodated at the proposed Multi-Purpose Sports Facility in Carlisle.

Sustainability Assessment:

External Economic Implications:

Nil

Social Issues:

New croquet facilities could be accommodated at the proposed Multi-Purpose Sports Facility in Carlisle.

Cultural Issues:

Further consideration will need to be given to either retaining the listed Croquet Clubhouse on the subject site or relocating the building to an alternative site at a later date.

Environmental Issues:

The established trees fronting Shepperton Road which are located in the portion of the site affected by the MRS road reserve, would be retained on the site at this stage. However, it should be noted that the trees may be removed by Main Roads at such time as road widening occurs.

COMMENT:

Loss of Reserve

The majority of the site is currently classified as a Local Scheme Reserve “Parks and Recreation” to reflect the longstanding use of the site as a croquet club. In view of the Council’s decision to seek to accommodate the croquet club into the proposed Multi-Purpose Sports Facility at Carlisle, there is an opportunity to consider reclassifying the land.

It is considered that loss of this Local Scheme Reserve “Parks and Recreation” would not have an adverse impact on the amenities of the local residents. The site is only able to be used by members of the Croquet Club which total approximately 25 in number and the site cannot be freely used by the general public. Accordingly, the reserve does not provide for the active recreation needs of the wider population. Notwithstanding that use of the reserve is currently restricted to club members, it should be noted that there are other Regional and Local “Parks and Recreation” reserves in the locality which provide for the passive and active recreation needs of residents. With regard to the current users of the reserve, a new croquet facility would be provided as part of the proposed Multi-Purpose Sports Facility in Carlisle which would meet the needs of the current members. Given the above, it is considered that loss of the reserve would not be detrimental to the amenities of the local residents or the Victoria Park Croquet Club members or result in an insufficient amount of “Parks and Recreation” reserves in the area.

Principal of “Office/Residential” zone, Development Standards and Precinct Boundary Realignment

The site currently falls within the Victoria Park Precinct, the majority of which is zoned “Residential R40”. Notwithstanding this, it should be noted that the locality has a commercial and residential character and the site abuts the “Office/Residential” zone to the west where development between 2 to 6 storeys and a plot ratio of 3 is permitted. This is a significant contrast to the low scale of development permitted along Rushton Street which has a maximum building height of 2 storeys and open space provision of 45%. The other residential properties along Rushton Street are separated from the “Office/Residential” zoned sites within the Causeway Precinct by a right-of-way which provides a buffer and helps to mitigate the visual impact of the change in scale. However, the right-of-way returns to Teddington Road and does not separate the subject site from “Office/Residential” zoned land and given this lack of separation it is considered that specific development provisions are required in order to respect the scale of development within both precincts. It is considered that development up to 4 storeys adjacent to the adjoining “Office/Residential” zone to the west that steps down to 2 storeys adjacent to the Rushton Street and the “Residential R40” zoned property to the north together with adequate setbacks and land use provisions would be an appropriate transition between the large scale mixed use development that is possible on the adjoining “Office/Residential” site and medium density residential streetscape along Rushton Street.

It is recommended that the use of the site be Multiple Dwellings, Grouped Dwellings and/or Offices and that retail uses such as shops and restaurants be discouraged in

order to protect the amenity of surrounding residents and so as not to undermine the viability of the retail hub and commercial core.

For the two lots adjacent to Nos. 33 & 33A Rushton Street commercial uses would only be permitted on the ground floor only and incidental to a dominant residential use. This will ensure most commercial uses would be sited towards Shepperton Road away from the adjoining residential properties. A Plot Ratio of 1.0 is recommended to ensure the intensity of the use/s on the site would not give rise to conditions that would be detrimental to the surrounding residents.

The development standards include provisions that the building height be limited two storeys adjacent to Rushton Street and Nos. 33 & 33A Rushton Street with development gradually stepping up to 4 storeys towards the rear and along Shepperton Road. A minimum front setback of 6m is proposed along Rushton Street adjacent to Nos. 33 & 33A Rushton Street stepping down to 4m and then 3m closer to Shepperton Road in order to respect the established building line of the streetscape. Vertical stepping of the development will also respect the built form of the Shepperton Road streetscape as building heights will reduce up the hill and the development will not appear so obtrusive due to the slope of the land along this section of the street.

It is considered that these specific land use and development provisions would protect the amenity of surrounding residents by siting the commercial land uses and building bulk towards Shepperton Road and the western boundary and that the principle of the “Office/Residential” zoning is acceptable.

Given that it is considered a mixed use development would be appropriate for the site it is recommended the site be excised from the Victoria Park Precinct and be included in the Causeway Precinct.

Other Matters

The Municipal Heritage Inventory states that the clubhouse has aesthetic, historic and social heritage significance and is in a good condition. The clubhouse will not be demolished as part of this proposed Amendment and the future of the building will be determined by Council at a later time.

The “Primary Regional Roads” reserve will not be reclassified as part of this Amendment. This land would be ceded to the Crown for road widening when the subject lots that comprise the site are amalgamated or re-subdivided in the future.

Conclusion

In view of the above, it is recommended that Council resolve to initiate Amendment 54 to the Town of Victoria Park Town Planning Scheme No. 1.

RESOLVED:

Moved: Councillor Hayes

Seconded: Councillor Bissett

1. Council resolve pursuant to Section 75 of the Planning and Development Act 2005 to initiate Amendment No. 54 to amend the Town of Victoria Park Town Planning Scheme No. 1 as follows:

1.1 Reclassify 31 (Lots 62, 63, 64 and 100) Rushton Street, Victoria Park from Local Scheme Reserve “Parks and Recreation” to “Office/Residential” zone.

1.2 Amend Precinct Plan P6 Victoria Park Precinct and Precinct Plan P3 Causeway Precinct to realign the boundary and include Lots 62, 63, 64 and 100 within Precinct Plan P3 Causeway Precinct.

1.3 Amend Town Planning Scheme No. 1 Policy Manual Policy 4.14 ‘Development Standards for Causeway Precinct’ as follows:

- At Clause 4.14.2 ‘Development Provisions for Designated Areas’ add the words “Area 6B. Croquet Club Site” after “Area 6. Low Rise Mixed Use’
- At Figure A2.1 ‘Designated Areas’ modify the Figure to include the subject sites within the Precinct, to include the area “6B Croquet Club Site” in the legend, and to identify the subject sites as being part of Area 6B.
- To insert the following provisions after ‘Figure A2.8: Development Provisions for Area 6’ and before the provisions for ‘g) Area 7 Commercial Core’:

“g) AREA 6B CROQUET CLUB SITE

(i) Desired future character: *The area is to act as an interface between the Commercial Core and medium density residential area of the Victoria Precinct whilst providing an attractive entry statement to the Causeway Precinct.*

(ii) Land use: Residential and/or commercial uses, but not retail uses such as Shops, Restaurants etc. On Lots 64 and 100 commercial uses only permitted on the ground floor in conjunction with residential uses and only permitted where the residential use is the primary component.

(iii): Density: R80

(v) Building height and form: Maximum 4 storeys (maximum

15m) to Shepperton Rd at frontage line. Maximum 2 storeys (maximum 7.5m) to Rushton Street with floors above the first 2 storeys to be a maximum of 4 storeys (maximum 15m) and to be setback a minimum of 4m behind the ground floor. Maximum 2 storeys (maximum 7.5m) within 20m of northern boundary shared with Nos. 33 & 33A Rushton Street.

Development to incorporate vertical stepping.

Building form to enable cross ventilation and natural light while maintaining appropriate street frontages.

- (vi) **Setbacks:** Buildings to be setback in accordance with the R40 side setback standards of the R-Codes from the northern boundary shared with Nos. 33 & 33A Rushton Street.
Development on Lot 100 to be setback a minimum of 6m from Rushton Street.
Development on Lot 64 to be setback 4m from Rushton Street.
Development on Lots 62 & 63 to be setback 3m from Rushton Street.
Nil setback permitted to Shepperton Road Reserve.
Nil setback permitted to western boundary.

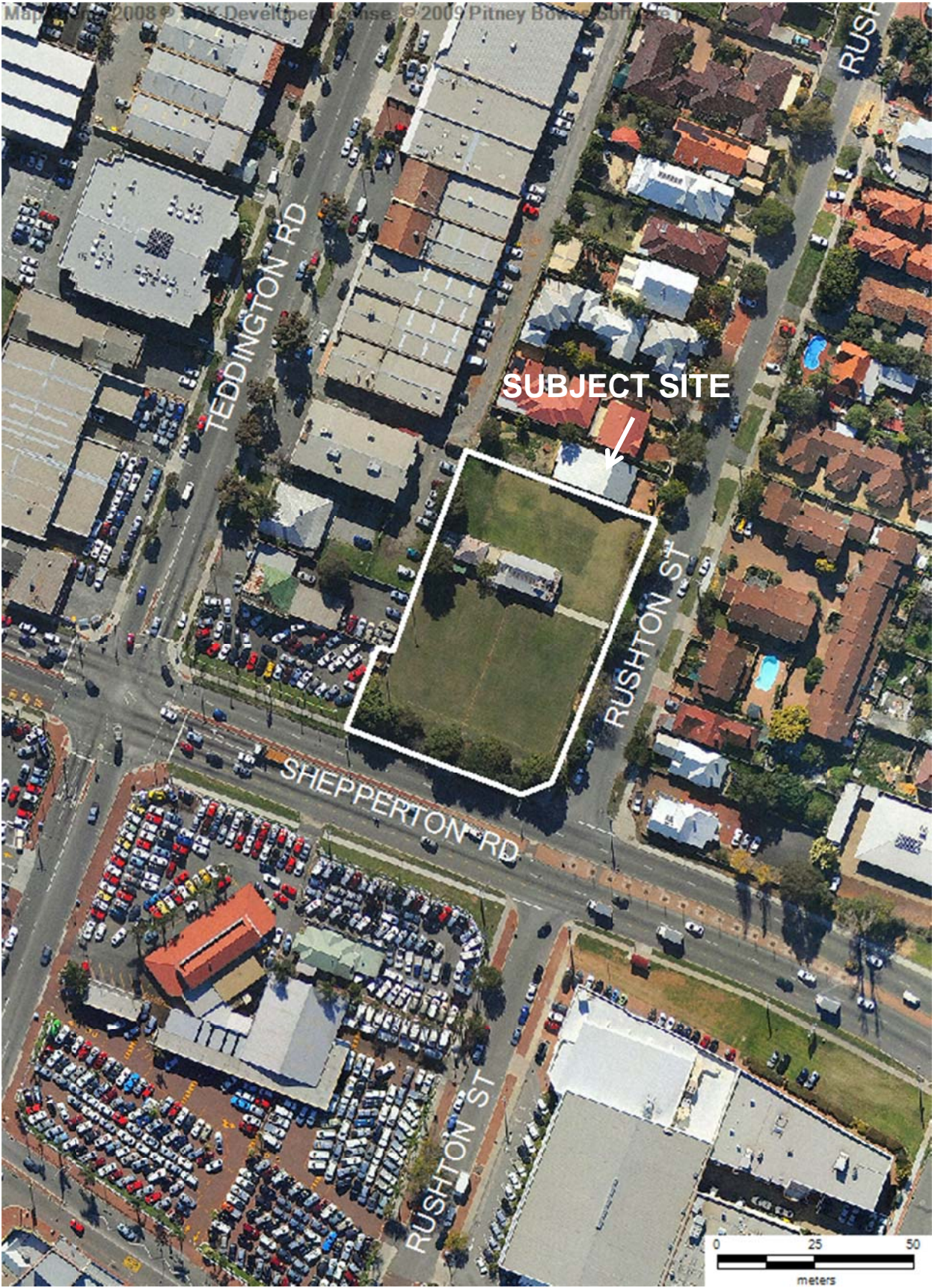
- (vii) **Access and parking:** No vehicle access off Shepperton Road.
Vehicle access to retain existing street trees where possible.
All car parking screened from street view.

(viii) Other: **Development on Lot 100 to comply with R40 Privacy standards of the R-Codes in relation to Nos. 33 & 33A Rushton Street. Provide separate clearly identifiable entries for residential and commercial uses with adequate pedestrian weather protection at entries.**

Development must present an articulated frontage to both the Shepperton Road and Rushton Street frontages and also provide a high standard of landscaping to both frontages, particularly the Rushton Street frontage.”

- **At ‘i) AREA 9 SHEPPERTON ROAD STREETSCAPE OVERLAY’, (ii) Lot size and development controls’ insert the words “, Area 6B Croquet Club Site” after ‘either Area 2 Asquith St Mixed Use’ in the first sentence only.**
 - **Amend ‘g) AREA 7 COMMERCIAL CORE’ to “h) AREA 7 COMMERCIAL CORE”**
 - **Amend ‘h) AREA 8 RETAIL HUB OVERLAY’ to “i) AREA 8 RETAIL HUB OVERLAY”**
 - **Amend ‘i) AREA 9 SHEPPERTON STREETSCAPE OVERLAY’ to “j) AREA 9 SHEPPERTON STREETSCAPE OVERLAY”**
 - **Amend the contents page and page numbers of the following pages as required.**
- 2. The Chief Executive Officer and Mayor be authorised to execute the Town Planning Scheme No. 1 Amendment No. 54 documents.**
- 3. Amendment No. 54 be referred to the Department of Environment and Conservation prior to the commencement of advertising of the Amendment.**

CARRIED (7-0)



12.4 Review of Provisions of Council’s Local Planning Policy – Boundary Walls
--

File Ref:	PLA0001	In Brief <ul style="list-style-type: none"> • Review of the provisions of Council’s Local Planning Policy – Boundary Walls. • Recommended that proposed modifications to the Policy be advertised for public comment.
Appendices:	Yes	
DA/BA or WAPC Ref:	N/A	
Date:	2 September 2011	
Reporting Officer:	I Ahmad	
Responsible Officer:	R Cruickshank	

TABLED ITEMS:

- Local Planning Policy – Boundary Walls

BACKGROUND:

Council’s Local Planning Policy – Boundary Walls was adopted on 4 August 2009. The primary objective of this Policy is to outline the requirements that apply for applications for residential development that incorporate boundary walls within the Town of Victoria Park, except for Sunbury Park Estate which is the subject of the Sunbury Park Site Design Guidelines.

It should be highlighted that the current Local Planning Policy – Boundary Walls prevails over Clause 6.3.2 of the Residential Design Codes (2008) which contains provisions relating to boundary walls. The Residential Design Codes (otherwise known as R-Codes) which provide for the control of residential development throughout the State were gazetted in October 2002 and have been further updated. The updated version of the Residential Design Codes was recently gazetted in 2010.

The R-Codes provide for Councils to prepare and adopt local planning policies to deal with local circumstances and character, including the power to prepare a local planning policy dealing with boundary walls.

DETAILS:

The Council’s Local Planning Policy – Boundary Walls permit walls of residential dwellings (both new dwellings and additions to existing dwellings) to be constructed on the side or rear boundary or within close proximity of the side or rear boundary, subject to specified limitations. The construction of a wall in such situations is termed a “boundary wall”, which is often described by many people as a “parapet wall”.

A copy of the existing Local Planning Policy – Boundary Walls with proposed changes marked is included in the Appendices.

Council’s Planning Services have identified deficiencies in the application of the above requirements which are required to be addressed. In addition, with the adoption of the revised R-Codes in 2010, it is therefore considered appropriate to review and update the current Local Planning Policy relating to boundary walls.

Legal Compliance:

The following extract from the Residential Design Codes of Western Australia 2010, refers to local planning policies,

“The Codes aim to obviate the need for the use of Local Planning Policies which generate generic provisions, such as those designed to protect privacy and to design for streetscape, by incorporation of these aspects within the Codes. However the Codes recognise that local differences of character must be accommodated. Accordingly, Local Planning Policies, properly advertised and adopted by similar procedures as those set out in the Model Scheme Text are the appropriate method to accomplish this aim and only these will have the required effect.”

The requirements for advertising a Local Planning Policy under the Model Scheme Text are as follows:

1. Publish a notice of the proposed Policy once a week for two consecutive weeks in a newspaper circulated in the Scheme area giving details of :
 - (i) where the draft policy may be inspected;
 - (ii) the subject and nature of the draft policy; and
 - (iii) in what form and during what period (being not less than 21 days from the day the notice is published) submission may be made;
2. May publish a Notice of the proposed Policy in such other manner and carry out such other consultation as the local government considers appropriate.
3. After the expiry of the advertising period the local government is required to review the policy in light of the submission made and resolve to adopt the Policy with or without modification, or not to proceed with the Policy.
4. If the local government resolves to adopt the Policy, the following must be undertaken:
 - (i) publish notice of the policy once in a newspaper circulated in the Scheme area; and
 - (ii) if, in the opinion of the local government, the Policy affects the interests of the Commission, forward a copy of the Policy to the Commission.

The Policy has effect on publication of a notice under 4(i) above.

Given the wording of the clause under the Model Scheme Text, it is considered that a “Streetscape” Local Planning Policy will not affect the interest of the Commission and therefore would not need to be forwarded to the Commission.

Advertising of any amendments to an existing Local Planning Policy is required to follow the same procedure as if a new Local Planning Policy was proposed to be adopted.

Policy Implications:

Any proposed modifications to the provisions contained within the Local Planning Policy – Boundary Walls will need to be undertaken in accordance with the provisions of the Model Scheme Text, as outlined above. This will require advertising of the modification for public comment, and consideration of any submissions received, prior to adoption by Council.

It is recommended that advertising of the proposed modifications to the provisions of the Local Planning Policy relating to boundary walls in the Town of Victoria Park, be undertaken for a period of 21 days. Advertising will comprise a notice being published in the Southern Gazette newspaper for two consecutive weeks. In addition, the draft modifications will be made available on the Council's website and at the Council's Administration Centre and Library for the entire comment period. Following the conclusion of advertising, a report will be presented to Council for its consideration with a view to adopting the proposed modifications to the Policy (with or without changes).

Sustainability Assessment:

External Economic Implications:

No impact.

Social Issues:

No impact.

Cultural Issues:

No impact.

Environmental Issues:

No impact.

COMMENT:

The review of the Local Planning Policy – Boundary Walls involves a number of changes to the current provisions which are identified below:

Definition of a Boundary Wall

The current Local Planning Policy – Boundary Walls defines a boundary wall as either a wall located on the boundary or a wall without any openings located between the boundary and the setback required by Table 2A and Figure 3 of the R-Codes. The Policy further states that a wall with minor or major openings is not regarded as a boundary wall, and will be assessed as per boundary setback compliance of the R-Codes.

The effect of this provision is that if a wall with no openings is proposed either on a boundary or located between the boundary and the required setback and complies with the relevant limitations on wall height and length, such wall, which is regarded as a boundary wall, is considered to meet the Acceptable Development standards and therefore, consultation with the adjoining owners and occupiers would not be required.

Such situations typically apply to dwellings which incorporate boundary walls to garages or store rooms where there are no openings proposed. It is envisaged that the compliant boundary walls would not have any significant adverse effect on the amenity of the adjoining property in terms of building bulk or solar access.

However, structures such as carports or patios, which feature posts/ columns either on the boundary or between the boundary and the setback required as per the R-Codes with its side that abuts the common boundary being unenclosed, are not defined as a boundary wall under the current Policy and are subject to boundary setback compliance of the R-Codes.

This is due to the fact that the unenclosed side portion of a carport or patio that abuts the common boundary is regarded as a minor opening. This would result in minor applications involving structures such as carports or patios to be advertised for community consultation due to the non-compliance with the boundary setback requirements of the R-Codes. A carport or patio of a maximum length and height of 9.0m and 3.5m respectively would normally attract a setback of 1.0m minimum from the property boundary.

The requirement to consult the adjoining owners and occupiers pertaining to such non-compliant matters is often regarded to be time consuming and redundant given that a structure with an unenclosed side that abuts the common boundary are considered to have a lesser impact on the amenity of the adjoining property compared to a compliant solid boundary wall of a similar height and length which would be regarded as a boundary wall, would be permitted and would otherwise be exempted from neighbour consultation.

To address this anomaly, it is recommended that the Local Planning Policy redefines a boundary wall to be either:

- a wall located on the boundary; or
- a wall without any windows located between the boundary and the setback required by Table 2A and Figure 3 of the Residential Design Codes.

In addition, the current Policy shall also be modified to specifically state that only walls which feature windows to minor openings or major openings are not regarded as a boundary wall, and such walls be assessed for compliance with the relevant boundary setback requirements as per the R-Codes (2010).

Residential Design Codes (2010)

With the updated version of the R-Codes being gazetted in 2010, the review of the Local Planning Policy – Boundary Walls also seeks to ensure that the provisions are generally consistent with the revised R-Codes relating to boundary walls. As such, THE Policy is to be modified accordingly.

Conclusion

The review of the provisions of the Local Planning Policy – Boundary Walls will address issues associated with the current boundary wall provisions and to ensure that this Policy is generally consistent with the provisions of the updated version of the R-Codes (2010) relating to boundary walls.

In view of the above, it is recommended that Council agree to advertise the review of the provisions of the Local Planning Policy – Boundary Walls for public comment. A report will be presented to Council following the conclusion of the advertising period, and prior to final approval of the revised Policy.

RESOLVED:

Moved: Councillor Skinner

Seconded: Councillor Armstrong

1. **The Council's Local Planning Policy – Boundary Walls be modified to read as follows:**

LOCAL PLANNING POLICY – BOUNDARY WALLS

Purpose

The purpose of this Policy is to outline the requirements that apply for applications for residential development that incorporate boundary walls, within the Town of Victoria Park.

Objective

- To provide certainty for applicants, landowners and Council staff regarding the applicable requirements for boundary walls.
- To define boundary walls for the purposes of planning applications in the Town of Victoria Park.
- To clarify those aspects where the Town has varied the boundary wall requirements of the Residential Design Codes.
- To outline the consultation requirements that apply for applications that propose boundary walls.

Background

- The Residential Design Codes were gazetted on 4 October 2002 and a revised version of the Codes were gazetted on 22 November 2010.
- The Residential Design Codes require all residential development to conform to the Codes (except where a Town Planning Scheme overrides specific provisions).
- Clause 6.3.2 and 7.1.4 of the Residential Design Codes (2010) contains provisions relating to boundary walls.

- The Codes enable Council to prepare its own Local Planning Policy for boundary walls.
- This Local Planning Policy shall override Clause 6.3.2 and 7.1.4 of the Residential Design Codes (2010).
- In assessing applications for planning approval that include boundary walls, Council will have regard to this Policy.

Application

This Policy applies to all land within the Town to which the Residential Design Codes apply. This Policy does not apply to Sunbury Park Estate which is the subject of the Sunbury Park Site Design Guidelines.

This Policy deals only with the Planning issues relating to boundary walls. It does not deal with the structural and fire safety requirements, for which applicants should consult with Council’s Building Unit.

Definition

“Boundary wall” is defined as:

- (a) a wall located on the boundary; or
- (b) a wall without any windows located between the boundary and the setback required by Table 2A and Figure 3 of the Residential Design Codes.

Walls to a dwelling with windows to minor openings or major openings are not regarded as a boundary wall, and will be assessed for compliance with Clause 6.3.1 and 7.1.4 of the Residential Design Codes (2010).

Development Standards

Performance Criteria	Acceptable Development
<p><i>P1 Buildings with boundary walls where it is desirable to do so in order to :</i></p> <ul style="list-style-type: none"> • <i>make effective use of space; or</i> • <i>enhance privacy; or</i> • <i>otherwise enhance the amenity of the development; or</i> • <i>not have any</i> 	<p><i>A1 Boundary walls to all Single Houses, all Grouped Dwellings and Multiple Dwellings with a coding of less than R30 within the following limits, subject to the overshadowing provisions of design element 6.9 and 7.4 of the Residential Design Codes :</i></p> <ul style="list-style-type: none"> <i>i. Boundary walls shall be constructed behind a 6.0 metre front setback (excluding carport structures open on all sides) to a primary street or behind a 3.0m front setback to a</i>

<p><i>significant adverse effect on the amenity of the adjoining property or streetscape; and</i></p> <ul style="list-style-type: none"> • <i>ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.</i> 	<p><i>secondary street or where a lot results from subdivision of a former corner lot and fronts the former secondary street; and</i></p> <ul style="list-style-type: none"> <i>ii. Boundary walls are permitted to abut an existing or simultaneously constructed wall of similar or greater dimension on the adjoining property; or</i> <i>iii. In areas coded R20 and R25, walls not higher than 3.0m with an average of 2.7m up to 9m in length; or</i> <i>iv. In areas coded R30 and higher, walls not higher than 3.5m with an average of 3.0m for either: (a) 2/3 the length of the balance of the boundary behind the front setback; or (b) up to 9.0 metres in length; whichever is the greater.</i>
<p>P2 <i>In mixed use development, in addition to the above:</i></p> <ul style="list-style-type: none"> • <i>Side boundary setback to a retail/commercial component of a development is in accordance with the existing street context, subject to relevant local planning scheme provisions.</i> • <i>Retail/commercial development adjoining residential is designed to minimise the potential impacts between the two uses.</i> 	<p>A2 <i>Boundary walls for Multiple Dwellings in areas with a coding of R30 or greater and within mixed use development:</i></p> <ul style="list-style-type: none"> <i>i. The wall has a zero setback where it abuts an existing or simultaneously constructed wall of equal or greater proportions; or</i> <i>ii. A wall built to one or more side boundaries has a maximum height and average height as set out in table 4 of the Residential Design Codes and a maximum length of 2/3 the length of the balance of the boundary behind the front setback.</i>

Notes-

- (a) Where the subject site and an affected adjoining site are subject to different density codes, the length and height of the boundary wall on either site is determined by reference to the lower density code.

- (b) Notwithstanding the definition of wall height in the Residential Design Codes, the height of the boundary wall shall include the height of any retaining where fill has occurred or is proposed on the subject lot. Where cut has occurred on the site adjoining the subject lot, the height of the boundary wall shall be measured relative to the finished ground level of the adjoining site.
- (c) In order to reduce the height and impact of boundary walls, it is recommended that boundary walls be designed with the gutter on top of the wall in lieu of parapet walls.
- (d) Wall lengths are calculated relative to the boundaries of each proposed strata lot, rather than being calculated relative to the boundaries of the original parent lot.
- (e) Two storey (or more) boundary walls will generally not be supported unless it abuts an existing or simultaneously constructed boundary wall of similar or greater dimension.

Consultation

Applications that comply with Acceptable Development standards

Where an application complies with the Acceptable Development standards of this Policy, details of the compliant boundary wall will not be referred to owners/occupiers of the adjoining property for comment.

Applications that do not comply with Acceptable Development standards

Where an application does not comply with the Acceptable Development standards of this Policy, the details of the application for the boundary wall will be referred to the owners/occupiers of the adjoining property for comment in accordance with Council Policy GEN3 'Community Consultation'.

Following consultation being undertaken, Council Officers will assess whether the application complies with the Performance Criteria standard prior to making a decision on the application.

- 2. The advertising and consultation process for the proposed modifications to the Local Planning Policy – Boundary Walls, as outlined in 1 above, be as follows:
 - 2.1 A formal notice relating to the draft modifications to the Local Planning Policy – Boundary Walls being published in the Southern Gazette at the commencement of the advertising period on 27 September 2011 and again in the Southern Gazette on 4 October 2011.

- 2.2 Details of the proposed draft modifications to the Local Planning Policy – Boundary Walls being placed on the Council’s website and made available at the Administration Centre and Library from 27 September 2011, through to the conclusion of the advertising period on 17 October 2011.**

CARRIED (7-0)

13. RENEW LIFE PROGRAM REPORTS

13.1 Movies by Burswood - Request to Occupy Council Property – Former Lathlain Pre-Primary School, 6-8 Planet Street, Lathlain

File Ref:	PRO1054	In Brief <ul style="list-style-type: none"> • Movies by Burswood request the use the former Lathlain Pre-Primary School premises on a short term basis. • Approval recommended.
Appendices:	No	
Date:	5 September 2011	
Reporting Officer:	W. Bow	
Responsible Officer:	A. Vuleta	

TABLED ITEMS:

- Nil

BACKGROUND:

In November 2010 the Department of Education and Training (DET) relinquished their leasehold over the Lathlain Pre-Primary School at Lots 593, 504, 505 and 596 Planet Street, Lathlain (the property). A plan and aerial overlay of the property is attached.

This freehold property is owned in fee simple by the Town with the land zoned “Civic Use – Public Purpose” under the provisions of the Town Planning Scheme.

Staff have been working with the DET to ensure compliance with the terms of the lease since last year.

The organisation, “Movies by Burswood”, have made a written request to the Town for the provisions of office space from which to undertake their administration and training. Discussions with the Town’s Business Life staff indicate that the former Lathlain Pre-Primary School site would be a suitable property for Movies by Burswood to undertake.

DETAILS:

Movies by Burswood is a four month event run almost entirely by volunteers that gives 100% of its profits to Western Australian children’s charities. The outdoor film season was created 10 years ago and provides affordable cinema events to the community, targeting family groups, during the summer months. The operational costs to run the venue are completely funded by sponsors and the venue is run 100% by volunteers. Audiences can reach up to 1500, with total attendance last season being 55,234. In 2010 Movies by Burswood raised \$702,796 for children’s charities.

Movies by Burswood will run from 8 December 2011 to 14 April 2012. All films for this venue are screened outdoors at Burswood Park by the Swan River in Burswood by a volunteer work force of approximately 400 people, many of whom come from the Victoria Park region.

Movies by Burswood are seeking a ‘home-base’ for their administration to assist them in building relationships with volunteers and the community. In the past, they have been offered vacant office space at no cost through their network of

supporters. Last year they occupied a very small space in Subiaco beside Ronald McDonald House and the year before they occupied the old CWA space in West Perth which was earmarked for demolition. Having an administration centre closer to the venue in Burswood Park would have considerable positive impact and by association, give the Town of Victoria Park great kudos.

Once the season opens, the Movies by Burswood administration centre operates out of a mobile trailer in Burswood Park. Prior to this, there is a lot of work required to prepare for the season ahead. The 400 volunteers who provide all the resources to operate must be trained, inducted and rostered. Suppliers need an address to deliver to and sponsoring organisations need to be able to send their marketing and promotional materials to an address for installation at the venue. Once the venue closes in April, a space is required for a few weeks to store materials to be collected by sponsors and for end of season administration and debriefing duties.

The office space has been requested from late September 2011 to the end of April 2012. In return for the 'in kind' use of council facilities, the Town would benefit from cross-promotional opportunities which could include -

- ticket allocations for Movies by Burswood which could be used as prizes or give aways throughout the summer months,
- cross-promotion of the Twilight Concert Series and Music by Moonlight at the venue and the Life in the Park "What's On",
- acknowledgement at the venue; on printed materials; and on the Movies by Burswood website.

Legal Compliance:

Discussion with Built Life staff indicate that the proposed use of the property for office and training purposes does not strictly accord with the town planning requirements for the Civic Use zoning of the property, however an ability for Council to afford discretion and permit the use may exist.

Concerns have been raised regarding the number of vehicle movements and the provision of parking during volunteer training and induction processes.

Given the age and previous use and tenure over the property by the DET, the building does not fully comply with the requirements of the Building Code of Australia. In particular access, egress, emergency lighting, sanitary facilities, access for persons with disability and services.

Staff have proposed that any short term use of the property by Movies by Burswood would be undertaken in accordance with a licence to occupy agreement. Notwithstanding that the licence to occupy comprises a disposal of land under the *Local Government Act 1995*, such disposal is exempt under the provisions of clause 30 of the *Local Government (Functions and General) Regulations 1996* because the land is to be disposed to a body, whether incorporated or not, the objects of which are of a charitable nature.

Policy Implications:

Nil

Strategic Plan Implications:

The operation of Movies by Burswood over the summer months adds to the “Vibrant Lifestyle” vision for the Town. Picnicking by the foreshore and watching a film under the stars has become a Victoria Park experience enjoyed by locals and visitors alike.

Financial Implications:

Internal Budget:

An “in kind” provision of office space would increase the Town’s sponsorship level with Movies by Burswood allowing for additional cross promotional opportunities. It is not proposed to apply a commercial or subsidised rental for the proposed seven month occupancy, however all outgoings (utilities, telephone and rubbish) should be covered by Movies by Burswood.

A \$2,500 building maintenance allocation has been made in the 2011/2012 budget and it is planned to use these funds to address building compliance matters such as emergency lighting, compliant door latches, access/egress and improving sanitary facilities to bring the building to a suitable state of amenity.

An allocation was also made in the 2011/2012 budget to assume responsibility for grounds maintenance upon vacation of the premises by the DET.

Total Asset Management:

The property has been identified in the Strategic Asset Review for re-zoning to “Residential R30” and subsequent development and/or disposal.

The property has also been identified as possible interim accommodation facility for community and other purposes during the Town Centre development.

Staff have been working with the DET to ensure compliance with the lease obligations and returning the property to the Town in a satisfactory standard of maintenance and repair.

Sustainability Assessment:

External Economic Implications:

Any support given to an organisation with a reputation for giving hundreds of thousands of dollars to children’s charities is a good investment in resources. Last season over \$700,000 was spread across five different charities including the Starlight Foundation, Riding for the Disabled, Ronald McDonald House, Noah’s Ark Toy Library, and Wheelchairs for Kids.

Social Issues:

Provision of office space will make it easier for Movies by Burswood to induct and train their volunteers. The Town will be seen as a supporter of Volunteering. Most of the volunteers come from the staff and families of the charities who benefit. There is also significant participation from the corporate sector, companies like Woodside, BHP,

Alcoa, HBF who run workplace volunteering programs. Every night, a team of 14 volunteers run the venue covering all roles. Each individual nominates which charity they are working for and at the end of the season, proceeds are divided by 'man hours' provided by each charity. Volunteers really get a sense that every hour they contribute to Movies by Burswood really makes a difference.

Cultural Issues:

The Town does not currently have a cinema operating in any of its commercial districts. The Movies by Burswood outdoor cinema provides a family-friendly accessible entertainment option to locals and visitors during the summer months.

Environmental Issues:

Nil

COMMENT:

A cross-program approach has been adopted in considering this proposal from Movies by Burswood with staff from the Built, Business and Community Life programs engaged and providing input.

Staff have concluded that permitting the Movies by Burswood organisation to occupy the former Lathlain Pre-Primary School property via a "licence to occupy" agreement for a period from 30 September 2011 to until 30 April 2012 is a suitable use of the property that will deliver a community dividend.

In the absence of a formal planning approval requirement staff will negotiate with Movies by Burswood to address issues such as hours of operation, parking issues, building and grounds maintenance requirements and will ensure that the Town's contribution to the organisation is duly recognised.

ADDITIONAL OFFICER'S COMMENT

Following the Elected Members Briefing Session of 13 September 2011 queries concerning the contribution of the Burswood Park Board to the Movies by Burswood organisation have been researched. The Burswood Park Board is a "principal partner" and contribute approximately \$50,000 to the Movies by Burswood organisation. This is in the form of:

- Venue provision
- Grounds maintenance
- Toilet provision and maintenance and cleaning
- Utilities
- Waste management and collection
- Parking supervision
- \$17,000 cash contribution

Currently Movies by Burswood occupy office space at Ronald McDonald House which unfortunately constrains the operational and training requirements of the organisation. Movies by Burswood have investigated lease options at commercial premises, however the lease rates are deemed prohibitive.

The issue of parking at the former Lathlain Pre-Primary School site has also been further examined. It has been determined that a condition of the Licence to Occupy

agreement will require that when Movies by Burswood undertake training and/or inductions for volunteers at the property, and where attendance is likely to exceed 10 persons, then the adjacent bituminised carpark at Lathlain Oval is to be used for car parking. The intention of this is to minimise on-street parking along Planet Street and any adverse impact on neighbourhood amenity.

The retention of the former Lathlain Pre-Primary School property was deemed critical after commencement of the Town's Strategic Asset Review. In particular, the property affords Council the ability to accommodate community and/or commercial groups within the building and the grounds may accommodate any necessary temporary accommodation buildings and the like.

RESOLVED:

Moved: Councillor Ashton

Seconded: Councillor Skinner

- 1. That Council endorse the use of the former Lathlain Pre-Primary School by the Movies by Burswood organisation, via a licence to occupy agreement, for the period 30 September 2011 – 30 April 2012 at a nil rental with all outgoings to be covered by Movies by Burswood.**
- 2. That Council delegate authority to the Chief Executive Officer to execute the relevant documentation.**

AMENDMENT:

Moved: Councillor Hayes

Seconded: Councillor Ashton

That a \$1.00 dollar rental value replace the word nil in Recommendation one.

CARRIED (7-0)

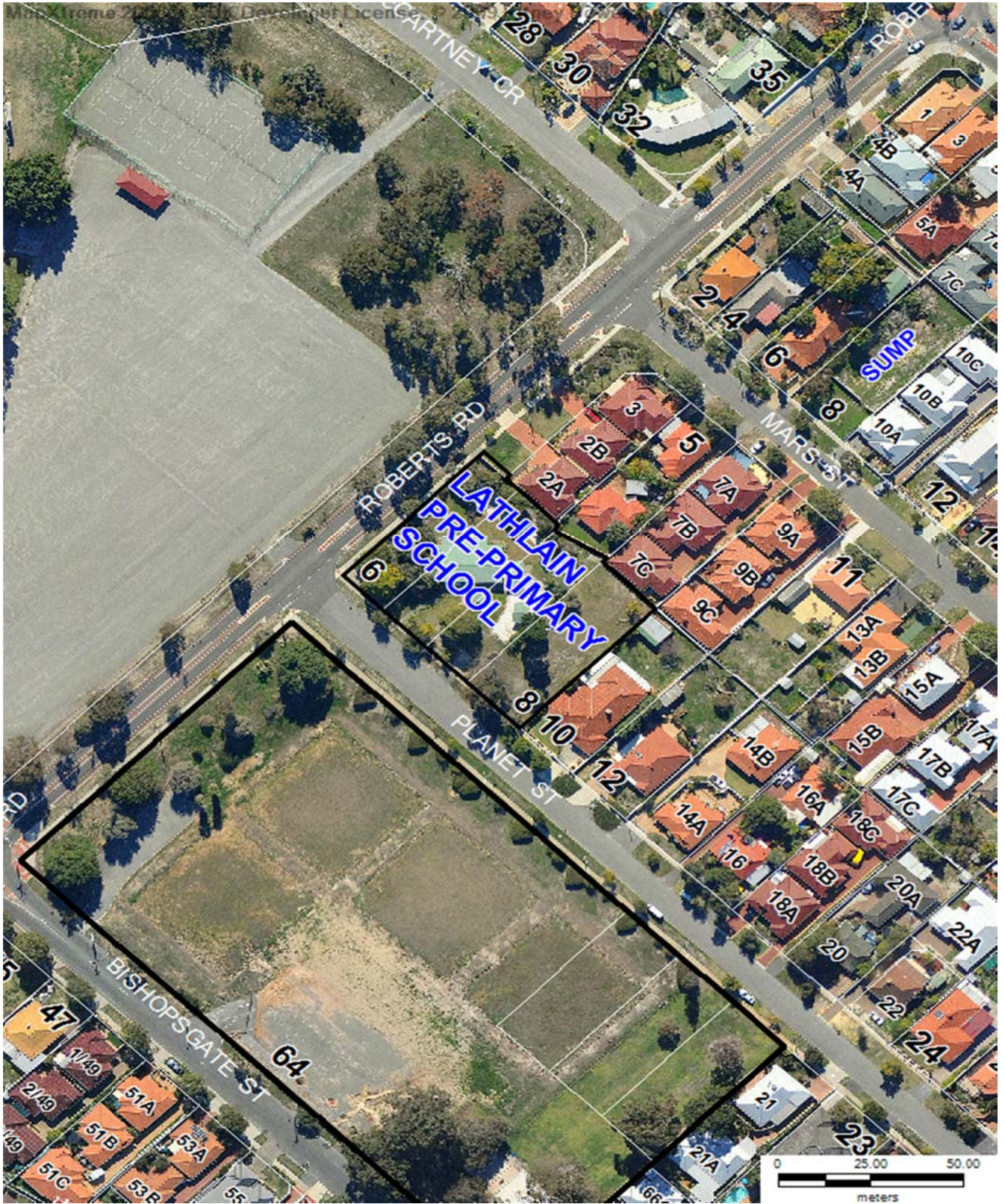
SUBSTANTIVE MOTION:

Moved: Councillor Ashton

Seconded: Councillor Skinner

- 1. That Council endorse the use of the former Lathlain Pre-Primary School by the Movies by Burswood organisation, via a licence to occupy agreement, for the period 30 September 2011 – 30 April 2012 at \$1.00 rental with all outgoings to be covered by Movies by Burswood.**
- 2. That Council delegate authority to the Chief Executive Officer to execute the relevant documentation.**

CARRIED (7-0)



Lathlain Pre-Primary School

SCALE = 1:1500



13.2 Mindarie Regional Council - Sublease to Landfill Gas and Power.

File Ref:	ADM0058	In Brief • Council to consider the Mindarie Regional Council's proposal to extend its sublease with Landfill Gas & Power
Appendices:	No	
Date:	7 September 2011	
Reporting Officer:	A Vuleta	
Responsible Officer:	A Vuleta	

TABLED ITEMS:

Confidential – Draft Sublease available to Elected Members from the Executive Officer.

BACKGROUND:

The owners of Tamala Park landfill site; the City of Wanneroo, City of Joondalup, City of Stirling, City of Perth, City of Vincent, the Town of Cambridge and the Town of Victoria Park (the Owners), lease land at Tamala Park to the Mindarie Regional Council (MRC) to be used for landfill. The original lease was entered into in October 1990, and was replaced with a new lease in 2006 which is not due to expire until 2032 (the Head lease). The sublease between Mindarie Regional Council and Landfill Gas & Power is a confidential document and is available to Elected Members from the Executive Officer.

In order to satisfy an environmental requirement that obliged MRC to appropriately manage landfill gas emissions, MRC entered into a contract and sublease with Landfill Gas & Power (LGP) in 2003 to extract gas from the landfill and to use the extracted gas to generate green electricity for distribution by Western Power.

Under the terms of the Head lease, MRC requires the consent of the Owners to enter the sublease. Council gave its consent to the original sublease at its ordinary Council Meeting of 25 February 2003.

DETAILS:

The proposed sublease maintains the previous sublease with variations. The document comprises the new sublease, which is a copy of the head lease and the expired sublease to which the new sublease refers. The variations between the expired sublease and the new sublease are set out in Schedule 2 of the new sublease.

The effect of the variations is in essence operational and financial as between the MRC and LGP. There is no direct impact on the Owners other than what MRC would consider to be advantageous commercial arrangements flowing from the variations, which ultimately would be considered to be in the interests of the members of the MRC.

The parties to the proposed sublease have been expanded to include the Owners – the existing sublease is between MRC and LGP. The reason for this change derives from changed terms in the Head Lease which replaced the original lease in 2006, sometime after the execution of the sublease in 2003. The proposed sublease also clarifies the rights and obligations of the parties under the Head Lease. MRC considered the matter at its meeting on 25 August 2011 and unanimously endorsed the proposed sublease,

subject to obtaining the consent of the Owners.

Legal Compliance:

Local Government Act 1995

Policy Implications:

Nil

Strategic Plan Implications:

Nil

Financial Implications:

Internal Budget:

Nil

Total Asset Management:

Nil

Sustainability Assessment:

External Economic Implications:

As a member of the MRC, the proposal would enhance the sustainability of the region.

Social Issues:

Nil

Cultural Issues:

Nil

Environmental Issues:

Nil

COMMENT:

Mindarie Regional Council (MRC), which leases land at Tamala Park from the Town of Victoria Park and the six other local government owners (the Owners), has a sublease with Landfill Gas & Power Pty Ltd (LGP) for the extraction of gas for the generation of electricity. The sublease recently expired and continues under holding over arrangements. MRC wishes to extend the sublease for a further period of three years and in accordance with the terms of its lease requires the consent of the Owners to do so.

The proposal to extend the sublease contains a limited number of variations from the previous sublease concerning operational and financial arrangements between MRC and LGP. It is recommended that Council gives its consent to the proposal to enter the sublease.

RESOLVED:

Moved: Councillor Vilaca

Seconded: Councillor Skinner

- 1 Council consents to the sublease between Mindarie Regional Council and Landfill Gas and Power Pty Ltd as set out at Attachment 1 to this Report and outlined in the sublease between MRC and Landfill Gas and Power Pty Ltd; and**
- 2 Council authorises the Mayor and the Chief Executive Officer to execute the sublease on behalf of the Town.**

CARRIED (7-0)

14. COMMUNITY LIFE PROGRAM REPORTS

No Reports.

15. BUSINESS LIFE PROGRAM REPORTS

15.1 Schedule of Accounts for the Period 1 July 2011 to 31 July 2011

File Ref:	FIN0015	In Brief
Appendices:	Yes	
Date:	8 September 2011	
Reporting Officer:	G. Patrick	
Responsible Officer:	B. Callander	
		<ul style="list-style-type: none"> • This report provides an overview of payments made by the Town during the month of July 2011. • Recommended that the July 2011 payments made via Accounts Payable, Payroll and Local Government Investments be confirmed.

TABLED ITEMS:

- File – cheques and supporting documents

BACKGROUND:

Council has delegated to the Chief Executive Officer the authority to make payments from the municipal and trust funds in accordance with Regulation 12(1) of the Local Government (Financial Management) Regulations 1996.

Under Regulation 13(1) of the Local Government (Financial Management) Regulations 1996, where a local government has delegated to the Chief Executive Officer the exercise of its power to make payments from the municipal fund or the trust fund, each payment from the municipal fund or the trust fund is to be noted on a list compiled for each month showing: -

- a) The payee's name;
- b) The amount of the payment
- c) The date of the payment; and
- d) Sufficient information to identify the transaction

That list should then be presented at the next Ordinary Meeting of the Council following the preparation of the list, and recorded in the minutes of the meeting at which it is presented.

DETAILS:

The list of Accounts Paid

The list of accounts paid by the CEO in accordance with Regulation 13(1) of the Local Government (Financial Management) Regulations 1996 be confirmed.

FUND	CHEQUE NUMBERS / PAY PERIODS	AMOUNTS \$
Municipal Account		
Recoup Advance Account		2,899,575.68
Bank Fees		3,244.76
Corporate Mastercard		9,483.69
		2,912,304.13
 Advance Account		
Automatic Cheques Drawn	75389 – 75506	615,405.46
Less Cancelled Cheques		(650.00)
Transfer of Payroll by EFT	F/E 5/7/2011	368,583.16
	F/E 19/7/2011	361,091.12
Direct Credits		253.35
EFT Creditor Payments		1,540,933.37
Less Returned Payments		0.00
EFT Wide Bay		13,959.22
		2,899,575.68
 Trust Account		
Cheques Drawn	2581 – 2584	900.00
Less Cancelled Cheques		0.00
		900.00

Legal Compliance:

This report and the attached lists are submitted in accordance with Regulation 13 of the Local Government (Financial Management) Regulations 1996.

Policy Implications:

Nil

Strategic Plan Implications:

Nil

Financial Implications:

Internal Budget:

Nil

Total Asset Management:

Nil

Sustainability Assessment:

External Economic Implications:

Nil

Social Issues:

Nil

Cultural Issues:

Nil

Environmental Issues:

Nil

COMMENT:

It is recommended that the payments made for the month of July 2011 be confirmed.

RESOLVED:

Moved: Councillor Skinner

Seconded: Councillor Ashton

1. In accordance with Regulation 13(1) of the Local Government (Financial Management) Regulations 1996 the List of Accounts Paid for the period 1 July 2011 to 31 July 2011 be confirmed;
2. Direct lodgement of payroll payments to the personal bank accounts of employees be confirmed;
3. Depositing and withdrawal of investments to and from accounts in the name of the Local Government be confirmed.

CARRIED (7-0)

15.2 Financial Statements for the Period Between 1 July and 31 July 2011

File Ref:	FIN0015	In Brief <ul style="list-style-type: none"> • Recommended that the Financial Statements for the period ending 31 July be adopted.
Appendices:	Yes	
Date:	8 September 2011	
Reporting Officer:	G. Patrick	
Responsible Officer:	B. Callander	

TABLED ITEMS:

- Nil

BACKGROUND:

The Town is required by the Local Government (Financial Management) Regulations 1996 to prepare, and present to Council, monthly financial statements. Reporting is being improved to show more detail on the Operating Statement as well as provide a Balance Sheet. Please note that these figures may still be subject to year end adjustments.

DETAILS:

Attached in the appendices are a copy of the Operating Statement and Balance Sheet for the month of July. Due to final adjustments still to be processed, as well as the late loading of the 2011-12 Budget into Authority, detailed explanations of all variances will be postponed.

Legal Compliance:

This report satisfies the requirements of Regulation 34 of the Local Government (Financial Management) Regulations 1996, pursuant to Section 6.4 of Local Government Act 1995 and the Local Government (Financial Management) Amendment Regulations 2005.

Policy Implications:
Nil

Strategic Plan Implications:
Nil

Financial Implications:
Internal Budget:
Nil

Total Asset Management:
Nil

Sustainability Assessment:
External Economic Implications:
Nil

Social Issues:
Nil

Cultural Issues:

Nil

Environmental Issues:

Nil

COMMENT:

It is recommended that the Financial Statements for the month of July 2011 be adopted.

RESOLVED:

Moved: Councillor Skinner

Seconded: Councillor Armstrong

In accordance with Regulation 34 of the Local Government (Financial Management) Regulations the Financial Statements for the period ending 31 July 2011 be adopted.

CARRIED (7-0)

15.3 Town Centre Redevelopment – Probity Plan (Item Withdrawn)

16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

17. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

18. PUBLIC QUESTION AND PUBLIC STATEMENT TIME

Mr Peter Petta, VICTORIA PARK WA 6100

Voiced his concerns that Administration has not addressed his letters to date about noise and traffic volume. Mr Petta's concerns about a response to his letter were taken on notice.

19. MATTERS BEHIND CLOSED DOORS

Recommendation

Moved: Councillor Hayes

Seconded: Councillor Bissett

That the meeting be closed to members of the public in accordance with clause 4.2 of the Local Law relating to Standing Orders and Section 5.23(2) of the Local Government Act 1995.

CARRIED (7-0)

Members of the public left the meeting at 7.34pm.

The Senior Management Team left the meeting at 7.34pm

Moved: Councillor Hayes

Seconded: Councillor Bissett

Suspension of Standing Orders Part 9 – Conduct of Members during debate Clause 9.5 Limitation of Number of Speeches and Clause 9.6 Limitation of Duration of Speeches be instated.

CARRIED (7-0)

11.2 Chief Executive Officer Annual Performance Review (Confidential Report)

RESOLVED:

Moved: Councillor Armstrong Seconded: Councillor Skinner

- 1. That the Council endorse the findings of the Occasional Committee formed to carry out the annual performance review of the CEO and endorse the performance objectives proposed for 2011.**
- 2. That the 2011 CEO's Performance Review be outsourced.**
- 3. That the 2011 Performance Review be completed by 31 March 2012.**

Cr. Hayes left the meeting.

CARRIED (6-0)

Cr. Hayes returned to the meeting.

Moved Councillor Bissett Seconded Councillor Vilaca

**Reinstate Standing Orders Part 9 – Conduct of Members during debate
Clause 9.5 Limitation of Number of Speeches and Clause 9.6 Limitation of
Duration of Speeches.**

CARRIED (7-0)

Recommendation

Moved: Councillor Hayes Seconded: Councillor Bissett

**That the meeting be opened to members of the public in accordance with
Section 5.23(2) of the Local Government Act 1995.**

CARRIED (7-0)

The Senior Management Team and returned to the meeting at 7.55pm.

The Presiding Member read out the decisions in relation to item 11.2.

20. CLOSURE

There being no further business the Mayor declared the meeting closed at 7.58pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed Mayor

Dated this Day of 2011