

# Ordinary Council Meeting

13 April 2016

## Minutes



Members of the public who attend Council meetings should not act immediately on anything they hear at the meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

Agendas and Minutes are available on the City's website [www.kwinana.wa.gov.au](http://www.kwinana.wa.gov.au)

## Vision Statement

***Kwinana 2030  
Rich in spirit, alive with opportunities,  
surrounded by nature – it's all here!***

## Mission

**Strengthen community spirit, lead  
exciting growth, respect the environment  
- create great places to live.**



## We will do this by –

- providing strong leadership in the community;
- promoting an innovative and integrated approach;
- being accountable and transparent in our actions;
- being efficient and effective with our resources;
- using industry leading methods and technology wherever possible;
- making informed decisions, after considering all available information; and
- providing the best possible customer service.

## Values

**We will demonstrate and be defined by our core values, which are:**

- Lead from where you stand – Leadership is within us all.
- Act with compassion – Show that you care.
- Make it fun – Seize the opportunity to have fun.
- Stand Strong, stand true – Have the courage to do what is right.
- Trust and be trusted – Value the message, value the messenger.
- Why not yes? – Ideas can grow with a yes.

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## **Present:**

HER WORSHIP MAYOR C ADAMS  
DEPUTY MAYOR P FEASEY  
CR R ALEXANDER  
CR W COOPER  
CR S LEE  
CR S MILLS  
CR B THOMPSON  
CR D WOOD

MS J ABBISS	-	Chief Executive Officer
MS C MIHOVILOVICH	-	Acting Director City Strategy
MS M BELL	-	Corporate Lawyer
MR P NEILSON	-	Acting Director City Development
MRS B POWELL	-	Director City Living
MR E LAWRENCE	-	Director Corporate and Engineering Services
MS A MCKENZIE	-	Council Administration Officer

Members of the Press	1
Members of the Public	5

## **1 Declaration of Opening:**

***Presiding Member declared the meeting open at 7:00pm and welcomed Councillors, City Officers and gallery in attendance and read the Welcome.***

“IT GIVES ME GREAT PLEASURE TO WELCOME YOU ALL HERE AND BEFORE COMMENCING THE PROCEEDINGS, I WOULD LIKE TO ACKNOWLEDGE THAT WE COME TOGETHER TONIGHT ON THE TRADITIONAL LAND OF THE NOONGAR PEOPLE”

## **2 Prayer:**

***Councillor Bob Thompson read the Prayer***

“OH LORD WE PRAY FOR GUIDANCE IN OUR MEETING. PLEASE GRANT US WISDOM AND TOLERANCE IN DEBATE THAT WE MAY WORK TO THE BEST INTERESTS OF OUR PEOPLE AND TO THY WILL. AMEN”

## **3 Apologies/Leave(s) of Absence (previously approved)**

### **Apologies**

Nil

### **Leave(s) of Absence (previously approved):**

Nil

#### **4 Public Question Time:**

Nil

#### **5 Applications for Leave of Absence:**

##### **COUNCIL DECISION**

152

**MOVED CR B THOMPSON**

**SECONDED CR S LEE**

**That Mayor Carol Adams be granted a leave of absence from 18 April 2016 to 22 April 2016 inclusive.**

**CARRIED  
8/0**

#### **6 Declarations of Interest by Members and City Officers:**

Nil

#### **7 Community Submissions:**

Nil

#### **8 Minutes to be Confirmed:**

##### **8.1 Ordinary Meeting of Council held on 23 March 2016:**

##### **COUNCIL DECISION**

153

**MOVED CR S MILLS**

**SECONDED CR D WOOD**

**That the Minutes of the Ordinary Meeting of Council held on 23 March 2016 be confirmed as a true and correct record of the meeting.**

**CARRIED  
8/0**

#### **9 Referred Standing / Occasional / Management /Committee Meeting:**

Nil

#### **10 Petitions:**

Nil

## **11 Notices of Motion:**

Nil

## **12 Reports – Community**

Nil

## **13 Reports – Economic**

Nil

## **14 Reports – Natural Environment**

Nil

## 15 Reports – Built Infrastructure

### 15.1 Joint Development Assessment Panel Application – Proposed Additions and Internal Reconfiguration to Kwinana Marketplace (Shop, Supermarket, Eating House and Liquor Store) – Lot 89 Chisham Avenue, Kwinana Town Centre

#### SUMMARY:

Council has received a proposal for an extension and additions to the Kwinana Marketplace for consideration under the City of Kwinana Town Planning Scheme No. 2 and Town Planning Scheme No.3 (TPS2 and TPS3). The applicant RPS Australia East Pty Ltd (RPS) has submitted an application on behalf of the land owner Shopping Centres Australasia Property Group RE Ltd (SCA), which intends to redevelop an existing supermarket store and specialty shops within the Kwinana Marketplace located on Lot 89 Chisham Avenue, Kwinana Town Centre (subject site).

The proposed application will redevelop the currently vacant mall in the north western corner of the shopping centre. The proposal is to demolish and replace the existing building (in the north western corner of the shopping centre) with a supermarket and to reconfigure a number of internal tenancies. The application also proposes to reconfigure car parking areas and access ways, construct shade sails over a number of parking areas, and reconfigure the loading dock areas. The proposal will provide for additional shopping choice within the Kwinana locality.

The development proposes the following:

- Approx. 4,198m<sup>2</sup> Supermarket;
- Approx. 700m<sup>2</sup> Mini Major;
- Approx. 200m<sup>2</sup> Liquor Store;
- Approx. 223m<sup>2</sup> Specialty and Kiosk;
- Rearranged Car Parking areas and Access ways;
- Shade Sails to 137 Car Parking bays on the Gilmore Avenue frontage;
- Rearranged Loading Docks;
- Rearranged internal Mall and Tenancy Configuration
- New Tenancy Signage.

The overall floor space of the redeveloped centre is approximately 36,455m<sup>2</sup> Gross Floor Area (GFA) which represents a slight reduction of the existing floor space of 36,720m<sup>2</sup> GFA. (see Attachment A of the Responsible Authority Report (RAR)).

As the estimated development cost of this application is in excess of \$10 million, the City does not have delegation to determine the application. The application is therefore required to be referred to the South West Metropolitan Joint Development Assessment Panel (JDAP) for determination. The application is to be considered by the JDAP at a meeting that is scheduled for the 22 April 2016. City officers have prepared the attached RAR in accordance with the Development Assessment Panel Regulations and it is attached for Council's consideration and determination.

The City is required to submit the RAR to the DAP Secretariat on 15 April 2016. Should the City not submit this report to the DAP Secretariat within the required timeframe, the Minister for Planning may direct the City to submit any information it has and provide it to the DAP directly.

**15.1 JOINT DEVELOPMENT ASSESSMENT PANEL APPLICATION – PROPOSED ADDITIONS AND INTERNAL RECONFIGURATION TO KWINANA MARKETPLACE (SHOP, SUPERMARKET, EATING HOUSE AND LIQUOR STORE) – LOT 89 CHISHAM AVENUE, KWINANA TOWN CENTRE**

The application has been referred to Council as the City has received legal advice informing the City that officers do not have delegation to prepare the RAR under the DAP Regulations. Council should note that if it wishes to modify or make an alternative recommendation to that contained with the RAR, this should be in the form of a separate recommendation which will be forwarded to the JDAP for consideration at its meeting.

**OFFICER RECOMMENDATION:**

That Council consider and adopt the recommendation of the Responsible Authority Report (Attached to this report) to the South West Metropolitan Joint Development Assessment Panel for the Additions and Internal Reconfiguration to the Kwinana Marketplace Shopping Centre (Shop, Eating House and Liquor Store), and associated external works including rearranged Car Parking areas, Access Ways and new Car Parking Shade Sails on Lot 89 Chisham Avenue, Kwinana Town Centre.

**COUNCIL DECISION**

**154**

**MOVED CR D WOOD**

**SECONDED CR R ALEXANDER**

**That Council consider and adopt the recommendation of the Responsible Authority Report (Attached to this report) to the South West Metropolitan Joint Development Assessment Panel for the Additions and Internal Reconfiguration to the Kwinana Marketplace Shopping Centre (Shop, Eating House and Liquor Store), and associated external works including rearranged Car Parking areas, Access Ways and new Car Parking Shade Sails on Lot 89 Chisham Avenue, Kwinana Town Centre.**

**CARRIED  
8/0**





## Form 1 - Responsible Authority Report

(Regulation 12)

<b>Property Location:</b>	Lot 89 Chisham Avenue, Kwinana Town Centre
<b>Application Details:</b>	Proposed Additions and Internal Reconfiguration to Kwinana Marketplace Shopping Centre, and, associated external works including rearranged Car Parking areas, Access Ways and new Car Parking Shade Sails
<b>DAP Name:</b>	Metro South-West
<b>Applicant:</b>	RPS Australia East Pty Ltd
<b>Owner:</b>	Shopping Centres Australasia Property Group RE Ltd
<b>LG Reference:</b>	DA8562
<b>Responsible Authority:</b>	City Of Kwinana
<b>Authorising Officer:</b>	Brenton Scambler – Coordinator Statutory Planning
<b>Department of Planning File No:</b>	DAP/16/01000
<b>Report Date:</b>	15 April 2016
<b>Application Receipt Date:</b>	26 February 2016
<b>Application Process Days:</b>	60 Days
<b>Attachment(s):</b>	1: Context and Location Plan 2: DA-01-Rev C – Proposed Site Plan 3: DA-02-Rev A – Existing Floor Plan 4: DA-03-Rev C – Proposed Works Plan 5: DA-04-Rev C – Proposed Elevations 6: DA-05-Rev C – Proposed Pedestrian Circulation Plan

### Officer Recommendation:

That the Metropolitan South West JDAP resolves to:

Approve DAP Application reference DAP/16/01000 and accompanying plans DA-01-Rev C, DA-02-Rev A, DA-03-Rev C, DA-04-Rev C and DA-05-Rev C all dated 17<sup>th</sup> February 2016 in accordance with Clause 6.1 of the City of Kwinana Town Planning Scheme No. 2, subject to the following conditions as follows:

### Conditions

1. This decision constitutes planning approval only and is valid for a period of 2 years from the date of approval. If the subject development is not substantially commenced within the 2 year period, the approval shall lapse and be of no further effect.
2. The applicant shall implement dust control measures for the duration of site works to the satisfaction of the City of Kwinana.

3. Landscaping areas, vehicle parking spaces, accessways and all other details as provided on the development plans are to be installed prior to occupying the proposed development and maintained thereafter by the owner/occupier to the satisfaction of the City of Kwinana.
4. The proposed building walls being applied with anti-graffiti treatment to the satisfaction of the City of Kwinana.
5. Any graffiti, vandalism or damage to the proposed development shall be made good immediately by the landowner to the satisfaction of the City of Kwinana.
6. A minimum of 8,420 square metres (8%) of the subject site to be landscaped and maintained to a high standard with plants native to the locality, to the satisfaction of the City of Kwinana.
7. The provision of 1,516 vehicle parking bays in accordance with Australian Standard AS2890, to be clearly marked on the ground and constructed of bitumen, brick or concrete to the satisfaction of the City of Kwinana.
8. The provision of an additional 10 bicycle parking spaces designed in accordance with Austroads Guide to Traffic Engineering Practice Part 14 – Bicycles 10.3 and AS2890.3, to the satisfaction of the City of Kwinana. Details being provided within 90 days of the date of this approval.
9. No goods or materials are to be placed or stored or offered for sale within car parking areas, access roads or on any footpath at any time. Storage of goods or materials shall be confined to designated service areas only.
10. All existing and proposed trafficked routes within the subject lot being sealed and drained to comply with City of Kwinana Trafficable Area Specifications.
11. Internal access and crossovers shall be modified and reconstructed to accommodate service / heavy vehicle access (as necessary) to the satisfaction of the City of Kwinana. An amended Traffic Impact Assessment and technical details are to be provided to the City for approval prior to the lodgement of a building permit application and works carried out in accordance with the approved plan.
12. A Signage Strategy detailing the dimensions, construction and artwork of all proposed signage being submitted for approval of the City of Kwinana prior to the lodgement of a building permit application.

The strategy shall provide that:-

  - (a) Signage is to be kept clean and free from unsightly matter including graffiti at all times by the owner/occupier to the satisfaction of the City of Kwinana.
  - (b) Signage associated with a business is to be removed upon vacancy of the business.
13. Rubbish bins are to be stored in the designated bin storage areas only. No storage of rubbish, recyclables or other stock within parking areas or access roads.

14. The proponent is to submit a Noise Impact Assessment Report prepared by a qualified acoustic consultant to determine noise impacts generated from the shopping centre arising from the installation of plant & equipment, air and water handling systems at the development to the satisfaction of the City of Kwinana to ensure compliance with the Environmental Protection (Noise) Regulations, prior to the prior to the occupation of the development.
15. The proponent is to submit to the City of Kwinana for approval prior to the lodgement of a building permit application an amended Waste Management Plan that details bin enclosure areas, bin storage areas and bin collection points in the development.
16. A Drainage Management Plan shall be provided to the City for approval prior to the lodgement of a building permit application, in accordance with Council's requirements demonstrating stormwater is able to be contained and disposed of on-site for the car parking, driveways and roofed areas.
17. Any proposed hydrants, booster cabinets or tanks being suitably integrated or located within the development to reduce any visual or amenity impacts to the satisfaction of the City of Kwinana. Details being provided prior to the lodgement of a building permit application.
18. Any proposed transformers, services, storage and deposit areas must be screened from view, air conditioners screened and/or located in areas with minimal impact on the public domain and television antennas or satellite dishes or such like to be located in roof space or as otherwise determined to the satisfaction of the City of Kwinana.
19. The development being suitably lit in accordance with Australian Standard AS4282 – Control of Obtrusive Effects of Outdoor Lighting. Lighting shall not impact on any adjacent residential property. Details to be provided to the City prior to the lodgement of a building permit application.
20. Plans detailing colours, materials and finishes of the proposed development being submitted to the City of Kwinana for approval prior to the lodgement of a building permit application to achieve a high quality finish to the satisfaction of the City.

**Advice Notes:**

1. The applicant is advised that all future development must be submitted to the City of Kwinana prior to the commencement of works or alteration of land use.
2. The applicant is further advised that this is not a building permit the City of Kwinana issues to enable construction to commence. A building permit is a separate Council requirement and construction cannot be commenced until a building permit is obtained.
3. The applicant should ensure that the proposed development complies with all other relevant legislation, including but not limited to, the Environmental Protection Act 1986 and Regulations, Health Act 1911 and Regulations, and the National Construction Code.

4. The applicant is advised of the following Health and Building matters which should be addressed as part of any building permit submission:
  - a) The development should comply with the existing Fire Safety Engineering Report (FSER) for the Kwinana Market Place (WP#110114) or an updated FSER will be required prior to the issue of a Building Permit. Details shall be submitted at building permit stage.
  - b) The proponent should submit to the City's Health services the number of additional staff resulting from the development and details of change rooms and ablution facilities.
  - c) The proponent should ensure that Air & Water Handling Systems comply with the requirements of the Health (Air Handling & Water System) Regulations.
  - d) The development shall be licensed to discharge to sewer and plumbing to be installed with a grease trap in accordance with the Water Corporation's requirements & the National Plumbing Code.
5. All tenancies proposing to carry out a food business must comply with the Food Act 2008 and Food Regulations 2009. An Application to Construct or Alter a Food Business and an Application for Notification or Registration of a Food Business shall be submitted to, and approved by, the City of Kwinana prior to the fit out of the tenancy.
6. Signage that has been approved or is otherwise exempted from Council Planning Approval pursuant to Clause 6.17.3 of the Town Planning Scheme No. 2 may be erected. Any other signage will require an additional Planning Approval.

### **Background:**

Property Address:	Lot 89 Chisham Avenue, Kwinana Town Centre
Zoning	MRS: Urban
	TPS: Shopping / Business Zone – Retail Precinct
Use Class:	Shop / Eating House
Strategy Policy:	City of Kwinana – Kwinana Town Centre Master Plan and Design Guidelines
Development Scheme:	City of Kwinana Town Planning Scheme No. 2 & 3
Lot Size:	10.52 Hectares
Existing Land Use:	Shopping / Commercial Centre
Value of Development:	\$12 Million

### **Site History**

Lot 89 Chisham Avenue, Kwinana Town Centre has been the key shopping / commercial centre for the City of Kwinana since the early 1970's. The site has undergone a number of redevelopments over this time, with the most recent redevelopment of the site being a major upgrade to the centre and its facilities which was approved in November 2011. This major upgrade was approved subject to conditions and increased the floor space of the centre from 16,000 square metres to approximately 31,000 square metres of retail floor space (~38,000m<sup>2</sup> gross floor

space). The redevelopment of the site was completed in 2013, however since this time, a large portion of the north western mall within the centre has remained untenanted.

## **Proposal**

RPS Australia East Pty Ltd (RPS) has submitted an application on behalf of the land owner Shopping Centres Australasia Property Group RE Ltd (SCA), which intends to redevelop an existing supermarket store and specialty shops within the Kwinana Marketplace located on Lot 89 Chisham Avenue, Kwinana Town Centre (subject site). The proposed application will redevelop the currently vacant mall in the north western corner of the shopping centre. The proposal is to demolish and replace the existing building (in the north western corner of the shopping centre) with a supermarket and to reconfigure a number of internal tenancies. The application also proposes to reconfigure car parking areas and access ways, construct shade sails over a number of parking areas, and reconfigure the loading dock areas. The proposal will provide for additional shopping choice within the Kwinana locality.

The development proposes the following:

- Approx. 4,198m<sup>2</sup> Supermarket;
- Approx. 700m<sup>2</sup> Mini Major;
- Approx. 200m<sup>2</sup> Liquor Store;
- Approx. 223m<sup>2</sup> Specialty and Kiosk;
- Rearranged Car Parking areas and Access ways;
- Shade Sails to 137 Car Parking bays on the Gilmore Avenue frontage;
- Rearranged Loading Docks;
- Rearranged internal Mall and Tenancy Configuration
- New Tenancy Signage.

The overall floor space of the redeveloped centre is approximately 36,455m<sup>2</sup> Gross Floor Area (GFA) which represents a slight reduction of the existing floor space of 36,720m<sup>2</sup> GFA.

## **Legislation & policy:**

### **Legislation**

- *Planning and Development Act 2005*
- *Planning and Development Regulations (Local Planning Schemes) Regulations 2015*
- City of Kwinana, Town Planning Scheme No.2 and No.3
- City of Kwinana, Kwinana Town Centre Master Plan and Design Guidelines
- *Health Act 1911*
- *Environmental Protection Act 1986* and relevant Regulations

### **State Government Policies**

State Planning Policy 4.2 – Activity Centres for Perth and Peel  
Liveable Neighbourhoods  
Perth and Peel @3.5 Million



## **Local Policies**

### **Local Commercial and Activity Centres Strategy**

## **Consultation:**

### Public Consultation

The proposals for the Shop and Liquor Store represent 'P' uses within the context of the requirements of Town Planning Scheme No.3 (TPS 3) and therefore is not required to be advertised. The Eating House is an 'AA' use which is a use in respect of which the Council exercising the discretionary powers available to it may approve under the scheme. In this case, the use is one which is considered appropriate to the subject site and already exists within the Marketplace so advertising was not considered necessary. The application largely represents the consolidation and minor reconfiguration of the existing approved Marketplace shopping centre complex, and, as such was not referred to any external agencies.

## **Planning assessment:**

The application has been considered by the City against a range of documents applicable to the development, including the City's Town Planning Schemes 2 and 3 and the Kwinana Town Centre Master Plan and Design Guidelines. The City has two Town Planning Schemes which directly relate to the subject site. Town Planning Scheme No. 3 (TPS 3) applies to the City Centre area and Town Planning Scheme No. 2 (TPS 2) applies to the remainder of the land within the Kwinana district. Whilst the site is outside the scheme area of TPS 2, Clause 1.7 of TPS 3 states that;

*"The provisions of the Scheme are in addition and complementary to the provisions of the Operative Town Planning Scheme published in the Government Gazette and controlling development throughout the entire Municipal Area.*

*All of the provisions of the Operative Town Planning Scheme shall continue to apply to the 'Scheme Area' except that where there is inconsistency between the specific provisions of the operative Town Planning Scheme and 'the Scheme', the Scheme shall prevail."*

Therefore, the City is also considering the provisions of TPS 2, so far as the Scheme is applicable, to assess the proposed development.

## **Town Planning Scheme No. 3 (TPS 3)**

The subject site is zoned Shopping/Business under TPS 3 and located in the Retail Precinct of the Town Centre. The objectives of the Shopping/Business zone are identified as, *"To accommodate retail and commercial use and development necessary to meet the district level shopping needs of the community"*. The

provisions of TPS 3 as they relate to this application will be discussed in detail further in this report.

### **Use Class**

The development application proposes a number of uses for the development. The City has assessed these proposed uses against the TPS 3 use class table to determine the appropriateness of each use. The permissibility of these use classes are detailed in the table below:

Shop	P
Liquor Store	P
Eating House	AA

As demonstrated from the use class table above, the proposed uses are either permitted uses ("P") or uses which may be approved by Council using the discretionary powers of the Scheme ("AA"). In the context of this application, the proposed uses are consistent with the objectives the Shopping/Business Zone and Retail Precinct, and more broadly TPS 3 and Kwinana Town Centre Master Plan and Design Guidelines.

### **Town Planning Scheme No. 2 (TPS 2)**

As stated previously, both TPS 2 and TPS 3 are applicable to the subject site. The objectives and land use permissibility of TPS 3 have been outlined above. The subject site is also included in Policy Area 20 under TPS 2, which states;

#### *"Area 20 - Kwinana Town Centre*

*Whereas the district centre has been established and whereas population levels could double with the development of Leda and whereas a wide range of community, cultural, commercial, recreation and administrative facilities need to be located in a convenient central location, the following planning policy shall apply:*

- (a) Development of district level facilities shall be encouraged in accordance with the Kwinana Town Centre Strategy Plan (as amended) adopted by Council;*
- (b) The policy area shall be divided into the following precincts;*

- \* *Civic Precinct shall contain Council administration, offices, community and cultural facilities, town park and recreation facilities,*
  - \* *Main Street Precinct shall contain retail shopping and associated commercial uses consistent with the concept of the traditional shopping street,*
  - \* *The Hub 'A' Precinct shall contain the retail and other commercial core of the district,*
  - \* *The Hub 'B' Precinct shall contain retail and other commercial expansion,*
  - \* *Town Centre Ancillary Use Precinct shall contain uses ancillary and complimentary to district centre functions and shall be the subject of an overall use and development control plan approved by Council prior to subdivision and development.*
- (c) *Subdivision design and works associated with subdivisional development shall be carried out in such a manner as to ensure minimal destruction of existing vegetation considered by Council to be worthy of preservation."*

Figure 1

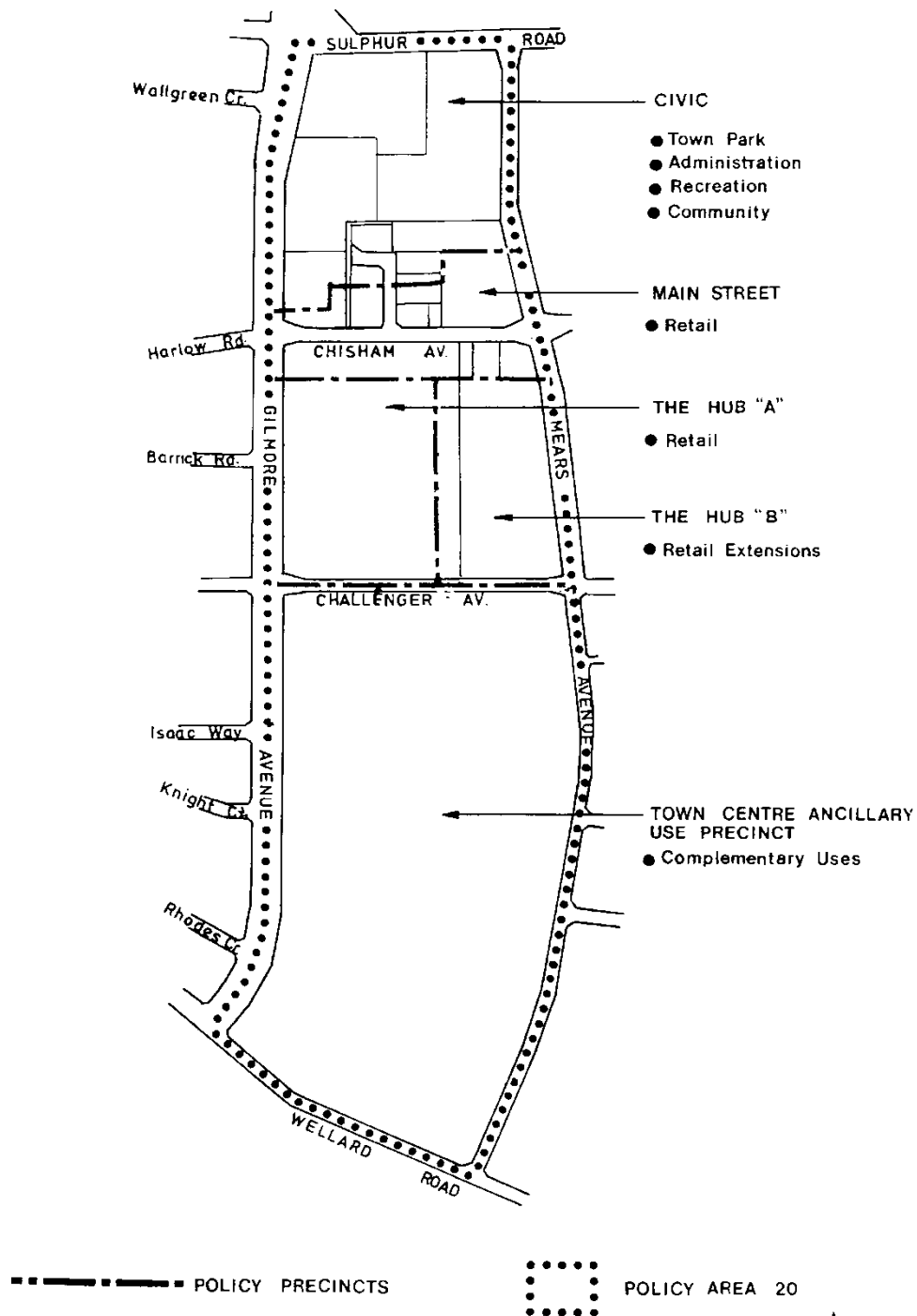


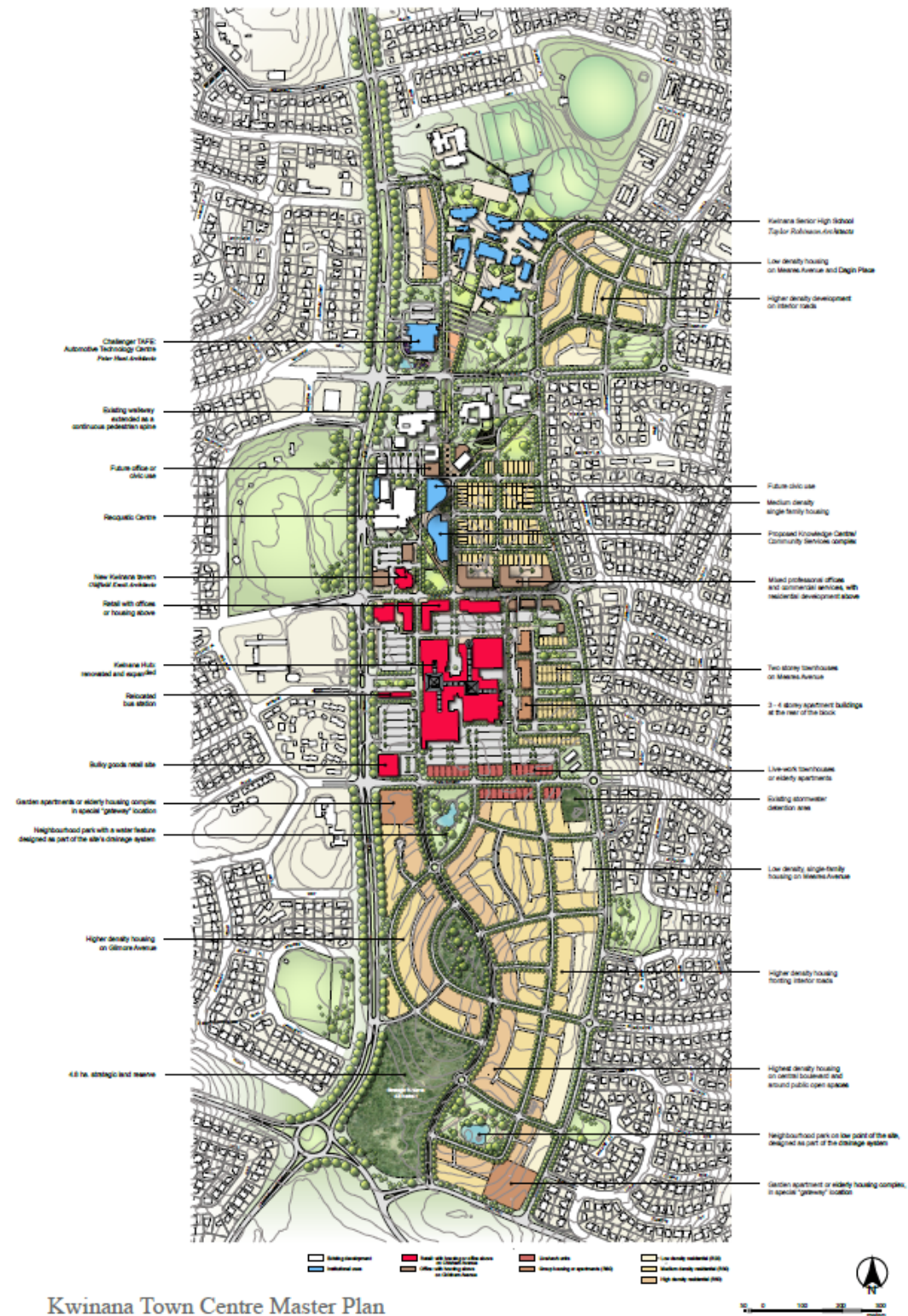
Figure 1 above shows the policy area precincts within the City Centre. As seen, the subject site is located within the 'Hub A Precinct' which is identified for Retail. This proposal is for a number of Shop uses, a Liquor Store and an Eating House, which is consistent with the policy statement for the Hub A Precinct. An assessment against the relevant provisions of TPS 2 is provided further in this report.

### **Town Centre Master Plan and Design Guidelines**

Clause 2.1.1 of TPS 3 requires that development shall occur generally in accordance with the Kwinana Town Centre Strategy Plan. The most recent version of this document is the Kwinana Town Centre Master Plan and Design Guidelines. The Master Plan provides an overall development framework for the Town Centre area. The Master Plan includes a Concept Plan (Figure 2) for the commercial centre, which is covered by TPS 3 as well as precincts to the north (Educational Precinct – Kwinana High School) and to the south (Challenger Precinct – E26). The Master Plan also includes urban design and building guidelines for development within the area. An assessment against the relevant provisions of the Kwinana Town Centre Master Plan and Design Guidelines is provided further in this report.



Figure 2



## **Development Standards**

The following tables list the relevant provisions under Town Planning Scheme No. 2 and 3 and the Kwinana Town Centre Master Plan which apply to this application. It is important to note, whilst the subject site is not located within the boundaries of TPS 2, Clause 1.7 of TPS 3 states that the provisions of TPS 2 continue to apply within the Kwinana City Centre. However, if there is a discrepancy between the provisions of the two schemes, TPS 3 shall prevail.

**Table 1: TPS 2 - Summary**

Provision	Requirements	Planning Comment
6.3.1, Table II - Setbacks	Minimum setbacks to be:  Front: 6 metres  Side: 1.5 metres  Rear: 0 metres  Secondary Street: 0 metres	Complies with provisions of the Scheme with the majority of the development (with the exception of the car park shade sails) occurring largely as part of the existing footprint of the Marketplace Centre.
6.5 – Kwinana Town Centre	<ul style="list-style-type: none"> <li>- Grouping of buildings shall be designed to produce an integrated layout</li> <li>- Buildings shall be of complementary design</li> <li>- Building Design and Layout shall make provision for future advertising to be in keeping with the architectural character of the development</li> <li>- Provision of planting and landscaping to enhance the environs</li> </ul>	<p>Buildings are grouped and provide an integrated layout, with the development representing a further consolidation of the existing Marketplace Centre.</p> <p>Signage panels are included in the proposal to promote signage appropriate to the scale and character of the buildings.</p> <p>Landscaping is provided in accordance with the relevant provisions of the Scheme. Shade trees and shade sails are also provided to promote the amenity of the car parking areas.</p>
6.5.1 – Plot Ratio	Shop – 2.0  Office – 2.0  Showroom – 1.5  Service Industry – 1.5  Others – as determined by	The development falls well within the plot ratio requirements and only occupies approximately 45% of the overall site area.

	Council	
6.5.4 – Car Parking	Parking being designed, constructed and maintained in accordance with Part VII of the Scheme.	See section on parking below.
6.5.5 – Loading and Unloading	Where areas for loading/unloading are to be provided they shall be provided and maintained in accordance with the approved plan relating thereto.	Loading bays are provided for each main area of the shopping complex with the new proposed loading bay being integrated with the Supermarket tenancy.
6.5.6 – Site Coverage and Setbacks	Council may be permit site cover up to 100% and a setback variation to zero subject to matters relating to access, car parking, circulation, servicing, loading and unloading and other matters which Council in its absolute discretion may take into consideration.	The development only proposes site coverage of 46%, with setbacks well in excess of the minimum required under the Scheme.
6.5.7 – Landscaped Areas	<p>- One twelfth of the lot shall be designed, developed and maintained as landscaping and shall existing vegetation identified by Council.</p> <p>- Where, in the opinion of Council, sufficient landscape features exist in the lot or nearby streets and reserves, the landscaped area may be reduced by up to 50%.</p> <p>- Existing vegetation in excess of 1.8 metres in height within the specified landscaping areas shall be retained in good order provided that it does not interfere with the orderly or proper planning of the development or pose a threat to the safety of the</p>	<p>This provision for 12% landscaping in TPS 2 is superseded by the landscaping provisions of TPS 3 which specifies 8% for the City Centre.</p> <p>In regards to retention of existing vegetation, there are a number of trees which were provided as part of the initial redevelopment of the Marketplace in 2012 which are proposed to be removed in lieu of installing shade sails to car parking areas. The removal of these trees will not result in a deficiency of landscaping across the site and is considered acceptable. The Marketplace Centre and its surrounding parking and landholding currently provides landscaping in accordance with the approved</p>

	development or to the public.	landscaping plans considered as part of the development approval issued over the landholding in 2012.
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**Table 2: TPS 3 - Summary**

Provision	Requirements	Planning Comment
3.1 – General Scheme	<p>3.1.1.1 - Building design and layout shall generally accord with the Kwinana Town Centre Design Guidelines adopted by Council (as amended from time to time) and Council shall have regard for the guidelines when assessing development proposals.</p> <p>3.1.1.2 - Building setback shall be at the absolute discretion of Council (except in the case of residential development) and Council shall have regard for the following when approving setbacks:</p> <p>(a) to ensure that no buildings are constructed over designated internal accessways which impede directly or indirectly vehicular or pedestrian movement along designated routes; and</p> <p>(b) Council has discretion to determine setbacks having regard to matters dealt with under the Kwinana Town Centre Design Guidelines, referred to in clause 3.1.1.1.</p>	Refer to Table 3 below regarding Town Centre Design Guidelines discussion. Building setbacks are well in excess of the minimum requirements stipulated under the TPS 3.

3.2 – Site Coverage and Setbacks	In determining the site coverage and set backs of any development other than residential development, Council may permit site coverage of up to 100 percent and a set back variation to zero subject to it first being satisfied on matters relating to access, car parking, circulation, servicing, loading and unloading and other matters which Council in its absolute discretion may take into consideration, including design guidelines referred to in clause 3.1.1.1.	As discussed above. The City is satisfied that these considerations and requirements have been addressed and the proposed site coverage and setbacks of the development comply with this provision.
3.3 - Lighting	- Lighting within car parking and landscaped areas where light fixtures are detached from buildings shall be of a consistent standard and conform to Council's specification.	The development plans do not include lighting details. The application has been conditioned that the car parking areas and pedestrian walkways be suitably lit, with details being provided to the satisfaction of the City.
3.4 - Fencing	Fencing shall be in accordance with the Kwinana Town Centre Design Guidelines.	Not Applicable as no fencing is proposed as part of this development.
3.5 - Landscaping	<p>- Council's objective in specifying and controlling landscaping standards within the Scheme Area is to promote a distinct identity and character for the Town Centre.</p> <p>- Site planning and building layout should secure the preservation of significant vegetation and in particular tall Tuarts.</p> <p>- Landscaping of individual developments shall be</p>	<p>As previously discussed the site currently provides landscaping in accordance with the approved landscaping plans considered as part of the development approval issued over the subject land in 2012.</p> <p>A condition reflecting the amount of landscaping to be provided and maintained on the development proposal has been applied to this application consistent with previous approvals.</p>



	<p>consistent with an overall landscaping strategy adopted by Council and centred around the use of existing vegetation. All developers shall lodge detailed landscaping plans for Council approval prior to the commencement of development.</p> <p>- Vehicle parking areas shall be landscaped with shading vegetation so that a vegetation island is situated between not more than 5 grouped vehicle parking bays.</p> <p>- Where, in the opinion of Council, sufficient landscape features exist in the lot or nearby streets and reserves, the landscaped area may be reduced by up to 50%.</p>	
3.6 – Parking and Drainage	<p>- Car parking areas shall be constructed, sealed, kerbed and drained to Council's specifications.</p> <p>- Drainage from roofed and paved areas shall be disposed of on site to Council's specifications.</p>	<p>The application has been conditioned to address both these requirements.</p> <p>The City is also recommending that a condition for a Drainage Management Plan be provided to demonstrate compliance with the City's specifications.</p>
4.5 – Shopping/Business Zone	<p>- The zone should generally accommodate and consolidate convenience, retail and other commercial core uses.</p>	<p>The City supports the development of further retail uses on the subject site. The proposed uses are permitted within the Shopping/Business Zone and are predominant uses within the Precinct. Given the scale of the proposed building, the development is also setback a considerable distance from</p>

	<p>- Provision shall be made for pedestrian/cyclist crossing installations and treatment at major internal thoroughfares, with priority assigned to pedestrians and cyclists.</p> <p>- Landscaping of parking areas should be based upon a theme which employs continuous vegetation strips within parking areas generally parallel to surrounding roads.</p>	<p>the primary street.</p> <p>Pedestrian Crossing facilities are provided throughout the development.</p> <p>The development provides landscaping in continuous strips adjacent to surrounding roads. Shade trees are provided throughout the remainder of the parking area.</p>
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**Table 3: Kwinana Town Centre Master Plan and Design Guidelines Summary**

Provision	Requirements	Planning Comment
Design Principles		
4 – Connecting the Neighbourhoods	- City Centre area should be permeable with a sound network of streets and pedestrian paths	The Master Plan identifies the subject site for primarily retail uses to form the main shopping precinct within the City Centre. The development provides for an extensive network of pedestrian paths into the surrounding street network.
5 – Improving Retail Function	<p>- Access to parking should be clearly visible, but where possible screened from view to minimise the impact of large expanses of parking</p> <p>- Shared parking arrangements should be considered.</p>	<p>Access to parking is clearly visible.</p> <p>Landscaping is provided and shade sails proposed throughout the development to break up the large expanses of parking and screen the car parking for surrounding streets.</p>
Urban Design Guidelines		

1.2 (e)	Between Chisham and Challenger Avenues, the central north-south spine is to run along the western façade of The Hub retail complex, providing a direct vehicular and pedestrian connection from the Challenger Neighbourhood, past the main entry to the shopping centre, to the market square. This route is to be enlivened by active retail frontage wherever possible, or artful advertising or display panels on any unavoidably inactive walls.	The development provides for a direct vehicular connection and provides protection to pedestrians with awnings extending over the footpath linking Chisham and Challenger Avenues.
Building Guidelines		
4.2 (a)	<ul style="list-style-type: none"> <li>- Traditional pitched rooves preferred.</li> <li>- Skillions, saw tooth and curved rooves may be approved.</li> </ul>	The development is of a commercial nature and made up of tilt panel concrete, which presents a concealed roof to the street, located behind a parapet. Given the type and style of development is a consolidation of an existing shopping complex, the City considers the roof design to be satisfactory.
4.2 (b)	<ul style="list-style-type: none"> <li>- Building facades, on all sides shall promote a sense of human scale.</li> <li>- Blank walls should be avoided and will not be permitted on streets or public spaces.</li> </ul>	The building presents a satisfactory façade to the streets and public realm, with a suitable level of detail and glazing to the frontages. The building also provides a covered awning over the pedestrian walkway leading along the development to Chisham Avenue.
4.2 (c)	<ul style="list-style-type: none"> <li>- Main entry to building should be clearly identifiable with a pediment awning or recess as appropriate to the overall composition of the façade.</li> </ul>	Entries to the building are clearly defined and awnings provided to provide shelter for pedestrians. No alterations to the building entries are proposed as part of this application.

4.2 (c) [sic]	<ul style="list-style-type: none"> <li>- Balconies, awnings and verandahs are encouraged.</li> <li>- Projections beyond the lot boundary must not interfere with street trees.</li> <li>- A clearance of 3.3 metres is provided.</li> </ul>	Awnings are provided with a clearance of approximately 4.0 metres.
4.3 (a)	<ul style="list-style-type: none"> <li>- Masonry is the preferred building material.</li> <li>- Metal panels may be used as decorative accents or feature panels</li> </ul>	The application complies with these requirements.
4.3 (b)	<ul style="list-style-type: none"> <li>- Acceptable roof materials include: clay tiles, copper, zinc, natural or reconstituted slate, colourbond steel and zincalume custom orb.</li> </ul>	The proposed building has a concealed roof which is not visible to the surroundings.
4.3 (c)	<ul style="list-style-type: none"> <li>- No reflective materials are permitted on walls, rooves and reflective or obscured glass in windows and doors is prohibited.</li> </ul>	None are proposed.
4.4 (c)	<ul style="list-style-type: none"> <li>- Tenancy signage shall be integrated into the design of the building.</li> </ul>	The development complies with this requirement.
4.5 (d)	<ul style="list-style-type: none"> <li>- Permissible sign types include:</li> <li>- Panel attached to buildings,</li> <li>- Projecting or hanging signs,</li> <li>- Awning or fascia signs,</li> <li>- Window signs applied directly to the glazing,</li> <li>- Sandwich board signs for ground floor food and beverage shops.</li> </ul>	The application contains signage of these types and a condition is recommended for a Signage Strategy for the application.
4.5 (e)	<ul style="list-style-type: none"> <li>- Tenancies may have two signs for ground floor tenancies, and one sign for upper floor tenancies.</li> </ul>	Indicative signage panels are shown in the attached plans, however detailed signage designs and artwork have not been provided.

	<ul style="list-style-type: none"> <li>- Shared signage preferred.</li> </ul>	The application has been conditioned for this information to be provided to the City.
4.6	<ul style="list-style-type: none"> <li>- All services, transformers, storage and deposit areas and wheeled rubbish bins must be screened from view.</li> <li>- Air conditioners should be located in areas with minimal impact on the public domain.</li> <li>- Television antennas are to be located in roof space where possible.</li> </ul>	The City has conditioned that these items be screened from view to the satisfaction of the City.
4.7	<ul style="list-style-type: none"> <li>- Design of buildings, fences and landscaping shall take into consideration sight lines to promote a sense of security and minimise blind spots.</li> <li>- Adequate lighting must be provided.</li> <li>- Lighting must minimise impact onto adjacent commercial properties and have no impact on residential properties.</li> <li>- All buildings and public spaces must be maintained at all times.</li> <li>- Timely repair of any damage or removal of graffiti.</li> <li>- All masonry surfaces shall be anti graffiti coated up to a height of 3 metres.</li> </ul>	The recommendation includes conditions to ensure the maintenance of the development, anti-graffiti coating and prompt removal of any graffiti.

## **Car Parking**

Part VII of TPS 2 provides the following requirements for car parking: Shop - 1 for every 20m<sup>2</sup> Gross Floor Area (GFA). Within the Kwinana Town Centre Zone - 1 for every 50m<sup>2</sup> GFA for shops less than 3,000m<sup>2</sup> GFA. For shops in excess of 3,000m<sup>2</sup> GFA - as determined by Council.

Under the previous development approval issued over the site for the overall redevelopment of the shopping centre in 2012, a parking ratio of 1 bay for every 25m<sup>2</sup> of GFA was determined by Council to be an appropriate ratio for parking over the subject site given its priority as the key shopping precinct within the City of Kwinana. This parking ratio was based on an assessment of other similarly sized shopping centres within other metropolitan areas within Perth. For those businesses however operating and proposed to operate on Chisham Avenue a parking ratio of 1 bay per 20m<sup>2</sup> GFA (TPS 2 Standard Parking Rate) was considered appropriate and applied at that time. The standard parking rate was considered appropriate given the nature of the businesses operating in this location as these uses have a heavy turn over of vehicles and pedestrians. On this basis, the following parking rates were applied to the development:

- For shops in excess of 3000m<sup>2</sup> – 1 bay per 25m<sup>2</sup> GFA;
- For shops less than 3000m<sup>2</sup> - 1 bay per 50m<sup>2</sup> GFA;
- Chisham Avenue Shops – 1 Bay per 20m<sup>2</sup> GFA;
- Eating House 1 bay for every 4m<sup>2</sup> of eating area.

The following table addresses the parking requirements applicable to the development.

<b>Land Use</b>	<b>Scheme No.2 Requirements</b>	<b>Yield (GFA)</b>	<b>Total</b>
Supermarket proposed	1 Bay per 25m <sup>2</sup> GFA (as determined by Council)	4,198m <sup>2</sup>	168
Woolworths		4,500m <sup>2</sup>	180
Specialty Shops		16,000m <sup>2</sup>	640
Big W Department Store		7,770m <sup>2</sup>	311
Dan Murphys	1 for every 50m <sup>2</sup> gross floor area for shops less than 3,000m <sup>2</sup> gross floor area	1,480m <sup>2</sup>	30
Mini Major		700m <sup>2</sup>	14
Chisham Avenue Shops	1 Bay per 20m <sup>2</sup> GFA	870m <sup>2</sup>	44
McDonald's Fast Food Outlet	1 for every 4 seats which an eating area is designed to provide; OR 1 for every 4m <sup>2</sup> of	246m <sup>2</sup> (60% 410m <sup>2</sup> )	62
Chicken Treat		123m <sup>2</sup>	31

Outlet	eating area or part thereof whichever produces the greater number of car parking spaces	(60% 205m <sup>2</sup> )	
KFC Outlet		180m <sup>2</sup> (60%300m <sup>2</sup> )	45
BP Service Station (8 fuel positions)	6 for customers plus 1 for each lubrication and maintenance bay plus 1 for each person working on the site	240m <sup>2</sup>	17
<b>Total for the proposed redevelopment</b>			<b>1,542</b>

The applicant has proposed an overall total of 1,516 car parking bays across the development site. In this regard the City has the general discretion to modify any provision or requirement of TPS 2 subject to the following:

- (a) approval of the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenity of the locality;
- (b) the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality; and
- (c) the spirit and purpose of the requirement or standard will not be unreasonably departed from thereby.

In regards to the above, City officers have considered the onsite reduction in the number of car parking bays and consider the reduction to be negligible in the context of the Shopping Centre and wider Kwinana City Centre. The onsite provision of car parking represents a 2% reduction in the overall number of parking bays to be provided and is not considered to conflict with the discretion provisions as discussed above.

**WAPC Activity Centres State Planning Policy (SPP) 4.2 and City of Kwinana Local Commercial and Activity Centres Strategy**

The City has also considered the development in the context of the WAPC Activity Centres SPP 4.2 and the City's Local Commercial and Activity Centres Strategy. As discussed above, the Kwinana City Centre is identified under the SPP hierarchy as a Secondary Centre (up to 50,000m<sup>2</sup> retail floor space), a multipurpose centre offering a range of services, facilities and employment and providing essential services to its catchment. The SPP aims to develop higher order centres for a variety of uses, with

a range of entertainment, hospitality and retail uses located in the centre core and lower intensity uses such as showrooms on the periphery of the activity centre. This proposed development is located at the core of the City Centre and provides a range of uses catering for both shopping and recreational activities.

The Local Commercial & Activity Centres Strategy was adopted by Council in 2014, and identifies the subject site as being within the Kwinana City Centre. The Strategies objectives for the Kwinana City Centre are:

- No upper retail floorspace limit, but a Retail Sustainability Assessment (RSA) will be required for any major development/s that would result in shop/retail floorspace equalling or exceeding 50,000m<sup>2</sup>;
- SPP 4.2 centre plan and mix of land use requirements apply.
- The Kwinana Town Centre Master Plan and Design Guidelines will remain as the guide for future City Centre development for the next 3-5 years, after which a detailed review will be carried out.

The proposed redevelopment of a portion of the Kwinana Marketplace meets the objectives of the Local Commercial & Activity Centres Strategy. The application is consistent with both SPP 4.2 and the City of Kwinana Local Commercial & Activity Centres Strategy, proposing a slight reduction of retail floor space to 36,455m<sup>2</sup> across the Kwinana Marketplace Precinct.

### **Traffic / Access**

Access to the site is provided via vehicle and pedestrian access from Chisham Avenue, Challenger Avenue and Gilmore Avenue. The Transport Impact Assessment indicates that the level of service and vehicle wait times at intersections is within the acceptable limits and the City's Engineering Department concur with this statement. The proposal does not alter any of the existing access or entry points into the development however the City's Engineering Department has made note that the existing crossover onto Chisham Avenue (between the Kentucky Fried Chicken (KFC) and Specialty Shops) will need to be considered for heavy vehicle access. This access point was not considered for truck movements in the initial redevelopment of the site in 2012 and as such its design has not accommodated for this type of vehicle movement. In this regard, a condition has been placed on the recommendation requiring the submission of an amended Transport Impact Assessment addressing the above matters.

### **Noise**

The previously approved development application for the redevelopment of the site in 2012 required a noise assessment to be provided addressing and detailing the noise levels generated from the centre. In this regard, the proposed application should be



reassessed and an updated acoustic report provided which demonstrates that the noise levels generated from the shopping centre (including this proposed development) comply with the Environmental Protection Act requirements.

**Conclusion:**

The proposed expansion of the Kwinana Market Place shopping centre is in keeping with the requirements of State and Local Legislation and Policy. The expansion represents the consolidation of a currently underutilised area within the centre and will result in additional shopping opportunities for members within the Kwinana community. The proposal complies with the requirements of the City of Kwinana TPS 2 and 3, and Town Centre Master Plan and Design Guidelines and as such is recommended for approval subject to conditions.

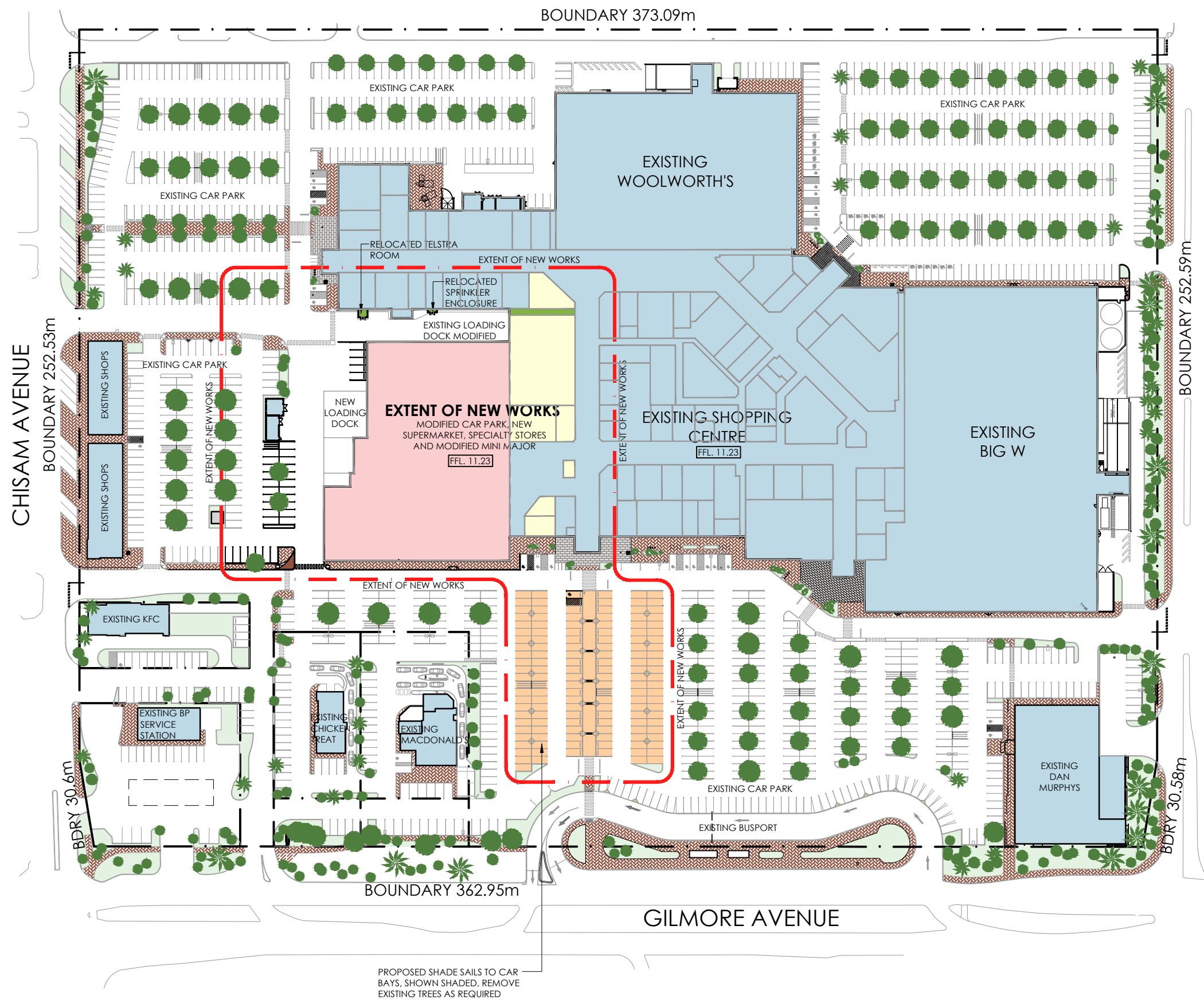


Attachment 1 – Location and Context Plan

Subject Site







LEGEND	
	EXISTING
	NEW MAJOR SUPERMARKET
	MODIFIED & NEW SPEC. TENANCIES
	LANDSCAPING
	SHADE SAILS
	RELOCATED SERVICES

NOTES	
1.	TELSTRA SERVICES LOCATION TO BE CONFIRMED AT BUILDING PERMIT STAGE
2.	REFER TO CIVIL ENGINEERS DRAWINGS FOR DRAINAGE REQUIREMENTS
3.	REFER TO TRAFFIC REPORT FOR TRAFFIC REQUIREMENTS
4.	ALL BUILDING ELEMENTS TO BE RE-SURVEYED TO CONFIRM EXACT LOCATIONS AND AREAS

LAND USE	REQUIREMENT	YIELD	TOTAL
Coles Supermarket (proposed)	1 for every 50m <sup>2</sup> gross floor area for shops less than 3,000m <sup>2</sup> gross floor area.	3,980m <sup>2</sup>	80
Woolworths Supermarket		4,500m <sup>2</sup>	90
Specialty Shops		16,000m <sup>2</sup>	320
Mini Major		700m <sup>2</sup>	14
Strip Shops		870m <sup>2</sup>	18
Big W Department Store		7,770m <sup>2</sup>	156
Dan Murphy's Liquor Store		1,480m <sup>2</sup>	30
McDonald's Fast Food Outlet	1 for every 4 seats which an eating area is designed to provide; OR 1 for every 4m <sup>2</sup> of eating area or part thereof whichever produces the greater number of car parking spaces	246m <sup>2</sup> (60% 410m <sup>2</sup> ) 123m <sup>2</sup>	62
Chicken Treat Outlet		(60% 205m <sup>2</sup> ) 180m <sup>2</sup>	31
KFC Outlet		(60% 300m <sup>2</sup> )	45
BP Service Station (8 fuel positions)	6 for customers plus 1 for each lubrication and maintenance bay plus 1 for each person working on the site	240m <sup>2</sup>	17

PROPOSED SITE PLAN  
SCALE 1:1500

ATTACHMENT 2



KWINANA SUPERMARKET EXTENSION  
PROPOSED SITE PLAN

17TH FEBRUARY 2016

KPA PROJECT NUMBER: 14-002

0m 15m 30m 45m 60m 75m  
SCALE 1:1500 @ A3

ISSUED FOR DEVELOPMENT APPLICATION

DA-01

DRAWING

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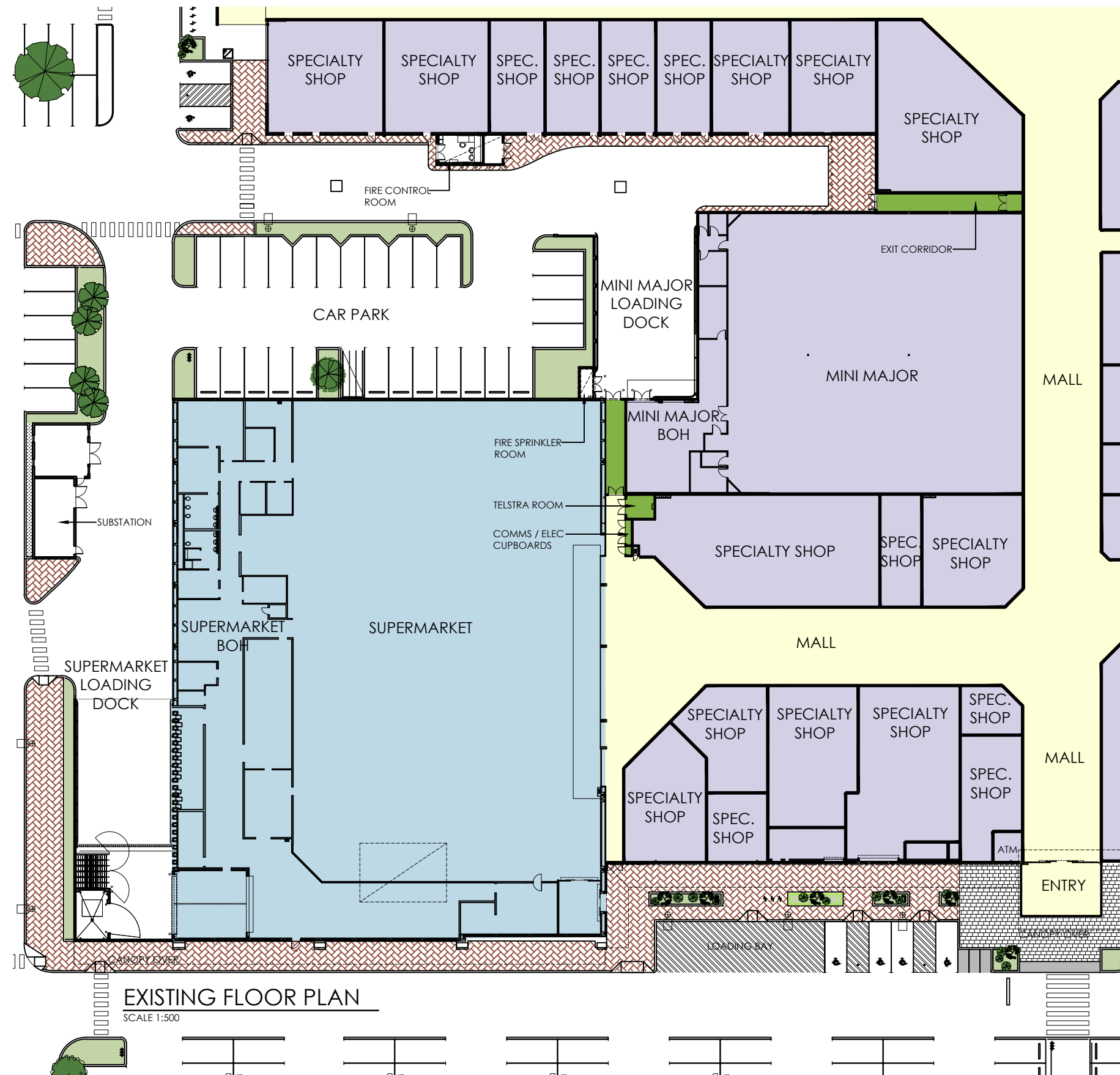
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# NOTE

ALL BUILDING ELEMENTS TO BE  
RE-SURVEYED TO CONFIRM EXACT  
LOCATIONS AND AREAS



EXISTING FLOOR PLAN

SCALE 1:500

ATTACHMENT 3



## KWINANA SUPERMARKET EXTENSION EXISTING SITE PLAN

17TH FEBRUARY 2016

KPA PROJECT NUMBER: 14-002

0m 5m 10m 15m 20m 25m  
SCALE 1:500 @ A3

ISSUED FOR DEVELOPMENT APPLICATION

DA-02

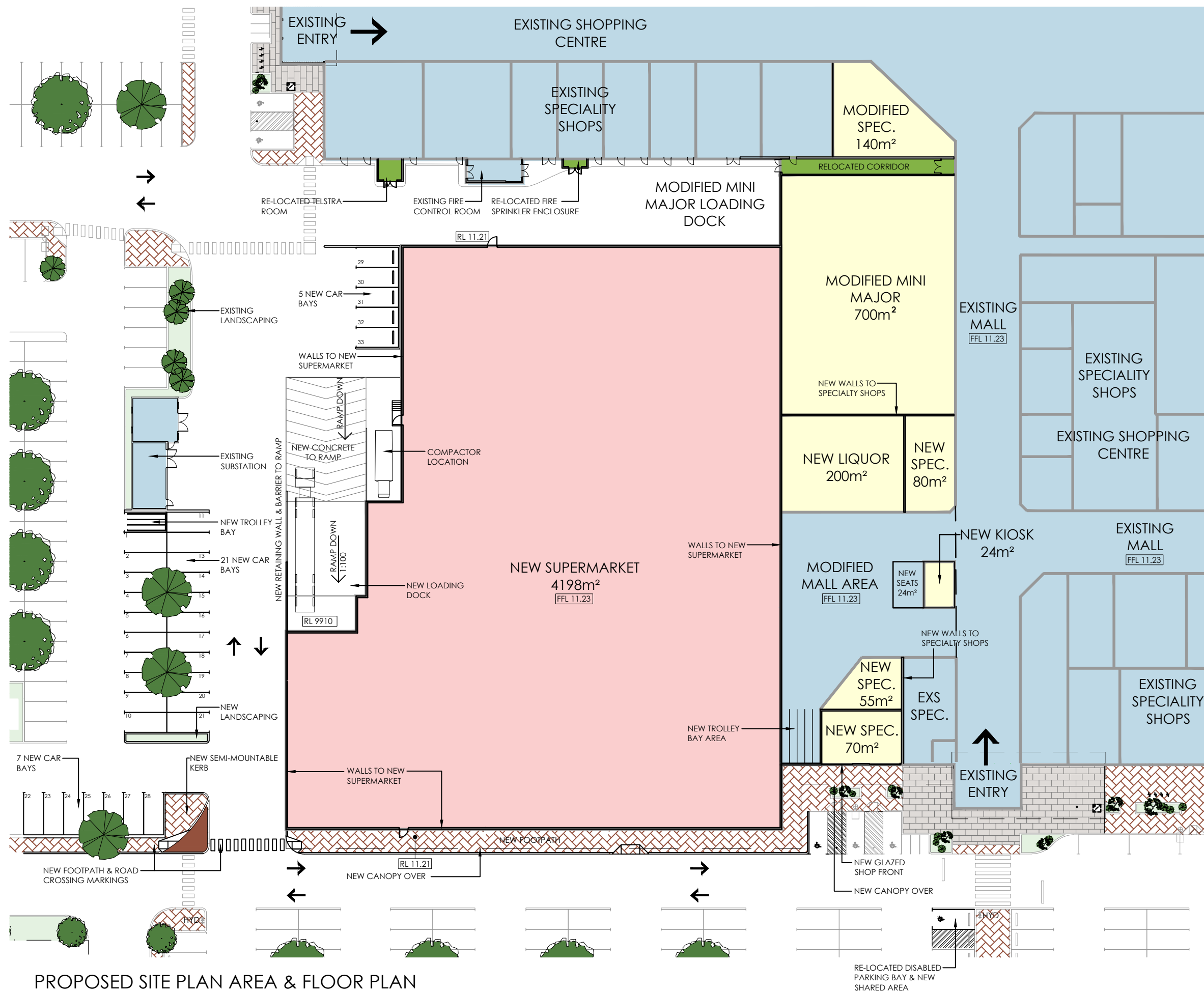
DRAWING

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PROPOSED SITE PLAN AREA & FLOOR PLAN

SCALE 1:1500

ATTACHMENT 4



KWINANA SUPERMARKET EXTENSION  
PROPOSED WORKS PLAN

17TH FEBRUARY 2016

KPA PROJECT NUMBER: 14-002

0m 5m 10m 15m 20m 25m  
SCALE 1:500 @ A3

ISSUED FOR DEVELOPMENT APPLICATION

DA-03

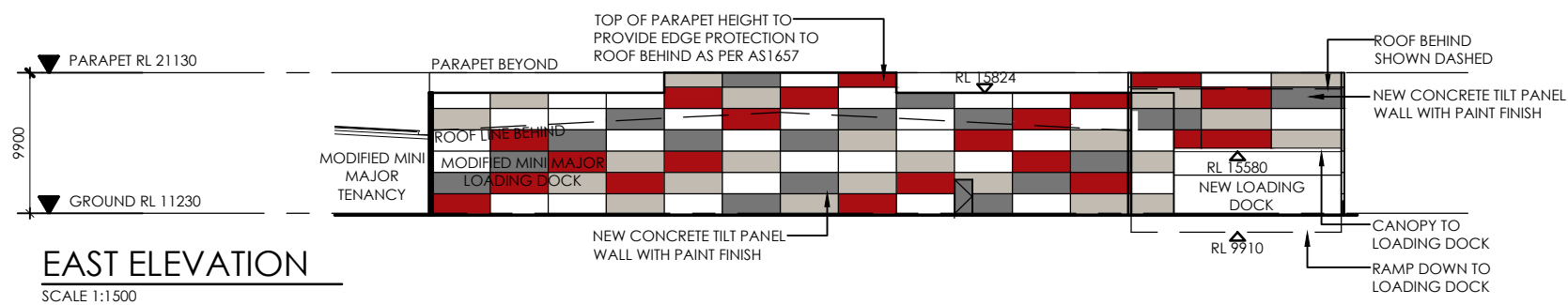
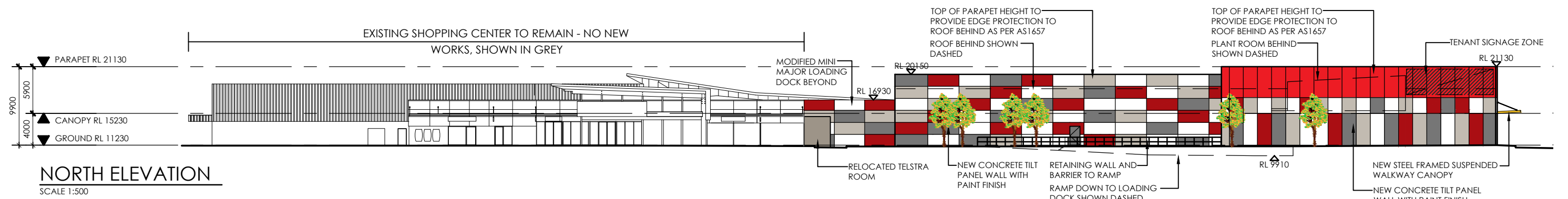
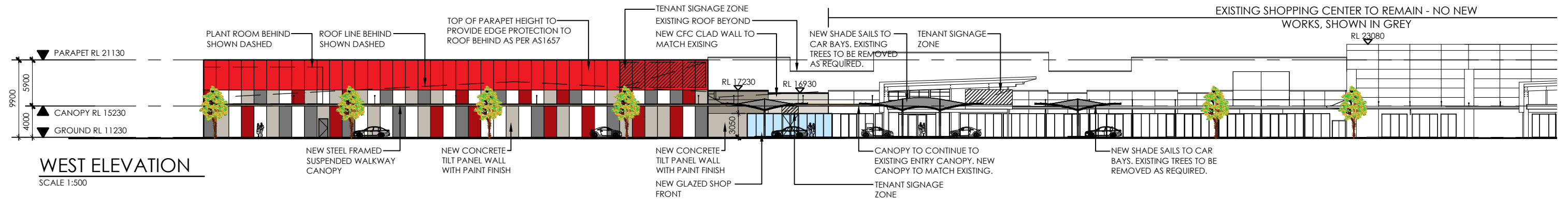
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# NOTE

ALL BUILDING ELEMENTS TO BE RE-SURVEYED TO CONFIRM EXACT LOCATIONS AND AREAS



## ATTACHMENT 5

### KWINANA SUPERMARKET EXTENSION PROPOSED ELEVATIONS

17TH FEBRUARY 2016

KPA PROJECT NUMBER: 14-002

0m 5m 10m 15m 20m 25m  
SCALE 1:500 @ A3

ISSUED FOR DEVELOPMENT APPLICATION

DA-04

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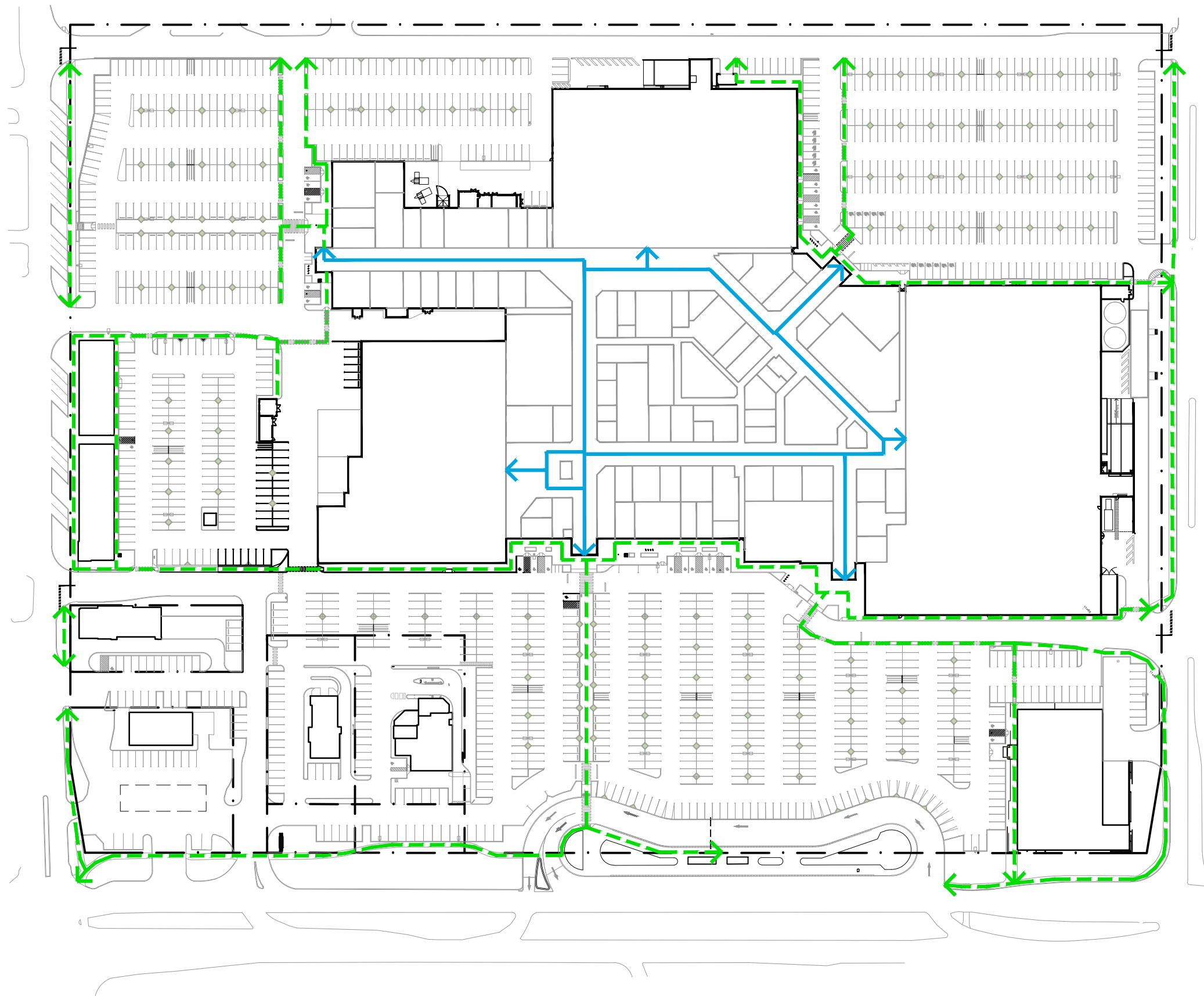
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**LEGEND**

INTERNAL PEDESTRIAN CIRCULATION

EXTERNAL PEDESTRIAN CIRCULATION



**PROPOSED PEDESTRIAN CIRCULATION PLAN**  
 SCALE 1:1500

**ATTACHMENT 6**



**KWINANA SUPERMARKET EXTENSION  
 PROPOSED PEDESTRIAN CIRCULATION PLAN**

17TH FEBRUARY 2016

KPA PROJECT NUMBER: 14-002

0m 15m 30m 45m 60m 75m  
 SCALE 1:1500 @ A3

ISSUED FOR DEVELOPMENT APPLICATION

**DA-05**

DRAWING

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## 16 Reports – Civic Leadership

### 16.1 Budget Variations

#### SUMMARY:

To amend the 2015/2016 budget to reflect various adjustments to the General Ledger with nil effect to the overall budget as detailed below. Due to the nature of these variations, they fall outside the annual budget review.

#### OFFICER RECOMMENDATION:

That the required budget variations to the Adopted Budget for 2015/2016 as outlined in the report be approved.

NOTE: AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

#### DISCUSSION:

ITEM #	LEDGER ACCOUNT	DESCRIPTION	OPERATING BUDGET	INCREASE/ DECREASE	REVISED BUDGET
1	600015.1002	Capital Expense	(331,472)	(20,000)	(351,472)
	700011.1898	Transfer from Reserve	20,000	20,000	40,000
	600017.1002	Capital Expense	(33,500)	20,000	(13,500)
	700012.1012	Transfer from Reserve	33,500	(20,000)	13,500
		<b><i>Governance Facility - transfer from identified savings from Senior Citizens oven replacement due to purchase of domestic ovens over commercial to Contingency as there has been an increase in air con and electrical repair outside normal scope of maintenance. Transfer from Asset Management Reserve.</i></b>			
	<b>Reason:</b>				
2	600016.1002	Capital Expense	(239,000)	(7,400)	(246,400)
	700044.1898	Transfer from Reserve	Nil	7,400	7,400
	600020.1002	Capital Expense	(303,684)	7,400	(296,284)
	700032.1898	Transfer from Reserve	35,000	(7,400)	27,600
		<b><i>Law Order &amp; PS Facility - transfer from identified savings from Margaret Feilman external painting due to quotes coming in cheaper than anticipated to Mandogalup and Kwinana South Fire Stations automation of doors as additional doors are required to be automated. Transfer from Asset Management Reserve.</i></b>			
	<b>Reason:</b>				
3	400655.1977	Operating Expense	Nil	(5,000)	(5,000)
	300210.1977	Operating Revenue	Nil	5,000	5,000
		<b><i>Family Day Care Aboriginal Resource – revenue in excess of adopted budget. Additional Department of Education and Training funding received for special projects for Family Day Care Aboriginal Resource worker program.</i></b>			
	<b>Reason:</b>				
4	400062.1116	Operating Expense	(35,600)	(1,500)	(37,100)
	400062.1236	Operating Expense	(30,000)	1,500	(28,500)
	<b>Reason:</b>	<b><i>Member Expense - transfer from identified savings from Members WALGA Contributions to cover unexpected Members catering costs.</i></b>			

#### LEGAL/POLICY IMPLICATIONS:

The Local Government Act 1995 Part 6 Division 4 s 6.8 (1) requires the local government not to incur expenditure from its municipal fund for an additional purpose except where the expenditure-

(b) is authorised in advance by resolution\*

“additional purpose” means a purpose for which no expenditure estimate is included in the local government’s annual budget.

\*requires an absolute majority of Council.



## 16.1 BUDGET VARIATIONS

**FINANCIAL/BUDGET IMPLICATIONS:**

Budget Item Name:	Various items as listed above.
Budgeted Amount:	
Expenditure to Date:	
Proposed Cost:	Nil effect.
Balance:	

\*NOTE: All figures are exclusive of GST

**ASSET MANAGEMENT IMPLICATIONS:**

The allocation of funds towards the upgrading and renewal of existing City assets in the capital expenditure items is in line with the Asset Management Strategy and will reduce the current asset management gap.

**ENVIRONMENTAL IMPLICATIONS:**

No environmental implications have been identified as a result of this report or recommendation.

**STRATEGIC/SOCIAL IMPLICATIONS:**

Council's Strategic Community Plan for the period 2015 to 2025 provides that Council will ensure the future sustainability of the City of Kwinana through the implementation of sound revenue and expenditure policies, and seeking additional revenue sources.

**RISK IMPLICATIONS:**

Refer to Legal/Policy comments for risk implications.

**COUNCIL DECISION**

155

**MOVED CR S LEE****SECONDED CR W COOPER**

**That the required budget variations to the Adopted Budget for 2015/2016 as outlined in the report be approved.**

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**

8/0

## **16.2 Proposed Road Closure – Portion of Darling Chase, Wandi**

### **SUMMARY:**

The City was approached by Rowe Group, on behalf of Satterley Property Group to initiate a formal application to permanently close a portion of Darling Chase road reserve. As detailed in Attachment A, the portion of the Darling Chase road reserve to be closed is situated between Figg Rise/Honeywood Avenue and Lyon Road, Wandi.

The proposed road closure will enable development to progress in accordance with the approved Local Structure Plan. In June 2014, the subject closure was put on hold due to a modification requirement to the Local Structure Plan. The modification requirement has now been resolved and the application to close the subject portion of road reserve can now be progressed.

In accordance with Section 58(3) of the Land Administration Act 1997, a local government must not resolve to make a request to the Minister for Lands to close a road until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution.

At the Ordinary Council Meeting held on 23 April 2014, Council resolved to give local public notice of the proposed road closure as detailed in Attachment A. The 35 days submission period has lapsed and no objections to the closure were received.

### **OFFICER RECOMMENDATION:**

That Council in accordance with Section 58(1) of the Land Administration Act 1997, formally request that the Minister for Lands grant the request to close the portion of road reserve detailed in Attachment A.

### **DISCUSSION:**

Both the Wandi North and the Wandi South approved Local Structure Plans identify the Wandi Local Playing Fields over the portion of the Darling Chase road reserve proposed to be closed.

Negotiations have been underway for some time to initiate the detailed design, construction and delivery of the local playing fields site and it is considered appropriate to initiate the closure of the portion of Darling Chase currently dissecting the local playing fields. This will enable development to progress in accordance with the approved Local Structure Plans.

The portion of the existing Darling Chase road reserve proposed to be closed is calculated at approximately 4007 square metres. The proposed portion of road to be closed as shown on Attachment A will be amalgamated with the adjoining land, being either Lots 1 to 3 on Deposited Plan 31293 to the north or Lot 675 on Deposited Plan 202618 to the south.

**16.2 PROPOSED ROAD CLOSURE – PORTION OF DARLING CHASE, WANDI**

The amalgamation process will essentially seek to transfer the land from one Local Scheme Reserve to another, being a transfer from 'Road Reserve' to 'Parks, Recreation and Drainage'; therefore, the land will remain as a Local Scheme Reserve (Crown land) under the care and control of the City of Kwinana. It is understood the land will be amalgamated without purchase by the adjoining landowners.

**LEGAL/POLICY IMPLICATIONS:****Land Administration Act 1997****58. Closing roads**

- (1) When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.
- (2) When a local government resolves to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.
- (3) A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.
- (4) On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) —
  - (a) by order grant the request; or
  - (b) direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or
  - (c) refuse the request.
- (5) If the Minister grants a request under subsection (4) —
  - (a) the road concerned is closed on and from the day on which the relevant order is registered; and
  - (b) any rights suspended under section 55(3)(a) cease to be so suspended.
- (6) When a road is closed under this section, the land comprising the former road —
  - (a) becomes unallocated Crown land; or
  - (b) if a lease continues to subsist in that land by virtue of section 57(2), remains Crown land.

**FINANCIAL/BUDGET IMPLICATIONS:**

Any costs associated with the closure will be the responsibility of Satterley Property Group.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications identified as a result of this report and the closure of this portion of road reserve will be offset by the creation of Wandi Local Playing Fields.

16.2 PROPOSED ROAD CLOSURE – PORTION OF DARLING CHASE, WANDI

**ENVIRONMENTAL IMPLICATIONS:**

Additional 'Parks, Recreation and Drainage' reserve will be created due to the realignment of this road.

**STRATEGIC/SOCIAL IMPLICATIONS:**

This proposed closure has already been identified and adopted in the Wandi North and Wandi South Local Structure Plans.

The City's Plan for the Future (Strategic Community Plan Section 4) outlines a number of objectives regarding the provision of public open spaces (4.2.1), balancing growth (4.4.2), planning for new communities (4.4.6) and regularly assessing the District and Local Structure Plans (4.4.1).

**RISK IMPLICATIONS:**

Should Council resolve not to formally request the Minister for Lands grant the request to close the portion of road reserve detailed in Attachment A, as per Section 58(1) of the Land Administration Act 1997, the closure process cannot proceed as per the approved Wandi North and Wandi South Local Structure Plans.

**COUNCIL DECISION**

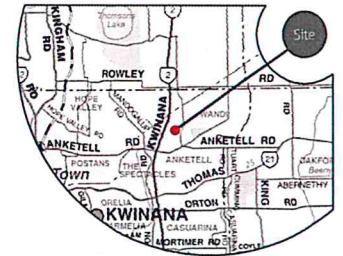
156

**MOVED CR B THOMPSON**

**SECONDED CR R ALEXANDER**

**That Council in accordance with Section 58(1) of the Land Administration Act 1997, formally request that the Minister for Lands grant the request to close the portion of road reserve detailed in Attachment A.**

**CARRIED  
8/0**



**LEGEND**

- Existing Lot Boundary
- Proposed Development Layout
- 675 Existing Lot Numbers
- Public Open Space
- Residential
- School
- Rural Residential
- Proposed Road Closure

Note: Areas and Dimensions are subject to survey

0 1 75 metres

**REVISIONS**

Rev	Date	Drawn
A	2013.09.13	M Sullivan



W: www.rowegroup.com.au  
E: info@rowegroup.com.au  
P: 08 9221 1991

Date Drawn: 2013-09-13  
Job Ref: 7926  
Scale: 1:1500 @ A3  
Client: Satterley Property Group  
Designer: R Cumming  
Drawn: M Sullivan  
Projection: MGA50 GD94  
Plan ID: 7926-SUB-06-A

**Attachment A**

Portion of existing Darling Chase to be closed

Lyon Road

Darling Chase

675

Wandi Local Structure Plan - Scale 1:8000 @ A3



Darling Chase  
Wandi

**Proposed Road Closure**

### **16.3 Proposed Road Closure – Portion of Tunnickliffe Street, Parmelia**

#### **SUMMARY:**

The City was approached by McMullen Nolan Group Pty Ltd (MNG) to initiate a formal application to permanently close a portion of Tunnickliffe Street, Parmelia, at the roundabout intersection of Parmelia Avenue and St Vincents School.

In accordance with Section 58(3) of the Land Administration Act 1997, a local government must not resolve to make a request to the Minister for Lands to close a road until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution.

At the Ordinary Council Meeting held on 10 February 2016, Council resolved to give local public notice of the proposed road closure as detailed in Attachments A and B. The 35 days submission period has lapsed and no objections to the closure were received.

#### **OFFICER RECOMMENDATION:**

That Council in accordance with Section 58(1) of the Land Administration Act 1997, formally request that the Minister for Lands grant the request to close the portion of road reserve detailed in Attachments A and B.

#### **DISCUSSION:**

This closure request has come about because the area of land was created in error as a portion of Tunnickliffe Street, Parmelia. A subsequent application has been lodged to use the area as a land exchange for the land required to accommodate a roundabout at the intersection of Tunnickliffe and Stevenson. The portion of land should not have been a road reserve.



**16.3 PROPOSED ROAD CLOSURE – PORTION OF TUNNICLIFFE STREET, PARMELIA****LEGAL/POLICY IMPLICATIONS:**

Land Administration Act 1997

58. Closing roads

- (1) When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.
- (2) When a local government resolves to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.
- (3) A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.
- (4) On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) —
  - (a) by order grant the request; or
  - (b) direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or
  - (c) refuse the request.
- (5) If the Minister grants a request under subsection (4) —
  - (a) the road concerned is closed on and from the day on which the relevant order is registered; and
  - (b) any rights suspended under section 55(3)(a) cease to be so suspended.
- (6) When a road is closed under this section, the land comprising the former road —
  - (a) becomes unallocated Crown land; or
  - (b) if a lease continues to subsist in that land by virtue of section 57(2),

**FINANCIAL/BUDGET IMPLICATIONS:**

The City has received payment of the administration fee in the amount of \$1,500 from McMullen Nolan Group Pty Ltd to meet the costs for the initiation of this road closure process.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications identified as a result of this report.

16.3 PROPOSED ROAD CLOSURE – PORTION OF TUNNICLIFFE STREET, PARMELIA

**ENVIRONMENTAL IMPLICATIONS:**

There are no environmental implications identified as a result of this report.

**STRATEGIC/SOCIAL IMPLICATIONS:**

There are no strategic/social implications as a result of this report.

**RISK IMPLICATIONS:**

Should Council resolve not to formally request the Minister for Lands grant the request to close the portion of road reserve detailed in Attachments A and B, as per Section 58(1) of the Land Administration Act 1997, the closure process cannot proceed.

**COUNCIL DECISION**

157

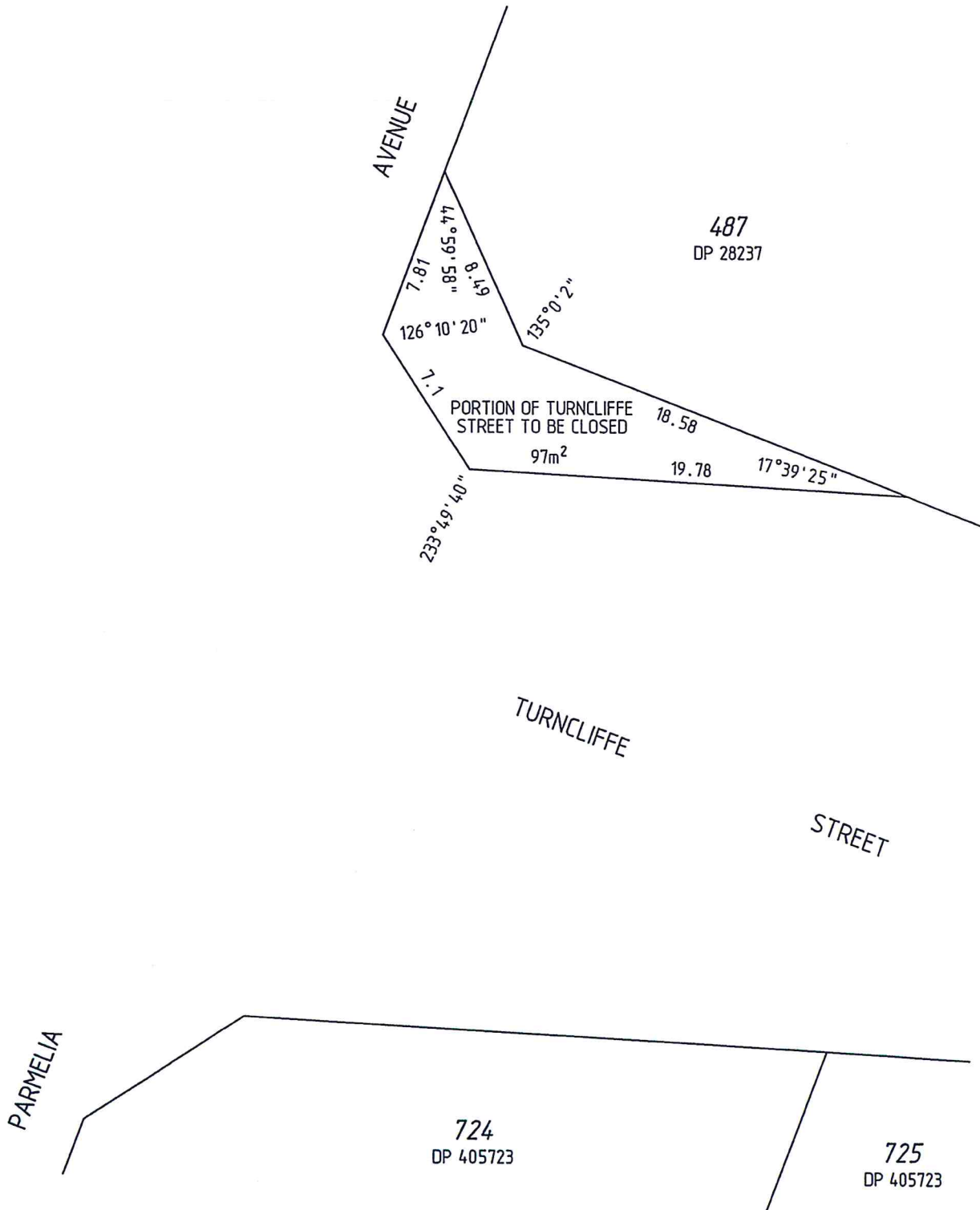
**MOVED CR W COOPER**

**SECONDED CR B THOMPSON**

**That Council in accordance with Section 58(1) of the Land Administration Act 1997, formally request that the Minister for Lands grant the request to close the portion of road reserve detailed in Attachments A and B.**

**CARRIED  
8/0**





MC MULLEN NOLAN GROUP Tel: (08) 6436 1599  
 Level 1, 2 Sabre Crescent Fax: (08) 6436 1500  
 Jandalot, W.A. 6164 info@mngsurvey.com.au  
 PO Box 3526, Success www.mngsurvey.com.au  
 W.A. 6964, Australia ABN 90 009 163 311

MNG Ref:- 91442mp-062a.dgn Date:- 14/10/2015

PORTION OF TURNCLIFFE  
 STREET TO BE CLOSED



Scale 1:250



## **16.4 Amendment to Council Appointment of Officers – Local Government to Officers 2016**

### **SUMMARY:**

A local government is authorised to exercise powers and duties under various Acts and Regulations, whereby they must appoint particular officers to carry out the duties of the local government. These appointments are reflected in the 'Council Appointment of Officers - Local Government to Officers 2016'.

At its 10 February 2016 meeting, Council resolved to appoint officers as authorised officers to undertake functions of the Control of Vehicles (Off-road Areas) Act 1978, as detailed in Attachment A.

It is recommended that the current Council Appointment of Officers – Local Government to Officers be amended as listed below with the inclusion of Ms Hayley Goodwin as detailed in the Attachment A:

- 1.4 Control of Vehicles (Off-road Areas) Act 1978 – Appointment of authorised officers

### **OFFICER RECOMMENDATION:**

That Council amend the Appointment of Officers – Local Government to Officers 2016 to include Ms Hayley Goodwin as an authorised officer for the purposes of the Control of Vehicles (Off-road Areas) Act 1978, as detailed in Attachment A.

NOTE – AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

### **DISCUSSION:**

Section 38(3)(a) of the Control of Vehicles (Off-road Areas) Act 1978 allows a local government to appoint authorised officers for the purposes of that Act. The Register titled Council Appointment of Officers – Local Government to Officers 2016 details the Acts and Regulations that require Council to make a direct appointment to a person or class of persons.

It is recommended that Ms Hayley Goodwin who is employed as a City Assist Officer for the City be appointed as an authorised officer to undertake functions in respect to the Control of Vehicles (Off-road Areas) Act 1978.

### **LEGAL/POLICY IMPLICATIONS:**

#### **Control of Vehicles (Off-road Areas) Act 1978**

#### **38. Authorised officers, who are, functions of etc.**

- (3) A local government may by resolution appoint —
- (a) any employee of the local government;

to be an authorised officer for the purposes of this Act either in respect of the whole of its district or any part thereof defined in the appointment.

**16.4 AMENDMENT TO COUNCIL APPOINTMENT OF OFFICERS – LOCAL GOVERNMENT TO OFFICERS 2016**

**FINANCIAL/BUDGET IMPLICATIONS:**

There are no direct financial implications related to this report.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no direct asset management implications related to this report.

**ENVIRONMENTAL IMPLICATIONS:**

There are no direct environmental implications related to this report.

**STRATEGIC/SOCIAL IMPLICATIONS:**

The role of Council is to ensure that the Council's delegations are aligned with the key goals and aspirations as set out in our Plan for the Future.

**RISK IMPLICATIONS:**

There are no risk implications related to this report.

**COUNCIL DECISION**

158

**MOVED CR S LEE**

**SECONDED CR D WOOD**

**That Council amend the Appointment of Officers – Local Government to Officers 2016 to include Ms Hayley Goodwin as an authorised officer for the purposes of the Control of Vehicles (Off-road Areas) Act 1978, as detailed in Attachment A.**

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**  
**8/0**

## ATTACHMENT A

<b>1.4 Control of Vehicles (Off-Road Areas) Act 1978- Appointment of authorised officers</b>																											
<b>Function to be performed:</b>	Appointment of such persons to be Authorised Persons for the purposes of this Act.																										
<b>Power to appoint:</b>	Control of Vehicles (Off-Road Areas) Act 1978 s38(3)(a) employees of Local Government																										
<b>Date of Appointment:</b>	24 June 2015 Resolution #500 10 February 2016 D16/1305																										
<b>Appointment of:</b>	<table> <tr> <td>Joanne Abbiss</td><td>Chief Executive Officer</td></tr> <tr> <td>Errol Lawrence</td><td>Director Corporate and Engineering Services</td></tr> <tr> <td>Clinton Venables</td><td>Manager Essential Services</td></tr> <tr> <td>Cecil Wells</td><td>Coordinator City Assist</td></tr> <tr> <td>Christoph Matzen</td><td>Senior City Assist Officer</td></tr> <tr> <td>Brad Casserly</td><td>City Assist Officer</td></tr> <tr> <td>Rodney De San Miguel</td><td>City Assist Officer</td></tr> <tr> <td>Trevor Jones</td><td>City Assist Officer</td></tr> <tr> <td>Ian Abel</td><td>City Assist Officer</td></tr> <tr> <td>Kieran Togher</td><td>City Assist Officer</td></tr> <tr> <td>Paul Lucas</td><td>City Assist Officer</td></tr> <tr> <td>Mark Allies</td><td>City Assist Officer</td></tr> <tr> <td>Hayley Goodwin</td><td>City Assist Officer</td></tr> </table>	Joanne Abbiss	Chief Executive Officer	Errol Lawrence	Director Corporate and Engineering Services	Clinton Venables	Manager Essential Services	Cecil Wells	Coordinator City Assist	Christoph Matzen	Senior City Assist Officer	Brad Casserly	City Assist Officer	Rodney De San Miguel	City Assist Officer	Trevor Jones	City Assist Officer	Ian Abel	City Assist Officer	Kieran Togher	City Assist Officer	Paul Lucas	City Assist Officer	Mark Allies	City Assist Officer	Hayley Goodwin	City Assist Officer
Joanne Abbiss	Chief Executive Officer																										
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Cecil Wells	Coordinator City Assist																										
Christoph Matzen	Senior City Assist Officer																										
Brad Casserly	City Assist Officer																										
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Kieran Togher	City Assist Officer																										
Paul Lucas	City Assist Officer																										
Mark Allies	City Assist Officer																										
Hayley Goodwin	City Assist Officer																										
<b>Special Requirements:</b>	<p>Control of Vehicles (Off-Road Areas) Act 1978</p> <p>s38(4) A person who is appointed as an authorised officer pursuant to subsection (2) or subsection (3) —</p> <p>(d) shall be issued with a certificate of his appointment as an authorised officer in the prescribed form, evidencing the area of jurisdiction entrusted to him under this Act, which he shall, on reasonable demand, produce for inspection by any person.</p>																										

## **16.5 Proposed Road Closure – Portions of Tamblyn Place, Wellard**

### **SUMMARY:**

The City was approached by McMullen Nolan Group Pty Ltd (MNG) to initiate a formal application to permanently close a portion of Tamblyn Place, Wellard, near the intersection of Tamblyn Place and Johnson Road, Wellard, as detailed in Attachment A.

In accordance with Section 58(3) of the Land Administration Act 1997, a local government must not resolve to make a request to the Minister for Lands to close a road until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution.

At the Ordinary Council Meeting held on 10 February 2016, Council resolved to give local public notice of the proposed road closure as detailed in Attachment A. The 35 days submission period has lapsed and no objections to the closure were received.

### **OFFICER RECOMMENDATION:**

That Council in accordance with Section 58(1) of the Land Administration Act 1997, formally request that the Minister for Lands grant the request to close the portions of road reserve detailed in Attachment A.

### **DISCUSSION:**

As detailed in Attachment A, the proposed closure of portions of the road reserve shown in green, blue and brown are necessary to accommodate lodgement of a subdivision application for the applicable lots, so that the Department of Lands can proceed with its process. The proposed closure of portions of the road reserve shown in yellow (1385 sqm) will become part of the public open space (POS).

**16.5 PROPOSED ROAD CLOSURE – PORTIONS OF TAMBLYN PLACE, WELLARD****LEGAL/POLICY IMPLICATIONS:**

Land Administration Act 1997

58. Closing roads

- (1) When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.
- (2) When a local government resolves to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.
- (3) A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.
- (4) On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) —
  - (a) by order grant the request; or
  - (b) direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or
  - (c) refuse the request.
- (5) If the Minister grants a request under subsection (4) —
  - (a) the road concerned is closed on and from the day on which the relevant order is registered; and
  - (b) any rights suspended under section 55(3)(a) cease to be so suspended.
- (6) When a road is closed under this section, the land comprising the former road —
  - (a) becomes unallocated Crown land; or
  - (b) if a lease continues to subsist in that land by virtue of section 57(2), remains Crown land.

**FINANCIAL/BUDGET IMPLICATIONS:**

The City has received payment of the administration fee in the amount of \$1,500 from McMullen Nolan Group Pty Ltd to meet the costs for the initiation of this road closure process.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications identified as a result of this report.

**ENVIRONMENTAL IMPLICATIONS:**

There are no environmental implications identified as a result of this report.

16.5 PROPOSED ROAD CLOSURE – PORTIONS OF TAMBLYN PLACE, WELLARD

**STRATEGIC/SOCIAL IMPLICATIONS:**

There are no strategic/social implications as a result of this report.

**RISK IMPLICATIONS:**

Should Council resolve not to formally request the Minister for Lands grant the request to close the portion of road reserve detailed in Attachment A, as per Section 58(1) of the Land Administration Act 1997, the closure process cannot proceed.

**COUNCIL DECISION**

159

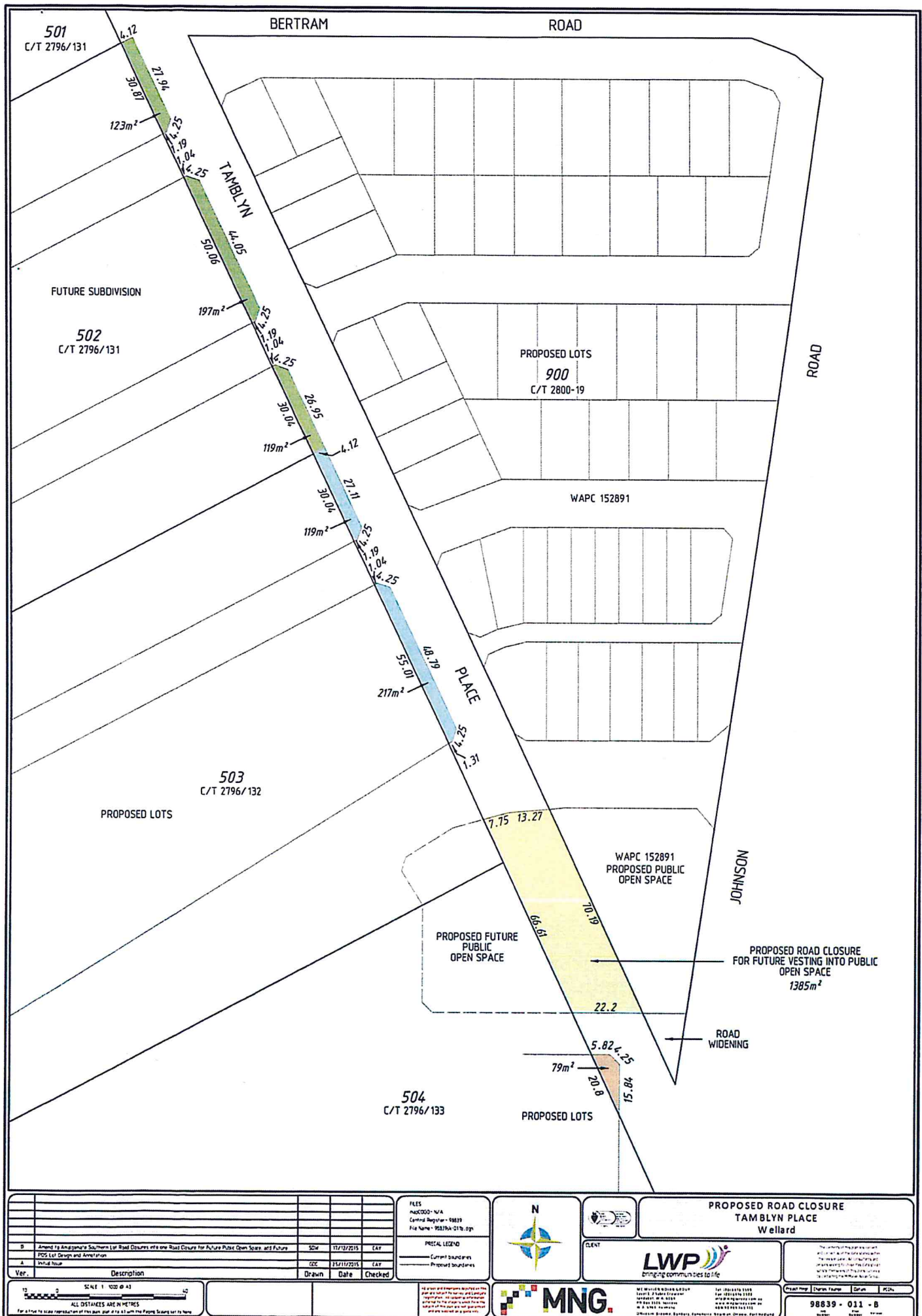
**MOVED CR W COOPER**

**SECONDED CR P FEASEY**

**That Council in accordance with Section 58(1) of the Land Administration Act 1997, formally request that the Minister for Lands grant the request to close the portions of road reserve detailed in Attachment A.**

**CARRIED  
8/0**





## 16.6 Adoption of Extractive Industries Amendment Local Law 2016

### SUMMARY:

The proposed Extractive Industries Amendment Local Law 2016 was advertised for the required period, as prescribed by the Local Government Act 1995, and a copy of this law was forwarded to the Minister for Local Government and Communities. The Department of Local Government and Communities has recommended numerous style, formatting and grammar changes and these recommendations have been applied and are incorporated into the final version of the local law as attached at Attachment A.

No public submissions were received in response to this notice.

### OFFICER RECOMMENDATION:

1. That the Presiding Member reads aloud the Proposed Extractive Industries Amendment Local Law 2016 purpose and effect:
  - a. The purpose of this local law is to prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government, regulating the carrying on of the extractive industry in order to minimise damage to the environment, roads and other people's health and property, and provide for the restoration and reinstatement of any excavation site.
  - b. The effect of this local law is any person wanting to carry on an extractive industry will need to be licensed and will need to comply with the provisions of this local law.
2. That Council resolve to:
  - a. Adopt the Extractive Industries Amendment Local Law 2016 with minor amendments from the local law originally proposed, made during the public submission period, which do not impact on the purpose or effect of this local law at Attachment A; and
  - b. Cause the Extractive Industries Amendment Local Law 2016 to be published in the Government Gazette and provide a local public notice stating when the local law comes into operation and that copies are available for public information.
  - c. Authorise the Mayor and Chief Executive Officer to sign the Explanatory Memorandum and Statutory Procedures Checklist of the process used at Attachment C, as is required to be provided to the Joint Standing Committee on Delegated Legislation and the Minister for Local Government and Communities within 10 working days of the Gazettal Notice publication date.

NOTE: AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

## 16.6 ADOPTION OF EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016

### DISCUSSION:

The **purpose** of this local law is to prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government, regulating the carrying on of the extractive industry in order to minimise damage to the environment, roads and other people's health and property, and provide for the restoration and reinstatement of any excavation site.

The **effect** of this local law is any person wanting to carry on an extractive industry will need to be licensed and will need to comply with the provisions of this local law.

The City's current Extractive Industries Local Law was adopted in May 2001 and reviewed in 2011. However, due to a technicality in completing the required process for the submission of local laws, it was disallowed by the Legislative Council in June 2012.

A review of the local law was once again commenced in 2013 but with the proposed local government amalgamations process taking precedence, the review was not able to be completed at that time and was postponed.

A number of staff working group meetings and an elected member's forum have taken place to review the current local law with the resulting draft local law presented to Council at the Ordinary Council Meeting of 16 December 2015 and subsequently advertised for public submission.

The proposal to make an Extractive Industries Amendment Local Law 2016 was advertised in the West Australian newspaper and the Sound Telegraph newspaper on 23 December 2015, the Administration Centre, Recquatic Centre, Darius Wells Library and Resource Centre and on the City's website. A copy of this local law was also forwarded to the Minister for Local Government and Communities on 24 December 2015.

A copy of the proposed local law was also provided to the Kwinana Industries Council and to all current holders of an Extractive Industries Licence with the City of Kwinana.

No public submissions were received in relation to this local law during the consultation period, however, the Department of Local Government provided comments which were of a minor nature and amendments have been made accordingly. A copy of the comments received from the Department of Local Government and Communities is at Attachment B, including a copy of the amendment local law as advertised and provided to DLGC for comment.

These recommendations were generally in regard to the formatting of the local law and had no impact on the purpose, affect or intent of this local law. The author of the comments did however, advise that she considered that the imposition of an "Accelerated Pavement Depreciation Fee" (under clauses 11 and 12) is unusual and it is uncertain how the Delegated Legislation Committee will approach this issue. The Committee may consider whether the fee reasonably reflects the cost incurred by the local government in maintaining the roads and regulating the carrying on of an extractive industry.

**16.6 ADOPTION OF EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016**

It was also stated that the City may wish to insert new items in the modified penalties table in respect to clauses 6.2(4), 6.2(5) and 6.2(6) of the principal local law. Further clarification was sought from DLGC regarding the inclusion of additional penalties and it was advised that to do so would require the local law review process to be restarted. After discussions with relevant staff it was agreed that the inclusion of these additional penalties was not warranted and as it was unlikely the provision for the penalties would be used, then they need not be included. The ability to commence prosecution proceedings for such offences was still available.

The author further advised that the comments:

- have been provided to assist the City with drafting matters in relation to the local law;
- do not constitute legal advice;
- have been provided in good faith for the City's consideration; and
- should not be taken as an approval of content.

A copy of the Explanatory Memorandum and Statutory Procedures Checklist of the process used, as is required to be provided to both the Joint Standing Committee on Delegated Legislation and the Minister for Local Government and Communities, is at Attachment C.

**LEGAL/POLICY IMPLICATIONS:**

Section 3.12 of the Local Government Act 1995 sets out the procedure to be followed to make a local law as follows:

- The purpose and effect of the proposed local law needs to be included in the agenda and minutes of this meeting.
- State wide and local public notice that the local government wants to make a local law and its purpose and effect is to be undertaken. Copies are to be made available for public comment over a six week period and the closing date for public submissions is to be provided in the advertisement.
- A copy of the proposed local Law is to be provided to the Minister for Local Government and Communities.
- The local government is to consider any submissions made before making the local law.
- The local government is to publish the local law in the Government Gazette.
- Local public notice is to be given of when the local law comes into operation and that copies are available for public information.
- The local government is to provide an explanatory memorandum of the process used to the Minister for Local Government and Communities.

**FINANCIAL/BUDGET IMPLICATIONS:**

Budget Item Name:	Governance Advertising and Promotions
Budgeted Amount:	\$90,000
Expenditure to Date:	\$3,220
Proposed Cost:	\$1,400
Balance:	\$85,380

\*NOTE: All figures are exclusive of GST

16.6 ADOPTION OF EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016

**ASSET MANAGEMENT IMPLICATIONS:**

There are no direct asset management implications related to this report.

**ENVIRONMENTAL IMPLICATIONS:**

There are no direct environmental implications related to this report.

**STRATEGIC/SOCIAL IMPLICATIONS:**

The role of Council is to ensure that the Council's local laws are aligned with the key goals and aspirations as set out in our Plan for the Future.

**RISK IMPLICATIONS:**

Creating local laws that guide the operations of the City will play a valuable role in reducing risk to levels acceptable to Council.

**COUNCIL DECISION**

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**MOVED CR S MILLS**

**SECONDED CR R ALEXANDER**

1. That the Presiding Member reads aloud the Proposed Extractive Industries Amendment Local Law 2016 purpose and effect:
  - a. The purpose of this local law is to prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government, regulating the carrying on of the extractive industry in order to minimise damage to the environment, roads and other people's health and property, and provide for the restoration and reinstatement of any excavation site.
  - b. The effect of this local law is any person wanting to carry on an extractive industry will need to be licensed and will need to comply with the provisions of this local law.
2. That Council resolve to:
  - a. Adopt the Extractive Industries Amendment Local Law 2016 with minor amendments from the local law originally proposed, made during the public submission period, which do not impact on the purpose or effect of this local law at Attachment A; and
  - b. Cause the Extractive Industries Amendment Local Law 2016 to be published in the Government Gazette and provide a local public notice stating when the local law comes into operation and that copies are available for public information.

16.6 ADOPTION OF EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016

- c. Authorise the Mayor and Chief Executive Officer to sign the Explanatory Memorandum and Statutory Procedures Checklist of the process used at Attachment C, as is required to be provided to the Joint Standing Committee on Delegated Legislation and the Minister for Local Government and Communities within 10 working days of the Gazettal Notice publication date.**

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**

**8/0**

## EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Kwinana resolved to make the following local law on the [insert simple date of resolution to adopt].

### 1. Citation

This local law is cited as the *City of Kwinana Extractive Industries Amendment Local Law 2016*.

### 2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

### 3. Principal local law

This local law amends the *Town of Kwinana Extractive Industries Local Law* as published in the Government Gazette on 10 August 2001.

### 4. Clause 1.1 amended

Clause 1.1 is amended as follows:

In clause 1.1 -

(a) delete –

“**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand and other material;

“**local government**” means the City of Kwinana;

“**secured sum**” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1;

“**town planning scheme**” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*.

(b) insert in alphabetical order within clause 1.1 –

“**Building Price Index**” means a statistical based method of measuring building price movements over time for the purpose of updating non-residential building construction budgets;

“**bulk earthworks**” means the removal, moving or adding of large quantities of soil or rock from a particular area to another in order to make an area a suitable height and level for a specific construction purpose;

“**carry on an extractive industry**” means quarrying, bulk earthworks and excavating for stone, gravel, sand and other material and the transporting of the material off the site;

“**local government**” means the City of Kwinana;

“**local planning scheme**” means a town planning scheme of the local government made under the *Planning and Development Act 2005*;

“**occupier**” has the meaning given to it in the Act;



“owner” has the meaning given to it in the Act;

“secured sum” means the sum required to be paid in the form of a bank guarantee under clause 5.1;”

“Schedule” means a Schedule of this local law;

- (c) in the definition of “excavation” after “includes quarry” insert “, bulk earthworks or extraction”; and
- (d) at the end of the definition of “site” delete the delete the semicolon and insert a full stop.

## **5. Insert new clause after clause 1.3**

New clause 1.4 is inserted after clause 1.3 as follows:

### **“Citation**

1.4 This local law may be cited as the *City of Kwinana Extractive Industries Local Law 2016*.”

## **6. Clause 2.1 amended**

Clause 2.1 is amended as follows:

After “Penalty” delete “5000” and replace with “\$5,000”.

## **7. Clause 2.2 amended**

In clause 2.2(1)(a)(i) delete “twenty one (21) days” and replace with “21 days”.

## **8. Clause 2.3 amended**

- (1) in clause 2.3(1)(a) –
  - (a) before “of a plan of the” delete “3 copies” and replace with “One hard copy and an electronic copy in a format acceptable to the local government”;
  - (b) in subparagraph (vii), delete “power lines, telephone cables” and replace with “infrastructure services including but not limited to power lines, communication cables”;
  - (c) in subparagraph (viii) after “existing”, insert “bores,”;
- (2) in clause 2.3(1)(b) –
  - (a) before “of a works and” delete “3 copies” and replace with “One hard copy and an electronic copy in a format acceptable to the local government”;
  - (b) delete subclause (xii) and replace with -
    - “(xii) a noise management plan, including a description of the measures to be taken to comply with the *Environmental Protection Act 1986* and *Environmental Protection (Noise) Regulations 1997*,”; and
- (3) in clause 2.3(1)(c) before “of a rehabilitation” delete “3 copies” and replace with “One hard copy and an electronic copy in a format acceptable to the local government”;

## **9. Clause 3.1 amended**

Clause 3.1 is amended as follows:

- (1) In subclause (4)(a), delete “30th June next” and replace with “next June 30”.
- (2) In subclause (5) delete paragraphs (q), (r) and (s) and replace with -
  - “(q) requiring the licensee to pay an Accelerated Pavement Depreciation Fee for using roads owned by the local government for transporting extracted materials, to assist with the repair, maintenance and upgrade of such roads; and
  - (r) any other matter for properly regulating the carrying on of an extractive industry.”



#### **10. Clause 3.2 amended**

Clause 3.2 is amended as follows:

- (a) After “3.2”, insert subclause number “(1)”
- (b) In clause 3.2 after subclause (1), insert:
  - “(2) On renewal or conclusion of a licence, the licensee shall pay the local government the applicable Accelerated Pavement Depreciation Fee due to accelerated depreciation of the pavement in accordance with the condition set out in the Extractive Industries Licence. The payable fee will be based on the total amount of extracted material and the length of local authority roads used in the transport route during the financial year (period from 1 July to 30 June). The applicable fee, tabled in the local government’s Schedule of Fees and Charges, will be adjusted annually in accordance with the Building Price Index.”

#### **11. Clause 4.1 amended**

In clause 4.1(1) in paragraph (f), delete “fee” and replace with “fees and charges”.

#### **12. Clause 4.2 amended**

In clause 4.2(1) in paragraph (d) delete “3.2” and replace with “3.2(1) or 3.2(2)”.

#### **13. Clause 4.3 amended**

In clause 4.3(1) in paragraph (a), delete “fee” and replace with “fees and charges”.

#### **14. Clause 5.1 replaced**

Delete clause 5.1, including title, and replace with:

##### **“Security For Restoration And Reinstatement for Local Government Owned Assets**

- 5.1 (1) For the purpose of ensuring that all fees and charges are paid and that local government owned assets that have been used to carry out excavation operations are properly restored or reinstated, the local government may require that –
- (a) as a condition of a licence; or
  - (b) before the issue of a licence,
- the licensee shall give to the local government a bank guarantee of a kind and in a form acceptable to the local government for a sum determined by the local government from time to time.
- (2) A bank guarantee required under subclause (1) is to be in the name of the local government for the purposes of this clause.”

#### **15. Clause 5.2 amended**

Clause 5.2 is amended as follows:

- (1) In subclause (1) after “reinstatement works”, insert “or fails to pay any fees and charges”;
- (2) In subclause (2) after “the proceeds of any”, delete “bond,”;
- (3) After “towards its costs” insert “or any outstanding fees and charges”.

#### **16. Clause 6.1 amended**

After clause 6.1(1) after “Penalty” delete “\$4,000” and replace with “\$5,000”.

#### **17. Clause 6.2 amended**

In clause 6.2(2)(iii) delete “DANGER EXCAVATIONS KEEP OUT” and replace with “DANGER EXCAVATIONS - KEEP OUT”.

**18. Clause 6.3 amended**

Clause 6.3 is amended as follows:

- (1) In subclause (1) paragraph (a), after “within 40 metres,” delete “(or such lesser distance as maybe allowed, in writing, by the local government)” and replace with “(without written permission from the local government and if required, the Department of Environment Regulation)”; and
- (2) In subclause (2) delete “Department of Minerals and Energy” and replace with “Department of Mines and Petroleum”.

**19. Clause 6.4 amended**

After clause 6.4(2) after “Penalty” delete “\$4,000” and replace with “\$5,000”.

**20. Clause 7.1 amended**

Clause 7.1 is amended as follows:

- (1) In subclause (1) after “liability insurance policy”, delete “taken out in the joint names of the licensee and the local government” and replace with “naming the local government and”; and
- (2) delete “10000000” and replace with “\$10,000,000”.

**21. Clause 7.4 amended**

- (a) In clause 7.4, renumber paragraphs; delete “(1)” and replace with “(a)”, delete “(2)” and replace with “(b)”, delete “(3)” and replace with “(c)”, delete “(4)” and replace with “(d)”, delete “(5)” and replace with “(e)”, delete “(6)” and replace with “(f)”, delete “(7)” and replace with “(g)”, delete “(8)” and replace with “(h)”, delete “(9)” and replace with “(i)”; and
- (b) In clause 7.4, after paragraph (i) and before “Penalty” insert on new line “Failing to comply with any requirements of this clause constitutes an offence.”

**22. Clause 8.1 amended**

Clause 8.1 is amended as follows:

Delete entire clause and replace with:

“8.1 When the local government makes a decision as to whether it will grant a person a licence or renew, vary or cancel a licence under this local law, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.”

**23. Clause 9.1 amended**

Clause 9.1 is amended as follows:

Delete “the Schedule” and replace with “Schedule 1”.

**24. Schedule - Prescribed Offences replaced**

Delete the entire “Schedule - Prescribed Offences” and replace with:

**Schedule 1 – Prescribed Offences**  
(Clause 9.1)

ITEM	CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
1.	2.1	Carry on extractive industry without licence or in breach of terms and conditions.	500
2.	6.1	Excavate near boundary.	500
3.	6.2(1)	Gateways not kept locked where required.	500
4.	6.2(2)	Warning signs not erected or maintained as required.	500
5.	6.2(3)	Excavation not drained as required.	500
6.	6.3(1)	Remove trees or shrubs near boundary without approval.	500
7.	6.3(2)	Store without required approval explosives or explosive devices.	500
8.	6.3(3)	Fill or excavate in breach of licence.	500
9.	6.4(1)(a)	Blasting without approval of the local government.	500
10.	6.4(1)(b)	Blasting outside times authorised.	500
11.	6.4(1)(d)	Blasting in breach of conditions imposed by the local government.	500
12.	6.4(2)	Blasting without approval on Saturday, Sunday or public holiday.	500
13.	7.4	On cessation of operations, failing to comply with the required conditions.	500

Dated: [insert simple date of adoption]

The Common Seal of the City of Kwinana was hereunto affixed in the presence of:-

.....  
**CAROL ADAMS**  
Mayor

.....  
**JOANNE ABBISS**  
Chief Executive Officer

## ATTACHMENT B

Comments received from Department of Local Government and Communities

11 February 2016:

This email is in response to your letter dated 24 December 2015 addressed to the Minister of Local Government, concerning the City's proposed *City of Kwinana Extractive Industries Amendment Local Law 2016*.

The Department's comments are noted below. Please contact me if you have any queries regarding the comments.

### City of Kwinana Extractive Industries Amendment Local Law 2016

#### 1. Citation clause in principal local law

Clauses 4 and 5 amend the contents page and the title of the principal local law. The City may wish to delete these clauses as amending the contents page is unnecessary and it is debateable as to whether the title is an operative part of the local law and whether it can be amended.

It is suggested that the City inserts a citation clause in the principal local law after the Repeal clause (i.e. clause 1.3) to ensure that the principal local law can be clearly identified. An example clause is as follows:

#### X. Citation clause

After clause 1.3 insert:

##### Citation

1.4 This local law may be cited as the *City of Kwinana Extractive Industries Local Law 2001*.

Amending the definition of "local government" to refer to the "City of Kwinana" (as provided in clause 6 of the local law) will also ensure that any reference to "local government" in the principal local law means the "City of Kwinana".

If clauses 4 and 5 are retained, they should be redrafted in line with best drafting practices (as explained under "4. Best drafting practices" below).

#### 2. Clause 3 – Principal Local Law

While this clause is effective in its current format, it is suggested that the City simplifies the clause. An example is as follows:

This local law amends the *City of Kwinana Extractive Industries Local Law 2001* as published in the *Government Gazette* on 10 August 2001.

### **3. Best drafting practices**

It is suggested that clauses 5 (if retained), 7 (if retained), 8, 11, 12, 19(2), 20, 23(b) and (c), 24 and 25 are amended so that the body of the clause specifies which clause in the principal local law is being amended.

Although the clause titles indicate the relevant clauses to be amended, clause titles are not interpreted to be an operative part of the local law itself, and thus have no legislative effect. Therefore, the body of each clause must clearly indicate which clause in the principal local law is amended/deleted/inserted.

The Delegated Legislative Committee has previously recommended amendment local laws to be disallowed where this practice has not been followed. If the body of an amendment clause fails to mention which clause/part/schedule is to be amended and how, the Committee will view the clause as being vague and potentially ineffective.

Clause 20 has been redrafted below as an example. In amending the other clauses, it is suggested that a similar drafting format is followed.

## **20. Clause 6.3 amended**

Clause 6.3 is amended as follows:

- (1) In subclause (1) after “within 40 metres,” delete “(or such lesser distance as maybe allowed, in writing, by the local government)” and insert “(without written permission from the local government and if required, the Department of Environment Regulation)”;
- (2) In subclause (2) delete “Department of Minerals and Energy” and insert “Department of Mines and Petroleum”; and
- (3) After “Penalty” insert a colon.

## **Clause 7 – Throughout the entire local law**

It is suggested that clause 7 is deleted as removing the commas from values over \$999 is unnecessary (i.e. doing so does not change the value of a number). If the City wishes to retain this

amendment, the City should specify which clauses in the principal local law are being amended (rather than referring to the “entire local law”).

### **1. References to “City”**

It is suggested that any references to “City”, “City of Kwinana” and “City’s” in clauses 10(1)(a), 10(2)(a), 10(3)(a), 11(2)(a) and 12(b) should be changed to “local government” or “local government’s” (as applicable) which will ensure that these clauses are consistent with the terminology used in the principal local law.

The Delegated Legislation Committee has previously voiced concerns at the use of the word “City” in local laws as a replacement for the term “local government”. The Committee’s current position is that “local government” is the current terminology to be used in local laws since this is consistent with the term used in the *Local Government Act 1995*.

### **2. “Accelerated Pavement Depreciation Fee”**

The imposition of an “Accelerated Pavement Depreciation Fee” under clauses 11 and 12 is unusual and it is uncertain how the Delegated Legislation Committee will approach this issue. The Committee may consider whether the fee reasonably reflects the cost incurred by the local government in maintaining the roads and regulating the carrying on of an extractive industry.

As clause 12 refers to an external document, namely, the City’s “Schedule of Fees and Charges”, the Committee may enquire as to how the City has notified the public of where the “Schedule of Fees and Charges” can be viewed/accessed. If this clause is retained, it is suggested that the City provides the Committee with information regarding access to the Schedule following gazettal of the local law. If the Committee believes that insufficient steps have been taken to advise the public, the Committee may require the City to take additional steps to convey this information.

Further, it is suggested that the term “Building Price Index” is defined in the local law.

### **3. Clause 26 – Proposed Schedule 1 – Prescribed Offences replaced**

- a) In the proposed Schedule 1 – Prescribed Offences table set out under clause 26, it is suggested that an additional column is inserted which assigns an item number to each modified penalty. This will make the Schedule easier to amend in the future.

For example:

Item	Clause	Nature of offence	Modified penalty
1.	xx	Xx	xx
2.	xx	Xx	xx
3.	xx	Xx	xx

- b) The City may wish to insert new items in the modified penalties table in respect to clauses 6.2(4), 6.2(5) and 6.2(6) of the principal local law.

#### 4. Minor edits

The following minor edits are suggested:

- a) Formatting throughout the local law:
- Insert a space between each clause and ensure that the spacing is consistent throughout the local law.
  - It is suggested that clauses, subclauses and paragraphs throughout the local law should be indented as follows.

##### 1. Clause title

(1) ...

(a) ...

(i) ...

The City may wish to refer to the format of recently gazetted local laws as a guide.

- b) Cross references – the City should ensure that all cross references in the local law are accurate (e.g. see the comments in relation to clauses 19, 20 and 26).
- c) Throughout the local law, the terms “change X to Y”, “delete X and insert Y” and “delete X and replace with Y” are used interchangeably. For consistency, it is suggested that the City uses one of these terms.
- d) Enactment clause:
- Replace “by all other powers” with “under all other powers enabling it”.
  - Replace “local government of the City of Kwinana” with “Council of the City of Kwinana”.
- e) Clause 1 – Insert a full stop at the end of the sentence.
- f) Clause 6:

- For each definition delete the quotation marks around the entire definition and insert quotation marks around the defined term. This will ensure consistency with the principal local law.
  - After “In clause 1.1” insert “ – ”.
  - In paragraph (a) in the definition of “town planning scheme”, replace “*Planning and Development Act 1928*” with “*Town Planning and Development Act 1928*”.
  - In paragraph (b) delete “within clause 1.1”.
  - Redraft paragraph (c) as follows: “in the definition of “**excavation**” after “includes quarry” insert “,bulk earthworks or extraction””.
  - Redraft paragraph (d) as follows: “at the end of the definition of “**site**” delete the semicolon and insert a full stop”.
- g) Clause 9 – delete the dash and place all text in the body of the clause on a single line.
- h) Clause 10 – In subclause(3)(a) delete “3” and replace with “3 copies”
- i) Clause 11(2):
- Delete “In clause (5)” and replace with “In subclause (5) –”
- j) Clause 12 – In subclause (b) delete “insert subclause after subclause (1)” and replace with “In clause 3.2 after subclause (1), insert:”
- k) Clause 16 – In the proposed clause 5.1(2) replace “is to in” with “is to be in”.
- l) Clause 19(1):
- Delete “subclause 6.2(1)” and replace with “clause 6.2(2)(iii)”.
  - Delete “paragraph (b), subparagraph (ii)”.
- m) Clause 21 – In subclause (1) insert a quotation mark before “5000”.
- n) Clause 25:
- Remove the capital letter in “Insert”.
  - Insert a full stop at the end of the clause.
- o) Renumber clause “25” (Schedule - Prescribed Offences Replaced) to “26.”
- p) Clause 26 –
- Delete “replacement “Schedule 1 – Prescribed Offences” as tabled below”.
  - In the proposed Schedule 1 table in the description of the modified penalty for clause 2.1, remove the capital letter in “Industry”.
  - In the clause column of the table:
    - (1) Replace “6.2 (1)(a)” with “6.2(1)”.
    - (2) Replace “6.2 (1)(b)” with “6.2(2)”.
    - (3) Replace “6.2 (1)(c)” with “6.2(3)”.
    - (4) Replace “6.3 (1)(a)” with “6.3(1)”.
    - (5) Replace “6.31 (b)” with “6.3(2)”.
    - (6) Replace “6.3 (1)(c)” with “6.3(3)”.
    - (7) Ensure that there is no space between the clause number and the subclause number. For example, replace “6.4 (1)(a)” with “6.4(1)(a)”, etc.



Please note that my comments:

- have been provided to assist the City with drafting matters in relation to the local law;
- do not constitute legal advice;
- have been provided in good faith for the City's consideration; and
- should not be taken as an approval of content.

The City should ensure that a detailed editorial analysis of the proposed local law has been undertaken and that the content of the local law is in accordance with the City's policies and objectives.

Advice received 15 February 2016 in respect to query regarding inclusion of additional modified penalties:

**Question:**

I do have one query though, in regard to Clause 26 were you stated – “The City may wish to insert new items in the modified penalties table in respect to clauses 6.2(4), 6.2(5) and 6.2(6) of the principal local law.”

Instead of including additional penalties for those three clauses, is it acceptable to insert a penalty that states “All other offences not specified” ?

This is already included in some other local laws, however I am not sure if this a contemporary view on providing penalties.

**Response from DLGC:**

The City can insert a general “catch all” modified penalty. However, the City should be reminded of section 3.13 of the *Local Government Act 1995*.

Section 3.13 of the Act provides that where the final local law to be adopted by Council is significantly different from the local law that was originally advertised by the City, the procedure under section 3.12 must be restarted.

Inserting any new modified penalty (i.e. for a specific offence or for a number of offences) is likely to constitute a significant change in proposal for the purposes of section 3.13. Accordingly, it is suggested that the City restarts the law-making process.

Whilst the Department is not able to advise definitely on this matter (it is considered by the Joint Standing Committee on Delegated Legislation) and this issue of inserting new modified penalties is untested, the general rule has been it would be prudent to restart the process where any revisions change any obligations or legal consequences under the local law. Amendments relating to grammatical or formatting changes, or changes which remove inconsistencies with Acts or Regulations are unlikely to be considered significantly different.

If the City inserts new modified penalties without restarting the section 3.12 process, the local law will be potentially invalid.

LOCAL GOVERNMENT ACT 1995

CITY OF KWINANA

## EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the local government of the City of Kwinana resolved to make the following local law on the [insert simple date of resolution to adopt].

### 1. Citation

This local law is cited as the *City of Kwinana Extractive Industries Amendment Local Law 2016*

### 2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

### 3. Principal local law

In this local law, the *City of Kwinana Extractive Industries Local Law* published in the *Government Gazette* on 10 August 2001, is referred to as the principal local law. The principal local law is amended.

### 4. Heading amended

Delete Title "Town of Kwinana" Contents Page and Title Page and insert "City of Kwinana".

### 5. Table of Contents amended

(a) Change the title "Table of Contents" to "Contents".

(b) Part 5 – SECURED SUM AND APPLICATION THEREOF. After "Security for Restoration and Reinstatement", add "FOR LOCAL GOVERNMENT OWNED ASSET"

(c) Delete "SCHEDULE" and insert "SCHEDULE 1 – PRESCRIBED OFFENCES".

### 6. Clause 1.1 amended

In clause 1.1

(a) delete –

"**carry on an extractive industry** means quarrying and excavating for stone, gravel, sand and other material;"

"**local government** means the Town of Kwinana";

"**secured sum** means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1;"

"**town planning scheme** means a town planning scheme of the local government made under the *Planning and Development Act 1928*."

(b) insert in alphabetical order within clause 1.1 –

"**bulk earthworks** means the removal, moving or adding of large quantities of soil or rock from a particular area to another in order to make an area a suitable height and level for a specific construction purpose;"

"**carry on an extractive industry** means quarrying, bulk earthworks and excavating for stone, gravel, sand and other material and the transporting of the material off the site;"

"**local government** means the City of Kwinana;"

"**local planning scheme** means a town planning scheme of the local government made under the *Planning and Development Act 2005*;"

"**occupier** has the meaning given to it in the Act;"

"owner has the meaning given to it in the Act;"

"secured sum means the sum required to be paid in the form of a bank guarantee under clause 5.1;"

"Schedule means a Schedule of this local law;"

(c) after "excavation includes quarry" insert ", bulk earthworks or extraction";

(d) after "site means the land specified by the local government in the licence", delete semicolon and insert full stop.

#### **7. Throughout the entire local law**

Where a monetary value over \$999 is stated, remove the commas, e.g., \$5,000 becomes \$5 000, and \$10,000,000 becomes \$10 000 000.

#### **8. Clause 2.1 amended**

After "Penalty" and before "\$5 000", insert "."

#### **9. Clause 2.2 amended**

In clause 2.2(1)(a)(i) –

delete "twenty one (21) days" and insert "21 days"

#### **10. Clause 2.3 amended**

(1) in clause 2.3(1)(a) –

(a) before "of a plan of the" delete "3 copies" and insert "One hard copy and an electronic copy in a format acceptable to the City";

(b) in subparagraph (vii), delete "power lines, telephone cables" and replace with "infrastructure services including but not limited to power lines, communication cables"

(c) in subparagraph (viii) after "existing", insert "bores,";

(2) in clause 2.3(1)(b) –

(a) before "of a works and" delete "3 copies" and insert "One hard copy and an electronic copy in a format acceptable to the City";

(b) delete subclause (xii) and replace with -

"(xii) a noise management plan, including a description of the measures to be taken to comply with the *Environmental Protection Act 1986* and *Environmental Protection (Noise) Regulations 1997*;"

(3) in clause 2.3(1)(c) –

(a) before "of a rehabilitation" delete "3" and insert "One hard copy and an electronic copy in a format acceptable to the City";

#### **11. Clause 3.1 amended**

(1) In subclause (4)(a), "30th June next" and insert "next June 30".

(2) In clause (5)

(a) delete paragraphs (q), (r) and (s) and insert -

"(q) requiring the licensee to pay an Accelerated Pavement Depreciation Fee for using roads owned by the City of Kwinana for transporting extracted materials, to assist with the repair, maintenance and upgrade of such roads; and

(r) any other matter for properly regulating the carrying on of an extractive industry."

#### **12. Clause 3.2 amended**

(a) After "3.2", insert subclause number "(1)"

(b) insert subclause after subclause (1) –

"(2) On renewal or conclusion of a licence, the licensee shall pay the local government the applicable Accelerated Pavement Depreciation Fee due to accelerated depreciation of the pavement in accordance with the condition set out in the Extractive Industries Licence. The payable fee will be based on the total amount of extracted material and the length of local authority roads used in the transport route during the financial year (period from 1 July to 30 June). The applicable fee, tabled in the City's Schedule of Fees and Charges, will be adjusted annually in accordance with the Building Price Index."

#### **13. Clause 4.1 amended**

In clause 4.1(1) in paragraph (f), delete "fee" and insert "fees and charges"

#### **14. Clause 4.2 amended**



In clause 4.2(1) in paragraph (d) delete "3.2" and insert "3.2(1) or 3.2(2)"

**15. Clause 4.3 amended**

In clause 4.3(1) in paragraph (a), delete "fee" and insert "fees and charges"

**16. Clause 5.1 replaced**

Delete clause 5.1, including title, and replace with:

**"Security For Restoration And Reinstatement for Local Government Owned Assets"**

5.1 (1) For the purpose of ensuring that all fees and charges are paid and that local government owned assets that have been used to carry out excavation operations are properly restored or reinstated, the local government may require that –

(a) as a condition of a licence; or

(b) before the issue of a licence,

the licensee shall give to the local government a bank guarantee of a kind and in a form acceptable to the local government for a sum determined by the local government from time to time.

(2) A bank guarantee required under subclause (1) is to in the name of the local government for the purposes of this clause."

**17. Clause 5.2 amended**

(1) In clause 5.2(1) after "reinstatement works", insert "or fails to pay any fees and charges"

(2) In clause 5.2(2):

(a) after "the proceeds of any", delete "bond,"; and

(b) after "towards its costs" insert "or any outstanding fees and charges".

**18. Clause 6.1 amended**

After clause 6.1(1) after "Penalty" delete "\$4,000" and insert ": \$5 000".

**19. Clause 6.2 amended**

(1) In subclause 6.2(1) paragraph (b), subparagraph (ii), delete "DANGER EXCAVATIONS KEEP OUT" and insert "DANGER EXCAVATIONS - KEEP OUT".

(2) After "Penalty" and before \$5 000", insert "."

**20. Clause 6.3 amended**

(1) In clause 6.3(1) paragraph (a), after "within 40 metres," delete "or such lesser distance as maybe allowed, in writing, by the local government" and insert "(without written permission from the local government and if required, the Department of Environmental Regulation)".

(2) In clause 6.3(2)

(a) delete "Department of Minerals and Energy" and insert "Department of Mines and Petroleum".

(b) after "Penalty" and before \$5 000", insert "."

**21. Clause 6.4 amended**

(1) After clause 6.4(1), after "Penalty" and before \$5 000", insert "."

(2) After clause 6.4(2) after "Penalty" delete "\$4,000" and insert ": \$5 000".

**22. Clause 7.1 amended**

In clause 7.1(1) after "liability insurance policy", delete "taken out in the joint names of the licensee and the local government" and insert "naming the local government and".

**23. Clause 7.4 amended**

(a) In clause 7.4, renumber paragraphs; delete "(1)" and insert "(a)", delete "(2)" and insert "(b)", delete "(3)" and insert "(c)", delete "(4)" and insert "(d)", delete "(5)" and insert "(e)", delete "(6)" and insert "(f)", delete "(7)" and insert "(g)", delete "(8)" and insert "(h)", delete "(9)" and insert "(i)".

(b) After paragraph (i) and before "Penalty" insert on new line "Failing to comply with any requirements of this clause constitutes an offence."

(c) After "Penalty" and before \$5 000", insert "."

**24. Clause 8.1 amended**

Delete entire clause and replace with:

"8.1 When the local government makes a decision as to whether it will grant a person a licence or renew, vary or cancel a licence under this local law, the provisions of Division 1 of Part 9 of

the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.”

**25. Clause 9.1 amended**

Delete “the Schedule” and Insert “Schedule 1”

**25. Schedule - Prescribed Offences replaced**

Delete the entire “Schedule - Prescribed Offences” and insert replacement “Schedule 1 - Prescribed Offences” as tabled below:

**Schedule 1 – Prescribed Offences**  
(Clause 9.1)

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.1	Carry on extractive Industry without licence or in breach of terms and conditions	500
6.1	Excavate near boundary	500
6.2 (1)(a)	Gateways not kept locked where required	500
6.2 (1)(b)	Warning signs not erected or maintained as required	500
6.2 (1)(c)	Excavation not drained as required	500
6.3 (1)(a)	Remove trees or shrubs near boundary without approval	500
6.3 (1)(b)	Store without required approval explosives or explosive devices	500
6.3 (1)(c)	Fill or excavate in breach of licence	500
6.4 (1)(a)	Blasting without approval of the local government	500
6.4 (1)(b)	Blasting outside times authorised	500
6.4 (1)(d)	Blasting in breach of conditions imposed by the local government	500
6.4 (2)	Blasting without approval on Saturday, Sunday or public holiday	500
7.4	On cessation of operations, failing to comply with the required conditions	500

---

Dated: [insert simple date of adoption]

The Common Seal of the City of Kwinana was hereunto affixed in the presence of:-

.....  
**CAROL ADAMS**  
Mayor

.....  
**JOANNE ABBISS**  
Chief Executive Officer

## ATTACHMENT C

### EXPLANATORY MEMORANDUM

1. **ADMINISTERING AUTHORITY**

City of Kwinana

2. **PUBLICATION OF LOCAL LAW**

WA Government Gazette dated [insert date] No. [insert number]

3. **TITLE OF LOCAL LAW**

Extractive Industries Amendment Local Law 2016

4. **SECTION(S) OF ENABLING ACT(S)**

This local law was made under –

Subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995*.

5. **PURPOSE, EFFECT AND JUSTIFICATION**

**Purpose** of the local law:

Is to prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government, regulating the carrying on of the extractive industry in order to minimise damage to the environment, roads and other people's health and property, and provide for the restoration and reinstatement of any excavation site.

**Effect** of the local law:

is any person wanting to carry on an extractive industry will need to be licensed and will need to comply with the provisions of this local law.

**Justification** for the local law:

To make changes in formatting and grammar to the principal local law in line with contemporary practices, changes to references to legislation to reflect current legislation and to review the level of penalties as this local law was made in 2001.

6. **ADDITIONAL INFORMATION**

There is no additional information.

7. **UNUSUAL OR CONTROVERSIAL PROVISIONS**

Clause 3.2 (2)

(2) On renewal or conclusion of a licence, the licensee shall pay the local government the applicable pavement rehabilitation fee due to accelerated depreciation of the pavement in accordance with the condition set out in the Extractive Industries Licence. The payable fee will be based on the total amount of extracted material and the length of local authority roads used in the transport route during the financial year (period from 1



July to 30 June). The applicable fee, tabled in the City of Kwinana's Schedule of Fees and Charges, will be adjusted annually in accordance with the Building Price Index.

## **8. CONSULTATIONS, SUBMISSIONS AND RESPONSES**

Copy of proposed amendment local law provided to all current holders of extractive industries with the City of Kwinana.

No responses received during consultation period.

## **9. FEES AND CHARGES, PENALTIES AND MODIFIED PENALTIES**

### **Fees and charges:**

Nil

### **Reason for new fees and charges or any increase in fees and charges:**

Inclusion of penalties for:

- On cessation of operations, failing to comply with the required conditions

### **Penalties and modified penalties:**

Type of Penalty		Date last updated	Old	New	Increase
2.1	Carry on extractive Industry without licence or in breach of terms and conditions	May 2001	400	500	25%
6.1	Excavate near boundary	May 2001	400	500	25%
6.2(1)	Gateways not kept locked where required	May 2001	400	500	25%
6.2(2)	Warning signs not erected or maintained as required	May 2001	400	500	25%
6.2(3)	Excavation not drained as required	May 2001	400	500	25%
6.3(1)	Remove trees or shrubs near boundary without approval	May 2001	400	500	25%
6.3(2)	Store without required approval explosives or explosive devices	May 2001	400	500	25%
6.3(3)	Fill or excavate in breach of licence	May 2001	400	500	25%
6.4(1)(a)	Blasting without approval of the local government	May 2001	400	500	25%
6.4(1)(b)	Blasting outside times authorised	May 2001	400	500	25%
6.4(1)(d)	Blasting in breach of conditions imposed by the local government	May 2001	400	500	25%



6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	May 2001	400	500	25%
7.4	On cessation of operations, failing to comply with the required conditions.	N/A	N/A	500	N/A

**Reason for new penalties or any increase in penalties or modified penalties:**

1. Penalties have not increased since 2001 and are in line with current values.
2. A new penalty for clause 7.4 has been included following advice received from the Department of Local Government and Communities in November 2013 and further reference to any offences that may not be specified.

**10. STATUTORY PROCEDURES CHECKLIST**

The completed and signed Statutory Procedures Checklist is attached.

**11. DISCLAIMER**

The Explanatory Memorandum is produced only as an aid to understanding the abovementioned local law and must not be substituted for the local law or gazetted or made available to the public in any manner or circumstance.

**12. CONTACT PERSON**

The local government's authorised officer for any enquiries about the local law is –

Full Name: Adam Vaughan-Williams  
Position Title: Governance Officer  
E-mail address: adam.vaughan-williams@kwinana.wa.gov.au  
Telephone No.: (08) 9439 0412  
Facsimile No.: (08) 439 0222  
Mobile No. (if applicable): Nil

**13.**

Signature:

PRINTED NAME:

Public Office:

Administering Authority:

CAROL ADAMS

Mayor

City of Kwinana

JOANNE ABBISS

Chief Executive Officer

City of Kwinana

# STATUTORY PROCEDURES CHECKLIST

## Procedures for making a valid Local Law: In accordance with *Local Government Act 1995* and *Ministerial Directions*

Please tick ✓ the 2nd column, where applicable, to indicate the procedural steps completed. Insert 'N/A' if the step is not applicable.

Only Box A is to be checked, not Box C, when the CEO of DEC has directed a local government.

<b>A. Waste Avoidance and Resource Recovery Act 2007 and Local Government Act 1995</b>		
61(1)(b)		Under s. 61(1)(b) of the <b>WARR Act</b> the CEO of DEC <u>directed</u> a local government to adopt or amend or repeal a waste-related local law–  <b>CEO of DEC's letter of direction: N/A</b>
3.12(2)		Presiding person gave notice to the meeting of the <b>purpose</b> and <b>effect</b> of the proposed local law in the prescribed manner: (a) in the agenda of that meeting; and (b) in the minutes of that meeting.  <b>Date of Council meeting: N/A</b>
3.12(5)		Published the adopted local law in the <i>Government Gazette</i> . <b>Date of Gazette: N/A No. N/A</b> and Sent copy of adopted/gazetted local law to the Ministers: <b>Sent to Minister for Local Government: N/A</b> <b>Sent to Minister for Environment: N/A</b>
3.12(6)		Local public notice: (refer s.1.7 under the LG Act) Published in newspaper circulating generally throughout the State.  <b>Name of newspaper: N/A</b> <b>Date of publication: N/A Page No.: N/A</b> (copy of newspaper <b>notice</b> attached) <b>Appeared on Notice Boards (local government offices and every library):</b> <b>From: N/A To: N/A</b>
3.12(7)		Sent EM material to the Joint Standing Committee on Delegated Legislation. <b>Hard copies sent to JSCDL: N/A</b> <b>And either:</b> • <b>Electronic copies sent by e-mail to JSCDL: N/A</b> <b>or</b> • <b>Copies on CD included with hard copies to JSCDL: NO</b>
3.12(8)		If applicable: This local law is <b>an amendment local law</b> which amends the text of the principal local law. <b>or</b> This local law is <b>a repeal local law</b> .

Procedure in Box B must be completed before the commencement of 3.12 procedures of the LG Act.

<b>B. Local Government Act 1995 Section 3.6 Places outside the district (eg: shoreline on public beach)</b>		
3.6(1)		Governor's approval was first obtained for a local government to make a local law that <b>applies</b> outside its district.  <b>Local government's request for approval: N/A</b>  <b>Notice in Government Gazette of Governor's approval:</b> <b>Date of Gazette: N/A No. N/A Page No.: N/A</b>

**C. Local Government Act 1995****Section 3.12 Procedure for making local laws**

3.12(2)	<p>Presiding person gave notice to the meeting of the <b>purpose</b> and <b>effect</b> of the proposed local law in the prescribed manner<sup>1</sup>:</p> <p>(a) in the agenda of that meeting; and</p> <p>(b) in the minutes of that meeting.</p> <p><b>Date of Council meeting: 16 December 2015</b> (copy of Council <i>minutes</i> attached)</p>
3.12(3)(a)	<p>State-wide public notice: (refer s.1.8 under this Act) Published in newspaper circulating generally throughout the State.</p> <p><b>Name of newspaper: West Australian</b> <b>Date of publication: 23 December 2015 Page No.: 86</b> (copy of actual <i>newspaper notice</i> attached)</p>
3.12(3a)	<p>Local public notice: (refer s.1.7 under this Act) Published in a newspaper circulating generally throughout the State, and exhibited on a notice board of the local government's offices and every library in the district.</p> <p><b>Name of newspaper: Sound Telegraph</b> <b>Date of publication: 23 December 2015 Page No.: 31</b> (If a different newspaper, copy of actual <i>newspaper notice</i> attached)</p> <p><b>Appeared on Notice Boards (local government offices and every library): From: 23 December 2015 To: 11 February 2016</b></p>
3.12(3)(b)	<p><u>Immediately after State-wide local public notice is published:</u> Sent copy of</p> <ul style="list-style-type: none"> <li>the proposed local law (in gazette-ready format) <b>and</b></li> <li>a copy of the State-wide public notice,</li> </ul> <p>to the Minister for Local Government<sup>2</sup>.</p> <p><b>Sent to Minister for Local Government: 24 December 2015</b></p> <p>and, where applicable, same copies sent to another Minister:</p> <ul style="list-style-type: none"> <li>Minister for Commerce<sup>3</sup>, administering the <i>Dividing Fences Act 1961</i> (for fencing local law)</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>Minister for Emergency Services, administering the <i>Bush Fires Act 1954</i> (for bush fire brigade or fire-break local law)</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>Minister for Environment, administering the <i>Waste Avoidance and Resource Recovery Act 2007</i> (for waste local law)</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>Minister for Health, administering the <i>Health Act 1911</i> (for health local law and cremation-related cemetery local law)</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>Minister for Agriculture and Food, administering the <i>Agriculture and Related Resources Protection Act 1976</i> (for pest plant local law)</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>Minister for <b>N/A</b>, administering the <b>N/A</b>, (for <b>N/A</b> local law)</li> </ul> <p><b>Sent to other Minister for N/A: N/A</b></p>

<sup>1</sup> Refer to regulation 3 in the *Local Government (Functions and General) Regulations 1996*.

<sup>2</sup> The Minister for Local Government administers the *Cemeteries Act 1986* (for cemetery local laws), the *Dog Act 1976* (for dog local laws) and the *Local Government Act 1995* (for standing orders, local government property, public places, public parking, activities on thoroughfares local laws, etc).

<sup>3</sup> The Minister for Commerce also administers the *Local Government (Miscellaneous Provisions) Act 1960* (Parts VIII, IX & XV only) but no local laws are required these Parts.

## C. Local Government Act 1995

### Section 3.12 Procedure for making local laws (continued)

3.12(4)	<p><b>Relevant to: WARR Act and Health Act - procedures prior to adoption:</b> After last day for submissions, <u>consideration</u> at Council meeting of –</p> <ul style="list-style-type: none"><li>• submissions received</li></ul> <p>and</p> <ul style="list-style-type: none"><li>• whether to make the local law as proposed (by absolute majority)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• whether to make a local law that was not significantly different from what was proposed (by absolute majority).</li></ul> <p><b>Council meeting date: N/A</b> <i>(copy of Council minutes attached)</i></p> <p>and</p> <ul style="list-style-type: none"><li>• gave copy of <u>final</u> version of proposed local law for consent under –</li></ul> <p><b>WARR Act: Consent of CEO of DEC: N/A</b> <b>Health Act: Consent of Exec. Director of Public Health: N/A</b> <i>(Consent is required prior to local government's actual adoption.)</i></p>
3.12(4)	<p><b>LG Act - final procedure for actual adoption:</b> After close of public consultation period of <b>minimum</b><sup>4</sup> 6 weeks, considered any submissions made about the proposed local law –</p> <p>and adopted the local law as proposed (by absolute majority)</p> <p>or adopted a local law that was considered not significantly different from what was proposed (by absolute majority).</p> <p><b>Council meeting date: [Insert meeting date &amp; item number]</b> <i>(copy of Council minutes attached)</i></p>
3.12(5)	<p>Published the adopted local law in the <i>Government Gazette</i>. <b>Date of Gazette: [Insert date] No. [Insert number]</b></p> <p><u>After</u> the adopted local law was published in the <i>Government Gazette</i>, sent a signed and sealed copy of the adopted local law to the Minister for Local Government.</p> <p><b>Sent to Minister for Local Government: [Insert date of letter]</b></p> <p>and where local law was made under legislation other than the <i>Local Government Act 1995</i>, sent to the relevant Minister:</p> <ul style="list-style-type: none"><li>• Minister for Commerce, administering the <i>Dividing Fences Act 1961</i> (for fencing local law)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• Minister for Emergency Services, administering the <i>Bush Fires Act 1954</i> (for bush fire brigade and fire-break local law)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• Minister for Environment, administering the <i>Waste Avoidance and Resource Recovery Act 2007</i> (for waste local law)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• Minister for Health, administering the <i>Health Act 1911</i> (for health local law and cremation-related cemetery local law)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• Minister for Agriculture and Food, administering the <i>Agriculture and Related Resources Protection Act 1976</i> (for pest plant local law)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• Minister for [Insert text], administering the [Insert Act], (for [Insert text] local law)</li></ul> <p><b>Sent to other Minister for [Insert text]: [Insert date of letter]</b></p>

Cont/...

<sup>4</sup> The local government cannot adopt the local law before the public consultation period (minimum 6 weeks) has closed. Section 61(f) of the *Interpretation Act 1984* determines the method for calculating the consultation period. Guidance is provided in the *Local Government Operational Guidelines No. 16 on Local Laws*, downloadable from the Department of Local Government's website: [www.dlg.wa.gov.au](http://www.dlg.wa.gov.au).

**C. Local Government Act 1995****Section 3.12 Procedure for making local laws (continued)**

3.12(6)	<p><u>After</u> the local law was published in the Gazette and <u>after</u> a signed and sealed copy of the local law was given to the Minister(s): gave local public notice of gazettal (refer s.1.7 of this Act)</p> <p>Published in a newspaper circulating generally throughout the District, and exhibited on a notice board of the local government's offices and every library in the district.</p> <p><b>Name of newspaper:</b> [Insert text] <b>Date of publication:</b> [Insert date] <b>Page No.:</b> [Insert number] (copy of <i>Newspaper notice</i> attached)</p> <p><b>Appeared on Notice Boards (local government offices and every library):</b> <b>From:</b> [Insert date] <b>To:</b> [Insert date]</p>
3.12(7)	<p><u>Within 10 working days of the Gazettal date:</u> supplied copies of the local law, Explanatory Memorandum, Statutory Procedures Checklist and other supporting material in accordance with Ministerial Directions, to the WA Parliament's Joint Standing Committee on Delegated Legislation (JSCDL):</p> <p><b>Hard copies sent to JSCDL:</b> [Insert date of letter] <b>And either:</b></p> <ul style="list-style-type: none"><li>• <b>Electronic copies sent by e-mail to JSCDL:</b> [Insert date of e-mail]</li></ul> <p><u>or</u></p> <ul style="list-style-type: none"><li>• <b>Copies on CD included with hard copies to JSCDL:</b> [YES / NO]</li></ul>
3.12(8)	<p>This local law is <b>an amendment local law</b> which amends the text of the principal local law.</p>

Signature:

PRINTED NAME:

Public Office:

Administering Authority:

CAROL ADAMS

Mayor

City of Kwinana

JOANNE ABBISS

Chief Executive Officer

City of Kwinana

## **16.7 Amendments and inclusions to the City's 2015/16 Schedule of Fees and Charges**

### **SUMMARY:**

To amend and include additional fees within the City's 2015/16 Schedule of Fees and Charges for various services undertaken by City officers for which the inclusion of a fee or a charge is considered appropriate and permissible under the Local Government Act 1995, for costs including City officer's labour, legal fees and administrative costs.

### **OFFICER RECOMMENDATION:**

That Council:

1. Authorise the publication of a local public notice stating the intention to include the fees and charges tabled at Attachment A into the City's 2015/16 Schedule of Fees and Charges effective 21 days from the date of the local public notice.
2. Include the fees and charges tabled at Attachment A into the City's 2015/16 Schedule of Fees and Charges effective 21 days from the date of the local public notice.

NOTE – AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

### **DISCUSSION:**

An administrative review has found that within the City's 2015/16 Schedule of Fees and Charges there are a number of services provided by the City for which the inclusion of a fee or a charge is considered appropriate and permissible under the Local Government Act 1995.

The purpose of including these fees and charges is to help recover costs including officer's time spent dealing with certain tasks, legal fees and administrative costs that would not be recoverable by any other means.

The burden of paying for services provided or administered by the City should not fall solely on ratepayers and the inclusion of a user pays system via an appropriate set of fees and charges is essential to the good governance by the City. This ensures that the cost of services is shared in an equitable manner, particularly for costs that require payment to other authorities and businesses, e.g, legal or statutory requirements.

Section 6.19 of the Local Government Act 1995 requires a local government wishing to impose any fees or charges after the annual budget has been adopted, to give local public notice of the fees or charges to be introduced and the date from which they will be imposed.

Fees will be either statutory or not and in determining the fees and charges which will apply for the year, consideration must be given to the 'basis' on which the fee is determined.

## 16.7 AMENDMENTS AND INCLUSIONS TO THE CITY'S 2015/16 SCHEDULE OF FEES AND CHARGES

Section 6.17 of the Local Government Act 1995 details the requirements when determining the setting of fees and within this report, are categorised as follows:

### **Full Cost Recovery**

The fee is set according to a 'User Pays' principle. That is, the fee is set at a level which at least fully covers the cost of providing that service or facility.

### **Partial Cost Recovery**

The fee is set at a level less than the amount required to cover the cost of providing that service or facility. This decision may be made based upon a recognised community service obligation.

### **Statutory**

The fee is set in accordance with statutory requirements. In this instance the City has no discretion to vary the fee. The fee is established independently of the actual cost of providing the service.

### **Reference**

The fee is determined by benchmarking those charged by other local governments or suppliers providing a comparable service or facility.

Where GST is applicable to the fee or charge, the amount shown in the schedule is inclusive of the GST. The applicability of the GST to the fee is based upon the most recent advice of the Australian Taxation Office and may be varied at their discretion in future.

In preparing this report, the fees and charges of a number of local governments within the metropolitan area were considered, and while there are some variances in the fees and charges that each of these local governments charge, the recommended inclusions were listed in some form by one or more of the local governments.

Explanations for the recommendations regarding the amending and inclusion of the additional fees and charges are listed below;

### **1. Traffic Management Plans**

The City's Engineering Services officers undertake the assessment of Traffic Management Plans (TMPs) for a variety of businesses and organisations throughout each year. In the past 12 months, officers have assessed some 160 TMPs requiring between one and two hours of officer related tasks per assessment at a cost to ratepayers of up to \$26,000. This cost does not include additional time that may be required for site visits and auditing of actual traffic management to ensure compliance with the approved application.

The City recovers the majority of this cost through a development application fee or Local Structure Plan or Scheme Amendment fee. The proposed fee is for TMPs that are required for commercial organisations running events or subdivisions where a TMP is required.

Section 6.16 of the Local Government Act 1995 allows a local government to impose and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed for supplying a service or carrying out work at the request of a person. It is considered appropriate to impose a fee for providing assessment of TMPs, rather than the cost having to be borne by ratepayers.



## 16.7 AMENDMENTS AND INCLUSIONS TO THE CITY'S 2015/16 SCHEDULE OF FEES AND CHARGES

A number of applications for TMPs are also received from not for profit organisations and service groups each year, e.g., medical fund raising events, other sporting events and ANZAC Day. Organisations may request a discount or reimbursement of costs for such events. Council's Community Funding Policy allows the City the ability to assess each request on an equitable level with other requests for funding and it is considered appropriate that any request for a discount or reimbursement of costs for the assessment of TMPs be dealt with through this Policy.

The applicable hourly rates are already identified within the City's Schedule of Fees and Charges (Schedule) as Professional Fees for the services provided by certain levels of officers. These rates can be used to calculate the costs of officer's time used when assessing TMPs.

The recommended inclusion of a fee for the provision of the assessment of Traffic Management Plans within the Engineering section of the Schedule is tabled below in blue text:

### Addition to the 2015/16 Schedule of Fees and Charges

Description	Comments	Statutory and Fee Type Indicator	GST	2015/16 Fee
<b>Traffic Management Plans</b>				
<b>Assessment of Traffic Management Plans</b>  (Note: Does not include TMP's for community groups, Development Applications, Local Structure Plans and Scheme Amendments.)	Costs per hour (or pro-rata) for Officers to undertake an assessment of Traffic Management Plans including site visits and reports as required.	No	Yes	See 'Professional Fees' in this Schedule of appropriate Officers hourly rates.

## 2. Property Leasing Fees

Council have adopted a number of fees and charges associated with the leasing of local government property, however, a further cost has been identified that is required by section 3.58 of the Local Government Act, e.g., for any disposal of property, the local government must ascertain the market value of property within six months of the disposition. This valuation is undertaken externally by a professional property valuer who provides the City with a Professional Valuation Report.

The cost of such a report may be in excess of \$2,000 and this cost is currently borne by the City, not the lessor. The City leases local government property for a wide range of purposes, including commercial, sporting and community groups and service provider groups. The fees and charges that may be imposed upon these various groups would likely have a greater impact on some groups than others and it is considered appropriate that a number of fees and charges be set that would reflect the ability by the various types of groups to absorb these costs.



## 16.7 AMENDMENTS AND INCLUSIONS TO THE CITY'S 2015/16 SCHEDULE OF FEES AND CHARGES

It is recommended that the recovery of this cost be proportional to the rate at which a lessor will pay rent as assessed by the Council's Leasing of Community Facilities Policy, i.e.;

- A. Full market rent will pay the full rate;
- B. Discounted market rent will pay the amount proportional to their discount; and
- C. Peppercorn rent – no cost recovery.

The recommended inclusion of a fee for the provision of a Professional Valuation Report to the Governance Lease Administration Fees section of the Schedule is tabled below in blue text:

### Addition to the 2015/16 Schedule of Fees and Charges:

Description	Comments	Statutory Fee Indicator	GST	2015/16 Fee
<b>Governance Lease Administration Fees</b>				
Lease administration fees for service providers may be less than indicated as determined on an individual basis by resolution of Council.				
Lease	Commercial Groups	No	Yes	\$660.00
Deed of Renewal	Commercial Groups	No	Yes	\$550.00
Deed of Variation	Commercial Groups	No	Yes	\$550.00
Deed of Assignment	Commercial Groups	No	Yes	\$440.00
Deed of Sub-Lease	Commercial Groups	No	Yes	\$550.00
Easement and other documents	Commercial Groups	No	Yes	\$165.00
Caveat lodgement and withdrawal	Commercial Groups	No	Yes	\$165.00
Landgate fees	Commercial Groups	No	Yes	Actual Cost
Legal fees	Commercial Groups	No	Yes	Actual Cost
<b>Professional Valuation Report</b>	All Groups	No	Yes	Actual cost discounted proportionally to the rate of rent assessed in accordance with Council's Leasing of Community Facilities Policy. Nil cost to peppercorn leases.
Lease	Sporting, Community and Service Groups	No	Yes	\$440.00
Deed of Renewal	Sporting, Community and Service Groups	No	Yes	\$330.00
Deed of Variation	Sporting, Community and Service Groups	No	Yes	\$330.00
Deed of Assignment	Sporting, Community and Service Groups	No	Yes	\$264.00
Deed of Sub-Lease	Sporting, Community and Service Groups	No	Yes	\$330.00
Easement and other documents	Sporting, Community and Service Groups	No	Yes	\$143.00
Caveat lodgement and withdrawal	Sporting, Community and Service Groups	No	Yes	\$143.00
Landgate fees	Sporting, Community and Service Groups	No	Yes	Actual Cost
Legal fees	Sporting, Community and Service Groups	No	Yes	Actual Cost
Peppercorn Rent	As per Draft Policy - Leasing of Community Facilities	No	No	\$100.00

### 3. Illuminated Street Name Sign Fees

Following interest from business to have installed illuminated street name signs within the City's local government property and road reserves, a review of the costs and methods of installing and managing this type of signage was undertaken.

## 16.7 AMENDMENTS AND INCLUSIONS TO THE CITY'S 2015/16 SCHEDULE OF FEES AND CHARGES

The costs associated with this type of sign can be considerable and to ensure these costs that are of a commercial nature are borne by the individual businesses requesting the signs and not ratepayers, amendments to the current fees and charges for pylon and illuminated signs are recommended within the City's Schedule of Fees and Charges.

The current annual fees structure has two items, for a 'Pylon Sign' and an 'Illuminated Sign', within local government property. It is recommended to amend the heading to include 'Road Reserves' as Pylon Signs may be installed within road reserves managed by the City, as distinct from local government owned property and include a new item 'Illuminated Street Name Signs', consistent with the naming terminology of Main Roads WA. The current listing of 'illuminated sign' should also remain for other illuminated signs that are not illuminated street name signs which also allows consistency with the City's 'By-law Relating to Signs and Bill Postings' terminology.

The costs of the construction of an illuminated street name sign is not reflected in the current Schedule. The City intends to manage any new illuminated street name sign by way of an advertising contribution agreement/licence (agreement) and to have the advertiser construct and pay for the illuminated street name sign and the City will retain ownership of the illuminated street name sign within local government property. This will be reflected in a reduced annual fee to the advertiser for the first five years of the agreement.

As assessment of comparable advertising fees has indicated that an acceptable market rate amount for advertising space on an illuminated street name sign would be around \$10,000 per annum. It is recommended that as part of an agreement for a new pylon sign, that the advertiser's annual fee be at a reduced rate of \$7,500 (indexed by CPI each year) for the first five year of the agreement, to allow the applicant to recover the cost of the sign construction and installation. If both parties wish to continue after the first five year agreement, then there will be an increase to the full rate per annum for the term of the new agreement (currently recommended as \$10,000). A new advertiser applying for advertising space on an existing illuminated street name sign and who does not construct a new sign, would pay the full annual rate from the commencement of the agreement.

The recommended amendments to the fees and charges related to the section on Annual Fee for Signs on Local Government Property is tabled below in blue text:

### Amendment to the 2015/16 Schedule of Fees and Charges

Description	Comments	Statutory Indicator	GST	2015/16 Fee
<b>Annual Fee for Signs on Local Government Property and Road Reserves</b>				
<b>Illuminated Street Name Sign</b> <b>Pylon Signs</b>	For each sign	No	Yes No	\$10,000 per annum \$400 per annum up to 4m <sup>2</sup> in area + \$75 over 4m <sup>2</sup>
	Reduced rate (for first five years) if constructed and installed by the advertiser at the commencement of the first five year agreement.	No	Yes	\$7,500 per annum
<b>An Illuminated Sign</b>	For each sign	No	No	\$500
<b>Any other Sign</b>	For each sign	No	No	\$200

## 16.7 AMENDMENTS AND INCLUSIONS TO THE CITY'S 2015/16 SCHEDULE OF FEES AND CHARGES

### LEGAL/POLICY IMPLICATIONS:

#### **Local Government Act 1995**

##### **s2.7. Role of council**

- (1) The council —
  - (a) governs the local government's affairs; and
  - (b) is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the council is to —
  - (a) oversee the allocation of the local government's finances and resources; and
  - (b) determine the local government's policies.

##### **s6.16. Imposition of fees and charges**

- (1) A local government may impose\* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.
- (2) A fee or charge may be imposed for the following:
  - (a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;
  - (b) supplying a service or carrying out work at the request of a person;
  - (c) subject to section 5.94, providing information from local government records;
  - (d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;
  - (e) supplying goods;
  - (f) such other service as may be prescribed.
- (3) Fees and charges are to be imposed when adopting the annual budget but may be:
  - (a) imposed\* during a financial year; and
  - (b) amended\* from time to time during a financial year.

\* Absolute majority required.

##### **s6.17. Setting level of fees and charges**

- (1) In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —
  - (a) the cost to the local government of providing the service or goods; and
  - (b) the importance of the service or goods to the community; and
  - (c) the price at which the service or goods could be provided by an alternative provider.

##### **s6.19. Local government to give notice of fees and charges**

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

- (a) its intention to do so; and
- (b) the date from which it is proposed the fees or charges will be imposed.

**16.7 AMENDMENTS AND INCLUSIONS TO THE CITY'S 2015/16 SCHEDULE OF FEES AND CHARGES**

**FINANCIAL/BUDGET IMPLICATIONS:**

The generating of income from the imposition of these fees and charges is expected but not quantifiable at the time of this report.

**ASSET MANAGEMENT IMPLICATIONS:**

No asset management implications have been identified as a result of this report or recommendation.

**ENVIRONMENTAL IMPLICATIONS:**

No environmental implications have been identified as a result of this report or recommendation.

**STRATEGIC/SOCIAL IMPLICATIONS:**

The City's Strategic Community Plan for the period 2015-2025 provides that Council will ensure the future sustainability of the City of Kwinana through the implementation of sound revenue and expenditure policies, and seeking additional revenue sources.

**RISK IMPLICATIONS:**

No risk implications have been identified as a result of this report or recommendation.

**COUNCIL DECISION**

**161**

**MOVED CR S LEE**

**SECONDED CR B THOMPSON**

**That Council:**

- 1. Authorise the publication of a local public notice stating the intention to include the fees and charges tabled at Attachment A into the City's 2015/16 Schedule of Fees and Charges effective 21 days from the date of the local public notice.**
- 2. Include the fees and charges tabled at Attachment A into the City's 2015/16 Schedule of Fees and Charges effective 21 days from the date of the local public notice.**

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**

**8/0**

## Attachment A – Amendments and additions to the 2015/16 Fees and Charges

### 1. Traffic management plans

Description	Comments	Statutory and Fee Type Indicator	GST	2015/16 Fee
<b>Traffic Management Plans</b>				
<b>Assessment of Traffic Management Plans.</b>  (Note: Does not include TMP's for community groups, Development Applications, Local Structure Plans and Scheme Amendments.)	Costs per hour (or pro-rata) for Officers to assessment of Traffic Management Plans including site visits and reports as required.	No	Yes	See 'Professional Fees' in this Schedule of appropriate Officers hourly rates.

### 2. Governance Lease Administration Fees

Description	Comments	Statutory Fee Indicator	GST	2015/16 Fee
<b>Governance Lease Administration Fees</b>				
<b>Professional Valuation Report</b>	All Groups	No	Yes	Actual cost discounted proportionally to the rate of rent assessed in accordance with Council's Leasing of Community Facilities Policy. Nil cost to peppercorn leases.

### 3. Annual Fee for Signs on Local Government Property and Road Reserves

Description	Comments	Statutory Indicator	GST	2015/16 Fee
<b>Annual Fee for Signs on Local Government Property and Road Reserves</b>				
<b>Illuminated Street Name Sign</b>	For each sign	No	Yes	\$10,000 per annum
	Reduced rate (for first five years) if constructed and installed by the advertiser at the commencement of the first five year agreement.	No	Yes	\$7,500 per annum

## **16.8 Council Policy Review – Leasing of Community Facilities and Advertising and Directional Signage in Thoroughfares and on Local Government Property**

### **SUMMARY:**

A review of two Council Policies – ‘Leasing of Community Facilities’ and ‘Advertising and Directional Signage in Thoroughfares and on Local Government Property’, was undertaken and are recommended for Council endorsement.

### **OFFICER RECOMMENDATION:**

That Council adopt the amended Policies contained within Attachment A:

- Leasing of Community Facilities; and
- Advertising and Directional Signage in Thoroughfares and on Local Government Property

### **DISCUSSION:**

A copy of the Policies as recommended for amendment is detailed in Attachment A with the current Policies contained within Attachment B. A summary of changes recommended to the Policies are included below.

#### **Policies recommended for amendment**

##### **Leasing of Community Facilities**

The recommended changes include:

- Minor changes to grammar in line with the City's style guide.
- Inclusion of a link to the Strategic Community Plan to identify the Policy's purpose within the Plan, in a new section within the title box.
- In the Eligible Organisation Criteria – add a heading to the section and provide a clarification on the method used to establish the meeting of the required criteria by adding a further sentence and a new column in the table.

##### **Advertising and Directional Signage in Thoroughfares and on Local Government Property**

The recommended changes include:

- Minor changes to grammar in line with the City's style guide.
- Inclusion of a link to the Strategic Community Plan to identify the Policy's purpose within the Plan, in a new section within the title box.
- In Scope – include reference to local planning schemes.
- In General Conditions.
  - Include a paragraph regarding ownership and costs distribution.
  - Include a sentence stating applications must be on a form available from the City.
- In Prohibited Advertising – Include a sentence stating that business names may be acceptable.
- Include a new paragraph – ‘Preferences’ – for advertisers that are aligned with Council's Healthy Lifestyle Plan and the Codes and Initiatives of the Advertising Standards Bureau.

**16.8 COUNCIL POLICY REVIEW – LEASING OF COMMUNITY FACILITIES AND ADVERTISING AND DIRECTIONAL SIGNAGE IN THOROUGHFARES AND ON LOCAL GOVERNMENT PROPERTY**

- In Sign Categories:
  - Rename 'Directional Signs' as 'Finger Signs' with an explanation to remove confusion with other types of signs.
  - Rename 'Pylon Signs (including Illuminated signs)' as 'Illuminated Street Name Signs' in line with the Main Roads WA terminology and better serve the intent of this section.

**LEGAL/POLICY IMPLICATIONS:**

***Local Government Act 1995***

**2.7. Role of council**

- (1) *The council —*
  - (a) *governs the local government's affairs; and*
  - (b) *is responsible for the performance of the local government's functions.*
- (2) *Without limiting subsection (1), the council is to —*
  - (a) *oversee the allocation of the local government's finances and resources;*  
*and*
  - (b) *determine the local government's policies.*

**FINANCIAL/BUDGET IMPLICATIONS:**

There are no direct financial implications for this report. Individual Policies may have financial implications and if so, budgetary considerations are included on an annual basis.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no direct asset management implications related to this report.

**ENVIRONMENTAL IMPLICATIONS:**

There are no direct environmental implications related to this report.

**STRATEGIC/SOCIAL IMPLICATIONS:**

The role of Council is to ensure that the Council's Policies are aligned with the key goals and aspirations as set out in our Plan for the Future.

**RISK IMPLICATIONS:**

Setting Policy positions that guide the operations of the City will play a valuable role in reducing risk to levels acceptable to Council.

*16.8 COUNCIL POLICY REVIEW – LEASING OF COMMUNITY FACILITIES AND ADVERTISING AND DIRECTIONAL SIGNAGE IN THOROUGHFARES AND ON LOCAL GOVERNMENT PROPERTY*

**COUNCIL DECISION**

**162**

**MOVED CR P FEASEY**

**SECONDED CR W COOPER**

**That Council adopt the amended Policies contained within Attachment A:**

- **Leasing of Community Facilities; and**
- **Advertising and Directional Signage in Thoroughfares and on Local Government Property**

**CARRIED  
8/0**



## ATTACHMENT A

# LEASING OF COMMUNITY FACILITIES

**This Policy provides a framework for the City to lease and licence its properties. It establishes the minimum community benefits that need to be demonstrated by prospective lessees and sets out the reporting requirements to ensure accountability to Council and recognition of the City's contribution.**

Adopted:	<b>09/09/2015 #562</b>
Last reviewed:	
Legal Authority:	Local Government Act 1995 Section 2.7 – Role of Council
Strategic Community Plan:	<p><b>Objective 1.5:</b> Actively work with the community to build local capacity.</p> <p><b>Strategy 1.5.1:</b> Develop community capacity, encourage self management of shared use facilities and enable access to funding opportunities in order to assist the sustainability of community and sporting groups, activities and events as well as support community networks and partnerships deliver projects and services.</p>

## Policy:

### 1 Introduction

Community facilities owned and leased or licenced by the City make an important contribution to the City's ability to achieve the objectives of the Strategic Community Plan and Corporate Business Plan. The facilities referred to in this Policy include both land and buildings, but do not include sports facilities, hall hire or facilities that are offered to the public for casual or short term hire. It applies to those premises that are occupied exclusively by commercial entities, community groups, organisations and those lessees providing a service sought after by the community.

For the purpose of this Policy a 'community group' is defined as a not for profit organisation that does not operate for the profit, personal gain or other benefit of particular people. The profits must be applied for the organisations purpose only.

This Policy provides a framework for leasing and licensing of City of Kwinana properties to third parties at peppercorn, discounted and commercial rates of rental. It establishes the requirement for all prospective lessees to demonstrate the community benefits arising from their use of City property and sets out reporting requirements (clause 7) to ensure accountability to Council and recognition of the City's contribution. The Policy establishes the terms and conditions the City will use as the basis for negotiating leases and licences.

This policy will apply to all new leases and licences, including the renewal of leases and licences on expiration of the current leases and licences.

## 2 Aim of Policy

Through implementation of this Policy, the City aims to maximise the benefit to the community whilst ensuring responsible management of community assets, with an equitable methodology for calculating lease and licence charges according to their classification.

## 3 Background

### 3.1 Leasing and Licensing in Kwinana

The City of Kwinana leases or licences a number of facilities to community groups and incorporated organisations at subsidised rates, including use as childcare centres, kindergartens, community centres and scout halls.

### 3.2 Legislative Framework

A number of laws and regulations affect City leases and licences. Of particular relevance are the following Western Australian Acts and Regulations.

- *Local Government Act 1995*: Includes details on the disposition requirements and exemptions and the circumstances requiring leases to be advertised.
- *Local Government (Functions and General) Regulations 1996*: Details the exemptions from section 3.58 of the Local Government Act 1995 for the disposition of land entered into by the City.
- *Occupier's Liability Act 1985*: Details the relationship between lessees and landlords in respect to liability and duty of care.

### 3.3 Community Profile

As the Kwinana population changes, so do demands for services. Projected changes to the community profile will affect the type of facilities that the community requires. This Policy will ensure that access to the City's facilities and assets are not unnecessarily restricted and properties can be redeployed over time to meet changing community needs.

## 4 Policy Objectives

The objectives of this policy are to:

- Ensure City owned facilities are used to meet demonstrated community needs consistent with Council's policies and the Strategic Community Plan;
- Provide accountability for City expenditure on rent subsidies, as they constitute indirect grants;
- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria;
- Ensure lessees pay fair and reasonable rent based on clear eligibility criteria and calculation methodologies;
- Optimise use of the City's community facilities and equitable access by the Kwinana community;
- Increase community access to activities and services, particularly access by disadvantaged and socially isolated groups;
- Enable the City's contribution to be reported to the community;
- Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Kwinana;

- Assist community groups to understand and support the achievement of Council's policies and plans;
- Facilitate a shared approach between Council and the lessee as to the cost of management and maintenance of City-owned facilities;
- Ensure that City-owned facilities are appropriately maintained as City assets;
- Ensure that City assets are maintained, developed and occupied responsibly, having regard to the interests of local communities; and
- Ensure sound financial management and effective administration of community facility leasing and licensing.

## 5 Eligibility for Leasing and Licensing Community Facilities

### 5.1 Eligibility Criteria

Schedule 1 to this Policy sets out eligibility criteria for leasing and licensing community facilities. Prospective lessees as well as those seeking renewal of leases or licences will be required to provide details of how they meet these criteria including financial information. Rent subsidies will have regard to the extent to which organisations meet the essential and desirable criteria (see Section 6.2). There are three categories of criteria:

- **Organisation criteria:** Includes appropriate organisational structure, financial viability and compliance with relevant legislation and Council policies. Community benefit criteria includes use of the facility to meet community needs, number of participants, access for disadvantaged groups, contribution to community wellbeing, and programs and services that are consistent with Council's objectives and goals as articulated in the City's Strategic Community Plan.
- **Facility management and development criteria:** Includes suitability for use on the site and a preparedness to maximise utilisation.
- **Lease/Licence category criteria:** Involves categorising community groups and organisations as eligible for peppercorn, discounted or full market rental.

### 5.2 Reporting against Criteria

All lessees will be required to report against the eligibility criteria on request, and on lease or licence renewal, and advise the City if their organisational status has changed. Lessees will be required to provide the City with a copy of a certificate of currency with respect to its insurance each year or as otherwise requested by the City and a copy of any permit or approval.

New leases and licences will require lessees and licensees to provide a copy of their annual report and financial statements. A lessee that breaches a lease or a licence condition may be required to relinquish the lease or licence. Where the lessee breaches the lease or licence by subletting without Council consent or receives funding or third party rental, Council may require the lessee to pay up to full market rent.

City Officers will assist lessees to comply with the reporting requirements by providing simple reporting formats and checklists, timely information and if necessary briefing or training on how to demonstrate their claims against the criteria.

City Officers may also seek additional information where necessary to better understand activities, the extent of community use and opportunities for facility and service development. Reporting requirements will be based on existing documents, such as annual reports, where possible.

### 5.3 Expression of Interest in Use of Council Property

Community groups who wish to utilise City property will be required to contact the relevant City department and lodge a written expression of interest outlining the proposed use and addressing the eligibility criteria. The City will consider expressions of interest on their merits when a property becomes available for use.

Existing lessees will be required to define the proposed use and demonstrate their compliance with the eligibility criteria when seeking renewal of their existing lease or licence arrangements. Lessees with a further term under the lease or licence who seek to exercise an option to extend the lease are generally entitled to require that the lease be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the lease or licence documentation).

## 6 Terms and Conditions of Leases and Licences

### 6.1 Standard Lease and Licences

The City's standard lease and licence agreements for various types of properties will be applied to all new tenancies including the renewal of existing tenancies and may be varied if essential to the special needs of the property or lessee, as resolved by Council. Lessees with a further term under the agreement who seek to exercise an option to extend the lease or licence are entitled to require that the lease or licence be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the documentation).

### 6.2 Breaches of Lease and Licences

For the purposes of this Policy, a 'breach' is defined as an act by the lessee, whether intended or not, where the conditions or requirements of a lease or licence have not been met, either by neglect, dereliction, non-observance, violation or in any other manner.

### 6.3 Rent and Review

#### 6.3.1 Market Rent Value

The market rental value of each property is determined by a licensed valuer.

#### 6.3.2 Rent Subsidy

Council may subsidise rent for eligible lessees. There are three categories of rent subsidy based on the extent to which organisations meet the essential and desirable eligibility criteria outlined in Schedule 1. Council will review performance against these criteria and eligibility for rent subsidy annually. The categories are:

- A: Peppercorn rent
- B: Discounted market rent
- C: Market rent

The eligibility criteria for each category are included in Schedule 1 and summarised in Table 1 below:

**Table 1 Rent Subsidy Categories**

Category	Annual Rent	Eligibility
A: Peppercorn rent	As determined annually in the City's Schedule of Fees and Charges	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Meets all relevant eligibility criteria;</li> <li>▪ Provides significant community benefit; <u>and</u></li> <li>▪ Has limited revenue-raising ability (net of cost of service) e.g. community play groups, neighbourhood house</li> </ul>
B: Discounted market rent	Full market rent with a reduction from this rate to be negotiated based on community benefit criteria, level of maintenance responsibility and capital contributions made by lessee, on a sliding scale basis providing discounts of between 30% and 70%	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Has revenue raising capacity or receives external funding assistance (e.g. receives some State Government funding or from its members); and</li> <li>▪ Meets all relevant eligibility criteria.</li> </ul>
C: Market rent	Full market rent	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Meets all relevant eligibility criteria; and</li> <li>▪ Provides services that are not targeted to the Kwinana community; <u>or</u></li> <li>▪ Is substantially funded by other agencies or governments; <u>or</u></li> <li>▪ Operations substantially include commercial activities for profit.</li> </ul>

Council will negotiate discounted market rents with eligible community organisations after consideration of various factors, including but not limited to the following factors:

- Consistency with Council's Strategic Community Plan and Corporate Business Plan
- Community benefit
- Use of volunteers
- Service and program fees
- Access by Kwinana residents
- Extent of external funding
- Track record as a City lessee

### 6.3.3 Annual Indexation of Rents

Rents (other than peppercorn rents) will be indexed annually and the amount payable will be increased by the Perth 'All Groups Consumer Price Index (CPI) (using the percentage change from corresponding quarter of previous year), and using the preceding quarter data of the annual review date, as determined by the Australian Bureau of Statistics.

## 6.4 Maintenance

Facility maintenance includes minor day-to-day maintenance able to be performed by a non-tradesperson and more significant programmed and non-programmed asset renewal maintenance requiring the services of a qualified tradesperson or experienced maintenance person.

While the City will generally assume some responsibility for facility maintenance costs and reflect this in rental values, the City reserves the right to negotiate structural and other maintenance responsibilities and costs where it is demonstrated to be in the interests of both parties. All maintenance obligations and maintenance standards will be clearly articulated in specific schedules to lease and licence documents.

Each lessee is required to maintain the facility in accordance with the maintenance schedule attached to their lease or licence using the services of registered and qualified tradespeople. The maintenance schedule will specify the City's and the lessee's responsibilities.

### 6.4.1 Maintenance Inspection

The City reserves the right to inspect the premises each year or more frequently as required. The City will give appropriate notice to the lessee in accordance with the lease or licence conditions.

### 6.4.2 Utilities

Payment of utilities is the responsibility of the lessee except where the lessee occupies an area that is part of a larger City facility and separate metering is impractical. The requirements and method of payments for utilities will be captured within individual lease agreements.

## 6.5 Term of Lease or Licence

The term of each lease or licence will be negotiated taking into account the particular circumstances of the facility and the lessee, including capital investment and long-term planning, sustainability of the service and the connection between facility use and the City's Strategic Community Plan.

## 6.6 Use of Licences Rather Than Leases

Council aims to maximise access and use of community facilities and encourages shared use. Where Council wishes to make a facility available to multiple users, a licence rather than a lease will be the preferred form of agreement. A lease agreement will be used where Council considers that providing exclusive rights to a single lessee is in the best interests of the community or is necessary to recognise financial investment by the lessee or secure the desired use and long-term development of the property.

## 6.7 Use of Premises and Occasional Hire

Leases and licences will only be available to community groups for approved purposes. All leases and licences will include a statement recognising Council's policy of maximising community use and a commitment by the lessee to support shared and multiple use of the facility by community-based organisations. Any such shared use and multiple use will be subject to Council approval.

It is recommended that lessees should make facilities available for casual hire where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. Hiring agreements, including fees and any restrictions on the property, shall be referred to Council for approval. Fees from casual hire are payable to the lessee, not to the City, as an incentive to maximise utilisation. Where the lessee receives fees for hiring out facilities, Council will be entitled to review the rent to take into account the income received.

## 6.8 Hours of Use

Council will prescribe the hours of use for all premises, dependent on the nature and proposed conduct of activities or programs and any planning permit conditions.

## 6.9 Sub-leasing

Lessees may only sub-lease or sub licence with Council permission to approved organisations for approved purposes and may be subject to terms and conditions. Generally, Council may use the same criteria to assess the sub-lease or licence as the head lease or licence.

## 6.10 Rates, Taxes and Outgoings

Where the lessee has a lease on an entire property, the lessee shall pay for rates (if charged), and any applicable taxes (including GST) or any stamp duty or other taxes payable. Where there is shared use the lessee can be charged outgoings on a proportional basis. This could be applied to a lease or a licence.

## 6.11 Insurance

Lessees must maintain their own public liability insurance to a value determined by the City, as detailed in the lease or licence document. Generally, the City will fully insure all City-owned improvements on leased or licensed premises. Lessees will be required to insure their own contents. The lessor will also be responsible for public risk insurance with the City's interests indemnified as far as possible.

## 6.12 Gaming and Liquor Licences

Council in most circumstances prohibits gaming licences in leased or licenced community facilities. Council strongly discourages gaming venues in the City, as it has a commitment to limiting the negative impacts of gambling on the community. The requirements of the *Gaming and Wagering Commission Act 1987* apply.

Council will support community groups carrying out bingo in leased or licenced community facilities where they are the permit holder of the gaming licence. Commercial gaming organisations are prohibited from leasing or having a licence of any community facility.

A permit for a liquor licence requires approval by the City and must be sought through the normal processes required by the City and the *Liquor Control Act 1988*.

## 6.13 Legal Fees

The payment of any fees and charges including legal costs associated with the establishment of lease or licence agreements will be in accordance with the schedule of fees and charges within the City's annual budget.

## 6.14 Keys and Locks and Security Arrangements

Lessees must provide keys to the City to enable the City to carry out essential maintenance and emergency services. Lessees must provide the City with information on any other security arrangements undertaken by the lessee in respect of the City's facility, such as security patrols, keypads and alarms. The City would retain a set of keys and would be required to be notified and provided with new keys if locks were changed.

## 6.15 Planning Requirements and Other Permits

All lessees must adhere to the conditions of any planning, building approvals or other approvals issued by the City or other authorities. Lessees must also obtain any permits or licences in order for the lessee to be able to use the premises for its permitted use.



**6.16 Removal of Assets**

The lessee may remove any assets that have been constructed or installed by them during the term of the lease or licences (unless otherwise part of the agreement), subject to the premises being returned to the City in its original condition. Any improvement not removed at the end of the lease or licence shall remain in the City's ownership.

**6.17 Capital Improvements**

Any capital improvements proposed by the lessee if approved by Council, would generally remain the property of the City unless otherwise specified in the lease or licence. Council will consider the capital contribution by lessees in assessing rent levels and length of lease or licence.

**6.18 Acknowledgment of Council Contribution**

Lessees must acknowledge any contribution by the City in their annual report, brochures and on any signage on the premises and is subject to the approval of the City. Acknowledgement requirements will be specifically detailed in all leases and licences.

**6.19 Nuisance**

Council requires that lessees undertake their permitted activities without adversely affecting the amenity of nearby neighbours. Breaches in this regard may lead to forfeiture of tenancy rights.

**6.20 City Access**

The lessee shall grant access to the City for facility inspection at any time after the City has given the lessee adequate notice (as defined in the lease or licence agreement).

**6.21 Asbestos Hazards**

The City will advise lessees if a facility is listed on the City's asbestos register and, where required, ensure that an associated lease or licence clearly states any lessee or licencees obligations in relation to potential asbestos hazards.

**6.22 Cleaning**

Cleaning will be the responsibility of the lessee. Where facilities are shared and/or the City arranges cleaning, a contribution towards cleaning will be negotiated with the lessee.

**6.23 Additional Requirements**

The lessee must comply with all legislation governing the activities of the lessee, e.g. Occupational Health and Safety, Child Care, Council policies etc. Council reserves the right to require category C (market rent) lessees to pay a security deposit.

**7 Implementation of Policy**

This Policy will apply to all leases and licences developed or renewed following its adoption by Council.

## SCHEDULE 1: Eligibility Criteria for Community Facility Leases/Licences

Any group wishing to lease or obtain a licence for a City of Kwinana community facility must meet the following criteria

Organisation Criteria		Leasee Category			
		✓ or X	A	B	C
1	The organisation must be an organisation, which applies any surpluses towards its purposes, prohibits any dividends or profits from being paid to its members and is exempt from paying income tax.		E	E	D
2	The organisation is a legal entity incorporated under appropriate legislation (such as the Associations Incorporation Act 1987).		E	E	E
3	The organisation is financially viable and able to demonstrate good financial management and record-keeping practices to the satisfaction of the City.		E	E	E
4	The organisation complies with relevant legislation governing its activities and holds any licences or registration certificates required for it to operate.		E	E	E
5	The organisation has a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and / or to the community, including the capacity to maintain appropriate financial records for audit purposes.		E	E	E
6	The organisation adheres to all relevant Council local laws including the Local Government Property Local Law, Council policies and has complied with the terms of any previous lease or licence and/or grant from the City.		E	E	E
7	Demand exists for the service or activity to be provided through the facility.		E	E	D
8	Facility use is consistent with City objectives and current Business Plan.		E	E	E
9	Use of the facility will increase social engagement and promote health and wellbeing of the Kwinana community.		E	E	D
10	The service or activity is non-discriminatory. It will be open to all residents who meet the criteria for participation that are directly related to the nature of the service or activity or geographic catchment area.		E	D	D
11	Disadvantaged groups can access the service or activity and strategies are in place to review and remove any barriers to participation.		E	E	D

Facility Management and Development Criteria		Leasee Category			
		✓ or X	A	B	C
1	Proposed use of the facility is suitable for the nature of the site and the neighbourhood.		E	E	E
2	The organisation is prepared to maximise utilisation of the facility as requested by the City.		E	E	E
3	The organisation agrees to provide the City with requested information including current and projected opening hours and participant and/or membership numbers.		E	E	E

### Leasee/Licencee Category Criteria

Council will use the following criteria to determine whether the group is categorised as either:

- A. Peppercorn: Rent determined annually in the Schedule of Fees and Charges.
- B. Discounted market rent: A reduction of 30-70% of the market rental valuation is to be calculated based on a scale of community benefit and other criteria, level of maintenance responsibility and financial contributions made by the lessee.
- C. Full market rent: As determined by market valuation.

When addressing the criteria above, the organisation's ability to meet the criteria will either be assessed as a tick (✓) in the box, if the requirement for an individual criterion has been met, or a cross (x), if it has not been met.

The final three (Leesee Category) columns show which criterion is Essential (E) and which is Desirable (D) for the three categories of the lessee to meet.

"E" in the column under the lessee category indicates that this is an essential criterion for that category of lessee to meet.

"D" under the lessee category indicates that it is a desirable criterion for that category of lessee to meet.

## **ADVERTISING AND DIRECTIONAL SIGNAGE IN THOROUGHFARES AND ON LOCAL GOVERNMENT PROPERTY**

**To establish uniformity in the design, installation and control of illuminated, advertising and directional street signs located in thoroughfares and on local government property within the City.**

Adopted:	<b>09/09/2015 #560</b>
Last reviewed:	
Legal Authority:	Local Government Act 1995 Section 2.7 – Role of Council Main Roads Act 1930 Sections 33B and 33C Transport Co-ordination Act 1966 Section 27 Town of Kwinana By-law relating to Signs and Bill Posting
Strategic Community Plan:	Objective 4.5: Actively improve the appearance of public areas and streetscapes throughout the City.  Strategy 4.5.5: Develop and implement urban design guidelines to achieve a good standard of built form in the City

### **Scope:**

This Policy relates to signage located within thoroughfares and land vested in the City of Kwinana. The requirements for signage located within private property or crown land not vested in the City is subject to the requirements of the City's local planning schemes and local laws.

### **Policy:**

#### **General conditions:**

While Council is mindful that effective signage is important for business, emergency services and community purposes, it aims to ensure that any signage is located strategically to maximise effect while minimising visual pollution and providing good amenity within the City.

All signage approved by the City under this Policy will remain the property of the City with all costs to be born by the applicant. The applicant will retain exclusive use of the signage for the period and conditions established with the City.

The City will assess all applications against the criteria within this policy and consideration of Main Roads WA's 'Guide to the Management of Roadside Advertising' and any other relevant local factors. Appropriate conditions of approval may be imposed.

Requests for signage must be in the form of a signage application obtainable from the City.

All signage is to be designed in accordance with the City's engineering and design requirements and approved by the City.

Fees and charges that may be applicable to the installation of signage will be detailed in the City's Schedule of Fees and Charges.

Graffiti removal will be in accordance with Council's Graffiti and Vandalism Policy.

**Tenure of signage:**

Advertising signs will be granted approval, unless approved for a shorter term, for a period of five years with an option to extend for a further period of five years. No advertising signage will be approved beyond a maximum of ten years.

On expiration of ten years a new application must be made for the location and if applicable, the applicant may be required to including the installation of a new sign in order to prevent the build up of old, worn and outdated signage. At any time, the existing sign may be required to be removed and replaced at the applicant's expense if the City believes the sign is in poor condition.

**Prohibited advertising**

The City will not approve any signage or advertising that in the opinion of the Chief Executive Officer:

- Is political, religiously offensive, pornographic in nature, or that in any other way is likely to be considered offensive to any person or class of persons;
- Promotes smoking, or tobacco products;
- Promotes alcohol or the consumption of alcohol;
- Could be mistaken for a traffic sign, or that constitutes a traffic hazard; or
- That is, or the content of which, is false, deceptive or misleading.

The above prohibitions would generally exclude actual registered business names.

The City will however have discretion to approve any signage in respect to the sponsorship of local clubs and community groups within local government property.

**Preferences**

Preference will be given to businesses whose purpose aligns with Council's Healthy Lifestyle Plan and the codes and initiatives of the Advertising Standards Bureau.

**Signage categories**

Specific requirements for individual styles of signs under this policy are as follows:

- Street Name Signs

Street name signs will be installed by the City, its contractors or as part of a new approved development by the developer, on street light poles whenever possible.

- Finger signs

Finger signs are small signs with white reflective writing on a blue background. The purpose of finger signage is to indicate the direction or location of a business area, e.g. local shopping centre and would generally be located at a road intersection along with a street name sign.

Signage for community facilities may be approved in specific locations for facilities such as:

- Religious centres;
- Sporting and recreational grounds and facilities;
- Civic and cultural centres;
- Non-profit organisations;
- Government facilities, eg post office, train station;
- Public toilets; and
- Emergency Services

- **Illuminated Street Name Signs**

Illuminated street name signs for individual businesses, shopping centres or industrial complexes may be approved by the City in specific locations and on arterial routes subject to planning and building approval but will not be approved adjacent to a residential property. The City maintains a list of permitted locations as is detailed in Annexure A. The preferred method for lighting for illuminated signage is for solar powered lighting.

The City will be the applicant where the sign is on City controlled land and an agreement will be entered into with the advertiser for a five year term (with an option for a further five years) with the construction and maintenance of the sign to be the responsibility of the advertiser.

- **Signs at bus stops, on bus shelters and bin surrounds.**

Sign installation, maintenance and advertising upon certain bus shelters, including those within the Kwinana Bus Terminal is to be in accordance with the 'Street Furniture Agreement' between the Minister for Transport and Adshel Street Furniture Pty Ltd dated 5 June 2000 and as amended. This agreement only refers to bus stops within the State Government's 'Rockingham – Fremantle System 21 Bus Route Plan'.

The City may approve the installation of advertising on bus shelters and bin surrounds at bus stops for which the above agreement does not apply.

## **Signs**

- All signs are subject to the requirements of the City's local planning scheme, local laws and other policies.



## Annexure A – Approved locations of Illuminated Street Name Signs

(Approved locations marked by red dot)



This location  
is identified  
for the City  
of Kwinana



## ATTACHMENT B

### LEASING OF COMMUNITY FACILITIES

**This Policy provides a framework for the City to lease and licence its properties. It establishes the minimum community benefits that need to be demonstrated by prospective lessees and sets out the reporting requirements to ensure accountability to Council and recognition of the City's contribution.**

Adopted:	<b>09/09/2015 #562</b>
Last reviewed:	
Legal Authority	Local Government Act 1995 Section 2.7 – Role of Council

#### **Policy:**

#### **1 Introduction**

Community facilities owned and leased or licenced by the City make an important contribution to the City's ability to achieve the objectives of the Strategic Community Plan and Corporate Business Plan. The facilities referred to in this Policy include both land and buildings, but do not include sports facilities, hall hire or facilities that are offered to the public for casual or short term hire. It applies to those premises that are occupied by commercial entities, community groups, organisations and those lessees providing a service sought after by the community.

For the purpose of this Policy a 'community group' is defined as a community based organisation, public or private, that is representative of a community or a significant segment of a community, and is engaged in meeting the needs or providing a service, including social, educational, environmental and health and is desired by the community.

This Policy provides a framework for leasing and licensing of City of Kwinana properties to third parties at peppercorn, discounted and commercial rates of rental. It establishes the requirement for all prospective lessees to demonstrate the community benefits arising from their use of City property and sets out reporting requirements (clause 7) to ensure accountability to Council and recognition of the City's contribution. The Policy establishes the terms and conditions the City will use as the basis for negotiating leases and licences.

This policy will apply to all new leases and licences, including the renewal of leases and licences on expiration of the current leases and licences.

#### **2 Aim of Policy**

Through implementation of this Policy, the City aims to maximise the benefit to the community whilst ensuring responsible management of community assets, with an equitable methodology for calculating lease and licence charges according to their classification.

#### **3 Background**

##### **3.1 Leasing and Licensing in Kwinana**

The City of Kwinana leases or licences a number of facilities to community groups and incorporated organisations at subsidised rates, including use as childcare centres, kindergartens, community centres and scout halls.

### **3.2 Legislative Framework**

A number of laws and regulations affect City leases and licences. Of particular relevance are the following Western Australian Acts and Regulations.

- *Local Government Act 1995*: Includes details on the disposition requirements and exemptions and the circumstances requiring leases to be advertised.
- *Local Government (Functions and General) Regulations 1996*: Details the exemptions from section 3.58 of the Local Government Act 1995 for the disposition of land entered into by the City.
- *Occupier's Liability Act 1985*: Details the relationship between lessees and landlords in respect to liability and duty of care.

### **3.3 Community Profile**

As the Kwinana population changes, so do demands for services. Projected changes to the community profile will affect the type of facilities that the community requires. This Policy will ensure that access to the City's facilities and assets are not unnecessarily restricted and properties can be redeployed over time to meet changing community needs.

## **4 Policy Objectives**

The objectives of this policy are to:

- Ensure City owned facilities are used to meet demonstrated community needs consistent with Council's policies and the Strategic Community Plan;
- Provide accountability for City expenditure on rent subsidies, as they constitute indirect grants;
- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria;
- Ensure lessees pay fair and reasonable rent based on clear eligibility criteria and calculation methodologies;
- Optimise use of the City's community facilities and equitable access by the Kwinana community;
- Increase community access to activities and services, particularly access by disadvantaged and socially isolated groups;
- Enable the City's contribution to be reported to the community;
- Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Kwinana;
- Assist community groups to understand and support the achievement of Council's policies and plans;
- Facilitate a shared approach between Council and the lessee as to the cost of management and maintenance of City-owned facilities;
- Ensure that City-owned facilities are appropriately maintained as City assets;
- Ensure that City assets are maintained, developed and occupied responsibly, having regard to the interests of local communities; and
- Ensure sound financial management and effective administration of community facility leasing and licensing.

## 5 Eligibility for Leasing and Licensing Community Facilities

### 5.1 Eligibility Criteria

Schedule 1 to this Policy sets out eligibility criteria for leasing and licensing community facilities. Prospective lessees as well as those seeking renewal of leases or licences will be required to provide details of how they meet these criteria including financial information. Rent subsidies will have regard to the extent to which organisations meet the essential and desirable criteria (see Section 6.2). There are three categories of criteria:

- **Compulsory organisation criteria:** Includes appropriate organisational structure, financial viability and compliance with relevant legislation and Council policies. Community benefit criteria includes use of the facility to meet community needs, number of participants, access for disadvantaged groups, contribution to community wellbeing, and programs and services that are consistent with Council's objectives and goals as articulated in the City's Strategic Community Plan.
- **Compulsory facility management and development criteria:** Includes suitability for use on the site and a preparedness to maximise utilisation.
- **Lease/Licence category criteria:** Involves categorising community groups and organisations as eligible for peppercorn, discounted or full market rental.

### 5.2 Reporting against Criteria

All lessees will be required to report against the eligibility criteria on request, and on lease or licence renewal, and advise the City if their organisational status has changed. Lessees will be required to provide the City with a copy of a certificate of currency with respect to its insurance each year or as otherwise requested by the City and a copy of any permit or approval.

New leases and licences will require lessees and licensees to provide a copy of their annual report and financial statements. A lessee that breaches a lease or a licence condition may be required to relinquish the lease or licence. Where the lessee breaches the lease or licence by subletting without Council consent or receives funding or third party rental, Council may require the lessee to pay up to full market rent.

City Officers will assist lessees to comply with the reporting requirements by providing simple reporting formats and checklists, timely information and if necessary briefing or training on how to demonstrate their claims against the criteria.

City Officers may also seek additional information where necessary to better understand activities, the extent of community use and opportunities for facility and service development. Reporting requirements will be based on existing documents, such as annual reports, where possible.

### 5.3 Expression of Interest in Use of Council Property

Community groups who wish to utilise City property will be required to contact the relevant City department and lodge a written expression of interest outlining the proposed use and addressing the eligibility criteria. The City will consider expressions of interest on their merits when a property becomes available for use.

Existing lessees will be required to define the proposed use and demonstrate their compliance with the eligibility criteria when seeking renewal of their existing lease and licence arrangements. Lessees with a further term under the lease or licence who seek to exercise an option to extend the lease are entitled to require that the lease be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the lease or licence documentation).

## **6 Terms and Conditions of Leases and Licences**

### **6.1 Standard Lease and Licences**

The City's standard lease and licence agreements for various types of properties will be applied to all new tenancies including the renewal of existing tenancies and may be varied if essential to the special needs of the property or lessee, as resolved by Council. Lessees with a further term under the agreement who seek to exercise an option to extend the lease or licence are entitled to require that the lease or licence be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the documentation).

### **6.2 Breaches of Lease and Licences**

For the purposes of this Policy, a 'breach' is defined as an act by the lessee, whether intended or not, where the conditions or requirements of a lease or licence have not been met, either by neglect, dereliction, non-observance, violation or in any other manner.

### **6.3 Rent and Review**

#### **6.3.1 Market Rent Value**

The market rental value of each property is determined by a licensed valuer and will be identified and recorded in lease or licence documentation, regardless of whether the rental is subsidised or not.

#### **6.3.2 Rent Subsidy**

Council may subsidise rent for eligible lessees. There are three categories of rent subsidy based on the extent to which organisations meet the essential and desirable eligibility criteria outlined in Schedule 1. Council will review performance against these criteria and eligibility for rent subsidy annually. The categories are:

- A:     Peppercorn rent
- B:     Discounted market rent
- C:     Market rent

## LEASING OF COMMUNITY FACILITIES

The eligibility criteria for each category are included in Schedule 1 and summarised in Table 1 below:

**Table 1 Rent Subsidy Categories**

Category	Annual Rent	Eligibility
A: Peppercorn rent	As determined annually in the City's Schedule of Fees and Charges	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Meets all relevant eligibility criteria;</li> <li>▪ Provides significant community benefit; <u>and</u></li> <li>▪ Has limited revenue-raising ability (net of cost of service) e.g. community play groups, neighbourhood house</li> </ul>
B: Discounted market rent	Full market rent with a reduction from this rate to be negotiated based on community benefit criteria, level of maintenance responsibility and capital contributions made by lessee, on a sliding scale basis providing discounts of between 30% and 70%	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Meets three out of the five "Organisation Criteria" outlined in Schedule 1; and</li> <li>▪ Has revenue raising capacity or receives external funding assistance (e.g. receives some State Government funding or from its members).</li> </ul>
C: Market rent	Full market rent	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Does not meet eligibility criteria for lessee categories A and B as outlined in Schedule 1; and</li> <li>▪ Provides services that are not targeted to the Kwinana community; <u>or</u></li> <li>▪ Is substantially funded by other agencies or governments; <u>or</u></li> <li>▪ Operations substantially include commercial activities for profit.</li> </ul>

Council will negotiate discounted market rents with eligible community organisations after consideration of various factors, including but not limited to the following factors:

- Consistency with Council's Strategic Community Plan and Corporate Business Plan
- Community benefit
- Use of volunteers
- Service and program fees
- Access by Kwinana residents
- Extent of external funding
- Track record as a City lessee

### 6.3.3 Annual Indexation of Rents

Rents (other than peppercorn rents) will be indexed annually and the amount payable will be increased by the Perth 'All Groups Consumer Price Index (CPI) (using the percentage change from corresponding quarter of previous year), and using the preceding quarter data of the annual review date, as determined by the Australian Bureau of Statistics.

## **6.4 Maintenance**

Facility maintenance includes minor day-to-day maintenance able to be performed by a non-tradesperson and more significant programmed and non-programmed asset renewal maintenance requiring the services of a qualified tradesperson or experienced maintenance person.

While the City will generally assume some responsibility for facility maintenance costs and reflect this in renewed rental values, the City reserves the right to negotiate structural and other maintenance responsibilities and costs where it is demonstrated to be in the interests of both parties. All maintenance obligations and maintenance standards will be clearly articulated in specific schedules to lease and licence documents.

Each lessee is required to maintain the facility in accordance with the maintenance schedule attached to their lease or licence using the services of registered and qualified tradespeople. The maintenance schedule will specify the City's and the lessee's responsibilities.

### **6.4.1 Maintenance Inspection**

The City reserves the right to inspect the premises each year or more frequently as required. The City will give appropriate notice to the lessee in accordance with the lease or licence conditions.

### **6.4.2 Utilities**

Payment of utilities is the responsibility of the lessee except where the lessee occupies an area that is part of a larger City facility and separate metering is impractical. The requirements and method of payments for utilities will be captured within individual lease agreements.

## **6.5 Term of Lease or Licence**

The term of each lease or licence will be negotiated taking into account the particular circumstances of the facility and the lessee, including capital investment and long-term planning, sustainability of the service and the connection between facility use and the City's Strategic Community Plan.

## **6.6 Use of Licences Rather Than Leases**

Council aims to maximise access and use of community facilities and encourages shared use. Where Council wishes to make a facility available to multiple users, a licence rather than a lease will be the preferred form of agreement. A lease agreement will be used where Council considers that providing exclusive rights to a single lessee is in the best interests of the community or is necessary to recognise financial investment by the lessee or secure the desired use and long-term development of the property.

## **6.7 Use of Premises and Occasional Hire**

Leases and licences will only be available to community groups for approved purposes. All leases and licences will include a statement recognising Council's policy of maximising community use and a commitment by the lessee to support shared and multiple use of the facility by community-based organisations. Any such shared use and multiple use will be subject to Council approval.

It is recommended that lessees should make facilities available for casual hire where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. Hiring agreements, including fees and any restrictions on the property, shall be referred to Council for approval. Fees from casual hire are payable to the lessee, not to the City, as an incentive to maximise utilisation. Where the lessee receives fees for hiring out facilities, Council will be entitled to review the rent to take into account the income received.



## **6.8 Hours of Use**

Council will prescribe the hours of use for all premises, dependent on the nature and proposed conduct of activities or programs and any planning permit conditions.

## **6.9 Sub-leasing**

Lessees may only sub-lease or sub licence with Council permission to approved organisations for approved purposes and may be subject to terms and conditions. Generally, Council may use the same criteria to assess the sub-lease or licence as the head lease or licence.

## **6.10 Rates, Taxes and Outgoings**

Where the lessee has a lease on an entire property, the lessee shall pay for rates (if charged), and any applicable taxes (including GST) or any stamp duty or other taxes payable. Where there is shared use the lessee can be charged outgoings on a proportional basis. This could be applied to a lease or a licence.

## **6.11 Insurance**

Lessees must maintain their own public liability insurance to a value determined by the City, as detailed in the lease or licence document. Generally, the City will fully insure all City-owned improvements on leased or licensed premises. Lessees will be required to insure their own contents. The lessor will also be responsible for public risk insurance with the City's interests indemnified as far as possible.

## **6.12 Gaming and Liquor Licences**

Council prohibits gaming licences in leased or licenced community facilities. Council strongly discourages gaming venues in the City, as it has a commitment to limiting the negative impacts of gambling on the community. Therefore gambling is not supported in City facilities and the requirements of the *Gaming and Wagering Commission Act 1987* apply.

Council will support community groups carrying out bingo in leased or licenced community facilities where they are the permit holder of the gaming licence. Commercial gaming organisations are prohibited from leasing or having a licence of any community facility.

A permit for a liquor licence requires approval by the City and must be sought through the normal processes required by the City and the *Liquor Control Act 1988*.

## **6.13 Legal Fees**

The payment of any fees and charges including legal costs associated with the establishment of lease or licence agreements will be in accordance with the schedule of fees and charges within the City's annual budget.

## **6.14 Keys and Locks and Security Arrangements**

Lessees must provide keys to the City to enable the City to carry out essential maintenance and emergency services. Lessees must provide the City with information on any other security arrangements undertaken by the lessee in respect of the City's facility, such as security patrols, keypads and alarms. The City would retain a set of keys and would be required to be notified and provided with new keys if locks were changed.

## **6.15 Planning Requirements and Other Permits**

All lessees must adhere to the conditions of any planning, building approvals or other approvals issued by the City or other authorities. Lessees must also obtain any permits or licences in order for the lessee to be able to use the premises for its permitted use.

## **6.16 Removal of Assets**

The lessee may remove any assets that have been constructed or installed by them during the term of the lease or licences (unless otherwise part of the agreement), subject to the



## LEASING OF COMMUNITY FACILITIES

premises being returned to the City in its original condition. Any improvement not removed at the end of the lease or licence shall remain in the City's ownership.

### **6.17 Capital Improvements**

Any capital improvements proposed by the lessee if approved by Council, would generally remain the property of the City unless otherwise specified in the lease or licence. Council will consider capital contribution by lessees in assessing rent levels and length of lease or licence.

### **6.18 Acknowledgment of Council Contribution**

Lessees must acknowledge any contribution by Council in their annual report, brochures and on any signage on the premises. Acknowledgement requirements will be specifically detailed in all leases and licences.

### **6.19 Nuisance**

Council requires that lessees undertake their permitted activities without adversely affecting the amenity of nearby neighbours. Breaches in this regard may lead to forfeiture of tenancy rights.

### **6.20 City Access**

The lessee shall grant access to the City for facility inspection at any time after the City has given the lessee adequate notice (as defined in the lease or licence agreement).

### **6.21 Asbestos Hazards**

The City will advise lessees if a facility is listed on the City's asbestos register and, where required, ensure that an associated lease or licence clearly states any lessee or licencees obligations in relation to potential asbestos hazards.

### **6.22 Cleaning**

Cleaning will be the responsibility of the lessee. Where facilities are shared and/or the City arranges cleaning, a contribution towards cleaning will be negotiated with the lessee.

### **6.23 Additional Requirements**

The lessee must comply with all legislation governing the activities of the lessee, e.g. Occupational Health and Safety, Child Care, Council policies etc. Council reserves the right to require category C (market rent) lessees to pay a security deposit.

## **7 Implementation of Policy**

This Policy will apply to all leases and licences developed or renewed following its adoption by Council.

**SCHEDULE 1: Eligibility Criteria for Community Facility Leases/Licences**
**Compulsory Organisational Criteria**

The following criteria are compulsory for any group wishing to lease or obtain a licence for a City of Kwinana community facility:

<b>Criteria</b>	
<b>Compulsory Organisation Criteria</b>	
1	The organisation must be an organisation, which applies any surpluses towards its purposes, prohibits any dividends or profits from being paid to its members and is exempt from paying income tax;
2	The organisation is a legal entity incorporated under appropriate legislation (such as the Associations Incorporation Act 1987);
3	The organisation is financially viable and able to demonstrate good financial management and record-keeping practices to the satisfaction of the City;
4	The organisation complies with relevant legislation governing its activities and holds any licences or registration certificates required for it to operate;
5	The organisation has a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and / or to the community, including the capacity to maintain appropriate financial records for audit purposes;
6	The organisation adheres to all relevant Council local laws including the Local Government Property Local Law, Council policies and has complied with the terms of any previous lease or licence and/or grant from the City;
7	Demand exists for the service or activity to be provided through the facility;
8	Facility use is consistent with City objectives and current Business Plan;
9	Use of the facility will increase social engagement and promote health and wellbeing of the Kwinana community;
10	The service or activity is non-discriminatory. It will be open to all residents who meet the criteria for participation that are directly related to the nature of the service or activity or geographic catchment area; and
11	Disadvantaged groups can access the service or activity and strategies are in place to review and remove any barriers to participation.
<b>Compulsory Facility Management and Development Criteria</b>	
1	Proposed use of the facility is suitable for the nature of the site and the neighbourhood;
2	The organisation is prepared to maximise utilisation of the facility as requested by the City; and
3	The organisation agrees to provide the City with requested information including current and projected opening hours and participant and/or membership numbers.

## LEASING OF COMMUNITY FACILITIES

### Lease/Licence Category Criteria

Council will use the following criteria to determine whether the group is categorised as either:

- A. Peppercorn: Rent determined annually in the Schedule of Fees and Charges.
- B. Discounted market rent: A reduction from this rate to be calculated based on a scale of community benefit and other criteria, level of maintenance responsibility and financial contributions made by the lessee.
- C. Full market rent: As determined by market valuation.

Criteria		Lessee Category		
Eligible Organisation Criteria		A	B	C
1	The organisation meets an identified community need	E	E	D
2	The organisation provides equitable access to services primarily to Kwinana community	E	E	D
3	The organisation's activities complement the City's services	E	E	D
4	The organisation offers programs otherwise unavailable to Kwinana residents	E	E	D
5	There is a long standing community expectation that the City accommodates the organisation	E	E	D
6	The organisation is not part of a larger organisation with alternative accommodation options	E	D	D
7	The organisation is accessible to a broad resident base	E	D	D
8	The organisation has participation by volunteers	E	D	D
9	The organisation has limited capacity to generate revenue net of operating costs	D	D	D
10	The organisation does not receive funds from the State or Commonwealth Government	D	D	D

The Eligible Organisation Criteria detail the criteria that an organisation must address to be considered.

The final three (Lessee Category) columns show which criteria is Essential (E) and which is Desirable (D) for the three categories of the lessee to meet.

"E" in the column under the lessee category indicates that this is an essential criterion for that category of lessee to meet.

"D" under the lessee category indicates that it is a desirable criterion for that category of lessee to meet.

### Qualification requirements

Besides meeting the Essential Organisation Criteria requirements, to qualify for;

- Category A – Peppercorn Lease, organisations must also meet at least one of the two 'Desirable' (D) Eligibility Organisation Criteria above.
- Category B - Discounted Market Rent, organisations must also meet at least three of the five 'Desirable' (D) Eligibility Organisation Criteria above.
- Category C - Full Market Rent, organisations must meet at least seven of the ten 'Desirable' (D) Eligibility Organisation Criteria above.

# ADVERTISING AND DIRECTIONAL SIGNAGE IN THOROUGHFARES AND ON LOCAL GOVERNMENT PROPERTY

**To establish a uniformity in the design, installation and control of illuminated, advertising and directional street signs located in thoroughfares and on local government property within the City.**

Adopted:	<b>09/09/2015 #560</b>
Last reviewed:	
Legal Authority	Local Government Act 1995 Section 2.7 – Role of Council Main Roads Act 1930 Sections 33B and 33C Transport Co-ordination Act 1966 Section 27

## Scope:

This Policy relates to signage located within thoroughfares and land vested in the City of Kwinana. The requirements for signage located within private property or crown land not vested in the City is subject to the requirements of the City's local laws.

## Policy:

### General conditions:

While Council is mindful that effective signage is important for business, emergency services and community purposes, it aims to ensure that any signage is located strategically to maximise effect while minimising visual pollution and providing good amenity within the City.

The City will assess all applications against the criteria within this policy and consideration of Main Roads WA's 'Guide to the Management of Roadside Advertising' and any other relevant local factors and appropriate conditions of approval that may be imposed.

All signage is to be designed in accordance with the City's engineering and design requirements and approval by the City.

Fees and charges that may be applicable to the installation of signage will be detailed in the City's Schedule of Fees and Charges.

Graffiti removal will be in accordance with Council's Graffiti and Vandalism Policy.

### Tenure of signage:

Advertising signs will be granted approval, unless approved for a shorter term, for a period of five years with an option to extend for a further period of five years. No advertising signage will be approved beyond a maximum of ten years.

On expiration of ten years a new application may need to be made for the location including the installation of a new sign in order to prevent the build up of old, worn and outdated signage. The existing sign may be required to be removed if the City believes the sign is in poor condition.

### Prohibited advertising

The City will not approve any signage or advertising that in the opinion of the Chief Executive Officer:

- Is political, religiously offensive, pornographic in nature, or that in any other way is likely to be considered offensive to any person or class of persons;
- Promotes smoking, or tobacco products;
- Promotes alcohol or the consumption of alcohol;
- Could be mistaken for a traffic sign, or that constitutes a traffic hazard; or
- That is, or the content of which, is false, deceptive or misleading.

The City will however have discretion to approve any signage in respect to the sponsorship of local clubs and community groups within local government property.

### **Signage categories**

Specific requirements for individual styles of signs under this policy are as follows:

- **Street Name Signs**

Street name signs will be installed by the City, its contractors or as part of a new approved development by the developer, on street light poles whenever possible.

- **Directional signs**

The purpose of directional signage is to indicate the direction or location of a business area, e.g. local shopping centre and would generally be located at a road intersection along with a street name sign. Directional signs will not be approved for individual businesses.

Signage for community facilities may be approved in specific locations for facilities such as:

- Religious centres;
- Sporting and recreational grounds and facilities;
- Civic and cultural centres;
- Non-profit organisations;
- Government facilities, eg post office, train station;
- Public toilets; and
- Emergency Services

- **Pylon Signs (including Illuminated Signs)**

Pylon signs for individual businesses, shopping centres or industrial complexes may be approved by the City in specific locations and on arterial routes subject to planning and building approval but will not be approved adjacent to a residential property.

- **Signs at bus stops, on bus shelters and bin surrounds.**

Sign installation, maintenance and advertising upon certain bus shelters, including those within the Kwinana Bus Terminal is to be in accordance with the 'Street Furniture Agreement' between the Minister for Transport and Adshel Street Furniture Pty Ltd dated 5 June 2000 and as amended. This agreement only refers to bus stops within the State Government's 'Rockingham – Fremantle System 21 Bus Route Plan'.

The City may approve the installation of advertising on bus shelters and bin surrounds at bus stops for which the above agreement does not apply.

### **Signs**

- All signs are subject to the requirements of the City's local planning scheme, local laws and other policies.

## 16.9 Proposed Dogs Amendment Local Law 2016

### SUMMARY:

A review of all the City's local laws is being undertaken and it is recommended that the current *Dogs Local Law 2010* be amended. The draft *Dogs Amendment Local Law 2016* has been prepared and needs to be advertised for public submissions before it can be considered by Council for adoption.

### OFFICER RECOMMENDATION:

1. That the Presiding Member reads aloud the *Dogs Amendment Local Law 2016*:
  - a) The purpose of this local law is to provide for the regulation, control and management of the keeping of dogs within the City of Kwinana.
  - b) The effect of this local law is establish the requirements with which owners and occupiers of land within the City of Kwinana must comply in order to keep dogs and provides the means of enforcing the local law.
2. That Council give state-wide public notice of its proposal to make the Dogs Amendment Local Law 2016, as detailed in Attachment A.

### DISCUSSION:

The **purpose** of this local law is to provide for the regulation, control and management of the keeping of dogs within the City of Kwinana.

The **effect** of this local law is establish the requirements with which owners and occupiers of land within the City of Kwinana must comply in order to keep dogs and provides the means of enforcing the local law.

The City's current *Dogs Local Law 2010* was adopted on 10 November 2010 and while a number of changes have been proposed in this review, it was considered manageable and economical to give effect to changes to this local law by way of an amendment to the current local law.

A number of staff working group meetings and an Elected Members forum have taken place to review the current local law.

The resulting draft local law, as it will appear when advertised in the *Government Gazette*, is shown in Attachment A.

To assist Elected Members in assessing these proposed changes, a copy of the current local law, including the proposed amendments is at Attachment B, as was presented to an Elected Member's forum held on 21 March 2016. Deletions to current text are in red font and proposed new text in blue font.

In addition, an explanatory list of all amendments in *the Dogs Amendment Local Law 2016* is at Attachment C.

## 16.9 PROPOSED DOGS AMENDMENT LOCAL LAW 2016

**LEGAL/POLICY IMPLICATIONS:*****Local Government Act 1995*****3.12. Procedure for making local laws**

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
- (2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.
- (3) The local government is to —
  - (a) give Statewide public notice stating that —
    - (i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice

**FINANCIAL/BUDGET IMPLICATIONS:**

Budget Item Name:	Governance Advertising and Promotions
Budgeted Amount:	\$90,000
Expenditure to Date:	\$5,393
Proposed Cost:	\$750
Balance:	\$83,857

\*NOTE: All figures are exclusive of GST

**ASSET MANAGEMENT IMPLICATIONS:**

There are no direct asset management implications related to this report.

**ENVIRONMENTAL IMPLICATIONS:**

There are no direct environmental implications related to this report.

**STRATEGIC/SOCIAL IMPLICATIONS:**

The role of Council is to ensure that the Council's local laws are aligned with the key goals and aspirations as set out in our Plan for the Future.

**RISK IMPLICATIONS:**

Creating local laws that guide the operations of the City will play a valuable role in reducing risk to levels acceptable to Council.



16.9 PROPOSED DOGS AMENDMENT LOCAL LAW 2016

**COUNCIL DECISION**

**163**

**MOVED CR B THOMPSON**

**SECONDED CR S LEE**

1. That the Presiding Member reads aloud the *Dogs Amendment Local Law 2016*:
  - a) The purpose of this local law is to provide for the regulation, control and management of the keeping of dogs within the City of Kwinana.
  - b) The effect of this local law is establish the requirements with which owners and occupiers of land within the City of Kwinana must comply in order to keep dogs and provides the means of enforcing the local law.
2. That Council give state-wide public notice of its proposal to make the Dogs Amendment Local Law 2016, as detailed in Attachment A.

**CARRIED  
8/0**

## ATTACHMENT A

### DOG ACT 1976 LOCAL GOVERNMENT ACT 1995 CITY OF KWINANA DOGS AMENDMENT LOCAL LAW 2016

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Kwinana resolved to make the following local law on the [insert simple date of resolution to adopt].

#### 1. Citation

This local law is cited as the *City of Kwinana Dogs Amendment Local Law 2016*.

#### 2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

#### 3. Principal local law

This local law amends the *Town of Kwinana Dogs Local Law 2010* as published in the *Government Gazette* on 19 November 2010.

#### 4. Clause 1.6 amended

Delete clause 1.6 in entirety and replace with –

##### **“1.6 Definitions**

In this local law unless the context otherwise requires –

**“Act”** means the *Dog Act 1976*;

**“authorised person”** means a person authorised by the local government to perform all or any of the functions conferred on an authorised person under this local law and includes a person appointed under section 29(1) of the Act;

**“CEO”** means the Chief Executive Officer of the local government;

**“District”** means the district of the local government;

**“dog management facility”** has the meaning given to it in the Act;

**“local government”** means the City of Kwinana;

**“local planning scheme”** means a local planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district.

**“owner”** has the meaning given to it in the Act;

**“person liable for the control of the dog”** has the meaning given to it in the Act;

**“premises”** has the meaning given to it in the Act;

**“public place”** has the meaning given to it in the Act;

**“Regulations”** means the *Dog Regulations 2013*; and

**“thoroughfare”** has the meaning given to it in the *Local Government Act 1995*.”

**5. Clause 1.7 amended**

Clause 1.7 is amended as follows:

- (1) in subclause (b), after “under clause 2.2;”, delete “and”;
- (2) renumber subclause “(c)” as subclause “(d)”;
- (3) insert a new subclause “(c)” after subclause “(b)” as follows:

“(c) the costs incurred by the operator of a dog management facility under section 30A(1) of the Act for the microchipping of a dog prior to release if so required under sections 21 or 22 of the Act; and”

**6. Clause 2.1 amended**

Clause 2.1 is amended as follows:

Delete the entire clause and replace with -

**“2.1 Dog management facility and impounding of dogs**

- (1) The local government may establish and maintain one or more dog management facilities for impounding dogs seized pursuant to the provisions of the Act or this local law.
- (2) The location of a dog management facility to be used by the local government shall be advertised from time to time in a newspaper circulating in the district.
- (3) A dog seized by an authorised person may be placed in a dog management facility.”

**7. Clause 2.2 amended**

Clause 2.2 is amended as follows:

Delete the entire clause and replace with -

**“2.2 Attendance of authorised person at dog management facility**

An authorised person is to be in attendance at the dog management facility for the release of dogs at the times and on the days of the week as are determined by the CEO.”

**8. Clause 2.3 amended**

Clause 2.3 is amended as follows:

Delete the entire clause and replace with –

**“2.3 Release of impounded dog**

- (1) A claim for the release of a dog seized and impounded is to be made to an authorised person.
- (2) The authorised person is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the authorised person, satisfactory evidence –
  - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or

- (b) that he or she is the person identified as the owner on a microchip implanted in the dog.”

**9. Clause 2.4 amended**

Clause 2.4 is amended as follows:

Delete the entire clause and replace with -

**“2.4 No breaking into or destruction of dog management facility**

A person who -

- (a) unless he or she is a person authorised to do so, releases or attempts to release a dog from a dog management facility; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof –
  - (i) any dog management facility; or
  - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog,

commits an offence.

**Penalty:** Where the dog is a dangerous dog, \$5,000; otherwise \$2,000.”

**10. Clause 3.1 amended**

Clause 3.1 is amended as follows:

- (1) renumber subclause “(2)” as subclause “(3)”;
- (2) renumber subclause “(3)” as subclause “(4)”;
- (3) After subclause (1), insert a new subclause “(2)” –

“(2) Fences are to be so constructed as to comply with all fencing local law, local planning scheme and Building Act 2011 requirements.”
- (4) delete the entire paragraph regarding “Penalty” and replace with:

**“Penalty:** Where a dog involved in the contravention is a dangerous dog, \$5,000 and a daily penalty of \$500; otherwise \$2,000 and a daily penalty of \$200.”

**11. Clause 4.1 amended**

Clause 4.1 is amended by deleting the title “**Interpretation**” and replacing with “**Definitions**”.

**12. Clause 4.2 amended**

In clause 4.2, after “made in the form”, delete “of that in Schedule 1” and replace with “as determined by the local government from time to time”;

**13. Clause 4.4 amended**

In clause 4.4, in the sentence after paragraph (b), delete “town planning scheme” and replace with “local planning scheme”.

**14. Clause 4.7 amended**

In clause 4.7(a), delete “town planning scheme” and replace with “local planning scheme”.

**15. Clause 4.8 amended**

In clause 4.8(1), after “subject to the conditions”, delete “contained in Schedule 2” and replace with “as determined by the local government from time to time”;

**16. Clause 4.9 amended**

In clause 4.9, delete the entire paragraph regarding “Penalty” and replace with:

**“Penalty:** Where a dog involved in the contravention is a dangerous dog, \$5,000 and a daily penalty of \$500; otherwise \$2,000 and a daily penalty of \$200.”

**17. Clause 4.13 amended**

In clause 4.13(2)(b), delete “the *Dog (Restricted Breed) Regulations (No 2) 2002*”.

**18. Clause 4.16 amended**

Delete clause 4.16, in entirety and replace with:

**“4.16 Inspection of kennel**

(1) With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time; otherwise

(2) In accordance with sections 12A(2) or 12A(4) of the Act.”

**19. Part 5 deleted**

Delete Part 5 – Dogs in public places in its entirety, inclusive of -

- (a) Clause 5.1 - Places where dogs are prohibited absolutely; and
- (b) Clause 5.2 - Places which are dog exercise areas.

**20. Part 6 amended**

Renumber “Part 6” as “Part 5”

**21. Clause 6.1 amended**

Renumber clause “6.1” as clause “5.1”.

**22. Part 7 amended**

Renumber “Part 7” as “Part 6”

**23. Clause 7.1 amended**

Clause 7.1 is amended as follows:

Delete clause 7.1 in its entirety and replace with:

**“6.1 Definitions**

In this Part -

**“infringement notice”** means the notice referred to in clause 6.3; and

**“notice of withdrawal”** means the notice referred to in clause 6.6(1).”

**24. Clause 7.2 amended**

Clause 7.2 is amended as follows:

- (1) Renumber clause “7.2” as clause “6.2”.
- (2) In subclauses (1), (2), and (3), delete “Schedule 3” and replace with “Schedule 1”.

**25. Clause 7.3 amended**

Clause 7.3 is amended as follows:

- (1) Renumber clause “7.3” as clause “6.3”.

- (2) Delete “Form 7” and replace with “Form 8”.

**26. Clause 7.4 amended**

Clause 7.4 is amended as follows:

Renumber clause “7.4” as clause “6.4”.

**27. Clause 7.5 amended**

Clause 7.5 is amended as follows:

Renumber clause “7.5” as clause “6.5”.

**28. Clause 7.6 amended**

Clause 7.6 is amended as follows –

- (1) Renumber clause “7.6” as clause “6.6”;
- (2) In subclause (1), delete “Form 8” and replace with “Form 9”; and
- (3) In subclause (2) delete “clause 7.3” and replace with “clause 6.3”.

**29. Clause 7.7 amended**

Clause 7.7 is amended as follows:

Renumber clause “7.7” as clause “6.7”.

**30. Schedule 1 deleted.**

Delete “Schedule 1 – Application for a licence for an approved kennel establishment”, in its entirety, and replace with -

**SCHEDULE 1  
PRESCRIBED OFFENCES**

<b>Item No</b>	<b>Offence</b>	<b>Nature of offence</b>	<b>Modified penalty \$</b>	<b>Dangerous Dog Modified Penalty \$</b>
1	2.4(a)	Attempting to or causing the unauthorised release of a dog from a pound	500	1000
2	2.4(b)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	500	1000
3	3.1(3)	Failing to provide means for effectively confining a dog	200	500
4	3.2(2)	Keeping a number of dogs in excess of those permitted	200	500
5	4.9	Failing to comply with the conditions of a licence	200	500
6	5.1(2)	Dog excreting in a prohibited place	200	200
7		All other offences not specified	200	500

**33. Schedule 2 deleted.**

Delete "Schedule 2 – Conditions of a licence for an approved kennel establishment", in its entirety.

**34. Schedule 3 deleted.**

Delete "Schedule 3 – Offences in respect of which modified penalty applies", in its entirety.

**35. Schedule 4 deleted.**

Delete "Schedule 4 – Dog Exercise Areas – Unrestricted Time Limits", in its entirety.

Dated: [insert simple date of adoption]

The Common Seal of the City of Kwinana was hereunto affixed in the presence of:-

.....  
**CAROL ADAMS**  
Mayor

.....  
**JOANNE ABBISS**  
Chief Executive Officer



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### **Schedule 1 Prescribed Offences**

**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995  
TOWN OF KWINANA  
DOGS LOCAL LAW 2010**

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Kwinana resolved on 10 November 2010 to adopt the following local law.

**PART 1 - PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Town of Kwinana Dogs Local Law 2010*.

**1.2 Objective**

The objective of this local law is to provide for the regulation, control and management of the keeping of dogs and kennel establishments within the district.

**1.3 Commencement**

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

**1.4 Repeal**

The *Town of Kwinana Dogs Local Law 2010* published in the *Government Gazette* on 1 February 2002 is repealed.

**1.5 Application**

This local law applies throughout the district.

~~**1.6 Interpretation**~~

~~In this local law unless the context otherwise requires—~~

~~Act means the *Dog Act 1976*;~~

~~authorised person means a person authorised by the local government to perform all or any of the functions conferred on an authorised person under this local law and includes a person appointed under section 29(1) of the Act;~~

~~CEO means the Chief Executive Officer of the local government;~~

~~District means the district of the local government;~~

~~local government means the Town of Kwinana;~~

~~local planning scheme~~ means a local planning scheme made by the local government under the ~~Planning and Development Act 2005~~ which applies throughout the whole or a part of the district.

~~owner~~ has the meaning given to it in section 3 of the Act;

~~person liable for the control of the dog~~ has the meaning given to it in section 3 of the Act;

~~“pound”~~ means a pound established under section 11 of the Act or clause 2.1(1);

~~“pound keeper”~~ means a person authorised by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law;

~~premises~~ has the meaning given to it in section 3 of the Act;

~~public place~~ has the meaning given to it in section 3 of the Act;

~~Regulations~~ means the ~~Dog Regulations 1976~~;

~~thoroughfare~~ has the meaning given to it in section 1.4 of the ~~Local Government Act 1995~~;  
and

~~“town planning scheme”~~ means a town planning scheme made by the local government under the ~~Planning and Development Act 2005~~ which applies throughout the whole or a part of the district.

## **1.6 Definitions**

In this local law unless the context otherwise requires -

**Act** means the Dog Act 1976;

**authorised person** means a person authorised by the local government to perform all or any of the functions conferred on an authorised person under this local law and includes a person appointed under section 29(1) of the Act;

**CEO** means the Chief Executive Officer of the local government;

**District** means the district of the local government;

**dog management facility** has the meaning given to it in the Act;

**local government** means the City of Kwinana;

**local planning scheme** means a local planning scheme made by the local government under the Planning and Development Act 2005 which applies throughout the whole or a part of the district.

**owner** has the meaning given to it in the Act;

**person liable for the control of the dog** has the meaning given to it in the Act;

**premises** has the meaning given to it in the Act;

**public place** has the meaning given to it in the Act;

**Regulations** means the Dog Regulations 2013; and

**thoroughfare** has the meaning given to it in the Local Government Act 1995.

## **1.7 Fees, charges and costs**

The following are to be imposed and determined by the local government under sections 6.16 - 6.19 of the *Local Government Act 1995* -

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; ~~and~~
- (c) the costs incurred by the operator of a dog management facility under section 30A(1) of the Act for the microchipping of a dog prior to release if so required under sections 21 or 22 of the Act; and
- (d ~~e~~) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

## **PART 2 - IMPOUNDING OF DOGS**

### ~~2.1 Pound and impounding of Dogs~~

- ~~(1) The local government may establish and maintain a pound or pounds for impounding dogs seized pursuant to the provisions of the Act or this local law.~~
- ~~(2) The location of the pound to be used by the local government shall be advertised from time to time in a newspaper circulating in the district.~~
- ~~(3) A dog seized by an authorised person may be placed in a pound.~~

### **2.1 Dog management facility and impounding of dogs**

- (1) The local government may establish and maintain one or more dog management facilities for impounding dogs seized pursuant to the provisions of the Act or this local law.
- (2) The location of a dog management facility to be used by the local government shall be advertised from time to time in a newspaper circulating in the district.
- (3) A dog seized by an authorised person may be placed in a dog management facility.

### **2.2 Attendance of authorised officer ~~pound-keeper~~ at dog management facility ~~pound~~**

An authorised officer ~~pound-keeper~~ is to be in attendance at the dog management facility ~~pound~~ for the release of dogs at the times and on the days of the week as are determined by the CEO.

### **2.3 Release of impounded dog**

- (1) A claim for the release of a dog seized and impounded is to be made to ~~the pound keeper or in the absence of the pound keeper, to~~ an authorised person.
- (2) The authorised officer ~~pound keeper~~ is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the authorised officer ~~pound keeper~~, satisfactory evidence –
  - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
  - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

## 2.4 No breaking into or destruction of dog management facility ~~pound~~

A person who -

- (a) unless he or she is ~~the pound keeper or~~ a person authorised to do so, releases or attempts to release a dog from a dog management facility ~~pound~~; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof –
  - (i) any dog management facility ~~pound~~; or
  - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog,

commits an offence.

**Penalty:** Where the dog is a dangerous dog, \$5,000 ~~\$2,000~~; otherwise \$2,000 ~~\$1,000~~.

## PART 3 - REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

### 3.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must -
  - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
  - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
  - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with:
    - (i) an efficient self-closing mechanism;
    - (ii) an efficient self-latching mechanism attached to the inside of the gate or door; and

- (iii) a mechanism which enables the gate or door to be permanently locked;
  - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
  - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) Fences are to be so constructed as to comply with all fencing local law, local planning scheme and Building Act 2011 requirements.
- (3 2) For the purpose of section 51(d) of the Act, the specified area to which this clause applies is the district.
- (4 3) Where an occupier fails to comply with subclause (1), he or she commits an offence.
- Penalty:** Where a dog involved in the contravention is a dangerous dog, \$5,000 ~~\$2,000~~ and a daily penalty of \$500; otherwise \$2,000 ~~\$1,000~~ and a daily penalty of \$200.

### 3.2 Maximum number of dogs

- (1) This clause does not apply to premises which have been –
  - (a) licensed under Part 4 as an approved kennel establishment; or
  - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act, 2 dogs over the age of 3 months and the young of those dogs under that age.

## PART 4 - APPROVED KENNEL ESTABLISHMENTS

### 4.1 Definitions Interpretation

In this Part and in Schedule 2 -

**applicant** means a person who applies for a licence;

**licence** means a licence to keep an approved kennel establishment on premises;

**licensee** means the holder of a licence;

**premises** in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

**transferee** means a person who applies for the transfer of a licence to her or him under clause 4.14.

### 4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form [as determined by the local government from time to time](#) ~~of that in Schedule 1~~, and must be lodged with the local government together with -

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

#### **4.3 Notice of proposed use**

- (1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged –
  - (a) once in a newspaper circulating in the district; and
  - (b) to the owners and occupiers of any premises adjoining the premises.
- (2) The notices in subclause (1) must specify that –
  - (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
  - (b) the application and plans and specifications may be inspected at the offices of the local government.
- (3) Where –
  - (a) the notices given under subclause (1) do not clearly identify the premises; or
  - (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

#### **4.4 Exemption from notice requirements**

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a –

- (a) permitted use; or



- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a ~~local town~~ planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

#### **4.5 When application can be determined**

An application for a licence is not to be determined by the local government until –

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

#### **4.6 Determination of application**

In determining an application for a licence, the local government is to have regard to –

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

#### **4.7 Where application cannot be approved**

The local government cannot approve an application for a licence where -

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a ~~local town~~ planning scheme; or
- (b) an applicant for a licence or another person who will have charge of the dogs will not reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and to ensure their health and welfare.

#### **4.8 Conditions of approval**

- (1) The local government may approve an application for a licence subject to the conditions ~~as determined by the local government from time to time contained in Schedule 2~~ and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions.

#### **4.9 Compliance with conditions of approval**

A licensee who does not comply with the conditions of a licence commits an offence.

**Penalty:** Where a dog involved in the contravention is a dangerous dog, ~~\$5,000~~ ~~\$2,000~~ and a daily penalty of ~~\$500~~ ~~\$200~~; otherwise ~~\$2,000~~ ~~\$1,000~~ and a daily penalty of ~~\$200~~ ~~\$100~~.

#### **4.10 Fees**

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 - 6.19 of the *Local Government Act 1995*.

#### **4.11 Form of licence**

The licence is to be in the form determined by the local government and is to be issued to the licensee.

#### **4.12 Period of licence**

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### **4.13 Variation or cancellation of licence**

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence –
  - (a) on the request of the licensee;

- (b) following a breach of the Act, the Regulations, ~~the Dog (Restricted Breed) Regulations (No 2) 2002~~ or this local law; or
  - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of –
  - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
  - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### **4.14 Transfer**

- (1) An application for the transfer of a valid licence from the licensee to another person must be –
  - (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with –
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises that are the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### **4.15 Notification**

The local government is to give written notice to -

- (a) an applicant for a licence of the local government's decision on her or his application for a licence;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;

- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

#### **4.16 Inspection of kennel**

- (1) With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time; **otherwise**
- (2) **In accordance with sections 12A(2) or 12A(4) of the Act.**

### **~~PART 5 – DOGS IN PUBLIC PLACES~~**

#### **~~5.1 Places where dogs are prohibited absolutely~~**

- ~~(1) Subject to section 8 of the Act and section 66J of the *Equal Opportunities Act 1984*, dogs are prohibited absolutely from entering or being in any of the following places—~~
  - ~~(a) a public building, shop or business premises, with the exception of a shop or business premises where dogs are sold; unless permitted by a sign;~~
  - ~~(b) a theatre or picture gardens;~~
  - ~~(c) all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993*;~~
  - ~~(d) a public swimming pool;~~
  - ~~(e) a building site or premises where every part of the fence and every gate or door in the fence, is not of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through the fence, gate or door;~~
  - ~~(f) land which has been set apart by the local government as a children's playground;~~
  - ~~(g) Kwinana Golf Course—Reserve No. 25309; and~~
  - ~~(h) all beaches within the local government.~~
- ~~(2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.~~

~~Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.~~

## ~~5.2 Places which are dog exercise areas~~

~~(1) Subject to clause 5.1 and subclause (2) of this clause, for the purposes of sections 31 and 32 of the Act the following are dog exercise areas;~~

~~(a) the places set out in Schedule 4; and~~

~~(b) Chisham Oval, Parmelia Reserve 365622 Bushland Only~~

~~(2) Subclause (1) does not apply to:~~

~~(a) land which has been set apart by the local government as a children's playground;~~

~~(b) an area being used for sporting or other activities, as permitted by the local government, during the times of such use; or~~

~~(c) a public car park.~~

## **PART 5 6 - MISCELLANEOUS**

### **5-6.1 Offence to foul a street or public place**

(1) A dog must not excrete on –

(a) any thoroughfare or other public place; or

(b) any land which is not a public place without the consent of the occupier.

(2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.

(3) The person liable for the control of the dog does not commit an offence against subclause (2) if –

(a) the excrement is removed immediately by that person and disposed of on private land with the consent of the occupier or in such other manner as the local government may approve; or

(b) they dispose of the dog excrement into a receptacle or bin on a park, reserve or land, specifically provided for holding dog excrement by the local government.

## **PART 6 7 - ENFORCEMENT**

### **6 7.1 Definitions Interpretation**

In this Part -

**“infringement notice”** means the notice referred to in clause 6 7.3; and

**“notice of withdrawal”** means the notice referred to in clause 6 7.6(1).

## **6 7.2 Modified penalties**

- (1) The offences contained in Schedule 1 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 1 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is not a dangerous dog.
- (3) The amount appearing in the fourth column of Schedule 1 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

## **6 7.3 Issue of infringement notice**

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 7 8 of the First Schedule of the Regulations.

## **6 7.4 Failure to pay modified penalty**

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

## **6 7.5 Payment of modified penalty**

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

## **6 7.6 Withdrawal of infringement notice**

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form of Form 8 9 of the First Schedule of the Regulations.
- (2) A person authorised to issue an infringement notice under clause 6 7.3 cannot sign or send a notice of withdrawal.

## **6 7.7 Service of infringement notice or notice of withdrawal**

An infringement notice or a notice of withdrawal may be served personally, or by leaving it at, or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

**SCHEDULE 1**  
*Dog Act 1976*  
*Local Government Act 1995*  
*Town of Kwinana Dogs Local Law 2010*  
**Application for a licence for an approved kennel establishment**

~~1) Application for a licence for an approved kennel establishment~~

~~I/we (full name) .....~~

~~of (postal address) .....~~

~~(telephone number) .....~~

~~(facsimile number) .....~~

~~(E-mail address) .....~~

~~Apply for a licence for an approved kennel establishment at (address of premises) .....~~

~~.....~~

~~For (number and breed of dogs) .....~~

~~\* (insert name of person) ..... will be residing at the premises on  
and from (insert date) .....~~

~~\* (insert name of person) ..... will be residing (sufficiently close to  
the premises so as to control the dogs and so as to ensure their health and welfare) at .....  
..... (insert address of residence)  
— on and from ..... (insert date).~~

~~Attached are—~~

- ~~(a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;~~
- ~~(b) plans and specifications of the kennel establishment;~~
- ~~(c) copy of notice of proposed use to appear in newspaper;~~
- ~~(d) copy of notice of proposed use to be given to adjoining premises;~~
- ~~(e) written evidence that a person will reside—  
—— (i) at the premises; or  
—— (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and~~
- ~~(f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.~~

~~Signature of applicant .....~~

~~Date .....~~

~~\* delete where inapplicable.~~

~~Note: a licence, if issued, will have effect for a period of 12 months — section 27(5) of the Dog Act.~~

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**OFFICE USE ONLY**

~~— Application fee paid on [insert date].~~



**SCHEDULE 2**  
*Dog Act 1976*  
*Local Government Act 1995*  
Town of Kwinana Dogs Local Law 2010  
**Conditions of a licence for an approved kennel establishment**

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- ~~(a) each kennel, unless it is fully enclosed, must have a yard attached to it;~~
- ~~(b) each kennel and each yard must be at a distance of not less than—~~
  - ~~(i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;~~
  - ~~(ii) 10m from any dwelling; and~~
  - ~~(iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;~~
- ~~(c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;~~
- ~~(d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;~~
- ~~(e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;~~
- ~~(f) the upper surface of the kennel floor must be—~~
  - ~~(i) at least 100mm above the surface of the surrounding ground;~~
  - ~~(ii) smooth so as to facilitate cleaning;~~
  - ~~(iii) rigid;~~
  - ~~(iv) durable;~~
  - ~~(v) slip resistant;~~
  - ~~(vi) resistant to corrosion;~~
  - ~~(vii) non-toxic;~~
  - ~~(viii) impervious;~~
  - ~~(ix) free from cracks, crevices and other defects; and~~
  - ~~(x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;~~
- ~~(g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;~~

- ~~(h) — the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;~~
- ~~(i) — where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;~~
- ~~(j) — from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
  - ~~(i) 2m; or~~
  - ~~(ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;~~~~
- ~~(k) — the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;~~
- ~~(l) — all external surfaces of each kennel must be kept in good condition;~~
- ~~(m) — the roof of each kennel must be constructed of impervious material;~~
- ~~(n) — all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;~~
- ~~(o) — all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;~~
- ~~(p) — noise, odours, fleas, flies and other vectors of disease must be effectively controlled;~~
- ~~(q) — suitable water must be available at the kennel via a properly supported standpipe and tap; and~~
- ~~(r) — the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
  - ~~(i) — at the premises; or~~
  - ~~(ii) — in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.~~~~

**SCHEDULE 1 3***Dog Act 1976**Local Government Act 1995**Town of Kwinana Dogs Local Law 2010***PRESCRIBED OFFENCES in respect of which modified penalty applies**

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
2.4(a)	Attempting to or causing the unauthorised release of a dog from a pound	500 <del>200</del>	1000 <del>400</del>
2.4(b)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	500 <del>200</del>	1000 <del>400</del>
3.1(3)	Failing to provide means for effectively confining a dog	200 <del>100</del>	500 <del>200</del>
3.2(2)	Keeping a number of dogs in excess of those permitted	200	500
4.9	Failing to comply with the conditions of a licence	200 <del>100</del>	500 <del>200</del>
<del>5.1(2)</del>	<del>Dog in place from which prohibited absolutely</del>	<del>100</del>	<del>200</del>
5 <del>6</del> .1(2)	Dog excreting in a prohibited place	200 <del>100</del>	200 <del>100</del>
	All other offences not specified	200 <del>100</del>	500 <del>200</del>

**SCHEDULE 4**  
*Dog Act 1976*  
*Local Government Act 1995*  
Town of Kwinana Dogs Local Law 2010  
**Dog Exercise Areas — Unrestricted Time Limits**

<b>Item No.</b>	<b>Description of Public Place</b>
<del>1.</del>	<del>Harry McGuigan Park, Medina — Reserve 24172</del>
<del>2.</del>	<del>Littlemore Park, Orelia — Reserve 30086</del>
<del>3.</del>	<del>Lot 268 Skottowe Parkway, Parmelia — Reserve 40922</del>
<del>4.</del>	<del>Lot 2 Postans Road, Hope Valley — Reserve 37356</del>
<del>5.</del>	<del>Lot 1333 Liddelow Road, Wandi — Reserve 36759</del>
<del>6.</del>	<del>Lot 1876 Wellard Road, Wellard Road, Sloans Reserve — Reserve 25132</del>
<del>7.</del>	<del>Lot E20 Parmelia Avenue, Peace Park, Parmelia — Reserve 33949</del>
<del>8.</del>	<del>Lot 4909 Westmoreland Cir, Bertram — Reserve 47331</del>
<del>9.</del>	<del>Daintree Loop, Bertram — Reserve 47259</del>
<del>10.</del>	<del>Harrison Way, Calista — Reserve 30326</del>
<del>11.</del>	<del>Whitebread Way, Leda — Reserve 43072</del>
<del>12.</del>	<del>Littlemore Park Reserve, Orelia — Reserve 30068</del>
<del>13.</del>	<del>Hennessy Park Reserve, Orelia — Reserve 30736</del>
<del>14.</del>	<del>Weaver Lane Public Recreation Reserve Wellard — Reserve 40218</del>
<del>15.</del>	<del>Lot 335 Wellard Road, Wellard Park, Wellard — Reserve 40218</del>
<del>16.</del>	<del>Lot 200 Seabrook Way, Medina — Reserve 33240</del>

Dated: [Insert simple date] 2010.

The common seal of the Town of Kwinana was affixed by the authority of a resolution of the Council in the presence of —

\_\_\_\_\_  
CAROL ADAMS  
Mayor

\_\_\_\_\_  
NEIL HARTLEY

## Explanation Notes

### DOG ACT 1976 LOCAL GOVERNMENT ACT 1995 CITY OF KWINANA DOGS AMENDMENT LOCAL LAW 2016

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Kwinana resolved to make the following local law on the [insert simple date of resolution to adopt].

#### 1. Citation

This local law may be cited as the *City of Kwinana Dogs Amendment Local Law 2016*.

#### 2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

[Inclusion of commencement clause which is required by DLGC.](#)

#### 3. Principal local law

This local law amends the Town of Kwinana Dogs Local Law 2010 as published in the Government Gazette on 19 November 2010.

#### 4. Clause 1.6 amended

Clause 1.6 replaced in entirety

[Because of the number of changes as detailed below, it was simpler to replace the entire clause. Details of changes include:](#)

- a. [Change the clause name from 'Interpretation' to Definition' which is a more contemporary explanation.](#)
- b. [The terms "pound" and "pound keeper" are obsolete and have been replaced by the terms "authorised person" and "dog management facility" in the \*Dog Act 1976\*.](#)
- c. [Removal of references to section 1.4 or section 3 of the Act consistent with other references throughout the clause.](#)
- d. [The Dog Regulations 1976 were repealed by the Dog Regulations 2013.](#)
- e. [Local planning scheme in lieu of Town Planning Scheme is the correct term now referred to by the \*Planning and Development Act 2005\*.](#)

#### 5. Clause 1.7 amended

Clause 1.7 is amended as follows:

- (1) in subclause (b), after "under clause 2.2;" delete "and";
- (2) renumber subclause "(c)" as subclause "(d)"; and
- (3) insert a new subclause "(c)" after subclause "(b)" as follows:

"(c) the costs incurred by the operator of a dog management facility under section 30A(1) of the Act for the microchipping of a dog prior to release if so required under sections 21 or 22 of the Act; and"

[New clause to reflect the requirement for dogs to now be microchipped and to allow the City to recover costs.](#)

#### 6. Clause 2.1 amended

Clause 2.1 is amended as follows:

Delete the entire clause and replace with –

**“2.1 Dog management facility and impounding of dogs**

- (1) The local government may establish and maintain one or more dog management facilities for impounding dogs seized pursuant to the provisions of the Act or this local law.
- (2) The location of a dog management facility to be used by the local government shall be advertised from time to time in a newspaper circulating in the district.
- (3) A dog seized by an authorised person may be placed in a dog management facility.”  
Throughout the amendment local law, changes have been made to reflect the new terminology “Authorised Officer” in lieu of “Poundkeeper”.

**7. Clause 2.2 amended**

Clause 2.2 is amended as follows:

Delete the entire clause and replace with -

**“2.2 Attendance of authorised person at dog management facility**

An authorised person is to be in attendance at the dog management facility for the release of dogs at the times and on the days of the week as are determined by the CEO.”

Throughout the amendment local law, changes have been made to reflect the new terminology “Authorised Officer” in lieu of “Poundkeeper”.

**8. Clause 2.3 amended**

Clause 2.3 is amended as follows:

Delete the entire clause and replace with –

**“2.3 Release of impounded dog**

- (1) A claim for the release of a dog seized and impounded is to be made to an authorised person.
- (2) The authorised person is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the authorised person, satisfactory evidence –
  - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
  - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.”

Throughout the amendment local law, changes have been made to reflect the new terminology “Authorised Officer” in lieu of “Poundkeeper”.

**9. Clause 2.4 amended**

Clause 2.1 is amended as follows:

Delete the entire clause and replace with -

**“2.4 No breaking into or destruction of dog management facility**

A person who -

- (a) unless he or she is a person authorised to do so, releases or attempts to release a dog from a dog management facility; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof –
  - (i) any dog management facility; or
  - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog,

commits an offence.

Throughout the amendment local law, changes have been made to reflect the new terminology “Authorised Officer” in lieu of “Poundkeeper”.

**Penalty:** Where the dog is a dangerous dog, \$5,000; otherwise \$2,000.”

Increase in penalties consistent with the *Dog Act 1976* penalties.

#### 10. Clause 3.1 amended

Clause 3.1 is amended as follows:

- (1) renumber subclause “(2)” as subclause “(3)”;
  - (2) renumber subclause “(3)” as subclause “(4)”;
  - (3) insert a new subclause “(2)” after subclause “(1)”;
  - (4) delete the entire paragraph regarding “Penalty” and replace with:  
“**Penalty:** Where a dog involved in the contravention is a dangerous dog, \$5,000 and a daily penalty of \$500; otherwise \$2,000 and a daily penalty of \$200.”
- 1. Insertion of new clause referencing the requirements of fencing to other legislation.
  - 2. Increase in penalties consistent with the *Dog Act 1976* penalties.

#### 11. Clause 4.1 amended

Clause 4.1 is amended by deleting the title “**Interpretation**” and replacing with “**Definitions**”.  
Change the clause name from ‘Interpretation’ to Definition’ which is a more contemporary explanation.

#### 12. Clause 4.2 amended

In clause 4.2, after “made in the form”, delete “of that in Schedule 1” and replace with “as determined by the local government from time to time”;

The current schedule is recommended for removal, consistent with the removal of most non-essential schedules in other local laws and policies. The current schedule will be kept as a City document that allows it to be amended as required so that it is able to be updated as required, particularly with electronic software changes as is currently a problem.

#### 13. Clause 4.4 amended

In clause 4.4, in the sentence after paragraph (b), delete “town planning scheme” and replace with “local planning scheme”.

As previously advised.

#### 14. Clause 4.7 amended

In clause 4.7(a), delete “town planning scheme” and replace with “local planning scheme”.

As previously advised.



**15. Clause 4.8 amended**

In clause 4.8(1), after “made in the form”, delete “contained in Schedule 2” and replace with “as determined by the local government from time to time”;

[As previously advised.](#)

**16. Clause 4.9 amended**

In clause 4.9, delete the entire paragraph regarding “Penalty” and replace with:

“**Penalty:** Where a dog involved in the contravention is a dangerous dog, \$5,000 and a daily penalty of \$500; otherwise \$2,000 and a daily penalty of \$200.”

[As previously advised.](#)

**17. Clause 4.13 amended**

In clause 4.13(2)(b), delete “the *Dog (Restricted Breed) Regulations (No 2) 2002*”.

[These Regulations were repealed by the Dog Amendment Act 2013.](#)

**18. Clause 4.16 amended**

Delete clause 4.16, in entirety and replace with:

**4.16 Inspection of kennel**

(1) With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time; otherwise

(2) In accordance with sections [12A\(2\) or 12A\(4\) of the Act.](#)

[Added a clause to allow duly authorised City officers to enter property consistent with the requirements under the Dog Act 1976, if consent from an occupier is not forthcoming.](#)

**19. Part 5 deleted**

Delete Part 5 – Dogs in public places in its entirety, inclusive of -

- (a) Clause 5.1 - Places where dogs are prohibited absolutely; and
- (b) Clause 5.2 - Places which are dog exercise areas.

1. [Section 31\(2B\) of the Dog Act 1976 now allows a local government, by absolute majority’ to specify a public place where dogs are prohibited; and](#)
2. [Section 31\(3A\) of the Dog Act 1976 now allows a local government, by absolute majority’ to specify a public place to be a dog exercise area.](#)

[Part 5 is therefore deleted, requiring the following parts to be renumbered.](#)

**20. Part 6 amended**

Renumber “Part 6” as “Part 5”

**21. Clause 6.1 amended**

Renumber clause “6.1” as clause “5.1”.

**22. Part 7 amended**

Renumber “Part 7” as “Part 6”

**23. Clause 7.1 amended**

Clause 7.1 is amended as follows:

Delete clause 7.1 in its entirety and replace with:

## **“6.1 Definitions**

In this Part -

**“infringement notice”** means the notice referred to in clause 6.3; and

**“notice of withdrawal”** means the notice referred to in clause 6.6(1).”

This clause was rewritten in entirety to reflect the word ‘Definitions’ being used in lieu of ‘Interpretation’ and the required renumbering of clauses.

### **24. Clause 7.2 amended**

Clause 7.2 is amended as follows:

- (1) Renumber clause “7.2” as clause “6.2”.
- (2) In subclauses (1), (2), and (3), delete “Schedule 3” and replace with “Schedule 1”.

[Renumbering of clause and schedule.](#)

### **25. Clause 7.3 amended**

Clause 7.3 is amended as follows:

- (1) Renumber clause “7.3” as clause “6.3”.
- (2) Delete “Form 7” and replace with “Form 8”.

[Renumbering of clause and wrong Form stated.](#)

### **26. Clause 7.4 amended**

Clause 7.4 is amended as follows:

Renumber clause “7.4” as clause “6.4”.

[Renumbering of clause.](#)

### **27. Clause 7.5 amended**

Clause 7.4 is amended as follows:

Renumber clause “7.5” as clause “6.5”.

[Renumbering of clause.](#)

### **28. Clause 7.6 amended**

Clause 7.6 is amended as follows –

- (1) Renumber clause “7.6” as clause “6.6”;
- (2) In subclause (1), delete “Form 8” and replace with “Form 9”; and
- (3) In subclause (2) delete “clause 7.3” and replace with “clause 6.3”.

[Renumbering of clause and wrong Form stated.](#)

### **29. Clause 7.7 amended**

Clause 7.4 is amended as follows:

Renumber clause “7.7” as clause “6.7”.

[Renumbering of clause.](#)

### **30. Schedule 1 deleted.**

Delete “Schedule 1 – Application for a licence for an approved kennel establishment”, in its entirety, and replace with -

**SCHEDULE 1  
PRESCRIBED OFFENCES**

<b>Item No</b>	<b>Offence</b>	<b>Nature of offence</b>	<b>Modified penalty \$</b>	<b>Dangerous Dog Modified Penalty \$</b>
1	2.4(a)	Attempting to or causing the unauthorised release of a dog from a pound	500	1000
2	2.4(b)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	500	1000
3	3.1(3)	Failing to provide means for effectively confining a dog	200	500
4	3.2(2)	Keeping a number of dogs in excess of those permitted	200	500
5	4.9	Failing to comply with the conditions of a licence	200	500
6	5.1(2)	Dog excreting in a prohibited place	200	200
7		All other offences not specified	200	500

Renumbering of schedule and amendment to penalties consistent with the Dog Act 1976.

**33. Schedule 2 deleted.**

Delete "Schedule 2 – Conditions of a licence for an approved kennel establishment", in its entirety.

[As previously advised.](#)

**34. Schedule 3 deleted.**

Delete "Schedule 3 – Offences in respect of which modified penalty applies", in its entirety.

[As previously advised.](#)

**35. Schedule 4 deleted.**

Delete "Schedule 4 – Dog Exercise Areas – Unrestricted Time Limits", in its entirety.

[As previously advised.](#)

## 17 Urgent Business

### COUNCIL DECISION

164

MOVED CR R ALEXANDER

SECONDED CR D WOOD

**That Council deal with the item of urgent business as presented in the Addendum to the Agenda.**

**CARRIED  
8/0**

### 17.1 Tender 601KWN16 Provision of Tree Pruning Service

#### **SUMMARY:**

The City of Kwinana invited tenders from suitably experienced contractors for the Provision of Tree Pruning Services.

The Request for Tender was advertised in "The Weekend West" newspaper on Saturday, 5 March 2016. The tender was also advertised and issued through the City's e-tendering portal Tenderlink [www.tenderlink.com/kwinana](http://www.tenderlink.com/kwinana).

The request for tender closed on 2.00pm Tuesday, 22 March 2016 with four submissions received.

#### **OFFICER RECOMMENDATION:**

That Council award the tender 601KWN16 for the Provision of Tree Pruning Services to Beaver Tree Services Pty Ltd for a period of three years, in accordance with the specification, their submission including the schedule of rates and special and general conditions of contract which includes:

- a. the contract will be subject to a price increase based on the previous year to year quarter Consumer Price Index (Perth) published data and will apply on the anniversary of the contract.
- b. The price adjustment will be automatically applied by the principal.

#### **DISCUSSION:**

The Request for Tender was advertised in "The Weekend West" newspaper on Saturday, 5 March 2016. The tender was also advertised and issued through the City's e-tendering portal Tenderlink [www.tenderlink.com/kwinana](http://www.tenderlink.com/kwinana).

The request for tender closed on 2.00pm Tuesday, 22 March 2016 with four submissions received from the following:

- Beaver Tree Services
- Pilack Pty Ltd ATF The Hall Discretionary Trading Trust T/A Dependable Tree Services
- Cosmag Pty Ltd Trading as Kennedy Tree Services
- Ibrox WA Pty Ltd T/A Total Tree Services

### 17.1 TENDER 601KWN16 PROVISION OF TREE PRUNING SERVICE

The Evaluation Panel comprised of the Procurement Officer, Senior Technical Officer Parks, Technical Officer Parks Operations and Acting Supervisor Parks. The panel evaluated the tender submissions in accordance with the documented compliance and qualitative criterion (the evaluation recommendation report is under confidential cover as it contains commercial-in-confidence information).

#### **LEGAL/POLICY IMPLICATIONS:**

Tender Regulations, Part 4, Local Government (Functions & General) Regulations 1996.

#### **FINANCIAL/BUDGET IMPLICATIONS:**

Budget Item Name:	Tree Pruning Services
Budgeted Amount:	Powerline pruning \$400,000 annually (scheduled works) Tree Maintenance \$182,000 annually (scheduled works)
Proposed Cost:	Tendered Lump Sum/ Cost of Service Provision

\*NOTE: All figures are exclusive of GST

#### **ASSET IMPLICATIONS:**

The City has extensive tree assets that require active maintenance to maintain clearance in and around power lines and pathways. In addition to this, the City's road verges require on-going pruning to maintain safe clearances and line of sight standards.

#### **ENVIRONMENTAL IMPLICATIONS:**

Street trees are maintained to a healthy standard with deceased and heavily diseased trees removed to minimise the risk of falling timber and further pest/disease infestation.

#### **STRATEGIC/SOCIAL IMPLICATIONS:**

As evident from the community consultation feedback, the City's tree assets are important to the Kwinana community. For the trees to remain without impeding powerlines, footpaths and roads, they must be proactively maintained.

#### **RISK IMPLICATIONS:**

Liability regarding damage to Western Power infrastructure, inaccessible footpaths, non-compliant road verge clearances and dangerous vehicle line of sight issues has the potential to result in legal action being taken against the City.

The Total expenditure for the provision of tree pruning services will exceed the \$150,000 tender threshold as determined by the Local Government Tender Regulations. Failure to procure this requirement by means other than undertaking a tender process will be in breach of the tender regulations.

17.1 TENDER 601KWN16 PROVISION OF TREE PRUNING SERVICE

**COUNCIL DECISION**

165

**MOVED CR D WOOD**

**SECONDED CR B THOMPSON**

**That Council award the tender 601KWN16 for the Provision of Tree Pruning Services to Beaver Tree Services Pty Ltd for a period of three years, in accordance with the specification, their submission including the schedule of rates and special and general conditions of contract which includes:**

- a. the contract will be subject to a price increase based on the previous year to year quarter Consumer Price Index (Perth) published data and will apply on the anniversary of the contract.**
- b. The price adjustment will be automatically applied by the principal.**

**CARRIED  
8/0**

## **18 Councillor Reports**

### **18.1 Councillor Ruth Alexander**

Councillor Ruth Alexander reported that she had attended Centenary Year of the Royal Association of Justices of Western Australia Afternoon Tea which was a very pleasant afternoon.

### **18.2 Councillor Wendy Cooper**

Councillor Wendy Cooper reported that she had attended an Evacuation Centre Training Session which was very interesting.

Councillor Cooper advised that she had attended the Arts Advisory Committee Meeting.

Councillor Cooper mentioned that she had attended the City of Kwinana Emergency Services Group Stakeholder Function which was very great.

Councillor Cooper reported that she had attended the Koorliny Arts Centre 25 year Anniversary and opening of the time capsule.

Councillor Cooper advised that she had attended Neighbourhood Day at all 9 events and that she thoroughly enjoyed all of them and commented that it was a great way of getting communities together.

Councillor Cooper mentioned that she had attended the Opening of the Wandi Pavilion.

Councillor Cooper reported that she had attended Centenary Year of the Royal Association of Justices of Western Australia Afternoon Tea.

Councillor Cooper advised that she had attended the Leda Primary School Anzac Service and that it had been a moving event.

Councillor Cooper mentioned that she had attended the Access and Inclusion Working Group Meeting.

Councillor Cooper reported that she had attended the City of Kwinana Citizenship Ceremony.

Councillor Cooper advised that she had attended the South Metropolitan Regional Council (SMRC) Briefing.

### **18.3 Councillor Sandra Lee**

Councillor Sandra Lee reported that she had attended the City of Kwinana Emergency Services Group Stakeholder Function which was a wonderful evening.

Councillor Lee advised that she had attended the City of Kwinana Citizenship Ceremony.

Councillor Lee mentioned that she had attended Centenary Year of the Royal Association of Justices of Western Australia Afternoon Tea.



## 18 COUNCILLOR REPORTS CONTINUED

### 18.4 Councillor Bob Thompson

Councillor Bob Thompson reported that he had attended the Opening of the new PEET Nature Themed Park and that it had been a lovely afternoon.

Councillor Thompson advised that he had attended the Calista Neighbourhood Day.

Councillor Thompson mentioned that he had attended the Opening of the Wandi Pavilion and that he had a great time.

Councillor Thompson reported that he had attended the City of Kwinana Citizenship Ceremony.

Councillor Thompson advised that he had attended the Access and Inclusion Working Group Meeting.

### 18.5 Councillor Dennis Wood

Councillor Dennis Wood reported that he had attended had attended Centenary Year of the Royal Association of Justices of Western Australia Afternoon Tea.

Councillor Wood advised that he had attended the Local Emergency Management Committee (LEMC) Meeting.

Councillor Wood mentioned that he had attended the Calista Primary School Anzac Service.

## 19 Response to Previous Questions

Nil

## 20 Mayoral Announcements (without discussion)

Mayor Carol Adams reported that she had attended the Koorliny Arts Centre 25 year Anniversary and that she had taken part in the opening of the time capsule which had been lovely and touching.

Mayor Adams advised that she had attended Neighbourhood Day which had been a really great community day.

Mayor Adams mentioned that she had attended the Opening of Wandi Pavilion which is a fantastic facility and was a really great day.

Mayor Adams reported that the Indian Ocean Gateway lobbying is continuing and the City has been providing stakeholders with updated information and everyone that they have addressed have been quite amazed and are certainly on side.

Mayor Adams advised that she had attended the Bertram Primary School Anzac Service.

*20 MAYORAL ANNOUNCEMENTS (WITHOUT DISCUSSION) CONTINUED*

Mayor Adams mentioned that she had attended the City of Kwinana Citizenship Ceremony.

Mayor Adams reported that she attended the Western Australian Launch National Growth Area Alliance Funding our Future which is related to a dedicated national infrastructure fund.

## **21 Matters Behind Closed Doors**

Nil

## **22 Meeting Closure**

The Mayor declared the Meeting closed 7:29pm.