

# COUNCIL MEETING

## AGENDA

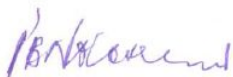


For the Ordinary Meeting of Council to be held on

**15 March 2017**

Dear Council Member,

The next Ordinary Meeting of the Shire of Cranbrook will be held on Wednesday 15 March 2017 at the Cranbrook Council Chambers commencing at 3.00pm.



Peter Northover  
Chief Executive Officer

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This agenda has yet to be dealt with by the Council. The recommendations shown at the foot of each item have yet to be considered by the Council and are not to be interpreted as being the position of the Council. The minutes of the meeting held to discuss this agenda should be read to ascertain the decision of the Council.

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# AGENDA

## 1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President, Cr Cunningham will declare the meeting open at   pm. The Shire President will alert the meeting to the procedures for emergencies including evacuation, designated exits and muster points.

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

### 2.1 ATTENDANCE

President	Cr JT (Twynam) Cunningham
Deputy President	Cr CY (Colin) Egerton-Warburton
Councillors	Cr DJ (David) Adams
	Cr PM (Peter) Beech
	Cr ER (Ruth) Bigwood
	Cr P (Peter) Denton
	Cr PL (Phil) Horrocks
	Cr HC (Helen) Parsons
	Cr TC (Tom) Standish

Chief Executive Officer	Mr PB (Peter) Northover
Manager of Finance & Administration	Mrs PA (Trish) Standish
Manager of Works	Mr JE (Jeff) Alderton

Members of the Public

### 2.2 APOLOGIES

Nil

### 2.3 APPROVED LEAVE OF ABSENCE

Nil

## 3. ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION

## 4. PUBLIC QUESTION TIME

### 4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

### 4.2 PUBLIC QUESTIONS

## 5. PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

## 6. APPLICATIONS FOR LEAVE OF ABSENCE

## 7. DISCLOSURE OF INTEREST

**8. MATTERS FOR WHICH MEETING MAY BE CLOSED**

The meeting will be closed to discuss item 13.1.

**9. CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**9.1 ORDINARY MEETING – 15 FEBRUARY 2017**

**That the minutes from the ordinary meeting of Council held on 15 February 2017, be confirmed as a true and correct record.**

## 10. REPORTS OF OFFICERS

### 10.1 FINANCE & ADMINISTRATION

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#### 10.1.1 LIST OF PAYMENTS

**RESPONSIBLE OFFICER:** Trish Standish – Manager of Finance and Administration

**REPORT AUTHOR:** Jodi Vitler – Finance Administration Officer

**FILE REFERENCE:** FM2

**APPLICANT:** N/A

**DATE OF REPORT:** 3 March 2017

**ATTACHMENTS:** List of Payments – 3 February 2017 to 2 March 2017

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#### **Purpose**

The purpose of this report is to advise the Council of payments made during the period 3 February 2017 to 2 March 2017.

#### **Background**

Nil

#### **Officers Comment**

Nil

#### **Statutory Environment**

Local Government (Financial Management) Regulation 13 states:

##### *13. List of accounts*

(1) If the local government has delegated to the Chief Executive Officer the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the Chief Executive Officer is to be prepared each month showing for each account paid since the last such list was prepared:

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

#### **Policy Applicable – Implications**

Council Policy 4.8 – 'Purchasing', states that:

*"The Chief Executive Officer is delegated authority to make payments from the Municipal Fund or the Trust Fund. Each payment from the Municipal Fund or the Trust Fund is to be noted on a list compiled for each month showing:*

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

*The list referred to above is to be presented to the Council at each ordinary meeting of the Council and is to be recorded in the minutes of the meeting at which it is presented.*

*It is considered appropriate to delegate this authority to the Chief Executive Officer as the payment of accounts is the final process after debts have been incurred through other processes and systems in place."*

### **Financial Implications**

There are no financial implications for this report.

### **Risk Implications**

The risks associated with matters in this report are:

- Misconduct
- Errors, Omissions and Delays
- Failure of IT and or Communication Systems and Infrastructure
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Document Management Processes
- Inadequate Supplier/Contract Management

The **impact** of the risk is Financial, Non-Compliance and Reputational.

The **consequences** of these risks are considered to be Major

The **likelihood** is Rare

Hence the **risk rating** for this item is Low

Risk mitigation includes the Council having strong financial policies and procedures in place and the requirement to report to the Council on a monthly basis.

### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 5.0: by 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective: 5.4 Demonstrate Sound Financial Planning and Management

Strategy: 5.4.2 Responsible and Accountable Financial Management

### **Consultation**

Consultation was not required for this report.

### **VROC Implications**

There are no strategic VROC implications from this report

### **Voting Requirements**

Simple Majority

### **OFFICERS RECOMMENDATION**

**That the payment of accounts totalling \$781,589.53 as per the attachment be noted:**

- **Electronic Funds Transfers EFT 7429 to EFT 7508 - \$658,309.86;**
- **Municipal Fund Cheque No's 11969 – 11978 - \$12,614.19;**
- **Internal Account Transfers (Payroll) - \$95,320.91;**
- **Direct Debit - \$15,344.57.**

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**10.1.2****MONTHLY FINANCIAL STATEMENTS**

<b>RESPONSIBLE OFFICER:</b>	Trish Standish – Manager of Finance and Administration
<b>REPORT AUTHOR:</b>	Trish Standish – Manager of Finance and Administration
<b>FILE REFERENCE:</b>	FM12
<b>APPLICANT:</b>	N/A
<b>DATE OF REPORT:</b>	7 March 2017
<b>ATTACHMENTS:</b>	Financial Statements February 2017

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**Purpose**

The purpose of this report is to present the financial position of the Shire of Cranbrook as at 28 February 2017.

**Background**

The Local Government (Financial Management) Regulations 1996 require the preparation of monthly financial statements and presentation of these statements to the Council.

**Officers Comment**

The February financial statements report on 8 months, or 67% of the financial year. It is worthy to note:

- The 'Municipal Fund Summary' on page 2 shows that we have raised 76% of our expected operating income;
- The 'Municipal Fund Summary' on page 2 shows that we have spent 61% of the budgeted operating expenditure for the year;
- The 'Municipal Fund Summary' on page 4 shows a net current assets position of \$798,299 (surplus), which is mainly made up of cash on hand; and
- The 'Variance Report' on page 9 and 10 defines the major variances between budget and actual figures as required by the regulations.

**Statutory Environment**

The Local Government (Financial Management) Regulations 1996 define the requirements for monthly financial reporting (Regulation 34).

**Policy Applicable – Implications**

Council Policy 4.1 Defining Material Variances, states that:

*When dividing the actual figures with the annual budget figure, a variance of plus or minus 10% of the percentage of the year elapsed will be reported. In addition, a variance must be greater than \$1,000 to be reported.*

**Financial Implications**

Whilst the financial statements report on the current position of the Council, the adoption of the recommendation below does not have a financial impact.

**Risk Implications**

The risks associated with matters in this report are:

- Misconduct
- Errors, Omissions and Delays
- Failure of IT and or Communication Systems and Infrastructure
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Document Management Processes
- Inadequate Supplier/Contract Management



The **impact** of the risk is Financial, Non-Compliance and Reputational  
The **consequences** of these risks are considered to be Major  
The **likelihood** is Rare  
Hence the **risk rating** for this item is Medium

Risk mitigation includes the Council having strong financial policies and procedures in place and the requirement to report to the Council on a monthly basis.

#### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 5.0: By 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective: 5.4 Demonstrate Sound Financial Planning and Management

Strategy: 5.4.2 Responsible and Accountable Financial Management

#### **Consultation**

Consultation was not required for this report.

#### **VROC Implications**

There are no strategic VROC implications from this report

#### **Voting Requirements**

Simple Majority

#### **OFFICERS RECOMMENDATION**

**That the attached financial statements for the period ending 28 February 2017 be noted.**

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<b>10.1.3</b>	<b>LEASE - LOT 256 MASON STREET CRANBROOK</b>
<b>RESPONSIBLE OFFICER:</b>	Trish Standish – Manager of Finance and Administration
<b>REPORT AUTHOR:</b>	Trish Standish – Manager of Finance and Administration
<b>FILE REFERENCE:</b>	CP115
<b>APPLICANT:</b>	Department of Housing
<b>DATE OF REPORT:</b>	10 March 2017
<b>ATTACHMENTS:</b>	Nil

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### **Purpose**

The purpose of this report is for the Council to consider a request from the Department of Housing to renew the lease agreement for Lot 256 Mason Street, Cranbrook for a period of one (1) year with an option of a further one (1) year at the existing weekly rent of \$280.00.

### **Background**

At the 16 March 2016 meeting of Council it was resolved:

**“That:**

- 1. The lease agreement between the Shire of Cranbrook and the Department of Housing for the rental of Lot 256 Mason Street, Cranbrook be renewed for a period of one (1) year with an option of a further one (1) year, subject to:**
  - a. Similar lease conditions to the current lease agreement;**
  - b. The weekly rent to be \$280.00; and**
  - c. The provision by Council of a current Electrical Safety Certificate to confirm all hard wired smoke alarms and RCD’s have been installed and are functioning correctly.**
- 2. The Chief Executive Officer and Shire President be authorised to affix the Council’s common seal to the new lease agreement.”**

### **Officers Comment**

The current lease for this property expires on 22 March 2017. The Department of Housing have approached the Council requesting to renew the lease agreement for Lot 256 Mason Street, Cranbrook for a period of one (1) year with an option of a further one (1) year at the existing weekly rent of \$280.00. As part of the renewal the Department of Housing requires the Council to provide an Electrical Safety Certificate dated within the previous 12 months (to confirm all hard wired smoke alarms and RCD’s have been installed and are functioning correctly).

The current lease agreement and tenancy for this property has operated for the majority of time without problem and for fair financial return (currently \$280 per week) since its commencement.

It is recommended that the lease agreement be renewed as requested for a period of one (1) year with an option of a further one (1) year.

### **Statutory Environment**

The requirements of section 3.58 (Disposition of Property) do not apply to this lease agreement as it is specifically exempt through Local Government Administration Regulation 30(2)(c)(ii) – disposition to a Department or instrumentality of the Crown.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

The 2016/2017 budget includes rental income for this property of approximately \$14,640 whilst the Council's maintenance and operating costs are approximately \$2,400 per annum, this provides for \$12,240 profit. The approximate cost of an electrical safety certificate is \$340.00.

### **Risk Implications**

The risks associated with matters in this report are:

- Errors, Omissions and Delays
- Inadequate Asset Sustainability Practices

The **impact** of the risk is Reputational and Property

The **consequences** of these risks are considered to be Minor

The **likelihood** is Unlikely

Hence the **risk rating** for this item is Low

Risk mitigation includes:

- Ensuring the lease document is correct and returned in a timely manner.
- Housing/rental inspections are carried out as required to ensure the Council's asset is being maintained adequately.

### **Strategic Community Plan Reference**

There is no reference to this report in the Council's Strategic Community Plan.

### **Consultation**

Consultation was not required for this report.

### **VROC Implications**

There are no strategic VROC implications from this report

### **Voting Requirements**

Simple Majority

### **OFFICERS RECOMMENDATION**

That:

1. **The lease agreement between the Shire of Cranbrook and the Department of Housing for the rental of Lot 256 Mason Street, Cranbrook be renewed for a period of one (1) year with an option of a further one (1) year, subject to:**
  - a. **Similar lease conditions to the current lease agreement;**
  - b. **The weekly rent to be \$280.00; and**
  - c. **The provision by Council of a current Electrical Safety Certificate to confirm all hard wired smoke alarms and RCD's have been installed and are functioning correctly.**
2. **The Chief Executive Officer and Shire President be authorised to affix the Council's common seal to the new lease agreement.**

## 10.2 GOVERNANCE & EXECUTIVE SERVICES

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<b>10.2.1</b>	<b>LOT 7 (25) GRANTHAM STREET CRANBROOK - DISPOSAL</b>
<b>RESPONSIBLE OFFICER:</b>	Trish Standish – Manager of Finance and Administration
<b>REPORT AUTHOR:</b>	Trish Standish – Manager of Finance and Administration
<b>FILE REFERENCE:</b>	CP110
<b>APPLICANT:</b>	WC & TJ Swan
<b>DATE OF REPORT:</b>	8 March 2017
<b>ATTACHMENTS:</b>	Nil

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### Purpose

The purpose of this report is for the Council to consider submissions received from the advertising required under the Local Government Act 1965 for the sale of Lot 7 (25) Grantham Street, Cranbrook.

### Background

At the 15 February 2017 meeting of Council it was resolved:

**“That:**

- 1. The Chief Executive Officer be authorised to execute the attached offer and acceptance document for the sale of Lot 7 (25) Grantham Street Cranbrook to William Cresswell Swan and Tania Joy Swan for \$140,000, in accordance with section 3.58 (3) of the Local Government Act 1995; and**
- 2. The net proceeds of the sale of Lot 7 (25) Grantham Street Cranbrook be placed into the Housing Reserve account.”**

### Officers Comment

Advertising has occurred in accordance with section 3.58 of the Local Government Act 1995 (point 1 above). No submissions were received. Section 3.58 (3) of the Act requires the advertising process to occur prior to the Council making the decision to sell (refer statutory environment below) and therefore this item has come before the Council.

The offer is for \$140,000 which is the same as the new market valuation received and dated 24 January 2017.

### Statutory Environment

Section 3.58 of the Local Government Act 1995 defines the process required for the disposal of local government property. This section states:

“(2) Except as stated in this section, a local government can only dispose of property to —

- (a) the highest bidder at public auction; or
- (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

- (a) it gives local public notice of the proposed disposition —
  - (i) describing the property concerned;
  - (ii) giving details of the proposed disposition; and
  - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and

- (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include-
- (a) the names of all other parties concerned;
  - (b) the consideration to be received by the local government for the disposition; and
  - (c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition."

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

The sale of this property has been included in the 2016/2017 budget with the net proceeds being transferred to the Housing Reserve to enable the Council to utilise these funds to construct future staff housing. This is in accordance with the Council resolution above.

### **Risk Implications**

The risks associated with matters in this report are:

- Errors, Omissions and Delays
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Asset Sustainability Practices

The **impact** of the risk is Financial, Non-Compliance, Reputational and Property

The **consequences** of these risks are considered to be Major

The **likelihood** is Rare

Hence the **risk rating** for this item is Low

Risk mitigation includes having a current market valuation for the property and having the property listed with a reputable real estate agent.

### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 4.0: By 2023 the Shire of Cranbrook will have Enviably Quality Infrastructure, Roads and Facilities*

Objective: Provide Outstanding Facilities

Strategy: Provision, development, maintenance and delivery of outstanding built assets

*Aspiration 5.0: By 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective: 5.5 Provide Outstanding People and Service

Strategy: 5.5.3 Organisational policies and strategies for the attraction and retention of quality employees

### **Consultation**

Consultation for this report included the Council, Executive Management Team together with the advertising that has already taken place.

### **VROC Implications**

There are no strategic VROC implications from this report

**Voting Requirements**

Simple Majority

**OFFICERS RECOMMENDATION**

**That:**

- 1. It be noted that no submissions have been received regarding the sale of Lot 7 (25) Grantham Street Cranbrook following advertising undertaken in accordance with section 3.58 (2) of the Local Government Act 1995; and**
- 2. Lot 7 (25) Grantham Street Cranbrook be sold to William Cresswell Swan and Tania Joy Swan for \$140,000.**

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<b>10.2.2</b>	<b>COMPLIANCE AUDIT RETURN - 2016</b>
<b>RESPONSIBLE OFFICER:</b>	Peter Northover – Chief Executive Officer
<b>REPORT AUTHOR:</b>	Trish Standish – Manager of Finance and Administration
<b>FILE REFERENCE:</b>	AD5
<b>APPLICANT:</b>	N/A
<b>DATE OF REPORT:</b>	1 March 2017
<b>ATTACHMENTS:</b>	2016 Compliance Audit Return

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### **Purpose**

The purpose of this report is for the Council to consider the Compliance Audit Return (CAR) for the 2016 calendar year as required by the Local Government Act 1995.

### **Background**

The CAR is one of the tools that allow the Council to monitor how the organisation is functioning. Each Local Government is required to carry out a compliance audit for the period 1 January – 31 December 2016 against the requirements included in the Local Government (Audit) Regulations.

### **Officers Comment**

The structure of the CAR continues in the reduced format that was introduced in 2011 with the areas of compliance restricted to those considered high risk.

The Audit Committee continues to be required to review the CAR and report the results of that review to the Council prior to adoption by the full Council and submission to the Department of Local Government.

The Audit Committee will be meeting at 12:45pm on Wednesday 15 March 2017, to discuss this return.

After the CAR has been presented to the Council, a certified copy of the return together with the relevant section of the minutes and any additional information explaining or qualifying the Compliance Audit, is to be submitted to the Executive Director of the Department of Local Government by 31 March 2017.

### **Statutory Environment**

The Local Government (Audit) regulations define the process and requirements for the compliance audit return.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

There are no financial implications for this report.

### **Risk Implications**

The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impact** of the risk is Non-Compliance

The **consequences** of these risks are considered to be Insignificant

The **likelihood** is Rare

Hence the **risk rating** for this item is Low

Risk mitigation includes ensuring the CAR is completed on time each year.

#### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 5.0: By 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective: 5.1 Deliver Excellence in Governance, Compliance, Regulation and Reporting.

Strategy: 5.1.1 Perform at the highest levels of corporate governance, responsibility and accountability.

5.1.2 Develop effective policies, procedures and practices.

#### **Consultation**

Consultation was not required for this report.

#### **VROC Implications**

There are no strategic VROC implications from this report

#### **Voting Requirements**

Simple Majority

#### **AUDIT COMMITTEE RECOMMENDATION**

The audit committee will be meeting at 12:45pm on Wednesday 15 March 2017 to discuss this report and will make a recommendation to the Council. The Officers recommendation for the Audit Committee to consider is:

**That the Audit Committee recommends to the Council that the Shire of Cranbrook's Compliance Audit Return for the period 1 January to 31 December 2016, as attached, be adopted.**



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<b>10.2.3</b>	<b>RESERVE 2079 – CHANGE OF NAME</b>
<b>RESPONSIBLE OFFICER:</b>	Peter Northover – Chief Executive Officer
<b>REPORT AUTHOR:</b>	Trish Standish – Manager of Finance and Administration
<b>FILE REFERENCE:</b>	R2079
<b>APPLICANT:</b>	Joanna Wilkinson
<b>DATE OF REPORT:</b>	1 March 2017
<b>ATTACHMENTS:</b>	1. Copy of Notice of Proposed Name Change 2. Letter of Support – Tony Warham & Perin Mulcahy 3. Letter of Support – Murray & Jan Pope 4. Letter of Support – Hon Terry Waldron MLA

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### **Purpose**

The purpose of this report is for the Council to consider supporting the change of name of A Class Reserve 2079 currently named “Rock Hole Gully Reserve” to “Kwirrup Reserve”.

### **Background**

Ms Joanna Wilkinson contacted the Shire last year to discuss the process of changing the name of A Class Reserve 2079. Ms Wilkinson was advised to send her written request through and has now done so.

### **Officers Comment**

According to Ms Wilkinson, her family lived on the adjoining property “Valemarie” from 1884 to 2006. The Wilkinson family had a respectful and positive relationship with Nyoongar people who lived in and passed through the area and gained a great deal of knowledge from them. The land, which is A Class Reserve 2079 was, and still is, home to many Western Grey kangaroos and Brush Tail wallabies and was always known by the Wilkinson family as “Kwirrup” – place of the brush.

The current name of the reserve, “Rock Hole Dam”, was assigned by CALM during the 1990’s. Ms Wilkinson claims that no community consultation was carried out and had it been, the family would have expressed their difference of opinion. She argues that while “Rock Hole Dam” is relevant due to the seasonal water pool located within the reserve, it is not the traditional name.

Ms Wilkinson has researched the accuracy of the name “Kwirrup” and has contacted the Department of Anthropology and Archaeology at the Western Australian Museum and was referred to the publication ‘*A Nyoongar Wordlist from the South West of Western Australia*’ (Bindon and Chadwick 1992). According to WJ Rae (1913, cited in Bindon and Chadwick 1992, 13) the name for a kangaroo or brush used by Nyoongars of the Mount Barker region was “Kwirr”. According to Ms Wilkinson, it is therefore correct to apply the name Kwirrup as her family did while living on the adjacent property.

As a tribute to the Nyoongar people who once occupied the land and with whom her family had such a positive relationship, Ms Wilkinson is seeking that the name of A Class Reserve 2079 be changed to “Kwirrup”. Ms Wilkinson placed a consultation notice within the Cranbrook Newsletter for a two-week period and received community support. There were no submissions opposing the change of name.

Ms Wilkinson has also obtained letters of support from surrounding land owners as well as the Hon Terry Waldron MLA, Member for Wagin. (see attachments)

Given that Ms Wilkinson has researched this matter, undertaken community consultation and received community support, it is recommended that the Council supports this proposal to change the name of A Class Reserve 2079 to “Kwirrup” and advise the Department of Parks and Wildlife of their support.

### **Statutory Environment**

The state geographic naming policies and standards are provided for under the Land Administration Act 1997.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

There are no financial implications for this report.

### **Risk Implications**

The risks associated with matters in this report are:

- Errors, Omissions and Delays
- Inadequate Engagement Practices

The **impact** of the risk is Reputational

The **consequences** of these risks are considered to be Insignificant

The **likelihood** is Unlikely

Hence the **risk rating** for this item is Low

Risk mitigation includes community consultation

### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 5.0: By 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective: 5.2 Demonstrate Strong Leadership and Management

Strategy: 5.2.2 Deliver services and outcomes that are considered best practice

### **Consultation**

Community consultation has been undertaken by Ms Wilkinson (see attached local newsletter notice). Letters of support are also attached to this report.

### **VROC Implications**

There are no strategic VROC implications from this report.

### **Voting Requirements**

Simple Majority

**OFFICERS RECOMMENDATION**

**That Council:**

- 1. Support the request from Ms Joanna Wilkinson to change the name of A Class Reserve 2079 from “Rock Hole Dam Reserve” to “Kwirrup Reserve”;**
- 2. Note that community consultation in relation to the change of name has been undertaken; and**
- 3. Authorise the Chief Executive Officer to advise the Department of Parks and Wildlife that Council supports the change of name of A Class Reserve 2079 from “Rock Hole Dam Reserve” to “Kwirrup Reserve”.**

**10.2.4 PLANNING APPLICATION - PROPOSED TELECOMMUNICATIONS INFRASTRUCTURE : LOT 5679 STURRY ROAD, CRANBROOK**

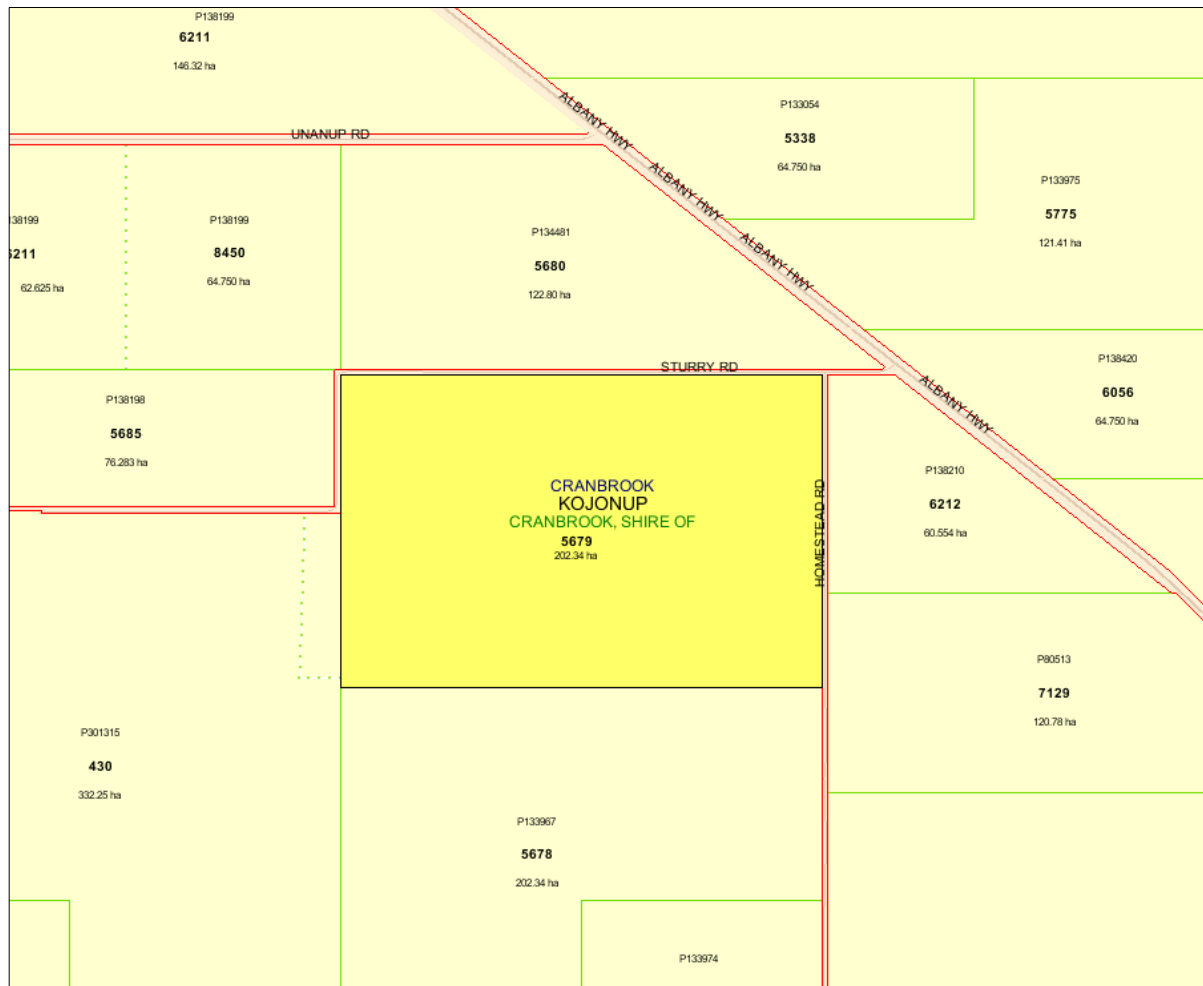
**RESPONSIBLE OFFICER:** Peter Northover – Chief Executive Officer  
**REPORT AUTHOR:** Liz Bushby – Gray & Lewis Landuse Planners  
**FILE REFERENCE:** A962  
**APPLICANT:** Deighton Pty Ltd (acting on behalf of Aurecon)  
**DATE OF REPORT:** 9 March 2017  
**ATTACHMENTS:** Nil

**Purpose**

The purpose of this report is for the Council to consider an application for telecommunications infrastructure on Lot 5679 Sturry Road, Cranbrook.

**Background**

Lot 5679 is located on the corner of Sturry Road and Homestead Road in Cranbrook. The lot has an approximate area of 202.34 hectares – refer location plan below.



## Officers Comment

### Zoning

The lot is zoned 'Rural' under the Shire of Cranbrook Town Planning Scheme No 4 ('the Scheme').

The objectives of the Rural zone include *'to ensure the continuation of broad hectare agriculture in the district encouraging where appropriate the retention and expansion of agricultural activities'* and *'to consider non rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources of the environment'*.

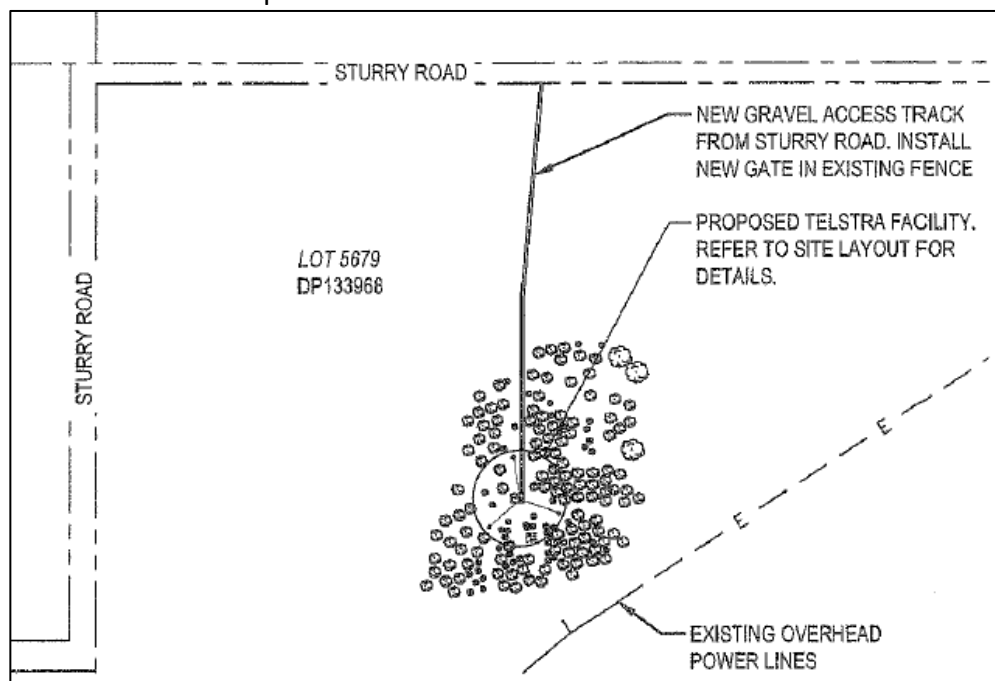
### Description of Application

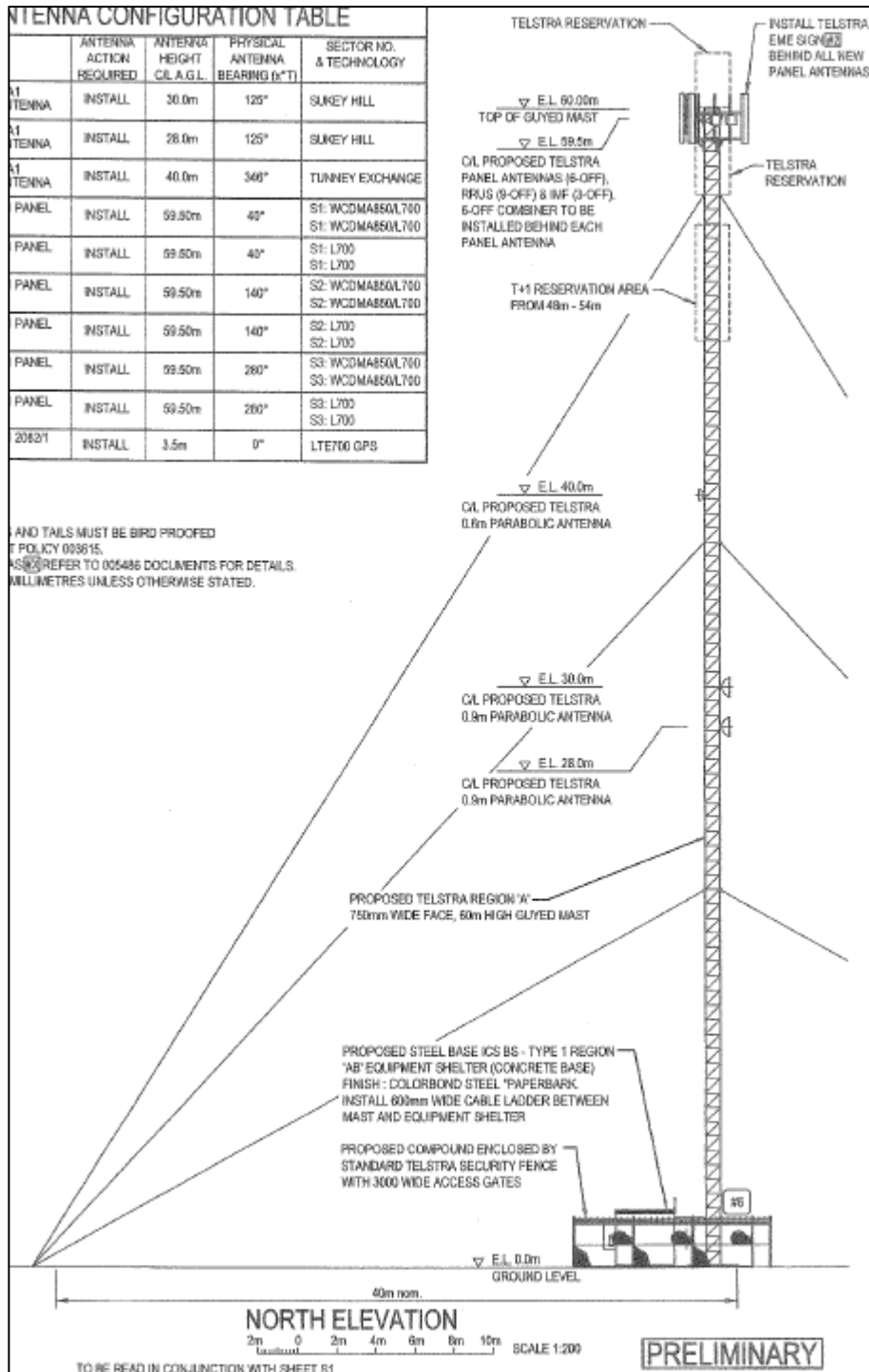
There is an existing telecommunications tower on Lot 5679 which is proposed to be removed and replaced with a 60 metre guyed mast. The new structure will include ancillary components such as 6 panel antennas, 3 parabolic antennas and an equipment shelter.

The applicant has advised as follows:

- Telstra is working on a Commonwealth Government and State Government funded project to put emergency services and mobile telephone communications in areas where current coverage is deficient.
- This program is known as the Black Spot Program and Telstra has been contracted to construct the tower.
- The lower area of the structure will be reserved for the emergency services organisations for potential future requirements.
- Selection of the site has been made with regard to the Western Australian Planning Commission (WAPC) Statement of Planning Policy 2.5.

A copy of the applicants report is available to Councillors on request. A locality plan and elevation is included in this report for ease of reference.





**Landuse classification and permissibility**

When an application is lodged, part of the planning assessment involves examining the landuse definitions in the Scheme, and determining the 'best fit' landuse classification.

There is a specific landuse definition for 'telecommunications infrastructure' under the Shire of Cranbrook Town Planning No 4 ('the Scheme') and it is defined as 'means land used to accommodate any part of the infrastructure of a telecommunications network and includes any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure used, or for use in connection with, a telecommunications network'.

Whilst the 'telecommunications infrastructure' landuse is defined in the Scheme, it is not listed in the Zoning Table.

Council has 3 options when dealing with a 'Use Not Listed' in accordance with Clause 4.4.2 of the Scheme as follows;

- '(a) determine that the use is consistent with the objectives of the Rural zone and is therefore permitted;*
- (b) determine that the use may be consistent with the objectives of the Rural zone and thereafter follow the advertising procedures of Clause 9.4 in considering an application for planning approval; or*
- (c) determine that the use is not consistent with the objectives of the Rural zone and is therefore not permitted. '*

It is recommended that Council pursue Option (b) as:

- The proposed tower has potential for visual impact simply due to the nature of the structure.
- Option (b) allows for public advertising so surrounding landowners can be consulted.
- Option (a) will set an undesirable precedent for similar applications to be treated as a permitted use in the Rural zone.

### **Advertising**

To expedite processing of the application, the Shire Administration has already advertised the application by writing to nearby adjacent landowners. Advertising closed on the 27 February 2017 and no submissions were received.

### **Western Australian Planning Commission Statement of Planning Policy No 5.2 on 'Telecommunications Infrastructure'.**

The Western Australian Planning Commission (WAPC) has an adopted Statement of Planning Policy No 5.2 for Telecommunications Infrastructure ('SPP 5.2') (March 2004).

The WAPC Policy discusses issues such as the need to meet the communication needs of the community and minimising potential adverse visual impact.

The objectives of SPP5.2 include:

*'To facilitate the provision of telecommunications infrastructure in an efficient, cost-effective and environmentally responsible manner to meet community needs and  
To minimise disturbance to the environment and loss of amenity in the provision of telecommunications infrastructure. '*

The Policy includes a series of guiding principles for the location, siting, and design of telecommunications infrastructure such as *"Telecommunications facilities should be located and designed to meet the communication needs of the community"*.

The Policy discusses the long term benefits of telecommunications infrastructure, however still includes guiding principles aimed to minimise adverse impacts on the visual character and amenity of the surrounding area and minimising potential adverse visual impact. In particular, impacts on prominent landscape features, general views in the locality, and individual significant views.

It is important to acknowledge the Policy references *"to minimise"* and that SPP2.5 does not require a tower to be invisible or have no visual impact.

From a practical perspective, height is an essential attribute of telecommunications infrastructure and is integral to the development being able to provide a service to the community.

Importantly, one of the guiding principles of SPP 5.2 is '*unless it is impractical to do so telecommunications towers should be located within commercial, business, industrial and rural areas and areas outside identified conservation areas*'.

The application generally complies with SPP 5.2.

### **Statutory Environment**

Planning and Development (Local Planning Schemes) Regulations 2015 - The *Planning and Development (Local Planning Schemes) Regulations 2015* were gazetted on 25 August 2015, and became effective on 19 October 2015.

The Regulations include 'Deemed Provisions' that automatically apply to local governments throughout Western Australia.

Regulation 67 outlines 'matters to be considered by Council' including and not limited to the aims and provisions of the Scheme, orderly and proper planning, any approved state policy, the compatibility of the development with its setting including to development on adjoining land, amenity, loading, access, traffic and any submissions received on a proposal.

Shire of Cranbrook Town Planning Scheme No 4 – Clause 9.4.1 (a) states that an application which involves a 'use not listed in the zoning table' is to be advertised in accordance with Clause 9.4.3. Clause 9.4.3 requires a 14 day advertising period.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

The Shire pays consultancy fees to Gray & Lewis for general planning advice.

### **Risk Implications**

The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impact** of the risk is Non-Compliance

The **consequences** of these risks are considered to be Minor

The **likelihood** is Unlikely

Hence the **risk rating** for this item is Low

Risk mitigation includes obtaining professional planning advice.

### **Strategic Community Plan Reference**

*Aspiration 5.0: By 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective: 5.1 Deliver Excellence in Governance, Compliance, Regulation and Reporting

Strategy: 5.1.1 Perform at the highest levels of corporate governance, responsibility and accountability.

### **Consultation**

As explained in the body of this report, this application was advertised by the Shire. Advertising was in the form of correspondence to nearby and adjacent landowners.



### **VROC Implications**

There are no strategic VROC implications from this report.

### **Voting Requirements**

Simple Majority

### **OFFICERS RECOMMENDATION**

**That Council:**

- 1. Determine that the proposed development of telecommunication infrastructure on Lot 5679 Sturry Road, Cranbrook may be consistent with the objectives of the Rural zone, and note that the application has been advertised in accordance with the Shire of Cranbrook Town Planning Scheme No 4 ('the Scheme').**
- 2. Note that no submissions have been received during advertising.**
- 3. Resolves to approve the application lodged by Deighton Pty Ltd (acting on behalf of Aurecon) for 'telecommunications infrastructure' on Lot 5679 Sturry Road, Cranbrook subject to:**
  - (i) All development is to be generally in accordance with the plans lodged as part of this application (Drawing No W108168), unless otherwise agreed to in writing by the Chief Executive Officer.**
  - (ii) If the development the subject of this approval is not substantially commenced within a period of 2 years, the approval shall lapse and be of no further effect.**
- 4. Advise the applicant through footnotes on any planning consents as follows:**
  - a. A planning consent is not an approval to commence any works. A building permit may also be required for construction works.**

**10.2.5 PROPOSED (TEMPORARY) RECEPTION CENTRE – FERNGROVE WINERY**

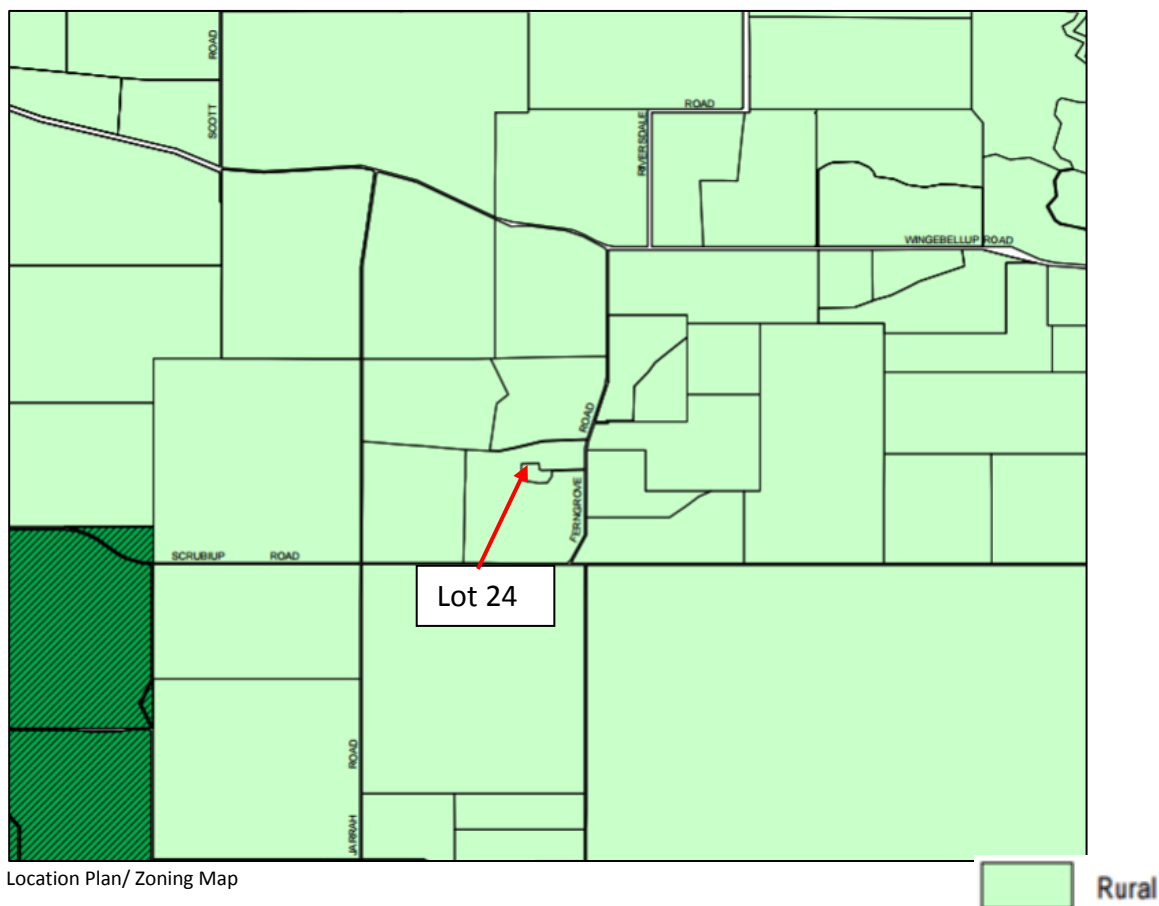
**RESPONSIBLE OFFICER:** Peter Northover – Chief Executive Officer  
**REPORT AUTHOR:** Liz Bushby - Gray & Lewis Landuse Planners  
**FILE REFERENCE:** A9236  
**APPLICANT:** Julie Zambra  
**DATE OF REPORT:** 10 March 2017  
**ATTACHMENTS:** Nil

**Purpose**

The purpose of this report is for the Council to consider an application seeking temporary planning approval for a reception centre on Lot 24 (No 276) Ferngrove Road, Frankland River. A temporary approval is being sought to facilitate hosting of 2 wedding receptions during 2017.

**Background**

Lot 24 has an approximate area of 6.2 hectares and has been developed with a winery that includes on site wine tasting and a cellar outlet. Lot 24 forms part of Ferngrove Winery which operates from several lots in Frankland River.



Location Plan/ Zoning Map

The applicant advises there is an existing liquor licence for the cellar sales, however they intend to apply for a different type of liquor licence for the planned weddings. This process is conducted through the Department of Racing, Gaming and Liquor who have a range of licence types available including an ‘occasional liquor licence’.

The Department of Racing, Gaming and Liquor may require a copy of relevant Shire approvals and / or consult with the Shire in regards to liquor licencing.

## **Officers Comment**

### **Zoning**

The lot is zoned 'Rural' under the Shire of Cranbrook Town Planning Scheme No 4 ('the Scheme').

The objectives of the Rural zone include:

- *to ensure the continuation of broad hectare agriculture in the district encouraging where appropriate the retention and expansion of agricultural activities;*
- *to consider non rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources of the environment;*
- *to allow for facilities for tourists and travellers, and for recreation uses.*

### **Description of Application**

The applicant has not lodged a detailed site plan (which would normally be provided as part of the planning application) however is only seeking a temporary approval to utilise the lot and existing buildings for 2 wedding ceremonies and receptions scheduled for the 28th April 2017 and 4 November 2017.

The functions will cater for up to 100 people, will include live band music and the sale / supply of alcohol. External caterers will be utilised for provisions of meals. The aerial photograph below shows existing development.



The applicant has submitted a floor plan showing the layout of the existing building which includes cellar sales, barrel storage, offices, and amenities/toilets.

The applicant has lodged a separate application to the Shires Environmental Health Officer / Building Surveyor to hold 'temporary public buildings and events'. The caterers have also lodged an application under the Food Act 2008 to sell food from a temporary premises.

### **Landuse classification and permissibility**

When an application is lodged, part of the planning assessment involves examining the landuse definitions in the Scheme, and determining the 'best fit' landuse classification.

A winery is defined as '*means premises used for the production of viticultural produce and may include the sale of produce*'.

The proposed use of the land for wedding functions is construed as a 'reception centre' which is defined in the Scheme as '*means premises used for functions on formal or ceremonial occasions but not for unhosted use for general entertainment purposes*'.

Whilst the 'reception centre' landuse is defined in the Scheme, it is not listed in the Zoning Table.

Council has 3 options when dealing with a 'Use Not Listed' in accordance with Clause 4.4.2 of the Scheme as follows;

- (a) determine that the use is consistent with the objectives of the Rural zone and is therefore permitted;*
- (b) determine that the use may be consistent with the objectives of the Rural zone and thereafter follow the advertising procedures of Clause 9.4 in considering an application for planning approval; or*
- (c) determine that the use is not consistent with the objectives of the Rural zone and is therefore not permitted. '*

It is recommended that Council pursue Option (b) as:

- The proposed temporary approval allows the operator to do a test run of events. They may apply for a more permanent approval if the events are successful.
- Option (b) allows for public advertising so surrounding landowners can be consulted.
- Option (a) will set an undesirable precedent for similar applications to be treated as a permitted use in the Rural zone.

### **Advertising**

To expedite processing of the application, Shire Administration has commenced advertising of the application by writing to nearby adjacent landowners. Advertising closes on 23 March 2017.

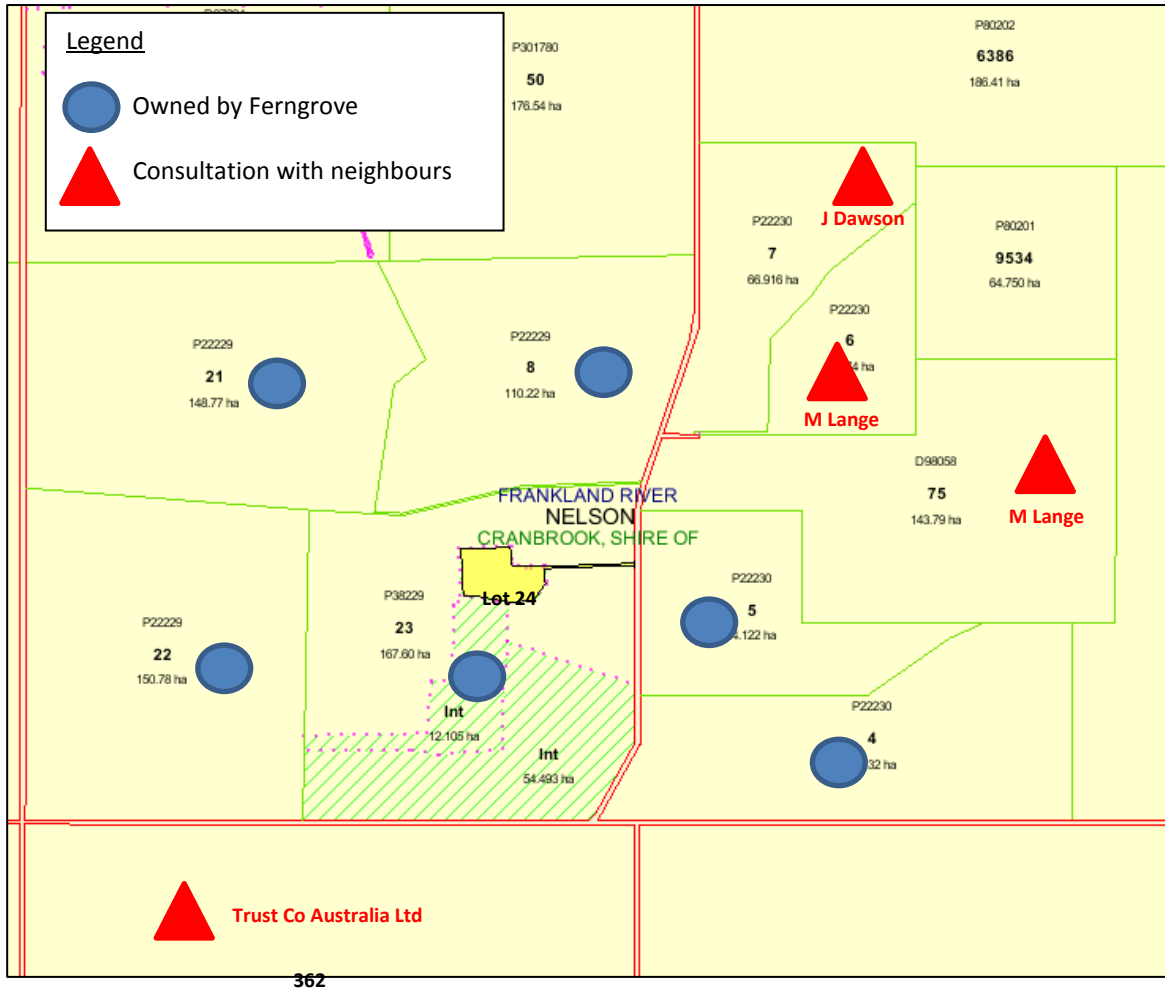
### **Carparking**

There are no specific carparking requirements under the Scheme however it is reasonable for the Shire to require all carparking to be contained on site for both planned events.

Having regard for the size of the lot it is not anticipated that carparking will be an impediment to proposal. If any carparking or traffic issues arise then it will only be for two isolated events.

### **Noise**

Lot 24 is located relatively central to the Ferngrove Winery. Ferngrove Vineyards Pty Ltd own surrounding lots 8, 21, 22 and 23 to the north, west and south. They also own Lots 4 and 5 to the immediate east of Ferngrove Road – refer map below.

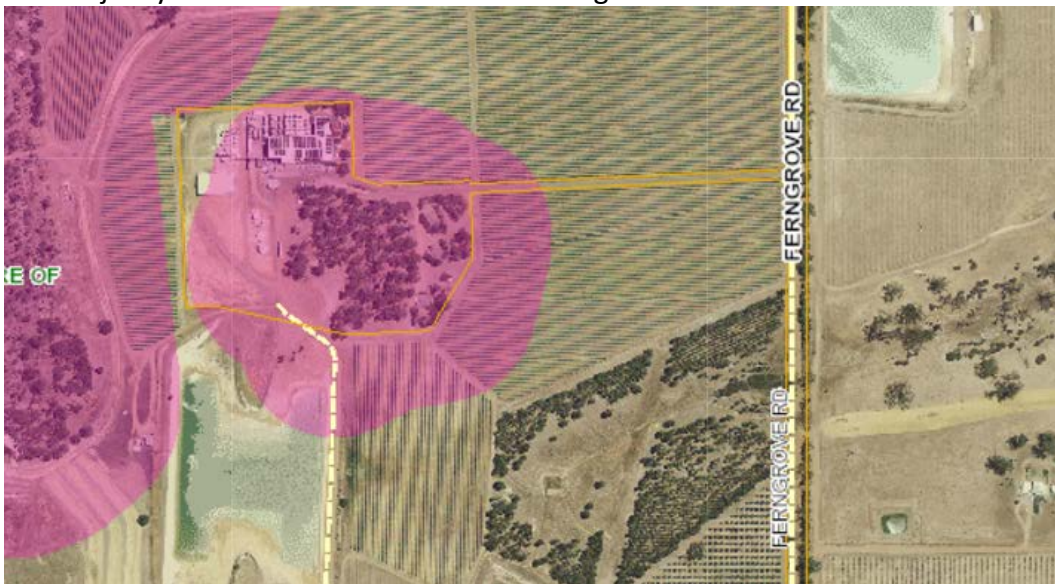


The operators have an obligation to comply with relevant noise regulations, and have advised functions will cease at midnight.

The temporary approval provides an opportunity to identify whether any noise nuisance occurs for the two planned events, and guarantees there will be no ongoing noise problems or landuse conflict. Given the size and location of the winery, it is considered unlikely at this stage that there will be adverse noise impact.

**State Planning Policy 3.7 - Planning in Bushfire Prone Areas**

The majority of Lot 24 is located within a designated Bushfire Prone Area – refer map below.



Source: [www.dfes.wa.gov.au](http://www.dfes.wa.gov.au)

Under the 'deemed provisions' of the *Planning and Development (Local Planning Schemes) Regulations 2015* Council is to have 'due regard' to any state planning policy. This essentially means Council has an obligation to give proper, genuine and realistic consideration to the requirements of 'State Planning Policy 3.7: Planning in Bushfire Prone Areas' (SPP 3.7).

The Shire has a mandatory obligation to consider SPP3.7 when making a decision on any application where the lot is within a designated bushfire prone area.

The Western Australian Planning Commission released SPP3.7 and associated Guidelines for Planning in Bushfire Prone Areas ('the Guidelines') in December 2015. These documents apply to all land identified as Bushfire Prone. The Guidelines were updated in February 2017 and are subject to an ongoing review which will be released in stages.

Under Clause 5.4 of the Guidelines all planning applications in Bushfire Prone Areas are to be accompanied by a BAL (Bushfire Attack Level) assessment.

A BAL examines the location of proposed development, distance to vegetation, type of vegetation within 100 metres, slope and determines whether higher construction standards should be imposed to reduce bushfire risk.

Gray & Lewis recommends that the application be determined without a BAL as it is less relevant to this application (as all buildings are existing) and the use is only temporary.

It is recommended that the applicant be advised that the lot is within a designated bushfire prone area and therefore they will need to consider bushfire management as part of any separate future application for a more permanent reception centre on the land. Emergency egress would need to be considered in the event of an emergency as the Bushfire Guidelines require a secondary egress point. A qualified fire consultant can provide the operators with a Bushfire Management Plan addressing current state planning policy requirements.

### **Statutory Environment**

*Planning and Development (Local Planning Schemes) Regulations 2015* - The *Planning and Development (Local Planning Schemes) Regulations 2015* were gazetted on 25 August 2015, and became effective on 19 October 2015.

The Regulations include 'Deemed Provisions' that automatically apply to local governments throughout Western Australia.

Regulation 67 outlines 'matters to be considered by Council' including and not limited to the aims and provisions of the Scheme, orderly and proper planning, any approved state policy, the compatibility of the development with its setting including to development on adjoining land, amenity, loading, access, traffic and any submissions received on a proposal.

*Shire of Cranbrook Town Planning Scheme No 4* – Clause 9.4.1 (a) states that an application which involves a 'use not listed in the zoning table' is to be advertised in accordance with Clause 9.4.3. Clause 9.4.3 requires a 14 day advertising period.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

The Shire pays consultancy fees to Gray & Lewis for general planning advice.

### **Risk Implications**

The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impact** of the risk is Non-Compliance and Reputational

The **consequences** of these risks are considered to be Minor

The **likelihood** is Unlikely

Hence the **risk rating** for this item is Low

Risk mitigation includes seeking professional planning advice.

### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 2.0: By 2023 the Shire of Cranbrook will have an Innovative, Diverse, Prosperous and Growing Economy*

Objective 2.2: Support Economic Growth and Development

Strategy 2.2.2: Provide business support and development

### **Consultation**

As explained in the body of this report, this application is being advertised by the Shire. Advertising is in the form of correspondence to nearby and adjacent landowners.

### **VROC Implications**

There are no strategic VROC implications from this report.

### **Voting Requirements**

**Absolute Majority** (for delegated authority)

### **OFFICERS RECOMMENDATION**

**That Council:**

1. **Determine that the proposed development for a temporary Reception Centre on Lot 24 (No 276) Ferngrove Road, Frankland River may be consistent with the objectives of the Rural zone, and note that the application is being advertised in accordance with the Shire of Cranbrook Town Planning Scheme No 4 ('the Scheme');**
2. **Note that the application is only seeking approval for a limited number of wedding functions, and if planning approval is granted a time limit of 9 months can be imposed;**
3. **Resolve by Absolute Majority to delegate authority to the Chief Executive Officer to determine the application following advertising, in accordance with Regulation 82 of the Planning and Development (Local Planning Schemes) Regulations 2015 and Clause 11.3.1 of the Shire of Cranbrook Town Planning Scheme No 4 to expedite processing of the application (as the first function is booked for April 2017);**
4. **Note that Shire Chief Executive Officer does not intend to exercise the delegated authority in the event that any adverse submissions are received during advertising, and can refer the application to the April Council meeting for determination; and**
5. **Authorise the Chief Executive Officer to respond to any correspondence by the applicant or the Department of Racing, Gaming and Liquor in regards to any proposed new liquor licence associated with the proposed reception centre.**





### **Officers Comment**

An application has been lodged by the Shire of Cranbrook on behalf of the Cranbrook Districts Motorcycle Club to place a sea container on Reserve 52284. The sea container is proposed to be used as a temporary clubhouse. A portion of the sea container will be used for storage.

It is understood that construction plans are being developed for future development of the site as a motocross track with associated facilities such as a club room, fencing, camping area and scorers hut. These facilities do not form part of the current planning application.

The application indicates that the sea container will be used until such time as a new club premises is constructed (approximately 3 years).

Gray & Lewis has liaised with the Shires Environmental Health Officer / Building Surveyor. The sea container will need a separate Building Permit and approval under the Health (Public Building) Regulations 1992.

It is recommended that any planning approval provide flexibility for provision of toilet facilities in case they are required for the sea container to meet the separate Building Regulations and /or Public Building requirements.

### **Statutory Environment**

#### Shire of Cranbrook Town Planning Scheme No 3 –

Under Clause 3.4.1 a person must not:

- (a) use a Local Reserve; or
  - (b) commence or carry out development on a local reserve
- without first having obtained planning approval under Part 9 of the Scheme.

Under Clause 3.4.2 the local government is to have regard to (a) the matters set out in clause 1.2 and (b) the ultimate purpose intended for the reserve.

Building Regulations 2012 – A Building Permit cannot be issued in the absence of a planning approval under Regulation 18.

Environmental Protection (Noise) Regulations 1997 – Noise is not being examined for this application as it is only for the sea container.

Despite this, Gray & Lewis notes that noise would need to be examined as part of any future separate application for the motocross premises and track. It is recognised that noise from motorsport venues can travel over wide distances.

There are acceptable noise emissions under the Regulations. Regulation 16A of the Regulations allows certain motorsport venues to be exempt from the assigned levels, provided that the Shire Chief Executive Officer has approved a Noise Management Plan and the motorsport is being conducted in accordance with that Regulation.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

## **Financial Implications**

### **Budget**

The Shire Chief Executive Officer has advised that a budget provision of \$50,000 will be provided by the Shire for future development of Reserve 52284 for a motocross facility, and grant funding has been received recently through the GSDC Regional Grants Scheme.

### **Long Term**

The Shire has already considered funding implications and therefore this issue is not revisited in this report.

### **Whole of Life**

The Shire has already considered funding implications and therefore this issue is not revisited in this report.

## **Risk Implications**

The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impact** of the risk is Non-Compliance.

The **consequences** of these risks are considered to be Minor.

The **likelihood** is Unlikely.

Hence the **risk rating** for this item is Low.

Risk mitigation includes liaising with Gray & Lewis and the Shires Environmental Health Officer / Building Surveyor to ensure all necessary approvals are obtained (including planning approval, building permits and public building/health approvals).

There is also a risk associated with noise for future stages of development and the need to comply with the *Environmental Protection (Noise) Regulations 1997*. Gray & Lewis recommends that the Shire liaises with a qualified noise consultant.

It is understood there is an intention for a Notification to be placed on the Certificate of Title(s) of lots surrounding the proposed development. The Notification will advise of the potential for noise and dust emissions associated with a motocross facility.

Whilst Gray & Lewis cannot provide legal advice, the writer is of the view that:

- A Notification does not necessarily override or mitigate the operator's obligations to comply with the *Environmental Protection (Noise) Regulations 1997*.
- A Notification simply advises an existing landowner or future purchaser that there may be dust and noise associated with a landuse. It does not prevent any future owner from complaining about noise, dust or a breach of the Noise Regulations.

## **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 1.0: By 2023 the Shire of Cranbrook will be respected for its Friendly, Vibrant, Connected and Safe Communities*

Objective: 1.5 Develop a Healthy Place to Grow and Age

Strategy: 1.5.3 Support a sporting and active community

## **Consultation**

No consultation has been conducted. It is recommended that any future stages of development be referred to nearby and surrounding landowners for comment.

### **VROC Implications**

There are no strategic VROC implications from this report

### **Voting Requirements**

Simple Majority

### **OFFICERS RECOMMENDATION**

**That Council:**

- 1. Authorise the Chief Executive Officer to sign the planning application form for the propose sea container on Reserve 52284.**
- 2. Approve the application lodged by the Shire of Cranbrook on behalf of the Cranbrook Districts Motorcycle Club for a sea container on Reserve 52284 subject to the following conditions and advice notes:**

**Conditions:**

- (i) The applicant to lodge detailed plans / elevations of the sea container for separate written approval of the Chief Executive Officer prior to the issue of a Building Permit. In the event that any amenities need to be included (to comply with the Health (Public Building) Regulations 1992 they may be approved as part of the detailed plan stage as ancillary development.**
- (ii) All development to be generally in accordance with the approved plans.**

**Advice Notes:**

- (a) This is a planning consent only for the sea container, and is not an approval for any future stages of development such as a motocross track, clubroom, camping areas etc**
- (b) A separate Building Permit needs to be obtained prior to placement of any building on the reserve. Separate approval is also required under the Health (Public Building) Regulations 1992.**
- (c) It is noted that the applicant is liaising with the Department of Environment and Regulation (DER) in regards to future clearing of the reserve. It is recommended that no siteworks commence until such time DER endorses clearing.**
- (d) It is recommended that any future application be advertised to nearby and adjacent landowners, and that noise be adequately addressed for any future stages of development.**

### 10.3 WORKS

### 10.4 ECONOMIC & COMMUNITY

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#### 10.4.1 FRANKLAND RIVER OVAL DAM UPGRADE

<b>RESPONSIBLE OFFICER:</b>	Jeff Alderton – Manager of Works
<b>REPORT AUTHOR:</b>	Jeff Alderton – Manager of Works
<b>FILE REFERENCE:</b>	CP209
<b>APPLICANT:</b>	N/A
<b>DATE OF REPORT:</b>	7 March 2017
<b>ATTACHMENTS:</b>	Nil

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#### **Purpose**

The purpose of this report is for the Council to consider re-constructing the two dams at the Frankland River Sporting Facility.

#### **Background**

Currently there are two dams, side by side at the Frankland River Sporting Facility, that collect water for the Frankland River oval reticulation. There are significant leakage issues with both of the dams.

There have been attempts in the past and more recently to rectify this problem, however it appears that the dams are still leaking.

#### **Officers Comment**

There have been a number of site meetings involving Councillors, Local Residents, Sporting Club Representatives, Shire Staff, Turf Management Specialist and a Dam Building Contractor regarding the issue of the leaking dams. At the most recent meeting held at Frankland River on 2 March 2017 representatives from the Frankland River Cricket Club, Country Club, and Primary School were supportive of the Shire's commitment to improve the quality of the infrastructure at the Frankland River Oval.

A quote has been prepared by a Contractor to re-construct and repair the two dams. The quote includes the removal of vegetation and spoil, the joining of the two dams into one and reshaping and relining of the new dam. The Shire's Outside Works Crew will also be involved with the works, which are expected to commence at the end of the 2017 cricket season.

This project forms the first stage of a proposed redevelopment of the Frankland River Oval. Stage two will be the replacement of the pumping system, oval reticulation network and the installation of a water tank. It is anticipated that stage two will take place in 2017/2018.

#### **Statutory Environment**

There is no specific legislation applicable to this report

#### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

## **Financial Implications**

### ***Budget***

The total cost of this report is anticipated to be \$50,000. There is currently no allocation for this project in the 2016/2017 budget, however the cost can be transferred from the Frankland River Sporting Facilities Reserve which currently has a balance of \$270,012.

### ***Whole of Life***

The whole of life financial implications including depreciation and maintenance are included in budgets annually.

## **Risk Implications**

The risks associated with matters in this report are:

- Inadequate Environmental Management
- Inadequate Asset Sustainability Practices
- Inadequate Project/Change Management
- Inadequate Supplier/Contract Management

The **impact** of the risk is Reputational, Property and Natural Environment

The **consequences** of these risks are considered to be Moderate

The **likelihood** is Unlikely

Hence the **risk rating** for this item is Low

Risk mitigation includes the use of qualified contractors.

## **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 4.0: By 2023 the Shire of Cranbrook will have Enviably Quality Infrastructure, Roads and Facilities*

Objective: 4.3 Provide Outstanding Public Facilities

Strategy: 4.3.2 Continue development of recreational and tourism facilities across Shire.

## **Consultation**

Consultation for this report included Councillors, Executive Management, Shire's Parks & Gardens, Dam Contractor, Turf Management Specialist and members of the Frankland River Community.

## **VROC Implications**

There are no strategic VROC implications from this report

## **Voting Requirements**

***Absolute Majority (Budget Amendment)***

## **OFFICERS RECOMMENDATION**

**That:**

- 1. Council commits to the re-construction of the two dams at the Frankland River Sporting Facility; and**
- 2. The cost of this re-construction be funded from the Frankland River Sporting Facilities Reserve.**

## 11. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

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### 11.1 SAT DETERMINATION (2017) WASAT 32 – CR HORROCKS

<b>RESPONSIBLE OFFICER:</b>	Peter Northover – Chief Executive Officer
<b>REPORT AUTHOR:</b>	Peter Northover – Chief Executive Officer
<b>FILE REFERENCE:</b>	A1372
<b>APPLICANT:</b>	Cr Horrocks
<b>DATE OF REPORT:</b>	9 March 2017
<b>ATTACHMENTS:</b>	SAT Determination (2017) WASAT 32

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#### **Purpose**

The purpose of this report is for the Council to consider a notice of motion submitted by Cr Horrocks opposing any challenge to the recent SAT Determination (2017) WASAT32.

#### **Background**

Mr and Mrs David Packard own and operate a business in Tenterden, trading as Rural Aspirations Pty Ltd. It is more commonly known in the community as 'Bills of Tenterden'.

In December 2015, the Packard's sought retrospective planning approval from Council as it was realised that no formal approvals had ever been granted prior to them taking over 'Bills of Tenterden' in 2002.

At the Ordinary Council held on 16 December, 2015, Council provided retrospective planning approval for a number of uses on Lot 5 Nunijup Road, Tenterden.

From the 'Notice of Determination On Application For Planning Approval' issued by the Shire on 18 December 2015, Council:

- a. Determined that the workshop and mechanical repairs were a permitted use and did not require planning approval (in accordance with clause 8.2(g) of the Shire's Town Planning Scheme No 4);
- b. Approved the receipt and storage of freight parcels and items;
- c. Approved a showroom use encompassing all goods sold from the premises other than milk, drinks, ice creams and newspapers;
- d. Approved a 'service industry' use; and
- e. Refused to grant planning approval for the sale of convenience items and the community postal agency.

The Shire sought both planning and legal advice to assist the Packard's in gaining the above approvals and whilst it has not satisfied the Packard's in terms of the sale of convenience items and the operation of the postal agency, it has provided them with the appropriate approval to allow them to sell the business as a going concern, should they elect to do so.

A letter of complaint was received by the Shire on 8 July, 2016. The complaint related to the continued sale of convenience items and the continued operation of the postal agency. It is understood that the postal agency was established by the Packard's at the request of Australia Post in June 2014 (without any approach by Australia Post to the Shire to determine appropriate zoning and planning requirements). The local Australia Post office was located at the Tenterden Roadhouse until it closed in June 2014. In approximately July 2015, the business was leased and re-opened as a roadhouse trading as the 'Tenterden Top-Up'.

The Roadhouse is zoned Town Centre and is located on Albany Highway, Tenterden – literally over the road from ‘Bills of Tenterden’. When the current lessee’s took over the lease, the Packard’s had already been operating the postal agency for a period of time.

As a result of the complaint received on 8 July, 2016, the Chief Executive Officer personally met with Mr and Mrs Packard. At the Council meeting held on 20 July 2016, Council passed a resolution reiterating the shire’s position and giving the Packard’s 3-6 months to resolve the matter, including disposal of the convenience items and the cessation of the postal agency.

A subsequent development application (planning application) and supporting email was received from Mr Aaron Bell of Able Planning, acting on behalf of Rural Aspirations Pty Ltd (Mr and Mrs Packard), on 4 August 2016 seeking approval for a ‘convenience store’ and ‘civic use’ – the latter being an argument in support of the postal agency.

As a result, further planning and legal advice was sought by the Shire, which essentially upheld the original advice based on the current Scheme requirements – ie approval cannot be granted for a convenience store and civic use. This advice was the subject of a separate report to Council on Wednesday, 21 September, 2016 and the resolution from that meeting is recorded below:

**“That Council:**

- 1. Refuse the application lodged for a convenience store and a postal agency on Lot 5 Nunijup Road, Tenterden as the uses are construed respectfully as a ‘shop’ and an ‘office’ which are not permitted in the Industrial Zone.**
- 2. Advise the applicant that:**
  - (i) They may lodge an application for review to the State Administrative Tribunal (SAT) however as the Tribunal can only make a decision within the confines of the *Shire of Cranbrook Town Planning Scheme No 4* , it is not considered that they will have discretion to approve the proposal.**
  - (ii) Shire Administration has confirmed it considers that the sale of all the goods shown on the floor plan submitted (except the milk/drinks fridge, ice cream freezer and newspapers) form part of the existing showroom approval dated 18 December 2015.**
  - (iii) If the showroom continues to operate, the Shire advises that the sale of milk/drinks fridge, ice creams in a freezer and newspapers (as shown on the site plan submitted) can continue without the need for any planning approval – Attachment 6. The existing sales areas of convenience goods however cannot be increased.”**

The Ombudsman’s office has been in contact with the Shire in relation to this matter, acting on a complaint claiming that the Shire was not taking any action in relation to either the sale of convenience items or the continued operation of the postal agency. It was pointed out that this was not the case. As a result of the correspondence from the Ombudsman’s office, there have been ongoing discussions and email exchanges with The Ombudsman’s Principal Investigating Officer, Mrs Rosalie Poole. This dialogue is still continuing.

As a result of the Council resolution in September 2016, Mr and Mrs Packard sought independent advice and decided to appeal the Shire’s rejection of their planning application for a ‘postal agency’ and the sale of ‘convenience items’ to the State Administrative Tribunal (SAT). A Directions Hearing was held on 11 November 2016 and the matter was heard by SAT member, Mr Maurice Spillane. Although the Packard’s Consultant Planner, Mr Aaron Bell, argued for the matter to go to mediation, the SAT member determined that there was no benefit in mediation given the Shire’s decision was based on legal advice received from Mr Andrew Roberts of

McLeods Barristers and Solicitors (McLeods), stating that the Shire had no discretion to approve the use.

Member Spillane also determined that the matter should be heard by documents (as opposed to legal representation), which I understand is rare, based on the fact that the Shire's advice had been received from McLeods.

The Shire (through Ms Liz Bushby of Gray & Lewis Landuse Planners) filed the necessary paperwork with the SAT on 30 November, 2016. I understand that Mr Bell, on behalf of the Packard's, filed his documents on 22 December, 2016.

### **Officers Comment**

On 17 February, 2017 the SAT handed down its findings.

In determining the case, Member Ms R Petrucci, whom I understand is a tax lawyer and not a planner, determined that:

- a. The sale of convenience goods is a use that falls within the definition of 'shop' which is not a permitted use under the 'Industrial' zone; and
- b. The community postal agency does not fall within the definition of 'convenience store', but rather falls within the definition of 'shop' which, as noted above, is not a permitted use under the 'Industrial' zone.

Despite the SAT accepting the Shire's arguments on use classification, the Member approved the postal agency (a prohibited 'office' use), on the basis of clause 67 of the *Planning and Development (Local Planning Scheme) Regulations 2015 (WA)*, which requires consideration of the potential loss of any community service.

Mr Denis McLeod from McLeods, has expressed concern with the SAT decision. He has pointed out that the SAT Member cannot approve a 'not permitted' use. He has stated that the decision is clearly wrong and cannot be justified in law or in planning principle.

Mr Andrew Roberts, a partner with McLeods, is on record as stating that the SAT member is simply wrong in her decision that approval can be granted for a prohibited use. He points out that "this decision represents a dangerous precedent for the Shire and could well be relied on by other developers seeking approvals from the Shire and could impact on other local governments. So, it potentially has broader implications".

Ms Bushby has also stated in an email to me dated 22 February 2017, that the "Department of Planning is looking at the decision. Their appeals team have sent it to the State Solicitor".

The Department of Planning has subsequently advised the Shire it is concerned with the decision and would be prepared to offer assistance to the Shire if it decided to challenge the decision. The Western Australian Local Government Association (WALGA) has also offered to assist the Shire with the cost of a challenge because of the sector wide implications from this SAT decision. So clearly, this matter is not simply a local planning matter. It has State-wide implications with potential to undermine town planning schemes throughout Western Australia.

The only avenue of challenge available to the Shire is an appeal to the Supreme Court, the cost of which could be as much as \$15,000. McLeods have agreed to cap their fees at a minimal amount of \$4,000 (excluding disbursements) in recognition of the importance of challenging this case. Under section 105(12) of the SAT Act, the Shire would also be required to pay the other party's costs of appeal – even if the Shire wins the appeal.



Ms Bushby has advised that she is confident that the Shire would win any appeal to the Supreme Court based on basic planning law principles. She is also of the view that there would be a high level of support by other local governments and the general planning profession if the Shire pursued an appeal. The fact that WALGA and the Department of Planning are willing to assist with funding demonstrates that they also consider this matter to be substantial.

It is worth noting however, that should the Council elect to not challenge the decision, it is open to the Department of Planning to initiate its own Judicial Review Application to the Supreme Court. A third party avenue of appeal is open to the department for a period of six months.

### **Statutory Environment**

#### *Shire of Cranbrook Town Planning Scheme No 4 ('the Scheme')*

An office and shop are listed as an 'X' use in the Industrial zone under Table 1 – Zoning Table. In accordance with Clause 4.3.2 this means that the uses are not permitted under the Scheme.

Under Note 4 in the Scheme it states *'the local government must refuse any 'X' use of land. Approval to an 'x' use of land may only proceed by way of an amendment to the Scheme.*

Gray & Lewis has confirmed that Council has no discretion to approve an office or shop in an Industrial zone, and that SAT is also confined by restrictions of the Scheme.

#### *Planning and Development Act 2005 –*

Section 2.11 : any person who is aggrieved by the failure of a local government to enforce or implement effectively the provisions of a town planning scheme can make representation to the Minister for Planning.

If the Minister considers it appropriate the matter can be referred to the State Administrative Tribunal (SAT) to provide a report and recommendations to the Minister for Planning.

The Minister has powers to order a local government to all things necessary for enforcing the observance of the scheme or any of the provisions of the scheme.

#### *Planning and Development (Local Planning Schemes) Regulations 2015 –*

Regulation 67 outlines the 'matters to be considered by Council' and lists factors to be taken into consideration when determining an application, such as traffic, amenity etc. The matters listed in Regulation 67 do not override the prohibition of a landuse in a zone under the Zoning Table of a Town Planning Scheme.

### **Policy Applicable – Implications**

There is no Council policy applicable to this report.

### **Financial Implications**

There are no financial implications for this report, although Council has spent a considerable amount of money obtaining planning and legal advice. Should the Council elect to challenge the decision, the costs of such challenge would be met by WALGA and the Department of Planning. Whilst formal confirmation from the latter is yet to be received, senior departmental staff have indicated that the department would look favourably at any formal request because of the State-wide planning implications from the SAT decision.

### **Risk Implications**

The risks associated with matters in this report are:

- Business and Community Disruption
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Engagement Practices

The **impacts** of the risks are Financial, Non-Compliance and Reputational

The **consequences** of these risks are considered to be Major

The **likelihood** is Likely

Hence the **risk rating** for this item is High

Risk mitigation includes seeking professional planning and legal advice.

### **Strategic Community Plan Reference**

The 2013-2023 Shire of Cranbrook, Strategic Community Plan states that:

*Aspiration 1.0: By 2023 the Shire of Cranbrook will be respected for its Friendly, Vibrant, Connected and Safe Communities*

Objective 1.1: Create Engaged Communities

Strategy 1.1.3: Support community building and development initiatives

*Aspiration 2.0: By 2023 the Shire of Cranbrook will have an Innovative, Diverse, Prosperous and Growing Economy*

Objective 2.2: Support Economic Growth and Development

Strategy 2.2.2: Provide business support and development

*Aspiration 5.0: By 2023 the Shire of Cranbrook will demonstrate, Strong Governance, Leadership and Organisational Growth*

Objective 5.1: Deliver Excellence in Governance, Compliance, Regulation and Reporting

Strategy 5.1.1: Perform at the highest levels of corporate governance, responsibility and accountability

Objective 5.2: Demonstrate Strong Leadership and Management

Strategy 5.2.3: Effectively manage risk

Objective 5.6: Listen to, Hear and Engage the Community

Strategy 5.6.2: Ongoing meaningful communication and engagement with residents and ratepayers of the Shire of Cranbrook

### **Consultation**

Consultation for this report included Gray and Lewis Landuse Planners, McLeods Barristers and Solicitors, Department of Planning and the Western Australian Local Government Association.

### **VROC Implications**

There are no strategic VROC implications from this report.

### **Voting Requirements**

Simple Majority

**COUNCILLOR'S NOTICE OF MOTION**

To be moved by Cr Horrocks

**That Council:**

- 1. Elects to not challenge the SAT decision handed down by Member Petrucci on 17 February 2017 that ruled in favour of the Postal Agency remaining with Rural Aspirations Pty Ltd; and**
- 2. Recognises that the SAT decision has a wide acceptance within the Tenterden Community.**

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

**13. MATTERS BEHIND CLOSED DOORS**

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**13.1 LOT 1 ON STRATA PLAN 58670 (8A) CURRIE STREET CRANBROOK - DISPOSAL**

**RESPONSIBLE OFFICER:** Trish Standish – Manager of Finance and Administration  
**REPORT AUTHOR:** Trish Standish – Manager of Finance and Administration  
**FILE REFERENCE:** CP142  
**APPLICANT:** N/A  
**DATE OF REPORT:** 1 March 2017  
**ATTACHMENTS:** Valuation - 24 January 2017

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**Statutory Environment**

Section 5.23 of the Local Government Act 1995 allows the Council to close all or part of a Council Meeting to members of the public if the meeting or the part of the meeting deals with a range of issues, dealing with any of the following; (a) a matter affecting an employee or employees; (b) the personal affairs of any person; (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; (e) a matter that if disclosed, would reveal — (i) a trade secret; (ii) information that has a commercial value to a person; or (iii) information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government; (f) a matter that if disclosed, could be reasonably expected to — (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; (ii) endanger the security of the local government’s property; or (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety; (g) information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971; and (h) such other matters as may be prescribed. As such it is recommended that the meeting be closed to the public in order deal with these items. A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

**Voting Requirements**

Simple Majority

**OFFICERS RECOMMENDATION**

**That the meeting be closed to members of the public at \_\_\_\_\_ in accordance with section 5.23 (c) of the Local Government Act 1995, to discuss a contract entered into, or which may be entered into by the local government.**

**14. CLOSURE OF MEETING**

There being no further business to discuss, the Shire President, Cr Cunningham will declare the meeting closed at \_\_\_\_ pm.