



MINUTES OF SPECIAL MEETING OF COUNCIL (COMMISSIONER)

For Council (the Commissioner) to consider:

- Adoption of the Annual 2023/2024 Statutory Budget including Schedule of Fees and Charges.
 - VC Mitchell Park Project consideration - Hold Point 3.
 - Development Application P22022 Extractive Industry (Gravel) – Lot 10 Donnybrook-Boyup Brook Road, Yabberup.
 - RFT 04-2223 Langley Villas - Refurbishment Works (Confidential Item).
-

Held on Wednesday 30 August 2023

Commencing at 5.00pm

Shire of Donnybrook Balingup Council Chamber, Donnybrook

Ben Rose
Chief Executive Officer

11 September 2023

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SHIRE OF DONNYBROOK BALINGUP
MINUTES OF SPECIAL COUNCIL (COMMISSIONER) MEETING

Held at the Council Chamber
Wednesday, 30 August 2023 at 5.00pm

1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Commissioner – Acknowledgment of Country.

The Commissioner acknowledged the traditional custodians of the land, the Wardandi People of the Noongar Nation, paying respects to Elders, past, present, and emerging.

The Commissioner declared the meeting open at 5pm and welcomed the public gallery.

The Commissioner advised that the meeting is being live streamed and recorded in accordance with Council Policy EM/CP-2. The Commissioner further stated the following:

“This meeting is being livestreamed and digitally recorded in accordance with Council Policy.”

“Members of the public are reminded that no other visual or audio recording of this meeting by any other means is allowed without the permission of the chairperson.”

“Whilst every endeavour has been made to only record those who are actively participating in the meeting, loud comments or noises from the gallery may be picked up on the recording.”

2 ATTENDANCES

MEMBERS PRESENT

MEMBERS	STAFF
Gail McGowan - Commissioner	Ben Rose – Chief Executive Officer
	Kim Dolzadelli – Director Corporate and Community
	Ross Marshall – Director Operations
	Loren Clifford – Acting Manager Executive Services
	Samantha Farquhar – Administration Officer - Executive Services

PUBLIC GALLERY

36 members of the public in attendance.

2.1 APOLOGIES

Nil.

2.2 APPROVED LEAVE OF ABSENCE

Nil.

2.3 APPLICATION FOR A LEAVE OF ABSENCE

Nil.

3 ANNOUNCEMENTS FROM PRESIDING MEMBER

I would like to formally advise that on Friday afternoon I received notice of resignation of Mr Ben Rose, who has been appointed as the incoming Chief Executive Officer at the Shire of Manjimup. On behalf of the Council team, we wish you the best of luck with your appointment. We thank you for your seven years of service to this community, including great outcomes that have been achieved over that time. We will go through a (transition planning) process over the coming weeks and give a little bit more detail to you all, shortly.

Mr Rose has advised that his preference is to take some leave before starting his new role, and a well-deserved break that would be. We will be looking at the point of which Mr Rose commences leave which will happen over the next few weeks, rather than the twelve weeks that is required under contract.

Mr Dolzadelli, Director Corporate and Community may act in the Chief Executive Officer position for a short period of time, whilst I continue negotiations around the appointment of an interim CEO, who I would like to be on-board before the new Councillors are appointed. The Council will then go through the recruitment process for a permanent CEO. Thank you, Kim, for stepping up for that time. Kim has also informed me that he would prefer to see an Interim CEO appointed sooner rather than later.

4 DECLARATIONS OF INTEREST

Nil.

5 PUBLIC QUESTION TIME

In accordance with the Clause 7(3) of the Local Government (Administration) Regulations, public questions must relate to the stated purpose of the Special Meeting.

Sandra Hough

1. *The DPIRD states in a letter to the Shire 21 June 2022 that they do not support the extraction of gravel on land zoned Priority Agriculture. Will the Commissioner now state the Shire of Donnybrook agrees with this decision and stop this and any further applications by this person or company?*
2. *Will the Commissioner on behalf of the Shire make clear that Priority Agricultural zones are there for a reason and ensure agricultural pursuits are what is required?*

Response: Commissioner McGowan

I will address those questions when we deal with the item (Agenda item 7.1.2.).

Sian Blackledge

What was the rationale for adding the two agenda items (the extractive industry application and VC Mitchell Park) to a Special Council Meeting immediately before the caretaker period, instead of leaving these important decisions to a new Council.

Response: Commissioner McGowan

The Extractive Industry application needed to be dealt within the statutory timeframe. Had we not considered it, it would be considered a deemed refusal and would have gone into the State Administrative Tribunal process.

As mentioned at previous meetings, VC Mitchell Park was due to come to fruition, to delay it any longer would mean we just continue to get increases in prices.

Question: Lisa Glover

My understanding of the rate revenue decision (from last year) was that there was a discount. Did we get a rate increase of 8.5% last year?

Response: Director Corporate and Community

The Council-approved rate increase last year was 8%. The previous year was 8.6%. There was also a one-off rates concession of 1.57% last year (subtracted off the 8%), which was funded through a discontinued COVID Reserve account.

Question: Lisa Glover

Can you please explain the rates revenue for last year in more detail, as my calculations indicate that the Shire's rating revenue was above 8%?

Response: Director Corporate and Community

The key Shire financial report to review in relation to this question is the Statement of Comprehensive Income – it provides a full overview of revenues (including rates) for the Shire, and also includes details of the rates concession for last year.

In addition to general rates revenue increases each year, each local government also receives 'Interim Rates' throughout the course of the financial year. Interim Rates are additional rates revenue which result from new development and newly titled lots, and are calculated on a pro-rata basis for the financial year. Last year's Interim Rate revenue (pro-rata calculated) was \$35k, which would increase to around \$50-\$60k for the full time-period of the next financial year (2023-24).

Question: Lisa Glover

I think what you are saying is that there have been additional properties and land to the value of half a million dollars, is that correct?

Response: Director Corporate and Community

Interim Rates (i.e. new lots and development) is not the significant component of the increase. The increase in general rates revenue for last year is made up of the general rates increase (rounded to 6% is approximately \$400k), plus the one-off Rates Concession funded through the discontinued COVID Reserve (rounded to \$100k), plus Interim Rates.

Question: Lisa Glover

I still don't understand why the discount is included in the rates calculation, when it came out of a separate budget.

Response: Director Corporate and Community

If you review the Statement of Comprehensive Income for last year, the general rates increase and the one-off concession are both included.

To aid understanding of local government rating systems and processes (including the systems and process at this Shire) it could be worthwhile for the Shire to host an information session for interested community members.

Question: Lisa Glover

That Covid money that came out of the budget I think that was termed as a discount and not as a concession. Am I correct in saying that?

Response: Director Corporate and Community

It was approved as a concession in the budget.

6 PRESENTATIONS

6.1 PETITIONS

Nil.

6.2 PRESENTATIONS

Nil.

6.3 DEPUTATIONS

Deanna Shand in relation to Development Application P22022 Extractive Industry (Gravel) – Lot 10 Donnybrook-Boyup Brook Road, Yabberup.

Julianne Hilbers and Jay McCormick on behalf of Save Preston River Valley, presenting a position statement in relation to Development Application P22022 Extractive Industry (Gravel) – Lot 10 Donnybrook-Boyup Brook Road, Yabberup.

Ryan Soerja Djanegara, via teams, in relation to Development Application P22022 Extractive Industry (Gravel) – Lot 10 Donnybrook-Boyup Brook Road, Yabberup.

7 REPORTS OF OFFICERS

7.1 DIRECTOR OPERATIONS

7.1.1 VC MITCHELL PARK PROJECT – HOLD POINT 3 COMPLETION

Location	Shire of Donnybrook Balingup
Applicant	Shire of Donnybrook Balingup
File Reference	PWF18T2
Author	Ross Marshall, Director Operations
Responsible Officer	Ben Rose, Chief Executive Officer
Attachments	7.1.1 (1) VC Mitchell Park Project – Hold Point 3 Documentation
Voting Requirements	Simple Majority

EXECUTIVE RECOMMENDATION

That Council (the Commissioner):

- 1. Approves the completion of Contractual Hold Point 3 for the VC Mitchell Park Project.**
- 2. Directs the Chief Executive Officer to:**
 - 2.1 Re-apply to the WA Treasury Corporation for a loan of up to \$2.9m for the VC Mitchell Park Project; and**
 - 2.2 Subject to loan approval, above, instruct the Contractor to proceed with the Construction Phase of the VC Mitchell Park Project for the Construction Phase Sum of \$8,231,951.00, excluding GST.**
- 3. Acknowledges and thanks Talison Lithium Pty Ltd for its generous VC Mitchell Park Project contribution to the Shire of Donnybrook Balingup for \$3.0 million.**
- 4. Directs the Chief Executive Officer to continue seeking supplementary project funding from the State Government, which can be used to reduce the Shire’s loan funded contribution to the project.**
- 5. Endorses the Donnybrook Football Club (DFC) contribution to the VC Mitchell Park Project, as follows:**
 - 5.1 Financial contribution of \$225,000 comprising:**
 - 5.1.1 \$160,000 from the DFC by way of a self-supporting loan through the Shire of Donnybrook Balingup, including loan guarantors.**
 - 5.1.2 \$65,000 from the DFC (via funding from the West Australian Football Commission).**

5.2 A commitment from the DFC to provide in-kind support for minor works including, but not limited, to project site landscaping.

STRATEGIC ALIGNMENT

The following outcome from the Council Plan relate to this proposal:

Outcome	2	A safe and healthy community.
Objective	2.1	Improve access to facilities and services to support community health and wellbeing.
Priority Project	2.1.2	Implement the Donnybrook Community, Sporting, Recreation and Events Precinct (VC Mitchell Park) Project.

EXECUTIVE SUMMARY

In accordance with the VC Mitchell Park Contract with Perkins Builders (Contractor), the Contractual 'Hold Point 3 – Issued for Construction Documentation milestone has been completed, and Council (the Commissioner) is requested to approve progressing to Stage 2 – Construction Phase.

BACKGROUND

At its 16 November 2022 Special Meeting, Council approved a 'Design and Construct' contract with Perkins Builders, as follows:

That Council:

1. *Authorise the Chief Executive Officer to:*
 - 1.1 *Execute the attached (Confidential) Contract documentation, including minor contract modifications required to reflect Building and Construction (Securities of Payment) Act 2021;*
 - 1.2 *Apply to the WA Treasury Corporation for a loan of up to \$2.9m for the VC Mitchell Park Project; and*
 - 1.3 *Execute the Project Financial Assistance Agreement with the State Government for \$5,750,000.*
2. *Request the Chief Executive Officer to secure project funding from the Donnybrook Football Club to the value of \$250,000.*
3. *Request the Chief Executive Officer to secure project funding from the WA Football Commission / Australian Football League to the value of \$120,000.*

4. *Request the Chief Executive Officer to secure the ongoing project management services of Shape Management for the duration of the design and construction phases acting in the capacity of Superintendent under the Contract.*
5. *Request the Chief Executive Officer to provide a project update to relevant stakeholders, including sporting clubs.*
6. *Re-affirm its support for the ‘Blended Management Model’ as recommended in the Anna Dixon Consulting report.*
7. *Thank Shire staff and engaged contractors/consultants for their diligent, robust and professional approach to the Project.*
8. *Release this resolution in the meeting Minutes.*

As part of the contract, three ‘Hold Points’ were included, as a mechanism to control project risk, as follows:

\$481,451.00 (ex. GST)	Hold Point 1: Schematic Design
	Hold Point 2: Detailed Design
	Hold Point 3: Issued for Construction Documentation
\$8,032,314.40 (ex. GST)	Construction Phase: Demolition and construction (with 12 months defects liability period)

In accordance with the Contract, at the completion of each Hold Point, the Shire via Council (Commissioner) is required to formally consider completion of the that Hold Point, and authorise to moving to the next Hold Point, noting there is neither any obligation nor financial commitment to proceed past each Hold Point.

Hold Point 1 (Schematic Design) and Hold Point 2 (Detailed Design) were resolved by Council (Commissioner) on 22 March 2023 and 12 June 2023 respectively.

Hold Point 3

Hold Point 3 – Issued for Construction Documentation includes deliverables as described in the Contract with Perkins Builders. The Project Superintendent’s assessment of Hold Point 3 deliverables, in accordance with the Contract particulars, are as follows.

Item	Completed	Superintendent's Comments
Full Construction Documentation Plus Intellectual Property Ownership	Yes	Perkins Builders have provided documentation which reflects “For Construction Issue” based on initial review although currently issued “for Review”. Note that documentation was formally received on Friday 18 August 2023 and is being reviewed by the Project Team and Superintendent. Initial review has concluded scope is appropriate however more detailed reviews are underway and ahead of construction commencement to ensure completeness and that any issues can be

Item	Completed	Superintendent's Comments
		<p>captured and addressed prior to commencement of construction.</p> <p>Further details of documentation are provided in the table below.</p> <p>It is noted that the purpose of the Shire taking possession of Intellectual Property Ownership as described in the Hold Point schedule is if Perkins Builders are not engaged for subsequent project delivery and another Contractor is selected. While this IP Ownership will be provided to the Shire, it is not anticipated that a change in Contractor for delivery is being considered and therefore issue of provision of IP Ownership at this point is not a concern.</p> <p>More general comment that while documentation has been received as of 18 August 2023, the Shire will reserve rights to review documentation prior to commencement of construction to ensure that all scope items have been allowed for. Perkins Builders as the Design and Construction Contractor will be required to fulfil their obligations under the Contract and particularly in alignment with the requirements of the Functional Brief.</p> <p>Perkins Builders have provided a schedule of Functional Areas and alignment with the Functional Brief and Schematic Design. Commentary provided regarding the proposed design and areas is in alignment with expectations and agreement with the Shire and in review of the Functional Brief.</p>
Architectural	Yes	<p>CCN via Perkins Builders have provided documentation consistent with the requirements in Annexure E Clause 63 – Hold Points Schedule and as per Hold Point 3 – Agreement of Lump Sum and Proceeding to Construction.</p> <p>CCN have provided a full set of drawings which adequately describe the detail and quality of works to be delivered which is consistent with the requirements of the Functional Brief and any agreed amendments.</p> <p>Note that submission documentation addresses Safety in Design, Section J Compliance, and other code compliance requirements.</p> <p>Project Team are reviewing notes within the documentation that refers to Shire provided scope and equipment, including cross-referencing allowances in the Lump Sum for consistency.</p>
Structural / Civil	Yes	<p>Forth via Perkins Builders have provided documentation consistent with the requirements in Annexure E Clause 63 – Hold Points Schedule and as per Hold Point 3 –</p>

Item	Completed	Superintendent's Comments
		<p>Agreement of Lump Sum and Proceeding to Construction.</p> <p>Forth have provided a full set of drawings which adequately describe the detail and quality of works to be delivered which is consistent with the requirements of the Functional Brief and any agreed amendments.</p> <p>Specifications not included in document set however these are generally included as part of Standard Details which are in the issue of documentation.</p>
Mechanical	Yes	<p>Link via Perkins Builders have provided documentation consistent with the requirements in Annexure E Clause 63 – Hold Points Schedule and as per Hold Point 3 – Agreement of Lump Sum and Proceeding to Construction.</p> <p>Link have provided a full set of drawings which adequately describe the detail and quality of works to be delivered which is consistent with the requirements of the Functional Brief and any agreed amendments.</p>
Electrical	Yes	<p>ESC Engineering via Perkins Builders have provided documentation consistent with the requirements in Annexure E Clause 63 – Hold Points Schedule and as per Hold Point 3 – Agreement of Lump Sum and Proceeding to Construction.</p> <p>ESC Engineering have provided a full set of drawings which adequately describe the detail and quality of works to be delivered which is consistent with the requirements of the Functional Brief and any agreed amendments.</p> <p>Includes scope requirements for connection to Western Power infrastructure.</p>
Hydraulic	Yes	<p>Stantec via Perkins Builders have provided documentation consistent with the requirements in Annexure E Clause 63 – Hold Points Schedule and as per Hold Point 3 – Agreement of Lump Sum and Proceeding to Construction.</p> <p>Stantec have provided a full set of drawings which adequately describe the detail and quality of works to be delivered which is consistent with the requirements of the Functional Brief and any agreed amendments.</p> <p>Includes connection of sewer to existing mains sewer off site including on site pump stations and rising mains.</p>
Site services Infrastructure	Yes	<p>Part of Electrical and Hydraulic for Construction Documentation Design Reports and considered to be sufficiently documented to support For Construction Issue.</p>
Other	N/A	

Item	Completed	Superintendent's Comments
Safety In Design Report	Yes	Safety In Design Spreadsheet has been provided as part of the formal issue via Perkins Builders. This is largely complete however requires final cross checking to complete for this Hold Point. What has been issues is sufficiently detailed to address risks and issues anticipated at this point of the project.
Cross reference to Functional Brief	Yes	Perkins Builders have provided a schedule of Functional Areas and alignment with the Functional Brief and Schematic Design. Commentary provided regarding the proposed design and areas is in alignment with expectations and agreement with the Shire and in review of the Functional Brief.
Sourcing of a minimum of three (3) comparative market price tests for each trade package building up to a fixed Lump Sum. Trade package schedule is to be developed prior reaching Hold Point 3.	Yes	<p>Perkins Builders have provided a Trade Package schedule and have itemised based on Pavilion 1 and Pavilion 2. This schedule largely reflects previous Cost Estimate breakdowns developed through the Shire and is consistent with typical project breakdowns.</p> <p>Perkins Builders have provided as part of their pricing schedule details of subcontractors that have been approached to provide pricing submissions.</p> <p>It is noted that Perkins Builders have been unable to source three quotations in some instances and based on subcontractor reluctance. This is due to several factors including a currently heated subcontractor market, location of the project and perception of local subcontractor preference as well as perception of Perkins Builders preferred subcontractors.</p> <p>This has been discussed with Perkins Builders and agreed that sufficient competition can be demonstrated in developing the full Lump Sum Price through multiple pricing received particularly for critical trades. Perkins Builders have been advised that they may be required to submit quotations upon request and that future audits may require full disclosure of all quotations.</p> <p>Lastly, the proposed list of subcontractors has been discussed with representatives of the Shire, the Superintendent and Perkins Builders. It is noted that Perkins Builders have utilised local subcontractors or representatives where possible and there are no subcontractors that of concern or present a risk to the project in the opinion of the project team.</p>
Table showing discretionary scope (shopping list) with tested pricing for Principal review and future inclusion, this based on market tested pricing.	Yes	<p>Perkins Builders have been requested to provide a schedule of discretionary scope items and unit pricing if additional scope may be included or added.</p> <p>It is noted that based on the Lump Sum price received and scope as defined within the documentation, Perkins Builders have managed to include the majority of what is considered discretionary scope within the deliverables. While some Value Engineering has occurred through previous design stages and Hold Points, there has been limited compromise with regards to functionality, scope,</p>

Item	Completed	Superintendent's Comments
		<p>quality, or aesthetics with any changes agreed through stakeholder consultation.</p> <p>A key outcome of the deliverables for Hold Point 3 is the extent of scope included as part of Pavilion 2 which was subject to overall budget. Through development of the design and firming the Lump Sum, scope for Pavilion 2 now includes partial fitout to the existing pavilion, recladding of the external facades, entry statement and ramping forming the focal point for visitors on arrival as well as minimum scope being new changerooms and ablutions, re-roofing, and consolidation of spectator areas.</p> <p>A schedule of rates will be provided and agreed prior to commencement of construction to ensure costs are consistent with market conditions if additional scope is to be considered.</p>
<p>Contractor lump sum price based on agreed selected packages following consultation and negotiation with the Shire and representatives. This should demonstrate best value that conforms to the available budget with detailed listing of inclusions, exclusions, and provisional sums.</p>	<p>Yes</p>	<p>Perkins Builders have submitted a Lump Sum proposal as of the 21 July 2023 and remains valid for 60 days. This Lump Sum is for the sum of \$8,858,402 excluding GST and includes Stage 1 Fees already committed to and largely expended.</p> <p>The scope has been discussed with key Stakeholders in several forums including one to one discussion through Shire representatives and the Project Team. The scope is largely agreed as being a good outcome for stakeholders and sporting groups noting compromises have been agreed although functional requirements have been maintained. Formal support for the project design has been received from several sporting groups including Football and Tennis which reflects agreement that the deliverables for the project are acceptable.</p> <p>The Superintendent has since discussed this Lump Sum and note that there are several line items which can be either removed or reduced which will in turn reduce the overall Lump Sum . These being:</p> <ol style="list-style-type: none"> 1. Contingency – Allowance of \$100,000 over and above the Shire's contingency. This allowance was intended to cover market fluctuations in material and trade pricing which affected all Contractors (not just Perkins Builders). While this remains a risk and should be allowed for, Perkins Builders have agreed that this can be removed from the Contract Sum and be controlled by the Shire. 2. Provisional Sum – Retaining Wall. Allowance of \$50,000 for potential latent conditions relating to the connection between Pavilion 1 and Pavilion 2. Based on advice from Perkins Builders this is now largely mitigated and can reduce the Provisional Sum from \$50,000 to \$15,000. 3. Electrical (Western Power) allowance. Contract Sum allows \$100,000 for Western power headworks based on Western Power online

Item	Completed	Superintendent's Comments
		<p>calculator. Based on advice from Perkins Builders electrical consultant it is anticipated that this may reduce by up to \$25,000.</p> <p>On this basis, it is anticipated that the Lump Sum value will be reduced by \$150,000 resulting in a value of \$8,708,402 ex GST.</p> <p>In comparison to the Contract Price in the Instrument of Award being \$8,513,765.40 ex GST., this represents an increase in price by \$194,636.60 ex GST.</p> <p>The Lump Sum contains several other Provisional Sums albeit small in value and risk with the majority of previous Provisional Sums now firmed up and included in the Lump Sum price.</p> <p>Considering the formulation of the budget timing and significant fluctuations in market pricing as well as refinement of scope and inclusion of Pavilion 2 scope previously discounted, this Lump Sum is seen to demonstrate high value for money.</p>
<p>Works Programme including critical path, key milestones, any Separable Portions, and allowances for float.</p>	<p>Yes</p>	<p>Perkins Builders have provided a draft Works Program which commences with works on site Monday 9 October 2023 and Practical Completion being mid to late October 2024. Commencement is cognisant to Football expectations on completing the 2023 season with demolition occurring post this date.</p> <p>Overall durations are in alignment with expectations and are in fact slightly reduced from original durations. The program in its current form meets project requirements.</p>

FINANCIAL IMPLICATIONS

Council (the Commissioner) approval to proceed to Stage 2 – Construction Phase incurs a further commitment of \$8,226,951.00 (ex GST) for the Construction Total Fixed Lump Sum.

Current Expenditure

Project expenditure to date is \$765,790.02. This amount includes funds acquitted under the initial \$250,000 State Government Grant (via Financial Assistant Agreement (FAA1)) and other costs or commitments realised to date, including the following.

In accordance with Contract between the Shire and Perkins Builders (Contractor), the following expenditure has been incurred/committed:

- Hold Point 1 to 3 inclusive – \$481,451.00 + GST – the Contractor is entitled to this amount. To date the Contractor has claimed \$427,301.60.

In addition, Project Management / Superintendent fees for Shape Management, the following expenditure has been incurred/committed:

- Fees for January 2023 to July 2023 inclusive – the Superintendent is entitled to \$40,908 +GST. To date the Superintendent has claimed \$34,090.00.

Other expenditure incurred in the current stage includes the following.

RCH Consulting	Project Peer Review and Consultation	\$12,814.00
Townsmore	Catering Design and Consultation	\$ 3,259.64
SW Audio Visual	Audio Visual Design	\$ 1,320.00
McDonald Fencing	Fencing in-way of hockey and tennis	\$10,045.00
AMD Accountants	Audit of Accounts for FAA1 Acquittal	\$ 1,250.00
Jackson McDonald Lawyers	Legal advice for AS4902 contract	\$ 2,500.00

Project Funding

Project funding sources have been revised as follows (changes highlighted in *italics*):

DESCRIPTION	SOURCE	AMOUNT	NOTES
FAA - 1 - DLGSCI Funding	State Government	\$250,000	Expended. Acquitted.
FAA – 2 - DLGSCI Funding	State Government	\$5,750,000	FAA contract executed by DLGSC. <i>Executed by the Minister 2 March 2023.</i>
WA Treasury Corporation Borrowings (Loan)	Shire	\$2,900,000	Loan application lodged 9 February 2023; <i>approval received 15 March 2023. Requires re-lodging under Shire Budget for new financial year.</i>
Proceeds of land sale (lots 3 and 4 Bridge Street, Donnybrook) to WaterCorp	Shire	\$100,000	Loan application reduced from \$3m to \$2.9m.
Hockey Pitch – Insurance Claim (stolen turf)	Shire (insurance)	\$41,229	Expended. Acquitted.
Hockey Pitch – Trust Fund – Cash in lieu of POS – Donnybrook (Mead Street land sales)	Shire	\$188,457	Expended. Acquitted.
Hockey Pitch – Trust Fund – Cash in lieu of POS – Donnybrook (General)	Shire	\$20,314	Expended. Acquitted.
Reserve – Land Development	Shire	\$250,000	Confirmed.
PROVISIONAL TOTAL		\$9,500,000	Funding available without DFC and WAFC contribution
<i>WAFC Grant – Female Changerooms/Other</i>	<i>WA Football Commission</i>	<i>\$120,000</i>	<i>Confirmed.</i>
<i>WAFC Grant – additional funds commitment.</i>	<i>WA Football Commission</i>	<i>\$15,000</i>	<i>Confirmed.</i>
<i>WAFC Grant – to offset DFC contribution.</i>	<i>WA Football Commission</i>	<i>\$65,000</i>	<i>Confirmed.</i>

<i>Donnybrook Football Club (DFC) Contribution</i>	<i>Donnybrook Football Club</i>	<i>\$160,000</i>	<i>Confirmed.</i>
<i>Talison Community Investment Program (CIP)</i>	<i>Talison CIP</i>	<i>\$3,000,000</i>	<i>Confirmed.</i>
TOTAL		\$12,860,000	<i>Funding available</i>

Target Design and Construction Budget

Upon execution of the Contract with Perkins Builders in December 2022, the following Target Budget was estimated.

PERKINS CONTRACT OVERVIEW	
STAGE 1 DESIGN PHASE	
Professional Fees – Schematic Design Hold Point 1 to Issue for Construction Design Hold Point 3 + Perkins Design Management Fees.	\$481,451.00
STAGE 2 CONSTRUCTION PHASE	
Construction Total – Fixed Lump Sum	\$8,032,314.40
TOTAL – PERKINS CONTRACT AWARD VALUE	\$8,513,765.40

The Perkins Builders Target Budget has been developed throughout Stage 1 – Design Phase, market tested in June 2023 and presented for Council (Commissioner) Approval as follows.

REVISED PERKINS CONTRACT OVERVIEW	
STAGE 1 DESIGN PHASE	
Professional Fees – Schematic Design Hold Point 1 to Issue for Construction Design Hold Point 3 + Perkins Design Management Fees.	\$481,451.00
STAGE 2 CONSTRUCTION PHASE	
Construction Total – Fixed Lump Sum	\$8,226,951.00
TOTAL – PERKINS CONTRACT AWARD VALUE	\$8,708,402.00

In addition, Shape Management’s fee as Superintendent for the Construction Phase is \$6,818.00 per month, equating to a further commitment of \$115,906.

Contract Construction Sum Movement

The increase in the Construction Total – Fixed Lump Sum from \$8,032,314.40 to \$8,226,951.00, a difference of \$194,636.60 is set out as follows:

- Rationalisation and reduction of overall floor area of approximately 130m2 - included.
- Add new roofing to existing Pavilion 2 (including safe roof access) - value approximately \$27,000.
- Add new compliant north entry door with weather protection (roof cover) to Pavilion 2 - included.
- Add new entry statement as steel portal frames wrapped around north elevation of Pavilion 2 including stainless steel arbor wiring – value approximately \$27,500.
- Add external cladding of existing Pavilion 2 building – value approximately \$22,500.

- Add dry lining of all internal walls to Pavilion 2 building – value approximately \$12,500.
- Add new internal ceilings to whole of existing Pavilion 2 building – value approximately \$17,500.
- Include demolition for removal and make good of 2 x existing toilets to Pavilion 2 - value approximately \$2,500.
- Include demolition of existing internal walls to create new store and extend kitchen to Pavilion 2 to Pavilion 2 - value approximately \$2,500.
- Add new external paving and retaining walls around existing Pavilion 2 and provide DDA compliant access - value approximately \$36,000.
- Delete Provisional Sum for pathways relating to the “above” item and access to / from the oval (Pavilion 1) and tennis courts (Pavilion 2). Localised paving to be carried out by the Shire upon establishment of actual levels. Reduction in Contract Sum of \$98,450.
- Add new balustrading along top of existing retaining wall between Pavilion 1 and 2 - value approximately \$7,500.
- Add canteen, bar and kitchen fitout and equipment to Pavilion 1 - value approximately \$135,550.
- Conversion of electrical, sewer and water supply infrastructure Provisional Sums to fixed sums and removal of associated risk.
- Delete Builder’s Contingency from the Fixed Lump Sum – original sum was \$100,000.
- Reduce existing retaining wall contingency sum as risk has been mitigated during design – original sum was \$50,000 revised sum is \$15,000.
- Reduce Authority Fees to actual (previously estimated as a percentage) – original sum was \$114,118.37, revised sum is \$61,521.

Known Project Construction Costs Risks

The known project cost risks include the following:

- Western Power Transformer Provisional Sum of \$75,000 included in Construction Sum – reduced from \$100,000.
- Oval and Tennis Court Lighting Infrastructure (Original) Provisional Sum of \$25,000 included in Construction Sum.
- Unforeseen and demonstrated material price escalation. Provisional Sum removed from Target Budget to be managed in accordance with the Contract Variation mechanism by the Superintendent.
- Provisional Sums of \$60,000 for Signage, Audio Visual Hardware, Landscaping Infrastructure and Retaining Wall Remedial Works – reduced from \$95,000, mainly due to reduced risk of works in way of the existing retaining wall.

Unknown Project Construction Costs Risks

The unknown project cost risks will be managed in accordance with the Contract and the Variation mechanism, administered by the Superintendent. The Contingency Sum of \$500,000.00 (approximately 6%) has been reserved for management of this risk.

Project Forecast Costs

Project costs are summarised as follows:

DESCRIPTION	AMOUNT
Funds expended to date	\$765,790.02
Balance outstanding on Design Phase (Perkins Builders)	\$54,149.40
Construction Phase	\$8,226,951.00
Shape Management	\$115,906.00
Shire Contingency	\$500,000.00
Furniture, Fixtures and Equipment Budget	\$200,000.00
FORECAST COST	\$9,865,796.42
PROJECT FUNDING	\$12,860,000.00

Borrowings

The loan application for \$2.9M was lodged (9 February 2023) with WA Treasury Corporation and approved earlier this year (15 March 2023). Renewal of the loan application is required as the Shire has not been able to activate the loan before the WATC standard three-month expiration term. Pending Council Resolution, the loan application will be re-submitted for approval.

As posted to the Shire’s website, the “VC Mitchell Park Project: Community Information Package”, “Attachment L - WATC Loan Application” provides further detail for the loan application.

Additional Funds

The Shire has partnered with Talison Lithium Australia and received a \$3 million(M) boost for the VC Mitchell Park Project. This supplementary funding will be used to complete associated and supporting works.

The Shire is pursuing additional supplementary funding from the following sources.

- Government – Based upon recent precedents for top up funding allocated to East Fremantle Oval Precinct (Town of East Fremantle) and the Hands Oval Development (City of Bunbury), the Shire has written to the State Government requesting supplementary funding.
- Lottery West – Pending the outcome for additional Government funding, the Shire will engage with Lottery West for supporting infrastructure funding.
- Various Grants – The Shire will continue to identify and pursue grant funding opportunities as and when they become available.

If successful, supplementary Government funding will be used to offset or reduce the Shire's loan borrowings.

POLICY COMPLIANCE

Nil.

STATUTORY COMPLIANCE

There are no specific statutory compliance considerations outside of the contractual considerations with Perkins Builders.

CONSULTATION

- Consultation with individual sports clubs (particularly tennis and football) has been continuing as part of the design development process.
- Perkins Builders delivered a presentation to the Commissioner and key staff on 22 February 2023 regarding the draft Schematic Design Report.
- A comprehensive Project Community Information Package was uploaded to the Shire website (and promoted via social media) on 7 March 2023.
- The Schematic Design report was uploaded to the Shire website (and promoted via social media) on 9 March 2023.
- Perkins Builders delivered a presentation to the Commissioner and key staff on 31 May 2023 regarding the draft Detailed Design Report.
- By way of a "Public Information Session" a presentation for the community with particular focus for the adjacent residents was presented on Sunday 11 June 2023. Post the Information Session - Summary Notes on the Detailed Design Report were uploaded to the Shire website.
- The Superintendent and Perkins Builders delivered a Hold Point 3 Deliverables to the Commissioner, Shire Officers and Project Consultation Group on Wednesday 1 August 2023.
- In accordance with the Financial Assistance Agreement, the Hold Point 3 Architectural Design has been submitted to the Department of Local Government, Sport and Cultural Industries (DLGSCI) for approval. The DLGSCI Industries provided approval of the final construction design 18 August 2023, confirming the design is consistent with the intent of the funding commitment.
- Donnybrook Tennis Club provided a letter of support (dated 14 August 2023) for the proposed upgrades to the clubrooms (Pavilion 2) as in the current plans, and confirmed they are in support of the project commencing.
- Donnybrook Football Club provided a letter of support (dated 21 August 2023) for the proposed design (Pavilion 1) and formally confirmed their monetary and in-kind contribution.

OFFICER COMMENT

The deliverables, as presented by Perkins Builders, for Hold Point 3 have been reviewed in accordance with the Contract by Shire staff and the Project Superintendent.

The Project Superintendent has advised that Contract deliverables for Hold Point 3 have been satisfactorily achieved. On this basis the Superintendent and Shire Officer recommend the project can proceed to Stage 2 Construction Phase, upon formal resolution by the Council (Commissioner).

COUNCIL RESOLUTION 105/23

MOVED: Commissioner McGowan

That Council (the Commissioner):

- 1. Approves the completion of Contractual Hold Point 3 for the VC Mitchell Park Project.**
- 2. Directs the Chief Executive Officer to:**
 - 2.1 Re-apply to the WA Treasury Corporation for a loan of up to \$2.9m for the VC Mitchell Park Project; and**
 - 2.2 Subject to loan approval, above, instruct the Contractor to proceed with the Construction Phase of the VC Mitchell Park Project for the Construction Phase Sum of \$8,231,951.00, excluding GST.**
- 3. Acknowledges and thanks Talison Lithium Pty Ltd for its generous VC Mitchell Park Project contribution to the Shire of Donnybrook Balingup for \$3.0 million.**
- 4. Directs the Chief Executive Officer to continue seeking supplementary project funding from the State Government, which can be used to reduce the Shire's loan funded contribution to the project.**
- 5. Endorses the Donnybrook Football Club (DFC) contribution to the VC Mitchell Park Project, as follows:**
 - 5.1 Financial contribution of \$225,000 comprising:**
 - 5.1.1 \$160,000 from the DFC by way of a self-supporting loan through the Shire of Donnybrook Balingup, including loan guarantors.**
 - 5.1.2 \$65,000 from the DFC (via funding from the West Australian Football Commission).**
 - 5.2 A commitment from the DFC to provide in-kind support for minor works including, but not limited, to project site landscaping.**

CARRIED: Commissioner McGowan

7.1.2. DEVELOPMENT APPLICATION P22022: EXTRACTIVE INDUSTRY (GRAVEL) – LOT 10 DONNYBROOK-BOYUP BROOK ROAD, YABBERUP

Location	Lot 10 Donnybrook-Boyup Brook Road, Yabberup
Applicant	E Stroud
File Reference	A4781 (P22022)
Author	Philip Diamond, Planning Officer
Responsible Officer	Kira Strange, Acting Manager Development Services
Attachments	7.1.2 (1) – Locality Plan 7.1.2 (2) – Site and Staging Plans 7.1.2 (3) – Application Management Plan 7.1.2 (4) – Weed Management Plan 7.1.2 (5) – Water Management Plan 7.1.2 (6) – Noise Management Plan 7.1.2 (7) – Dust Management Plan 7.1.2 (8) – Preliminary Rehabilitation Plan 7.1.2 (9) – Dieback Brochure 7.1.2 (10) – Visual Impact Assessment 7.1.2 (11) – Original Application (18 May 22, superseded) 7.1.2 (12) – DBCA Submissions 7.1.2 (13) – DMIRS Submissions 7.1.2 (14) – DPIRD Submissions 7.1.2 (15) – DPLH Submissions 7.1.2 (16) – DWER Submissions 7.1.2 (17) – MRWA Submissions 7.1.2 (18) – PTA Submissions 7.1.2 (19) – Full Copy of Public Submissions 7.1.2 (20) – Shire Request for Further Information
Voting Requirements	Simple Majority

EXECUTIVE RECOMMENDATION
<p>That Council (the Commissioner):</p> <p>Pursuant to Schedule 2, Part 9, clause 68 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions)</i>, and the provisions of the <i>Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7)</i>, refuses application reference P22022, and the accompanying plans (Attachments 7.1.2 (2) to (10)), for an Extractive Industry (Gravel) at Lot 10 Donnybrook-Boyup Brook Road, Yabberup, for the following reasons:</p> <p><u>Provisions of the Priority Agriculture Zone</u></p> <p>1. In relation to Part 3, clause 3.6.2 of LPS7 and clause 67(2) (a) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed development will be consistent with, and not contrary to, the aims and objectives of the Priority Agriculture zone, specifically subclauses (i), (iv), (vii), and (ix) as they relate to the protection and management of</p>

agricultural land resources, biodiversity, and the promotion of intensive agricultural land uses.

- 2. In relation to clause 67(2) (fa) of the Deemed Provisions, the proposal is inconsistent with the Shire of Donnybrook Balingup Local Planning Strategy, specifically clause 5.2.4 and 5.5.7, as it may impact the landscape associated with the identified tourist route of the Donnybrook-Boyup Brook Road.**
- 3. In relation to clause 4.54.10 of LPS7, in considering the reasons for refusal stipulated where the local government shall refuse an application for development approval, in the opinion of the local government the proposal will:**
 - a. Adversely affect the rural landscape (subclause (i));**
 - b. Adversely impact upon the agricultural use of the land and adjacent/nearby areas (subclause (ii));**
 - c. result in the impacts of the proposed use/development not being adequately contained on the application site (subclause (vi)); and**
 - d. in the opinion of the local government, result in an undesirable planning outcome (subclause (vii)).**

Noise Management

- 4. In relation to Part 3, clause 67(2) (c), (f), (m) and (n), of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed noise management measures can reasonably, practicably and/or realistically achieve compliance with the *Environmental Protection (Noise) Regulations 1997*. This will result in an unacceptable impact to the noise sensitive receivers within the applicable buffer area of the site.**

Land Degradation

- 5. In relation to clause 67(2) (a), (c), (q) and (za) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed extraction will not jeopardise the future agricultural use of the land in relation to biodiversity, soil degradation and protection of the land as a long-term agricultural resource.**

Visual Amenity and Compatibility of Development

- 6. In relation to clause 67(2) (m) and (n) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed development is compatible within its setting and surrounding area and will not adversely affect the amenity and scenic values of the locality in relation to;**
 - a. the bunds, topsoil and overburden stockpiles;**
 - b. the location of areas for light and heavy vehicular parking; and**

c. the scale of the development in relation to the staging of the extraction and rehabilitation.

ADVICE NOTES:

A. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. An application must be made within 28 days of the determination.

STRATEGIC ALIGNMENT

The following outcomes from the Council Plan 2022 – 2032 relate to this proposal:

Outcome	6	The built environment is responsibly planned and well maintained
Objective	6.1	Ensure sufficient land is available for residential, industrial and commercial uses.

EXECUTIVE SUMMARY

An application for development approval was received by the Shire on 18 May 2022 for an Extractive Industry (Gravel) at Lots 10, 3671, 2064 and 2061 Donnybrook-Boyup Brook Road, Yabberup.

The application was initially advertised to all properties within a 1 kilometre radius of the subject lot boundaries, for a period of 2 weeks. After substantial community requests for an extension, the period for public advertising was extended by an additional 2 weeks. In total, 72 submissions were received at the conclusion of the public advertising period (71 submissions objecting, 1 submission supporting). In addition, one external authority objected to the proposal.

Following a preliminary review, including consideration of all public submissions, internal referral to relevant Shire internal departments, and external agency responses, additional information was requested from the applicant. On 27 March 2023, the applicant provided an amended application, including the reduction of the extraction area to wholly within Lot 10, as well as additional information in response to the Shire's technical request to address a number items.

Following an extensive assessment, including additional internal and external stakeholder referrals, Shire officers have concluded that the information presented does not adequately address a number of key matters for consideration, nor are they satisfied that the proposal, including all information as presented, could be suitably managed through conditions of approval.

Therefore, it is recommended that Council (the Commissioner) refuse the application for the reasons outlined within the Executive Recommendation.

BACKGROUND

On 18 May 2022, the Shire received an application for development approval for an extractive industry (gravel) at Lots 10, 3671, 2064 and 2061 Donnybrook-Boyup Brook Road, Yabberup. A preliminary assessment of this application was completed and additional information was requested of the applicant (Attachment 7.1.2 (20)). In response to this request, the applicant submitted revised information, including amendments to the initial proposal, on 27 March 2023.

Broadly, the proposal was reduced to be wholly within the property boundaries of Lot 10, reducing the overall size of the proposal and, to an extent, the stages of the extraction. This amended application is the subject of this report and assessment (see below for comparison).

Application Details	Initial Application 18 May 2022	Amended Application 27 March 2023
Lots	<ul style="list-style-type: none"> • Lot 10 • Lot 3671 • Lot 2064 • Lot 2061 	<ul style="list-style-type: none"> • Lot 10
Lot Area	<ul style="list-style-type: none"> • 40.78ha (Lot 10) • 37.57ha (Lot 3671) • 32.28ha (Lot 2064) • 64.91ha (Lot 2061) 	<ul style="list-style-type: none"> • 40.78ha
LPS7 Zoning	<ul style="list-style-type: none"> • Priority Agriculture (Lots 10 and 3671) • General Agriculture (Lots 2064 and 2061) 	<ul style="list-style-type: none"> • Priority Agriculture
Permissibility in the Zone	<ul style="list-style-type: none"> • 'A' use (Lots 10 and 3671) • 'A' use (Lots 2064 and 2061) 	<ul style="list-style-type: none"> • 'A' use
Hours of Operation	Monday-Friday 7:00 am to 17:00 pm	Monday-Friday 7:00 am to 19:00 pm Saturday 7:00am to 16:00 pm
Total Extraction Area	37ha	14.5ha
Number of stages	6	3
Average Size of Each Stage	~6.2ha	~4.83ha
Extraction Length (Years)	8 Years 10 Years for complete rehabilitation	5 Years 6 Years for complete rehabilitation
Extraction Volume	740,000 tonnes total 74,000 tonnes annually	262,400 tonnes total 52,488 tonnes annually
Extraction Depth	1m	1m

Application Details	Initial Application 18 May 2022	Amended Application 27 March 2023
Truck Haulage Volume	Max.17 trucks per day, dependent on demand.	Max. 13 trucks per day, dependent on demand.
Haulage Route	Not provided.	Indicated to proceed towards Donnybrook along Donnybrook-Boyup Brook Road.

As in the above table, Lot 10 is zoned Priority Agriculture under the Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7).

The proposed development is considered consistent with the definition of ‘industry – extractive’ within LPS7 which means *“an industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone or similar material from the land and includes the treatment and storage of those materials or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry-mining”*.

Under LPS7, ‘industry – extractive’ is an ‘A’ use in the Priority Agriculture zone which means that *“the use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the deemed provisions”*. In this regard, all applications for an extractive industry on Priority Agriculture zoned properties require prior approval from the Shire.

Lot 10 is bounded by Donnybrook-Boyup Brook Road to the north (although separated by a rail reserve) with access directly from a road reserve off Donnybrook-Boyup Brook Road (Attachment 7.1.2 (1)). Donnybrook-Boyup Brook Road is identified within the Shire’s Local Planning Framework as a key tourist route. Clauses 5.2.4 and 5.5.7 of the Shire’s Local Planning Strategy identifies the importance of protecting the landscapes associated with identified tourist routes within the Shire, with Donnybrook-Boyup Brook Road identified as one of these routes. This also has statutory protection through Special Control Area 7 of LPS7.

The subject lot form part of an overall agriculture property owned by the proponent of which a portion currently contains vineyards. Private rural land surrounds the property which is generally used for agriculture and other rural lifestyle endeavours.

In accordance with the provisions of the LPS7, the Environmental Protection Authority (EPA) Guidance Statement No. 3, and the requirements of the *Planning and Development (Local Planning Scheme) Regulations 2015*, the initial application was referred to;

- All properties within a 1,000m radius of the subject lot boundaries of the initial application (i.e. 1,000m of Lots 10, 3671, 2064 and 2061);
- The Shire’s internal Development Control Unit; and
- External government agencies, including:
 - Department of Planning, Lands and Heritage (DPLH) (Aboriginal Heritage);
 - Department of Primary Industries and Regional Development (DPIRD);

- Department of Mines, Industry, Regulation and Safety (DMIRS);
- Department of Biodiversity, Conservation and Attractions (DBCA);
- Department of Water and Environmental Regulation (DWER);
- Public Transport Authority (PTA); and
- Main Roads Western Australia (MRWA)

Further details regarding the advertising, consultation and submissions received are available in 'Consultation' below.

Following the receipt of the additional information including amended application details, a thorough assessment and further consultation with external agencies was undertaken.

The detailed review and assessment of the amended proposal is the subject of this report.

In light of Council's delegation parameters and the significant number of submissions and community interest, the application is presented to Council (the Commissioner) for determination.

FINANCIAL IMPLICATIONS

All relevant application fees have been paid by the applicant.

During the course of this assessment, Shire officers engaged ALTUS Planning to undertake an independent desktop review of the application and relevant information. This review was undertaken at a cost of \$1,360 (exc. GST).

In addition, should the applicant exercise their rights to have the decision reviewed by the State Administrative Tribunal, there will likely be additional resourcing required (staff time and/or the cost of appointing a consultant to represent the Shire).

POLICY COMPLIANCE

The proposal has been assessed against the relevant and applicable provisions of the following policies.

Local Planning Policy 9.7 – Interpretation (Extractive Industry) (LPP 9.7)

LPP 9.7 states that where extraction of raw material is for personal use, it is not considered an extractive industry. Therefore, LPP 9.7 is not applicable to this proposal as it is for a commercial extraction operation.

State Planning Policy 2.4 – Planning for Basic Raw Materials (SPP 2.4)

Applicable clauses of SPP 2.4 and the associated guidelines have been assessed in the table below.

SPP 2.4 Requirement	Officer Comment
<i>Clause 6.3 – Subdivision and development applications to demonstrate:</i>	
<p><i>(a) that land uses are compatible by avoiding sensitive land uses within SGS areas and/or extraction site separation distances as outlined in the EPA Guidance Statement No 3 – Separation Distances between Industrial and Sensitive Land Uses; Buffer distance required is 1000m without management measures</i></p>	<p>EPA Guidance Statement No 3 notes a 1,000m buffer should be implemented for proposals of this nature. Where a 1,000m buffer cannot be achieved, management measures should be implemented (i.e. noise management, dust management etc.), that demonstrate compliance with the relevant regulations and/or that can be implemented through reasonable conditions of approval</p> <p>There are 10 potentially noise sensitive structures within the 1,000m buffer of the extraction area, with the closest being 510m away.</p> <p>Refer to Officer’s Comment for further assessment.</p>
<p><i>(d) the application of vertical separation distances to groundwater and other management measures to protect water resources where an extractive industry is proposed.</i></p>	<p>The applicant has proposed to extract material to a maximum of 1m depth. DWER have advised that as the extraction is within an upland area, the interception of groundwater is unlikely at upper portions of the landscape. However, DWER have advised there is a medium risk of interception at lower parts of the landscape.</p> <p>DWER have advised they are satisfied that the placing of conditions restricting extraction to a maximum of 1m depth and prohibiting dewatering works would satisfy any potential concern to the interception of groundwater.</p> <p>If the application is approved, relevant conditions should be placed consistently with DWER’s advice.</p>

SPP 2.4 Guideline Requirement	Officer Comment
<p><i>Clause 4 – Assessment of Proposals for Extractive Industries</i> <i>Assessment of proposals to establish, extend or expand an extractive industry, as well as managing the potential impacts of the operation, should consider the following:</i></p>	
<p><i>(a) the avoidance or mitigation of conflicts and detrimental effects on existing and future sensitive land uses and agricultural land in the surrounding</i></p>	<p>Proponent has provided a noise and dust management plan which have been reviewed by DWER. Refer to the assessment to DWER’s comments in</p>

SPP 2.4 Guideline Requirement	Officer Comment
<i>areas (that is, noise, dust, vibration, blasting and vehicular traffic);</i>	<p>‘Consultation’ in relation to noise and dust management.</p> <p>In relation to traffic, Donnybrook-Boyup Brook Road is a primary distributor road under the jurisdiction of MRWA. The proposals impact on traffic flow has been assessed by MRWA who have advised that they have no concerns with the proposal (subject to the upgrade condition as required in the officer’s assessment against clause 4 (j) below).</p>
<i>(b) having an effective consultation process with appropriate stakeholder engagement, including advertising as required;</i>	<p>Consultation has been undertaken in accordance with the <i>Planning and Development (Local Planning Scheme) Regulations 2015</i>.</p> <p>Additional consultation by the proponent at various stages of the proposal, as recommended by DWER and the Shire, could be conditioned in the case of an approval.</p>
<i>(e) the quantity and quality of resource and scale and duration of extraction</i>	<p>The proponent has indicated that there is a relatively high quantity of gravel resource on the lot.</p> <p>The duration of extraction has been reduced and is relatively standard for a proposal of this nature.</p> <p>Notwithstanding the proponent has reduced the overall size of the proposal, the stages of the extraction have only slightly been reduced to ~4.5ha. This is still considered particularly high/large in the context of the surrounding area and associated impacts.</p>
<i>(f) management of finished ground levels for BRM extraction and site rehabilitation</i>	<p>A contour map of final landform has not been provided which would assist in this assessment, however, is not typically required at this stage. DWER and the Shire have acknowledged that this element would be typically conditioned in the case of approval with appropriate financial bonds in place to ensure the site is suitably rehabilitated.</p>
<i>(g) the site’s potential for sequential land use and the ability to rehabilitate</i>	<p>The applicant has proposed a staged approach to extraction operations in 3,</p>

SPP 2.4 Guideline Requirement	Officer Comment
<p><i>the land in a manner compatible with its long-term use as defined by the local planning scheme (see note below);</i></p>	<p>approximately 4.5ha areas. However, the plan of rehabilitation (within Attachment 7.1.2 (3)) indicates that the rehabilitation for the first stage would not be completed until the extraction for the last stage has concluded.</p> <p>The proponent has indicated that site would be rehabilitated to pasture. However, DPIRD have indicated that the extraction of the gravel will have a negative impact on the capability of the land for viticulture and perennial horticulture (as it will remove the free draining part of the soil). This may have long term impacts on the viability and productivity of the land.</p>
<p><i>(h) the ability to stage the extraction operations to avoid conflicts with any adjacent sensitive land uses;</i></p>	<p>The proponent has not sufficiently demonstrated that the proposed staging will reduce the potential impacts to adjacent sensitive land uses.</p>
<p><i>(j) the availability and suitability of road access;</i></p>	<p>The proposal includes use of a local road reserve to access Donnybrook-Boyup Brook Road (MRWA road) (Attachment 7.1.2 (1))</p> <p>The local road reserve is not maintained by the Shire and has informally been managed by the proponent.</p> <p>MRWA have noted that the existing intersection between this local road reserve would be inadequate for the proposal. They have requested that the intersection and the first 30m of the road reserve be upgraded to a bitumen sealed standard.</p> <p>The Shire’s works department have further requested that this upgrade be extended to 100m from the intersection.</p> <p>The above upgrade requirements would need to be conditioned in the case of an approval to ensure they are completed prior to the commencement of operations. It is noted that the applicant has acknowledged and agreed to this requirement.</p>

SPP 2.4 Guideline Requirement	Officer Comment
<p><i>(k) the effect of the proposed extractive industry on any native flora and fauna and general landscape values;</i></p>	<p>Native flora or fauna is not specifically identified within the extraction area as it is currently vegetated with introduced vineyard species. A buffer has been included to protect identified native vegetation to the south, west and north of the extraction area.</p> <p>As outlined in Clause 4.7 (below), the proponent has not sufficiently demonstrated that the proposal will not to the surrounding landscape values, particularly as it relates to the scale and size of the extraction areas and associated bunds, topsoil and overburden stockpiles.</p>
<p><i>(l) how all water resources will be protected during BRM extraction including a separation distance to the defined groundwater level plus other management measures to protect water resources during BRM extraction;</i></p>	<p>The applicant has provided a water management plan which has been reviewed by the Shire’s Works and Services department and DWER.</p> <p>DWER have indicated that due to the height of the extraction area in the topography of landscape, there is low to medium risk of impact to the water table. DWER have advised that, in the case of an approval, this can be suitably managed through a condition restricting extraction to a maximum of 1m depth and prohibiting dewatering works.</p> <p>DWER have indicated that based on the slope of the subject lot, “there may be the potential for sediment transport downslope from the EIL areas into the downslope properties (and Donnybrook-Boyup Brook Road) during major storm events”.</p> <p>The Shire’s Works and Services department have reviewed the provided stormwater management measures in the context of DWER’s comments. They are satisfied that stormwater will be appropriately managed from the proposal to ensure that surrounding infrastructure, waterways etc. are not negatively impacted – noting that the measures would need to be conditioned within any approval.</p>
<p><i>(o) sites of cultural and historic significance on and near the land,</i></p>	<p>The extraction area is located wholly outside of any formally registered sites of Aboriginal</p>

SPP 2.4 Guideline Requirement	Officer Comment
<p><i>having regard to how they are likely to be integrated with subsequent land uses;</i></p>	<p>significance. However, there are a number of nearby waterways that are identified.</p> <p>DPLH has advised that the proposal does not intersect any known Aboriginal sites or heritage places and that approval under the <i>Aboriginal Heritage Act 1972</i> would not be required. This advice was received prior to the commencement of the <i>Aboriginal Cultural Heritage Act 2021</i> (current legislation) on 1 July 2023.</p> <p>In any case, an approval issued by the local government does not negate any requirement of the proponent to obtain additional approvals under the relevant legislation. Advice of this nature would be provided in the case of an approval.</p>
<p><i>(p) location and stability of excavations, stock piles and overburden dumps.</i></p>	<p>The locations of the stockpile and overburden have been illustrated on the site plan.</p> <p>Refer to 4.7 below for further assessment.</p>
<p>4.3 Operating Hours <i>Operating hours should be included as a condition of approval. Operating hours are generally between 5am and 5pm, Monday to Saturday, however a local government may set its own conditions, for instance to support major infrastructure projects.</i></p>	<p>Proposed operating hours are 7am to 7pm Monday to Friday, and 7am to 4pm Saturdays.</p> <p>As noted in the ‘Background’ section of this report, Donnybrook-Boyup Brook Road is identified as a scenic, tourist route under the Shire’s Local Planning Framework. Clauses 5.2.4 and 5.5.7 of the Shire’s Local Planning Strategy identifies the importance of protecting the landscapes associated with identified tourist routes within the Shire, with Donnybrook-Boyup Brook Road identified as one of these routes. This also has statutory protection through Special Control Area 7 of LPS7.</p> <p>The proposed operating hours past 5pm and/or on a Saturday are not considered suitable in the context of this site considering the context of the site and typical increase tourist traffic on weekends. Notwithstanding this, in the case of an approval, proposed operating hours could be conditioned which could also contribute</p>

SPP 2.4 Guideline Requirement	Officer Comment
	<p>to appropriately managing the potential impacts to the surrounding area. It is unclear whether a reduction in the proposed operating would result in an increase to the time period required for overall extraction.</p>
<p>4.7 Visual Impacts <i>Preserving or replanting vegetation can assist in minimising visual impacts from roads, adjoining properties and other key viewing locations. Depending on the size and life of a quarry, a vegetative screen of at least 50 meters width is recommended to assist with visual impacts and help mitigate dust impacts.</i></p> <p><i>The WAPC’s Visual Landscape Planning in WA (2007) contains detailed guidance on addressing visual impacts, including ways to minimise the visibility of operations.</i></p> <p>Consideration of Visual Landscaping Planning in WA includes Part 3 which describes the potential visual element impacts of extractive industries including:</p> <ul style="list-style-type: none"> • The extraction area itself • Access roads, loading areas etc. • Bunds, stockpiles and mounds <p>It also describes issues in terms of their location (particularly near scenic roads) and the design of rehabilitation earthworks.</p>	<p>The proponent has submitted a Visual Impact Assessment (Attachment 7.1.2 (10)) and has indicated that visual impact will be mitigated based on the presence of existing vegetation along the road frontage and the presence of the topsoil bunds proposed. The proponent has also proposed to conduct tree planting within the lot to reduce visual impact.</p> <p>Considering the three mitigation measures proposed, the following is noted:</p> <ol style="list-style-type: none"> 1. The existing vegetation along the road frontage is located within the road reserve and the adjoining rail reserve and is therefore not under the care and control of the proponent. Notwithstanding this, the vegetation is sparse and has several major gaps. Particularly notable is the gap of vegetation surrounding the entry point, which is beneficial from a vehicular sightline perspective, however results in the proposal being highly visible. It is considered that the existing roadside vegetation may not suitably mitigate the visual impact of the proposal. 2. In considering <i>Visual Landscape Planning in WA</i>, it is noted that topsoil bunds are not necessarily a screening element and potentially create a negative visual impact in themselves. In this case, the scale and size of the proposed bunds are likely to negatively impact the visual amenity of the area. 3. Notwithstanding that in some cases, vegetation can be a good tool to mitigate visual impact of development, in this case, it is not considered to be a practical solution when considering the

SPP 2.4 Guideline Requirement	Officer Comment
	<p>duration of the proposal and the growth times of the vegetation. The vegetation is unlikely to be at sufficient coverage or height during the time of extraction (which is ~5 years).</p> <p>Clause 2.3 of the <i>WAPC’s Visual Landscape Planning in WA (2007)</i>, discusses recommended requirements for visual impact assessments including how each stage will be managed from a visual perspective and noting clear recommendations for the management of visual impact. The proponent’s provided Visual Impact Assessment is not consistent with this standard and lacks clear information to demonstrate that the proposal will not have a visual impact.</p> <p>In considering the application against the requirements of this provision, Shire officers consider that the visual impact assessment is not sufficient and the impact of the proposal has not been sufficiently demonstrated.</p>

State Planning Policy 2.5 – Rural Planning (SPP 2.5)

Applicable clauses of SPP 2.5 have been assessed in the table below.

SPP 2.5 Requirement	Officer Comment
<i>Clause 5.9 – Basic raw materials outside the Perth and Peel planning regions</i>	
<i>(f) sequential land use planning is encouraged whereby extraction and appropriate rehabilitation can take place on a programmed basis in advance of longer-term use and development</i>	Refer to Clause 4 (f) (g) (h) within the SPP 2.4 guidelines above.
<i>(i) planning decision-makers are to have due regard to advice from environmental agencies and consider potential impacts on fragmentation and connectivity of remnant vegetation;</i>	<p>Advice from DBCA and DWER has been sought and considered.</p> <p>Refer to Clause 4 (k) within the SPP 2.4 guidelines above.</p>

State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP 3.7)

The proposal is located within an area designated as bushfire prone area. Clause 2.6 of the *Guidelines for Planning in Bushfire Prone Areas V1.4* provides discretion to exempt proposals from the requirements of SPP3.7 in circumstances where there is no intensification of land-use, and/or the proposal is not increasing the bushfire threat. An example of this is provided within the Guidelines:

A development application for an extractive industry where the extraction is undertaken in an open cleared area (for example, quarries and open cut mining) and no habitable buildings are proposed.

The proposal is consistent with this example and has been exempted from the requirements of SPP 3.7 accordingly.

STATUTORY COMPLIANCE

The application has been assessed against the relevant and applicable statutory provisions as follows.

Shire of Donnybrook Balingup Local Planning Scheme No.7

Part 3 – Zones and the Use of Land

The subject lot is zoned Priority Agriculture under LPS7. In accordance with Clause 3.6.2 of LPS7, the objectives of the zone are as follows:

- (i) require the protection of the rural infrastructure and agricultural land resources;*
- (ii) planning to avoid the introduction of land uses and subdivision not related to agriculture including rural residential proposals;*
- (iii) support the improvement of resource and investment security for agricultural and allied industry production;*
- (iv) require protection and enhancement of biodiversity;*
- (v) encourage value-adding opportunities to agricultural products at source;*
- (vi) support a wide variety of productive agricultural and rural activities;*
- (vii) support subdivision; where it provides for boundary adjustments, realignments, farm restructuring and new lot creation which promotes effective land management practices, environmental and landscape enhancement and infrastructure provision;*
- (viii) support sensible use and management of resources, and the proper direction and control of development;*
- (ix) promote the existing intensive agricultural land use; and*
- (x) encourage other similar or complementary activities*

In some cases, extractive industries can be considered complementary to, and do not jeopardise, the objectives of the Priority Agriculture zone. However, in this case, largely based on the context of the site, location of the property, and the scale of the proposal, Shire officers consider that the proponent has not sufficiently demonstrated that the application is consistent with objectives of the subject zone, specifically clause 3.6.2 (i), (iv), (viii) and (ix).

The intent of subclause (viii) and (ix), and of the Priority Agriculture zoning in general, is to protect land that can be utilised for intensive agriculture. Noting the general land use rights for landowners of agricultural properties, in extracting the free draining part of the soil of known primary production land, the applicant may reduce the ability of the lot to be used for long-term agriculture, including intensive and extensive operations. Whilst in some cases, this may be remedied through significant rehabilitation, the extent of what is required is unknown or whether the impact would be too substantial to rectify. Based on the objection received from DPIRD (refer to ‘Consultation’ below), the Shire indicated that additional information (in the form of an agronomists report or similar) may address this matter up front. The applicant indicated that this information would not be provided.

In light of the above and considering the potential impact to the soil, the proposal may be contrary to subclause (i) as it may not encourage, nor result in, the protection of the agricultural land resource. Similarly, the condition of the soil broadly forms part of the overall biodiversity of the area, therefore potentially contrary to subclause (iv).

Part 4 – General Development Requirements

The relevant and applicable general development requirements of LPS7 have been assessed and summarised in the below table.

LPS7 Requirement	Proposal	Officer Comment
<i>Clause 4.8 Clearing Native Vegetation</i>	No clearing proposed	Noted.
<i>Clause 4.17 General Appearance of Buildings and Preservation of Amenity where, in the opinion of the local government, any proposed building or the erection of structures or carrying out of site works is out of harmony with existing buildings or the landscape of the locality by virtue of the design and appearance of the development, the colour or type of materials to be used on exposed surfaces, the height, bulk and massing of any building, the local government may refuse the application for development approval. The refusal can be made notwithstanding that the application may otherwise comply with the provisions of the Scheme. ...</i>		<p>While the subject clause primarily refers to the impact of building amenity on surrounding areas, it also notes the potential visual impact from ‘site works’.</p> <p>By nature, extractive industries feature a substantial amount of ‘site works’ in the form of the physical extraction and the construction of accessways to the extracted areas. The resulting bunds and stockpiles from extraction are also aspects of siteworks on the lot.</p> <p>As noted above (Clause 4.7 of SPP 2.4 Guidelines), there is insufficient information to demonstrate what impact the proposal</p>

LPS7 Requirement	Proposal	Officer Comment
<p><i>In exercising its discretion under this clause, the local government shall have regard to the following when assessing any application for development approval -</i></p> <p><i>(iv) the effect of the building or works on nearby properties, and on the occupants of those buildings;</i></p> <p><i>(v) the effect on the landscape and environment generally;</i></p>		<p>will have in relation to visual amenity on the surrounding area.</p>
<p>Clause 4.24 Use of Setback Areas</p>	<p>The proposal is within the 30m setback to the road reserve to the east (Local Road Reserve informally managed by applicant, see Clause 4 (j) of SPP 2.4 Guidelines).</p>	<p>Refer to Clause 4.54.8 for further assessment of setbacks.</p>
<p>Clause 4.27 Car Parking and Vehicle Access Requirements</p>	<p>Any parking associated with the proposal would be within the subject lot boundaries.</p>	<p>Vehicular parking for the extractive industry will include parking of the extraction machinery, temporary parking for trucks, and parking for staff vehicles.</p> <p>Given the size of the lot, there is adequate space for parking of vehicles to occur wholly internally to the lot.</p> <p>However, there may be a need for hard stand areas to cater for this parking (particularly for stationary extraction machinery).</p> <p>Given the location of the extraction area, it is noted that this information should be included within required</p>

LPS7 Requirement	Proposal	Officer Comment
		information (i.e. visual impact assessment).
<i>Clause 4.32 Vehicle Crossovers/Entrances</i>	Proposal includes the utilisation of an existing road reserve which is not managed by the Shire onto Donnybrook-Boyup Brook Road.	Refer to assessment against Clause 4 (j) of SPP 2.4 Guidelines.
<i>Clause 4.42 Bush Fire Hazard and Fire Management Plans</i>	The extraction area is within a designated bushfire prone area. Proposal includes operating procedures for times of bushfire risk.	As noted above, the development is exempt from the requirements of SPP 3.7. Notwithstanding this, the proponents operating procedures are reasonable and would be conditioned in the case of an approval.

Clause 4.55 Priority Agriculture Zone

Subclause 4.55.2 of LPS7 stipulates that “*the provisions of clause 4.54 shall apply to the Priority Agriculture zone except that reference to the ‘General Agriculture’ zone shall be deemed to be a reference to the ‘Priority Agriculture’ zone*”.

In this regard, the relevant provisions of clause 4.54 have been assessed as follows.

LPS7 Requirement	Proposal	Officer Comment
<i>Clause 4.54.8 – Development standards</i> <i>Setbacks:</i>		
<i>(i) Minimum front setback – 30m</i>	Proposal is within the 30m setback to the road reserve to the east (Local Road Reserve informally managed by applicant, see Clause 4 (j) of SPP 2.4 Guidelines.	While this does not comply, the road reserve is used entirely by the applicant/landowner and does not appear to be used by the public. As such, the reduced setback would not in itself have any visual impact.
<i>(ii) Minimum side setback – 20m</i>	North – 20m South – 20m	North – 285m South – 20m Complies
<i>(iii) Minimum rear setback – 20m</i>	Rear (west) – 20m	20m Complies

LPS7 Requirement	Proposal	Officer Comment
<p><i>Clause 4.54.8.3 - With the exception of a single dwelling, where the proposed development is for a non-agricultural purpose, the local government shall require a minimum setback of 100 metres from existing intensive agricultural activities on any adjacent lot, whether owned by the applicant or a third party.</i></p>	<p>Proposed setback of 20m to land utilised for intensive agriculture on adjacent land owned by the applicant.</p>	<p>The proposal is for a ‘non-agricultural’ use. However, the intent of this clause is to minimise associated land use conflict for continued operation of existing agriculture operations.</p> <p>In this circumstance, the introduction of the extractive industry does not limit the ability for the intensive agriculture on adjacent lots to operate.</p> <p>As such, the setback reduction is considered acceptable, subject to appropriate conditions in the case of an approval.</p>
<p><i>Clause 4.54.8.7 – In assessing applications for development approval for the establishment of plantations, industry-extractive and other development on land within the [Priority Agriculture] zone, the local government shall seek to ensure that the setbacks assist in maintaining environmental and landscape qualities of the locality so they are not detrimentally affected.</i></p>	<p>-</p>	<p>The proponent could be requested under this provision to increase the setback of the proposal from adjacent lot boundaries. However, given the lot’s topography (which slopes upwards from the road and western boundary), an increased setback is unlikely to reduce the impact of the proposal on the landscape qualities of the area (as discussed further in Clause 4.7 of SPP 2.4 Guidelines).</p>
<p><i>Clause 4.54.8.8 – In assessing applications for development approval within the [Priority Agriculture] zone, the local government will consider the following:</i></p> <p><i>(i) the availability of services required to support the proposed development and the</i></p>	<p>Water supply for operations to be externally sourced or from existing dams owned by applicant.</p>	<p>The proponent has noted the potential use of a dam on Lot 3245 on P252598 (also owned by applicant).</p>

LPS7 Requirement	Proposal	Officer Comment
<p><i>economic impact of the provision of, extension or upgrading of those services that may be required;</i></p> <p>(ii) <i>(the adequacy of the roads, existing or proposed in the area which may be needed to support the amount of road traffic expected to be generated by the development; and</i></p> <p>(iii) <i>the need to enforce such conditions as the local government deems appropriate, in order to minimise any adverse effect the development may have on the general environment of the area.</i></p>	<p>No onsite effluent disposal required.</p> <p>Proponent seeks to use local road reserve (informally managed by landowner) to access Donnybrook-Boyup Brook Road.</p> <p>Traffic includes 13 trucks with a total of 26 daily truck movements. In addition, there may be a number of smaller vehicles for staff.</p>	<p>DWER have reviewed the proposed water use and have noted that a change in licence would be required to achieve this.</p> <p>If approved, a condition would be required to ensure suitable water availability for the proposal. An advice note would also need to be included consistent with DWER’s advice.</p> <p>MRWA and Shire’s works department have reviewed the proposed access.</p> <p>As noted in the assessment against clause 4 (j) of SPP 2.4 Guidelines, the existing road reserve requires upgrading to cater for operations.</p> <p>The proponent has not provided sufficient information to demonstrate that potential associated impacts have been addressed and/or can be managed through conditions of approval.</p> <p>Refer to ‘Officer Comment’.</p>
<p>4.54.10. Reasons for refusal <i>The local government shall refuse an application for development approval where in its opinion the proposed development will</i> –</p>		

LPS7 Requirement	Proposal	Officer Comment
<p><i>(i) adversely affect the rural landscape;</i></p> <p><i>(ii) adversely impact upon the agricultural use of the land and adjacent/nearby areas;</i></p> <p><i>(vi) result in the impacts of the proposed use/development not being adequately contained on the application site;</i></p> <p><i>(vii) In the opinion of the local government, result in an undesirable planning outcome</i></p>		<p>As outlined within the report, visual amenity and the impact on the landscape has been thoroughly assessed and officers consider that the proposal may adversely impact the rural landscape as presented.</p> <p>Whilst the proposal is unlikely to impact the ability of the continued agricultural use of the surrounding area, as outlined by DPIRD, the proposal may impact the long term agricultural viability of the site itself.</p> <p>The proponent has not sufficiently demonstrated that noise can be reasonably or practicably managed on the site which would result in impact to the surrounding area, particularly the noise sensitive properties within the 1,000m buffer.</p> <p>Where potential impacts from development proposals cannot be addressed and/or appropriately managed through conditions of approval, this results in an undesirable planning outcome.</p>

Part 5 – Special Control Area

Approximately 60m of the north side of Lot 10 is located within *Special Control Area (SCA) 7 – Road Protection Area*. Clause 5.8.1 of LPS7 details that the purpose of the road protection area is to “*protect the function of the key travel routes within the Scheme area and the amenity and visual character of adjacent land and to apply special land use and development controls to meet this objective*”.

The provisions within Clause 5.8.2 of LPS7 predominantly relate to signage and building setbacks within 100m of the road reserve.

Notwithstanding this, the intent of SCA7 (as described in Clause 5.8.1) is to protect the amenity of key tourist routes in the Shire. This is evidenced by the three roads (or part thereof) designated within SCA7: Donnybrook-Boyup Brook Road; Balingup-Nannup Road; and South Western Highway. In this regard, Shire officers consider that the applicant has insufficiently demonstrated that the proposal will not negatively impact the “amenity and visual character of adjacent land” and will not jeopardise the intent of SCA7.

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, Clause 67 (2) outlines the matters to be considered by a local government when assessing an Application for Development Approval. The relevant matters have been assessed as follows.

LPS Regs Requirement	Officer Comment
<i>(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area</i>	<p>A thorough assessment has been made against the relevant matters of the Deemed Provisions and LPS7.</p> <p>It is considered that all relevant and applicable matters have not been addressed.</p>
<i>(c) any approved State planning policy</i>	<p>All applicable State Planning Policies have been assessed above.</p> <p>It is considered that all relevant and applicable matters have not been addressed.</p>
<i>(m)(i) the compatibility of the development with the desired future character of its setting</i>	<p>The desired future character of the area is for agricultural purposes with no future changes identified. Assessment against the character of the area is provided in (n) below.</p>
<i>(m)(ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development</i>	<p>Notwithstanding that the proponent has reduced the overall size of the initial proposal, based on the context of the site and surrounding area, it is considered that the proposed height of the bunds, potential stockpiles, and scale of the stages is not acceptable.</p> <p>In this regard, the applicant has not provided sufficient information to demonstrate that the proposed development will not negatively impact adjoining land or other land in the locality.</p>
<i>(n)(i) environmental impacts of the development</i>	<p>There are a number of potential environmental impacts that can occur with extractive industries. These include:</p> <ul style="list-style-type: none"> • Impact to water resources; • Impact from insufficient weed management; • Impact from dieback spread; • Impact from dust emissions; • Impact from native vegetation clearing;

LPS Regs Requirement	Officer Comment
	<ul style="list-style-type: none"> • Impact to native fauna from clearing or other emissions; etc. <p>The application has been referred to the Shire’s Environmental officer, DWER and DBCA. Based on the information contained within the proposal and the responses received from relevant authorities, the Shire is satisfied that in the case of an approval, environmental matters could be appropriately managed through various conditions of approval.</p>
<i>(n)(ii) the character of the locality</i>	<p>In some cases, extractive industries can be compatible with the general character of Agricultural areas, as they are often appropriately managed to ensure that surrounding residences (which are fewer in number in agricultural areas compared to urban areas) and environmental assets are not adversely impacted.</p> <p>However, the specific context and setting of this lot is important. Its positioning on a primary tourist route in the Shire (see Special Control Area section of LPS7 above), its position on Priority Agricultural land and its topographical position in the landscape, present compatibility issues with the surrounding area, particularly from a noise and visual amenity perspective.</p>
<i>(n)(iii) social impacts of the development</i>	<p>It is noted that the Shire received a significant number of submissions during the public advertising period. Whilst this, in itself, demonstrates an element of social impact, many of the submissions received expressed significant concern for surrounding landowners’ health and wellbeing as a result of this proposal.</p> <p>It is considered that potential social impacts associated with noise and visual amenity have not been sufficiently addressed.</p>
<i>(o) likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate their impact</i>	<p>The proposal has been referred to the Shire’s Works and Services division, DWER and DBCA in relation to environmental impacts.</p> <p>DWER have indicated that based on the slope of the subject lot, “there may be the potential for sediment transport downslope from the EIL areas into the downslope properties (and Donnybrook-Boyup Brook Road) during major storm events”.</p>

LPS Regs Requirement	Officer Comment
	<p>The Shire’s Works and Services department have reviewed the provided stormwater management measures in the context of DWER’s comments. They are satisfied that stormwater will be appropriately managed from the proposal to ensure that surrounding infrastructure, waterways etc. are not negatively impacted – noting that the measures would need to be conditioned within any approval.</p>
<p><i>(q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk</i></p>	<p>Key areas for consideration as they relate to this proposal include bush fire, soil erosion and land degradation.</p> <p>Based on the application and information presented as well as the objection from DPIRD, it is considered the proposal does not adequately address this matter, specifically the proposals unacceptable risk to land degradation.</p>
<p><i>(s) the adequacy of –</i> <i>(i) the proposed means of access to and egress from the site</i> <i>(ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles</i></p>	<p>Refer to the assessment against clause 4(j) of SPP 2.4 Guidelines.</p> <p>Refer to the assessment against clause 4.27 of LPS7.</p>
<p><i>(t) amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety</i></p>	<p>Refer to the assessment against clause 4 (a) and (j) of SPP 2.4 Guidelines.</p>
<p><i>(x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals</i></p>	<p>As outlined above, the Shire received a significant number of submissions during the public advertising period objecting to the proposal.</p> <p>Due regard has been given to all valid planning matters for consideration raised, and the technical elements of each have been assessed. It is considered that a number of these matters have not be addressed by the applicant.</p>
<p><i>Clause (y) any submissions received on the application;</i></p>	<p>Refer to ‘Consultation’ below.</p>
<p><i>Clause (za) the comments or submissions received from any authority consulted</i></p>	<p>Refer to ‘Consultation’ below.</p>

Shire’s Extractive Industries Local Law

The proponent would be required to apply for an extractive industry licence prior to undertaking any extraction activities.

In the case of an approved development application for extractive industries, as part of the assessment against the Local Law, the Shire undertakes a preliminary compliance review to ensure all applicable conditions of approval have been fulfilled prior to issuing a licence.

CONSULTATION

Schedule 2, Part 9, Clause 64 (1) (b) (i) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, specifies that the Shire is to undertake advertising when considering an application for development approval for an ‘A’ use.

In accordance with Clause 67 of the Regulations, the Shire must give due regard to any submission received during the consultation period.

External Authority / Agency Referral

The proposal was advertised to relevant external authorities / agencies including:

- Department of Planning, Lands and Heritage (DPLH) (Aboriginal Heritage);
- Department of Primary Industries and Regional Development (DPIRD);
- Department of Mines, Industry, Regulation and Safety (DMIRS);
- Department of Biodiversity, Conservation and Attractions (DBCA);
- Department of Water and Environmental Regulation (DWER);
- Public Transport Authority (PTA); and
- Main Roads Western Australia (MRWA)

A full copy of the agency responses can be found in Attachments 7.1.2 (12) to (18) with a summary provided below.

Agency	Agency Comment	Officer Comment
DPLH	Advised that the proposal does not intersect any known Aboriginal sites or heritage places and that approval under the <i>Aboriginal Heritage Act 1972</i> would not be required. This advice was received prior to the commencement of the <i>Aboriginal Cultural Heritage Act 2021</i> (current legislation) on 1 July 2023.	Refer to assessment against clause 4 (o) of SPP 2.4 Guidelines.
DPIRD	Objection <ul style="list-style-type: none"> • Land is identified as high to very high capability for viticulture. 	In light of this initial feedback, it was recommended to the applicant that provision an agronomist report (or similar) could assist is

	<ul style="list-style-type: none"> Proposed extraction of gravel would remove the free draining part of the soil that is beneficial for viticulture/perennial horticulture. After extraction, soil unlikely to be able to support vineyards in the future. 	<p>demonstrating the quality of the existing soil. The applicant declined to provide such a report.</p> <p>In the absence of a site specific agronomist report, the only indication of the current soil quality is that noted by DPIRD (through their soil mapping software) and the existing use of the lot (for vineyards).</p> <p>As such, from present information, the soil is indicated to be of high quality and, from DPIRD’s advice, the proposal has the potential to impact the quality of this soil from the removal of the free draining part of the soil.</p>
DMIRS	No objection	Noted.
DBCA	<p>No objection</p> <ul style="list-style-type: none"> Existing vegetation is part of the Balingup and Queenwood vegetation complexes and should be retained. Recommend 10m buffer to vegetation that is denoted on site. 	<p>The applicant has provided a buffer on the site plan to protect existing native vegetation.</p> <p>In the case of an approval, relevant conditions and/or advice notes would need to be included.</p>
DWER	<p>Comment only</p> <p>Several key issues noted:</p> <ol style="list-style-type: none"> Operations may be a prescribed premises under the <i>Environmental Protection Regulations 1987</i> Potential stormwater, erosion, sedimentation risk <ul style="list-style-type: none"> Comment that the provided stormwater management plan does not adequately demonstrate stormwater will be appropriately managed on site. 	<ol style="list-style-type: none"> In the case of an approval, an advice note would be required reflecting DWER advice. The Shire’s Works and Services department have reviewed the provided stormwater management measures in the context of DWER’s comments. They are satisfied that stormwater will be appropriately managed from the proposal to ensure that surrounding infrastructure, waterways etc. are not negatively impacted – noting that the measures would need to be conditioned within any approval.

<p>3. Water Supply – applicant should quantify their water needs.</p> <p>4. Environmental Risks – Operations should be in accordance with DWER’s water quality protection note (WQPN) 15 ‘Basic Raw Materials Extraction’</p> <p>5. Dieback Management – Dieback measures proposed should be reviewed and conditioned in any potential approval.</p> <p>6. Staging Plan</p> <ul style="list-style-type: none"> • Recommend extraction occurring in each stage only after substantial commencement of rehabilitation for previous stage. • Proponent to revise staging size to ensure stormwater is appropriately managed. <p>7. Rehabilitation Plan and Final Landform</p> <ul style="list-style-type: none"> • Rehabilitation Plan to be conditioned. • A contour map to be provided. • Sumps be removed once rehabilitation is completed <p>8. Groundwater protection</p> <ul style="list-style-type: none"> • Excavation to be kept to 1m depth. • No dewatering works to occur. 	<p>3. In the case of an approval, a condition would be required reflecting DWER advice.</p> <p>4. In the case of an approval, an advice note would be required reflecting DWER advice.</p> <p>5. DBCA and Shire’s Environmental Officer are satisfied with dieback measures proposed. If approved, compliance would need to be conditioned with this plan.</p> <p>6. In the case of an approval, the Shire agrees that staging would need to occur sequentially (i.e. one is wholly completed before next stage starts).</p> <p>Regarding the stormwater management for each stage, the Shire’s Works and Services department have reviewed the provided stormwater management measures in the context of DWER’s comments and are satisfied with the proposed measures – provided they are appropriately conditioned.</p> <p>7. In the case of an approval, compliance with a suitable rehabilitation plan would be conditioned.</p> <p>While a post contour map would assist in the assessment of this aspect, the relevant concerns could be conditioned in the case of an approval.</p> <p>8. In the case of an approval, suitable conditions would be implemented to restrict excavation to 1m depth to ensure no dewatering works occur.</p>
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<p>9. Fuel and chemical management</p> <ul style="list-style-type: none"> Chemicals to be managed in accordance with Water Quality Protection Note 56 – ‘Toxic and Hazardous Substance Storage and Use’ 	<p>9. In the case of an approval, an advice note would be required reflecting DWER advice.</p>
<p>Dust</p> <ul style="list-style-type: none"> Agree with dust risk classification identified by proponent. Potential for dust risk if P23002 and P22022 were concurrently operated. Recommend compliance measures be implemented by the Shire including no operations during winter months. Recommend ongoing engagement with adjacent residents 	<p>Dust</p> <p>Note that DWER is satisfied with the dust management measures including ongoing engagement with adjacent residents by the proponent in the case of an approval.</p> <p>Regarding operations in winter, the proponents dust management plan specifically notes that dust generating activities would be undertaken in the winter.</p>
<p>Noise</p> <p>Broadly noted that the measures proposed within the submitted Acoustic Assessment “<i>should comply</i>” with the <i>Environmental Protection (Noise) Regulations 1997</i> (Noise Regulations), noting that:</p> <ul style="list-style-type: none"> <i>“The modelled noise emission levels seem reliable, and the assessment results seem acceptable, if the proposed bunds are properly designed, located and constructed”.</i> <i>“The proposed bunds may not be very effective in reducing noise transmissions from the operation to the sensitive receivers, unless the fixed and mobile plant work only in the area immediately behind the bunds. Alternatively, the height of the product stockpile needs to be increased”.</i> <i>“While the removal and stockpiling of topsoil can be considered to be “construction work” under the Noise Regulations (hence not requiring compliance with the</i> 	<p>Noise</p> <p>The applicant has engaged Herring Storer Acoustics (HSA) to undertake a noise impact assessment.</p> <p>It is noted that whilst DWER have indicated the proposal should achieve full compliance with the Noise Regulations, this is reliant upon: a significant amount of topsoil bunds being properly designed, located and constructed. It is also noted that some of the predicted noise generated is within 1db of the acceptable limit.</p> <p>Based on the slope of the land, height of bunds and overburden extraction, this may affect the ability of the development to achieve compliance with the assigned levels.</p> <p>As indicated by DWER, the proposed bunds may not be very effective in reducing noise</p>

	<p><i>assigned levels) the extraction of overburden is not. The modelling of the dozer assumes that barriers are in place. It must therefore be ensured that the topsoil bunds are at full height before overburden extraction and overburden bund construction is undertaken”.</i></p>	<p>transmissions from the operation to the sensitive receivers, due to the topographic situation between the operation and the receivers, unless the dozers work only in the area immediately behind the bunds.</p> <p>Given the nature of extractive industries, it would be reasonably expected that the dozers would be working away from the bunds over the entire extraction area, making this difficult, if not impossible, to achieve.</p> <p>Notwithstanding the visual impact of the significant size of the proposed bunds (~750m x 3m x 18m), the Shire also has concern with the amount of topsoil available on-site to construct these.</p> <p>As indicated by DWER, the extraction and stockpiling of topsoil is considered construction (not required to comply with the assigned levels) but the extraction of overburden is not. Based on the size of the bunds and the likely amount of topsoil in the area, it is uncertain (if not unlikely) that it will be of sufficient volume to construct the bunds. This would require the importation of fill to achieve.</p> <p>In light of the above review of DWER’s advice, the nature of the proposal and the information provided, the Shire considers that the proposed development will not realistically or practicably be able to achieve compliance with the Noise Regulations and will have unacceptable impacts to the surrounding area, specifically the noise sensitive places within the 1,000m buffer of the extraction area.</p>
PTA	No objection	Noted.

	<ul style="list-style-type: none"> • No comments were provided on the initial application. • Following the second referral, PTA requested a number of conditions in the case of an approval including: <ol style="list-style-type: none"> 1. Construction work to be contained on site 2. Services not to cross rail corridor 3. Management protocol report for construction methods to be submitted to ARC infrastructure 4. No storage within rail reserve 5. Drainage not to be discharged into rail corridor 6. No native vegetation clearing in rail corridor 7. Dust suppression methods to be used during construction works 8. Hygiene/biosecurity management to ensure no spread of weeds 9. Bushfire management measures to be within lot 10. Section 70A notification regarding future rail activation 	<p>In the case of an approval, relevant conditions and/or advice notes would need to be included.</p>
MRWA	<p>No objection</p> <ul style="list-style-type: none"> • Initial crossover with Donnybrook-Boyup Brook Road is to be upgraded including bitumen sealing the first 30 metres • Required to submit an application to for minor works in the road reserve 	<p>Noted.</p> <p>In the case of an approval, relevant conditions and/or advice notes would need to be included.</p>

Internal Development Control Unit

The application was referred to the internal Development Control Unit for assessment. Key issues reviewed included noise, dust, traffic/access, stormwater management and rehabilitation measures proposed.

The reviewed dust management, stormwater management and rehabilitation measures were generally supported.

Access and Traffic

The Shire’s Works and Services department noted that the existing local road reserve providing access to the lot was not currently maintained by the Shire. Works and Services noted that the current condition of this road reserve was inadequate for the proposal and

should be upgraded to a 100m sealed standard from the intersection with Donnybrook-Boyup Brook Road.

It is also recommended that the management of the road reserve be formally resolved through the closure of the road reserve. If approved, this could be included as an advice note. In the case of an approval, the approved use and upgrade of this road is not to be misconstrued as Council's position on any future request to close the road reserve and formally acquire the land.

Noise Management

With regards to noise, the Shire's Environmental Health Officer has reviewed the application in conjunction with the feedback from DWER and has raised concerns regarding the information presented.

As outlined in the Officers Comment against the response from DWER, the ability to appropriately manage the noise from the proposed development is reliant upon the presence of significant bunds.

In addition to the comments provided, there are issues associated with increasing the size of the bunds as they relate to the availability of soil to construct as well as the increased potential visual amenity issues.

Refer to Officer's Comment for further assessment.

Public Consultation

Based on the potential localised impacts of a proposal of this nature, and considering the EPA's 1,000m generic buffer distance for such extractive industry proposals, officer's provided written notification to all landowners within a 1,000m radius of the subject lot boundaries. In accordance with Schedule 2, Clause 64 of the *Planning and Development (Local Planning Scheme) Regulations 2015*, this written notification was sent with a submission period of 14 days.

After initial community feedback, the submission period was extended for an additional 14 days and the full application was published on the Shire's website for ease of reference.

In total, 72 individual submissions were received, with 71 objections and 1 in support of the proposal. A full copy of all submissions are located within Attachment 7.1.2 (19).

It is noted that submissions made were based on the application and associated information contained within the initial application and not on the revised application. Shire officers considered that readvertising the amended documentation would be counterproductive given that it was considered that there were a number of outstanding gaps in the information received and some of the requested information was not provided.

In addition, Shire officers reasonably concluded that given the nature of the objections received for the initial application, the amended application received would unlikely address the broad issues raised in the submissions, particularly as they relate to noise, visual impact and land degradation.

A summary of key Planning concerns raised within the submissions is provided below.

Issue Raised in Submission	Officer Comment
Visual Amenity	
<p>A number of objections received were based on the negative visual amenity impact from the extractive industry including:</p> <ul style="list-style-type: none"> • The appearance of the extraction in general; • The appearance of bunds, stockpiles; • The fact that the existing topography would ensure that the extraction area is visible (i.e. the lot slopes upwards from the road making the extraction prominent in the landscape) • This was linked to concern regarding the appearance’s impact on the landscape of the Preston River Valley, an area that is noted for its positive visual appearance. 	<p>Visual impact has been thoroughly considered through the assessment process.</p> <p>As outlined above, notwithstanding that in some cases, vegetation can be a good tool to mitigate visual impact of development, in this case, it is not considered to be a practical solution when considering the duration of the proposal and the growth times of the vegetation. The vegetation is unlikely to be at sufficient coverage or height during the time of extraction (which is ~5 years).</p> <p>As part of the preliminary review further information was requested to demonstrate that the development would not have a negative visual amenity impact on the Donnybrook-Boyup Brook Road and the surrounding area.</p> <p>Shire officers consider that the Visual Impact Assessment provided (Attachment 7.1.2 (10)) is insufficient as it does not adequately address the potential visual impact relating to the extraction area, associated bunds, stockpiles, constructed flat areas etc.</p>
Noise	
<p>A number of objections received referenced the negative impact of noise from operations and vehicle movements.</p> <p>Concern was raised regarding the ability for the extraction operation to comply with the Environmental Protection Noise Regulations, particularly when considering the topography of the land and the proposed size of the bunds.</p> <p>In addition, submitters noted the potential impact of noise from a general amenity</p>	<p>To address noise from trucks, the proponent proposed to include broad band reversing warning devices to reduce noise impact.</p> <p>The actions proposed to address truck noise are considered reasonable and consistent with general practice that is undertaken for extractive industries.</p> <p>Refer to the broader assessment against DWER’s comments in ‘Consultation’</p>

<p>perspective. This detailed that compliance with the noise regulations did not necessarily mean no noise would be experienced, which would introduce an impact to the general amenity and liveability of the area.</p>	<p>above and the ‘Officers Comment/Conclusion’ below.</p>
<p>Dust</p>	
<p>A number of objections were received with relation to dust impact from the proposal.</p> <p>While many of the submissions were general, specific aspects noted were:</p> <ul style="list-style-type: none"> • Dust emitting from stockpiles • Dust contributing to air pollution • Dust contamination of waterways • Dust from trucks • Dust emitting from extraction operations • Dust impact to surrounding flora/fauna 	<p>The proponent has provided a Dust Management Plan (Attachment 7.1.2 (7)).</p> <p>DWER has reviewed this information and determined that the measures should ensure that there is no external impact from all dust producing activities, provided they are implemented during winter.</p> <p>In this regard, in the case of an approval, appropriate conditions should be implemented that enforce this requirement.</p>
<p>Traffic Impact and Vehicular Access</p>	
<p>A number of submissions noted the potential of the proposal to negatively impact the road network through increased traffic.</p> <p>Additionally, objections were received based on the impact of the proposed trucks on the existing access (degrading the crossover) and the inadequacy of the relevant section for egress/entering, particularly as it relates to safety.</p>	<p>The proposed vehicular access and impact of traffic have been considered throughout this assessment including referral to MRWA and review by the Shire’s Works and Services department.</p> <p>Both MRWA and the Shire determined that based on the status of Donnybrook-Boyup Brook Road, the number of trucks proposed would be relatively nominal. However, proposed operating hours can be stipulated to reduce potential impacts during typically busier periods (i.e. after 5pm and on Saturday).</p> <p>It was also determined that upgrades would be required to the local road reserve as it accesses Donnybrook-Boyup Brook Road.</p> <p>It is considered that traffic management and vehicular access could be appropriately addressed through conditions in the case of an approval.</p>
<p>Impact to Present and Future Character of Area</p>	

<p>Submissions referencing the present character noted the potential for the development to:</p> <ul style="list-style-type: none"> • Impact on quality of life enjoyed. • Impact on the surrounding tourist hotspot. • Impact on community. • Impact on people choosing to invest in area. • The proposal was inconsistent with the surrounding area. <p>Submissions also referenced the future character of the area noting how the proposal could set a precedent for future extraction operations being proposed in the future.</p>	<p>The potential impact to character of an area may be considered quite subjective.</p> <p>Notwithstanding this, based on the application and associated information presented, Shire officers consider that the applicant has not demonstrated that the impacts of the proposal as it relates to character, specifically the noise and visual amenity, will not unacceptably impact the character of the locality.</p> <p>With regards to precedence, extractive industries are not uncommon in an agricultural setting with each proposal assessed on the individual merits and context of the area.</p> <p>Where a land use can be considered within an applicable zone in accordance with LPS7, an application can be made and assessed by the local government against the applicable matters for consideration.</p>
<p>Stormwater Impact</p>	
<p>A number of objections were received based on the potential for stormwater to be improperly controlled and for resulting erosion/sedimentation to occur from the operations.</p> <p>This resulting externality was noted to have potential impact onto surrounding infrastructure, properties and waterways.</p> <p>This was considered to be a potential impact during and after extraction/rehabilitation.</p>	<p>The proponent has provided a water management plan which details how the proposal would retain/control stormwater to ensure that erosion and sedimentation does not impact surrounding properties/infrastructure.</p> <p>DWER and Shire’s Works Department have reviewed this information and are satisfied with proposed measures.</p> <p>If approved, compliance with measures would need to be conditioned.</p>
<p>Environmental Impact</p>	
<p>A variety of potential environmental impacts were noted by submitters including:</p> <ol style="list-style-type: none"> 1. Potential impact to fauna from extraction operations. 	<ol style="list-style-type: none"> 1. The applicant has conducted a desktop assessment of existing fauna on the site with no issues identified. The proposed extraction does not seek to clear vegetation utilised by

	<p>protected native fauna and the proposed operations do not inherently impact native fauna/flora. In addition, both DBCA and DWER have reviewed the proposal with no concern raised.</p>
<p>2. Potential impact to groundwater / drinking water from extraction.</p>	<p>2. DWER have reviewed potential impacts to groundwater and outlined that a maximum of 1m extraction is acceptable based on the high topography of the extraction area and the depth of the extraction.</p> <p>In the case of an approval, suitable conditions would be implemented to ensure ongoing compliance.</p>
<p>3. Potential impact to roadside vegetation.</p>	<p>3. Roadside vegetation is outside the scope of the application area as it is wholly within the road reserve area.</p>
<p>4. Potential impact to soil quality</p>	<p>4. DPIRD have reviewed the proposal and have objected based on potential impacts to soil quality. This has been considered throughout the assessment and deemed that insufficient information has been provided to complete an assessment.</p>
<p>5. An insufficiency in the proposed rehabilitation plan.</p>	<p>5. The proposed rehabilitation plan is generally consistent with proposals of this nature for the assessment stage. In all cases of an approval for extractive industries, detailed rehabilitation plans are required prior to issuing an extractive industry licence.</p>
<p>6. Potential impact to the local ecosystem, especially adjacent waterways.</p>	<p>6. Impact to ecosystem has been considered, particularly as it relates to native flora and fauna, and the quality of the soil. Whilst the Shire is satisfied that the proposal will not impact native flora and fauna, there is outstanding information as it relates to soil.</p> <p>The proposal is appropriately setback from adjacent waterways and stormwater management methods are deemed acceptable and would be conditioned in the case of an approval.</p>

<p>In addition, a number of studies were requested to be undertaken:</p> <p>A. An environmental impact assessment</p> <p>B. Testing of the current soil</p> <p>C. A flora and fauna Survey</p> <p>D. Additional detail regarding how the existing vines would be removed – so as to not impact the soil.</p>	<p>A. The Shire is satisfied with the information submitted regarding environmental impacts, with the exception of the impact to soil.</p> <p>B. An agronomists report, or similar, would assist in the assessment of the soil however the applicant indicated that this would not be provided.</p> <p>C. The extraction area is within a present vineyard and does not propose to clear any native vegetation.</p> <p>D. Removal of the vines is outside of the scope of this application as it is something that can be undertaken without local government approval, regardless of the outcome of this application.</p>
<p>Zoning</p>	
<p>Several submitters objected on the basis that the proposal was inconsistent with the Priority Agriculture zone, deemed provisions of the <i>Planning and Development (Local Planning Scheme) Regulations</i>, as well as the Shire’s strategic planning in the area (such as the Shire’s Council Plan).</p>	<p>Consideration of the lot zoning and land use permissibility has been outlined in ‘Background’ above.</p> <p>Ultimately, where a land use can be considered within an applicable zone in accordance with LPS7, an application can be made and assessed by the local government against the applicable matters for consideration.</p>
<p>Bushfire</p>	
<p>Several submitters noted the potential for the operations to be impacted by bushfire and for the operations to potentially generate bushfire impact.</p>	<p>From a technical point of view, as outlined above, extractive industry operations are exempt from the provisions of SPP 3.7.</p> <p>Notwithstanding this, the proponent has provided information regarding management of operations particularly during bushfire season.</p> <p>In the case of an approval, relevant conditions and/or advice notes would need to be included to ensure this is appropriately managed.</p>
<p>Ongoing Monitoring and Compliance</p>	

<p>Several submitters raised concern regarding how ongoing compliance and monitoring would occur for the operations (particularly considering monitoring necessary to ensure that noise, dust, water management etc. are all complied with). Others questioned what mechanisms would be in place for breeches/complaints.</p>	<p>The applicant has noted that monitoring will take place for different aspects of the proposal (although notably not for noise management measures). They have also noted that a complaints register will be provided and that complaints received will be “acted on promptly”.</p> <p>In the case of an approval with appropriate conditions, ongoing compliance is the responsibility of the applicant/landowner to manage in perpetuity of the proposal.</p> <p>The Shire’s current monitoring procedure for such extractive industry operations is an annual compliance review prior to the issue of the annual extraction licence.</p> <p>In addition, a bond is taken at the issue of the initial extractive industry licence for rehabilitation works.</p>
<p>Impact to Heritage</p>	
<p>Concern was raised regarding the potential of the proposal to impact on Aboriginal Cultural Heritage and on surrounding heritage buildings (such as the Sunnyvale building).</p>	<p>Potential impacts to Aboriginal Heritage have been considered throughout the assessment. As outlined in this report, regardless of the applicable legislation of the time, an approval from local government does not negate any approval requirements from the DPLH.</p> <p>Regarding impact to other heritage buildings, there are locally identified heritage structures within the locality (the closest being ‘Sunnyvale’ located at 1885 Donnybrook-Boyup Brook Road). Such heritage structures make up part of the identified character of the area. As such, while Shire officers cannot identify any particular impact to these structures, impact to these heritage structures is included within the proposals general impact to the character of the area (see Clause 67 (2) (n) (ii) of the LPS Regs).</p>
<p>Impact to Land Use Productivity</p>	
<p>A number of submissions noted the potential of the proposal to impact on the land use productivity of the subject lot.</p>	<p>As outlined in the ‘Consultation’ section above, DPIRD have raised concerns</p>

	<p>regarding the impact of the development on the quality of the soil.</p> <p>It has been deemed that insufficient information has been provided to complete an assessment in this regard.</p>
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OFFICER COMMENT/CONCLUSION

When considering a development application, clause 68 (2) of the Deemed Provisions outlines the following options for determination:

- (2) *The local government may determine an application for development approval by —*
- (a) granting development approval without conditions; or*
 - (b) granting development approval with conditions; or*
 - (c) refusing to grant development approval.*

Shire officers have extensively assessed the application received including the amendments made and information provided. Due regard has been given to all public submissions as well as technical advice received from other Shire service divisions and external authorities.

In addition, Shire officers have liaised with the applicant in requesting additional information and providing technical recommendations regarding the level of information required for submission, in order to sufficiently demonstrate compliance with the relevant provisions of applicable policies and statutory requirements.

Notwithstanding this, the information submitted is considered insufficient and/or has not been provided to adequately demonstrate compliance with the applicable provisions, nor has it reasonably been demonstrated that all potential impacts could be appropriately or practically managed through conditions of approval.

In this regard, in accordance with clause 74 of the Deemed Provisions:

- (1) The local government may grant development approval subject to a condition that further details of any works or use specified in the condition must be submitted to, and approved by, the local government before the developer commences the development.*
- (2) The local government may only impose a condition referred to in subclause (1) if the local government is satisfied that the further matters that are to be approved would not substantially change the development approved.*

Essentially, Shire officers (and in turn Council (the Commissioner)), need to be certain that the proposal is capable of being approved and managed through reasonable and achievable conditions of approval.

In considering this, and the provisions of subclause (2) above, Shire officers have deemed that the outstanding matters relating to this application may materially and substantially change the development, if at all able to be achieved, and therefore, at this stage are

unable to recommend an approval subject to conditions. These matters include issues associated with:

1. Provisions of the Priority Agriculture zone;
2. Noise management;
3. Land degradation; and
4. Visual amenity and compatibility of the development.

Similarly, as outlined in the report and the recommended reasons for refusal, clause 4.54.10 of LPS7 outlines specific circumstances where the local government shall refuse an application for development approval. The outstanding matters outlined above are consistent with the matters for consideration in clause 4.54.10.

Of significant concern is the ability of the proposal to achieve practicable, reasonable, and realistic compliance with the *Environmental Protection (Noise) Regulations 1997*. As outlined in the EPAs Guidance Statement No. 3 and SPP 2.4, a generic separation/buffer distance of 1,000m is to be implemented between extractive industries for gravel, and noise sensitive receivers (i.e. houses) where suitable noise management measures are not implemented and/or cannot be achieved.

There are 36 freehold properties within 1,000m of the boundaries of Lot 10, however the proponent has identified 10 potentially noise sensitive structures within the 1,000m buffer of the extraction area, with the closest being 510m away.

In considering the Acoustic Assessment prepared by Herring Storer Acoustics (Attachment 7.1.2 (6)) and the comments received by DWER, the Shire has particular concern as it relates to:

- The practical and realistic ability of the proposal to achieve compliance with the Noise Regulations due to the nature of the proposal (i.e. machinery not able to remain directly on the other side of the bunds), the construction of the bunds (including areas with gaps), and topography of the site (i.e. machinery at a higher topography than the highest point of the bunds, not providing a barrier);
- The sheer size of the bunds (as are proposed and as may need to be increased as recommended by DWER) will likely create an unacceptable visual impact; and
- The negative impact of noise to the surrounding area, specifically the noise sensitive receivers (i.e. houses) within the 1,000m buffer when not appropriately managed and/or realistically achieved.

Notwithstanding that some of the elements of the outstanding matters within the assessment may potentially be addressed through additional information and/or revised documentation, Shire officers considered the following factors:

1. As per 65A of Deemed Provisions, a thorough request for additional information was provided to the applicant including technical feedback outlining the key areas that would need to be addressed (Attachment 7.1.2 (20)). In response;
 - a. the applicant acknowledged that much of the information would be a requirement through a standard condition in the case of an approval, to which the Shire agrees;

- b. the applicant declined to provide some information that was recommended, which is the right of the applicant under clause 65B of the Deemed Provisions; and
 - c. some of the information provided was insufficient, which results in Shire officers not being able to complete a thorough assessment and/or non-compliance with relevant provisions.
2. In considering the statutory timeframes of clause 75 of the Deemed Provisions, the Shire is cognisant that continued requests for information would extend the process and potentially result in a similar outcome where information was not provided and/or was insufficient. This is of particular issue when considering noise management as compliance with the Noise Regulations may not be possible, therefore additional informational would be counterproductive.
3. In the interest of procedural fairness and the requirements of the Deemed Provisions, Council (the Commissioner) could determine the application based on the information provided, which Shire officers deem to be insufficient and/or inconsistent with the relevant provisions outlined in the assessment (and stipulated in the recommended reasons for refusal). The decision can be reviewed at the State Administrative Tribunal where the outstanding matters may be further discussed in mediation and potentially bring back to Council for further consideration. The applicant may also choose not to appeal the decision.

It should be noted that following the submission of this application, the proponent has submitted two separate applications (P23013 and P23002) on their property (i.e the surrounding lots), one of which is for an additional extractive industry (P23002 indicated on Attachment 7.1.2 (1)). Whilst cumulative impacts are to be considered, particularly when they are in close proximity, each application is to be assessed on their individual merits.

In light of the above, and the technical assessment of relevant Shire departments and external authorities, it is recommended that Council (the Commissioner) refuse the application for the reasons outlined in the Executive Recommendation.

EXECUTIVE RECOMMENDATION

That Council (the Commissioner):

Pursuant to Schedule 2, Part 9, clause 68 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Deemed Provisions), and the provisions of the Shire of Donnybrook Balingup *Local Planning Scheme No. 7* (LPS7), refuses application reference P22022, and the accompanying plans (Attachments 7.1.2 (2) to (10)), for an Extractive Industry (Gravel) at Lot 10 Donnybrook-Boyup Brook Road, Yabberup, for the following reasons:

Provisions of the Priority Agriculture Zone

1. In relation to Part 3, clause 3.6.2 of LPS7 and clause 67(2) (a) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed development will be consistent with, and not contrary to, the aims and objectives of the Priority Agriculture zone, specifically subclauses (i),

(iv), (vii), and (ix) as they relate to the protection and management of agricultural land resources, biodiversity, and the promotion of intensive agricultural land uses.

2. In relation to clause 67(2) (fa) of the Deemed Provisions, the proposal is inconsistent with the Shire of Donnybrook Balingup Local Planning Strategy, specifically clause 5.2.4 and 5.5.7, as it may impact the landscape associated with the identified tourist route of the Donnybrook-Boyup Brook Road.
3. In relation to clause 4.54.10 of LPS7, in considering the reasons for refusal stipulated where the local government shall refuse an application for development approval, in the opinion of the local government the proposal will:
 - a. Adversely affect the rural landscape (subclause (i));
 - b. Adversely impact upon the agricultural use of the land and adjacent/nearby areas (subclause (ii));
 - c. result in the impacts of the proposed use/development not being adequately contained on the application site (subclause (vi)); and
 - d. in the opinion of the local government, result in an undesirable planning outcome (subclause (vii)).

Noise Management

4. In relation to Part 3, clause 67(2) (c), (f), (m) and (n), of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed noise management measures can reasonably, practicably and/or realistically achieve compliance with the *Environmental Protection (Noise) Regulations 1997*. This will result in an unacceptable impact to the noise sensitive receivers within the applicable buffer area of the site.

Land Degradation

5. In relation to clause 67(2) (a), (c), (q) and (za) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed extraction will not jeopardise the future agricultural use of the land in relation to biodiversity, soil degradation and protection of the land as a long-term agricultural resource.

Visual Amenity and Compatibility of Development

6. In relation to clause 67(2) (m) and (n) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed development is compatible within its setting and surrounding area and will not adversely affect the amenity and scenic values of the locality in relation to;
 - a. the bunds, topsoil and overburden stockpiles;
 - b. the location of areas for light and heavy vehicular parking; and

- c. the scale of the development in relation to the staging of the extraction and rehabilitation.**

ADVICE NOTES:

- A. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. An application must be made within 28 days of the determination.**

Pursuant to Part 2, Regulation 11(da) of the *Local Government (Administration) Regulations 1996*, the decision by Council (the Commissioner) to approve this application is made, on balance, based on the matters raised being able to be reasonably managed through appropriate conditions of approval.

COUNCIL RESOLUTION 106/23

MOVED: Commissioner McGowan

That Council (the Commissioner) approve Development Application P22022 Extractive Industry (Gravel) – Lot 10 Donnybrook-Boyup Brook Road, Yabberup, subject to the following conditions:

VALIDITY

- 1. This approval is valid for a period of five (5) years after the date of issue or within any extended period as determined, in writing, by the Shire of Donnybrook Balingup.**

REVISED PLANS

- 2. Prior to the submission of an Extractive Industry Licence application, revised documentation and/or additional information is to be submitted to, and approved by, the Shire of Donnybrook Balingup including:**
- a) A revised staging plan demonstrating a reduction in the area of each extraction stage to a maximum of 2 hectares and the specific location of bunds for each stage (as may be required for noise management and/or visual impact mitigation).**
 - b) A revised Noise Management Plan demonstrating reasonable and practicable management solutions as to how noise generated across each of the stages will comply with the *Environmental Protection (Noise) Regulations 1997* and the *Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017*, or superseding standard(s). This is to include specific design, location, construction and source of material, as may be required, for all noise management measures (i.e. bunds).**
 - c) A revised Visual Impact Assessment, prepared in accordance with *State Planning Policy 2.4 Planning for Basic Raw Materials and Visual***

***Landscape Planning in Western Australia*, demonstrating how the visual amenity impact of the following elements will be suitably mitigated from Donnybrook-Boyup Brook Road and the surrounding area:**

- (i) The extraction area(s);
 - (ii) Access roads and vehicle loading area(s);
 - (iii) Bunds, stockpiles and mounds; and
 - (iv) Safety fencing.
- d) An Agronomist Report (or similar) prepared by a suitably qualified person that clearly demonstrates:
- (i) The quality of the soil within the proposed extraction stages; and
 - (ii) The amount of topsoil and overburden present in the extraction stages.
3. Prior to the submission of an Extractive Industry Licence application all application documentation is to be accordingly updated to reflect the revised documentation and/or additional information as per Condition 2, and thereafter implemented to the satisfaction of the Shire of Donnybrook Balingup.
4. The layout of the site and location of works permitted must always accord with the endorsed plan(s), as per Conditions 2 and 3, including any notations and/or conditions of approval, and must not be altered or modified without the further written consent of the Shire of Donnybrook Balingup.

DUST MANAGEMENT

5. Dust is to be appropriately managed on site at all times in accordance with the relevant provisions of the approved Dust Management Plan (as per Condition 3), the Shire of Donnybrook Balingup *Animals, Environment and Nuisance Local Law 2017*, and to the satisfaction of the Shire of Donnybrook Balingup.
6. A suitable supply of water for the purposes of all site management operations, is to be provided to the satisfaction of the Shire of Donnybrook Balingup (Refer Advice Note E).

WEED AND DIEBACK MANAGEMENT

7. Weed management is to be undertaken in accordance with the relevant provisions of the Application Management Plan (as per Condition 3) and to the satisfaction of the Shire of Donnybrook Balingup. Any declared weeds found to be within the site need to be appropriately treated and removed prior to any further excavation works and reported as per Condition 18.
8. Measures to reduce dieback are to be undertaken in accordance with the relevant provisions of the Application Management Plan (as per Condition 3) and to the satisfaction of the Shire of Donnybrook Balingup.

9. A minimum 10m buffer is to be provided between all proposed extraction areas and adjacent native vegetation. The 10m buffer is to be demarcated to clearly identify vehicle exclusion areas to the satisfaction of the Shire of Donnybrook Balingup, in consultation with the Department of Biodiversity, Conservation and Attractions.

FIRE MANAGEMENT

10. Suitable fire management is to be undertaken in accordance with the relevant provisions of the Application Management Plan (as per Condition 3), the Shire of Donnybrook Balingup *Bush Fire Brigades Local Law* and the *Bush Fires Act 1954*, or superseding standard(s).

WATER MANAGEMENT

11. All stormwater from the proposed development including building(s) and hardstand area(s) shall be managed by the landowner in perpetuity, in accordance with the *Animals, Environment and Nuisance Local Law 2017* and the approved Water Management Plan (as per Condition 3).
12. Any erosion and/or sedimentation issues that occur due to insufficient drainage and/or stormwater management from the proposed development, including any driveway or accessway, is to be rectified, so as not to impact any surrounding waterways and/or properties, including any infrastructure, to the satisfaction of the Shire of Donnybrook Balingup.
13. Extraction works are not to exceed a depth of 1m below the existing natural ground level unless otherwise approved, in writing, by the Shire of Donnybrook Balingup in consultation with the Department of Water and Environmental Regulation.
14. No groundwater is to be exposed on the surface of the pit floor. Should groundwater be exposed during excavation works, all works are to cease and the Shire of Donnybrook Balingup is to be notified. Any remedial works, as required by the Shire of Donnybrook Balingup, in consultation with the Department of Water and Environmental Regulation, are the responsibility of the operator to rectify.
15. Any refuelling and/or activities that carry a risk of spills are not to be undertaken in close proximity to the detention basins or stormwater flow paths.

ONGOING COMPLIANCE AND MONITORING

16. Prior to the submission of an Extractive Industry Licence application, an ongoing compliance and monitoring methodology is to be prepared and approved by the Shire of Donnybrook Balingup, in consultation with the relevant authorities. The methodologies are to be implemented thereafter as they relate to:
 - a) Noise emissions;

- b) **Dust emissions;**
 - c) **Water management; and**
 - d) **Weed and dieback management.**
17. **With regards to Condition 16 and the applicable Management Plans (as per Condition 3), a complaints register is to be established including:**
- a) **Details of the subject of the complaint;**
 - b) **Actions undertaken by the applicant/landowner to rectify the complaint; and**
 - c) **The on-site publication of appropriate contact details where complaints are to be directed (in the first instance).**
18. **With regards to Condition 16 and 17 a suitable report is to be prepared and submitted to the Shire of Donnybrook Balingup every 3 months including information relating to:**
- a) **The data and results of the on-site monitoring as per Condition 16;**
 - b) **A copy of the complaints register as per Condition 17; and**
 - c) **Any other information as deemed necessary by the Shire of Donnybrook Balingup.**

REHABILITATION AND PIT CLOSURE MANAGEMENT

19. **Prior to the submission of an Extractive Industry Licence application, a Pit Rehabilitation and Closure Management Plan prepared by a suitably qualified person is to be submitted to, and approved by, the Shire of Donnybrook Balingup. The Plan is to be prepared in accordance with the requirements of works outlined within the Shire of Donnybrook Balingup *Extractive Industry Local Law 2016* including, but not limited to:**
- a) **All site restoration and remediation works including indicative timeframes;**
 - b) **Maximum batter/slope levels and methods of stabilisation;**
 - c) **Finished ground levels;**
 - d) **Watercourse management including the removal of water management measures, as may be required, after extraction (i.e. the proposed sumps);**
 - e) **Proposed plant species, number and location including any maintenance requirements; and**
 - f) **Any measures for the restoration of the soil quality to pre-extraction levels as may be required as a result of the Agronomist Report (or similar, as per Condition 2).**
20. **With regards to Conditions 2, 3 and 19, site restoration of each stage is to be substantially completed prior to extraction occurring on the next stage to the satisfaction of the Shire of Donnybrook Balingup.**
21. **Pit closure works and rehabilitation of each of the entire site is to be completed within two (2) years of the end of extraction works or the expiration of this approval (whichever is sooner) unless otherwise extended, in writing, by the Shire of Donnybrook Balingup.**

22. **With regards to Condition 2, 19 and 21, following the completion of all site rehabilitation works, a post-extraction Agronomist Report (or similar) is to be prepared, demonstrating that the soil quality has been substantially returned to pre-extraction levels, to the satisfaction of the Shire of Donnybrook Balingup.**
23. **Prior to the submission of an Extractive Industry Licence application, a \$20,000 bond (cash or unconditional bank guarantee in favour of the Shire of Donnybrook Balingup) is required for the works identified by the Pit Rehabilitation and Closure Management Plan in Condition 19. Return of the bond will be subject to meeting the completion of works identified in the rehabilitation and closure plan to the satisfaction of the Shire of Donnybrook Balingup.**

OPERATING HOURS

24. **Operating hours of the extractive works are restricted to:**
 - a) **8:00 am to 5:00 pm – Monday to Friday (excluding Public Holidays) unless otherwise agreed, in writing, by the Shire of Donnybrook Balingup.**
25. **Trucks are not to operate between the following hours on any given school day on a school bus route, as defined by the Department of Education:**
 - a) **7:30 am to 8:40 am; and**
 - b) **3:20 pm to 4:20 pm.**

VEHICULAR MANAGEMENT

26. **Prior to the commencement of works, the road reserve adjoining the lot is to be designed, constructed, sealed, and drained for a distance of 100m from the intersection with Donnybrook-Boyup Brook Road, to the satisfaction of the Shire of Donnybrook Balingup in consultation with Main Roads Western Australia, the Public Transport Authority and ARC Infrastructure.**
27. **The cost to relocate and/or remove any services/infrastructure that may be required for the purposes of meeting Condition 26, are the responsibility of the landowner/applicant.**
28. **With regard to Condition 26, the applicant is to thereafter maintain the road for the life of extraction operations to the satisfaction of the Shire of Donnybrook Balingup.**

OTHER

29. **Prior to the commencement of works, a copy of a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of**

not less than \$10,000,000 in respect of any one claim relating to any of the excavation operations.

30. Prior to the commencement of works, suitable safety fencing and warning signage is to be installed on the perimeter of the extraction area, and thereafter maintained, to the satisfaction of the Shire of Donnybrook Balingup.

ADVICE NOTES

- A. This development approval does not equate to an Extractive Industry Licence. No works are to be undertaken until such time as an application for an Extractive Industry Licence is submitted to, and approved by, the Shire of Donnybrook Balingup in accordance with the *Extractive Industry Local Law 2016*.
- B. The proposed operations are likely categorized as a Prescribed Premises, as per Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations). The applicant is advised to refer to the information and Industry Regulation Guide to Licensing available at <http://www.der.wa.gov.au/our-work/licences-and-works-approvals>. You will need to contact the Department of Water and Environmental Regulation (DWER) at info@dwer.wa.gov.au or (08) 6364 7000 regarding requirements.
- C. It is recommended that the applicant undertake public consultation, including to surrounding residences within 1,000m of the extraction area, prior to:
- (i) Periods of crushing and screening;
 - (ii) Large cartage/haulage campaigns; and
 - (iii) Any other periods of activity that the proponent considers may impact surrounding residences.
- D. With regards to Condition 5, this includes the requirement to ensure that dust generating activities only occur within winter months.
- E. With regards to Condition 6, Department of Water and Environmental Regulation have advised that use of water associated with any existing dams or water courses may be subject to approval. It is recommended that the proponent contact the Department of Water and Environmental Regulation's Bunbury water licensing branch for further information.
- F. With regards to Conditions 19, 20, 21, 22 and 23, return of the bond will be measured against the works identified within the Pit Rehabilitation and Closure Management Plan as determined by the Shire of Donnybrook Balingup.
- G. With regards to Condition 26 and 28, the road reserve is to remain publicly accessible and is not in any way to restrict public use of the reserve. In addition, it is noted that the approved use of, and upgrade to, the subject road reserve is not to be misconstrued as the Shire's support for any future request to the close and/or acquire the road reserve under the *Land Administration Act 1997*.

- H. Prior to the commencement of works, the Public Transport Authority requests that a management protocol report for all construction methods must be prepared and submitted to the satisfaction of Arc Infrastructure. The construction methods detailed in the management protocol report shall be thereafter implemented and maintained for the duration of the development.
- I. In addition to Advice Note D, the Public Transport Authority advises that the operations should be consistent with the following:
- (i) Services to the development are not to cross the rail reserve, either above or below ground;
 - (ii) Construction works, vehicles or materials are not to be stored within the rail reserve;
 - (iii) Drainage is not to be discharged into the rail reserve; and
 - (iv) No clearing of native vegetation is to occur within the rail corridor.
- J. The Public Transport Authority have advised that should the rail corridor be reactivated, upgrades to the rail level crossing may be required subject to the recommendations of an Australian Level Crossing Assessment Model (ALCAM) assessment for the level crossing prior to the reopening of rail line.
- K. The proposed extraction is to be implemented in accordance with the Department of Water and Environmental Regulation's Water quality protection note (WQPN) 15 'Basic raw materials extraction' where applicable, to ensure environmental risks are appropriately mitigated.
- L. Management of all activities involving hazardous chemicals shall be in accordance with the Department of Water and Environmental Regulation's WQPN 56 – 'Toxic and Hazardous Substance Storage and Use' (Dec 2018).
- M. Notwithstanding any approval hereby granted by the local government, the applicant is reminded of their obligations under the *Aboriginal Cultural Heritage Act 2021* with regards to undertaking a due diligence assessment and obtaining all relevant approvals. For further information, you may wish to contact the Department of Planning, Lands and Heritage.
- N. If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
- O. Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought or obtained.
- P. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. An application must be made within 28 days of the determination.

CARRIED: Commissioner McGowan

7.2 DIRECTOR CORPORATE AND COMMUNITY

7.2.1 ADOPTION OF THE STATUTORY BUDGET 2023/2024

Location	Shire of Donnybrook Balingup
Applicant	Shire of Donnybrook Balingup
File Reference	FNC 04/1
Author	Kim Dolzadelli, Director Corporate and Community
Responsible Manager	Kim Dolzadelli, Director Corporate and Community
Attachments	7.2.1(1) - 2023/2024 Statutory Annual Draft Budget 7.2.1(2) - Appendix to 2023/2024 Statutory Annual Draft Budget 7.2.1(3) - 2023/2024 Schedule of Fees and Charges 7.2.1(4) - 2023-2024 Draft Budget Outline
Voting Requirements	Absolute Majority

EXECUTIVE RECOMMENDATION

That Council (the Commissioner) Adopts:

1. The 2023/2024 Statutory Annual Budget (Attachment 7.2.1(1)) and Appendix to 2023/2024 Statutory Annual Draft Budget (Attachment 7.2.1(2)) Pursuant to Section 6.2 of the *Local Government Act 1995*.
2. The 2023/2024 Schedule of Fees and Charges (Attached 7.2.1(3)). Pursuant to Section 6.16 of the *Local Government Act 1995*.
3. The following rates in the dollar and minimum payments for the 2023/2024 financial year on all ratable land, pursuant to Section 6.32 of the *Local Government Act 1995*.

General rate multiplied by each valuation dollar:

Unimproved Value (UV)	0.005379
Gross Rental Valuation (GRV)	0.1121
Minimum payment level:	
Unimproved Value (UV)	\$1,515.00
Gross Rental Valuation (GRV)	\$1,515.00

4. The due dates for the payment of rates and charges in the below table, pursuant to Section 6.45 of the *Local Government Act 1995*.

Payment in Full	Due Date
Full Payment	20 October 2023
Two Instalments	Due Date
1st Instalment	20 October 2023
2nd Instalment	19 February 2024
Four Instalments	Due Date
1st Instalment	20 October 2023

2nd Instalment	19 December 2023
3rd Instalment	19 February 2024
4th Instalment	19 April 2024

5. **A 11% penalty interest rate on overdue rates and charges that remain unpaid past the due date, pursuant to Section 6.51 of the *Local Government Act 1995*.**
6. **An interest rate of 5.5% where the owner has elected to pay rates and charges through an instalment option, pursuant to Section 6.45 of the *Local Government Act 1995*.**
7. **An instalment administration charge where the owner has elected to pay rates and charges through an instalment option being payable on the 2nd (and each subsequent) instalments, pursuant to Section 6.45 of the *Local Government Act 1995*:**
 - 7.1. **\$12.00 total fee for two (2) instalment option; and**
 - 7.2. **\$36.00 total fee for four (4) instalment option.**
8. **A material variance for reporting of \$10,000 for 2023/2024, pursuant to Regulation 34(5) of the *Local Government (Financial Management) Regulations 1996*.**
9. **The 2023/2024 Waste Receptacle Charges, pursuant to section 67 of the *Waste Avoidance and Resource Recovery Act 2007*.**
 - 9.1. **Bin Service - 3 Bin Service \$375.00**
 - 9.2. **Bin Service - 2 Bin Service \$360.00**
 - 9.3. **Optional Bin - Rubbish (Fortnightly) \$140.00**
 - 9.4. **Optional Bin - Rubbish (Weekly) \$275.00**
 - 9.5. **Optional Bin - Recycling \$ 86.00**
 - 9.6. **Optional Bin - Organics \$149.00**
 - 9.7. **Aged Care Bin Service - 3 Bin Service \$121.00**
 - 9.8. **Aged Care Bin Service - Optional Organics \$ 50.00**

STRATEGIC ALIGNMENT

The following outcomes from the Council Plan relate to this proposal:

- | | | |
|-----------|------|--|
| Outcome | 11 | Strong, visionary leadership. |
| Objective | 11.1 | Provide strategically focused, open, and accountable governance. |

Outcome	12	A well respected, professionally run organisation.
Objective	12.1	Deliver effective and efficient operations and service provision.

EXECUTIVE SUMMARY

The Executive recommendations are required to adopt the 2023/24 Annual Budget and associated Fees and Charges.

BACKGROUND

The 2023/2024 Annual Budget has regard to the 2023-2024 Draft Budget Outline (Attachment 7.2.1(4)) endorsed by Council at its meeting held 24 May 2023.

Significant capital works are included in this Annual Budget which include:

Asset Classes	2023/24 Draft Budget
Infrastructure - Roads	\$3,109,139
Infrastructure - Bridges	\$2,991,300
Infrastructure - Footpaths	\$136,590
Infrastructure - Other	\$262,425
Plant And Equipment	\$1,141,106
Furniture And Equipment	\$159,900
Buildings	\$14,629,779
Total	\$22,430,239

Type Classification	2023/24 Draft Budget
Renewal	\$22,170,359
Upgrade	\$85,000
New	\$174,880
Total	\$22,430,239

A detailed breakdown of projects can be found in Attachment 7.2.1(2) - Appendix to 2023/2024 Statutory Annual Draft Budget.

New borrowings of \$2.9M are proposed to fund the works (not covered by grants) required for the VC Mitchell Park Project for 2023/24.

The Draft Budget is premised on an 6.5% increase to total base Rate Revenue. It is critical to note that this is the average increase, and some Ratepayers will be impacted below and some above this average if their properties Rateable Value has increased by the Office of the Valuer General above or below the average for the district. These variations will predominantly impact Unimproved Valuation (UV) properties as these have all been revalued effective from 1 July 2023.

Unimproved Valuation (UV) properties are most commonly defined as ‘rural/farming’ properties, whilst Gross Rental Valuation (GRV) properties are all remaining properties not defined as UV.

The Draft Statutory Budget (Attachment 7.2.1(1)) has been produced in accordance with provisions of the *Local Government Act 1995*.

FINANCIAL IMPLICATIONS

This report will adopt the Annual Budget 2023/2024 as required by the *Local Government Act 1995* and facilitate the provision of services and facilities to the community in accordance with identified needs.

POLICY COMPLIANCE

Nil.

STATUTORY COMPLIANCE

As part of the annual budget development process, a local government must have regard for numerous requirements under the *Local Government Act 1995* (the Act) and associated Regulations. These include, but are not limited to, the following provisions:

- Adoption of Annual Budget Section 6.2 of the Act and Part 3 of the Local Government (Financial Management) Regulations detail the form and manner in which an annual budget is to be presented to the Council for formal consideration.
- Reserve Accounts Section 6.11 of the Act provides guidance in respect of reserve accounts and also outlines the processes required should a local government determine to amend the purpose of a reserve.
- Power to Borrow Sections 6.20 and 6.21 of the Act refer to a local government's power to borrow and the administrative requirements associated therewith.
- Limit on revenue and income from general rates Section 6.34 prescribes the limits on which Council can yield in relation to its annual rates income. The Draft Budget falls within the threshold.
- Adoption of Fees and Charges Sections 6.16 – 6.19 of the Act refer to the imposition, setting the level of, and associated administrative matters pertaining to fees and charges. The requirement to review fees and charges on an annual basis is detailed within Regulation 5 of the *Local Government (Financial Management) Regulations 1996*.
- *Waste Avoidance and Resource Recovery Act 2007*, Waste Receptacle Charges, pursuant to section 67.

CONSULTATION

Detailed consultation has been undertaken with staff.

OFFICER CONCLUSION

The Executive recommendations set out in the item comprise the resolution to adopt the 2023/2024 Annual Budget in statutory format.

COUNCIL RESOLUTION 107/23

MOVED: Commissioner McGowan

That Council (the Commissioner) Adopts:

1. The 2023/2024 Statutory Annual Budget (Attachment 7.2.1(1)) and Appendix to 2023/2024 Statutory Annual Draft Budget (Attachment 7.2.1(2)) Pursuant to Section 6.2 of the *Local Government Act 1995*.
2. The 2023/2024 Schedule of Fees and Charges (Attached 7.2.1(3)). Pursuant to Section 6.16 of the *Local Government Act 1995*.
3. The following rates in the dollar and minimum payments for the 2023/2024 financial year on all ratable land, pursuant to Section 6.32 of the *Local Government Act 1995*.

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1st Instalment	20 October 2023
2nd Instalment	19 December 2023
3rd Instalment	19 February 2024
4th Instalment	19 April 2024

5. **A 11% penalty interest rate on overdue rates and charges that remain unpaid past the due date, pursuant to Section 6.51 of the *Local Government Act 1995*.**
6. **An interest rate of 5.5% where the owner has elected to pay rates and charges through an instalment option, pursuant to Section 6.45 of the *Local Government Act 1995*.**
7. **An instalment administration charge where the owner has elected to pay rates and charges through an instalment option being payable on the 2nd (and each subsequent) instalments, pursuant to Section 6.45 of the *Local Government Act 1995*:**
 - 7.1. **\$12.00 total fee for two (2) instalment option; and**
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8. **A material variance for reporting of \$10,000 for 2023/2024, pursuant to Regulation 34(5) of the *Local Government (Financial Management) Regulations 1996*.**
9. **The 2023/2024 Waste Receptacle Charges, pursuant to section 67 of the *Waste Avoidance and Resource Recovery Act 2007*.**
 - 9.1. **Bin Service - 3 Bin Service \$375.00**
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 - 9.7. **Aged Care Bin Service - 3 Bin Service \$121.00**
 - 9.8. **Aged Care Bin Service - Optional Organics \$ 50.00**

CARRIED: Commissioner McGowan

7.3 CHIEF EXECUTIVE OFFICER

Nil.

8 MEETING CLOSED TO THE PUBLIC

8.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

8.1.1 REQUEST FOR TENDER 04-2223 LANGLEY VILLAS – REFURBISHMENT WORKS

EXECUTIVE RECOMMENDATION

That the meeting be closed in accordance with section 5.23(2) of the *Local Government Act 1995* to discuss agenda item 12.1.1 Request for Tender 04-2223 Langley Villas – Refurbishment Works.

This report is confidential in accordance with Section 5.23 (2) (c) of the *Local Government Act 1995*, which permits the meeting to be closed to the public.

(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.

COUNCIL RESOLUTION 108/23

MOVED: Commissioner McGowan

That the meeting be closed in accordance with section 5.23(2) of the *Local Government Act 1995* to discuss agenda item 12.1.1 Request for Tender 04-2223 Langley Villas – Refurbishment Works.

CARRIED: Commissioner McGowan

The meeting was closed to the public at 7.10pm

EXECUTIVE RECOMMENDATION

That the meeting be re-opened to the public.

COUNCIL RESOLUTION 110/23

MOVED: Commissioner McGowan

That the meeting be re-opened to the public.

CARRIED: Commissioner McGowan

The meeting was re-opened to the public at 7.13pm

8.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC

8.2.1 REQUEST FOR TENDER 04-2223 LANGLEY VILLAS – REFURBISHMENT WORKS

COUNCIL RESOLUTION 109/23

That Council (the Commissioner) direct the Chief Executive Officer to:

- 1. Determine Tenderers 1 and 2 as the preferred tender respondents, to date.***
- 2. Undertake tender clarifications with Tenderers 1 and 2 to achieve the best possible value for money outcome and Award Tender RFT 04-2223, to either Tenderer 1 or Tenderer 2.***
- 3. Ensure that the tender award aligns to the State Government Social Housing and Economic Recovery Program grant funding guidelines and budget allocations.***
- 4. Request the Department of Communities to provide project contingency and release \$100,000 from Joint Shire-State Community Housing Reserve Funds to assist with the long-term maintenance and repair of the units, and in the event that the Department of Communities do not agree to release reserve funds, then reduce the contract scope to establish approximately 5% contingency.***
- 5. Prepare a budget amendment report for Council to recognise the Joint Shire-State Community Housing Reserve Funds.***

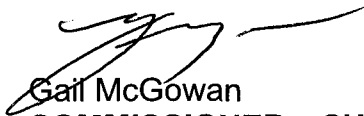
6. ***Provide an update for the community and stakeholders of the successful tender award.***
7. ***Release this resolution in the meeting Minutes.***

9 CLOSURE

The Commissioner to advise that the next Ordinary Council Meeting will be held on Wednesday 27 September 2023 commencing at 5.00pm in the Shire of Donnybrook Balingup Council Chamber.

The Commissioner declared the meeting closed at 7.15pm.

These Minutes were confirmed by the Council (the Commissioner) as a true and accurate record at the Ordinary Council Meeting held 27 September 2023.



Gail McGowan

COMMISSIONER – SHIRE OF DONNYBROOK BALINGUP