

# **ATTACHMENTS**

## **ORDINARY COUNCIL AGENDA**

### **31 MARCH 2020**

#### **Attachment No. 1**

General Meeting of Electors held on 10 February 2020

#### **Attachment No. 2A**

Minutes - Ordinary Council Meeting held on 25 February 2020

#### **Confidential Attachment No. 1:**

Ordinary Council Meeting 25 February 2020 – Confidential Minutes

#### **Attachment No. 2B:**

Minutes - Special Council Meeting held on 24 March 2020

#### **Attachment No. 3:**

- Element - Email dated 24 March 2020 including submission letters dated 18 Feb 2020, 4 Sep 2019 and 1 Oct 2019
- Element – Written Deputation
- Vincent Siciliano, LJ Hooker – Written Deputation
- Offer and Acceptance Form and associated Special Conditions form; and
- Community Consultation Report.

#### **Attachment No. 4:**

Local Planning Policy No. 17 – Grade Separation at the Corner of Guildford Road and Old Perth Road

#### **Attachment No. 5:**

- Existing Local Planning Policy No. 13 – Trees on Development Sites
- Draft amended Local Planning Policy No. 13 – Tree Retention and Provision

#### **Attachment No. 6:**

- Proposed Town of Bassendean Animals, Environment, Nuisance and Pests Local Law 2019 (with amendments in red);
- Comments received from the Department of Local Government;
- Comments received from the Department of Health; and
- Summary of submissions.

#### **Attachment No. 7:**

- Letter from the Director General Department of Water and Environmental Regulation (DWER) dated 20 December 2019.
- Proposed *Town of Bassendean Waste Local Law 2019* (Final draft).

#### **Attachment No. 8:**

- Draft Policy on Single Use Plastics & Balloons
- A Guide for Eliminating Single-Use Plastics
- Policy 4.7 – Recyclable & Biodegradable Products at Town of Bassendean's Events and Functions Policy

**Attachment No. 9:**

- (Draft) Council Policy 1.9 Verge Treatment Policy 2020 (new verge treatment policy).
- (Draft) *Verge Treatments – Guidelines for enhancing your verge* (guidelines).
- Current Council Policy 1.9 Verge Treatment and Maintenance Policy and Appendix One Permissible Verge Treatments.
- Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2010 (Thoroughfares Local Law).
- Josh Byrnes and Associates, Verge treatment Review, November 2019.
- Water Corporation's Waterwise verge best practice guidelines.

**Attachment No. 10:**

Deed of Variation – Local Government House Trust

**Attachment No. 11**

Obsolete

**Confidential Attachment No. 3:**

RFT 03/2019 Plumbing and Gas Services Tender Evaluation Report.

**Confidential Attachment 4:**

Tender Evaluation Report - RFT 08/2019 Whitfield Safe Access Street Road Rehabilitation and Improvements.

**Attachment No. 12:**

List of payments for February 2020.

**Attachment No. 13:**

Monthly Financial Report, containing the Statement of Financial Activity for February 2020.

**Attachment No. 14:**

Audit and Governance Minutes of 11 March 2020

**Confidential Attachment No. 5:**

Audit and Risk Register as at 11 March 2020

**Attachment No. 15:**

External Committee Minutes

**Confidential Attachment No. 6:**

Community Benefit Sponsorship and Grants Sponsorship Application;  
Proposed budget; and  
Grants Assessment Panel report

**Confidential Attachment No. 7:**

- Notice of Motion – Cr Wilson
- Agreed Upon Procedures – Stan Moses Management Group Final Report, Moore Stephens, June 2019.

# **ATTACHMENT NO. 1**

# TOWN OF BASSENDEAN

## MINUTES

### GENERAL MEETING OF ELECTORS

HELD IN THE BASSENDEAN COMMUNITY HALL  
48 OLD PERTH ROAD, BASSENDEAN

ON MONDAY 10 FEBRUARY 2020 AT 7.00PM

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#### 1.0 OPENING AND WELCOME

The Mayor declared the meeting open, welcomed all those in attendance and acknowledged the past and present traditional owners and custodians of the land on which the meeting was held.

#### 2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

##### Present

##### Councillors

Cr Renee McLennan, Mayor  
Cr Kathryn Hamilton, Deputy Mayor  
Cr John Gangell  
Cr Hilary MacWilliam  
Cr Sarah Quinton  
Cr Jai Wilson

##### Officers

Ms Peta Mabbs, Chief Executive Officer  
Mr Paul White, Director Corporate Services  
Mr Luke Gibson, Director Community Planning  
Mr Phil Adams, Executive Manager Infrastructure  
Mr Bryce Campbell, Waste & Recycling Coordinator  
Ms Deanie Carbon, Corporate Communications Coordinator  
Mrs Amy Holmes, Minute Secretary

##### Public

Approximately 30 members of the public were in attendance.



## Press

Nil

## Apologies

Cr Chris Barty  
Don Yates  
Carolyn McGregor  
Carol Seidel

### **3.0 MAYOR'S ADDRESS/REPORT**

Cr Renee McLennan presented the Mayor's report for the year ended 30 June 2019 and spoke on the progress and achievements of the previous 12 months and current projects:

- Changes to Council administration and staff
- Ensuring direction of Council aligns with community expectations
- BassenDream Community Engagement project
- Community Benchmarking survey
- One Planet Living sustainability framework
- Bassendean Men's Shed
- Mary Crescent playground redevelopment
- Progressing Sandy Beach playground
- Urban forest – street tree planting
- Transport study – active transport such as walking & cycling
- Whitfield Safe Active Street
- Arts & Culture Plan
- Plastic Free
- FOGO – Food Organics & Garden Organics
- 1 Surrey Street restoration & extension
- Underground power
- Living Streams

### **4.0 CEO'S ADDRESS**

The Chief Executive Officer, Ms Peta Mabbs, provided an overview of administrative changes since her commencement and outlined her priorities:

- New Executive team – changes in leadership to drive necessary changes internally and externally

- Strategic review of the organisation – fit for purpose in serving the Council and community into the future
- Priorities are - Governance, Community Engagement, Town Planning and Sustainability
- BassenDream Our Future
- Local Planning Framework
- 10 Year Strategic Plan for the community
- Review of IT systems – opportunity for improvements to streamline our business.

## **5.0 RECEIVING OF THE 2018/19+ ANNUAL REPORT**

The purpose of the meeting is to receive the 2018/19 Annual Report and any other General Business. The Annual Report can be found on the Town's website at:

<https://www.bassendean.wa.gov.au/documents/735/annual-report-20182019-adopted>.

### **RESOLUTION – ITEM 5.0**

MOVED Emily Wilding, Seconded Paul Bridges, that the 2018/19 Annual Report including the Audited Annual Financial Statements and Auditor's Report, be received.

CARRIED

## **6.0 GENERAL BUSINESS**

### **6.1 Questions Submitted in Advance**

Ms Genevieve Errey, 36 Anzac Terrace, Bassendean

*What is the Town doing to protect trees on private property*

The Mayor advised that the Town is really concerned about the loss of trees. Last year, the Green Spaces Better Places Report ([https://www.greenerspacesbetterplaces.com.au/media/163130/w\\_sattg.pdf](https://www.greenerspacesbetterplaces.com.au/media/163130/w_sattg.pdf)) identified the Town of Bassendean as one of the areas most likely to be vulnerable to extreme heat and in the top 50 greening opportunities for the whole of Australia. This is one reason why we have introduced a target of 70% canopy coverage of our road reserves and tripled our budget for new street trees. We have already procured 600 trees for this winter's planting season and will be purchasing more. We have also recently employed a street tree officer to ensure the success of our tree planting program.

However, as we know, the majority of canopy loss is due to the clearing of mature trees on private property to make way for new development. We are therefore in the process of developing a local planning policy relating to retention of existing trees and provision of new trees on private property.

Under the current state legislation there are limitations on local government's ability to regulate tree removal on private property, therefore the Policy will likely seek to incentivise the retention of existing trees and where that is not achieved, require new trees to be planted.

In addition, I am personally very keen for the Town to lobby the state government to implement legislative changes to bring WA more in line with other states for the protection of significant trees.

Emily Wilding, 21 Second Avenue, Bassendean

*What is the Town doing to address homelessness.*

The Mayor responded, the 2016 Census identified 97 people in Bassendean who were defined as homeless. The numbers include people who are sleeping rough but also people in shelters, boarding houses, temporary housing or those living in houses considered to be severely crowded. I know that as a community we have a heart for people and I love that our community cares when they hear about those amongst us who are suffering. WA's 10 year strategy on homelessness for 2020-2030, "All Paths Lead to Home" was recently released to address this complex challenge. The strategy identifies that homelessness is best addressed when all levels of government, community services sector, private business and communities work together. It also highlights the need to define and understand our respective roles to provide clarity about how we will work together to affect the greatest positive change. The strategy identifies the ways in which local governments can contribute many of which I'm pleased that the Town is currently doing or working towards:

- Making information on local services and supports available and accessible.
- Ensuring Rangers and front-line staff are informed and supported to interact with people experiencing homelessness and, where appropriate, refer them to local services.
- Working with Police to support and refer people experiencing homelessness to local services and supports.
- Coordinating volunteer and charity groups through a place-based approach that better meets the needs of people experiencing homelessness.

- Utilising land and assets to create places that are inclusive and can support vulnerable people

Our frontline workers, including rangers, library and youth services staff interact with and provide assistance to people who are at risk of, or experiencing homelessness.

Although these staff may not have the specialist skills required to address the complex issues these people face, there is an opportunity for the interaction to be a key point of referral to local homelessness and accommodation services. Recently several of our frontline staff have undergone training in mental health awareness to build knowledge and understanding of vulnerable people in our community. The ToB also provides emergency packages (of food, water and toiletries) when we become aware of people who may be sleeping rough in our Town. Our staff also provide information to assist people to access State and Commonwealth funded services through our library which is often frequented by vulnerable people seeking a safe place to access the internet and use facilities.

Recently, the Town undertook an asset mapping exercise with community members to better understand the strengths in our community, including community groups and key services and to identify any gaps. We are now bringing this information together and turning it into a community directory for all of our community members to access.

The Town's Youth Service delivers the SHIELD Program (Secure Housing for Individuals Exploring Lifeskills Development). This program is a partnership with the premier youth homelessness provider in the region; Indigo Junction (formerly Swan Emergency Accommodation), the Department of Communities and Foundation Housing. SHIELD offers 4 local houses to young people who are transitioning from 'supervised' accommodation with 'live in' support workers, to independent housing supported externally. The Program offers this accommodation for up to 2 years, by which time successful participants can transition to permanent public or social housing.

We will soon be undertaking a major review of our asset portfolio. Providing inclusive places is important and the opportunity to review our community facilities will allow us to consider the needs of all members of our community.

*What is the Town doing to promote community safety.*

All of us want to feel secure and building a safe, strong community is a priority. We have developed a close relationship with our local police and meet regularly to discuss any concerns. We have been extremely impressed with their responsiveness whenever concerns have been raised. This has included deploying mounted police in the Town, attending community meetings, visiting businesses along OPR to discuss security concerns and providing advice and recently additional police resources being allocated to our area in response to a spate of burglaries.

Despite this, police have confirmed that crime in our area has not increased in recent years. We experience incidents of opportunistic crime but the most significant issue that they deal with in our Town is domestic violence.

Our recent Community Survey results indicate community safety is a priority for our community and this will be considered when developing our new SCP in the coming months. Our actions over this reporting period has included:

- Communication & raising awareness— we have included material on the ToB website; Thrive; in person (ToB and Police) with the aim of empowering citizens to protect themselves, their home, their businesses;
- CCTV installation at Jubilee Reserve & Mary Crescent Reserve;
- Deploying the Town's mobile CCTV trailer in conjunction with the police;
- Creating a reporting culture in our community – report suspicious activity to enable police to build a picture of what is happening and respond accordingly;
- Building stronger community connections where people know their neighbours through supporting local community groups;
- Funding Constable Care in our schools to teach younger children the importance of protective behaviours;
- Visiting other local governments to assess their approaches e.g City of Kwinana;
- Lighting upgrades along OPR and throughout much of the Town north of the train line with the proposed undergrounding of power; and
- Promoting foot traffic through the Town centre with vibrancy activities such as WonderRealm.

We are currently examining the value of an audit on OPR to identify opportunities for making changes to the physical environment to enhance safety. We all have a role to play. Community safety and crime prevention requires government, the police and each of us as community members to play our part.



## 6.2 Public Question Time

Mr Paul Bridges, West Road, Bassendean

*When is the History Book going to be published in some form. Given the money spent, staff hours and community contribution, the information needs to be made available to the public.*

The CEO advised that it is going through its last review and will be made available shortly. We need to consider in what format to present it.

Mr Robert Giersch, 47 Fifth Avenue, Bassendean

*Would Council consider banning parking down one side of the street in the Avenues. Fourth Avenue in particular is bad.*

The Mayor advised that the public can report parking issues which will then be followed up by Ranger Services. The Rangers can look into this issue.

*The large trees on Success Avenue have caused issues with the road and kerbing. The road has just been resurfaced. Before any more large trees are planted, consideration needs to be given to the potential damage caused.*

The Mayor advised that this will be considered by the Town to ensure that tree roots don't affect the infrastructure of roads, pavements, verges etc.

Mr Phil Adams, Executive Manager Infrastructure, advised that the impact of tree roots will be taken into consideration to ensure appropriate selection of trees.

Mr Bill Busby, Ashfield Sports Club

*Please give some attention and consideration to the Town Planning Scheme.*

*What have you done to improve the security of businesses in the Town, particularly in relation to the break-ins at the hairdressers.*

The Mayor commented that the Town has met with the business owner a number of times, along with the Police. They have installed security measures. The last communication with the business owner was that they were comfortable with the action taken to date.

Mr Bruce Keay, 11 Earlsferry Court, Bassendean

*Where is the Town at with Scheme 4A. Under Financial Risk Management on page 57, there is not a single mention about the contingent risk for the Town with Scheme 4A. The Scheme has been in deficit for a number of years. What other things has the Auditor not identified that may be a risk to the Town.*

The Mayor responded that a report on Scheme 4A was presented to Council at its December OCM and a series of actions was agreed to.

The Director Corporate Services advised that this report is for the financial year ending 2019. Scheme 4a will be reflected in the 2019/2020 report.

Mr Clive Haliday – 3/106 Broadway, Bassendean

*To what extent is the Council accountable to the State Government for the implementation of planning matters. What kind of time frames are in place for these matters to be implemented.*

The Mayor advised that the Director Community Planning will be presenting a timeline to Council at its February OCM.

The Director Community Planning commented that the West Australian Planning Commission sets the rules and agenda for planning for the State. The final decisions rest with the Minister. There is an expectation that any proposals put forward are in line with community sentiment and that the community has been consulted. Approval rests with the Minister and the State Government.

Mrs Anne Brinkworth, 19 Ida Street, Bassendean

*Congratulations to the Wind in the Willows Childcare service in Ashfield for being ranked in the top ten.*

*The Broadway Arboretum needs some attention as a number of trees have been cut back to stumps and many of the plants aren't getting enough water. The Council needs to allocate some funding to maintain this asset.*

*The Town really needs to progress its Transit Oriented Development or we are going to miss out.*

The Mayor commented that the Town has the opportunity to have a new scheme in place soon and has the opportunity to do it well.

Emily Wilding, 21 Second Avenue, Bassendean

*The Town's 2018 Youth Statement outlined 'legal issues' as a priority area and highlighted the need to play a diversionary role in the prevention of juvenile/youth crime, as well as the need to foster improved community relations between young people, the police and the general community. What plans are in place, or will be put in place to achieve these priorities.*

The CEO commented that there are programmes delivered through the Town's Youth Services, specifically Case Management which is focused on an individual's situation. We work with other agencies and provide an education programme for those youths who find school difficult to deal with. Recently the BassenDream project and community survey identified the need to work closely with the younger members of our community and make them feel included.

Mr William Busworth, West Road, Bassendean

*Half of total revenue received from rates goes to employee costs. Employee costs were almost \$1million over budget. What will be put in place to avoid this in the future.*

The Mayor commented that the period reported was during our organisational restructure. Changes to administration and staff have impacted these figures.

The Director Corporate Services commented that a number of things weren't anticipated. A large part of the increase was the transformation programme. Staff were paid out their entitlements when they ceased employment with the Town. Wind in the Willows- paternity leave entitlements, change in the delivery of Senior Services – changed from state based system to commonwealth system. Resulted in a need to boost the workforce through additional casual employees.

The Mayor advised that more than half the Town's staff are employed in Wind in the Willows and Senior Services. These are paid for by the service, not through rates revenue.

The Mayor advised that the Town is putting processes in place to avoid this happening in the future. We have had many conversations about this.

The CEO commented that the 2018/19 Budget was set almost two years ago. There were some factors we were not aware of. Superannuation increases, EBA salary increases, people leaving – entitlements, backfill arrangements when people are away – paying extra salaries etc. These issues will be considered when setting the next budget.

Presley Chihuri, 3 Thompson Road, Bassendean

*Can the Town save money on the frequency that Councillors have meetings. Why are there two Council meetings two weeks apart, isn't this double handling.*

The Mayor explained that a Briefing Session is conducted one week, followed by the Ordinary Council Meeting the next week. That is the way the majority of local governments operate. The briefing sessions are not additional meetings but are an opportunity to ask questions of staff and gather information needed as part of the decision making process. Decisions are made by Council at the Ordinary Council Meeting. Councillors and Executive Staff are not paid per meeting.

Mr Paul Bridges, West Road, Bassendean

*Have the 48 properties identified under the Municipal Heritage Inventory been listed for protection under the Town Planning Scheme.*

The Director Community Planning responded that yes they have.

*Has any money been allocated for the development of Streetscape Guidelines.*

The Director Community Planning advised that little progress has been made. The current priority is to review the planning framework of the Local Planning Strategy.

*With regard to the street tree planting programme and the aim to achieve 70% canopy cover, what will be the measures of success. Climate change issues affecting our Town need to be considered, with the main issues being tree planting and rising sea levels which are bringing salt water into Bindaring Park.*

The Mayor commented that the Town's Street Tree Officer will be assessing what we currently have in terms of street trees and an overarching plan will be developed.

*Are we still pruning street trees to the property line and road edge.*

The Mayor advised that the Town has had conversations with the contractors about pruning requirements.

Mr Bill Busby, Ashfield Sports Club

*Can the Town look into improving facilities at the Ashfield Sports Club to support female sport participants. For example, there are no female changeroom facilities.*

*There's a section of festoon lighting on Old Perth Road that isn't working and needs to be repaired.*

The Mayor advised that this particular section of festoon lighting was installed in the wrong area by the contractor and so is not connected to the electricity.

## **6.2     Motions**

Nil

## **7.0     MEETING CLOSURE**

There being no further business, the Mayor declared the meeting closed, the time being 8.40pm.



# **ATTACHMENT NO. 2**



# TOWN OF BASSENDEAN

## ORDINARY COUNCIL MEETING

### MINUTES

### 25 FEBRUARY 2020

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# TOWN OF BASSENDEAN

## MINUTES

### ORDINARY COUNCIL MEETING

HELD IN THE COUNCIL CHAMBER, 48 OLD PERTH ROAD, BASSENDEAN

ON TUESDAY 25 FEBRUARY 2020 AT 7.00PM

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#### 1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open, welcomed all those in attendance and acknowledged the past and present traditional owners and custodians of the land on which the meeting was held.

#### 2.0 PUBLIC QUESTION TIME & ADDRESS BY MEMBERS OF THE PUBLIC

##### 2.1 Public Question Time

Mr Bruce Keay, 11 Earlsferry Court, Bassendean

*In reference to Item 10.5 – Finalisation of Town Planning Scheme No. 4A at the last OCM (December 2019), what progress has been made on points 1-7.*

The Director Community Planning responded that the lot in Hamilton Street has been created and the title has been issued. The Town is currently in negotiations over the land swap to occur in Hyland Street.

##### 2.2 Address by Members of the Public

*It should be noted that public statements are not recorded in the minutes.*



### **3.0 ATTENDANCES, APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE**

#### **Present**

##### **Councillors**

Cr Renee McLennan, Mayor  
Cr Kathryn Hamilton, Deputy Mayor  
Cr Chris Barty  
Cr John Gangell  
Cr Hilary MacWilliam  
Cr Sarah Quinton  
Cr Jai Wilson

##### **Officers**

Ms Peta Mabbs, Chief Executive Officer  
Mr Paul White, Director Corporate Services  
Mr Luke Gibson, Director Community Planning  
Mr Phil Adams, Executive Manager Infrastructure  
Ms Donna Shaw, Manager Planning Services  
Mr Bryce Campbell, Waste & Recycling Coordinator  
Ms Deanie Carbon, Corporate Communications Coordinator  
Mrs Amy Holmes, Minute Secretary

##### **Public**

Approximately four members of the public were in attendance.

##### **Press**

Nil

#### **Leave of Absence**

Cr Hamilton requested a Leave of Absence for 20-22 March 2020.

#### **COUNCIL RESOLUTION – ITEM 3.0**

**OCM – 1/02/20** MOVED Cr Quinton, Seconded Cr Wilson, that Cr Hamilton be granted a Leave of Absence for 20-22 March 2020.  
**CARRIED UNANIMOUSLY 7/0**

### **4.0 DEPUTATIONS**

Nil

**5.0 CONFIRMATION OF MINUTES**

**5.1 Ordinary Council Meeting held on 17 December 2019**

**COUNCIL RESOLUTION/OFFICER RECOMMENDATION –  
ITEM 5.1(a)**

**OCM – 2/02/20** MOVED Cr Quinton, Seconded Cr Barty, that the minutes, of the Ordinary Council Meeting held on 17 December 2019 be received.

**CARRIED UNANIMOUSLY 7/0**

**COUNCIL RESOLUTION/OFFICER RECOMMENDATION –  
ITEM 5.1(b)**

**OCM – 3/02/20** MOVED Cr Quinton, Seconded Cr Wilson, that the minutes of the Ordinary Council Meeting held on 17 December 2019 be confirmed as a true record.

**CARRIED UNANIMOUSLY 7/0**

**6.0 ANNOUNCEMENT BY THE PRESIDING PERSON WITHOUT  
DISCUSSION**

Nil

**7.0 PETITIONS**

Nil

**8.0 DECLARATIONS OF INTEREST**

Nil

**9.0 BUSINESS DEFERRED FROM PREVIOUS MEETING**

Nil

**10.0 REPORTS**

**10.1 Adoption of Recommendations En Bloc**

It was agreed that items 10.2, 10.3, 10.4, 10.5, 10.6, 10.10, 10.11 & 10.13 be removed from the en-bloc table and considered separately.

**COUNCIL RESOLUTION/OFFICER RECOMMENDATION –  
ITEM 10.1**

**OCM – 4/02/20** MOVED Cr Quinton, Seconded Cr Barty, that Council adopts en bloc the following Officer recommendations contained in the Ordinary Council Meeting Agenda of 25 February 2020:

Item	Report
10.8	Determinations Made by the Principal Building Surveyor
10.9	Determinations Made by Development Services
10.12	Bassendean Local Emergency Management Committee Meeting held on 5 February 2020
10.14	Quarterly Report for Period Ended 31 December 2019
10.15	Calendar for February/ March 2020
10.16	Receipt of External Committee Minutes

**CARRIED UNANIMOUSLY 7/0**

Council was then requested to consider the balance of the Officer recommendations independently.

Item	Report
10.2	Review of Local Planning Framework
10.3	Additions and Alterations to Shop (Chemist) and Medical Centre at Lot 37, (No.1B) Colstoun Road, Ashfield
10.4	Third Party Appeal Rights in Planning – WALGA Consultation with Members
10.5	Old Perth Road Markets – Future Direction
10.6	Food Organics Garden Organics Charge Modelling
10.7	Town of Bassendean Meeting Procedures Local Law 2020
10.10	Accounts Paid – December 2019 and January 2020 (
10.11	Monthly Financial Report – December 2019 and January 2020
10.13	Quarterly Report for Period Ended 31 December 2019
13.1	RFT 06/2019 Provision of Restoration and Conservation Works to the Residency and the Pensioner Guard Cottage and Construction of a New Community Space at 1 Surrey St, Bassendean
13.2	Appointment of Members to the Audit and Governance Committee – 2019 to 2021

**10.2 Review of Local Planning Framework (Ref: UAP/PLANNG/14 - Luke Gibson, Director Community Planning)**

**APPLICATION**

The purpose of this report was to inform Council and the community as to the process in undertaking a review of the Local Planning Framework.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION —  
ITEM 10.2

**OCM – 5/02/20** MOVED Cr Wilson, Seconded Cr Hamilton, that Council notes the information contained in the report, including that a subsequent report will be presented to Council prior to 30 June 2020.

CARRIED 6/1

*Crs Wilson, Hamilton, McLennan, Barty, MacWilliam & Quinton voted in favour of the motion. Cr Gangell voted against the motion.*

**10.3** Additions and Alterations to Shop (Chemist) and Medical Centre at Lot 37, (No.1B) Colstoun Road, Ashfield, Owner/Applicant: IQD Investments Pty Ltd (Ref: DABC/BDVAPPS/2019-169 – Cameron Hartley, Planning Officer)

APPLICATION

The purpose of this report was for Council to consider an application for development approval for additions and alterations to the existing Shop (Chemist) and a partial change of use to Medical Centre at Lot 37 (No.1B) Colstoun Road, Ashfield.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION —  
ITEM 10.3

**OCM – 6/02/20** MOVED Cr Wilson, Seconded Cr Hamilton, that Council approves the application for development approval for the proposed additions and alterations to the existing Shop (Chemist) and partial change of use to Medical Centre at Lot 37 (No.1B) Colstoun Road, Ashfield, subject to the following conditions:

1. The 'Shop' and 'Medical Centre' operating in accordance with the approved business details received 19 December 2019 and 31 January 2020 and 19 February 2020, which forms part of this approval.
2. The loading and/or unloading of vehicles is to occur on-site and in a manner that does not interfere with the parking of vehicles in the car park.
3. Prior to or in conjunction with the application for a building permit, the approved plans are to be modified such that the enclosed bin store area at the rear of the site:

- a. is constructed of 1.8m high masonry walls;
  - b. is provided with a non-visually permeable, self-closing gate; and
  - c. includes the installation of a floor waste to the base of the bin store area.
4. The Medical Centre use is limited to two consultants at any one time.

CARRIED UNANIMOUSLY 7/0

**10.4 Third Party Appeal Rights in Planning – WALGA Consultation with Members (Ref: DABC/LEGLTN/1 Christian Buttle, Senior Planning Officer)**

PURPOSE

To provide a response to the Western Australian Local Government Association (WALGA) as to whether or not the Town supports the following motion which was carried by attendees at the August 2019 WALGA Annual General Meeting (AGM):

- “1. That there be an amendment to the Third Party Appeals Process Preferred Model, being that third parties in addition to Local Governments are able to make an appeal.*
- 2. That there be an amendment to the Third Party Appeals process Preferred Model, being that closely associated third parties in addition to Local Governments are able to appeal decisions made by the Western Australian Planning Commission and the State Administrative Tribunal, in addition to Development Assessment Panels.”*

COUNCIL RESOLUTION/OFFICER RECOMMENDATION —  
ITEM 10.4

**OCM – 7/02/20**

MOVED Cr Wilson, Seconded Cr Quinton, that Council advises the Western Australian Local Government Association that it does not support the August 2019 motion to amend the Preferred Model for Third Party Appeal Rights in Western Australia.

CARRIED 5/2

*Crs Wilson, Quinton, McLennan, Barty and Gangell voted in favour of the motion. Crs Hamilton and MacWilliam voted against the motion.*



*Cr Hamilton requested her reasons for voting against the motion be recorded, as follows:*

*"I am voting against this motion because it supports an archaic system that is inconsistent with the principles of natural justice. To waiver support for Third Party Appeal Rights is to deny our community a voice. Third Party Appeal Rights exist and are administered efficiently in every state and territory of Australia except Western Australia, and it is my strongly held view that legitimate planning appeals should be permissible."*

**10.5 Old Perth Road Markets – Future Direction (Ref: ECOD/EVMNGT/2 - Salvatore Siciliano, Manager Recreation and Culture)**

**APPLICATION**

The purpose of this report was for Council to consider options associated with the future of the Old Perth Road Markets (OPRM). This report does not seek to address the performance of the current parties involved in the delivery of the Old Perth Road Markets.

**OFFICER RECOMMENDATION – ITEM 10.5**

That Council:

1. Extends both the Management Agreement with the Rotary Club Swan Valley and the contract with the Coordinator of the Old Perth Road Markets until 30 June 2020;
2. Approves an Expression of Interest process to be conducted regarding the future staging of the Old Perth Road Markets; and
3. Notes that a report will be presented to a future Council meeting outlining the results of the Expression of Interest process.

**LAPSED FOR WANT OF A MOVER**

*Cr Barty moved an alternative motion.*

**COUNCIL RESOLUTION – ITEM 10.5**

**OCM – 8/02/20** MOVED Cr Barty, Seconded Cr Wilson, that:

1. Council extends both the Management Agreement with the Rotary Club Swan Valley and the contract with the coordinator of the Old Perth Road Markets until 30 June 2021;
2. Prior to the conclusion of the contract 30/6/21, the Town of Bassendean will conduct an Expression of Interest review process to determine the future direction of the Old Perth Road Markets. In the event the contract extension is not accepted, Council approves an Expression of Interest process to be conducted regarding the future staging of the Old Perth Road Markets; and
3. Council notes that if required a report will be presented at a future Council meeting outlining the results of the Expression of Interest process.

**CARRIED** 6/1

*Crs Barty, Wilson, McLennan, Hamilton, MacWilliam and Quinton voted in favour of the motion. Cr Gangell voted against the motion.*

**10.6 Food Organics Garden Organics Charge Modelling (Ref: WSTMNGT/SVPROVN/5 Brice Campbell, Recycling and Waste Coordinator)**

*Cr Gangell left the meeting at 7.59pm and returned at 8.02pm.*

**APPLICATION**

The purpose of this report was for Council to consider the different charging models prior to the introduction of the three bin Food Organics Garden Organics (FOGO) service.

**OFFICER RECOMMENDATION — ITEM 10.6**

That Council:

1. Notes the charging models presented in the report;
2. Selects separate 140L and 240L residential charges as the preferred charging model in the 2020/21 financial year;

3. Selects 3:1 as the preferred disposal ratio for the difference between 140L and 240L general waste bins in the 2020/21 financial year, which provides an increased cost of approximately \$81 for the option to retain a 240L general waste bin; and
4. Notes the opt out scheme will include a cost difference for retaining the 240L general waste bin.

*Cr Wilson moved the officer recommendation with an amendment to point 3 as the cost at this stage is unknown.*

**COUNCIL RESOLUTION — ITEM 10.6**

**OCM – 9/02/20** MOVED Cr Wilson, Seconded Cr McLennan, that Council:

1. Notes the charging models presented in the report;
2. Selects separate 140L and 240L residential charges as the preferred charging model in the 2020/21 financial year;
3. **Selects 3:1 as the preferred disposal ratio for the difference between 140L and 240L general waste bins in the 2020/21 financial year; and**
4. Notes the opt out scheme will include a cost difference for retaining the 240L general waste bin.

**CARRIED UNANIMOUSLY 7/0**

**10.7 Town of Bassendean Meeting Procedures Local Law 2020 (Ref: GOVR/LEGLTN/1 - Peta Mabbs, Chief Executive Officer)**

**APPLICATION**

This report provides the new Town of Bassendean Meeting Procedures Local Law 2020.

**COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.7**

**OCM – 10/02/20** MOVED Cr Wilson, Seconded Cr Quinton, that Council:

1. Repeals the Town of Bassendean Standing Orders Local Law 2011; and

2. Resolves to make the new Town of Bassendean Council Meeting Procedures Local Law 2020.

CARRIED BY AN ABSOLUTE MAJORITY 7/0

**10.8 Determinations Made by the Principal Building Surveyor (Ref: LUAP/PROCED/1 – Kallan Short, Principal Building Surveyor)**

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.8

**OCM – 11/02/20** MOVED Cr Quinton, Seconded Cr Barty, that Council notes the decisions made under delegated authority by the Principal Building Surveyor.

CARRIED UNANIMOUSLY BY EN BLOC RESOLUTION – OCM-4/02/20 7/0

**10.9 Determinations Made by Development Services (Ref: LUAP/PROCED/1 – Christian Buttle, Senior Planning Officer)**

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.9

**OCM – 12/02/20** MOVED Cr Quinton, Seconded Cr Barty, that Council notes the decisions made under delegated authority by the Acting Manager, Development Services.

CARRIED UNANIMOUSLY BY EN BLOC RESOLUTION – OCM-4/02/20 7/0

**10.10 Accounts Paid – December 2019 and January 2020 (Ref: FINM/CREDTS/4 – Paul White, Director Corporate Services)**

APPLICATION

The Local Government (Financial Management) Regulations 1996, Regulation 13, requires a list of accounts paid by the CEO each month to be presented to Council at the next ordinary meeting of council after the list is prepared.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.10

**OCM – 13/02/20** MOVED Cr McLennan, Seconded Cr Barty, that Council receives the list of payments for December 2019 and January 2020.

CARRIED UNANIMOUSLY 7/0

**10.11 Monthly Financial Report – December 2019 and January 2020 (Ref: FINM/AUD/1 – Paul White, Director Corporate Services)**

APPLICATION

The Local Government (Financial Management) Regulations 1996, Regulation 34, requires that a statement of financial activity be prepared each month and presented to Council.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.11

**OCM – 14/02/20** MOVED Cr Wilson, Seconded Cr Barty, that Council receives the monthly financial reports for December 2019 and January 2020.

CARRIED UNANIMOUSLY 7/0

**10.12 Bassendean Local Emergency Management Committee Meeting held on 5 February 2020 (Ref: GOVN/CCLMEET/12 – Luke Gibson, Director Community Planning)**

APPLICATION

The purpose of the report was for Council to receive the report on a meeting of the Bassendean Local Emergency Management Committee held on 5 February 2020.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.12

**OCM – 15/02/20** MOVED Cr Quinton, Seconded Cr Barty, that Council receives the report on a meeting of the Bassendean Local Emergency Management Committee held on 5 February 2020.

CARRIED UNANIMOUSLY BY EN BLOC RESOLUTION – OCM-4/02/20 7/0

**10.13 Quarterly Report for Period Ended 31 December 2019 (Ref: FINM/AUD/1 – Peta Mabbs, Chief Executive Officer)**

APPLICATION

The purpose of this report was for Council to receive the Quarterly Report for the period ended 31 December 2019.

OFFICER RECOMMENDATION – ITEM 10.13

That Council:

1. Receives the Quarterly Report for the quarter ending 31 December 2019; and
2. Deletes the Outstanding Council Resolutions attached to the Quarterly Report for the period ending 31 December 2019, that are recommend for deletion.

*Cr McLennan moved the officer recommendation with the deletion of Point 2 as an updated report was requested to be provided to Councillors.*

COUNCIL RESOLUTION – ITEM 10.13

**OCM – 16/02/20** MOVED Cr McLennan, Seconded Cr Wilson, that Council receives the Quarterly Report for the quarter ending 31 December 2019.

CARRIED UNANIMOUSLY 7/0

**10.14** **Common Seal (Ref: INFM/INTPROP/1 – Elizabeth Nicholls, Executive and Research Officer to CEO)**

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.14

**OCM – 17/02/20** MOVED Cr Quinton, Seconded Cr Barty, that Council notes the affixing of the Common Seal during the reporting period.

CARRIED UNANIMOUSLY BY EN BLOC RESOLUTION – OCM-4/02/20 7/0

**10.15** **Calendar for February/ March 2020 (Ref: Elizabeth Nicholls, Executive and Research Officer to CEO)**

COUNCIL RESOLUTION/OFFICER RECOMMENDATION - ITEM 10.15

**OCM – 18/02/20** MOVED Cr Quinton, Seconded Cr Barty, that the Calendar for February/March 2020 be adopted, **with the addition of the Audit and Governance Committee on 11 March 2020, commencing at 5.30pm.**

CARRIED UNANIMOUSLY BY EN BLOC RESOLUTION – OCM-4/02/20 7/0

**10.16 Receipt of External Committee Minutes (Ref: INFM/INTPROP/1 – Elizabeth Nicholls, Executive and Research Officer to CEO)**

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 10.16

**OCM – 19/02/20** MOVED Cr Quinton, Seconded Cr Barty, that Council notes the attached minutes from external Committee meetings held within the reporting period.

CARRIED UNANIMOUSLY BY EN BLOC RESOLUTION – OCM-4/02/20 7/0

**11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**12.0 ANNOUNCEMENTS OF NOTICES OF MOTION FOR THE NEXT MEETING**

**12.1 Notice of Motion - Cr John Gangell – Construction of a Town Centre Piazza**

*“That Council receives a report outlining potential sites, timeframes and associated costs for commencing the planning process for the construction of a multifaceted Town Centre Piazza for consideration in the 2020/2021 draft budget that could potentially, dependant on budget and space constraints, incorporate the following elements:*

- 1. A community space that is suitable for a variety of different functions including but not limited to markets, concerts, festivals, rallies, civic functions and other events;*
- 2. A dedicated space for an outdoor functional fitness space that would include but not be limited to climbing, swinging, pushing, pulling and strength and conditioning that would be suitable for all ages.”*

**12.2 Notice of Motion - Cr John Gangell – Creation of a Tourism and Marketing Strategy**

*“That Council receives a report on creating a tourism and marketing strategy in-house for the Town with a focus on creating the Town of Bassendean as a destination location.”*

**13.0** **CONFIDENTIAL BUSINESS**

**COUNCIL RESOLUTION – ITEM 13.0(a)**

**OCM – 20/02/20** MOVED Cr MacWilliam, Seconded Cr Wilson, that the meeting go behind closed doors in accordance with Section 5.23 of the Local Government Act 1995, the time being 8.25pm.

**CARRIED UNANIMOUSLY 7/0**

*Cr Gangell left the meeting at 8.28pm and did not return.*

**13.1** **RFT 06/2019 Provision of Restoration and Conservation Works to the Residency and the Pensioner Guard Cottage and Construction of a New Community Space at 1 Surrey St, Bassendean (PARE/TENDNG/79), Paul White, Director Corporate Services**

*This matter was considered with members of the public excluded from the Chambers under Clause 5.23 (2) (c) of the Local Government Act 1995, as the report discusses a contract which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.*

**COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 13.1**

**OCM – 21/02/20** MOVED Cr McLennan, Seconded Cr Quinton, that Council receives and notes the Officer Recommendation as shown in the Confidential Attachment to the Ordinary Council Minutes of 25 February 2020.

**CARRIED UNANIMOUSLY 6/0**

**13.2** **Appointment of Members to the Audit and Governance Committee – 2019 to 2021**

*This matter was considered with members of the public excluded from the Chamber under Clause 5.23 (2) (b) of the Local Government Act 1995, as the officer report discusses information of a personal nature.*

**OFFICER RECOMMENDATION – ITEM 13.2**

MOVED Cr Quinton, Seconded Cr Wilson, that Council appoints those nominees as shown in the Confidential Report attached to the Ordinary Council Agenda of 25 February 2020; to the Audit and Governance Committee for a two year period, expiring on the next ordinary Local Government Election Day, unless otherwise indicated.

**LOST 0/6**



*After further discussion all Councillors voted against the recommendation, including the Mover and Seconder of the motion.*

*Cr Hamilton moved an alternative motion.*

COUNCIL RESOLUTION – ITEM 13.2

**OCM – 22/02/20** MOVED Cr Hamilton, Seconded Cr Quinton, that Council:

1. Amends the Instrument of Appointment and Delegation for the Audit and Governance Committee to include membership of four Councillors and up to three community members;
2. Appoints Cr Barty as a member of the Audit and Governance Committee for the 2019/21 term;
3. Appoints the following community members to the Audit and Governance Committee for a two year period, expiring on the next ordinary local government election day, unless otherwise indicated:
  - Mr Tom Klaassen;
  - Mr Martin Le Tessier;
  - Mr Elliott Brannan; and
4. Endorses the engagement of Mr Ron Back as an advisor to the Audit and Governance Committee for a two year period, expiring on the next ordinary local government election day, unless otherwise indicated.

CARRIED UNANIMOUSLY 6/0

COUNCIL RESOLUTION – ITEM 13.0(b)

**OCM – 23/02/20** MOVED Cr Wilson, Seconded Cr Barty, that the meeting come from behind closed doors, the time being 9.03pm.

CARRIED UNANIMOUSLY 6/0

*As no members of the public returned to the Chamber, the reading aloud of the motions passed behind closed doors was dispensed with.*

**14.0**                    **CLOSURE**

The next Briefing Session will be held on Tuesday 17 March 2020. The next Ordinary Council Meeting will be held on Tuesday 24 March 2020 commencing at 7.00pm.

There being no further business, the Presiding Member declared the meeting closed, the time being 9.03pm.

# **ATTACHMENT NO. 2B**

# **TOWN OF BASSENDEAN**

## **MINUTES**

### **SPECIAL COUNCIL MEETING**

HELD IN THE BASSENDEAN COMMUNITY HALL, 48 OLD PERTH ROAD,  
BASSENDEAN

**ON TUESDAY 24 MARCH 2020 AT 6.00PM**

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#### **1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS**

The Presiding Member declared the meeting open, welcomed all those in attendance and acknowledged the past and present traditional owners and custodians of the land on which the meeting was held.

#### **2.0 PUBLIC QUESTION TIME AND ADDRESS BY MEMBERS OF THE PUBLIC**

##### **2.1 Public Question Time**

Nil

##### **2.2 Address by Members of the Public**

Nil

#### **3.0 ATTENDANCES, APOLOGIES & APPLICATIONS FOR LEAVE OF ABSENCE**

##### **Present**

##### **Councillors**

Cr Renee McLennan, Mayor  
Cr Chris Barty  
Cr John Gangell  
Cr Sarah Quinton  
Cr Jai Wilson

Apologies

Cr Kathryn Hamilton, Deputy Mayor  
Cr Hilary MacWilliam

Officers

Ms Peta Mabbs, Chief Executive Officer  
Mr Paul White, Director Corporate Services  
Mr Luke Gibson, Director Community Planning  
Mr Phil Adams, Executive Manager Infrastructure  
Mrs Amy Holmes, Minute Secretary

Public

Nil

Press

Nil

**4.0 REPORTS**

**4.1 Consideration of Audit Completion Report and Compliance Audit Return (Ref: GOVN/CCLMEET/18 – Paul White, Director Corporate Services)**

APPLICATION

The purpose of this report was for Council to:

- Receive the Audit Completion Report for the Year Ended 30 June 2019; and
- Adopt the Local Government 2019 Compliance Audit Return for the Town of Bassendean for the period 1 January 2019 to 31 December 2019;

*Officers made a minor amendment to point 2, as shown in bold.*

**COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 4.1**

**SCM – 1/03/20** MOVED Cr Wilson, Seconded Cr Gangell, that Council:

1. Receives the officer's report on matters identified as significant by the Town's external auditor and provides the report, attached to the Special Council Agenda of 24 March 2020, to the Minister for Local Government, The Hon. David Templeman MLA;

2. Makes a copy of the Report to the Minister for Local Government, attached to the **Special Council Agenda of 24 March 2020, available on the Town's website;** and
3. Adopts the Local Government 2019 Compliance Audit Return for the Town of Bassendean for the period 1 January 2019 to 31 December 2019, as attached to the Special Council Agenda of 24 March 2020.

CARRIED UNANIMOUSLY 5/0

**4.2      Mid Review of Annual Budget 2019/20 (Ref: FINM/BUGTG/1) – Paul White, Director Corporate Services)**

APPLICATION

The purpose of this paper was to present the Annual Budget Review for 2019/20 for adoption.

The budget review must be submitted to Council within 30 days of it being completed. The review was completed on 29 February 2020 and is therefore presented at this meeting.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 4.2

**SCM – 2/03/20**      MOVED Cr Wilson, Seconded Cr Quinton, that Council adopts the review of the Annual Budget for the 2019/20 financial year, as outlined in this report and detailed in the list of proposed budget amendments, as attached to the Special Council Agenda of 24 March 2020, in accordance with Regulation 33A of the Local Government (Financial Management) Regulations 1996.

CARRIED BY AN ABSOLUTE MAJORITY 5/0

**4.3      Response to COVID 19 Pandemic (Ref: PUBH/REPRNG/1 - Peta Mabbs, CEO)**

BACKGROUND

In light of the global pandemic, the Town of Bassendean has adapted its range of services and support to the community as we face the challenge of the Coronavirus (COVID-19). This comes at an important time, when people look to government for leadership, support and compassion.

The approach is based on minimising the health risks and financial burden, while maximising support for the most vulnerable members of our community.

A number of statutory services such as waste collection will continue as per normal.

COUNCIL RESOLUTION/OFFICER RECOMMENDATION – ITEM 4.3

**SCM – 3/03/20** MOVED Cr Wilson, Seconded Cr Gangell, that Council, in recognition of the impact of the Coronavirus (COVID-19):

1. Requests the Chief Executive Officer to prepare a budget scenario for 2020-21 based on:
  - a) 0% rate revenue increases in accordance with section 6.2 of the *Local Government Act* and no increase in fees and charges.
  - b) Any proposal for the undergrounding of power by Western Power in parts of Eden Hill and the Bassendean area, not to financially impact home owners in the 2020-21 financial year.
2. Delegates to the Chief Executive Officer the authority to utilise the remaining sponsorship and events funding and commemorative services funding for the remainder of this financial year in order to facilitate community outreach services including the potential for community grants; and
3. Approves 20 days COVID-19 paid leave for employees who have contracted COVID-19, need to care for another person who has COVID-19 or is required to self-isolate, cannot access school or other care arrangements because of COVID-19 or are otherwise prevented from working because of COVID-19.

CARRIED UNANIMOUSLY 5/0

## **5.0                    MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

### **5.1            Notice of Motion – Cr Wilson: FOGO**

#### **COUNCIL RESOLUTION – ITEM 5.1**

**SCM – 4/03/20**      MOVED Cr Wilson, Seconded Cr Quinton, that Council:

1. Acknowledges the Eastern Metropolitan Regional Council (EMRC) has declared on 19 March 2020, a distribution totalling \$13,789,200 from the EMRC's Secondary Waste Reserve to be distributed to all member Councils of the EMRC on or before 30 June 2020 and notes the EMRC conditions of this distribution; and
2. By absolute majority, in accordance with s.5.42 of the Local Government Act 1995 delegate authority to the Chief Executive Officer of the Town of Bassendean its power and the discharge of its duties to negotiate, finalise and enter into a Deed of Release or such legal form of agreement with the EMRC to enable the Town of Bassendean to receive the distribution of funds from the EMRC and to commit the Town of Bassendean to the obligations of the use of funds."

**CARRIED BY AN ABSOLUTE MAJORITY 5/0**

## **6.0                    CLOSURE**

There being no further business, the Presiding Member declared the meeting closed, the time being 6.07pm.



# **ATTACHMENT NO. 3**

**Disposal of 246 (Lot 5) Morley Drive East, Eden Hill**

**From:** Aaron Lohman <[aaron.lohman@elementwa.com.au](mailto:aaron.lohman@elementwa.com.au)>

**Sent:** Tuesday, 24 March 2020 10:16 AM

**To:** Cr Renee McLennan <[crmclennan@bassendean.wa.gov.au](mailto:crmclennan@bassendean.wa.gov.au)>; Cr Kath Hamilton <[crhamilton@bassendean.wa.gov.au](mailto:crhamilton@bassendean.wa.gov.au)>; Cr John Gangell <[crgangell@bassendean.wa.gov.au](mailto:crgangell@bassendean.wa.gov.au)>; Cr Sarah Quinton <[crquinton@bassendean.wa.gov.au](mailto:crquinton@bassendean.wa.gov.au)>; Cr Jai Wilson <[crwilson@bassendean.wa.gov.au](mailto:crwilson@bassendean.wa.gov.au)>

**Cc:** Cr Chris Barty <[crcbarty@bassendean.wa.gov.au](mailto:crcbarty@bassendean.wa.gov.au)>; Cr Hilary MacWilliam <[crmacwilliam@bassendean.wa.gov.au](mailto:crmacwilliam@bassendean.wa.gov.au)>; Scott Greenwood <[scottg@hawaiian.com.au](mailto:scottg@hawaiian.com.au)>; Peta Mabbs <[pmabbs@bassendean.wa.gov.au](mailto:pmabbs@bassendean.wa.gov.au)>

**Subject:** Ordinary Council Meeting -

Dear Elected Members

We refer to the above-mentioned matter.

On behalf of Hawaiian Investments Pty Ltd, element made the attached submissions. By way of background Hawaiian is the owner of the Hawaiian Bassendean Shopping Centre which is located within the Bassendean Town Centre.

We understand that a deputation was not possible to the Agenda Briefing Forum of 17 March 2020 due to concerns surrounding COVID 19, and the Council Meeting tonight is likely to be cancelled to facilitate a Special Council Meeting.

Whilst we understand that the Ordinary Council Meeting may be cancelled, we are instructed by our Client to reiterate comments made in our previous submissions, as attached, given that the proposal will likely be considered in the near future.

We note that the Town considers the sale of the land, and compliance with the planning framework as two separate matters. Notwithstanding, the sale of the land will assist in facilitating the implementation of the buyers concept plan which will arise conflict with the town's planning framework should a Development Application be lodged on this basis.

Thus, having regard to the above, it is considered preferable that Council consider deferral of sale of the land until certainty is sought regarding the development potential of the land through the Development Approval process. As such, it is respectfully requested that Council not support the sale of the land at this time.

Should you have any queries please do not hesitate to contact the undersigned.

Regards





**element.**

Our Ref: 19-376

18 February 2020

Chief Executive Officer  
Ms Peta Mabbs  
Town of Bassendean  
35 Old Perth Road  
BASSENDEAN WA 6934

Dear Ms Mabbs

**LETTER OF OBJECTION**

**SALE OF PROPERTY BY PRIVATE TREATY: LOT 5 MORLEY DRIVE EAST EDEN HILL**

element represents Hawaiian Investments Pty Ltd (Hawaiian) the owner of the Hawaiian Bassendean Shopping Centre at 2 West Road, Bassendean.

**Background**

element has previously made two submissions on the above-mentioned matter dated 4 September 2019 and 1 October 2019. A copy of those submissions are contained within Annexure 1.

The Eden Hill Centre is located approximately 1.5km north of Hawaiian's Bassendean Shopping Centre. The progression of the proposal for a commercial/retail development of 3,840m<sup>2</sup> including a supermarket arises significant concerns for our Client.

**Proposed Sale**

The sale of 5 Morley Drive East, Eden Hill is proposed to assist in the development of Lots 4 and 5 Morley Drive East into a Shopping Centre of 3,840m<sup>2</sup>. As we have previously detailed the proposed Shopping Centre should not be supported on the following grounds:

- *Endorsement of the Concept Plan is inconsistent with the Town's LCS and LEO as the subject site is identified as a Local Centre and the proposed development is of a Neighbourhood Centre scale.*
- *The LEO identifies demand for a total of 366m<sup>2</sup> shop / retail floorspace within Eden Hill Centre by 2031. This demand analysis confirms that Eden Hill is intended to function as a Local Centre providing convenience retail to local residents only. Provision of approximately 3,840m<sup>2</sup> of shop-retail floorspace at Eden Hill is not envisaged by the planning framework and will undermine the viability and growth of the Town Centre.*
- *Approval of the Concept Plan is inconsistent with SPP4.2 as it would undermine the established and planned activity centre hierarchy. Activity centre structure plans and developments should be consistent with the centre's classification in the hierarchy.*

- *It is unclear as to the planning rationale or justification to facilitate a floorspace increase of over 10 times of the demand for such floorspace as set out within the LEO.*
- *The Concept Plan is significantly inconsistent with the objectives of the 'Local Shopping' zone as it will not maintain a retail hierarchy to ensure that the catchment of the Town Centre zone is not adversely affected.*
- *It is queried given the demand for shop / retail floorspace is only 366m<sup>2</sup> as set out within the LEO whether the development proposed within Concept Plan is deliverable.*
- *The Eden Hill locality can be serviced by an existing IGA Supermarket located within 870 metres of the subject site at the corner of Morley Drive East and Bottlebrush Avenue. If development proceeds on the subject site it would significant impact on the IGA Supermarket.*
- *Access is proposed from Morley Drive East which is an ORR under the MRS. New access to an ORR is unlikely to be supported in accordance with DC4.3.*
- *Approval of the proposal would be contrary to orderly and proper planning.*
- *There is no demonstrable market need and demand for the proposed 3,840m<sup>2</sup> neighbourhood centre, including a full-line supermarket of 3,200m<sup>2</sup>. This is based on the following:*
  - *Residents in the Eden Hill area already have convenient access to neighbourhood scale centres and full-line supermarkets. Within 2 km of the Eden Hill site, 95% of residents can travel to an existing activity centre (with a full-line supermarket) within 5 minutes. The average travel time for these residents is only 3 minutes.*
  - *Within 3 km of the site of the proposed Eden Hill Village centre there are 7 supermarkets and the supply of supermarket floorspace in the region of relevance to Eden Hill is currently above the Perth average. With the addition of a 3,200m<sup>2</sup> supermarket the provision of supermarket floorspace would be 24% above the Perth average. Residents therefore already have access to supermarkets and everyday shopping needs.*
  - *The size of the potential catchment and market demand for the Eden Hill Village centre would not be large enough to adequately support the proposed centre.*

In terms of the proposed sale of the land we have reviewed the special conditions of the contract of sale which were provided in Annexure 3 to the Agenda Report of the Briefing Session of 10 December 2019. On review of the contract of sale we understand that the purchaser must as soon as practicable arrange for the construction of the development including seeking all necessary approvals.

The term 'development' is defined in the special conditions of the contract of sale. Development is defined as a commercial / retail development. The following concerns arise in respect to the requirement to build a commercial / retail development as follows:

- As set out in our previous advice the proposed Concept Plan prepared by the purchaser is contrary to the Town's Local Planning Scheme No.10 (LPS10) and State Planning Policy 4.2 Activity Centres for Perth and Peel (SPP4.2). Notwithstanding, the Town is indicating a requirement for the purchaser to construct a commercial / retail development. Thus, the sale of the land has the propensity to facilitate development of the land that is contrary to LPS10 and SPP4.2 having regard to the likelihood that development will proceed on the basis of the Concept Plan.

- As demonstrated by the Urbis Preliminary Need and Demand Assessment there is no demonstrated market demand or need for a Shopping Centre. Thus, the Town's indication to the purchaser to construct a commercial / retail development which has no demonstrated need is not a preferable decision in respect to the future development of the land.
- Based on the proposed Concept Plan we envisage that any Development Application for the development will be determined by the Metro Central Joint Development Assessment Panel (JDAP). The Town's role will be limited to providing a Responsible Authority Report (RAR). Thus, the Town will not have a determinative role for the final development outcome for the site.

Further to the above, we note that the special conditions of the contract of sale do not require the purchaser to develop the residential component of the development which is shown on the Concept Plan. Moreover, as per the special conditions of the contract of sale the purchaser has the unfettered discretion to make changes to the development of the land provided the appropriate approvals are received. Thus, it appears that regardless of the intent for a commercial / retail development there is discretion available with the special conditions of sale to seek approval to develop some other type of development.

#### **Compliance with Section 3.58 of the Local Government Act**

In selling the land the Town is required to comply with Clause 3.58 of the *Local Government Act 1995* (the Act).

Clause 3.58 (4) (c) (i) requires that the details of the proposal sale for public advertising are to include a market valuation of the disposition as ascertained by a valuation carried out no more than six months before the proposed disposition. Based on the advice contained on the 'Have Your Say' website a valuation was obtained on 8 July 2019. Therefore, it is considered that compliance with Clause 3.58 (4) (c) (i) has not been achieved.

#### **Other Options**

It is unknown as to whether the Town has sought interest from other parties in respect to purchasing the land in question which may yield a greater purchase price and deliver greater value to the Town. If this process has not been undertaken it would be prudent to do so.

#### **Conclusion**

element acts on behalf of Hawaiian in respect to the proposal sale of Lot 5 Morley Drive East, Eden Hill.

For the reasons previously provided in submissions on the proposal our Client opposes the land sale and development of a Shopping Centre on the subject site.

In addition to the above, based on a review of the special condition of sale taken from the Agenda Briefing Session of 10 December 2019 it is understood that the Town is indicating a requirement to the purchaser to construct a commercial / retail development. In addition, the purchaser has the unfettered discretion to make changes to the development of the land provided the appropriate approvals are received. Thus, it appears that regardless of the of the intent for a commercial / retail development there is discretion available with the special condition conditions of sale to seek approval to a develop some other type of development.

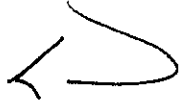
As advised earlier within this advice our Client has significant concerns in respect to the development of a commercial / retail development on the subject site. These concerns arise as the development proposed is contrary to both LPS10 and SPP4.2. In addition, there is no demonstrated need or demand for the proposal as advised by Urbis Preliminary Need and Demand Assessment. Thus, it is queried whether it is a preferable decision to sell the land to the purchaser for a commercial / retail development which is contrary to the Town's planning framework.

Finally, Clause 3.58 (4) (c) (i) of the Act has not been complied with. Thus, it is queried whether the requirements of 3.58 have been appropriately followed.

Having regard to the above, it is requested that the sale of land to the purchaser not proceed.

Should you have any queries or require clarification on any of the matters presented herein, please do not hesitate to contact the undersigned on (08) 9289 8300.

Yours sincerely  
**element**

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line that curves upwards at the end.

Aaron Lohman  
Principal – Planning

CC: Client





**element.**

Our Ref: 19-376

4 September 2019

Chief Executive Officer  
Town of Bassendean  
35 Old Perth Road  
Bassendean WA 6934

**Attention: Mr Brian Reed: Manager Development Services**

Dear Sir

**LETTER OF OBJECTION EDEN HILL CENTRE – PROPOSED CONCEPT PLAN AND REQUEST TO PURCHASE LOT 5 (NO. 246) MORLEY DRIVE EAST, EDEN HILL**

**element** represents Hawaiian Investments Pty Ltd (Hawaiian) the owner of the Hawaiian Bassendean Shopping Centre at 2 West Road, Bassendean.

Hawaiian has been made aware of the Concept Plan which proposes the redevelopment the Eden Hill Centre at Lots 4 and 5 Morley Drive East, Eden Hill. It is understood that the proposal includes the potential sale of Lot 5 Morley Drive, East Eden Hill which is currently owned by the Town of Bassendean (Town) to Birmingham Properties.

The Eden Hill Centre is located approximately 1.5km north of Hawaiian's Bassendean Shopping Centre. The progression of the proposal raises significant concerns for our Client which are outlined below.

**Proposed Concept Plan**

The proposed concept plan most recently considered by the Council at its meeting held 23 April 2019, envisages the following redevelopment of the Eden Hill Centre:

- Provision of shop retail floorspace totalling 3,840m<sup>2</sup>, consisting of a 3,200m<sup>2</sup> supermarket and additional specialty retail;
- A total of 184 car parking bays, consisting of 169 bays on-site and an additional 15 street bays; and
- Proposed residential apartments and grouped dwellings along the eastern and southern perimeter of the development site.

At this juncture we query whether the food and beverage activities have been included within total retail floorspace. The Concept Plan does not clearly indicate this.

**Town of Bassendean Local Commercial Strategy**

In the Council Agenda Report dated 23 April 2019 the following commentary is provided in respect to analysis of the Concept Plan.

*The types of land uses proposed and the amount of retail floor space proposed appear to be consistent with Council's preference for a Neighbourhood Centre as contained in State Planning Policy 4.2 – Activity Centres for Perth and Peel.*

*Any future application for development approval, or Structure Plan required for the retail component of the site will need to be accompanied by a Retail Sustainability Assessment examining the impact of the development on nearby centres.*

The Town's Local Commercial Strategy (LCS) is contained within the Town's Local Planning Strategy (LPS) as endorsed by the Western Australian Planning Commission (WAPC) in December 2014 and updated in February 2015.

In terms of the retail floorspace proposed, it is unclear to how a conclusion that a Neighbour Centre is the Council's preference for the Eden Hill site, having regard to the existing planning framework. In particular, the LCS advises that

*Identify the Eden Hill, Walter Road and Ashfield local centres as local shopping zones under the Local Planning Scheme and make provision for limited retail and commercial uses to service local needs only;*

Underlining is the Author's emphasis.

Furthermore, the LCS questions the viability of the Eden Hill Centre as follows:

*Eden Hill Shopping Centre has had its growth and trading capacity restricted due to the impact of other shopping facilities, including the relatively new local centre along Morley Drive in the City of Swan.*

Underlining is the Author's emphasis.

The LCS acknowledges the Bassendean Town Centre (including Hawaiian's asset) as the major retail and commercial hub within the Town. Furthermore, the LCS recognises the need to prioritise the continued development of the Town Centre over other centres. In that regard the following objectives are provided for the Bassendean Town Centre:

*To prioritise and promote the importance of the Bassendean Town Centre as the commercial, retail and civic activity District Centre for the municipality, and facilitate its sustainable growth and vitality;*

*To promote and facilitate the revitalisation of the traditional main street pedestrian based commercial retail precinct at the west end of Old Perth Road, without undermining the overall importance of the Bassendean Village Shopping Centre as a car based retail centre servicing the district.*

*Promote the development of Bassendean Town Centre area as a District Centre that has the potential to be regarded regionally as a desirable place to live at higher densities (similar to places such as Fremantle or Subiaco).*

Underlining is the Author's emphasis.

Based upon the LCS, it is evident that the Eden Hill centre was envisaged as a Local Centre only and the centre is zoned 'Local Shopping' under the Town's Local Planning Scheme 10 (LPS10) to reflect this status. The proposed concept plan proposes a Neighbourhood Centre scale of shop retail floorspace and therefore represents a departure from the current approved LCS.

The LCS has been endorsed by both the Council and WAPC as part of the current LPS and should be used to inform the activity centre hierarchy.



The following excerpts from Town's Strategic Community Plan is referenced in the Agenda Report of 23 April 2019:

<b>Objectives</b> <i>What we need to achieve</i>	<b>Strategies</b> <i>How we're going to do it</i>	<b>Measures of Success</b> <i>How we will be judged</i>
4.1 Build economic capacity	4.1.1 Encourage and attract new investment and increase capacity for local employment	Economic and Commercial Activity
	4.1.2 Plan for and build capacity for Commercial and Industrial	New businesses (including home based) granted development approval by the Town.
	4.1.3 Support and promote home based businesses	
4.2 Facilitate local business retention and growth	4.2.1 Strengthen local business networks and partnerships	Number of local business and Stakeholder Survey (Engagement and Facilitation of local Business Networks)
	4.2.2 Continue the activation of Bassendean's Town Centre	
	4.2.3 Enhance economic activity in neighbourhood centres	

As per the above, the continued activation of Bassendean Town Centre is a strategy of the Town. Should a supermarket and associated retail development be facilitated at the Eden Hill it is considered that it would compromise this strategy because it would adversely impact on the catchment of the Bassendean Town Centre.

### Draft Bassendean Local Economic Overview (2018)

The draft Bassendean Local Economic Overview (LEO) was prepared by FAR lane, to inform the preparation of the Town's Economic Development Plan 2017-2022 and Local Planning Strategy 2017-2030.

The LEO at section 5.1 includes a Commercial Floorspace Demand Analysis which uses a gravity model to model the projected demand for shop retail floorspace for each of the Town's commercial centres. Figure 43 of LEO provides an illustration of the projected floorspace. Figure 43 from the LEO is provided below:

Figure 43- Bassendean Projected Floorspace Demanded

Complex Name	m <sup>2</sup> of Commercial Floorspace Demanded			
	2018	2021	2026	2031
BASSEDEAN TOWN CENTRE	13,641	14,433	16,126	18,116
EDEN HILL	262	286	323	366
IDA STREET	2,425	2,593	2,881	3,218
WEST ROAD	85	88	99	111
COLSTOUN ROAD	1,228	1,308	1,450	1,617
BASSEDEAN ISO USES	71	74	83	94

Source: FAR lane 2018

The FAR lane report comments in respect to the above-mentioned findings that:

*These findings reflect a moderate level of growth anticipated in Bassendean to 2031. The Bassendean Town Centre in particular is projected to grow by 32%, or an approximate 4,500sqm of net lettable area. This equates to an additional full-range supermarket with equivalent new specialty stores.*

This predicted additional floorspace for the Town Centre described above is effectively sought to be replicated by the proposed Concept Plan. If development was to occur in accordance with the Concept Plan, it could seriously undermine the ability to consolidate additional retail within

the Town Centre. In turn, this would undermine the recognised activity centre hierarchy within the Town.

Importantly, the LEO only indicate that 366m<sup>2</sup> of floorspace is required within Eden Hill. The Concept Plan well exceeds the 366m<sup>2</sup> by proposing 3,840m<sup>2</sup> of floorspace or approximately ten times the floorspace set out within the LEO.

The demand analysis by FAR lane confirms that Eden Hill should function as a local centre providing convenience retailing to a limited local catchment only.

### **Objectives of the Local Shopping Zone**

The objectives of the Local Shopping zone under LPS10 are a relevant consideration and are as follows:

- a) *to provide for the local retail and service needs of the locality;*
- b) *to ensure that the local needs of residents are met, whilst maintaining a retail hierarchy to ensure that the catchment of the Town Centre zone is not adversely affected;*
- c) *to ensure a respect for the residential amenity of the surrounding neighbourhood, particularly in terms of design and location of vehicle parking, pedestrian movement, pedestrian and vehicular safety, and control of signage;*
- d) *to ensure that development conforms with the Local Planning Strategy and the principles of any Local Planning Policy adopted by the Council.*

Underlining above is the Author's emphasis.

It is considered that the proposed Concept Plan does not meet the objectives of the Local Shopping zone for the following reasons:

- The Concept Plan provides for a 3,840m<sup>2</sup> of floorspace which is considered to exceed the requirements for the locality.
- The Concept Plan undermines the retail hierarchy set out within the LCS and more recently the LEO by proposing a Neighbour Centre style development on a site that is only identified as a Local Centre. Proposing a Neighbour Centre style development with associated 3,840m<sup>2</sup> of floorspace will adversely impact upon the Town Centre. Regardless, of the classification of the Centre the floorspace proposed will likely have significant impact on existing centres.
- The Eden Hill centre has an overlapping retail catchment with the Bassendean Town Centre, and the inclusion of a supermarket at Eden Hill has the potential to significantly draw customers away from the Town Centre and thereby adversely impact upon viability of the Town Centre.
- The Town's LCS and LEO highlight the need to maintain the Bassendean Town Centre as the primary centre within Bassendean and predicts that the Town Centre will provide an additional 4,500m<sup>2</sup> of shop-retail floorspace by 2031. The additional floorspace proposed at Eden Hill will undermine the projected growth and development of the Town Centre, which would thus undermine the Town Centre as the focus of activity within Bassendean.

Having regard to the above, the proposed Concept Plan does not align with the objectives 'Local Shopping' zone under LPS10 and therefore, the Concept Plan should not be supported by Council. Furthermore, there has been no justification provided to justify any departure from the strategic and planning framework guiding and controlling development for the Eden Hill Centre.

In addition, it is further noted that the Eden Hill locality is already served by the Kiara IGA which is located within 870 metres of the Eden Hill Centre on the corner of Bottlebrush Drive and Morley Drive East.

## **State Planning Policy 4.2 – Activity Centres for Perth and Peel**

State Planning Policy 4.2 – Activity Centres for Perth and Peel (SPP 4.2) establishes a framework to plan for the distribution of activity centres through a hierarchy of activity centres. The Town is required to have regard to SPP4.2 in accordance with Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

SPP4.2 defines Local Centres as providing convenience retailing with a total shop-retail floorspace under 1,500m<sup>2</sup>. The Eden Hill centre is identified as a Local Centre within the Town's local planning framework. It is evident that the Concept Plan proposed, proposes a Neighbourhood Centre scale of development.

SPP 4.2 states at Clause 5.1(2) provides that:

*The responsible authority should not support activity centre structure plans or development proposals that are likely to undermine the established and planned activity centre hierarchy. Activity centre structure plans and developments should be consistent with the centre's classification in the hierarchy. The responsible authority should consider the main role/function and typical characteristics for each centre type outlined in Table 3.*

Underlining above is the Author's emphasis.

It is considered that the Concept Plan, if implemented, will undermine the activity centre hierarchy by proposing a scale of development of the normally associated with a Neighbourhood Centre. This will draw patrons away from the Town Centre and thus will likely adversely impact on the level of services able to be offered due to a decline in catchment population contrary to SPP4.2.

It is important to acknowledge that under SPP4.2 (Clause 5.1.2 (1)) that Local Centres provide delicatessens and convenience stores that provide for day to day needs of local communities rather than supermarkets. Supermarkets should be contained within Neighbourhood Centres as outlined in Table 3 of SPP4.2.

Clause 6.5 of SPP4.2 sets out that a retail sustainability assessment (RSA) assesses the potential economic and related effects of a significant retail expansion on the network of activity centres in a locality.

Clause 6.5.2 of SPP4.2 sets out circumstances where a Retail Sustainability Assessment (RSA) is required to be prepared to support a development proposal which includes the following:

- Any proposal that would result in the total shop-retail floorspace of a neighbourhood centre expanding by more than 3,000m<sup>2</sup>; and
- Where a significant increase to the shop-retail floorspace identified within an endorsed local planning (or commercial) strategy for a centre, which has been derived from a retail needs assessment.

The proposed Concept Plan contemplates a total of 3,840m<sup>2</sup> of shop-retail floorspace, which exceeds the 3,000m<sup>2</sup> floorspace expansion limit outlined in dot point '1' above. Although, noting that the Eden Hill Centre is not a Neighbourhood Centre it is considered that an RSA is required. Further to the above, the proposed floorspace substantially exceeds that contemplated by the endorsed LCS and more recently the LEO. This is also noting that a Local Centre has a maximum of 1,500m<sup>2</sup> retail floorspace under SPP4.2 and 3,840m<sup>2</sup> is proposed. Therefore, an RSA is

required, and Council should not proceed further with the proposal on this basis. Such an approach would further be contrary to orderly and proper planning.

## **Implementation Uncertainty**

We note that at the Ordinary Meeting of Council held on the 23 April 2019, that the Council resolved to require the following additional reports be brought to Council to inform the potential sale of Lot 5 Morley Drive East, Eden Hill:

- *The proposed purchase price of the land;*
- *Design amendments that address Council's desire to preserve existing significant trees;*
- *Assurance for the community regarding good quality design and development outcomes;*
- *Arrangements to ensure that the land is developed in a reasonable timeframe; and*
- *Any other information required to evaluate a proposal for the Council owned land to be sold by private treaty.*

It is considered that progression of the Concept Plan and sale of the land is premature notwithstanding the abovementioned information being required by Council. It is considered that the delivery of the proposed development is far from certain having regard to the non-compliances of the Concept Plan when assessed against the LCS, LEO and SPP4.2.

The Agenda Report for the Ordinary Council at the April 2019 meeting advises that implementation of the Concept Plan would be pursued by way of a Local Structure Plan (LSP).

It is noted that LPS10 does not provide the ability for a structure plan to be prepared for land zoned 'Local Shopping', and nor do the *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations)*. Under the Regulations a Structure Plan may only be prepared in the following circumstances:

- (a) *the area is —*
  - (i) *all or part of a zone identified in this Scheme as an area suitable for urban or industrial development; and*
  - (ii) *identified in this Scheme as an area requiring a structure plan to be prepared before any future subdivision or development is undertaken; or*
- (b) *a State planning policy requires a structure plan to be prepared for the area; or*
- (c) *the Commission considers that a structure plan for the area is required for the purposes of orderly and proper planning.*

None of the above-mentioned circumstances currently allow for the preparation of a Structure Plan for the subject site. Thus, it is unclear as to how a structure plan will be implemented to ensure a coordinated approach to the redevelopment of the Eden Hill Centre.

## **Other Matters**

It is noted that the Concept Plan proposes direct access from Morley Drive East which is an Other Regional Road (ORR) under the Metropolitan Region Scheme.

The Western Australian Planning Commission (WAPC) Development Control Policy 4.3 Regional Roads (Vehicle Access) (DC4.3) provides a general presumption against access for new driveways. In particular, where alternate access is, or could be made available from side or rear streets no access shall be permitted to the regional road unless special circumstances apply.

Having regard to DC4.3 it is considered unlikely that access onto Morley Drive East would be supported. If this is correct traffic generated from the proposal would be required to access the

subject site from the local road network. An assessment on traffic impacts on the local road network would be required.

## **Conclusion**

To conclude based on an assessment of the planning framework it is considered that the proposed Concept Plan should not be supported by Council as:

- Endorsement of the Concept Plan is inconsistent with the Town's LCS and LEO as the subject site is identified as a Local Centre and the proposed development is of a Neighbourhood Centre scale.
- The LEO identifies demand for a total of 366m<sup>2</sup> shop / retail floorspace within Eden Hill Centre by 2031. This demand analysis confirms that Eden Hill is intended to function as a Local Centre providing convenience retail to local residents only. Provision of approximately 3,840m<sup>2</sup> of shop-retail floorspace at Eden Hill is not envisaged by the planning framework and will undermine the viability and growth of the Town Centre.
- Approval of the Concept Plan is inconsistent with SPP4.2 as it would undermine the established and planned activity centre hierarchy. Activity centre structure plans and developments should be consistent with the centre's classification in the hierarchy.
- It is unclear as to the planning rationale or justification to facilitate a floorspace increase of over 10 times of the demand for such floorspace as set out within the LEO.
- The Concept Plan is significantly inconsistent with the objectives of the 'Local Shopping' zone as it will not maintain a retail hierarchy to ensure that the catchment of the Town Centre zone is not adversely affected.
- It is queried given the demand for shop / retail floorspace is only 366m<sup>2</sup> as set out within the LEO whether the development proposed within Concept Plan is deliverable.
- The Eden Hill locality can be serviced by an existing IGA Supermarket located within 870 metres of the subject site at the corner of Morley Drive East and Bottlebrush Avenue. If development proceeds on the subject site it would significant impact on the IGA Supermarket.
- Access is proposed from Morley Drive East which is an ORR under the MRS. New access to an ORR is unlikely to be supported in accordance with DC4.3.
- Approval of the proposal would be contrary to orderly and proper planning.

We trust that our submission will be given due consideration by the Council.

Should you have any queries or require clarification on any of the matters presented herein, please do not hesitate to contact the undersigned on (08) 9289 8300.

Yours sincerely  
**element**



Aaron Lohman  
Principal – Planning

CC: Client





element.

Our Ref: 19-376

1 October 2019

Chief Executive Officer  
Town of Bassendean  
35 Old Perth Road  
Bassendean WA 6934

**Attention: Mr Brian Reed: Manager Development Services**

Dear Sir

**LETTER OF OBJECTION EDEN HILL CENTRE – PROPOSED CONCEPT PLAN AND REQUEST TO PURCHASE LOT 5 (NO. 246) MORLEY DRIVE EAST, EDEN HILL**

**element** represents Hawaiian Investments Pty Ltd (Hawaiian) the owner of the Hawaiian Bassendean Shopping Centre at 2 West Road, Bassendean.

In respect to the above, **element** made a submission to the Town on 4 September 2019. Further to that submission our Client commissioned Urbis to prepare a Preliminary Need and Demand Assessment (the assessment). A copy of this assessment is attached.

The key conclusions of the assessment are as follows:

*The analysis outlined in this report indicates that there is no demonstrable market need and demand for the proposed 3,840 sq.m neighbourhood centre, including a full-line supermarket of 3,200 sq.m. This is based on the following:*

- *Residents in the Eden Hill area already have convenient access to neighbourhood scale centres and full-line supermarkets. Within 2 km of the Eden Hill site, 95% of residents can travel to an existing activity centre (with a full-line supermarket) within 5 minutes. The average travel time for these residents is only 3 minutes.*
- *Within 3 km of the site of the proposed Eden Hill Village centre there are 7 supermarkets and the supply of supermarket floorspace in the region of relevance to Eden Hill is currently above the Perth average. With the addition of a 3,200 sq.m supermarket the provision of supermarket floorspace would be 24% above the Perth average. Residents therefore already have access to supermarkets and everyday shopping needs.*
- *The size of the potential catchment and market demand for the Eden Hill Village centre would not be large enough to adequately support the proposed centre.*

*Given the lack of sufficient market need and demand for the proposed Eden Hill Village centre, if this centre was developed as per the masterplan it would be expected have an adverse impact on the established activity centre hierarchy.*

The assessment from Urbis further supports our submission that Concept Plan should not be supported by Council. In particular, it will have an adverse impact on the established activity centre hierarchy.

It is requested that the Town considered this letter and attached assessment concomitant with our original submission.

Should you have any queries or require clarification on any of the matters presented herein, please do not hesitate to contact the undersigned on (08) 9289 8300.

Yours sincerely  
**element**

A handwritten signature in black ink, appearing to be 'A. Lohman', written in a cursive style.

Aaron Lohman  
Principal – Planning

CC: Client

# **EDEN HILL VILLAGE CENTRE PRELIMINARY NEED AND DEMAND ASSESSMENT**

26 SEPTEMBER 2019  
PREPARED FOR HAWAIIAN

**URBIS**



**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

Director	Jeff Armstrong
Consultant	Dermott Carr
Project Code	P0015511

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# INTRODUCTION

This report outlines an assessment of the market need and demand for the proposed masterplan for Eden Hill Village (shopping centre). The masterplan proposes the development of a new shopping centre providing 3,840 sq.m of retail (PLUC 5 shop) floorspace, including a full-line supermarket of 3,200 sq.m.

Eden Hill activity centre currently provides 160 sq.m of retail floorspace, as reported in the 2015 Department of Planning Land Use Employment Survey. A Commercial Floorspace Demand Analysis, included in the *Bassendean Local Economic Overview Report* (prepared by Far Lane consultancy in 2018) indicates potential commercial/retail floorspace demand of 366 sq.m by 2031. The potential increase in floorspace at Eden Hill is therefore only around 200 sq.m.

The report also stated that *'these findings reflect a moderate level of growth anticipated in Bassendean to 2031.'* Of the demand available to support an expansion of retail floorspace, the report also recommends that the majority of this future capacity for retail shops and services is provided in Bassendean Town Centre.

The findings of this report are therefore in direct conflict with the Eden Hill Village masterplan, which proposes almost 3,700 sq.m of additional floorspace (which is nearly 3,500 sq.m more than the recommended additional 200 sq.m).

The analysis outlined in this report provides further evidence that the proposed Eden Hill Village masterplan is not appropriate in the context of the activity centre hierarchy, there is not a market need for the proposed centre and there is insufficient market demand to support the scale of centre proposed, including the full-line supermarket.

## Proposed Development

### Eden Hill Village

Table 1

Retail Use	Leasable Area (Sq.m)
Supermarket	3,200
Food & Beverage	340
Retail / Commercial	300
<b>Total</b>	<b>3,840</b>

Source: Town of Bassendean

Figure 1 – Proposed Eden Hill Village Masterplan



Source: Town of Bassendean



# 1. NEED AND DEMAND ASSESSMENT

## 1.1. ACCESS TO SUPERMARKETS

A key initial consideration in the assessment of the market need and demand of the proposed Eden Hill Village centre is the extent to which residents have convenient access to supermarkets and activity centres generally.

Analysis of drive times from the place of residence of residents within 2 km of the Eden Hill site indicates:

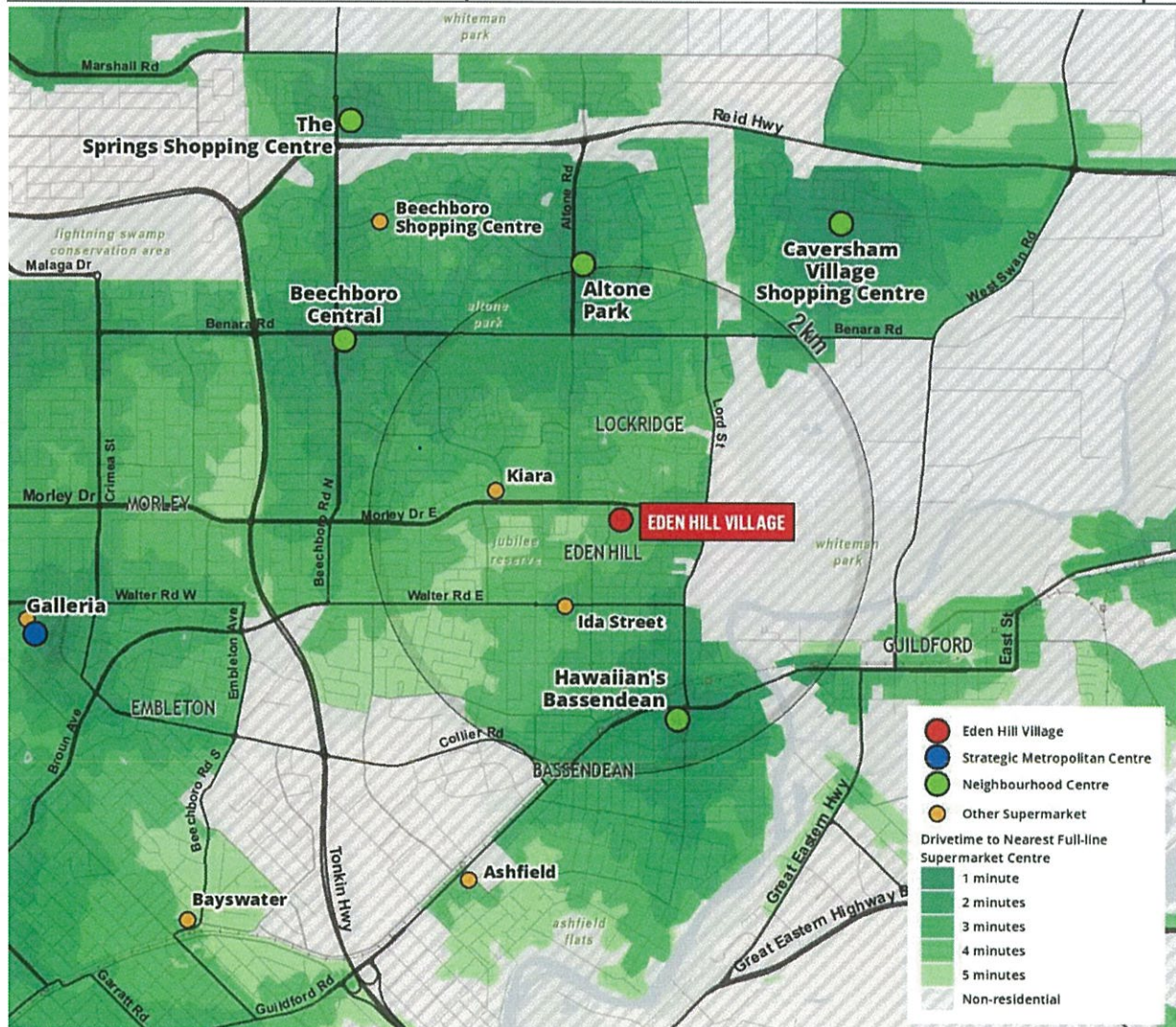
- The average drivetime to a full-line supermarket/neighbourhood scale centre is approximately 3 minutes.
- Less than 5% of residents have to travel for more than 5 minutes to shop at a neighbourhood scale centre including a full-line supermarket.

It is evident from this analysis that residents already have easy and convenient access to a neighbourhood scale centre, including a full-line supermarket, and the addition of the Eden Hill Village centre would not demonstrably improve access to retailing serving everyday shopping needs.

In this regard, there is negligible need for the proposed full-line supermarket and neighbourhood scale shopping centre at Eden Hill.

Drive Time to Nearest Full-Line Supermarket

Map 1





## 1.2. POTENTIAL CATCHMENT

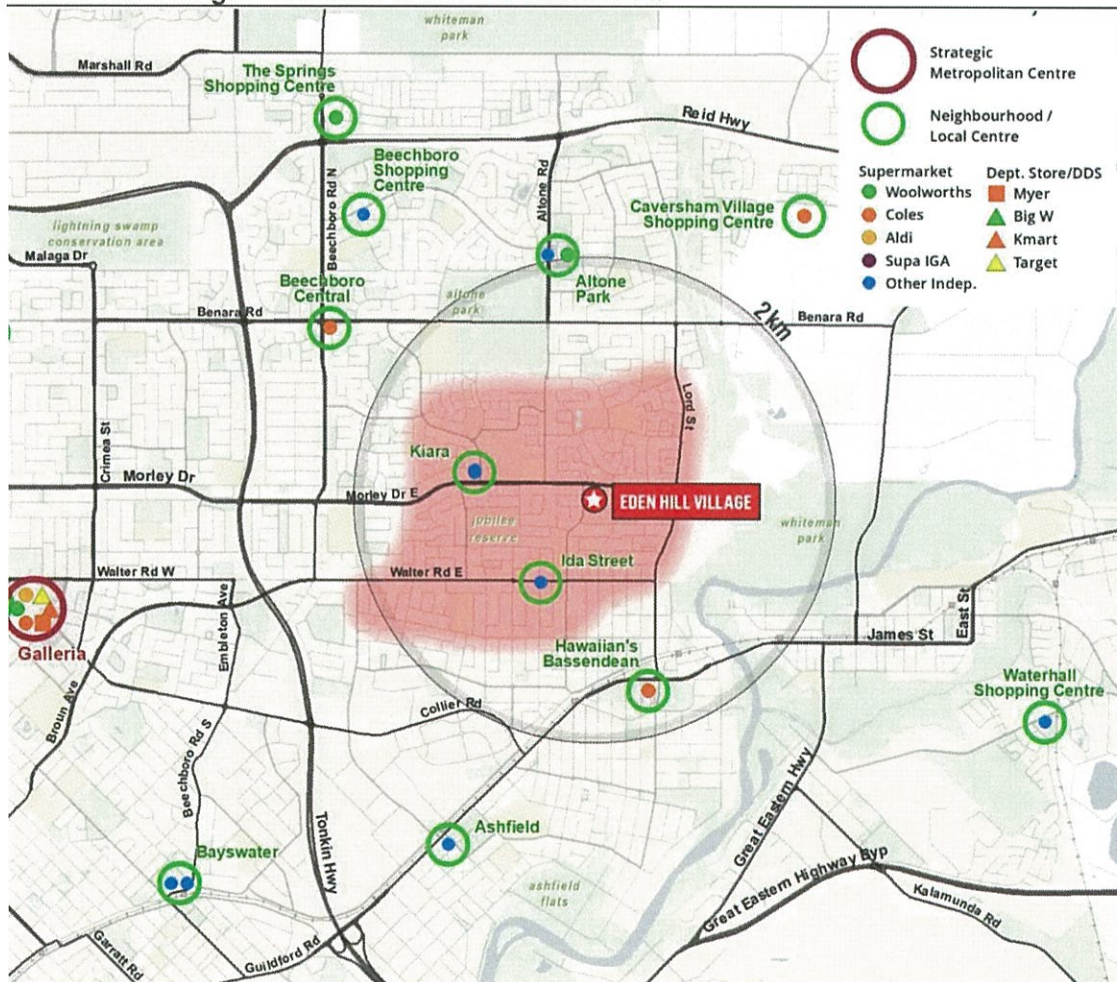
A further consideration of the accessibility of supermarkets / neighbourhood centres and potential catchment for the proposed Eden Hill Village centre is the size of the area (and number of residents) where Eden Hill has the shortest drivetime for a resident from their place of residence. This analysis shows:

- The area where Eden Hill Village would offer the shortest drivetime to a full-line supermarket generally extends no more than 1 km from the site of the proposed centre.
- This area currently includes a resident population of 9,600 which is forecast to remain largely unchanged in future years.
- The size of the potential catchment is less than half that would be necessary to support a full-line supermarket recognising also that this market is relied upon (and would be shared with) to support existing activity centres (e.g. Altona Park and Bassendean Town Centre, both of which are within 2 km of the site).

We note this analysis does not take into account the benefit to households of aligning a broader range of visits with a shopping trip. For example, Bassendean Town Centre is a key destination for shopping and services but also attracts visits due to the inclusion of a station along the Midland railway line. The synergy between different uses and the social, economic and environmental benefits associated with undertaking multi-purpose visits in one location should also be taken into account in determining the need for the Eden Hill Village activity centre. In this respect, Bassendean Town Centre is already playing a significant role and there is opportunity to expand the range of facilities to further leverage the agglomeration of uses and provide greater benefits for the community. The proposed development would be expected to have significant impacts on the potential for improvements to Bassendean Town Centre to be realised.

Eden Hill Village – ‘Closest Resident Catchment’

Map 2



### 1.3. SUPERMARKET SUPPLY

Within the general catchment of relevance to Eden Hill, which covers the area extending from the Reid Highway in the north, Tonkin Highway in the west, Caversham in the north-west, Bassendean in the south and Guildford in the east, there are 8 supermarkets providing 17,600 sq.m of floorspace. Against a current resident population of 49,000 there is currently 36 sq.m of supermarket floorspace per 100 residents in this catchment area. This provision is 5% above the Perth average of 34 sq.m.

With the proposed addition of a new 3,200 sq.m supermarket at Eden Hill Village the provision of supermarket floorspace would increase to a high level of 42 sq.m per 100 residents which would be 24% above the Perth average.

The analysis of supermarket supply indicates that the catchment is already well served by supermarkets and that there is unlikely to be sufficient market demand to support the proposed Eden Hill Village supermarket without having a significant impact on existing stores in the area.

#### Supermarket Supply

##### Eden Hill Village Catchment

Table 2

Supermarkets	Supermarket Floorspace (GLA)	Distance to Eden Hill
Kiara - IGA	600	1.0 km
Hawaiian's Bassendean - Coles	4,000	1.7 km
Altone Park - Woolworths	3,000	1.9 km
Altone Park - NP Oriental	2,000	1.9 km
Beechboro Central - Coles	3,100	2.4 km
Caversham Village - Coles	3,500	2.7 km
Beechboro Shopping Centre - IGA	800	2.9 km
Ashfield - IGA	600	3.2 km
<b>Current Supply</b>	<b>17,600</b>	
Eden Hill Village Supermarket (Proposed)	3,200	
<b>Proposed Supply (incl. Eden Hill Village)</b>	<b>20,800</b>	

Supermarket Floorspace Per 100 Residents	Variation to Perth Average	
Current Supply	36	+5%
Proposed Supply (incl. Eden Hill Village)	42	+24%
Perth Average	34	

Source: Urbis



## 2. CONCLUSIONS

The analysis outlined in this report indicates that there is no demonstrable market need and demand for the proposed 3,840 sq.m neighbourhood centre, including a full-line supermarket of 3,200 sq.m. This is based on the following:

- Residents in the Eden Hill area already have convenient access to neighbourhood scale centres and full-line supermarkets. Within 2 km of the Eden Hill site, 95% of residents can travel to an existing activity centre (with a full-line supermarket) within 5 minutes. The average travel time for these residents is only 3 minutes.
- Within 3 km of the site of the proposed Eden Hill Village centre there are 7 supermarkets and the supply of supermarket floorspace in the region of relevance to Eden Hill is currently above the Perth average. With the addition of a 3,200 sq.m supermarket the provision of supermarket floorspace would be 24% above the Perth average. Residents therefore already have access to supermarkets and everyday shopping needs.
- The size of the potential catchment and market demand for the Eden Hill Village centre would not be large enough to adequately support the proposed centre.

Given the lack of sufficient market need and demand for the proposed Eden Hill Village centre, if this centre was developed as per the masterplan it would be expected have an adverse impact on the established activity centre hierarchy.

Whilst there are benefits from maximizing the amount of competition in a market it needs to be at a level that supports the sustainability of the centre hierarchy.

It is noted that the Hawaiian's Bassendean centre, which currently achieves a turnover productivity 20% below the average of single supermarket centres, is vulnerable to new competition. With the potential for a large diversion of trade from the Hawaiian's Bassendean centre, given its proximity to the Eden Hill site and reliance on the Eden Hill market to support its scale and performance, the proposed Eden Hill Village development could have a significant adverse impact on the centre including a risk of higher vacancy.

The sustainability of other centres, such as Altone Park, Ida Street and Kiara, could also be at risk as a result of the proposed Eden Hill Village development.

The weakened performance of the centre and reduction in market demand available to the centre could also diminish the willingness of Hawaiian to invest further in the asset. The proposed Eden Hill Village development therefore could stifle further development and improvements to the Hawaiian's Bassendean centre and the broader Bassendean Town Centre.

The commercial floorspace demand analysis prepared for the Town of Bassendean indicates potential for 366 sq.m. This scale of development appears more appropriate in the context of market demand and potential risks to the sustainability of the centre hierarchy from the proposed masterplan for Eden Hill Village.

# DISCLAIMER

This report is dated September 2019 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (Urbis) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Hawaiian (Instructing Party) for the purpose of Need and Demand Assessment (Purpose) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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Whilst Urbis has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. Urbis (including its officers and personnel) is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which Urbis relies, provided that such errors or omissions are not made by Urbis recklessly or in bad faith.

This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.





**element.**

Our Ref: 19-376

1 October 2019

Chief Executive Officer  
Town of Bassendean  
35 Old Perth Road  
Bassendean WA 6934

**Attention: Mr Brian Reed: Manager Development Services**

Dear Sir

**LETTER OF OBJECTION EDEN HILL CENTRE – PROPOSED CONCEPT PLAN AND REQUEST TO PURCHASE LOT 5 (NO. 246) MORLEY DRIVE EAST, EDEN HILL**

**element** represents Hawaiian Investments Pty Ltd (Hawaiian) the owner of the Hawaiian Bassendean Shopping Centre at 2 West Road, Bassendean.

In respect to the above, **element** made a submission to the Town on 4 September 2019. Further to that submission our Client commissioned Urbis to prepare a Preliminary Need and Demand Assessment (the assessment). A copy of this assessment is attached.

The key conclusions of the assessment are as follows:

*The analysis outlined in this report indicates that there is no demonstrable market need and demand for the proposed 3,840 sq.m neighbourhood centre, including a full-line supermarket of 3,200 sq.m. This is based on the following:*

- Residents in the Eden Hill area already have convenient access to neighbourhood scale centres and full-line supermarkets. Within 2 km of the Eden Hill site, 95% of residents can travel to an existing activity centre (with a full-line supermarket) within 5 minutes. The average travel time for these residents is only 3 minutes.*
- Within 3 km of the site of the proposed Eden Hill Village centre there are 7 supermarkets and the supply of supermarket floorspace in the region of relevance to Eden Hill is currently above the Perth average. With the addition of a 3,200 sq.m supermarket the provision of supermarket floorspace would be 24% above the Perth average. Residents therefore already have access to supermarkets and everyday shopping needs.*
- The size of the potential catchment and market demand for the Eden Hill Village centre would not be large enough to adequately support the proposed centre.*

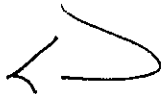
*Given the lack of sufficient market need and demand for the proposed Eden Hill Village centre, if this centre was developed as per the masterplan it would be expected have an adverse impact on the established activity centre hierarchy.*

The assessment from Urbis further supports our submission that Concept Plan should not be supported by Council. In particular, it will have an adverse impact on the established activity centre hierarchy.

It is requested that the Town considered this letter and attached assessment concomitant with our original submission.

Should you have any queries or require clarification on any of the matters presented herein, please do not hesitate to contact the undersigned on (08) 9289 8300.

Yours sincerely  
**element**

A handwritten signature in black ink, appearing to be 'A. Lohman', written in a cursive style.

Aaron Lohman  
Principal – Planning

CC: Client



**Deputation in relation to Item 7.1  
Council briefing session of 17 March 2019**

Good evening madam Mayor, Councillors and staff. My deputation relates to Item 7.1 of the agenda relating to the proposed sale of Lot 5 Morley Drive East, Eden Hill to Birmingham Properties.

I represent Firmus Capital, as fund managers for the owners of the nearby Altone shopping centre in Beechboro and I would like to note our Client's objection to the proposed sale for the following reasons.

Firstly, we are concerned that our submission and other submissions made during the public advertising of the proposed sale has not been given due and proper consideration in the agenda report as required by clause 3.58 (3)(b) of the Local Government Act.

While this is not our primary concern with the proposal, we do consider it necessary for the Council to give specific consideration to each submission received before it makes a decision to dispose of the site in accordance with the requirements of the Act.

Our primary concern relates to the conditions on which the sale is based and how this may relate to any future decision making relating to the future development of the site.

I note that the agenda report on pages 6 and 7 notes a preference to sell the land in order to remove any potential conflict in the Town's role as a seller of the land, and as a regulatory authority in the development approval process. Based on the conditions of sale of the land, it is our view that the Town will at least retain some interest in the land until construction has been commenced.

The contract of sale includes conditions that:

- Firstly, compel the buyer to, as soon as practicable after settlement, arrange for the construction of Development, and defines development as one consisting of commercial and / or retail buildings;
- Secondly, includes provision for the Council to give notice to the buyer in construction has not commenced within 3 years of settlement to compel the buyer to commence the development within six months of the notice; and
- Finally, charges the property in favour of Council and includes an option for Council to buy back the property if the Council considers that the buyer has not fulfilled its obligations as stated in the contract.

Having regard to the above, we consider the Council to retain a level of vested interest to ensure the development as defined by the contract occurs in a timely manner, and this interest will be in place at the point in time that the Council is required to consider any subsequent development application.

Having regard to this, we consider it preferable to seek certainty regarding the potential development outcome for the subject site prior to the sale through the Development Approval process.

In this regard, we note on page 7 of the agenda report, that the Town has received an unsolicited offer on terms similar to the above for an additional \$25,000.00 above the current sales price. This suggests on an open market that the land value is higher than the current sale value. Moreover, such an approach would assist in managing community expectations as to an achievable development outcome for the site.

Finally, it is our view that there is significant uncertainty in respect to the Buyer's concept for the site given the conflict with the Town's current planning framework.

For these reasons, we respectfully request that Council resolve to not support the proposed sale of Lot 5 Morley Drive East, Eden Hill to Birmingham Properties as recommended.



**From:** Vincent Siciliano <[vsiciliano@ljhcperth.com.au](mailto:vsiciliano@ljhcperth.com.au)>  
**Sent:** Tuesday, 17 March 2020 5:17 PM  
**To:** Luke Gibson <[lgibson@bassendean.wa.gov.au](mailto:lgibson@bassendean.wa.gov.au)>; Liz Nicholls  
<[ENicholls@bassendean.wa.gov.au](mailto:ENicholls@bassendean.wa.gov.au)>  
**Subject:** Briefing Session - Agenda Item 7.1

Good afternoon Luke and Liz,

Apologies for not being present this evening. Taking all proactive advise and consideration to *social distancing*; I am unable to attend this evening in person for a deputation.

To say we are currently experiencing unprecedented times is an understatement. The purpose of the deputation was to verbally support the Officer recommendation - as written - and answer any questions the Councillors may have and/or add commentary to the commercial perspective on the matters for Council to consider.

Rightfully as stated, the Council is under no obligation to sell the land. We are however in this position following a process of negotiation – each party engaged independent valuation advice – and price was agreed. Beyond agreement of price, the Buyer remains interested at the price as it was established through the environmental report commissioned that the land is not contaminated.

Without the inclusion of this property, any redevelopment of the combined land areas would be constrained beyond the topography of the land to adequately design the desired retail/commercial to satisfy our client and provide the Town a suitable footprint and scale to incorporate residential development.

The acquisition of Lot 5 is only the first step before any concept could be approved and ultimately developed. As we are seeing right now around the world and Australia, uncertain economic times as a result of a pandemic, strain to health systems, loss of lives and the inevitable loss of jobs, will ultimately determine the commercial viability of any investment to this land.

We look forward to hearing the Council's discussion and reading the minutes ahead of the next Council meeting.

Kind regards

Vincent

Vincent Siciliano, Director / Principal



A 58 Kings Park Road, West Perth WA 6005

D 08 9220 2205 M 0488 355 535

T 08 9220 2200 F 08 9220 2222

E [vsiciliano@ljhcperth.com.au](mailto:vsiciliano@ljhcperth.com.au) \* Please note my e-mail address has changed – please update your records accordingly

W [perth.ljhcommercial.com.au](http://perth.ljhcommercial.com.au)

**NOTICE:** Contracts must be lodged with the Office of State Revenue for duty assessment within two (2) months of the date the last person executes the Contract.

TO:

**As Agent for the Seller / Buyer**

**THE BUYER (FULL NAME AND ADDRESS)**

Birmingham Properties Pty Ltd as to a 1998/2000 share, Ladrift Pty Ltd as to a 1/2000 share and Matax Pty Ltd as to a 1/2000 share ..  
all of care of Ernst & Young, 11 Mounts Bay Road, Perth, Western Australia 6000 .....

OFFERS TO PURCHASE (as joint tenants/tenants in common specifying the undivided shares) the Land and Property Chattels set out in the Schedule ("the Property") with vacant possession unless stated otherwise in the Special Conditions at the Purchase Price on the terms set out in the Schedule, the Conditions and the Special Conditions.

## SCHEDULE

The Property at:

246 Morley Drive East, Eden Hill, Western Australia .....

Lot 5 ..... Deposited/Survey/Proposed Strata/Diagram/Plan 41398..... Whole/Part Vol 1357 ..... Folio 796.....

A deposit of \$..... of which ..... is paid now and \$..... to be paid within..... of acceptance.

To be held by.....  
 ("the Deposit Holder"). The balance of the Purchase Price to be paid on the Settlement Date.

Purchase Price \$1,000,000.00 plus GST. ....

Settlement Date See special condition 6 of Annexure A .....

Property Chattels including .....

**FINANCE CLAUSE IS APPLICABLE**

LENDER: \*\*\*\*\*

LATEST TIME: 4pm on:.....

AMOUNT OF LOAN:.....

SIGNATURE OF BUYER: .....

FINANCE CLAUSE IS NOT APPLICABLE

Signature of the Buyer if Finance Clause **IS NOT** applicable

.....

### SPECIAL CONDITIONS

Annexure A special conditions attached to this Contract form part of this Contract .....

[illegible][illegible]

#####

#####

[illegible]

.....

.....

[illegible]

#####

[illegible]

\*\*\*\*\*

**NOTE: IF THIS DOCUMENT IS ON SEPARATE PAGES OR IS TO BE FAXED THEN ALL PARTIES SHOULD SIGN ALL PAGES**



## CONDITIONS

## 1. SUBJECT TO FINANCE

If the Buyer signs the "Finance Clause IS NOT Applicable" box in the Schedule then this clause 1 does not apply to the Contract.

If any information is completed in or the Buyer signs the "Finance Clause IS Applicable" box in the Schedule then this clause 1 applies to the Contract.

1.1 Buyer's Obligation to Apply for Finance and Give Notice to the Seller

- (a) The Buyer must:
- (1) immediately after the Contract Date make an application for Finance Approval to the Lender using, if required by the Lender, the Property as security; and
  - (2) use all best endeavours in good faith to obtain Finance Approval.
- (b) If the Buyer does not comply with clause 1.1(a) or 1.1(c)(1) then the Contract will not come to an end under clause 1.2 and the Buyer may not terminate the Contract under clause 1.3. The rights of the Seller under this Clause 1.1 will not be affected if the Buyer does not comply with Clause 1.1.
- (c) The Buyer must immediately give to the Seller or Seller Agent:
- (1) an Approval Notice if the Buyer obtains Finance Approval; or
  - (2) a Non Approval Notice if Finance Approval is rejected at any time while the Contract is in force and effect.

1.2 No Finance Approval by the Latest Time: Non Approval Notice Given

This Contract will come to an end without further action by either Party if on or before the Latest Time:

- (a) written Finance Approval has not been obtained; and
- (b) the Buyer gives a Non Approval Notice to the Seller or Seller Agent.

1.3 No Finance Approval by the Latest Time: No Notice Given

If by the Latest Time:

- (a) the Buyer has not given an Approval Notice to the Seller or Seller Agent; and
  - (b) the Buyer has not given a Non Approval Notice to the Seller or Seller Agent;
- then this Contract will be in full force and effect unless and until either the Seller gives written Notice of termination to the Buyer or the Buyer terminates this Contract by giving a Non-Approval Notice to the Seller or Seller Agent.

1.4 Finance Approval: Approval Notice Given

If by the Latest Time, or if clause 1.5 applies, before the Contract is terminated:

- (a) written Finance Approval has been obtained; and
  - (b) the Buyer has given an Approval Notice to the Seller or Seller Agent;
- then this Clause 1 is satisfied and this Contract is in full force and effect.

1.5 Notice Not Given by Latest Time: Seller's Right to Terminate

If by the Latest Time the Buyer has not given an Approval Notice or a Non Approval Notice to the Seller or Seller Agent then at any time until an Approval Notice is given, the Seller may terminate this Contract by written Notice to the Buyer.

1.6 Buyer Must Keep Seller Informed: Evidence

- (a) If requested in writing by the Seller or Seller Agent the Buyer must advise the Seller or Seller Agent of:
- (1) the progress of the Finance Application; and
  - (2) provide evidence in writing of the making of a Finance Application, in accordance with clause 1.1(a) and of any loan offer made, or any rejection; and
  - (3) if applicable the reasons for the Buyer not accepting any loan offer.
- (b) If the Buyer does not comply with the request within 2 Business Days then the Buyer authorises the Seller or Seller Agent to obtain from the Lender the information referred to in 1.5(a).

2. Acceptance of this offer will be sufficiently communicated to the Buyer if verbal or written notification is given by the Seller or Seller's Agent to the Buyer that the acceptance has been signed by the Seller.
3. The 2011 General Conditions are incorporated into this Contract so far as they are not varied by or inconsistent with the Conditions or Special Conditions of this Contract.
4. If GST is applicable to this transaction then the relevant GST provision should be outlined in the Special Conditions or in an attached GST Annexure, which forms part of this Contract.

**BUYER** [If a corporation, then the Buyer executes this Contract pursuant to s.127 of the Corporations Act]

Witness

Date

**THE SELLER** (FULL NAME AND ADDRESS) ACCEPTS the Buyer's offer

Town of Bassendean of Guildford Road, Bassendean

[If a corporation, then the Seller executes this Contract pursuant to s.127 of the Corporations Act]

Witness

Date

**JOINT FORM.** A true copy of this document has been received by each of the Parties -- together with a copy of the 2011 General Conditions.

**STRATA DISCLOSURES** If the Property is a Strata Lot, then the Buyer acknowledges having received the Form 28 Disclosure Statement before signing this Contract.

**CONVEYANCER** The parties nominate their Representative below to act on their behalf and consent to Notices being served to that Representative's facsimile number.

BUYER'S REPRESENTATIVESELLER'S REPRESENTATIVE

Name

Name

Signature

Signature

## COPYRIGHT

The copyright of this Contract by Offer and Acceptance is the property of the Real Estate Institute of Western Australia (Inc.) ("REIWA") and neither the form nor any part of it may be used or reproduced by any method whatsoever or incorporated by reference or in any manner whatsoever in any other document without the consent of REIWA.

## **Annexure A**

### **Special Conditions of Sale**

#### **1. Definitions**

##### **1.1 In this Contract:**

**Adjoining Land** means the means Lot 4 on Diagram 41398 and being the whole of the land comprised in Certificate of Title Volume 598 Folio 181A and, where the context requires, includes any part or parts of that land;

**Amalgamated Land** means the amalgamation of the Land and the Adjoining Land;

**Approvals** means all approvals of any description whatsoever required by the Buyer, in the Buyer's absolute and unfettered discretion, to amalgamate the Land with the Adjoining Land;

**Buyer's Cost of Remediation** means all costs incurred by the Buyer to:

- (a) investigate, contain and remove any Contamination:
  - (i) on the Property; and
  - (ii) any other property which has migrated from the Property; and
- (b) remediate any Contamination on:
  - (i) the Property;
  - (ii) any other property where Contamination has occurred which migrated from the Property,

to the satisfaction of the relevant authorities including the cost of any third party engaged by the Buyer in obtaining reports in respect of the Contamination.

**Contamination** means anything that presents or may present a direct or indirect risk or harm to human health or the Environment.

**Development** means the construction of commercial and/or retail buildings and associated infrastructure and services on the Amalgamated Land. The Buyer may in its absolute and unfettered discretion make any changes to the Development and to the Land provided that such changes are approved or required by any competent Authority;

**Environment** means all components of the Earth, including each and any combination of the constituents of:

- (c) the land, air and water and any living organism in any of them;
- (d) the atmosphere;

- (e) any organic or inorganic matter; and
- (f) structures, buildings and other human-made areas.

**Force Majeure** means, in relation to either Party, any circumstances beyond the control of that Party including, without limitation, any act of God, strike, lock-out or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, that results in it being unable to perform in whole or in part any obligation under this Contract.

**Land** means Lot 5 on Diagram 41398 and being the whole of the land comprised in Certificate of Title Volume 1357 Folio 796 and, where the context requires, includes any part or parts of that land;

- 1.2 A covenant or agreement entered into or made by more than one person or persons and/or corporation or corporations shall be binding upon such person or persons and/or such corporation or corporations jointly and each of them severally.
- 1.3 The singular number includes the plural number and the masculine gender includes the feminine and neuter gender and vice versa.
- 1.4 The headings to these Special Conditions shall not affect the construction and interpretation thereof.
- 1.5 Nothing in this Contract is to be interpreted against a party on the ground that the party put it forward.
- 1.6 Reference to any statute or enactment (State or Federal) shall include all statutory amendments and re-enactments thereof for the time being in force and regulations or by-laws thereunder.
- 1.7 Wherever the term Land, is used in this Contract those terms shall, where the context permits, be construed as if the words "or any part thereof" were inserted immediately following each occasion upon which those terms are used.
- 1.8 Where there is any inconsistency between the 2011 General Conditions applying to this Contract and the Special Conditions, the Special Conditions will prevail.
- 1.9 Words of inclusion are not words of limitation.
- 2. **Contract conditional**
  - 2.1 This Contract is subject to the condition precedent that the Buyer is satisfied, in the Buyer's absolute and unfettered discretion, of the results of the report of the investigations in respect of any Contamination on the Property or other properties where Contamination on those other properties has migrated from the Property (**Investigations Report**).

- 2.2 Should the Buyer not be satisfied, in its absolute and unfettered discretion, of the results of the Investigations Report, the Buyer may at any time up to one month after receiving the Investigations Report, by notice in writing ("Notice") terminate the Contract, whereupon the Contract shall be at an end.
- 2.3 If the Buyer does not deliver a Notice within the time specified in sub-clause 2.2, then the Buyer shall be deemed to have waived the benefit of the condition precedent in this clause.
- 2.4 The condition precedent in this special condition may be waived by the Buyer but not the Seller.
- 2.5 The Seller must provide reasonable access to the Buyer and the Buyer's agents, contractors and employees for the purposes of carrying out the investigations of any Contamination on the Property or other properties where Contamination on those other properties has migrated from the Property.
- 2.6 The Buyer must use all reasonable efforts to expeditiously:
  - (a) arrange an inspection of any Contamination on the Property and other properties where Contamination on those other properties has migrated from the Property;
  - (b) procure an Investigations Report; and
  - (c) deliver a copy of the Investigations Report to the Seller.
- 2.7 If this Contract terminates under this special condition, then:
  - (a) each party will be released from its obligations to further perform this Contract except for the obligations under this sub-clause (g);
  - (b) each party will retain its rights against the other in respect of any past breach of the Contract;
  - (c) the Seller, in accordance with special condition 10, shall pay to the Buyer, the Buyer's Cost of Remediation; and
  - (d) all moneys paid by the Buyer shall be repaid to the Buyer.

### **3. Development**

The Buyer shall, as soon as practicable after Settlement, arrange for the construction of the Development, including applying for any required approvals for the Development.

### **4. Option to Repurchase**

- 4.1 If at least three (3) years after Settlement the Buyer has not Commenced Construction of the Development and the Seller, acting in good faith, provides written notice to the Buyer requiring the commencement of the Development within six (6) months after such written notice to the Buyer and the Buyer has not commenced the Development after the expiration

of that notice the Seller shall have the option upon giving to the Buyer thirty (30) days notice in writing to re-purchase the Property for an estate in unencumbered fee simple in possession from the Buyer for the re-purchase price (as determined pursuant to special condition 4.2 hereof).

- 4.2 Subject to special condition 4.3, the re-purchase price to be paid by the Seller will be the higher of:

- (a) the Purchase Price; and
- (b) the current market value of the Property,

plus the Buyer's reasonable costs and expenses to re-subdivide the Amalgamated Land to remove the Land from the Amalgamated Land. For the sake of clarity, the amount of the rebate provided in special condition 6 shall not be deducted from the re-purchase price.

- 4.3 Any dispute as to the current market value of the Property will be determined by a valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian Division. The appointed valuer who will act as an expert and the valuer's decision will be final and binding on the Seller and Buyer.

- 4.4 The Buyer hereby charges the Property in favour of the Seller for the purpose of securing the Buyer's obligation to complete the Development and acknowledges and agrees that the Seller may lodge an absolute caveat against the title to the Property in respect of the option granted to the Seller pursuant to this Condition and the Buyer shall not take any action to remove such caveat. The option hereby granted shall continue notwithstanding any transfer or other dealing with the Property. The Seller will execute and lodge with Landgate a withdrawal of the caveat within 14 days after the Seller has been notified by the Buyer that the Development has Commenced Construction.

- 4.5 Upon the exercise of the option to re-purchase by the Seller under special condition 4.1:-

- (a) settlement shall take place on the date being thirty (30) days after the notice to re-purchase is given under special condition 4.1;
- (b) the Seller shall prepare and the Buyer shall execute a registrable transfer of the Property in favour of the Seller;
- (c) the re-purchase price as determined pursuant to special condition 4.2 shall be paid to the Buyer the transfer registered and possession given and taken on the date of settlement;
- (d) rates and taxes shall be adjusted as at the date of settlement;
- (e) the Seller shall pay the cost of the preparation and registration of the transfer and all stamp duties and registration fees; and
- (f) the Buyer shall sell the Property to the Seller free of all encumbrances except those existing at the date of Settlement of this Contract.

- 4.6 The consideration for the option to purchase hereby granted is the execution of the Contract.
- 4.7 In this clause **Commenced Construction** means the stage of construction where there is an initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

## **5. Contamination**

- 5.1 The Parties acknowledge and agree that the Property may contain Contamination and that other properties may contain contamination which has migrated from the Property.
- 5.2 Subject to special condition 2, the Buyer agrees to undertake the following with respect to the Contamination on the Property and any Contamination on other properties which has migrated from the Property:

- (a) investigate the extent of any Contamination on the Property and on other properties where Contamination on those other properties has migrated from the Property;
- (b) consult with the relevant authorities regarding remediation of any Contamination on the Property and on other properties where Contamination has migrated from the Property; and
- (c) remediate any Contamination on the Property and on other properties where Contamination has migrated from the Property,

and may engage such consultants and contractors, that the Buyer considers are required, to undertake the matters referred to in special condition 5.2(a) to (c)

## **6. Settlement**

- 6.1 Settlement shall take place on the day that is 20 Business Days after the later of:
- (a) the withdrawal of Memorial M035633 and any other limitation, interest, encumbrances and notification that may be on the title to the Property due to any Contamination on the Property; or
  - (b) the date the Buyer provides notice to the Seller that the Buyer is willing to proceed to Settlement with Memorial M035633 or any other limitation, interest, encumbrances and notification that may be on the title to the Property due to any Contamination on the Property remaining on the title to the Property.
- 6.2 The Parties acknowledge and agree that if Memorial M035633 is not to be removed and/or other limitation, interest, encumbrances and notification that may be on the title to the Property due to any Contamination on the Property is not to be removed, the Buyer may, by giving notice at any time, terminate this Contract and:
- (a) each party will be released from its obligations to further perform this Contract except for the obligations under this sub-clause 6.2;

- (b) each party will retain its rights against the other in respect of any past breach of the Contract; and
- (c) the Seller, in accordance with special condition 10, shall pay to the Buyer, the Buyer's Cost of Remediation
- (d) all moneys paid by the Buyer shall be repaid to the Buyer.

## **7. Rebate of Purchase Price**

- 7.1 The Seller must allow to the Buyer, at Settlement, as a deduction of the Purchase Price, the Buyer's Cost of Remediation.
- 7.2 The Buyer shall, no later than 10 Business Days prior to Settlement, provide the Seller with an audited statement of the Buyer's Cost of Remediation.

## **8. Seller Warranties**

The Seller represents and warrants to the Buyer as at Settlement (unless otherwise stated) that:

- (a) except in respect of any contamination referenced in Memorial M035633, there is nothing on the Land that presents or may present a hazard or a direct or indirect risk or harm to human health or to the environment, including, but not limited to, the soil, air and water and any living organism in any of them or in any structures or buildings or other improvements on the Land;
- (b) there is no litigation, prosecution, claim, investigation, arbitration or other proceeding in progress, pending or threatened against the Seller in respect of the Property which is material and the Seller is not aware of any circumstances which are likely to give rise to any such litigation, prosecution, claim, investigation, arbitration or other proceeding; and
- (c) there are no orders, notices or requirements of any government, governmental body or authority or provisions of any legislation affecting the carrying on of any business on the Land which have not been complied with and there are no proposals of any such body or authority known to the Seller which may result in any such order, notice or requirement being made or given.

## **9. Force Majeure**

- 9.1 If either Party is affected by Force Majeure it must forthwith notify the other Party of the nature and extent thereof.
- 9.2 Neither Party is deemed to be in breach of this Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance, of any of its obligations under this Contract to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other Party and the time for performance of that obligation will be extended accordingly.

- 9.3 If the Force Majeure in question prevails for a continuous period in excess of six months, the Parties will enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

#### **10. Buyer's Cost of Remediation**

- 10.1 If, for any reason, Settlement does not occur and the Contract comes to an end, then in addition to any other rights the Parties may have, the Seller must, on termination of the Contract, pay to the Buyer, the Buyer's Cost of Remediation.
- 10.2 The Seller agrees to charge to the Buyer the Property to secure the payment to the Buyer of the Buyer's Cost of Remediation and agrees to do all that is necessary for the purpose of allowing the Buyer to lodge a subject to claim caveat against the Property to secure same.

#### **11. GST**

If any payment made by one party to any other party under or relating to this Contract constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breaches, termination, and indemnities arising from this Contract.

#### **12. Confidentiality**

- 12.1 The Parties, including their respective officers, employees and agents, must not (directly or indirectly) disclose to any person, or use or permit to be disclosed or used for any purpose other than a purpose contemplated by this Contract, the terms of this Contract or any matter or information whatsoever connected with the subject matter or the terms of this Contract except:
- (a) information that is in the public domain as at the Contract Date or subsequently enters the public domain without any breach of either party's obligations under this clause;
  - (b) as the Parties otherwise agree in writing;
  - (c) the information is required to be disclosed or used by employees in the proper performance of the obligations of this Contract;
  - (d) such disclosure is required by law or order of a court of competent jurisdiction or by order of an applicable governmental authority; or
  - (e) such disclosure is necessary for the purposes of the party receiving professional advice.
- 12.2 This clause 12 survives termination of this Contract.



# **Eden Hill proposed land sale**

February 2020

Consultation Analysis

*UPDATED 18 March 2020*

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## 1. Executive Summary

In January 2020, the Town of Bassendean sought feedback about the proposed disposal of vacant Town-owned land at Lot 5 (No. 246) Morley Drive East on the corner of Ivanhoe Street, Eden Hill to the owners of the adjoining property at Lot 4 (No. 248) Morley Drive East.

Consultation found community support for the proposal, with 51 of the 69 submissions supporting the sale:

4. Given the information provided above, I:	
Support the sale of this land	51
Do not support the sale of this land	13
No opinion	5

## 2. Background

The property, covering 1,9993m<sup>2</sup>, is a vacant site which formerly housed a petrol station. It adjoins a former shopping centre which has been vacant for several decades. The adjoining property is jointly owned by Birmingham Properties Pty Ltd, Ladrift Pty Ltd and Matax Pty Ltd.

The proposal relates to sale of the block only and any development of the entire site will be subject to normal town planning application processes.

Consultation was covered in a Motion carried by Council in December 2019:

MOVED Cr McLennan, Seconded Cr Wilson, that Council gives public notice of the proposed disposal of 246, Lot 5 Morley Drive East Eden Hill in accordance with Section 3.58 of the Local Government Act 1995 and the terms of the owner of the abutting site.

It is noted that some concern was raised by two submitters with the validity of the valuation and the manner in which consultation took place. In response, the following is provided:

- In selling the land, the Town is required to comply with Clause 3.58 of the Local Government Act 1995 (the Act). Clause 3.58(4)(c)(i) requires that the details of the proposal sale for public advertising are to include a market valuation of the disposition as ascertained by a valuation carried out no more than six months before the proposed disposition. The relevant valuation was obtained on 8 July 2019, meaning that it was within the six month period at the time that Council resolved to advertise the proposal. If Council elects to dispose of the property, it will be recommended that it also resolve that it

believes the valuation to be a true indication of the value at that time. In this regard, it should be noted that the offer from the prospective purchaser is \$25,000 greater than the valuation.

- The consultation was specifically targeted to the issue at hand, being the potential sale of Town-owned land. While the adjoining landowner's concept plan was provided, it was clearly explained that it was for illustrative purposes only and had no formal status.

### 3. Methodology

To seek feedback, the Town hosted the following:

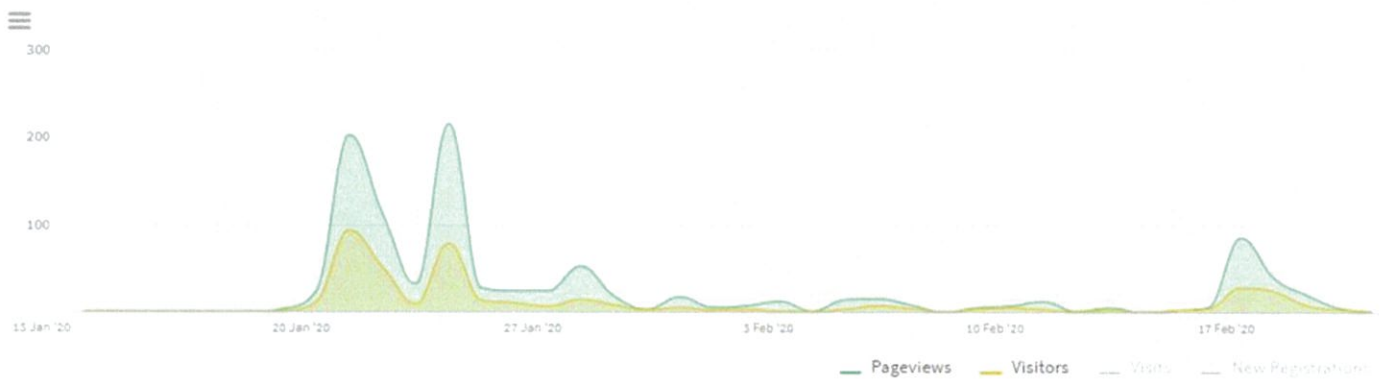
- An online survey at Your Say Bassendean, promoted on Facebook
- A statutory newspaper advertisement
- Emails submitted through [yoursay@bassendean.wa.gov.au](mailto:yoursay@bassendean.wa.gov.au) and lodged in the electronic survey results.

When community consultation finished on 18 February, the feedback was collated.

#### Visitors Summary

Your Say Bassendean from 01 Jan '20 to 21 Feb '20

DAILY MONTHLY



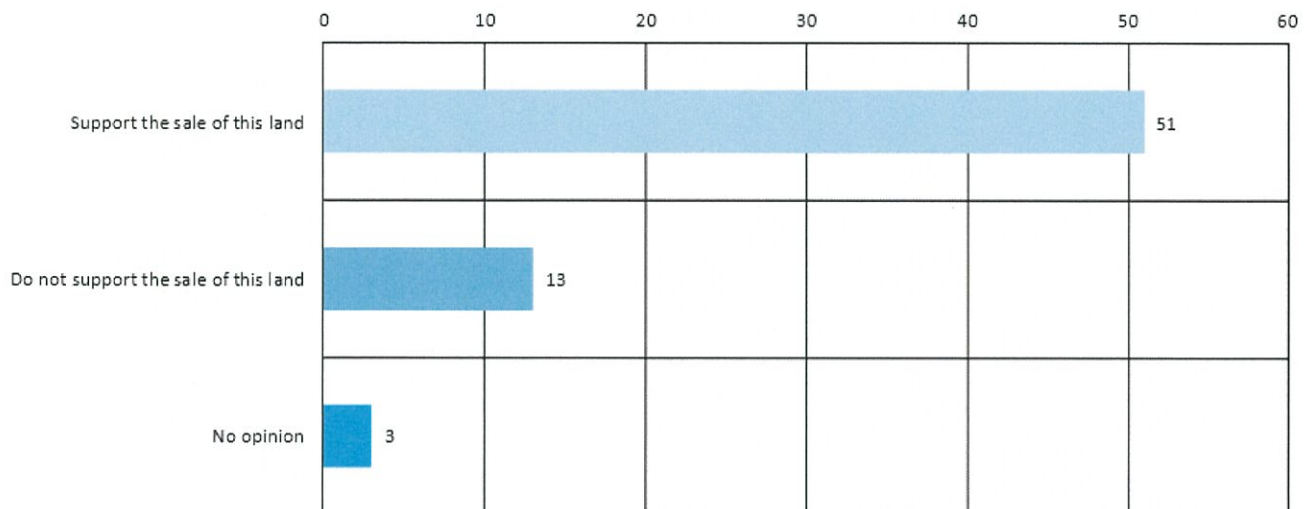
## 4. Engagement Summary

Engagement summary	
<p><b>We asked for feedback on the proposed disposal of 246, Lot 5 Morley Drive East Eden Hill.</b></p>	<p>You said:</p> <p>“Sell, sell, sell... ToB has done nothing with the land for years.”</p> <p>“It would also bring in some funds that could be used elsewhere and we would save money on upkeep for the site. The sooner the better.”</p> <p>“There has been no discussion on what the new revenue would be allocated to nor what proportion would go towards Eden Hill specific redevelopment.”</p> <p>“It is contrary to the principles of orderly and proper planning to facilitate the sale of land to a Purchaser whose intentions are to develop the lot contrary to the established planning framework.”</p>
<p><b>Concerns raised:</b></p> <ul style="list-style-type: none"> <li>• <b>Encourage Town to act to improve aesthetics</b></li> <li>• <b>Encourage Town to act to provide amenity and services</b></li> <li>• <b>Concern about type of proposed development</b></li> <li>• <b>Competition for nearby shopping centres</b></li> <li>• <b>Concern about method of consultation</b></li> <li>• <b>Concern the valuation was out of date.</b></li> </ul>	
<p><b>You participated</b></p> <ul style="list-style-type: none"> <li>• <b>Online surveys and emails 69</b></li> </ul>	
Next steps	
<p><b>We are now reviewing all community input.</b></p>	



## 6. Survey responses

### 4. Given the info...



### Comments

#### Support the sale of the land

- 1 A redevelopment of this neglected site will improve the overall look of the entrance to the suburb. It will also ensure that the neglected building is not a fire hazard or a site for vandalism.
- 2 the vacant lot is no use to anyone in it's current state - go ahead and sell it
- 3 100% support the sale price of this land. The area is an eye sore and needs to be developed asap. The concept plans look fantastic.
- 4 Faster it is sold the quicker it is developed.
- 5 Sell sell sell, on condition that it is developed within 1 year. ToB has done nothing with the land for years.
- 6 I support the sale of the land providing there is a binding agreement on a reasonable timeframe for development. I would like to see a supermarket open up - preferably a Woolworths, with space for a coffee shop, bakery, restaurant/bar, and other small independent shops.

7

It may encourage the owners to demolish the old shopping centre and finalise the plans to build a useful facility that would be of benefit to the area. It would also bring in some funds that could be used elsewhere and we would save money on upkeep for the site. The sooner the better.

8

I give conditional support to the sale of this land to the adjacent commercially zoned property owner. For years this commercial site has remained idle and appropriate development is desirable. Sale of the Council owned lot should be conditional that the title will only be transferred when the substantive owner has obtained both development approval and a building licence issued. For too long this Town has suffered from a lack of development potential through investors land banking.

9

If indeed the following information is accurate then I would like to express my concern and state that I support the investigation of alternative conditions of sale that would ensure the development of the site with a specified timeframe,

The proposal before Council and the current community consultation relates only to the sale of the land, not its development. Whilst a concept plan has been prepared, this plan is not binding and a proposal to develop the land has not been received. Any potential development of the site would involve a separate consultation and approval process. The proposed conditions of sale have been prepared by the buyer and include: A statement that the buyer shall 'as soon as practicable after settlement, arrange for the construction of the development...' however there does not appear to be anything to bind them to this. The option for the Town to repurchase the land if the buyer has not 'commenced construction' of the development within three years. We have received advice that the clearing of the site (demolition of existing buildings) would satisfy this condition.

We have been advised that the buyer has indicated they are not willing to consider stronger conditions of sale. Whilst there is clearly community support for the development of the site to proceed (and hence the land sale) there is a concern that under the current conditions of sale the buyer can acquire the Town's land, not proceed with development but simply clear the site within three years and will have then met the required conditions.

I would also like to express disappointment that in the 19 years I have lived within the town of Bassendean (Eden Hill) no notable developments of community property in the Suburb of Eden Hill come to mind apart from the Mary Crescent playground development last year. I also can't bring to mind any functional shopping centres within the boundaries of Eden Hill. In conclusion, I am very supportive of much that the council has achieved in the last couple of years and look forward to the council taking decisive action toward getting the property developed as soon as possible.

10

'We'd love to have a grocery store within walking and riding distance!

We hope as many of the significant trees can be saved as possible, and the owners are incentivised to make the space 'Green' to reduce power consumption (i.e. solar panels, EV charging station) and increase amenity/reduce island heat affect by making it as shady as possible (i.e. tree canopy and plants)

We hope the council can work out a way to ensure a Grocery store is built within a reasonable period (i.e. few years)



We hope the town can work out how to incentivise local businesses/food shops to open there, instead of chains like McDonalds in the 'food' precinct. Keep up the hard work ToB!

- 11 Would love to see the redevelopment of the property into a shopping centre
- 12 Maybe turn it into a community garden or something that can benefit the community.
- 13 If the Town does not require the asset and those funds can be used for greater public benefit then the land should be sold. If this facilitates the redevelopment of this and the adjoining site then that provides greater amenity for the people of Eden Hill.
- 14 This would be a huge improvement for the suburb!
- 15 This land is an eye sore as is the adjoining empty shopping centre  
It often has issues with security and police and is affecting value of homes and encourages crime. The sooner it gets developed the better
- 16 It's an eyesore! Get rid of it and develop that tragic area.
- 17 In the sale include conditions that make the land use attractive to the wider community. Does the land abut Mary Crescent Reserve? If it does, it should be at least visually connected to it.
- 18 Something desperately needs to be done to ensure the revival of key Eden hill areas. This is a good, central location that is falling into a visual state of disrepair due to a lack of speed and different ideas in the planning process.  
We need to make this area better and nicer. That old building needs to go. We should have better shop near by to walk to. I am hoping it will make the park a better place and friendly place. It need to be a modern building with modern quality shop that can get the customers to go there and be used. Not a empty not used shops
- 19
- 20 It's better for the area to have something built on the site and the council can use the money for something else.
- 21 I support the sale of the land to fund other projects within the Town (hopefully Sandy Beach Nature Play and BIC reserve improvements) for the simple reason that the Town holding onto englobo sites without any near-term community benefit is not sound practice for an LG. However the Town should be mindful that it is highly unlikely that a development of the Eden Hill site will occur as a result with any certainty. I dont believe the joint property owners are proven developers or have track record in delivery of shopping centre sites. Preparing 'concept plans' is a long way off achieving the development. To this end the Town should not sell this to the publics as an opportunity to free up land for the development as the site is still highly speculative and more than likely it will be land-banked by Birmingham for 10 years or more until there is a satisfactory retail sustainability assessment for the need for a new neighbourhood centre. The Town could consider sale 'subject to development conditions" much like the MRA development sites though in the current climate this may hinder the sale, and the near term opportunity to the Town for much-needed funding for capital works probably outweighs the issue.

- 22 I support the sale of the land. Due consideration needs to be given to its future use considering it was a BP Petrol Station.
- 23 As quickly as possible and minimise red tape to get the redevelopment through as quickly as possible.
- 24 As the corner property is relatively small and of limited use to the town, sell only on the proviso the entire former Eden Hill Shopping Centre site be re-developed to include a new small supermarket and Cafe/Coffee Shop. This is sorely missed in the area.
- 25 Any thing to speed up the renovation of this site and of the old shopping center. It has remained under developed for far too long. Sure the site may have needed some time for the oil residues from the service station to dissipate, but the history of the long period of decay for the general area since the big shopping center closed, does not reflect well on the historical long term vision of the Town Council for enhancing the area and servicing the community.
- 26 Support the sale of the land if they are actually going to develop the area in a specified time frame, otherwise the developer: 1. renegs on their contract and the land is transferred back to the Town of Bassendean and 2. Starts paying penalties to the Town of Bassendean of a fixed amount agreed during the sale of the land for every month they stall the development process.
- 27 Council seems to have no plan to do anything with the site other than to leave it vacant, so even if it is sold and sits vacant for another few years, at least we have their money.
- 28 I'm comfortable with ToB selling this parcel of land however only if there are conditions on the developer to speed up the development of the site. The information above reveals little about the timeframe. Given the depressed housing market/economy I can't see a developer rushing into this. It's likely they will defer development until it's economically viable (which business spends money simply for the good of the community?. ToB need to provide more communication and assurances to the public that something tangible is going to happen. I appreciate selling this parcel of land is a step in that direction, but again info on timing and the urgency to develop is what the community seems to be demanding. The Eden Hill CAN raised this issue this week at our committee meeting and will be in touch requesting more information. Furthermore, the ToB should/must give the community info on how the 1 million will be allocated. Can this not be ring fenced for projects to revitalise Eden Hill specifically, especially given the state of assets in the area.
- 29 The area need to be rejuvenated as it's currently unsightly
- 30 Absolutely support. Would be an asset to the Eden Hill area.
- 31 Prefer development is not more tiny residential units.

- 32 I would like to see this land used. I give preference to a community based project whether it be a shopping centre or some other group.
- 33 It's an eyesore and waste of vacant land. I would rather see it developed.
- 34 I think it's best to sell once a clear vision has been put in of what the new owners are planning to do with the land
- 35 Anything that makes use of the land and adds some benefit to the area is desirable. It is not good driving past this neglected area every day. The money for the sale can be put to good use by the Shire.
- 36 It's an eyesore and it would be better redeveloped
- 37 Although you have stated that as only 1% of the total site, would it be possible to try make the sale contingent on the developer completing the development as planned and in a reasonable time-frame? Otherwise they may have just added another 2,000 sq m of land to their landbank and the amenity would still be missing.
- 38 It will add value, improve the appearance of the area, and be of significant benefit for the community for the site to be redeveloped into services and businesses for the use of the community, including the opportunity for retail, cafes/restaurants and other community organisations etc. I fully support the redevelopment of this site which is well overdue.
- 39 Support the sale of the land and agree with the re-development of the shopping centre proposal. I dont agree with the proposal of the apartments surrounding the shopping center although any upgrade to the subject site will be beneficial and in every residence best interest.
- 40 The two parcels of land would be difficult to develop as separate projects leading to a poorer design outcome. The Town of Bassendean would be in a difficult position if they retained the land and acted as owner/developer and approving authority. I support the sale of the land to the adjoining owners in accordance with the rules for such a sale.
- 41 I would like to strongly support the development of the Eden Hill shopping centre site. There is a park on both sides of the site. It is a magnificent location for a development of this nature. To develop this site would also bring people to the parks, essentially widening the recreation area. I have a vision of people with their dogs, others that have come from suburbs away for a meal, a place where I can walk to work and take my shopping home on foot. Please consider the vision of a wonderful bustling and aesthetically pleasing space that would incorporate these two parks. The alternative is an empty block of land.

42 I support the sale of the corner block to enhance the development of the entire site. If it brings more positive activity to the area. I am curious of the surrounding areas and what plans the Council has for these areas. I am a local business owner in Eden Hill and I am finding it hard to get any future plans from the Town.

I support the sale of this land on the following conditions:

- The Town of Bassendean does not incur any financial or other responsibility which may arise from previous use of site as a service station and associated contamination or from this previous use. Any costs or liabilities must be borne by the land owners / developers
- 43 • The property undergoes an updated valuation, and sale price revised accordingly, as the previous valuation was 6 months ago and market conditions have changed meanwhile
- Any contract be made available to the public, NOT confidential, as it concerns ratepayers.

## Do not support sale of land

1 The concept plan looks like a slightly jazzed up 20th century shopping precinct. It doesn't describe the southern boundary buildings, clearly showing poor attention to detail that does not bode well for constructed outcomes. The council, as a One Planet Living subscriber, should use all levers it controls (particularly withholding the sale of the land) to force the developer to apply ALL relevant One Planet Living principles to the design, creating a future-proofed design rather than yet another eyesore and community liability in 20 years time. Only then would I support the land sale.

Given that ToB has signed up to ONE PLANET that the sale of land should be contingent on the new development meeting these guidelines. No compliance, no sale! From the online plans I see no evidence of solar power, grey water recycling, waste management, underground power and public gardens/park spaces being incorporated in the commercial or residential buildings. Yes there are trees in the parking areas but this is minimum requirement and given. All the residential building should be required to include grey water and solar/storage and meeting/pedestrian part of the traffic flow and feel of a 21 Century development .

2 It would be good to see a roof garden secured with, solar panels and a youth center/cafe and skate park designed fencing and/or legal graffiti wall on the roof top of the main commercial building with external ramp and lift access. As this development is next to Alf Faulkner on Ivanhoe it would be good to see how these recreational facilities and green spaces can be linked more cohesively to the development and perhaps contribute more positively to the towns green ways and cycling access plan. It would be a shame to see this development go ahead in its current form with TOB selling land as it looks like it will suffer the same fate as this sites previous short-sighted, soon to be demolished incarnation. It would be nice to

think that this development could be a model of sustainable, affordable and community minded living for generation to come.

There is a need for more childcare facilities in the area with another proposed school not far in the newly established Caversham area that also has a brand new shopping centre. I don't feel another shopping center is required or would benefit in the Eden Hill area with so many other established shops in the adjacent area already.

3

Retirement housing could be a strong possibility for this land redevelopment having so many local shops, chemist, hairdressers and doctors surgeries close at hand in a quiet neighbourhood together with some more affordable housing for young growing families to enable diversity would be more needed and of benefit to the community.

4

Leasing the land rather than selling would improve the council's ability to guide how the larger site is developed and used, and can inspire a longer commitment from the adjoining owner. Having the Town as an ongoing stakeholder can also reassure the community that their interests are represented

5

Only sell if you have a watertight letter in writing that they will do what they say. Can you not compulsory acquire the Charlie Carters land at a fair price. Have lived in Eden hill over 50 years and we have put up with this (xxxxxxx) long enough

6

The only options are to sell or not. They do not cover the larger concerns in regards to enforcing redevelopment timeframes and outcomes. The Town has chosen a weak position in negotiations. There has been no discussion on what the new revenue would be allocated to nor what proportion would go towards Eden Hill specific redevelopment.

7

The information provided above suggests that the sale of the council owned land will expedite development of the site as a whole. Not only is this misleading - as the Town currently has no control over the developer's actions on the site - but means other possible actions are overlooked. I do not support sale of the land as currently proposed. I do support sale of the land AFTER the developer has received JDAP approval for development. In this instance, the town will retain some leverage and it may encourage the developer to move forward. If the developer does nothing, at least the Town can understand their true motivations without losing an asset.

8

With no guarantee that the developer will actually develop the site I think the shire is best to keep the land to do what they feel is best with it. Unfortunately after so many years of nothing being done and the developer having no care for the land I can't trust the developer.

9 The pending sale of council owned land at Lot 5 Morley Road East should be IMMEDIATELY SUSPENDED until (A) the Town of Bassendean adopts State Planning Policy 4.2 Activity Centres and Transit Corridors related to the Bassendean Activity Centre, and (B) proceeds to amend Local Planning Scheme 10 to reflect the higher densities possible for that part of the transit corridor along Ivanhoe Street to the intersection with Morley Road East, and subsequently, (C) such an amendment is approved by the WAPC. It is possible that Lot 5, Morley Road East may have a higher sale price based on the changed zoning status. Further, the intended use of such funds from the sale of Lot 5, Morley Road East should be quarantined to offset the costs of the proposed undergrounding of power or related agreed purposes of the Eden Hill community, and not added to the general consolidated revenue of the Town, which may fund projects not in Eden Hill and not acceptable to a majority of Eden Hill residents.

10 I initially provided feedback supporting the land sale however upon reading the additional information re development I don't agree with the conditions in their current format. Further development conditions should apply to the sale to ensure the buyer does not demolish the existing building and then leave the lot vacant well after the 3 years is up.

11 I support the investigation of alternative conditions of sale that would ensure the development of the Eden Hill site in a specified timeframe.

#### SALE OF PROPERTY BY PRIVATE TREATY: LOT 5 MORLEY DRIVE EAST, EDEN HILL

I refer to the notice of proposed sale by private treaty of Lot 5 Morley Drive East, Eden Hill (the 'Site') to Birmingham Properties Pty Lt, Ladrift Pty Ltd and Matax Pty Ltd (the 'Purchaser').

Please note that element represents Firmus Capital Pte Ltd ('Firmus' or 'Client') who own the Altone Shopping Centre located within the City of Swan. Our Client wishes to object to the proposed sale of the Site for reasons set out below.

#### Background

element has previously made a submission on the above-mentioned matter dated 4 September 2019. A copy of this submission is provided at Attachment A to this letter.

12 In addition to these submissions, element also made a deputation to the Council at its agenda briefing session on the 10 December 2019 further objecting to the proposed sale of the Site.

While we understand that Council has formed the view that the proposed sale of the Site does not bind the Council to approve the Concept Plan put forward by the Purchaser, we still have significant concerns regarding the proposed sales process and contract as set out below.

#### Grounds for Objection

##### Retail Sustainability

We have previously objected on the basis that the Purchaser has made its intentions clear that it intends to develop the Site as part of a larger retail development that includes approximately 3,840sqm of shop-retail floorspace, inclusive of a full-line supermarket. The previously stated reasons for objecting to the sale are set out as



follows:

1. The Eden Hill Centre is recognised as a local centre within the Town's Local Planning Strategy and Local Commercial Strategy as endorsed by the Western Australian Planning Commission ('WAPC'). Local centres are limited to 1,500sqm of shop-retail floorspace and are intended to provide limited convenience retailing only. The Concept Plan envisages a Neighbourhood Centre scale shop-retail development, inclusive of a full-line supermarket. The Concept Plan is clearly inconsistent with the Town's strategic planning framework.
2. The Town's draft Local Economic Overview document identifies demand for a total of 366sqm shop retail floorspace within the Eden Hill Centre by the year 2031. This demand analysis confirms that Eden Hill is intended to function as a local centre providing convenience retail to local residents only. The document predicts that the majority of new shop-retail floorspace will be provided within the Bassendean Town Centre. Provision of approximately 3,800sqm of shop-retail floorspace at Eden Hill not envisaged by the planning framework has the potential to undermine the viability and growth of the Town Centre as demonstrated by the Economic Analysis Report prepared by Macroplan.
3. The proposed Concept Plan is clearly inconsistent with the objectives of the 'Local Shopping' zone, which seeks to protect the primacy of the Bassendean Town Centre as the principal centre in which shopping, entertainment, community and business uses should be contained. The 'Local Shopping' zone is intended for local centres which are designated to provide limited convenience retailing to a small local catchment.
4. The proposed Concept Plan is not supported by a Retail Sustainability Assessment as required by State Planning Policy 4.2. Notwithstanding, Firmus has engaged an independent economic analysis report which demonstrates that the Concept Plan as proposed will have a negative impact on the viability and hierarchy of the established network of activity centres, including our Client's Altone Park Shopping Centre.
5. If expenditure directed to the above centres is impacted to the extent indicated by the Macroplan report, this could result in the loss of existing retail offering within these centres, which will result in the deterioration in the level of services available to the local community and the ultimate undermining of the established activity centre hierarchy.
6. The suitability of the proposed Concept Plan including the built form outcomes envisaged for the site are uncertain given that it has not been supported by a Retail Sustainability Assessment and there is no basis to coordinate the future redevelopment of the site through a comprehensive structure planning process under the current 'Local Shopping' zone.
7. Any approval granted to develop the Eden Hill Centre in the manner intended by the Purchaser would be contrary to principles of orderly and proper planning, given the inconsistencies with the planning framework and the lack of justification from departing from it.

Whilst we appreciate that the Council is not fettered to consider the Purchaser's Concept Plan in the proposed sale of the lot, it is contrary to the principles of orderly and proper planning to facilitate the sale of land to a Purchaser whose intentions are to develop the lot contrary to the established planning framework.

Terms of Contract

We note that the terms of the proposed contract of sale includes a definition for 'Development' as "the construction of commercial and/or retail buildings and associated infrastructure and services on the Amalgamated land".

We foresee several issues with this. Firstly, the definition omits any reference to residential development of the site, which is considered to be an integral component of the Concept Plan to achieve a better built form outcome for the locality.

Furthermore, the special conditions of the contract of sale grant the purchaser complete discretion to pursue an alternate development outcome for the site. This does not protect the community's interest in ensuring that an appropriate and timely development outcome will be achieved for the Site.

We also note that one of the intended purposes of the contract is to require the amalgamation of the Site with the adjacent land owned by the Purchaser. The contract also provides for the Town to repurchase the Site should the development not proceed in a timely manner. However, if the land is first amalgamated before the Town enacts this clause of the contract, it may not be possible to repurchase the Site as it would no longer exist as a separable portion.

This uncertainty does not appear to pass the criteria previously agreed to by the Council at a previous meeting held on 23 April 2019, whereby Council sought to secure through any potential sale negotiations, firstly assurance for the community as to the ultimate development outcomes for the site, and secondly, arrangements to ensure that the land is developed in a reasonable timeframe.

These assurances are by no means secured under the current conditions of contract, given that neither the Council nor the Purchaser has sought to comprehensively address the issue relating to the amount of retail floorspace that is deemed acceptable for the Eden Hill site in accordance with the requirements of both the State and Town's own local planning framework.

Instead, any contract of sale should include the following conditions to provide Council and their community with a greater level of certainty that a specific and timely development outcome will be achieved:

1. that planning approval for a particular development (compliant with the applicable planning framework) is granted before title to the land is transferred, and the contract should include a mechanism governing the process for seeking planning approval within a reasonable timeframe;
2. that the contract of sale should be linked to a more specific definition of 'Development' (compliant with the applicable planning framework), and that any specific changes to the development should not be made without Council's consent in writing; and
3. that any amalgamation of the Site to occur after development approval is granted and following the transfer of titles have been transferred once development approval has been granted.

Compliance with Section 3.58 of the Local Government Act

In disposing of land, local governments are required to follow the process set out in Clause 3.58 of the Local Government Act 1995 (the 'Act'). Section 3.58 of the Act mandates that all of local government property is to be sold at public auction, either to the highest bidder or "the most acceptable tender", unless a detailed and transparent process is undertaken.

In following this transparent process, Clause 3.58 (4)(c)(i) of the Act requires a local



government to disclose the market value of the property "as ascertained by a valuation carried out not more than 6 months before the proposed disposition". The Council's notice of the proposed sale references a valuation undertaken by Landgate on the 8 July 2019 which was undertaken greater than 6 months ago and may not reflect current market value at the time of advertising the proposed sale. Furthermore, Council at its meeting held on 17 December 2019 did not expressly consider whether the Landgate valuation continued to reflect market value for the Site and it is therefore considered that compliance with Clause 3.58 has not been achieved. Notwithstanding, Clause 3.58 establishes a preference for local government land to be disposed of by public auction as the best way to assess the market value of property. A public auction may attract interest from other entities that could result in a greater purchase price and/or a more appropriate development outcome for the site.

#### Conclusion

For the reasons set out in our submission, our Client objects to the proposed sale of the Site and will seek to object to any future development which would be seen to undermine the established retail activity centre hierarchy.

The Contract itself is insufficient on its present proposed terms to protect the public interest in a proper development of the Site, or retention of the Site if it is not implemented properly, or at all. There are many changes required to the terms of the Contract if that interest is to be protected, examples of which have been given above. As advised previously, our Client has significant concerns in respect to the development of a commercial/retail development on the Site. These concerns are made on the basis that the Concept Plan being sought to be implemented by the Purchaser is contrary to both LPS10 and SPP4.2.

The Macroplan retail assessment previously provided to the Town, demonstrates that the development as detailed in the Concept Plan would have a detrimental and unsustainable impact on several existing centres, including our Client's Centre at Altone Park and also Hawaiian at Bassendean. It can also be concluded that there is sufficient access to existing retail services in the catchment and there is not a demonstrated need for a new full-line supermarket at Eden Hill.

Finally, it is considered that Clause 3.58 (4)(c)(i) of the Local Government Act 1995 has not been complied with. In order to provide a more transparent process to the sale of the Site, we recommend that the Council proceeds to a public auction to test the market with respect to purchase price and also with respect to canvassing potential alternative development outcomes for the Site. We trust that our submission will be given due consideration by the Council. Should you have any queries or require clarification on any of the matters presented herein, please do not hesitate to contact (us).

#### LETTER OF OBJECTION

#### SALE OF PROPERTY BY PRIVATE TREATY: LOT 5 MORLEY DRIVE EAST EDEN HILL

- 13 element represents Hawaiian Investments Pty Ltd (Hawaiian) the owner of the Hawaiian Bassendean Shopping Centre at 2 West Road, Bassendean.

#### Background

element has previously made two submissions on the above-mentioned matter dated 4 September 2019 and 1 October 2019. A copy of those submissions are contained

within Annexure 1.

The Eden Hill Centre is located 1.5km north of Hawaiian's Bassendean Shopping Centre. The progression of the proposal for a commercial/retail development of 3,840m<sup>2</sup> including a supermarket arises significant concerns for our Client.

#### Proposed Sale

The sale of 5 Morley Drive East, Eden Hill is proposed to assist in the development of Lots 4 and 5 Morley Drive East into a Shopping Centre of 3,840m<sup>2</sup>. As we have previously detailed the proposed Shopping Centre should not be supported on the following grounds:

- Endorsement of the Concept Plan is inconsistent with the Town's LCS and LEO as the subject site is identified as a Local Centre and the proposed development is of a Neighbourhood Centre scale.
- The LEO identifies demand for a total of 366m<sup>2</sup> shop / retail floorspace within Eden Hill Centre by 2031. This demand analysis confirms that Eden Hill is intended to function as a Local Centre providing convenience retail to local residents only. Provision of approximately 3,840m<sup>2</sup> of shop-retail floorspace at Eden Hill is not envisaged by the planning framework and will undermine the viability and growth of the Town Centre.
- Approval of the Concept Plan is inconsistent with SPP4.2 as it would undermine the established and planned activity centre hierarchy. Activity centre structure plans and developments should be consistent with the centre's classification in the hierarchy.
- It is unclear as to the planning rationale or justification to facilitate a floorspace increase of over 10 times of the demand for such floorspace as set out within the LEO.
- The Concept Plan is significantly inconsistent with the objectives of the 'Local Shopping' zone as it will not maintain a retail hierarchy to ensure that the catchment of the Town Centre zone is not adversely affected.
- It is queried given the demand for shop / retail floorspace is only 366m<sup>2</sup> as set out within the LEO whether the development proposed within Concept Plan is deliverable.
- The Eden Hill locality can be serviced by an existing IGA Supermarket located within 870 metres of the subject site at the corner of Morley Drive East and Bottlebrush Avenue. If development proceeds on the subject site it would have significant impact on the IGA Supermarket.
- Access is proposed from Morley Drive East which is an ORR under the MRS. New access to an ORR is unlikely to be supported in accordance with DC4.3.
- Approval of the proposal would be contrary to orderly and proper planning.
- There is no demonstrable market need and demand for the proposed 3,840m<sup>2</sup> neighbourhood centre, including a full-line supermarket of 3,200m<sup>2</sup>.

This is based on the following:

- Residents in the Eden Hill area already have convenient access to neighbourhood scale centres and full-line supermarkets. Within 2 km of the Eden Hill site, 95% of residents can travel to an existing activity centre (with a full-line supermarket) within 5 minutes. The average travel time for these residents is only 3 minutes.
- Within 3 km of the site of the proposed Eden Hill Village centre there are 7 supermarkets and the supply of supermarket floorspace in the region of relevance to Eden Hill is currently above the Perth average. With the addition of a 3,200m<sup>2</sup>

supermarket the provision of supermarket floorspace would be 24% above the Perth average. Residents therefore already have access to supermarkets and everyday shopping needs.

- The size of the potential catchment and market demand for the Eden Hill Village centre would not be large enough to adequately support the proposed centre. In terms of the proposed sale of the land we have reviewed the special conditions of the contract of sale which were provided in Annexure 3 to the Agenda Report of the Briefing Session of 10 December 2019. On review of the contract of sale we understand that the purchaser must as soon as practicable arrange for the construction of the development including seeking all necessary approvals. The term 'development' is defined in the special conditions of the contract of sale. Development is defined as a commercial / retail development. The following concerns arise in respect to the requirement to build a commercial / retail development as follows:

- As set out in our previous advice the proposed Concept Plan prepared by the purchaser is contrary to the Town's Local Planning Scheme No.10 (LPS10) and State Planning Policy 4.2 Activity Centres for Perth and Peel (SPP4.2). Notwithstanding, the Town is indicating a requirement for the purchaser to construct a commercial / retail development. Thus, the sale of the land has the propensity to facilitate development of the land that is contrary to LPS10 and SPP4.2 having regard to the likelihood that

development will proceed on the basis of the Concept Plan.

- As demonstrated by the Urbis Preliminary Need and Demand Assessment there is no demonstrated market demand or need for a Shopping Centre. Thus, the Town's indication to the purchaser to construct a commercial / retail development which has no demonstrated need is not a preferable decision in respect to the future development of the land.

- Based on the proposed Concept Plan we envisage that any Development Application for the development will be determined by the Metro Central Joint Development Assessment Panel (JDAP). The Town's role will be limited to providing a Responsible Authority Report (RAR). Thus, the Town will not have a determinative role for the final development outcome for the site.

Further to the above, we note that the special conditions of the contract of sale do not require the purchaser to develop the residential component of the development which is shown on the Concept Plan. Moreover, as per the special conditions of the contract of sale the purchaser has the unfettered discretion to make changes to the development of the land provided the appropriate approvals are received. Thus, it appears that regardless of the intent for a commercial / retail development there is discretion available with the special conditions of sale to seek approval to develop some other type of development.

Compliance with Section 3.58 of the Local Government Act

In selling the land the Town is required to comply with Clause 3.58 of the Local Government Act 1995 (the Act). Clause 3.58 (4) (c) (i) requires that the details of the proposal sale for public advertising are to

include a market valuation of the disposition as ascertained by a valuation carried out no more than six months before the proposed disposition. Based on the advice contained on the 'Have Your Say' website a valuation was obtained on 8 July 2019.



Therefore, it is considered that compliance with Clause 3.58 (4) (c) (i) has not been achieved.

#### Other Options

It is unknown as to whether the Town has sought interest from other parties in respect to purchasing the land in question which may yield a greater purchase price and deliver greater value to the Town. If this process has not been undertaken it would be prudent to do so.

#### Conclusion

element acts on behalf of Hawaiian in respect to the proposal sale of Lot 5 Morley Drive East, Eden Hill. For the reasons previously provided in submissions on the proposal our Client opposes the land sale and development of a Shopping Centre on the subject site. In addition to the above, based on a review of the special condition of sale taken from the Agenda Briefing Session of 10 December 2019 it is understood that the Town is indicating a requirement to the purchaser to construct a commercial / retail development. In addition, the purchaser has the unfettered discretion to make changes to the development of the land provided the appropriate approvals are received. Thus, it appears that regardless of the intent for a commercial / retail development there is discretion available with the special condition conditions of sale to seek approval to a develop some other type of development.

As advised earlier within this advice our Client has significant concerns in respect to the development of a commercial / retail development on the subject site. These concerns arise as the development proposed is contrary to both LPS10 and SPP4.2. In addition, there is no demonstrated need or demand for the proposal as advised by Urbis Preliminary Need and Demand Assessment. Thus, it is queried whether it is a preferable decision to sell the land to the purchaser for a commercial / retail development which is contrary to the Town's planning framework.

Finally, Clause 3.58 (4) (c) (i) of the Act has not been complied with. Thus, it is queried whether the requirements of 3.58 have been appropriately followed. Having regard to the above, it is requested that the sale of land to the purchaser not proceed. Should you have any queries or require clarification on any of the matters presented herein, please do not hesitate to contact (us).

Opportunity cost. Selling the land now makes it unavailable for use in the future.

- 14 There is also no information on how the additional funds from the sale will be used by the town. If there is development in the adjacent land, there would be an opportunity for the town to integrate some community uses into the corner lot. If it's sold, it will probably become a fast food outlet or service station.

- 15 Quick, cheap and aesthetic fix: mulch and turn it into a fenced dog park. Add a few more native trees (think jacaranda) facing main road. Fencing neatens up the area and for a plot this small, it would be too cramped to build another shopping area as we gotta think about the parking and traffic flow coming from a 70km/h zone. Need more parks and flora as the name of the suburb aptly suggests... Eden Hill! Less concrete and more green parks! Only sell when a good sensible developer comes by years down the road, meanwhile a park space is the quickest and easiest fix.



- 16 The council is just being money hungry about the potential sale of the land, and the possible future development of the shopping centre. I do not support this development. Altone Road Mk2 in the making. As if we don't have enough shit in the area.

## No opinion stated for or against sale of land

The opportunity for submissions to be made regarding the proposed disposal of 246, Lot 5 Morley Drive East, Eden Hill, appears to have been presented in a leading manner and does not accurately represent the situation or council's options.

In the interests of transparency, the submissions opportunity should have been prefaced with an accurate description of how it came about - that in response to an officer's recommendation to an 'in principle agreement' to sell and give public notice of proposed disposal, the mayor proposed an alternate motion to give public notice only, which appears to be more in line with the Local Government Act 1995 Section 3.58. This is a critical insight as a layperson reading the description and provided documentation would be given the impression that no recommendation to agree to the offer has yet been raised - rather that the offer is only in the discussion stage and that public submissions will be taken into account. Council is under no obligation to act on community feedback to the proposal, another salient piece of information missing from the Yoursay forum.

- 1 The description of the land disposal further misleads readers, indicating that the proposal relates 'to the sale of the block only' with development subject to normal town planning application processes. As the offer of sale outlines, development is a condition of sale (see below) and so therefore does relate to the proposal. 'Normal town application processes' is a broad term, and fails to account for the Town's role in the JDAP that would assess development of the scale proposed in the concept plan for the amalgamated site, with any development decisions a result of the panel deliberation, not just council consideration.

The statement that 'the town has only limited influence over development time frames or outcomes of the abutting site' is just one of many comments from the December 2019 briefing session notes, and is arguably as worthy of mention as 'the council is under no obligation to sell the land', or concerns about reputational damage and an anticipated contentious development application process. The chosen statement presents a prejudgement of the situation, and fails to adequately represent all considerations of the briefing notes, let alone those of the proposed disposal.

It is common practice to discuss pros and cons, or benefits and disadvantages, rather than just one side of a situation as noted on the Yoursay page. This lack of balance in the proposal description demonstrates considerable bias for an affirmative response, and misses an opportunity to establish an open forum for discussion. The benefits are touted as being redevelopment, however as council is well aware, the adjoining property owner is motivated to develop with or without the sale of the Town's site, and

so really the sale is no guarantee of any kind of development and rather a ceding of opportunity to influence development.

The offer from the adjoining property owner should have been included in the document library, as it has already been made publicly available via the December 2019 briefing session attachments, with particular reference to the conditions proposed. Question 6 of the Yoursay frequently asked questions (When will the site be developed?) has been answered: 'That is at the landowner's discretion and is outside the Town's control.' This answer is misleading as outlined in Annexure A of the Special Conditions of Sale, the seller (the Town) has an option to re-purchase the land if development has not commenced, subject to various conditions. A further read of the condition 4 Option to Repurchase makes it clear that although face value may indicate an action the council can take, it would be a costly endeavour with the re-purchase price at least as much as the sale price, and with additional costs to be shouldered by the council to re-subdivide. This condition does not seem to serve the council at all, and should be at least amended to have no additional costs to the council to pursue, or to impose costs to the seller as recourse for lack of development and act as a deterrent for development delay.

The possible redevelopment scenario presented in the preliminary concept plans is so problematic that it should only be included as supporting documentation with considerable caveats (such as - glaring non-compliance issues indicate that a development application for such a proposal would be rejected, or at the very least require considerable amendments). Formal objections to the concept plan have already been brought to council, and outline areas of non-compliance with the concept - not least an over representation of commercial floor area in a vicinity with struggling shopping strips and well established shopping centres. Issues of non-compliance and objections to a preliminary concept plan are harbingers of the fraught development application process that is likely to ensue following lodgement.

It seems that while an affirmative position regarding the proposed sale is represented on the Yoursay page, an opportunity for the Town to have ongoing involvement in the proposed development of both sites PRIOR to a finalisation or agreement of terms and conditions of sale, has been overlooked. Given the scale of the concept plan development, and the inevitable assessment by JDAP and predicted rejection / extensive revision required, a condition such as 'offer acceptance is contingent on receipt of development approval for the amalgamated sites from the JDAP' could be proposed. Such a condition leaves the council free from a complete commitment to the sale, allows for a collaborative development design process, indicates to both the seller and DPLH that the council is motivated and supportive of development, and gives the seller impetus to progress from preliminary concepts to approvals. A precedent of similar conditions for private land sales is established, and with appropriate legal advice, such a condition would strengthen the council's position. Perhaps the most important outcome of such a condition (if it is appropriately explained) would be the reassurance for the community that the council truly has local interests at heart, and by being a stakeholder in more than one way for

redevelopment is increasing it's influence rather than minimising it with the current sale proposal.

Thank you for the opportunity to comment - I hope that the council considers all feedback with an even hand and takes the time to ensure that no options to improve the development possibilities for the sites are overlooked.

2 There is a need for more childcare facilities in the area with another proposed school not far in the newly established Caversham area that also has a brand new shopping centre. I don't feel another shopping center is required or would benefit in the Eden Hill area with so many other established shops in the adjacent area already. Retirement housing could be a strong possibility for this land redevelopment having so many local shops, chemist, hairdressers and doctors surgeries close at hand in a quiet neighbourhood together with some more affordable housing for young growing families to enable diversity would be more needed and of benefit to the community.

Given that TOB has signed up to ONE PLANET that the sale of land should be contingent on the new development meeting these guidelines. No compliance, no sale! From the online plans I see no evidence of solar power, grey water recycling, waste management, underground power and public gardens/park spaces being incorporated in the commercial or residential buildings. Yes there are trees in the parking areas but this is minimum requirement and given. All the residential building should be required to include grey water and solar/storage and meeting/pedestrian part of the traffic flow and feel of a 21 Centaury development .

3 It would be good to see a roof garden secured with, solar panels and a youth center/cafe and skate park designed fencing and/or legal graffiti wall on the roof top of the main commercial building with external ramp and lift access. As this development is next to Alf Faulkner on Ivanhoe it would it would be good to see how these recreational facilities and green spaces can be linked more cohesively to the development and perhaps contribute more positively to the towns green ways and cycling access plan.

It would be a shame to see this development go ahead in its current form with TOB selling land as it looks like it will suffer the same fate as this sites previous short-sighted, soon to be demolished incarnation. It would be nice to think that this development could be a model of sustainable, affordable and community minded living for generations to come.

4 The offer tendered is marginally above the valuation noting the property adjoins land owned by the prospective purchaser making it more valuable to them. It is also worth benchmarking other land for sale for development, e.g. 23 to 25 Ida St which is circa \$900/m2 for 1520m2. It is suggested the Town adopts a principle (if it doesn't already exist) that asset sales in one area are used to buy new assets in the same area and secondly, that funds from asset sales can only be used on capital works, i.e. they cannot be used for recurrent expenditure. I feel the community would benefit if there are incentives to develop the property, e.g. the purchaser pays a \$100,000 for an "option" to buy the land (for an agreed sum) which is foregone if a development is not



approved within 3 years after which the balance is paid. I feel the Town should insert a caveat on the title and/or put some trees on the Town's register – an action that is consistent with the Town's rhetoric. I feel the Concept Plan is OK but needs more space for trees and soft coverings and that the facades on Morely Drive and Christie Way also need "softening".

One would like to see the Town of Bassendean ensuring that quality housing is being built on the site and not cheap housing that will be demolished 20 years after its been built. I think the question of having a large shopping centre may result in empty shops as there is the trend to online shopping for a lot of people who have very little time for shopping during normal trading hours. Maybe there is room for a small supermarket like a IGA, the size off the proposed.

The shopping centre site appears to have a very large footprint on the proposed plan that exceeds the Town's planning policy for local shopping appress to well and truely exceed. One would like to see shops that had housing accommodation located maybe on the Morley Drive side. Maylands have shops at street level and multi 2-3 level housing units about the historic shops located on Whatley Cresent and with ave corner , this would be ideal for Eden Hill.

Having a community hall come meeting space within the development would be very beneficial for the Town and the community which is basically short in providing space for community groups who are wishing to run meetings and workshops. This would cater for many community groups wishing to run programs. Having a community space / meeting facility would be well received for people living north of the railway line, often feeling like the forgotten residents with in the town. While there is the Alf Faulkner Hall nearby at Mary Crescent as far as I am aware the place is always well booked all the time. Hunting for federal and state grants to build the facility would help in making the community hall space happen as there is a shortage community facilities that people could use to hold meetings ,workshops and gatherings.

in the Eden Hill area, going on what people look for in the Eastern States where backyards no longer exist in homes and apartments that are being built, people are wanting park areas and open space. I think the model at Scadden Street development proves having housing around a small park area works really well. The new housing around Gallagher Street has been good and gives Eden Hill a positive look for the area.

I remember back in the early1990's there was a rush to have a caravan park there by the council of the day. This was hit on the head with then Mayor and some fellow councillors pushing for good quality housing to be built on Scadden Street, the old foundry site. A bad example was when the government sold off a section of land at Cyril Jackson High school site in the late 1980's. It's a very bad example of poor quality housing done on the cheap and is now looking like the houses need replacing in 2020 at the corner of Cyril Street and Reid Street in Ashfield ,

From my understanding the TOB do own a portion of land within this proposed development. Any proceeds for this land sale should be re invested into the Eden Hill area for a community benefit. For far too long residents and ratepayers who live north of the railway line have been totally ignored not having the facilities that people who live south of the railway line. Any TOB land that is part of the old Eden Hill shopping centre land sale that raises revenue for the Town should be used to provide facilities

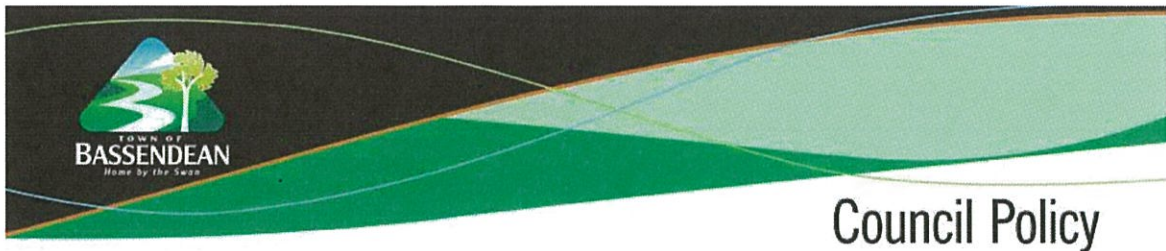


in Eden Hill that will be beneficial to the community that lives north of the railway line. One would expect whoever buys the old Eden Shopping Centre site have set in place a timeline to development and construction to take place within a time limit of no more than 3 years. A good example when the Scadden Street development housing lots came up for sale, there was agreement that the purchaser would build their home within a 3 year period. This proved to be successful as I understand there are now only 3 housing sites where construction has not taken place in the at least 15 years. The quality of the housing on the Scadden Street site has been of a high standard.

There are serious concerns that some really good mature trees would be removed to accommodate the proposed plan. One would be expecting the Town to ensure that all the mature trees on the site were retained. When Hawaiian decided to redevelop the Bassendean Shopping centre on West Road, Bassendean great effort was made by Hawaiian's senior management that all the large mature trees remain. This has provided a great landmark for the shopping centre in maintaining all those great huge gum trees on West Road, the 3 trees at the entry to the carpark and the 2 up near the actual car park. Also many of the trees that line the carpark lower on the Old Perth Road side on the shopping centre site. I think that there should be the same effort put into retaining as many as possible large mature trees as possible. Shady carparks attract customers as well as fauna who would enjoy the trees as a food source and shelter. There seems to be some serious concern that the site would be bulldozed to make way for any further development, no certain timeframe. One would hope that there are all the great mature trees on the site that should remain, that any planning for that site could incorporate the large mature trees into the final plan. A limited timeframe should be set for the purchaser to commence construction. Clearing the block should not be seen as the job has been done, the site then to sit idle for another 4 plus years that once again would have to go before Council. It's just doing more stalling in providing a good quality development for the Town. Only other comment I wish to make is that the people who have built homes around the area in Christie Way that runs down the west side of the proposed development would be subjected to very substantial increase in traffic that would include trucks making deliveries to the proposed super market and the proposed 4-5 level residential apartments. The traffic issues that would be associated in having this proposed development. The quiet Christie Way would become a major thoroughfare with heavy traffic use. Suddenly the quiet area that people who thought would be an ideal place to live would suddenly dramatically change their tranquil area that they choose to live in. Traffic into the development site should be made either on Morley Drive or Ivanhoe Street that can handle the increased traffic because they are major roads for better access. Basically the whole proposed development plan needs to be dropped and a far better proposed plan needs to be put forward that will benefit the community and will not dramatically impact on people who live adjacent to the old Eden Hill shopping centre site.

# **ATTACHMENT NO. 4**





## **LOCAL PLANNING SCHEME NO. 10**

### **LOCAL PLANNING POLICY NO. 17      GRADE SEPARATION AT THE CORNER OF GUILDFORD ROAD AND OLD PERTH ROAD**

#### **OBJECTIVE**

To encourage grade separation between vehicles and pedestrians in any future developments on the corners of Guildford Road and Old Perth Road.

To encourage improved access from the Town Centre to the Train Station and to areas located on the northern side of the railway line.

#### **APPLICATION**

This policy applies to Lots 1,188,187 and 97 (No1) Old Perth Road Bassendean and Lot 355 (No 2) Old Perth Road Bassendean

#### **POLICY**

The owners of properties located on the corner of Guildford Road and Old Perth Road are encouraged to investigate the possibility of incorporating an overpass to the Bassendean Train Station in any future redevelopment of those properties.

#### **IMPLEMENTATION**

This policy is advisory in nature and does not have any statutory force.

# **ATTACHMENT NO. 5**



## LOCAL PLANNING SCHEME NO. 10

# LOCAL PLANNING POLICY NO. 13 – TREES ON DEVELOPMENT SITES

### Background

Trees provide environmental, health and amenity benefits in relation to solar screening, microclimate, carbon absorption, bird and animal habitat, air quality and visual attractiveness. Due to these benefits, trees can also enhance the monetary value of individual properties and the enjoyment of residing in a green, leafy neighbourhood.

Local Planning Scheme No. 10 (LPS10) promotes urban infill which contributes to the Town's sustainability commitment. However, while the Town of Bassendean is presently characterised by mature trees, an inevitable consequence of urban infill development is that only a very limited number of trees can be retained on development sites. While sharing the community concern about the loss of trees as a result of development, the Town takes a balanced approach to both urban infill development and tree preservation, as reflected in this Policy.

### 1.1 Citation

This Policy is adopted by the Town of Bassendean as a Planning Policy pursuant to Section 2.4 of Local Planning Scheme No .10.

### 1.2 Purpose

The purpose of this policy is to State Council's position on the retention of trees on development sites.

### 1.3 Application of this Policy

This policy applies to all applications that require planning consent under the Local Planning Scheme.



## 1.4 Relationship to the Local Planning Scheme No 10, the Residential Design Codes of Western Australia and other Council policies

This policy compliments the Local Planning Scheme No 10, the Residential Design Codes of Western Australia. This policy should be read in connection with Council's Street Tree Removal and Replacement Policy and Amenity Tree Evaluation Policy which controls trees within the verge area adjoining development sites.

Under the Local Planning Scheme No. 10, each application for planning approval is to be accompanied by:

1. The existing and proposed ground levels over the whole of the land the subject of the application and the location, height and type of all existing structures, and structures **and vegetation proposed to be removed**; and
2. The nature and extent of any open space and landscaping proposed for the site.

Under the Residential Design Codes each application for planning approval is required to be accompanied by an existing site analysis plan showing:

1. The position, type and size of any tree exceeding 3.0m in height; and
2. The street verge, including footpaths, **street trees**, crossovers, power poles and any service such as telephone, gas, water and sewerage in the verge.

Note: Any development that proposes the removal of a street tree requires the planning approval of the Town of Bassendean.

## 1.5 Additional requirements for Grouped and Multiple Dwelling Developments

The Residential Design Codes require the retention of existing trees which are greater than 3,0m in height in areas of open space associated with the development.



Where it is not possible to retain existing trees, due to the size of the trees, or their invasive nature and the development cannot be designed to retain those trees, Council will require the planting of suitable replacement advance specimen trees.

## **1.6 Tree Retention and Planting.**

Care should be taken with tree retention and planting to ensure that the existing trees, or new trees when reaching maturity will not affect building structures, driveways and infrastructure. As a general principle buildings should not be placed within the drip zone of the tree.

## **1.7 Variation to Local Planning Scheme and Residential Design Codes Standards**

Council will actively consider varying Scheme and Residential Design Code standards to assist with the retention of significant trees, providing the variation will not adversely affect the amenity of adjoining properties or streetscape character.

## **1.8 Tree Preservation Orders**

The Local Planning Scheme No. 10 gives Council the power to make tree preservation orders, having regard to a tree's aesthetic quality, historical association, rarity or other characteristics, which in the opinion of the local government, makes the tree worthy of preservation.

Any land owner or developer who allows a tree, the subject of a tree preservation order, to be cut or removed without the local government's consent, commits an offence under the Scheme and is liable for prosecution.

The Scheme also gives the power for Council to make a tree preservation order where there is a risk of imminent damage to a tree requiring an order to be made or amended as a matter of urgency, without consultation with the owner in advance.

## **1.9 Environmental Protection Act 1986**

Under the Environmental Protection Act 1986, which is administered by the Department of the Environment, a permit may be required to remove

native vegetation or a person wishing to remove a tree must qualify to clear under an exemption.

An exemption is a kind of clearing activity that does not require a permit. These exemptions are often referred to as the Schedule 6 exemptions and a set of regulations known as the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Some of the exemptions are listed below:

### **Clearing under the Planning and Development Act 2005**

This exemption allows clearing in accordance with a subdivision approved by the responsible authority under the *Planning and Development Act 2005*.

This includes clearing native vegetation for the purposes of:

- constructing roads to provide access to or within the subdivision;
- providing water services to the satisfaction of the Water Corporation;
- filling or draining the land in accordance with the specifications of the approval; and
- clearing within any building envelope described in the approved plan or diagram.

Most subdivision approvals do not explicitly authorise the clearing of native vegetation other than for the purposes outlined above.

### **Environmentally Sensitive areas**

The exemptions to obtain a permit do not apply if the site is within a gazetted environmentally sensitive area or is within a buffer zone of a conservation category wetland.



**Draft Amended 19 March 2020**

## **Local Planning Policy No. 13 - Tree Retention and Provision**

### **1. Citation**

This is a Local Planning Policy prepared under Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This Policy may be cited as Local Planning Policy No. 13 – Tree Retention and Provision.

### **2. Policy Statement**

The Town recognises the increasing importance of retaining trees due to their amenity, environmental and health benefits. Trees assist in mitigating the impacts of the urban heat effect, reduce air pollution, improve groundwater quality and provide important habitats for wildlife.

Whilst Local Planning Scheme No. 10 provides statutory provisions relating to the retention of significant trees, this Policy seeks to encourage the retention of existing trees on development sites and increase the urban canopy cover as infill development occurs.

### **3. Policy Objectives**

- (a) To retain existing trees to maintain a local sense of place.
- (b) To increase canopy coverage and shade to provide amenity, environmental and health benefits.
- (c) To provide a framework for assessing whether a tree should be subject to a Tree Preservation Order.
- (d) To provide for the retention and planting of trees associated with development on privately owned land.
- (e) To outline the requirements for additional tree planting on privately owned land.

### **4. Application**

This Policy applies to:

- any assessment of whether a tree(s) should be subject to a Tree Preservation Order.
- all applications for subdivision involving residential-zoned land and/or residential development.
- all applications for development approval involving Single Houses and Grouped Dwellings, where the estimated cost of development is \$100,000 or more.

*Note: The requirements do not extend to applications for multiple dwellings as such development is assessed against State Planning Policy 7.3 – Residential Design Codes – Volume 2 – Apartments.*

## **5. Definitions**

- Large Tree: *means a species of tree that has the potential to have a canopy diameter of greater than 9m.*
- Medium Tree *means a species of tree that has the potential to have a canopy diameter of between 6m and 9m.*
- Tree Growth Zone: *is an area provided to support healthy growth of a tree and is free from development or structures, including areas of hardstand.*

## **6. Policy Requirements**

### **6.1 Tree Preservation Orders**

Clause 4.7.7.2(i) of Local Planning Scheme No. 10 (LPS 10) provides the local government the ability to order the preservation and maintenance of a tree via a Tree Preservation Order.

In assessing whether a tree meets the characteristics prescribed by Clause 4.7.7.2(i) of the Scheme, Council will not support the establishment of a Tree Preservation Order unless the tree(s) meets at least one of the following criteria:

(a) Historical Association

Those trees that are of importance to the Aboriginal community, European significance, association with a significant heritage site, or commemorative plantings.

(b) Aesthetic Quality

Those trees that due to their context in and contribution to the landscape, are considered to be of aesthetic, location and/or landmark significance.

(c) Rarity

- (i) Those trees that are of an outstanding size or age, horticultural significance, or contain curious growth forms.
- (ii) Rarity is to be considered from a state-wide and Town of Bassendean context.
- (iii) Outstanding size or age and horticultural significance is based on the size and age of the tree relative to normal mature size and age of trees for that species in the Town.
- (iv) Curious growth forms include abnormal outgrowths, fused branches or unusual root structures.

(d) Other Significance

Other significance includes, but is not limited to, habitat significance. Although all trees have some habitat value, in undertaking assessments under this policy the habitat value of a tree is only deemed significant if it provides a breeding, feeding or roosting site regularly used by fauna protected under state or federal legislation.

## 6.2 Subdivision and Development

- (a) All applicable residential development will be required to incorporate at least one medium tree (or equivalent) for every 350m<sup>2</sup> of site area (rounded to the nearest whole number), with a minimum of one tree per lot. In this regard, a large tree is worth two medium trees.
- (b) Any required trees are to be provided prior to the occupation of the development and must be at a minimum 2m high and 100-litre pot size.
- (c) The number of trees required by Clause (a) may be reduced by two where a tree subject to a Tree Preservation Order or a medium or large tree is retained on site and protected by a Tree Growth Zone, subject to the submission of details of the proposed measures to protect the tree(s) identified on the site plan as outlined in *Australian Standard – AS4970-2009 - Protection of trees on development sites*.
- (d) Where an existing tree is retained under Clause (c), the Town will impose conditions on the relevant approval requiring:
  - (i) the retention of the tree in perpetuity; and
  - (ii) a notification to be registered on the Certificate of Title under Section 70A of the Transfer of Land Act 1893 advising prospective purchasers that the site contains a tree which is required to be retained and protected from development works.
- (e) The relocation of existing trees to elsewhere on the same site will only be considered where:
  - (i) a report by a suitably qualified arborist is provided to the satisfaction of the Town, demonstrating that the new location of the tree is suitable, and how the tree will be maintained in good health during and after relocation; and
  - (ii) a legal agreement has been prepared and executed at the landowner/applicant's cost to the satisfaction of Town, confirming maintenance arrangements and replacement of the tree in the event the tree does not survive.
- (f) The relocation of existing tree(s) into the Town's reserves (including within the road reserve) is not supported.
- (g) The trunks of all new and retained tree(s) are to be located in their own Tree Growth Zone that is free of development, structures and hardstand and meets the follows parameters:

Requirement	Large Tree	Medium Tree
Minimum horizontal area	64m <sup>2</sup>	36m <sup>2</sup>
Minimum horizontal dimension	6m	3m
Minimum depth (if on structure)	1,200mm	800mm

- (h) In supporting any subdivision that will create additional residential lots, the Town will recommend the imposition of a condition requiring satisfactory arrangements being made to inform prospective purchasers of the requirements prescribed by this Policy.

### 6.3 Protection of Street Trees as part of Subdivision/Development processes

- (a) Street trees will not be permitted to be removed to accommodate proposed crossovers and driveways unless otherwise approved by the Town, which will only be considered favourably where a report by a suitably qualified arborist is provided to the satisfaction of the Town, demonstrating that the tree is:
- (i) Dead, having less than 10% photosynthetic material or live tissue present in the canopy mass;
  - (ii) Diseased and unlikely to respond to treatment;
  - (iii) Structurally unsound to the extent it presents a danger to the community; or
  - (iv) A species declared **as a noxious weed by the Department of Primary Industries and Regional Development.**
- (b) Where removal of a street tree is approved by the Town, the landowner/applicant is responsible for the full cost of the pruning, removing and replacing any street tree in accordance with the Town's Amenity Tree Evaluation Policy.

## APPLICATION

<p><b>Policy Type:</b> Strategic Policy</p> <p><b>Link to Strategic Community Plan:</b> Town Planning &amp; Built Environment</p>	<p><b>Policy Owner:</b> Director Development and Place</p> <p><b>First Adopted:</b> OCM – 15/08/18</p> <p><b>Last Reviewed:</b> March 2020</p> <p><b>Version:</b> 2</p> <p><b>Next Review due by:</b> March 2023</p>
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# **ATTACHMENT NO. 6**





**LOCAL GOVERNMENT ACT 1995**

**TOWN OF BASSENDEAN**

**ANIMALS, ENVIRONMENT, NUISANCE AND PESTS  
LOCAL LAW 2019**

# **LOCAL GOVERNMENT ACT 1995**

## **TOWN OF BASSENDEAN**

### **ANIMALS, ENVIRONMENT, NUISANCE AND PESTS LOCAL LAW 2019**

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# LOCAL GOVERNMENT ACT 1995

## TOWN OF BASSENDEAN

### ANIMALS, ENVIRONMENT, NUISANCE & PESTS LOCAL LAW 2019

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Bassendean resolved on XXXXXX to make the following local law.

#### Part 1 – PRELIMINARY

##### 1.1 Citation

This local law may be cited as the *Town of Bassendean Animals, Environment, Nuisance and Pests Local Law 2019*.

##### 1.2 Commencement

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

##### 1.3 Application

This local law applies throughout the district.

##### 1.4 Repeal

The *Town of Bassendean Health Local Law 2001*, published in the *Government Gazette* on 24 August 2001 is amended as follows:

- (a) delete Part 4, Division 1;
- (b) delete Part 4, Division 2; clauses 4.15 and 4.16;
- (c) delete Part 4, Division 3;
- (d) delete Part 5, Division 1;
- (e) delete Part 5, Division 2;
- (f) delete Part 5, Division 3;
- (g) delete Part 5, Division 4; and
- (h) delete Part 6.

##### 1.5 Interpretation

(1) In this local law, unless the context specifies otherwise—

**Act** means the *Local Government Act 1995*;

**affiliated person** means a person who is a member of a poultry or pigeon club incorporated under the *Associations Incorporation Act 2015*;

**authorised person** means a person appointed by the local government under section 9.10 of the LG Act to perform any of the functions of an authorised person under this local law caged;

**birds** includes budgerigars, canaries, finches, quail, doves and other small birds;

**Code of Practice—Pigeon Keeping** means the Code of Practice for Pigeon Keeping and Racing in Western Australia as prescribed by the *Animal Welfare (General) Regulations 2003* as amended from time to time;

**commercial vehicle** means a motor vehicle having a tare weight in excess of 3000 kilograms;

**commercial wrecking** means the activity of wrecking vehicles or machinery for the purpose of conducting a business by offering vehicles, machinery or parts thereof for purchase, trade, sale or gain;

**district** means the district of the local government;

**land** includes any building or structure on the land;

**local government** means the Town of Bassendean;

**lot** has the meaning given to it by the *Planning and Development Act 2005*;

**nuisance** means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment by a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**occupier** means any person who is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to land to perform any work in relation to any land and includes a builder or contractor;

**other caged birds** includes parrots, galahs, corellas and the like;

**owner** where used in relation to land, has the meaning given by the *Local Government Act 1995*;

**permit** means a permit issued under this local law;

**pigeon** includes homing pigeons and other domesticated breeds of the species *Columba livia*, but does not include native pigeons or doves whether or not the keeping of such birds is subject to the approval of the Department of Biodiversity, Conservation and Attractions;

**poultry** includes fowls, peafowl, turkeys, geese, ducks, bantams and other domestic fowls;

**refuse** means any waste material including bricks, lime, cement, concrete, rubble, stones, iron, timber, tiles, bags, plastics, ashes, vegetation, timber, wood or metal shavings, sawdust, and waste food, and includes any broken, used, derelict or discarded matter;

**Regulations** means the *Local Government (Functions and General) Regulations 1996*;

**Schedule** means a schedule to this local law;

**thoroughfare** means any highway or thoroughfare which the public are entitled to use, including the verge and other things including bridges and culverts appurtenant to it;

**vehicle** means any motor vehicle, part of a motor vehicle in a state of disrepair or in the process of being wrecked whether licensed or not; and

**wreck** includes the dismantling, breaking up, storage and disposal of vehicles.

- (2) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act.
- (3) Where in this local law a duty, obligation or liability is imposed on an owner or occupier the duty shall be deemed to be imposed jointly and severally on each owner and occupier.

- (4) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 of the *Local Government Act 1995* and any powers of entry exercised by this local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

## **Part 2—KEEPING OF ANIMALS**

### *Division 1 - Keeping of animals and birds*

#### **2.1 Interpretation**

In this division, unless the context otherwise requires -

**animal** includes cats, dogs, rabbits, ferrets or the like; and

**bird** includes but is not limited to poultry, galahs, parrots, corellas, cockatoos and other Australian native birds, budgerigars, finches, pigeons and doves or the like.

#### **2.2 Cleanliness**

An owner or occupier of a premises, in or on which an animal or bird is kept shall –

- (a) keep the premises free from excrement, filth, food waste and all other matter which is, or is likely to become offensive or attract rats or other vectors of disease;
- (b) when so directed by local government, clean and disinfect the premises;
- (c) keep the premises, so far as possible free from flies or other vectors of disease, by spraying with a residual insecticide or other effective means; and
- (d) ensure the keeping of the animal or bird does not cause a nuisance and is not offensive or dangerous to health.

#### **2.3 Animal enclosures**

- (1) A person shall not keep or cause, or permit to be kept, any animal enclosure on premises which are not effectively drained or of which the drainage flows to the walls or foundations of any building.
- (2) The local government may by notice in writing direct the owner or occupier require the surface of the ground of all enclosures used for the keeping of animals to be paved, graded and drained.

#### **2.4 Disposal of dead animals**

An owner or occupier of land on which there is a dead animal shall immediately dispose of the dead animal in such a manner as not to cause or be a nuisance to any person.

### *Division 2 - Keeping of large animals*

#### **2.5 Interpretation**

In this Division, unless the context otherwise requires –

**cow** includes an ox, calf, or bull;

**horse** includes an ass, mule, donkey or pony; and

**large animal** includes a pig, sheep, goat, deer, llama, alpaca or camel.

#### **2.6 Conditions for keeping of an animal**

- (1) Subject to subclause (2) an owner or occupier of premises shall not keep or allow to be kept any horse, cow or large animal on those premises.

- (2) An owner or occupier of premises may upon written application to the local government, request permission to keep one or more sheep or horse. The number of sheep or horses permitted by the local government shall be at a rate not greater than one horse or sheep per 2000 square metres of land set aside for the exclusive use of the sheep or horse.
- (3) The owner or occupier of premises with approval to keep sheep or horses, shall provide for their use a stable or enclosure which shall:
  - (a) not be situated within 30 metres of a dwelling;
  - (b) be constructed of an impervious material; and
  - (c) have a floor, constructed of cement, concrete or other similar impervious material with the upper surface of which at least 75mm above the surface of the ground.
- (4) The owner or occupier of any premises on which a stable is located shall:
  - (a) maintain the stable in a clean condition, free of insect pests, rodents and offensive odour;
  - (b) when so directed in writing by an authorised person, clean, wash and disinfect the stable; and
  - (c) when so directed in writing by an authorised person, spray the stable or such parts as may be directed, with a residual insecticide.

*Division 3 - Keeping of poultry, pigeons and caged birds*

**2.7 Limitation on numbers of poultry and pigeons and caged birds**

- (1) An owner or occupier of premises shall –
  - (a) subject to paragraph 1(b), not keep a combined total of more than 12 poultry or caged birds or 6 ducks without the written approval of the local government, on any one lot of land;
  - (b) not keep more than 12 pigeons unless the owner or occupier is an affiliated person in which case the maximum number of pigeons may be increased to 75;
  - (c) subject to subclause (3), not keep any of the following:
    - (i) geese;
    - (ii) a turkey;
    - (iii) peafowl;
    - (iv) rooster; and
    - (v) other caged birds,on any land within the district.
- (2) The local government may either reduce the approved number of poultry, pigeons or caged birds kept by an owner or occupier, or ban the keeping of poultry, pigeons or caged birds by an owner or occupier, if the conditions of this Division are not complied with or if excessive noise is evident.
- (3) The local government may, upon written application to it, grant approval to a person who is the owner or occupier of premises to keep on those premises, either a goose, gander, turkey, peafowl, rooster or other caged birds.
- (4) A person who has been granted approval under subclause (3) hereof, to keep a goose, gander, turkey, peafowl, rooster or other caged birds, on the premises may do so only while he/she is the occupier thereof.
- (5) The local government may cancel the approval granted to an occupier under subclause (3) hereof, upon receipt of a justified complaint relating to the keeping of either a goose, gander, turkey, peafowl, rooster or other caged birds.



## **2.8 Conditions for keeping poultry in limited numbers**

- (1) A person who keeps poultry or permits poultry to be kept shall ensure that –
  - (a) no poultry are kept within 9 metres of a neighbouring dwelling and 5 metres from an opening to a dwelling;
  - (b) no poultry approach within 9 metres of a public street, public building, commercial premises or food premises;
  - (c) all poultry are kept in an enclosure not closer than 1.2 metres to any property boundary, within which is a properly constructed, weatherproof structure for roosting, which shall:
    - (i) allow a minimum of 0.3 square metres of floor area per fowl;
    - (ii) have an impervious floor of 50 millimetre minimum thickness, graded to the front to facilitate easy cleaning;
    - (iii) be designed to allow easy access for cleaning; and
    - (iv) have the walls and roof constructed of an impervious material.
  - (d) all structures or enclosures within which poultry are kept are maintained at all times in a clean condition;
  - (e) the enclosures have an otherwise unobstructed area of at least 20 square metres; and
  - (f) the occupier shall clean and disinfect the enclosure, structure and surrounds, and trap or bait flies, rodents and other vectors of disease when so directed by an authorised person.
- (2) An owner or occupier of a premises, may upon written application to the local government, request permission to vary the provisions contained within 2.8(1) (a), (b), (c) and/or (e).
- (3) Local government may cancel the approval granted to an owner/occupier under subclause (2) hereof, upon receipt of a justified complaint relating to the conditions for keeping of poultry in limited numbers.

## **2.9 Conditions for keeping of pigeons in limited numbers**

- (1) A person who keeps, or permits to be kept, pigeons shall ensure that:
  - (a) no opening to a pigeon loft, including openings for ventilation, is within 15 metres of a public street, public building, commercial premises or food premises;
  - (b) no opening to a pigeon loft, including openings for ventilation, is within 9 metres of any residential dwelling;
  - (c) no pigeon loft is located within 1.2 metres of a boundary of an adjoining property;
  - (d) all structures used to house pigeons shall be of sound, weatherproof construction, the framework and roost being of smooth sealed timber or metal, the walls and roof to be constructed of galvanised iron or other approved material, and the floor to be constructed in a manner and of a material which will facilitate the hygienic removal of waste matter, husks, seed, feathers, dead birds and faecal matter;
  - (e) bird cages, aviaries, lofts and surrounds shall be kept in a clean condition to the satisfaction of an authorised person;
  - (f) the occupier shall clean and disinfect cages, aviaries, lofts and surrounds, and trap or bait flies, rodents and other vectors of disease when so directed by an authorised person;
  - (g) the local government may, at its discretion, prohibit an owner or occupier exercising homing pigeons between specified hours of the day, if health or nuisance related problems become evident; and
  - (h) where there is any discrepancy between this clause relating to the Keeping of Pigeons, cage-birds and other cage-birds and the Code of Practice – Pidgeon Keeping the higher standard of construction and hygiene shall prevail.

## 2.10 Removal of non-conforming structure or enclosure

- (1) If a structure or enclosure is used for the keeping of poultry or pigeons contrary to the provisions of sections 2.8 and 2.9 respectively, the local government may by notice in writing direct the owner or occupier to take such actions as the authorised person considers necessary within the time specified in the notice.
- (2) Where a notice is issued under subclause (1), the requirements set out in the notice must be complied with within the period specified in the notice.

## 2.11 Restrictions on pigeon nesting or perching

- (1) The local government may by notice in writing direct the owner or occupier of a premises in which pigeons are in a habit of nesting or perching, to take such actions as the authorised person considers necessary to prevent them from continuing to do so.
- (2) Where a notice is issued under subclause (1), the requirements set out in the notice must be complied with within the period specified in the notice.

# Part 3— LANDCARE

## *Division 1 – Liquid waste*

### 3.1 Interpretation

In this division, unless the context otherwise requires:

**liquid refuse** includes all washings from windows and vehicles; overflow, bleed off, condensate and drainage from air conditioning equipment including cooling towers and evaporative coolers and any other liquid used for cooling purposes; and

**liquid waste** means bathroom, kitchen, scullery and laundry wastes, the contents of septic tanks, all washings from animal and poultry pens and any other domestic or trade wastes that are discharged by means of a drain to a receptacle for drainage.

### 3.2 Deposit of liquid refuse

An owner and/or occupier of land shall take reasonable steps to -

- (a) contain all liquid refuse on the land; and
- (b) ensure no liquid refuse is released or escapes from the land, whether by means of wind, water or any other cause.

### 3.3 Disposal of liquid waste

- (1) The owner or occupier of premises shall:
  - (a) provide one or more of the methods prescribed in this clause, for the disposal of all liquid waste produced on the premises; and
  - (b) at all times maintain in good working order and condition any apparatus used for the disposal of liquid waste.
- (2) Liquid waste shall be disposed of by one or more of the following methods:
  - (a) discharging it into the sewerage system of a licensed water service operator in a manner approved by the licensed water service operator;
  - (b) discharging it into an apparatus for the treatment of sewage and disposal of effluent and liquid waste approved by the Chief Health Officer or the local government; or
  - (c) collection and disposal at an approved liquid waste disposal site in a manner approved by the Chief Health Officer.

## *Division 2—Unsightly land and disused materials*

### **3.4 Removal of refuse and disused material**

- (1) The owner or occupier of a lot shall not keep, or permit to remain on the lot, any refuse, rubbish or disused material of any nature or kind which in the opinion of authorised person is likely to give the lot an untidy appearance and, or does not conform with the general appearance of other land in that part of the district.
- (2) The local government may by notice in writing direct the owner or occupier to take such actions as the authorised person considers necessary to remove of refuse, rubbish or disused material from the lot within the time frame specified in the notice.

### **3.5 Removal of unsightly overgrowth of vegetation**

- (1) The owner or occupier of a lot shall not permit to remain on a lot any unsightly overgrowth of vegetation that gives the lot an untidy appearance and does not conform with the general appearance of other land in that part of the district.
- (2) The local government may give notice in writing to the owner or occupier of a lot to take such actions as the authorised person considers necessary to remove the overgrowth of vegetation within the time specified in the notice.

### **3.6 Storage of vehicles and machinery**

The owner or occupier of a residential lot shall not –

- (a) store any vehicle, part or body of a vehicle, vessel or machinery in a state of disrepair;
- (b) allow to remain on any land, a vehicle, part or body of a vehicle, vessel, or machinery in a state of disrepair;
- (c) wreck, dismantle or break up any vehicle, part or body of a vehicle, vessel or machinery; unless-
  - (i) inside a building; or
  - (ii) within an area enclosed by a fence or wall not less than 1.8 metres in height and of such a nature as to screen all vehicles, parts of bodies of vehicles or machinery from the street and from adjoining properties; or
- (d) wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance.

### **3.7 Commercial wrecking of vehicles**

An owner or occupier of land in the district must not undertake, permit or suffer the commercial wrecking of vehicles on that land, without first having obtained written approval from the local government.

### **3.8 Disposing of disused refrigerators or similar containers**

A person shall not place, leave or dispose of a disused refrigerator, ice-chest, ice-box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first removing every door and lid and every lock, catch and hinge attached to a door or lid or otherwise rendering every door and lid incapable of being fastened.

## **Division 3 – Swimming pool backwash management**

### **3.9 Disposal of swimming pool backwash**

The owner or occupier of land on which a swimming pool is constructed shall ensure that backwash is not permitted to discharge onto or run-off onto adjacent land.

## **Part 4—NUISANCES**

### *Division 1—Light*

#### **4.1 Use of exterior lights**

An owner or occupier of land on which floodlights or other exterior lights are erected or used shall not allow the floodlights or other exterior lights to shine directly onto any other premises.

#### **4.2 Emission or reflection of light**

An owner or occupier of land shall ensure that—

- (a) artificial light is not emitted or reflected from anything on the land so as to illuminate premises outside that land at a level that interferes unreasonably with normal daily activities; and
- (b) natural light is not reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare.

#### **4.3 Notice may require specified action to prevent emission or reflection of light**

(1) Where—

- (a) floodlights or other exterior lights shine directly onto any other premises;
- (b) artificial light is emitted or reflected from anything on the land so as to illuminate premises outside the land that interferes unreasonably with normal daily activities; or
- (c) natural light is reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare,

the local government may by notice in writing direct the owner or occupier to take such actions as the authorised person considers necessary within the time specified in the notice.

(2) The notice referred to in subclause (1) may direct that—

- (a) floodlights or other exterior lights are used only during the hours specified in the notice;
- (b) the direction in which the lights shine be altered as specified in the notice;
- (c) any reflective surfaces be painted or otherwise treated so as to abate the nuisance; or
- (d) any combination of these measures that the local government believes to be appropriate to the circumstances.

### *Division 2—Smoke, fumes, odours and other emissions*

#### **4.4 Escape of smoke, fumes, odours and other emissions**

- (1) An owner or occupier of land or premises shall take all reasonable steps not to cause or permit the escape of smoke, fumes or odours from the land or premises in such quantity or of such a nature as to cause or to be a nuisance to any person.
- (2) Subclause (1) does not apply to odour from the use of organic fertilisers applied in accordance with the product label or in the case of bulk fertiliser in a manner as to minimise nuisance.

## Division 3 – Commercial vehicle noise

### 4.5 Commercial vehicle noise from residential land

A person shall not start or drive a truck on land or adjacent to land which is zoned, approved or used for residential purposes between the hours of 10.00 pm and 7.00 am on the following day without first obtaining the written approval of the local government.

## Division 4—Bird nuisance

### 4.6 Restrictions on feeding of birds

- (1) A person shall not feed a pigeon, dove, ibis, raven, corella, lorikeet or other wild bird so as to cause a nuisance.
- (2) Where an authorised person forms the opinion that a person has not complied with subclause (1) the local government may give notice to a person requiring the person to clean up and properly dispose of any feed or waste products specified in the notice.

## Part 5— PEST CONTROL

### Division 1 – Flies

#### 5.1 Interpretation

In this Division, unless the context otherwise requires:

"flies" means any of the two-winged insects constituting the order *Diptera* commonly known as flies.

#### 5.2 Fly breeding matter not to be left on premises unless covered or treated

An owner or occupier of premises shall not place, throw or leave, or permit or cause to be placed, thrown or left, in, on, or about the premises any matter or thing which is liable to attract, or be a breeding place for flies unless that matter or thing is covered, protected, treated or dealt with in such a manner as to effectively prevent it from attracting or being a breeding place for flies.

#### 5.3 Measures to be taken by an occupier

An occupier of premises shall ensure that:

- (a) rubbish receptacles are kept clean and tightly sealed at all times except when refuse is being deposited or emptied;
- (b) food scraps and uneaten animal and bird food are wrapped tightly and deposited in a rubbish receptacle without delay;
- (c) lawn clippings used on gardens as mulch are raked out thinly;
- (d) fertilisers are dug well into the soil;
- (e) compost heaps are kept well covered;
- (f) barbecues are kept clean and free from food scraps;
- (g) anything that is buried and may attract or be a breeding place for flies is covered with at least 200 millimetres of soil and compacted; and
- (h) excrement from pets is collected and properly disposed of without delay.

#### 5.4 Local government may give notice directing measures to be taken

Where in the opinion of an authorised person flies are prevalent or are breeding on any premises, the local government may give to the owner or occupier of the premises a notice in writing directing him or her to take, within the time specified in the notice, such measures as in the opinion of the authorised person are necessary to:

- (a) control the prevalence of flies;
- (b) effect the eradication of flies; and
- (c) effectively prevent the breeding of flies.

## *Division 2 – Mosquitoes*

### **5.5 Interpretation**

In this Division, unless the context otherwise requires:

**mosquitoes** means any of the two-winged insects constituting the family *Diptera Culicidae* commonly known as mosquitoes.

### **5.6 Premises to be kept free of mosquito breeding matter**

An owner or occupier of premises shall keep the premises free of:

- (a) refuse; and
- (b) water located so as to be, liable to become the breeding place of mosquitoes.

### **5.7 Measures to be taken by an owner or occupier**

An owner or occupier of premises:

- (a) where there is a fountain, pool, pond or excavation of any kind which contains water suitable for the breeding of mosquitoes, shall keep the water:
  - (i) stocked with mosquito predatory fish; or
  - (ii) covered with a film of petroleum oil or other larvicide; and
- (b) where there is a water tank, well, cistern, vat or barrel, shall:
  - (i) keep it protected with a mosquito-proof cover; and
  - (ii) screen all openings, other than the delivery exit, with wire mesh having openings no larger than 1.2 millimetres.

### **5.8 Drains, channels, compensating basins and septic tanks**

An owner or occupier of land shall:

- (a) cause all drains, channels and compensating basins in or on the land to be kept in good order and free of mosquito larvae; and or
- (b) where a septic tank is installed on the land:
  - (i) apply an approved larvicide according to the directions on the container, into the septic tank system, whenever directed to do so by the local government.
  - (ii) provide, and keep in sound condition at all times, wire mesh having openings no larger than 1.2 millimetres covering any inlet vent to the tank.

### **5.9 Drainage of land**

An owner or occupier of land upon which there is water liable to become a breeding place for mosquitoes shall, when required by the local government, effectively drain the land and, for that purpose, shall:

- (a) make or provide drains on the land;
- (b) remove all irregularities in the surface of the land;
- (c) if necessary, adjust the surface of the land or raise the level of the surface in such a manner that:

- (i) the water on the land may flow into the drains without obstruction; and
- (ii) no water shall remain on any portion of the land other than the drains; and
- (d) keep all drains in good order and free from obstruction.

### 5.10 Swimming pools

Where there is a swimming pool on any premises where the circulation system does not function, or has not been used such that the pool water is green or stagnant and suitable for the breeding of mosquitoes, the owner or occupier shall when required by a notice issued by the local government:

- (a) re-activate the pool circulation system within a time specified and operate it so that the water is filtered for as many hours as may be specified; and/or
- (b) chlorinate and adjust pH of the pool to:
  - (i) 4 milligrams per litre free chlorine; and
  - (ii) pH within the range 7.2 to 7.6; or
- (c) empty or drain the pool; or
- (d) pour up to 1 litre of paraffin oil or kerosene onto the water surface of the pool; and
- (e) maintain the pool water free of mosquito breeding.

### *Division 3 – Rodents*

### 5.11 Interpretation

In this Division, unless the context otherwise requires:

**rodents** means those animals belonging to the order *Rodentia* and includes rats and mice but does not include animals (other than rats) kept as pets in an enclosure designed for the purpose of keeping as pets animals of that kind.

### 5.12 Measures to be taken to eradicate rodents

- (1) An owner or occupier of premises shall at all times take effective measures to eradicate any rodents in or on the premises.
- (2) Without limiting the generality of subclause (1), an owner or occupier of premises, whenever there are indications of the presence of rodents in, on or about the premises, and while such indications continue, shall:
  - (a) take effective measures to keep the premises free from rodents including:
    - (i) protecting food stuffs;
    - (ii) using a rodenticide bait or a properly baited trap; and
    - (iii) preventing rodents having access to water on the premises;
  - (b) inspect daily each rodenticide bait or trap used and, whenever a rodent is found, shall:
    - (i) if it is not already dead, kill it immediately; and
    - (ii) dispose of the carcass in such a manner as will not create a nuisance; and
  - (c) take whatever measures for the eradication of rodents as an authorised person may from time to time direct.

### 5.13 Waste food etc.

An owner or occupier of premises shall:

- (a) not store, or allow to be stored, on any premises, any food, refuse or other waste matter unless it is contained in a rodent proof receptacle or compartment; and
- (b) follow any direction of the authorised person to dispose of fallen fruit, nuts or seed.

### 5.14 Restrictions on materials affording harbourage for rodents



- (1) An owner or occupier of premises shall cause:
  - (a) any part of the premises; or
  - (b) any material, sewer, pipe or other thing in or on the premises, that might afford access or harbourage to rodents to be altered, repaired, protected, removed or otherwise dealt with so as to prevent it being used as access for or harbourage of rodents.
- (2) The local government may by notice direct, an owner or occupier of premises to take whatever action that, in the opinion of an authorised person, is necessary or desirable to prevent or deter the presence of rodents in or on the premises.
- (3) An owner or occupier of premises shall comply with a notice from, and within the time allowed by local government under this clause.

#### *Division 4 – Cockroaches*

##### **5.15 Interpretation**

In this Division, unless the context otherwise requires:

***cockroach*** means any of the various *orthopterous* insects commonly known as cockroaches.

##### **5.16 Measures to be taken to eradicate cockroaches**

- (1) An owner or occupier of premises shall take effective measures to eradicate any cockroaches in or on the premises.
- (2) Without limiting the generality of sub-clause (1), an owner or occupier of premises, whenever there are any indications of the presence of cockroaches in, on or about the premises, and while such indications continue, shall take effective measures to keep the premises free from cockroaches including:
  - (a) washing and storing, immediately after use, cooking and eating utensils;
  - (b) wrapping and depositing in a rubbish receptacle without delay all food scraps, uneaten pet food and garbage; and
  - (c) whenever required by local government, treating any area with baits or other methods to eradicate cockroaches.

#### *Division 5 - European Wasps*

##### **5.17 Interpretation**

In this Division, unless the context otherwise requires:

***European Wasp*** means a wasp *Vespula germanica*.

##### **5.18 Measures to be taken to keep premises free from European wasp nests**

An owner or occupier of premises shall ensure that the premises are kept free from European Wasp nests and shall:

- (a) immediately notify the local government of any wasp nest in, on or about the premises that is suspected to be a European Wasp nest;
- (b) follow any direction of an authorised person for the purpose of destroying the wasps and their nest; and
- (c) assist an authorised person to trace any nest that may be present in, on or about the premises.

## **Part 6—OBJECTIONS AND APPEALS**

### **6.1 Objections and appeals**

When the local government makes a decision under this local law as to whether it will -

- (a) grant a person a permit or authorisation;
- (b) vary or cancel a permit or authorisation; or
- (c) give a person a notice,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations shall apply to that decision.

## **Part 7 – ENFORCEMENT**

### *Division 1 – Notices given under this local law*

#### **7.1 Notice of breach**

- (1) Where a breach of any provision of this local law has occurred, the local government may give a notice in writing to the person alleged to be responsible for such a breach.
- (2) A notice issued pursuant to subclause (1) shall—
  - a) specify the provision of this local law which has been breached;
  - b) specify the particulars of the breach; and
  - c) state the manner in which the recipient is required to remedy the breach to the satisfaction of the local government within a time period stipulated in the notice which shall be not less than 7 days from the giving of the notice.
- (3) It is an offence to fail to comply with a notice issued by the local government pursuant to subclause (1).

#### **7.2 Form of notices**

Where this local law refers to the giving of a notice other than the giving of an infringement notice and no particular form is prescribed, it will be sufficient that the notice be in writing giving sufficient details to enable the owner, occupier or other person to whom the notice is issued to know the offence committed and the measures required to be taken or conditions with which compliance is required, as the case may be.

### *Division 2 – Offences and Penalties*

#### **7.3 Offences and penalties**

- (1) A person who—
  - (a) fails to do anything required or directed to be done under this local law;
  - (b) fails to comply with the requirements of a notice issued under this local law by the local government; or
  - (c) does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land or premises, the owner or occupier of the land or premises has the duty of causing to be done the act so required to be done, or of preventing from being done the act forbidden to be done.
- (3) A person who commits an offence under this local law is liable to a maximum penalty of \$5000 and where the offence is of a continuing nature a maximum daily penalty of \$500 in

respect of each day or part of a day during which the offence has continued.

### *Division 3 – Infringement Notices and Modified Penalties*

#### **7.4 Prescribed offences**

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1—
  - (a) in the case of a first offence the modified penalty will be that prescribed in column 4 of Schedule 1; and
  - (b) in the case of a subsequent offence the modified penalty will be that prescribed in column 5 of Schedule 1.

#### **7.5 Form of infringement notices**

For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice given under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the Regulations.

**Schedule 1 – Prescribed Offences**  
**[Clause 7.4]**

Item	Clause	Description of offence	Modified penalty - first offence	Modified penalty - subsequent offence
1.	2.2	Failing to keep an animal or bird in accordance with a condition of this local law	\$250	\$500
2.	2.3(1)	Failing to maintain an animal enclosure	\$250	\$500
3.	2.4	Failing to immediately dispose of a dead animal in a manner as not to cause a nuisance	\$250	\$500
4.	2.6	Failing to keep an animal in accordance with conditions of this local law	\$250	\$500
5.	2.7(1)(a)	Keeping more than 12 poultry or caged birds	\$250	\$500
6.	2.7(1)(c)	Keeping of a goose or gander, turkey, peafowl, rooster or other caged without written permission of the local government	\$250	\$500
7.	2.8	Failing to keep poultry in accordance with conditions of this local laws	\$250	\$500
8.	2.9	Failing to keep pigeons in accordance with conditions of this local laws	\$250	\$500
9.	2.10(2)	Failing to comply with a notice to remove non-conforming structure or enclosure	\$250	\$500
10.	2.11(2)	Failing to comply with a notice issued to prevent pigeons nesting or perching	\$250	\$500
11.	3.2	Release of liquid refuse from the land	\$250	\$500
12.	3.3(2)	Failing to dispose of liquid waste in an approved manner	\$250	\$500
13.	3.4(1)	Keeping or allowing to be kept on a lot refuse, rubbish or disused material giving the land an untidy appearance	\$250	\$500
14.	3.5(1)	Keeping or allowing to be kept on a lot unsightly overgrowth of vegetation giving the land an untidy appearance	\$250	\$500
15.	3.6(a)	Storing on a lot a vehicle, part or body of a vehicle or machinery in a state of disrepair	\$250	\$500
16.	3.6(b)	Storing or allowing to remain on land, a vehicle, part or body of a vehicle or machinery in a state of disrepair	\$250	\$500
17.	3.6(c)(i)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not inside a building	\$250	\$500
18.	3.6(c)(ii)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not behind a sufficient fence or wall	\$250	\$500
19.	3.6(d)	Wrecking, dismantling or breaking up a vehicle, vessel or machinery so as to cause a nuisance	\$250	\$500
20.	3.7	Commercial wrecking of vehicles on land without local government approval	\$250	\$500
21.	3.8	Disposing of disused refrigerator or similar container with door or lid that can be fastened	\$250	\$500
22.	3.9	Discharging swimming pool backwash onto adjacent land	\$250	\$500

23.	4.1	Erection or use of lighting installations other than in accordance with this local law	\$250	\$500
24.	4.2(a) & (b)	Permit the emission or reflection of light	\$250	\$500
25.	4.4(1)	Allowed the escape of smoke, fumes, odour and other emissions so as to cause a nuisance	\$250	\$500
26.	4.5	Use of a commercial vehicle other than in accordance with this local law	\$250	\$500
27.	4.6(1)	Feeding a bird so as to cause or create a nuisance	\$250	\$500
28.	5.2	Failing to keep premises free of fly breeding matter	\$250	\$500
29.	5.3	Failing to comply with conditions of this local law preventing fly breeding	\$250	\$500
30.	5.6	Failing to keep premises free of mosquito breeding matter	\$250	\$500
31.	5.7	Failing to comply with a condition of this local law to prevent mosquito breeding	\$250	\$500
32.	5.8	Failing to maintain a drain, channel, compensating basin or septic tank in accordance with a condition of this local law	\$250	\$500
40.	5.9	Failing to drain land	\$250	\$500
41.	5.10	Failing to comply with a notice of the local government	\$250	\$500
42.	5.12(1)	Failing to take effective measures to eradicate rodents in or on the premises	\$250	\$500
43.	5.12(2)	Failing to take measures to eradicate rodents in accordance with this local law	\$250	\$500
44.	5.13(a)	Failing to prevent access by rodents to waste food, refuse or other waste	\$250	\$500
45.	5.13(b)	Failing to follow a direction to dispose of fallen fruit, nuts or seed	\$250	\$500
46.	5.14(1)	Failing to alter, repair, protect, remove or otherwise deal with part of a premises or other thing on the premises used as access for or harbourage of rodents	\$250	\$500
47.	5.16(1)	Failing to take effective measures to eradicate cockroaches	\$250	\$500
48.	5.18	Failing to ensure premises is free of European Wasp nests	\$250	\$500

Dated:

The Common Seal of the Town of Bassendean was affixed by authority of a resolution of the Council in the presence of—

\_\_\_\_\_  
R. McLENNAN Mayor.

\_\_\_\_\_  
P. MABBS Chief Executive Officer.

## SUMMARY OF SUBMISSIONS

Submitter No.	Nature of Submission	Responses from the Town
1	<p><b>Do not object</b></p> <p>1. I think reducing the number of birds to 12 is sound however the wording is still open to interpretation - if the chook's nesting enclosure is 1.2m from the property line but they allowed to run around the property that puts them often in a space against property lines. I would say that that means many people would be in breach if they have long runs / allow their birds to free range.</p>	<p>1. The local law requires poultry to be confined to their enclosure, constructed not less than 1.2m to the property boundary. The local law also requires poultry to be confined to the enclosures as the practice of 'free ranging' leads to birds entering neighbouring properties, damage to garden beds and plants, noise and the fouling of surfaces.</p>
2	<p><b>Objection</b></p> <p>1. Clause 2.8 (a) 9m to a neighbouring dwelling seems unnecessarily excessive; if a householder only wants to keep a small number of smaller breed of chickens, and especially as the size of blocks is shrinking and neighbouring properties could be built ~1m from the boundary - thus the land size required could be larger than the average block in the town.</p> <p>2. Clause 2.8 (c) The proposed laws do not seem to include the use of a raised structure, instead they specify that a 50mm thickness base be built in the ground. A raised structure is easier to keep clean, discourages rats and other vermin and can provide the chickens with additional day time shelter.</p> <p>3. Clause 2.8 (e) A requirement of 20sq m seems excessive, especially if only 3 or 4 chickens are being kept.</p> <p>4. Clause 3.1 this seems to preclude the use of grey water for watering the garden which is good for the environment if eco-friendly detergents are used. I believe that this clause should be reworded to allow for that use.</p>	<p>1. Clause 2.8(2) allows for an owner or occupier to make application to the Local Government to vary the setback requirements of clause 2.8 (a), (b), (c) &amp; (e). Upon application, site specific factors can be assessed as well as the level of support of neighbours.</p> <p>2. Refer to response provided in point 1.</p> <p>3. Refer to response provided in point 1.</p> <p>4. The provisions relating to the use of grey water remains unchanged from the existing Health Local Law and continues to be permitted under the new local law. It should be noted however, that the <i>Health</i></p>

Submitter No.	Nature of Submission	Responses from the Town
		<i>(Miscellaneous Provisions) Act 1911</i> requires greywater to be applied through bucketing by hand or an approved greywater system.
3	<p><b>Objection</b></p> <ol style="list-style-type: none"> <li>1. The justification for reducing the total number of chickens permitted on one property is that "average" lot sizes have reduced. This assumes a one size fits all approach which makes no sense if you have a large block, particularly if it is surrounded by other large blocks. Provision should be made for larger block sizes to be allowed to support more chickens.</li> <li>2. With regards to setbacks, 9m from any road is unreasonable, particularly if someone lives on a corner block.</li> <li>3. Requiring chicken housing to have a concrete floor is not always suitable for backyard chickens. A concrete floor is a permanent structure. In the case of a change of use at an adjoining property (as has occurred at our own place with a new house being constructed only 3m from rear boundary) this structure would then become redundant. Hard concrete floors do not allow for the "deep litter" style of poultry keeping, which is more ecologically beneficial as litter absorbs moisture &amp; reduces odours and can be safely composted into soil conditioner. The process of hosing out a concrete floor renders manure soluble so it can pollute groundwater. This may be suitable in a commercial factory farming situation, with large buffer zones, where high density and large numbers of poultry which are unable to go outdoors, dust bath etc. can be susceptible to pathogens and epidemics requiring complete sterilisation of a facility. Backyard chickens have access to sunshine, exercise, socialisation and fresh greens so tend to be in far better condition and with stronger immune systems.</li> </ol>	<ol style="list-style-type: none"> <li>1. Clause 2.7(1)(a) allows for the keeping of more than 12 poultry subject to the approval of the local government. The approval process will consider the lot size, number of birds and the proximity of the poultry enclosure to neighbouring dwellings.</li> <li>2. Clause 2.8(2) has been amended to allow an owner or occupier to apply to vary the setback distance to a road.</li> <li>3. The local law requires only the roosting area to have a constructed hardstand to assist with the collection and disposal of manure. Concrete slabs/pavers will satisfy the requirement whilst being both cheap and temporary in nature. A concrete floor does not prevent 'deep litter' style poultry keeping, in fact commercial operators operating a deep litter operation have an impervious concrete floor on which wood dust is applied. Over time this wood dust mixes with the waste including manure, feathers, food waste etc. to form deep litter.</li> </ol>



Submitter No.	Nature of Submission	Responses from the Town
	<p>4. The draft law makes no reference to "free ranging" chickens.</p> <p>5. The draft law makes no reference to portable / mobile poultry housing such as "chicken tractors". These are readily available as an off-the-shelf item at Bunnings &amp; rural supply stores. Chicken tractors are a very environmentally beneficial way to keep chickens as they move around frequently, always to fresh ground. This eliminates the build-up of manure, and breaks the lifecycle of parasites (fleas, worms) if they may be present. Anyone who has kept chooks will know that even one chicken can, in time, transform a whole yard into a dust bowl as it is their natural behaviour to constantly dig up &amp; turn over fresh ground. Managing this behaviour with a tractor system is better for the chickens and the garden as there will always be fresh ground available and recovery time for the plants chickens like to nibble on. The chicken's manure is also in a predictable location and less likely to be tracked around.</p> <p>6. The draft law mentions protection from predators but should also include protection from scavengers, such as ravens. If ravens have access to a chicken pen they will steal eggs, and use the water bowl to soften stale bread, fouling the water. Bird netting or similar to keep ravens and doves out is advisable</p>	<p>4. The local law requires poultry to be confined within their enclosure. The 'free ranging' of poultry regularly leads to birds roaming into neighbouring properties where they damage garden beds and plants, create noise and foul surfaces.</p> <p>5. Clause 2.8(2) has been amended to allows an owner or occupier the ability to apply to vary the requirements relating to enclosures, at which time an assessment of the type of enclosure and management practices can be undertaken.</p> <p>6. The comment is noted, however, it is beyond the scope of the local law to consider the welfare and wellbeing of poultry. The local law relates to managing nuisance.</p>

Submitter No.	Nature of Submission	Responses from the Town
	<p>7. The draft law mentions roosters. It is the opinion of many local residents that people should be permitted to keep a rooster so long as there are no substantiated complaints. Areas of Bassendean are subject to a considerable amount of noise pollution due to proximity to the airport. The airport noise, and barking dogs, both occur at all hours and create a nuisance far more persistent than the morning crowing of a rooster. There is also some justification for allowing people to breed their own chickens, as chickens brought in from elsewhere may be vectors of pathogens not already present.</p> <p>8. The priority of the local law should be the welfare and wellbeing of the animals. While there is clearly an attempt at this, mandating features such as concrete floors does nothing to ensure safe healthy animals unless they are being well looked after. Allowing animals to behave as they would naturally, and keeping them safe from harm is of critical importance. Backyard poultry are not for the sole purpose of egg production, like factory farmed animals. They are also pets &amp; gardeners and may benefit the mental health of residents when able to behave naturally.</p>	<p>7. An owner or occupier wishing to keep a rooster may make application to the local government under paragraph 2.7(3). Approval to keep a rooster will be considered where the applicant can demonstrate they have the support of neighbours.</p> <p>8. Refer to response provided in point 6.</p>
4	<p><b>Objection</b></p> <p>1. Generally it should be noted that this law should not be enforced, if it is breached, unless the breach is actually creating a legitimate nuisance or health risk for people or the animals. Not just a precious neighbours complaining for no legitimate reason. This is particularly relevant to under Clauses 2.8, in particular, set back requirements.</p>	<p>1. Town's priority will be to educate the community, working with the residents to achieve compliance. Notwithstanding, enforcement provisions have been included in the local law, which can be used where it is deemed necessary.</p> <p>Clause 2.8(2) allows for an owner or occupier to make application to the Local Government to vary the setback requirements of clause 2.8 (a), (b), (c) &amp; (e). Upon application, site specific factors can be assessed as well as the level of support of neighbours.</p>

Submitter No.	Nature of Submission	Responses from the Town
	<p>2. I disagree entirely with clause 2.8 C (ii). This is only ever a good idea for large numbers of birds in a commercial operation. The birds need access to the real ground. A roost needs to be provided above the ground and in a cleanable form.</p> <p>3. Please add reference to recent research showing some rodenticides to be toxic to native birds (owls, other birds of prey which accidentally eat poisoned rodents). Encourage the use of products with less harmful active ingredients to native birds.</p>	<p>2. Clause 2.8 (c) (ii) requires only the roosting area to be hardstand. The balance of the enclosure can be bare ground.</p> <p>3. The comment is noted however, it is beyond the scope of this local law to determine the form of rodenticide used.</p>
5	<p><b>Objection</b></p> <p>I wholeheartedly disagree with this law.</p>	<p>Noted.</p>
6	<p><b>Comment</b></p> <p>If there is to be laws they need to be enforced up till now laws controlling cats and dogs have been adopted but not enforced, animals are returned to owners over and over only to have them at large again. I can understand one escape but once it happens a second time the animal should not be returned to the owner but disposed of.</p>	<p>Town's priority will be to educate the community, working with the residents to achieve compliance. Notwithstanding, enforcement provisions have been included in the local law, which can be used where it is deemed necessary.</p>

## Dept of Health - Response

Hi Jeff

Thank you for your email and for providing a copy of the proposed local laws to the Department of Health. As the laws are to be established under the *Local Government Act 1995* an advisory copy is to be provided to the Chief Health Officer for noting but his consent is not required. This approach is consistent with the intent of the *Public Health Act 2016* which recognises local government as a partner in the administration of public health and provides local government with increased autonomy.

I have found that the Minister's office received your letter on 28<sup>th</sup> March 2019 and noted the information provided. I can arrange for the Chief Health Officer to provide comment on the proposed laws if you would prefer, though I believe that this would delay the process for the City.

Please advise on how you would like to proceed and I will act accordingly. Should you wish to discuss this matter, please contact me by return email or on 9222 4434.

Regards

Kelly

Kelly Crossley

**Principal Advisor, Legislation**

**Environmental Health Directorate | Public & Aboriginal Health Division**

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<http://ww2.health.wa.gov.au>

**promoting health | preventing disease | managing risk**

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## **Response from the Dept of Local Govt and Communities**

Dear Mr Somes

This email is in response to your email dated 25 March 2019 addressed to the Minister for Local Government regarding the Town's proposed local law.

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

Town of Bassendean Animals, Environment, Nuisance and Pests Local Law 2019

### **1. Health Act 1911**

The Department notes that this local law is made under the Health (Miscellaneous Provisions) Act 1911 in addition to the Local Government Act 1995.

Accordingly, the Town should ensure that a copy of the local law has been forwarded to the Minister for Health, if this has not occurred already.

### **1. Page numbers**

It is suggested that the page numbers be removed from the contents page. These numbers will clash with the existing page system in the Government Gazette. As long as the contents page lists the clause numbers and clause titles, this should provide sufficient guidance to readers.

### **1. Enactment clause date**

The current date in the enactment clause of 26 February 2019 is incorrect.

Under section 3.12(4) of the Local Government Act 1995, a local law can only be made after the public submission period has closed.

The date that should appear in the enactment clause will be a date after the public submission period, when the Council considers the final copy of the proposed local law and resolves to 'make' that local law.

### **1. Enacting provision**

The enacting provision states that the local law is made under the Health Act (Miscellaneous Provisions) Act 1911 and the Local Government Act 1995. It is important that both empowering Acts are mentioned above the local law title and in the enacting provision.

An example is provided below for the City's consideration:

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HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911 LOCAL GOVERNMENT ACT 1995 Town of Bassendean  
Animals, Environment, Nuisance and Pests Local Law 2019

Under the powers conferred by the Health (Miscellaneous Provisions) Act 1911, Local Government Act 1995 and under all other powers enabling it, the Council of the Town of Bassendean resolved on (x month 2017) to make the following local law.

## 1. Clause 1.4 - Repeal

For best drafting principles, it is suggested that this clause be reformatted as follows:

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### 1.4 Amendment

The Town of Bassendean Health Local Law 2001 published in the Government Gazette on 24 August 2001 is amended as follows:

- (a) delete Part 4, Division 1;
- (b) delete clause 4.15 and 4.16;
- (c) Since the clause is only deleting certain part of the Town's health local law, it should be referred to as an amendment rather than a repeal.

## 1. Powers of entry

Clause 1.5(4) provides a limitation on the Shire's power to enter private property.

In recent years, the Parliament's Delegated Legislation Committee has requested that the disclaimer be worded as follows:

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(4) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 of the Local Government Act 1995 and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

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## 1. References to Department of Water and Environmental Regulation

In clause 3.5(a), the definition for pigeon refers to an approval granted by the Department of Water and Environmental Regulation (DWER).

Since the definition refers to native pigeons and doves, it is possible that this definition should refer to the Department of Biodiversity, Conservation and Attractions (DBCA).

The Town should check with both Departments and ensure the correct Department is being referenced in the definition.

## 1. External documents

The local law makes reference to other external documents such as the Code of Practice - Pigeon Keeping. The Town should ensure that copies of all external documents referred to in the local law are included when it is submitted to the Committee. The Committee may also inquire as to how these external documents will be made freely available to members of the public.

## 1. Minor edits

The following minor edits are suggested:

- \* For best drafting principles, it is suggested that all instances of "section" and "subsection" be replaced with "clause" and "subclause", unless it is in reference to an Act of Parliament
- \* Clause 1.5:
  - \* In the definition of authorised person, insert a semicolon at the end of the sentence.
  - \* In the definition of owner, italicise "Local Government Act 1995".
  - \* Replace the defined term "Commercial vehicle" with "commercial vehicle".
- \* Clause 2.2: redesignate paragraphs a) - d) as (a) - (d).
- \* Clause 2.6(2): This subclause contains two sentences. It is suggested that they be merged or alternatively, the second sentence should be moved into a new subclause.
- \* Clause 2.7:
  - \* In subclause (1)(a) replace "clause 1(b)" with "paragraph (b)".
  - \* In subclause (1)(c):
    - \* insert a semicolon at the end of each subparagraph (i) - (iii).
    - \* Insert a semicolon and the word "and" after that semicolon at the end of subparagraph (iv).
    - \* Insert a comma at the end of subparagraph (v)
    - \* On the final line change "Town of Bassendean" to "the district".
- \* Clause 2.8: in subclause (2) and (3) remove the capitals from "Local Government" to ensure consistency with the defined term.
- \* Clause 3.1: defined terms should be formatted in lower case. It is suggested that both instances of "Liquid" be replaced with "liquid".
- \* Clause 3.3:
  - \* in subclause (2)(a) delete the word "or" after the semicolon.
  - \* In subclause (2)(b) replace "Local government" with "local government".
- \* Clause 3.6: In paragraph (c)(i) insert the word "or" after the semicolon.
- \* Clause 4.3:
  - \* In in subclause (1)(c) insert a comma after the word "thoroughfare".
  - \* In subclause (2)(b) delete the word "or" after the semicolon.
  - \* In subclause (2)(c) insert the word "or" after the semicolon.
- \* Clause 5.1: replace "Flies" with flies.
- \* Clause 5.4: in paragraph (b) insert the word "and" after the semicolon.
- \* Clause 5.11: italicise "rodents".
- \* Clause 5.12(2)(b)(ii): insert the word "and" after the semicolon.
- \* Clause 5.15: replace "Cockroach" with "cockroach".
- \* Clause 6.1: in paragraph (c) replace the semicolon with a comma.
- \* Clause 7.3:
  - \* In subclause (1)(c) replace the semicolon with a comma.
  - \* In subclause (3) after "\$5000 and" insert "where the offence is of a continuing nature,".
  - \* In subclause (3) insert one line space between the end of this subclause and "Division 3 - Infringement Notices and Modified Penalties".

The Town should conduct a comprehensive review of the draft to ensure that all numbering and cross references are correct.

Minister's Directions - pursuant to s 3.12(7) of the Local Government Act 1995



Please note: once the Town has published a local law in the Government Gazette, the Town must comply with the requirements of the Minister's Local Laws Explanatory Memoranda Directions 2010. The Town must, within 10 working days of the Gazettal publication date, forward the signed Explanatory Memoranda material to the Committee at the current address:

Committee Clerk

Joint Standing Committee on Delegated Legislation Legislative Council Committee Office GPO Box A11  
PERTH WA 6837

Email: [delleg@parliament.wa.gov.au](mailto:delleg@parliament.wa.gov.au)<<mailto:delleg@parliament.wa.gov.au>>

Tel: 9222 7404

Fax: 9222 7805

A copy of the Minister's Directions and Explanatory Memoranda forms can be downloaded from the Department of Local Government and Communities website at [www.dlgc.wa.gov.au](http://www.dlgc.wa.gov.au)<<http://www.dlgc.wa.gov.au>>. Failure to comply with the Directions may render the local law inoperable.

Please note that my comments:

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

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

Kind regards

Carmen Chia

Legislation Officer

Department of Local Government, Sport and Cultural Industries

140 William Street, Perth WA 6000

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Web

[www.dlgsc.wa.gov.au](https://www.dlgsc.wa.gov.au)<<https://www.dlgsc.wa.gov.au>>

The Department acknowledges the Aboriginal peoples of Western Australia as the traditional custodians of this land, and we pay our respects to their Elders past and present.



# **ATTACHMENT NO. 7**





Government of Western Australia  
Department of Water and Environmental Re

Document #: ILET-16589719  
Date: 20.12.2019  
Officer: PAUL WHITE  
File: WSTMNGT/SVPROVN/5



Our ref: DWERDG832/19  
Enquiries: Leanne Reid, 6364 7028

Ms Peta Mabbs  
Chief Executive Officer  
Town of Bassendean  
PO Box 87  
BASSENDEAN WA 6934

Email: [mail@bassendean.wa.gov.au](mailto:mail@bassendean.wa.gov.au)

Dear Ms Mabbs

**TOWN OF BASSENDEAN WASTE LOCAL LAW 2019**

I refer to the correspondence dated 6 December 2019 requesting consent to the Town of Bassendean Waste Local Law 2019.

I confirm that I consent to the Town of Bassendean Waste Local Law 2019 and accordingly have signed and enclosed two copies of the Local Law.

My decision to provide consent to the making of the Local Law is based on policy considerations and the responsibility for ensuring that the Local Law is within power rests with the Local Government.

I request that you provide the Minister for Environment, the Minister for Local Government and me with a copy of the Waste Local Law as gazetted.

Yours sincerely

Mike Rowe  
**DIRECTOR GENERAL**

**20 December 2019**

Enc: Town of Bassendean Waste Local Law 2019 (two copies)

**WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2007  
LOCAL GOVERNMENT ACT 1995**

**TOWN OF BASSENDEAN**

**WASTE LOCAL LAW 2019**

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*Waste Avoidance and Resource Recovery Act 2007*  
*Local Government Act 1995*

Town of Bassendean

**Waste Local Law 2019**

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## **Schedule 1 - Meaning of 'non-collectable waste'**

## **Schedule 2 - Prescribed offences**

**Waste Avoidance and Resource Recovery Act 2007  
Local Government Act 1995**

**Town of Bassendean**

**Waste Local Law 2019**

Under the powers conferred on it by the *Waste Avoidance and Resource Recovery Act 2007*, the *Local Government Act 1995* and under all other enabling powers, the Council of the Town of Bassendean resolved on   date to make the following local law.

**Part 1 - Preliminary**

**1.1      Short title**

This is the *Town of Bassendean Waste Local Law 2019*.

**1.2      Commencement**

This local law commences 14 days after the day on which it is published in the *Government Gazette*.

**1.3      Application**

This local law applies throughout the district.

**1.4      Repeal**

This local law repeals part 4, division 2 of the *Town of Bassendean Health Local Law 2001*, as published in the *Government Gazette* on 24 August 2001, except for the following clauses:

- (b)      clause 4.16

**1.5      Meaning of terms used in this local law**

- (1)      In this local law—

***authorised person*** means a person appointed by the local government under section 9.10 of the LG Act to perform any of the functions of an authorised person under this local law;

***collectable waste*** means local government waste that is not—

- (a)      liquid refuse;
- (b)      liquid waste; or
- (c)      non-collectable waste;

**collectable waste receptacle** means a receptacle for the deposit and collection of collectable waste that is—

- (a) a recycling waste receptacle;
- (b) a general waste receptacle; or
- (c) an organic waste receptacle;

**collection**, when used in relation to a receptacle, means the collection and removal of collectable waste from the receptacle by the local government or its contractor;

**collection day** means the day determined by the local government for the collection of collectable waste in the district or a part of the district;

**collection time** means the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district;

**costs** of the local government include administrative costs;

**Council** means the council of the local government;

**district** means the district of the local government;

**general waste receptacle** means a receptacle for the deposit and collection of collectable waste that is not recycling waste;

**LG Act** means the *Local Government Act 1995*;

**LG Regulations** means the *Local Government (Functions and General) Regulations 1996*;

**local government** means Town of Bassendean;

**local government waste** has the same meaning as in the WARR Act;

**non-collectable waste** has the meaning set out in Schedule 1;

**occupier** in relation to premises, means any or all of the following—

- (a) a person by whom or on whose behalf the premises are actually occupied; or
- (b) a person having the management or control of the premises;

**organic waste** means waste that decomposes readily, such as garden waste or food waste;

**organic waste receptacle** means a receptacle for the deposit and collection of organic waste ;

**owner** has the same meaning as in the LG Act;

**public place** includes a place to which the public ordinarily have access, whether or not by payment of a fee;

**receptacle**, means a receptacle—

- (a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and
- (b) the waste from which is collected and removed from the premises by the local government or its contractor;

**recycling waste receptacle** means a receptacle for the deposit and collection of recycling waste;

**recycling waste** means—

- (a) paper and cardboard;
- (b) plastic containers comprised of polyethylene terephthalate or high density polyethylene;
- (c) glass containers;
- (d) steel containers;
- (e) aluminium containers;
- (f) liquid paper board; and
- (g) any other waste determined by the local government to be recycling waste;

**specified** means specified by the local government or an authorised person, as the case may be;

**street alignment** means the boundary between the land comprising a street and the land that abuts the street;

**WARR Act** means the *Waste Avoidance and Resource Recovery Act 2007*;

**WARR Regulations** means the *Waste Avoidance and Resource Recovery Regulations 2008*;

**waste** has the same meaning as in the WARR Act;

**waste facility** means a waste facility, as defined in the WARR Act, that is operated by the local government; and

**waste service** has the same meaning as in the WARR Act.

- (2) Where, in this local law, a duty or liability is imposed on an owner or occupier, or on an owner and occupier, the duty or liability is taken to be imposed jointly and severally on each of the owners or occupiers.

## **1.6 Local public notice of determinations**

Where, under this local law, the local government has a power to determine a matter –

- (a) local public notice, under section 1.7 of the LG Act, shall be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;
- (c) the determination remains in force for the period of one year after the date that local public notice has been given under paragraph (a);
- (d) after the period referred to in paragraph (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act; and
- (e) the determination shall be recorded in a publicly accessible register of determinations that shall be maintained by the local government.

#### **1.7 Rates, fees and charges**

The local government's powers to impose rates, fees and charges in relation to waste services are set out in sections 66 to 68 of the WARR Act and sections 6.16 and 6.17 of the LG Act.

#### **1.8 Power to provide waste services**

The local government's power to provide, or enter into a contract for the provision of, waste services is dealt with in section 50 of the WARR Act.

### **Part 2 - Local government waste**

#### **2.1 Supply of receptacles**

- (1) The local government is to supply, for the use of each premises that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal, from those premises, of collectable waste.
- (2) The owner of premises to which subclause (1) applies must—
  - (a) ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and
  - (b) ensure that each receptacle is used, in respect of those premises, in accordance with this local law.

#### **2.2 Deposit of waste in receptacles**

- (1) An owner or occupier of premises shall not deposit or permit to be deposited in a receptacle any non-collectable waste.
- (2) A person shall not deposit waste in a receptacle that has been provided for the use of other premises without the consent of the owner or occupier of those premises.

#### **2.3 General waste receptacles**

- (1) An owner or occupier of premises shall not deposit or permit to be deposited in a general waste receptacle—

- (a) where the receptacle has a capacity of 240 litres—more than 70 kilograms of collectable waste; or
  - (b) where the receptacle has a capacity of 140 litres – more than 70 kilograms of collectable waste; or
  - (c) where the receptacle has any other capacity—more than the weight determined by the local government.
- (2) Where the local government supplies recycling waste receptacles, an owner or occupier of premises shall not deposit or permit to be deposited in a general waste receptacle any recycling waste.
- (3) Where the local government supplies organic waste receptacles, an owner or occupier of premises shall not deposit or permit to be deposited in a general waste receptacle any organic waste.

#### **2.4 Recycling waste receptacles**

An owner or occupier of premises shall not deposit or permit to be deposited in a recycling waste receptacle—

- (a) anything other than the particular type of recycling waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres— more than 70 kilograms of recycling waste; or
- (c) where the receptacle has a capacity of 360 litres – more than 70 kilograms of recycling waste; or
- (d) where the receptacle has any other capacity—more than the weight determined by the local government.

#### **2.5 Organic waste receptacles**

An owner or occupier of premises shall not deposit or permit to be deposited in an organic waste receptacle—

- (a) anything other than the particular type of organic waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres - more than 70 kilograms of organic waste; or
- (c) where the receptacle has any other capacity - more than the weight determined by the local government.

#### **2.6 Direction to place or remove a receptacle**

- (1) The local government or an authorised person may give a written direction to an owner or occupier of specified premises —
  - (a) to place a receptacle in respect of those premises for collection; or
  - (b) to remove a receptacle in respect of those premises after collection.

- (2) The direction under paragraph (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.
- (3) An owner or occupier of premises shall comply with a direction given under this clause.

## **2.7 Duties of owner or occupier**

An owner or occupier of premises shall—

- (a) except for a reasonable period before and after collection time, keep each receptacle in a storage space or area that is behind the street alignment;
- (b) take reasonable steps, if placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, ensure that, within a reasonable period before collection time, each receptacle is —
  - (i) within 1 metre of the carriageway;
  - (ii) placed so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and
  - (iii) facing squarely to the edge of and opening towards the carriageway,or in such other position as is approved in writing by the local government or an authorised person;
- (c) take reasonable steps to ensure that the premises are provided with an adequate number of receptacles; and
- (d) if the receptacle is lost, stolen, damaged or defective, notify the local government, as soon as practicable, after the event.

## **2.8 Exemption**

- (1) An owner or occupier of premises may apply in writing to the local government for an exemption from compliance with the requirements of clause (a) or (b).
- (2) The local government or an authorised person may grant, with or without conditions, or refuse an application for exemption from compliance under this clause.
- (3) An exemption granted under this clause shall state—
  - (a) the premises to which the exemption applies;
  - (b) the period during which the exemption applies; and
  - (c) any conditions imposed by the local government or the authorised person.
- (4) An exemption granted under this clause ceases to apply –

- (a) if the local government decides, on reasonable grounds, that there has been a failure to comply with a condition of the exemption; and
- (b) from the date that the local government informs the owner or occupier of its decision under clause 2.8(4)(a).

## 2.9 Damaging or removing receptacles

A person, other than the local government or its contractor, shall not—

- (a) damage, destroy or interfere with a receptacle; or
- (b) except as permitted by this local law or as authorised by the local government or an authorised person, remove a receptacle from any premises to which it was delivered by the local government or its contractor.

## 2.10 Verge collections

- (1) Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—
  - (a) shall deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and
  - (b) must otherwise comply with those terms and conditions.
- (2) Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of that waste for a commercial purpose but may remove it for any other purpose.
- (3) Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.
- (4) Clause <sup>2.10(2)</sup> ~~Error! Reference source not found.~~ does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

## Part 3 - General duties

### 3.1 Duties of an owner or occupier

An owner or occupier of premises shall—

- (a) take reasonable steps to ensure that a sufficient number of receptacles are provided to contain all waste which accumulates or may accumulate in or from the premises;
- (b) ensure that each receptacle is kept in good condition and repair;
- (c) take all reasonable steps to—



- (i) prevent fly breeding and keep each receptacle free of flies, maggots, cockroaches, rodents and other vectors of disease;
- (ii) prevent the emission of offensive or noxious odours from each receptacle; and
- (iii) ensure that each receptacle does not cause a nuisance to an occupier of adjoining premises; and
- (d) whenever directed to do so by the local government or an authorised person, thoroughly clean, disinfect, deodorise and apply a residual insecticide to each receptacle.

### **3.2 Removal of waste from premises**

- (1) A person shall not remove any waste from premises unless that person is—
  - (a) the owner or occupier of the premises;
  - (b) authorised to do so by the owner or occupier of the premises; or
  - (c) authorised in writing to do so by the local government or an authorised person.
- (2) A person shall not remove any waste from a receptacle without the approval of—
  - (a) the local government or an authorised person; or
  - (b) the owner or occupier of the premises at which the receptacle is ordinarily kept.

### **3.3 Receptacles and containers for public use**

A person shall not, without the approval of the local government or an authorised person—

- (a) deposit household, commercial or other waste from any premises on or into; or
- (b) remove any waste from,

a receptacle provided for the use of the general public in a public place.

## **Part 4 - Operation of waste facilities**

### **4.1 Operation of this Part**

This Part applies to a person who enters a waste facility.

### **4.2 Hours of operation**

The local government may from time to time determine the hours of operation of a waste facility.

#### **4.3 Signs and directions**

- (1) The local government or an authorised person may regulate the use of a waste facility—
  - (a) by means of a sign; or
  - (b) by giving a direction to a person within a waste facility.
- (2) A person within a waste facility shall comply with a sign or direction under paragraph (1).
- (3) The local government or an authorised person may direct a person who commits, or is reasonably suspected by the local government or the authorised person of having committed, an offence under this clause to leave the waste facility immediately.
- (4) A person shall comply with a direction under paragraph (3).

#### **4.4 Fees and charges**

- (1) Unless paragraph (3) applies, a person shall, on or before entering a waste facility or on demand by the local government or an authorised person, pay the fee or charge as assessed by an authorised person.
- (2) An authorised person may assess the fee or charge in respect of a particular load of waste at a rate that applies to any part of that load, even if that rate is higher than the rate that would apply to any other part of the load.
- (3) Paragraph (1) does not apply—
  - (a) to a person who disposes of waste in accordance with the terms of—
    - (i) a credit arrangement with the local government; or
    - (ii) any other arrangement with the local government to pay the fee or charge at a different time or in a different manner; and
  - (b) to the deposit of waste owned by the local government, or in the possession of an employee on behalf of the local government.

#### **4.5 Depositing waste**

- (1) A person shall not deposit waste at a waste facility other than—
  - (a) at a location determined by a sign and in accordance with the sign; and
  - (b) in accordance with the direction of an authorised person.
- (2) The local government may determine the classification of any waste that may be deposited at a waste facility.

#### **4.6 Prohibited activities**

- (1) Unless authorised by the local government, a person shall not—
  - (a) remove any waste or any other thing from a waste facility;

- (b) deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law;
  - (c) light a fire in a waste facility;
  - (d) remove, damage or otherwise interfere with any flora in a waste facility;
  - (e) remove, injure or otherwise interfere with any fauna in a waste facility; or
  - (f) damage, deface or destroy any building, equipment, plant or property within a waste facility.
- (2) A person shall not act in an abusive or threatening manner towards any person using, or engaged in the management or operation of, a waste facility.

## **Part 5 - Enforcement**

### **5.1 Objection and appeal rights**

Division 1 of Part 9 of the LG Act applies to a decision under this local law to grant, renew, vary or cancel –

- (a) an approval under clause 2.7(b);
- (b) an exemption under clause 2.8(2);
- (c) an approval under clause 2.9(b);
- (d) an approval under clause 2.10(1);
- (e) an authorisation under clause 3.2(1)(c);
- (f) an approval under clause 3.2(2); and
- (g) an approval under clause 3.3.

### **5.2 Offences and general penalty**

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law a person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day during which the offence has continued.

### **5.3 Other costs and expenses**

- (1) A person who is convicted of an offence under this local law is to be liable, in addition to any penalty imposed under clause 5.2, to pay to the local government the costs and expenses incurred by the local government in taking remedial action such as—

- (a) removing and lawfully disposing of toxic, hazardous or poisonous waste; or
  - (b) making good any damage caused to a waste facility.
- (2) The costs and expenses incurred by the local government are to be recoverable, as a debt due to the local government, in a court of competent civil jurisdiction.

#### **5.4 Prescribed offences**

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the LG Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

#### **5.5 Form of notices**

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the LG Act is that of Form 1 in Schedule 1 of the LG Regulations.
- (2) The form of the infringement notice given under section 9.16 of the LG Act is that of Form 2 in Schedule 1 of the LG Regulations.
- (3) The form of the infringement withdrawal notice given under section 9.20 of the LG Act is that of Form 3 in Schedule 1 of the LG Regulations.

## **Schedule 1 - Meaning of 'non-collectable waste'**

[Clause 1.5(1)]

**non-collectable waste** means –

- (a) hot or burning material;
- (b) household hazardous waste, including paint, acids, alkalis, fire extinguishers, solvents, pesticides, oils, gas cylinders, batteries, chemicals and heavy metals;
- (c) any other hazardous material, such as radioactive waste;
- (d) any explosive material, such as flares or ammunition;
- (e) electrical and electronic equipment;
- (f) hospital, medical, veterinary, laboratory or pathological substances;
- (g) construction or demolition waste;
- (h) sewage;
- (i) 'controlled waste' for the purposes of the *Environmental Protection (Controlled Waste) Regulations 2004*;
- (j) any object that is greater in length, width, or breadth than the corresponding dimension of the receptacle or that will not allow the lid of the receptacle to be tightly closed;
- (k) waste that is or is likely to become offensive or a nuisance, or give off an offensive or noxious odour, or to attract flies or cause fly breeding unless it is first wrapped in non-absorbent or impervious material or placed in a sealed impervious and leak-proof container; and
- (l) any other waste determined by the local government to be non-collectable waste.

## Schedule 2 - Prescribed offences

Item No.	Clause No.	Description	Modified Penalty
1	2.1(2)(a)	Failing to pay fee or charge	\$350
2	2.1(2)(b)	Failing to ensure lawful use of receptacle	\$350
3	2.2(1)	Depositing non-collectable waste in a receptacle	\$350
4	2.2(2)	Depositing waste in another receptacle without consent	\$350
5	2.3(1)	Exceeding weight capacity of a general waste receptacle	\$350
6	2.3(2) and (3)	Depositing unauthorised waste in a general waste receptacle	\$350
7	2.4(a)	Depositing unauthorised waste in a recycling waste receptacle	\$350
8	2.4(b), (c) and (d)	Exceeding weight capacity of a recycling waste receptacle	\$250
9	2.5(a)	Depositing unauthorized waste in an organic waste receptacle	\$350
10	2.5(b) and (c)	Exceeding weight capacity of an organic waste receptacle	\$350
11	2.6(3)	Failing to comply with a direction concerning placement or removal of a receptacle	\$250
12	2.7(a)	Failing to keep a receptacle in the required location	\$250
13	2.7(b)	Failing to place a receptacle for collection in a lawful position	\$250
14	2.7(c)	Failing to provide a sufficient number of receptacles	\$250
15	2.7(d)	Failing to notify of a lost, stolen, damaged or defective receptacle	\$50
16	2.9(a)	Damaging, destroying or interfering with a receptacle	\$400
17	2.9(b)	Removing a receptacle from premises	\$400
18	2.10(1)	Failing to comply with a term or condition of verge waste collection	\$400
19	2.10(2)	Removing waste for commercial purposes	\$350
20	2.10(3)	Disassembling or leaving in disarray waste deposited for collection	\$250
21	3.1(a)	Failing to provide a sufficient number of receptacles	\$250
22	3.1(b)	Failing to keep a receptacle clean and in a good condition and repair	\$250
23	3.1(c)(i)	Failing to prevent fly breeding and vectors of disease in a receptacle	\$350
24	3.1(c)(ii)	Failing to prevent the emission of offensive odours from a receptacle	\$350
25	3.1(c)(iii)	Allowing a receptacle to cause a nuisance	\$350
26	3.1(d)	Failing to comply with a direction to clean, disinfect or deodorise receptacle	\$300

Item No.	Clause No.	Description	Modified Penalty
27	3.2(1)	Unauthorised removal of waste from premises	\$250
28	3.2(2)	Removing waste from a receptacle without approval	\$250
29	3.3 (a)	Depositing waste without authority into a receptacle provided for the use of the general public in a public place	\$300
30	3.3(b)	Removing waste without authority from a receptacle provide for the use of the general public in a public place	\$300
31	4.3(2)	Failing to comply with a sign or direction	\$500
32	4.3(4)	Failing to comply with a direction to leave	\$500
33	4.4(1)	Disposing waste without payment of fee or charge	\$500
34	4.5(1)	Depositing waste contrary to sign or direction	\$500
35	4.6(1)(a)	Removing waste without authority in a waste facility	\$250
36	4.6(1)(b)	Depositing toxic, poisonous or hazardous waste at a waste facility	\$500
37	4.6(1)(c)	Lighting a fire in a waste facility	\$300
38	4.6(1)(d)	Removing or interfering with any flora in a waste facility	\$300
39	4.6(1)(e)	Removing or interfering with any fauna without approval in a waste facility	\$300
40	4.6(1)(f)	Damaging, defacing or destroying any building, equipment, plant or property within a waste facility	\$500
41	4.6(2)	Acting in an abusive or threatening manner	\$300

Consented to:



Chief Executive Officer  
Department of Water and Environmental Regulation

Dated this 20<sup>th</sup> of December 2019

Dated \_\_\_\_\_

The common seal of the Town of Bassendean was hereunto affixed to this document by resolution of the Council in the presence of:

\_\_\_\_\_  
Renee Joy McLennan  
Mayor

and

\_\_\_\_\_  
Peta Maree Mabbs  
Chief Executive Officer





# **ATTACHMENT NO. 8**



**DRAFT AS @ 19 MARCH 2020**

## Single Use Plastics & Balloons

The Town of Bassendean recognises the need to protect the environment and is committed to reducing the amount of single-use plastics used within the Town by avoiding the use of single-use plastics and encouraging the use of alternatives.

This policy provides the requirements and obligations for the purchase, sale and use of single-use plastics and balloons at events on Town managed land and events managed by the Town including internal operations.

### Policy application

- This policy applies to all staff and with respect to:
  - All operations conducted by the Town.
  - Traders (excluding alfresco dining) operating with a permit issued by the Town.
  - Public functions and/or events held in thoroughfares, public places and on local government property where approval is required from the Town.
- This policy does not apply to:
  - Events that do not require approval from the Town
  - Traders and businesses that do not require a permit from the Town under the Local Law and;
  - Activities operating under a lease agreement from the Town entered into prior to this Policy being made.
- Persons to which this policy applies shall first agree to ensuring the following requirements are met prior to being issued approval to lease or book that place:
  - Balloons are not to be used, sold, distributed or released.
  - Single-use plastic or polystyrene serving materials and packaging are not to be used, sold or distributed.
  - Single-use plastic items must not be used in the purchase, sale, distribution and transport of food or goods, unless required under other conditions or legislation These items include but are not limited to:

- Bags
  - Disposable cups
  - Cutlery & straws
  - Plates & bowls
  - Takeaway containers
- Plastic beverage bottles are not to be used, sold or distributed, where suitable alternatives can be provided.
  - Plastic event promotional materials must be re-used where possible.

Alternative options to single-use plastics must be fit for purpose with **reusable** products being prioritized for use in the first instance and **compostable** products being used where re-usable options are not readily available.

For suitable alternatives see the guidance document 'A guide for eliminating single-use plastics'.

Exemptions for reasons pertaining to health & safety should be made in writing to the CEO.

## Definitions

**Balloon** inflatable device made from rubber, latex, foil or plastic where the primary function is to be inflated.

**Compostable** means products complying with Australian Standard AS4736-2006 Biodegradable Plastics. Products that are able to decompose to produce a non-toxic soil product.

**Local Government Property** has the meaning as depicted in *Town of Bassendean Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2010*

**Permit** has the meaning as depicted in *Town of Bassendean Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2010*

**Polystyrene** synthetic resin which is a polymer of styrene, used chiefly as lightweight rigid foams and films.

**Public place** has the meaning as depicted in *Town of Bassendean Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2010*

**Re-usable** means a product that can be used a repeated number of times for the same purpose for which it was originally designed.

**Single Use Plastic** means a plastic product that is not conceived, designed or placed on the market to accomplish, within its life span, multiple use by being returned to the retailer for refill or re-used for the same purpose for which it was conceived.

**Thoroughfares** has the meaning as depicted in *Town of Bassendean Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2010*

**Trader** has the meaning as depicted in *Town of Bassendean Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2010*

## APPLICATION

<b>Policy Type:</b> Strategic Policy	<b>Responsible Officer:</b>
<b>Link to Strategic Community Plan:</b> Natural Environment	<b>First Adopted:</b> OCM
	<b>Last Reviewed:</b>
	<b>Version :</b>
	<b>Next Review due by:</b>



## A guide for eliminating single-use plastics

This guidance should be used to assist relevant persons and organisations in meeting the requirements of the Town of Bassendean Policy on Single-use Plastics & Balloons.

### Current context:

The Town of Bassendean recognises the need to act to prevent damage from plastics on the environment. A Council policy on single-use plastics and balloons was endorsed by Council in ----- **(Reference the Policy title and Policy number)**

All Town sponsored and managed events as well as internal operations are required to comply with the Town's Single-use Plastics & Balloons Policy **(Policy number)**. The Policy will require re-usable or compostable packaging to be used in place of single-use plastics, at Town sponsored events and within Town operations.

### What is a single-use plastic?

Single-use plastics are disposable plastics that are designed to be used once and thrown away. Some examples include food related items: plastic wrap, cutlery, cups, stirrers, condiment sachets, plates and bowls; as well as single use items such as glitter, confetti and balloons.

### What is wrong with plastic?

When plastics break down in the environment they do not biodegrade but rather break down into smaller and smaller pieces called 'micro-plastics'. These plastic pieces build up in the soil and the marine environment, being absorbed and metabolized by organisms. This incorporates plastic into the food web, which bio accumulates when one organism ingests another. As organisms do not have any effective way of eliminating micro plastics from their system, the concentrations increase. The concentration is further increased when one organism digests another.

The effects of micro-plastic bioaccumulation in the food chain are not yet fully understood however some wildlife are already showing declines due to plastic pollution. In particular, the marine environment where plastic pieces are more abundant than food and are often mistaken for food, choking the animal or simply causing starvation.

Balloons are single use plastic items that often cause harm when they are released to the environment. Balloons tend to travel longer distances and if particles are released in a marine environment are very often mistaken for food by wildlife.

**Did you know?** More plastic has been produced in the last 10 years than was produced in the 100 years prior to that, and it is estimated that the amount of plastic in our oceans will outweigh that of fish by the year 2050.

**What can you do to reduce or eliminate single-use plastic?**

- Avoid packaging waste altogether by buying in bulk and *bringing your own* container/wrap or cup with you.
- Use compostable packaging instead (see below for more information).
- Start small, choose key items which you know you use frequently and decide to purchase them plastic free.
- If you are arranging an event then make it plastic free, you will teach those around you the importance of reducing plastic.
- Choose to dine in where possible to avoid packaging.
- Choose brands that package their product in less packaging, every little bit does count.
- If you do have to purchase plastic items make sure you have the most up to date information on what can and cannot be recycled.
- Ask your local café if they will be switching to compostable packaging, if you are a business then request this from your suppliers.

As demand for alternatives to plastic increase, so too will the alternatives and new options for avoiding plastics. Never underestimate the influence your choices will have!

**See the Town's website for information about how to recycle right.**





## How do I tell the difference between compostable plastics and conventional petroleum based plastics?

Compostable products are able to decompose to produce a non-toxic residue as they are made using plant based ingredients only. Some of these products now resemble conventional plastic quite closely.

Check out the symbols below to be sure that what you are buying is compostable.

Compostable products will always have a symbol **OR** will have the words 'PLA' with the recycling symbol and number '7' or 'Compostable' written on the product. PLA (polylactic acid) is a compostable bioplastic derived from plant sugars.

The terms 'biodegradable' and 'Degradable' are not indicators of a product being compostable. These terms simply mean they break down slightly faster than ordinary plastic products however, often still produce a noxious residue and are not accepted in the composting system.



Compostable



Home Compostable

**AS 5810**  
**ABAX 9999**



### Alternatives to single-use plastics

If you need this	Try this first	and then try this
Cups	<ul style="list-style-type: none"> <li>• Reusable mugs and cups provided and a wash station set up on site.</li> <li>• Patrons encouraged to bring their own mug or coffee cup</li> </ul>	<ul style="list-style-type: none"> <li>• Compostable cups made from PLA, sugarcane or paper.</li> <li>• Only provide a lid when it is requested.</li> </ul>
Plates and bowls	<ul style="list-style-type: none"> <li>• Patrons BYO plate/bowl</li> <li>• Re-usable crockery or re-usable plastic wares provided by vendors and washed on site.</li> </ul>	<ul style="list-style-type: none"> <li>• Compostable plates and bowls made from PLA, sugarcane or paper.</li> </ul>
Cutlery	<ul style="list-style-type: none"> <li>• Reusable cutlery provided and wash stations set up on site.</li> <li>• Patrons encouraged to bring their own reusable cutlery</li> </ul>	<ul style="list-style-type: none"> <li>• Compostable (PLA, sugarcane or paper) or wooden cutlery</li> </ul>
Water bottles	<ul style="list-style-type: none"> <li>• Drinking water facilities are made available on site</li> <li>• Patrons can bring their own bottle &amp; refill on site</li> <li>• Reusable bottles available for purchase at the event</li> </ul>	<ul style="list-style-type: none"> <li>• Glass</li> <li>• Paperboard cartons</li> <li>• Aluminium or steel cans</li> </ul>
Straws	<ul style="list-style-type: none"> <li>• Patrons encouraged to bring their own straw</li> <li>• Stainless steel straws to be washed and re-used.</li> </ul>	<ul style="list-style-type: none"> <li>• Paper straws</li> </ul>
Bags	<ul style="list-style-type: none"> <li>• Patrons encouraged to bring their own reusable bag</li> <li>• Vendors sell re-usable bags</li> </ul>	<ul style="list-style-type: none"> <li>• Paper bags</li> <li>• Compostable bags</li> <li>• Boxes</li> </ul>

Condiments	<ul style="list-style-type: none"> <li>• Provide a condiment station where people can apply sauces directly to their meal.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide condiments in compostable packaging such as paper/bamboo or PLA trays.</li> </ul>
Cling wrap	<ul style="list-style-type: none"> <li>• Airtight containers</li> <li>• Silicone food wraps</li> <li>• Glass jars for food storage</li> <li>• Sandwich pockets</li> <li>• Bees wax wraps</li> </ul>	<ul style="list-style-type: none"> <li>• Compostable plant based soft plastic packaging and cling film.</li> <li>• Baking paper</li> </ul>

If you are a vendor at an event then use the opportunity to sell some re-usable products such as water bottles, straws, cutlery sets and coffee cups.

### Information for events

If you are managing an event, large or small in the Town of Bassendean please contact the Town's Recycling & Waste team for information about how to make it plastic free and waste wise.

It is important to let patrons know that you will be holding a plastic free event and to offer information about how they can avoid plastic. Use waste wise messaging in all event promotions such as "Bring your own re-usable coffee cup and water bottle".

Make sure alternatives such as wash-up stations and water refill points are accessible and clearly marked and advertise before the event so patrons know to bring their reusable items.

The basic rule to follow when planning waste wise events is the *Waste Hierarchy* which prioritises avoiding waste first, over other waste management mechanisms such as recycling or repurposing. Please refer to the image below which shows examples of each waste management mechanism.





Avoid waste packaging

- Bring your own cutlery, plate and cup.
- Choose re-usable options such as metal straws, reusable cups, cutlery and plates and set up a wash-up station.
- Utilise a re-usable cup/plate service.
- Set up a condiment station where people can help themselves to avoid single use sachets and tubs.
- Vendors to provide re-usable crockery & cutlery
- Dine in rather than taking food away.

Re-use where possible and recycle right

- Choose to re-use disposable items such as takeaway containers.
- Use organics bins to compost food, garden waste and compostable packaging.
- Make sure all waste goes into the right bin and make sure waste is recycled correctly.

Landfill  
last!

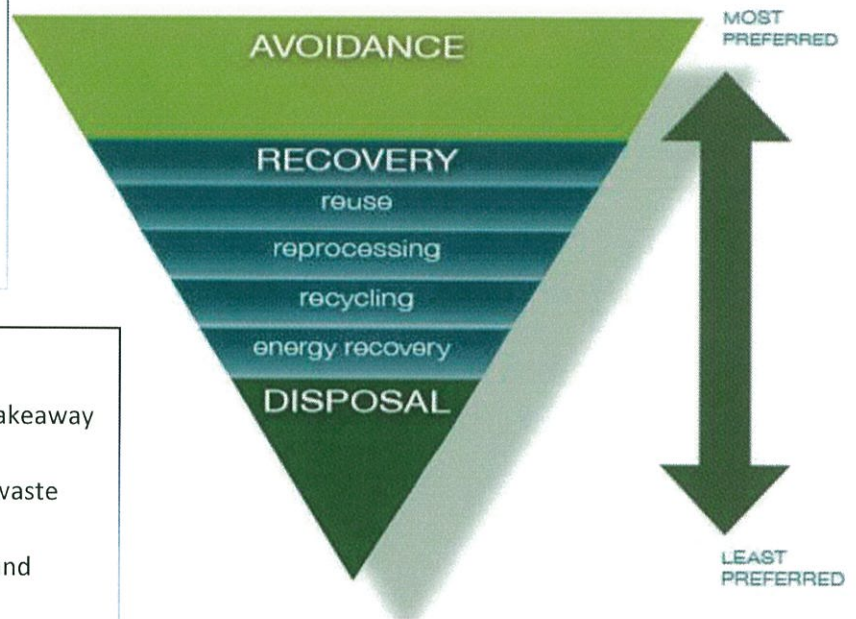


Image adapted from Waste Authority  
WA (2019)

**Still unsure? Please visit the Town's website**  
**<http://www.bassendean.wa.gov.au>** or contact the  
**Town's Waste team at**  
**[wasteservices@bassendean.wa.gov.au](mailto:wasteservices@bassendean.wa.gov.au)**

## 4.7 Recyclable & Biodegradable Products at Town of Bassendean's Events and Functions Policy

This Policy outlines the Town's commitment towards caring for the environment through the facilitation of "environmentally conscious" events and functions.

Public events and functions provide many benefits for the community, including: builds social cohesion; facilitates greater cultural understanding; assists in achieving social capital; and creates a stronger sense of place.

### Objective

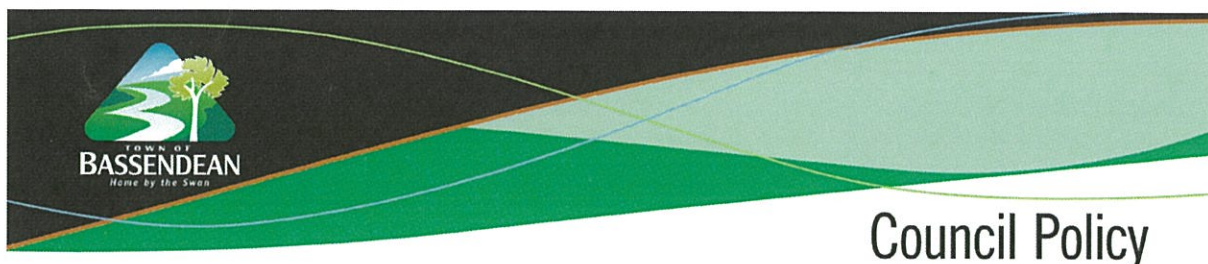
The objectives of this Policy are:

1. To outline the Town's environmental responsibilities when serving food and drinks at public events and functions;
2. To recognise that caring for the environment is an important consideration in the facilitation of public events and functions held by the Town
3. To provide guidelines and provide priority access to encourage internal and external food and drink stallholders to be more environmentally conscious when participating in the Town's events and functions; and
4. To provide information and education to the general public in relation to recyclable and biodegradable products

### Strategy

The Town of Bassendean strives to achieve these objectives through implementation of the following strategies:

1. The Town will use recyclable and biodegradable products for serving food and drinks at public events and functions, where possible; and
2. The Town will encourage the use of recyclable and biodegradable products at its events and functions by external stallholders, by promoting the environmental benefits and providing priority access to stallholders who agree to use such products.



## Application

Responsibility for the implementation of this policy rests with the Mayor, Councillors and Chief Executive Officer. The Policy is to be reviewed every three years.

<b>Policy Type:</b> Council Policy	<b>Policy Owner:</b> Director Community Development
<b>Link to Strategic Community Plan:</b> Arts, Heritage and Culture -	<b>Adopted:</b> OCM – 15/5/09
	<b>Last Review Date:</b> March 2014
	<b>Version 1</b>
	<b>Next Review due by:</b> December 2016

