



Special Council Meeting

MINUTES

Tuesday 19 May 2020

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1. Official Opening

The Presiding Member opened the meeting at 6:38pm and welcomed Councillors, Staff and Members of the Public Gallery. The Presiding Member also acknowledged the Traditional Owners of the land on which we meet the Whadjuk Noongar people.

2. Attendance, Apologies and Leave of Absence Previously Approved

Councillors

South East Ward

John Giardina
Janelle Sewell
Geoff Stallard

South West Ward

Lesley Boyd
Mary Cannon
Brooke O'Donnell

North West Ward

Lisa Cooper
Dylan O'Connor

North Ward

Cameron Blair
Kathy Ritchie
Margaret Thomas JP (Mayor) Presiding Member

Members of Staff

Chief Executive Officer

Rhonda Hardy

Executive Team

Gary Ticehurst - Director Corporate Services
Brett Jackson - Director Asset Services
Peter Varelis - Director Development Services

Management Team

James Wickens - Manager Environmental Health & Community Safety
Nicole O'Neill - Manager Customer & Public Relations
Regan Travers - Principal Statutory Planner

Administration Support

Darrell Forrest - Governance Advisor
Cam Jones - IT Coordinator (Live Streaming Technician)
Donna McPherson - Executive Assistant to the CEO

Technical Advisor

Lindsay Stephens

Members of the Public 20

Members of the Press Nil.

Apologies

Cr Sue Bilich

Leave of Absence Previously Approved Nil.

3. Public Question Time

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this meeting. For the purposes of Minuting, these questions and answers will be summarised.

3.1 Eddie van Rijnswoud, Piesse Brook (Questions provided in writing)

Q1. The assumption that the typical car occupancy will be 4 persons, in my opinion is unrealistic. This view is based on observations over many years of the patronage of existing tourism venues and the resulting congestion in the Bickley Valley and Pickering Brook regions. Most of the time, cars observed to had just two occupants.

Based on this observation, an average number of vehicles of around 200 can be expected. On special occasions this could be significantly higher.

A1. Car parking provision is not an assumption of car occupancy, it is the rate prescribed in Table 3 of LPS3 for 1 bay to be provided for every four people to be accommodated.

Q2. 200 vehicles per day maybe considered acceptable when distributed over the whole day but in the context of a major function, for example a wedding or an organised function, the 200+ vehicles will arrive and depart in a single cluster.

A2. The applicants Operation Management Plan indicates that upon closure of the venue, attendees will be gradually ushered out of the venue, rather than forced out all at the same time. In the event of a large booking, it is expected that attendees would arrive in a short space of time. Whether it is arriving or departing, the required upgrades to the crossover, and the addition of a left turn lane into the site in a northbound direction, means that while busy, the access to the site will be appropriately designed.

- Q3. Mundaring Weir Road in particular and surrounding connecting roads are not designed for this peak traffic condition. Special events such as the Targa Rally require special traffic management procedures have to be put in place.
- A3. The operation of the restaurant on a daily basis does not generate the need for on-site traffic management which is common for large events. If an event was proposed at the site which was a special one off event and was able to obtain the required approval from the City of Kalamunda to do so, it is likely that traffic management measures would be required. However, due to the site's finite supply of car parking area, the ability for the site to host a large event where attendees travel by car is likely to be similar to that of the maximum capacity of the restaurant in any case.
- Q4. Mundaring Weir Road already has a bad accident record.
- A4. The Traffic Impact Statement (Figure 14) shows crash history for the section of Mundaring Weir Road from Aldersyde to Fern. Two crashes were recorded in 2014 and one in 2016.
- Q5. I have lived in the area since 1951 and have observed on many occasions bad and dangerous driving. Visitors often do not take due care of the prevailing road conditions. Drivers become impatient when stuck behind slow vehicles or bicycles and overtake when it is not permitted by road markings. Kalamunda has a large number of bicycles visiting the town and area. Whereas these are concentrated on weekends, smaller numbers visit us during the week. One or two bikes on Mundaring Weir Road often cause various levels of driver frustration, and all too frequently to road rage and dangerous driving.
- A5. Noted.
- Q6. Most of the access to Mundaring Weir Road is via the Kalamunda town site and its limited feeder routes already suffer from congestion and the additional 200+ vehicles will have the potential to extend or exacerbate the current peak period congestion times.
- A6. The Traffic Impact Statement shows in Table 5 that the level of service for intersections around the site maintain an 'A' standard up until the Sunday peak traffic projected for 2051 which drops to a 'B' standard. This means that intersections will operate without congestion.

- Q7. There does not appear to be any economic solution to increasing the traffic flow capabilities into, through and around the townsite due to topographical features and existing development levels.
- A7. Traffic modelling shows 65% of traffic will be from the west (Kalamunda Town Centre) and 35% from the east.
- Q8. Noise levels in the town site are already objectional on weekends when large numbers of motorcycles and cars visit or transit through Kalamunda.
- A8. Noted. These concerns are beyond the proposed development application.
- Q9. What provisions have been made for overflow parking when onsite capacity has been exceeded?
- A9. There are no provisions for overflow parking. The maximum capacity is not able to be exceeded.
- Q10. The proposal appears not to have a contingency plan should the proposed treatment systems fail or not perform correctly and impact the water supply of the catchment area, local residents who are dependent on the local ground water supply and the tourists who utilise the walk trails lower down in the valley.
- A10. The wastewater has a failsafe mechanism, and the operational management plan has been recommended to be modified to include a requirement for a backup power source to be available at all times.
- Q11. Who will be responsible for the consequences and any remediation in the event of an adverse incident?
- A11. The onus is on the landowner to ensure that all conditions and management plans are implemented for the duration of the development. The City audits compliance with conditions for high-risk applications to ensure ongoing compliance. The responsibility for any incident will need to be assessed based on the particulars of an incident.
- 3.2 Dennis & Angela Jones, Piesse Brook (Questions received in writing)
- Q1. What is the time frame for this proposed development? Why was it deemed necessary to hold a Special Meeting during the Covid 19 crisis

when residents are necessarily focussed on family, health, schooling and job retention issues? Surely this development application could've waited until a later Ordinary Meeting.

- A1. The City has processed the application as further information has been made available.
- Q2. Did Council approve CR to operate as a restaurant catering for a maximum daily total of 350 persons, including staff and contractors, on 26 November 2012?
- A2. No. The Department of Health approved a wastewater treatment system for 350 persons.
- Q3. What conditions were placed on this approval and why was the number capped at 350?
- A3. The conditions the Department of Health placed on this approval related exclusively to the design, installation and ongoing management of the proposed wastewater system. The number was capped at 350 through negotiation with then Department of Water as they wanted to ensure that the impacts to the water catchment were appropriately managed.
- Q4. What is the status of this approval today?
- A4. The approval lapsed and is no longer applicable.
- Q5. What conditions have changed to now consider raising the total daily number to 480?
- A5. Further site investigations and details around the operation of the system. The application is for 480 persons and therefore the Council has an obligation to consider this number.
- Q6. CR was previously a restaurant that catered for indoor dining only, although there were a small number of tables outside. The current proposal includes provision for outside dining on the balcony and outdoor dining area. These outdoor additions will generate the most noise that will disturb many neighbours within the valley. Is there an estimate of the number of diners in these areas and is there any proposed live/recorded music being considered in the outdoor locations?

A6. The application does not specify the number of patrons in different areas of the site. Yes, external amplified music is proposed 9.00am to 6.00pm Mondays to Saturdays and 10.00am to 5.00pm Sundays and Public Holidays. A 10 Amp limit to power supply is proposed for external music.

Internal music is proposed to be limited from 9.00am to 9.00pm all days and is proposed to be background music, so visitors can have a conversation with music playing in the background. These details are provided in the Noise Management Plan.

Q7. The Applicant states that CR operated as a restaurant with approval for 350 patrons for over 30 years under the previous owner. Can Council please confirm this statement and provide details of any conditions of this earlier approval?

A7. Approval from 1975 has no patronage restriction but does have parking requirement of 93 bays.

Q8. The Applicant points out that the application is for "a restaurant and not an events venue or entertainment function centre". What is the difference in the approval process between these types of venues and does one type of venue attract more onerous conditions?

A8. They're different use classes under the City's Local Planning Scheme No.3

"restaurant/cafe" means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the Liquor Control Act 1988;

"reception centre" means premises used for hosted functions on formal or ceremonial occasions;

Roadworks

"Officers acknowledge that an increase in restaurant capacity will result in more traffic. The applicant provided a Traffic Impact Assessment demonstrating that subject to upgrades, access to the site can be acceptable."

Q9. Can Council please provide details of all road upgrades and how does Council measure "acceptable"?

A9. Crossover to Mundaring Weir Road requires redesign and construction. Basic left turn into the site needs to be constructed. Acceptability is based on compliance with Australian Standards and applicable Austroads standards.

Noise

“Officers acknowledge that restaurants are a generator of noise. The applicant has provided a noise management plan and subject to minor modifications, the noise management plan is considered to reduce noise to an acceptable level. Officers note that the restaurant will still need to comply with the Environmental Protection (Noise) Regulations.”

Q10. Can Council please advise how “an acceptable (noise) level is measured, especially to nearby residents and those in the valley, which is essentially an echo chamber.

A10. The legal standard for the measurement of noise is prescribed within S.20 of the Environmental Protection (Noise) Regulations 1997. It is important to note that measurements are required to be collected from the complainant’s property and not from the noise source.

3.3 Piesse Brook Preservation Group (Set 1) (provided in writing)

Q1. Does the Applicant intend to have Weddings at the Venue?

A1. The applicant has sought approval for an expansion of the restaurant, not a wedding venue.

Q2. Have Department of Water and Environmental Regulation (DWER) approved the Applicants wastewater management plan?

A2. No, DWER, as an advisory agency, are not supportive of the application. However, the City has given due regard to the comments of DWER in its assessment of the proposal.

Q3. Have DWER agreed to nutrient retention and setback distances to drinking water source protection areas?

A3. No, DWER, as an advisory agency, are not supportive of the application. However, the City has given due regard to the comments of DWER in its assessment of the proposal.

Q4. Has the Applicant provided the City with a summary of the economic benefits of a larger facility?

A4. No.

Q5. In the Agenda, page 28, Environmental Implications Item 135 – on balance the City considers that the strict compliance with the management and mitigation measures can be applied to the proposal. The proposed development is shown to have minimal environmental implication. The question:

- Who warrants the strict compliance?

A5. The City.

- What are the legal ramifications of failures to any of the compliances?

A Compliance action through the City's Local Planning Scheme and *the Planning and Development Act 2005*.

Q6. Have DWER expressed its concerns with storm water generation and dispersal in regard to contaminants (Hydrocarbons) especially from the car parking facilities?

A6. Yes.

Q7. On page 59 of the Middle Helena Catchment Strategy (MHCS) under recommendations – Refer all planning applications that are not consistent with the Strategy or with State Planning Policy 2.7 – Public Drinking Source Policy to the West Australian Planning Commission (WAPC), for advice, prior to determination.
Does the City intend to seek the advice of WAPC as this amendment is not consistent with the MHCS as evidence in the various DWER correspondences to the City?

A7. Restaurants can be considered subject to conditions and as such WAPC advice was not required to be sought.
Two points earlier in the recommendation of the MHCALUWMS it is clearly states that:

“Refer all planning applications that are listed as compatible with conditions in priority 2 and priority 3 areas in the Department of Water's water quality protection note Land Use Compatibility in Public Drinking Water Source Areas, including the variations contained in this strategy (table 7), to the Department of Water for advice and recommendations prior to determination, unless other referral arrangements have been agreed with the Department of Water (Shire of Kalamunda, Shire of Mundaring).”

As 'restaurant' is compatible with conditions and in a P2 area, this recommendation applies, not the later recommendation requiring WAPC determination. The City has referred to the Department of Water (now DWER), therefore a determination of the application is able to be made in a manner consistent with the MHCALUWMS.

- Q8. What is the definition of a Restaurant under the City's Town Planning Scheme No. 3 and does it comply with Priority 2 (P2) source protection of the MHCS?
- A8. "restaurant/cafe" means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the Liquor Control Act 1988; Restaurants can be considered in the P2 area, subject to conditions.
- Q9. The July 2019 correspondence from the City seeking Residents comments on the Amendment mention is made of DWER's concerns for the aquifers. The group has tested several bores in close vicinity and the water quality was of a high standard. Question, if bores are contaminated who is responsible?
- A9. It would depend on the source of the contaminate.
- Q10. Are the Council and DWER aware the dam on which the carpark storm water is being directed is a natural spring?
- A10. The City cannot answer for DWER. It appears that this feature is on a separate site.
- Q11. Sheppard Design Services drawing – mentioned the ATU is to have a bunding to retain spills or leakages. Does this not suggest that spills or leakages will occur and the ATU's positioning is very close to the Hacketts Gully waterways?
- A11. Proposed as a mitigation measure, should it occur.
- Q12. In the correspondence from DWER to the City dated 26 February 2020, DWER reiterates *"DWER cannot support the proposal for the reasons stated above. However, should the decision making authority resolve to approve the proposal, contrary to the DWER's advice, then the following conditions of approval are recommended:*
- A12. *Water Management Plan*

- *Prior to the commencement of site works, a Water Management Plan is to be prepared and approved, to the satisfaction of the Department of Water and Environmental Regulation and the City of Kalamunda.*
- *The approved Water Management Plan shall be implemented to the satisfaction of the City of Kalamunda.*

The Water Management Plan should identify and address all potential risks to water quality from the existing land uses and proposed development, including but not limited to:

- *wastewater loadings and management;*
- *nutrient budget and effluent disposal feeater from carparks and roads;*
- *management of irrigation and nutrients from landscaped areas;*
- *potential impacts and mitigation measures for onsite and offsite water quality if proposed management systems fail*

The Water Management Plan should be prepared in accordance with relevant Water Quality Protection Notes (WQPN) and guidelines including:

- *WQPN 25: Land use compatibility tables for public drinking water source areas;*
- *WQPN 70: Wastewater treatment and disposal – domestic systems*
- *WQPN 79: Rural restaurants, cafés and taverns near sensitive water resources;*
- *WQPN 88: Rural tourist accommodation;*
- *Middle Helena Catchment Area Land Use and Water Management Strategy.”*

Q13. Can the council satisfy DWER's conditions?

A13. The City will consult with DWER on the various aspects of the conditional requirements, should the application be approved and proceed.

Q14. Why has the Development Services not provided a Risk Management report for Bushfires?

A14. There is no requirement for a Risk Management Report to be provided in relation to bushfires. Other information in relation to bushfire is attached including a Bushfire Attack Level assessment, Bushfire Management Plan and Emergency Evacuation Plan.

Q15. Has the recommendations from correspondence from DFES to the City dated 5th May 2020 and which is contained in the Agenda's associated documents, been acted upon?

- A15. Conditional requirement as the matter is capable of being addressed.
- Q16. Why has the Development Services not provided a Risk Management Report for Traffic?
- A16. There is no requirement for a Risk Management Report to be provided in relation to traffic. Other information in relation to traffic is attached including a Transport Impact Statement.
- 3.4 Piesse Brook Preservation Group (Set 2) (provided in writing)
- Q1. In 2006 a request was made to initiate an amendment to the Scheme to allow for an Additional Use Restaurant to operate from Lot 3.
- Was the Applicant advised that the restaurant would cater for a maximum of 80 patrons/day and wastewater loads to have an output of less than or equal to 580litres/day?
- A1. Based on the information contained in the Minutes from the Planning Services meeting held 14 August 2006, the report, at the time, envisaged 80 patrons for the restaurant use (Paragraph 6 of Item 77). The report notes that the Draft Middle Helena Catchment Area Land Use and Water Management Strategy (at the time) identified a restaurant as a 'Conditional' use in P2 areas subject to wastewater loads having less than or equal to 540 litres per day.
- Q2. Did the Applicant propose that they would utilize the existing purpose buildings, and this would not entail any additional buildings or structures on site?
- A2. Based on the information contained in the Minutes from the Planning Services meeting held 14 August 2006, the report, at the time noted that:
- The applicant is proposing to utilise the existing purpose-built building for use as a restaurant, this will not entail any additional buildings or structures on the site (Paragraph 6 of Item 77).
- Q3. Did the Applicant also state that no vegetation would be removed?
- A3. Based on the information contained in the Minutes from the Planning Services meeting held 14 August 2006, the report at the time noted that: This will not necessitate the removal of any vegetation and will not compromise the objectives of the zone. (Paragraph 7 of Item 77).

Q4. Did the Shire not state in a meeting with the Proponent at a meeting on 11 March 2009 that restriction on Patron numbers (80/day) was a consequence of the site being in a Public Drinking Water Area and the condition was requested by the Department of Water?

A4. The City's record of the meeting indicate the following:
"...that a maximum of 80 persons per day may be accommodated in the Restaurant."

"...was a consequence of the site being in a public drinking water area and that the condition was requested by the Department of Water (DoW). It was imposed by the Shire on its planning consent as we are required to have due regard to State Policy and comments from State agencies."

Q5. Was it imposed by the Shire on its planning consent as the Shire are required to have due regard to State Policy and comments from State Agencies?

A5. Noted above.

Q6. At the same meeting to Question 2, was the Proponent advised that the current patron restrictions should be taken into account when contemplating the extensions, as even if the building area increased, there would not be an increase in the allowable number of Patrons?

A6. The City's record of the meeting indicates the following:

"...was strongly advised that the current patron restrictions should be taken into account when contemplating the extensions, as even if the building area increased, there would not be an increase in the allowable number of patrons. It was suggested that the patron number issues be sorted out before committing to the extensions, but ultimately this was a matter for the owners."

Q7. Is this now justification for the Patron numbers to increase because the floor area of the restaurant has increased?

A7. A number of considerations have been taken into a account in relation to patron numbers, not just the size of the existing built form. These various considerations are outlined in the City's report.

Additional Information from the City:

Notwithstanding the information above, the City's records indicate that the proposed Scheme Amendment, the subject of the 14 August 2006 report, was withdrawn on 25 Jan 2007.

3.5 Piesse Brook Preservation Group (Set 3) (provided in writing)

Q1. When operational did the original Chalet Rigi have an approval patronage number of 350 persons/day set by the then Shire of Kalamunda?

A1. No.

Q2. In June 2008 the Shire granted a DA for the restaurant to reopen. It did so with conditions, one of which was patronage numbers being 80 persons. The DA approval was for 2 years. The approval lapsed in 2010. Question: did the approval for the 80 patrons also lapse?

A2. The development was substantially commenced and as such, the approval did not lapse.

Q3. The building permits – number 2012-1083 and 20151193 were issued to the Applicant June 2010 by the Shire to increase the existing restaurant envelope. Question: is the City aware of the conditions set for the granting of the permits and specifically the Shire President's clear comments to the Applicant?

A3. Yes, the City is aware of the conditions set on the permit. No, the City was not able to source the comments from the then Shire President.

3.6 Paul & Janine Smith, Piesse Brook (provided in writing)

Q1. Can you advise what the City of Kalamunda and Councilors have done to address the concerns by those who have submitted objections? Have they met or spoken with everyone who has submitted the objections?

A1. Further information has been requested from the application in response to issues raised. Meetings have been held with objectors, where requested.

Q2. Has information requested by the residents of Piesse Brook been provided to them in a timely manner with reasonable time to review?

A2. The application was referred to residents for comment. There is no requirement under the City's Local Planning Scheme No.3 to re-advertise further information provided as part of the assessment process.

Q3. It appears that the City of Kalamunda has relied only on the information provided by the applicant? Can you confirm if the Shire has completed its own independent reviews on any of the main concerns (traffic, noise, fire)?

Or, as it appears, the City of Kalamunda has relied only on the information provided by the applicant?

- A3. The City has reviewed the information provided by the applicant from the various disciplinary perspectives.
- Q4. As per the agenda there were 56 objections to the submission: In bringing this matter before Council for approval, is Council disregarding these objections? Why has the City of Kalamunda called a SPECIAL MEETING to approve this application, with less than a week's notice to opposing residents, and at a time wherein many people are unable to attend?
- A4. All objections have been documented and reported. The Special Council Meeting has been called for Council to consider the application.
- Q5. Has the City of Kalamunda ensured that the third parties who have provided reports and supporting documentation for this application are qualified to supply the advice and reports?
- A5. Verification of reports was undertaken.
- Q6. Has the City of Kalamunda ensured that the third parties who have provided reports and supporting documentation have no conflict of interest in this matter?
- A6. The City is unable to provide comment on third party conflicts of interest.
- Q7. All the Risk Management points on the agenda (136 – 140) are Significant, Possible, High – who will be monitoring and reporting on these risks in the future?
- A7. The City will monitor compliance for the conditions of the application which relate to the relevant risk considerations.
- Q8. The applicant is saying that he will do many things “once he opens” – will Council make approval conditional on these commitments? If they are not fulfilled, what would be the consequences for the applicant?
- A8. Compliance may be undertaken by the City through its planning scheme and the Planning and Development Act 2005.
- Q9. What would the council require the applicant to do to prevent his patrons trespassing onto the neighbouring properties? Are all fences around the proposed venue suitable as a boundary fence for a restaurant? There are dams and creeks on neighbouring properties.

A9. Any trespassing is a matter for the Police.

Application Type

Q10. Is this application for a restaurant or a function centre?

A10. Restaurant.

Q11. What is the maximum capacity of patrons of the venue at any one time?

A11. 480 per day, which include staff as well as patrons.

Q12. As per the Associated Documents the letter from SafeRight ([10.1.1.15 415 Mundaring Weir Road - Applicant Response to Submissions](#)) the application claims that the restaurant has only ever operated under approval for 350 patrons. Can the City of Kalamunda confirm the veracity of this claim, both historically and currently?

A12. Approval from 1975 has no patronage restriction but does have parking requirement of 93 bays. Approval from 2012 has a patronage restriction to 80 per day.

Q13. In attachment [10.1.1.15 415 Mundaring Weir Road - Applicant Response to Submissions](#) it states under TRAFFIC AND PARKING: "Production of a stand-alone Events Traffic Management Plan for any events outside of normal operating conditions (none currently planned), including traffic control, signage and marshals". Does this mean that if the applicant is granted approval by the City of Kalamunda the applicant already has the intention of holding events rather than operating a restaurant? If so why is this application for operation as a restaurant?

A13. No, any special event applications will have to be assessed on their merits.

Q14. Attachment 8.1.1.15 states the following: "An operational and marketing focus on a family-friendly venue suitable for daytime and group visitors particularly in the mid-week when other nearby venues are closed, including:

- Self-drive families or group visiting the Hills in the daytime
- Tour buses exploring Hills wineries/cideries and wanting to have a sit-down lunch or Local clubs wanting to host group meals in the daytime e.g. WA Seniors, Red Hatters or Cyclists using the road or mountain bike networks, typically mornings and lunch.

This focus will ensure that the peak flow of visitors will be around 11 am – 2 pm (i.e. not during main commute times). More information is provided in the Operational Management Plan (January 2020)."

If the main focus is on day time visitors during the mid-week why is approval being sought to be open until 10pm on week nights and 12pm on weekends?

- A14. The City has assessed the application based on proposed operational times.
- Q15. Can Council advise what other restaurant in the City of Kalamunda has a capacity of 480 people? This seems very excessive for a restaurant – these numbers seem more aligned to a function center?
- A15. The City is not aware of any restaurant that has the capacity for specifically, 480 persons per day.
- Q16. Under the Advice Notes G) "The applicant is advised that if the proposed premises or part thereof will be available for hire then an application for a Certificate of Approval under the Health (Public Buildings) Regulations 1992 must be submitted to the City of Kalamunda and approved prior to use of the building." Again, is this application for a restaurant or should it be a function centre if the applicant already has intention of hiring the premises out (and the City of Kalamunda is already aware of this)?
- A16. The application is for a restaurant.
- "restaurant/cafe" means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the Liquor Control Act 1988;
- "reception centre" means premises used for hosted functions on formal or ceremonial occasions.

Water Contamination

- Q17. Who is going to take responsibility for possible water contamination given that the City of Kalamunda has not taken the advice of DWER who have advised that there should only be a maximum of 80 patrons?
- A17. The onus is on the landowner to ensure that all conditions and management plans are implemented for the duration of the development. The City audits compliance with conditions for high-risk applications to

ensure ongoing compliance. The responsibility for any incident will need to be assessed based on the particulars of an incident.

Q18. Who will be undertaking the regular water testing to check for contamination and where will the test water be taken from in Hacketts Gully?

A18. Responsibility of the applicant, to the satisfaction of the City.

Q19. Will the City of Kalamunda be undertaking its own water quality tests before approval is granted to provide a base-line of water quality?

A19. The City has undertaken its own water monitoring for this area.

Q20. Does approval of this development application set precedent for other such developments to be undertaken in the area in contravention of State Government regulations and recommendations? Or is this development, for some reason, to be given special status?

A20. Each application will have to be assessed on its merits.

Noise

Q21. On the noise report – Page 58 – can you clarify what “Thick Glass Windows” means? Is there a noise rating on these windows?

A21. Question for the applicant.

Q22. As per the noise report the owner is going to be responsible for dealing with noise complaints – isn't this like putting the fox in charge of the hen house?

A22. The proponent handles noise complaints in the first instance, if the City receives complaints the approval/conditions don't absolve the City of the responsibility for investigating and actioning complaints received.

Q23. He has mentioned in the noise report on page 54 – some isolated variances may be expected from the above operating hours and conditions, although these would be limited to isolated occurrences on special events e.g. birthday celebrations. Is this statement forewarning that the applicant is going to disregard the rules whenever it suits – how is this going to be managed by the City of Kalamunda? This statement also makes it obvious that the applicant fully intends to hold functions at the venue – even though he is applying for approval for a restaurant.

- A23. Any complaints or incidents will need to be assessed and managed by the City.
- Q24. Has the City of Kalamunda considered the consequences for the surrounding residents of 480 people leaving a restaurant between 12am – 1am? We would consider this to be unreasonable?
- A24. Details are outlined in the report.
- 3.7 Digby Johnston, Piesse Brook
- Q1. Has the City issued an approval for 350 patrons at the venue?
- A1. The City has not issued planning approval for 350 patrons the City issued planning approval was for 80 patrons. There was subsequently a Department of Health Approval for a wastewater treatment system which allowed for patronage of 350. However, the planning approval only allowed for 80 patrons.
- Q2. Did the approval granted in 2011 lapse?
- A2. The development was substantially commenced and as such the approval for 80 patrons did not lapse.
- Q3. Is the City aware of the conditions set granting the set granting the permits and specifically the Shire President's clear comments to the applicant?
- A3. Yes, the City is aware of the conditions set on the building permit, but the City was not able to source any record or information of a previous Shire President making any comments to the applicant.
- Q4. Does the applicant intend to have weddings at the venue?
- A4. The applicant has sought approval for the expansion of the restaurant, not specifically for a wedding venue.
- Q5. Has the Department of Water and Environmental Regulation (DWER) approved the applicant's wastewater management plan?
- A5. No. The Department of Water, as an advisory agency, are not supportive of the application which is evidenced in the City report. However, the City has given due regard to the comments of DEWAR in its assessment of the proposal and this is outlined in the report

- Q6. Have DEWAR agreed to nutrient retention and set back distances to drinking water source protection areas?
- A6. No. The Department of Water, as an advisory agency, are not supportive of the application which is evidenced in the City report. However, the City has given due regard to the comments of DEWAR in its assessment of the proposal and this is outlined in the report.
- Q7. Has the applicant provided the City with a summary of the economic benefits of a larger facility?
- A7. No.
- Q8. In the agenda on page 28 environmental implications point 135 *"On balance, the City considers that subject to strict compliance with the management and mitigation measures which can be applied to the proposal, the proposed development is shown to have minimal environmental implications."* Who warrants the strict compliance? What are the legal ramifications of failure of the compliance?
- A8. The City will regulate compliance should the application be approved with the relevant conditions. Should compliance not be met there are penalties under the City's Local Planning Scheme and the *Planning and Development Act* for no compliance with conditions.
- Q9. Have DWER expressed its concerns with storm water dispersal in regards to contaminants and hydrocarbons especially from the carparking facility.
- A9. Yes.
- Q10. On page 59 of the Midland Helena Catchment Strategy (MHCS) under recommendations "refer all planning applications that are not consistent with the strategy or with State Planning Policy 2.7- *Public Drinking Source Policy* to the Western Australian Planning Commission (WAPC) for advice prior to determination." Does the City intend to seek the advice of the WAPC as this amendment is not consistent with MHCS as evidence in the various DWER correspondences to the City.
- A10. The City has considered this specific clause and points within the MHCS and has complied with that in terms of referring the application to the Department of Water for comment based on the City's assessment of the strategy there is no requirement to refer the application to the WAPC.
- Q11. What is the definition of a restaurant under the City's Town Planning Scheme 3 and does it comply the Priority 2 (P2) Water Source Protection for the Midland Helena Catchment?

- A11. I will quote the City's planning scheme in regard to the definition of restaurant *"restaurant/cafe" means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the Liquor Control Act 1988;"*
- Restaurant's can be considered in P2 Drinking Water Source Areas subject to conditions.
- Q12. Are the council and DWER aware that the dam on which the car park storm water is being directed is a natural spring.
- A12. The City cannot answer for DWER. It appears this feature is on a separate site.
- Q13. Shepherd Design services drawing mentioned the ATU is to have a bunding to retain spills and leakages. Does this not suggest spills and leakages will occur and the ATU positioning is very close to Hacketts Gully waterways?
- A13. The bunding is a proposed mitigation measure **should** it occur.
- Q14. In accordance with DWER to the City dated 26 February 2020 DWER reiterates *"DWER cannot support the proposal for the reasons stated above, however should the decision making authority resolve to approve the proposal contrary to DWERs advice then the following conditions of approval are recommended:*
- Water Management Plan – prior to the commencement of any site works a management plan is to be prepared and approved to the satisfaction of the Department of Water and Environmental Regulation and the City of Kalamunda. The approved water management plan shall be implemented to the satisfaction of the City of Kalamunda. The water management plan should identify and address all potential risks to water quality from the existing land uses and the proposed development including but not limited to; waste water loadings and management, nutrient budget and efficient disposal field details, management of storm water from carparks and roads, management of irrigation and mitigation measures for on-site and off site water quality if proposed management systems fail. The water management plan should be prepared in accordance with the relevant water quality protections notes and guidelines including WPQN25, WPQN70, WPQN79, WPQN88 and Midland Helena Catchment Area Land Use and Water Management Strategy."* Can the City satisfy DWERs conditions?

- A14. The City will consult with DWER on various aspects of the conditional approval should the application be approved and proceed.
- Q15. Why has the City not provided a Risk Management Report for bushfire?
- A15. There is no requirement for a Risk Management Report to be provided in relation to bushfire. Other information in relation to bushfire is attached to the report including a Bush Fire Attack Level Assessment, a Bushfire Management Plan and an emergency evacuation plan.
- Q16. Does the recommendations from correspondence from DFES to the City dated 5 May 2020, which is contained in the Agenda's associated documents been acted upon.
- A16. They are conditional requirements and are matters which can be address by a conditional requirement on the advice from DFES to the city's satisfaction.
- Q17. Why has the City not provided a Risk Management Report for traffic?
- A17. There is no requirement for a Risk Management Report to be provided in relation to traffic. Other information in relation to traffic is attached to the report including a Transport Impact Statement.

3.8. Steven Oxley, Piesse Brook

Q1. As the sound echoes across the Valley. Is there to be a curfew on music activities at the venue?

A1. The Operational Management Plan attached to the agenda item indicates external amplified music is proposed between 9am and 6pm Mondays to Saturday and 10 am to 5pm on Sunday and public holidays. A 10amp limit to power supplies is proposed for external music. Notwithstanding these stipulations the applicant is required to comply with the environmental regulations in terms of noise and any complaints in regard to noise will be investigated by the City and may include noise monitors and other equipment being installed at residences should there be issues with noise and testing those measurements and readings against the noise regulations.

3.9 Mike Longo, Piesse Brook

As stated in the City's report (point 136) there is a high risk of water contamination and likelihood is possible. It states that the water will be tested every 2 years which is not frequent enough and City's

recommendation is twice a year which is still not acceptable, and any contamination could cause significant damage in this time.

Q1. Could this be changed to testing at least every month whilst the creek is actively running (July till November) as nearby properties solely rely on ground water for domestic use and primary production?

A1. The City has sought advice in relation to monthly testing. This would not be necessary unless there was or had been an issue with the system. The advice received is that twice yearly would suffice. If Council is of a mind the requirement in the recommendation could be changed for consideration.

Q2. There is also a concern for the lack of sustainability with the current system. Water is such a precious commodity it would be preferable to use a system where it can be reused rather than wasted. Point 7.3 in the water report states the soil removes all the gut bacteria and viruses and then point 11 states the water is sterile, clear, and odourless so which is correct?

A2. In relation to the particulars around what is in the report my understanding is the system treats the water to the point it is suitable for irrigation.

Q3. Could an ATU system be used where the water could be recycled and used again for at least non-potable purposes which would reduce any risk of contamination in the water catchment area?

A3. In relation to the system being used for non-potable purposes my understanding is the wastewater system is not at that point nor supported by the department of health. The system proposed does have dripline irrigation areas.

4. Petitions/Deputations

4.1 A deputation was received from Francesca Flynn of Evergreen Consultancy, representing the owner, Future Design Holdings Pty Ltd, regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Flynn spoke in favour of the application.

4.2 A deputation was received from Frank Lindsey regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Mr Lindsey spoke in relation to bushfire risk associated with the development.

- 4.3 A deputation was received from Geoff Bower regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Mr Bower spoke in relation to effect on the amenity and environmental impacts of the neighbours associated with the development.

The Presiding Member adjourned the meeting from 7:55pm to 8:05pm. All Elected Members and staff returned. All members of the gallery remained.

- 4.4 A deputation was received from Mr Tim Houweling, Cornerstone Legal, representing the Piesse Preservation Group regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Mr Houweling spoke in relation validity of the application.
- 4.5 A deputation was received from Ms Peta Stewart regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Stewart spoke in relation to effect on the amenity of the neighbours associated with the development.
- 4.6 A deputation was received from Ms James Evans regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Mr Evans spoke in relation to effect on the amenity of the neighbours associated with the development.
- 4.7 A deputation was received from Ms Rosemarie Parker regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Parker spoke in relation to effect on the amenity of the neighbours associated with the development.
- 4.8 A deputation was received from Mr Mack McCormack, Future Design Holdings Pty Ltd, regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Mr McCormack spoke in favour of the application.
- 4.9 A deputation was received from Mr Nikolai Mehanikov regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Mehanikov spoke in relation to effect on the amenity of the neighbours associated with the development.
- 4.10 A deputation was received from Mr Kevin Bennett, representing the Kalamunda Chamber of Commerce, regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Bennett spoke in relation spoke in favour of the application.

5. Announcements by the Member Presiding Without Discussion

- 5.1 The Presiding Member invited Mr Lindsay Steven, water consultant, to present an overview of works undertaken and issued raised during deputations.

Mr Stevens provided input in terms of approvals and works undertaken by the applicant. Mr Stevens has undertaken an extensive review of the development site and has made recommendations to the City.

Mr Stevens provided a comprehensive report to the meeting.

6. Matters for Which the Meeting may be Closed

- 6.1 Nil.

7. Disclosure of Interest

7.1. Disclosure of Financial and Proximity Interests

- a. Members must disclose the nature of their interest in matter to be discussed at the meeting. (Section 5.56 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Section 5.70 of the *Local Government Act 1995*.)

- 7.1.1 Nil.

7.2. Disclosure of Interest Affecting Impartiality

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

- 7.1.1 Nil.

8. Reports to Council

8.1. Development Services Reports

8.1.1. Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

Previous Items	PS8/2010
Directorate	Development Services
Business Unit	Approval Services
File Reference	DA18/0405
Applicant	Future Design Holdings Pty Ltd Francesca Flynn – Evergreen Consultancy
Owner	Future Design Holdings Pty Ltd
Attachments	<ol style="list-style-type: none">1. Site Plan [8.1.1.1 - 1 page]2. Department of Biodiversity, Conservation and Attractions (DBCA) Response 7 April 2020 [8.1.1.2 - 3 pages]3. Department of Health (DOH) Referral Comments [8.1.1.3 - 2 pages]4. Department of Water and Environmental Regulation (DWER) Response [8.1.1.4 - 4 pages]5. Department of Fire and Emergency Services (DFES) Response [8.1.1.5 - 3 pages]6. Smith Consulting Bushfire Attack Level (BAL) Report [8.1.1.6 - 19 pages]7. Bushfire Management Statement [8.1.1.7 - 1 page]8. Emergency Evacuation Plan for Chalet Rigi [8.1.1.8 - 18 pages]9. Evergreen Noise Management Plan [8.1.1.9 - 9 pages]10. Evergreen Water and Stormwater Management Report [8.1.1.10 - 133 pages]11. Shawmac Transport Impact Statement [8.1.1.11 - 28 pages]12. Chalet Rigi Operational Management Plan (OMP) [8.1.1.12 - 40 pages]13. Submissions List [8.1.1.13 - 110 pages]14. Advertising Map with 300m overlay [8.1.1.14 - 1 page]

15. Applicant Response to Community Submissions and Department of Water Environment Regulation [8.1.1.15 - 12 pages]
16. Independent Peer Review [8.1.1.16 - 27 pages]
17. Plans of Existing Building [8.1.1.17 - 3 pages]
18. Cross Section and 3D Concept plans [8.1.1.18 - 3 pages]
19. Roof Plans [8.1.1.19 - 1 page]

Cr O'Connor foreshadowed a procedural motion to adjourn the meeting to a future date to allow Councillors and the Community more time to read and understand the information presented. Cr O'Connor requested any additional information be made publicly available on the City's Website prior to the recommencement of the meeting. The procedural motion received a seconder before being put to the vote.

PROCEDURAL MOTION

RESOLVED SCM 72/2020

That this meeting now adjourns until 6.30pm on Tuesday 2 June 2020.

Moved: **Cr Dylan O'Connor**

Seconded: **Cr Janelle Sewell**

Vote: **CARRIED UNANIMOUSLY (11/0)**

The meeting adjourned at 9:30pm.

During the period of the adjournment additional information and an amended officer recommendation was made available to the public by way of an additional attachment to the Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers (Attachment 8.1.1.20)

Following the adjournment, the meeting reconvened on Tuesday 2 June 2020.

The Presiding Member opened the meeting at 6:34pm and welcomed Councillors, Staff and Members of the Public Gallery. The Presiding Member also acknowledged the Traditional Owners of the land on which we meet the Whadjuk Noongar people.

Attendance, Apologies and Leave of Absence Previously Approved

Councillors

South East Ward

John Giardina
Janelle Sewell
Geoff Stallard

South West Ward

Lesley Boyd
Mary Cannon
Brooke O'Donnell

North West Ward

Cr Sue Bilich (arrived at 6:46pm)
Lisa Cooper
Dylan O'Connor

North Ward

Cameron Blair
Kathy Ritchie
Margaret Thomas JP (Mayor) Presiding Member

Members of Staff

Chief Executive Officer

Rhonda Hardy

Executive Team

Gary Ticehurst - Director Corporate Services
Brett Jackson - Director Asset Services
Peter Varelis - Director Development Services

Management Team

Regan Travers - Principal Statutory Planner

Administration Support

Darrell Forrest - Governance Advisor
Cam Jones - IT Coordinator (Live Streaming Technician)
Donna McPherson - Executive Assistant to the CEO
Kaitlan Schilling - Executive Assistant to Director Development Services

Members of the Public 20

Members of the Press Nil.

Apologies Nil.

Leave of Absence Previously Approved Nil.

The Presiding Member advised the meeting that additional deputations have been accepted.

- 4.11 A deputation was received from Mr George Watts, representing Herring , Storer Accoustics on behalf of the Piesse Brook Preservation Group, regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Watts undertook an independent assessment of the noise impact information provided by the applicant in relation to the development.
- 4.12 A deputation was received from Mr Phil Stewart regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Mr Stewart spoke in relation to effect on the amenity of the neighbours associated with the development.
- 4.12 A deputation was received from Ms Linda Munroe regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Munroe spoke in relation to effect on the amenity of the neighbours associated with the development.
- 4.13 A deputation was received from Mr Nathanael Altinier regarding Item 8.1.1 Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers. Ms Altinier spoke in relation to effect on the amenity of the neighbours associated with the development.

8.1.1. Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application to Increase Patron Numbers

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

Previous Items	PS8/2010
Directorate	Development Services
Business Unit	Approval Services
File Reference	DA18/0405
Applicant	Future Design Holdings Pty Ltd Francesca Flynn – Evergreen Consultancy
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Attachments	1. Site Plan [8.1.1.1 - 1 page]

2. Department of Biodiversity, Conservation and Attractions (DBCA) Response 7 April 2020 [**8.1.1.2** - 3 pages]
3. Department of Health (DOH) Referral Comments [**8.1.1.3** - 2 pages]
4. Department of Water and Environmental Regulation (DWER) Response [**8.1.1.4** - 4 pages]
5. Department of Fire and Emergency Services (DFES) Response [**8.1.1.5** - 3 pages]
6. Smith Consulting Bushfire Attack Level (BAL) Report [**8.1.1.6** - 19 pages]
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18. Cross Section and 3D Concept plans [**8.1.1.18** - 3 pages]
19. Roof Plans [**8.1.1.19** - 1 page]
20. Modified Officer Recommended Conditions Lot 3 (415) Mundaring Weir Road, Piesse Brook - Application

TYPE OF REPORT

- Advocacy When Council is advocating on behalf of the community to another level of government/body/agency
- Executive When Council is undertaking its substantive role of direction setting and oversight (eg accepting tenders, adopting plans and budgets)
- Information For Council to note
- ✓ Legislative Includes adopting Local Laws, Town Planning Schemes and Policies. When Council determines a matter that directly impacts a person's rights and interests where the principles of natural justice apply. Examples include town planning applications, building licences, other permits or licences issued under other Legislation or matters that could be subject to appeal to the State Administrative Tribunal

STRATEGIC PLANNING ALIGNMENT

Kalamunda Advancing Strategic Community Plan to 2027

Priority 3: Kalamunda Develops

Objective 3.3 - To develop and enhance the City's economy.

Strategy 3.3.1 - Facilitate and support the success and growth of industry and businesses.

Priority 3: Kalamunda Develops

Objective 3.4 - To be recognised as a preferred tourism destination.

Strategy 3.4.1 - Facilitate, support and promote, activities and places to visit.

Strategy 3.4.2 - Advocate and facilitate diversification options for the rural properties to flourish.

EXECUTIVE SUMMARY

1. The purpose of this report is to consider an application to amend an existing planning approval for a restaurant to increase the total number of patrons and staff from 80 to 480 per day at Lot 3 (415) Mundaring Weir Road, Piesse Brook (subject site).
2. The site has particular topographical features and is located within the Helena Pipehead Water Sub-catchment, which is a Priority 2 (P2) Public Drinking Water Source Area.

3. The application was advertised to landowners and occupiers within an 800 metre to 1 kilometre radius and included referral to four State Government agencies.
4. The responses during the consultation period identified concerns with the proposed increase in patrons. To ensure the technical considerations in relation to wastewater and potential impacts on the P2 Public Drinking Water Source Area are appropriately considered, the City has sought an independent peer review of documents provided by the applicant and submissions received from the Department of Water and Environmental Regulation (DWER) and Department of Health (DOH) as they relate to wastewater disposal.
5. It is recommended that Council approve the application, subject to conditions.

BACKGROUND

6. **Land Details:**

Land Area:	26,069m ² (2.61ha)
Local Planning Scheme Zone:	Rural Landscape Interest
Metropolitan Regional Scheme Zone:	Rural

7. **Summary of Previous Approvals**

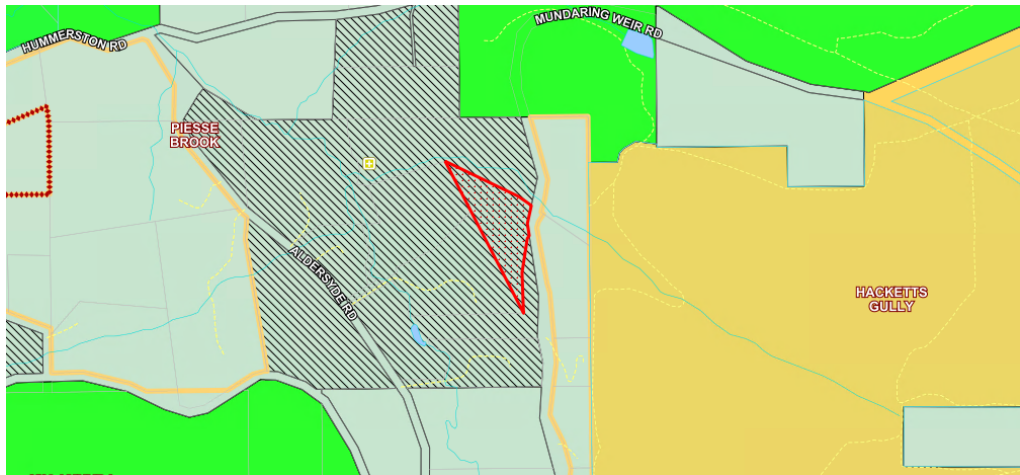
The application seeks to amend the planning approval issued on 24 November 2011 which approved 'additions to existing restaurant' with a condition restricting the number of patrons to 80 per day.

8. The number of 80 reflected the then advice from the DWER which recommended that 80 patrons was the maximum which would not cause risk to the environment and water catchment.
9. In support of the approval at 80 patrons per day, the applicant applied to the Department of Health, which approved an effluent disposal system which had the capacity for 350 patrons per day.
10. The restaurant, while not currently operational, has existed on the land in various iterations (and ownership) as far back as 1946.

11. **Locality Plan:**



12. **Local Planning Scheme Map:**



DETAILS AND ANALYSIS

13. Existing Approvals

Planning approval was issued on 24 November 2011 which provided for 'additions to existing restaurant' with a condition restricting the number of patrons to 80 per day.

14. While the focus of this application is the change to the maximum number of 80 patrons, it is important to note that while the restriction was applied in 2011, the nature of the additions to the restaurant reflected the scale of a restaurant with the potential to accommodate a larger capacity.

15. With a valid planning approval, building permits followed, and the site works were substantially commenced.

16. Site Constraints

The subject site has a number of natural constraints.

17. The sloped topography of the site results in limited areas of flat land, which make it challenging to accommodate infrastructure such as car parking areas and wastewater irrigation areas. Flat areas of land have been constructed on the site, over a number of years.

18. The site has a small frontage to Mundaring Weir Road which limits safe access opportunities to the existing crossover area.

19. As the restaurant and ancillary buildings are set in location, the additional infrastructure required to support additional patrons is required to fit around those fixed features.

20. Wastewater

Due to the size of the lot and the fact that sections of undeveloped areas are not effective areas for wastewater irrigation, the proposed irrigation area has been designed to fit on two separate areas of the site which have the required soil permeability. It is a common occurrence for irrigation areas to be split-up across a property in order to maximise their efficiency and minimise environmental risks. As the minimum irrigation area has been met, and the irrigation areas have been verified through soil analysis as being sufficient and practically implementable, the analysis of wastewater can shift its focus to the site's location within a Priority 2 (P2) public drinking water source area.

21. The proposed development by virtue of its increase in intensity has the potential to increase risk to the public drinking water source area, which would not be consistent with the applicable planning framework. However, the City considers that it is through the detail of an application that risk minimisation can be achieved, rather than by providing an arbitrary land use exception or limited number of patrons.

22. Scale of the expansion

As the built form of the facility has been established through existing approvals, the focus of this application is on elements of the site which are required to be modified in order to specifically accommodate the 480 patrons per day including staff.

23. In some ways, the fact that the built form of the restaurant already exists, is a mitigating factor on the issue of the scale of the development, as this application proposes to put in place the additional supporting infrastructure which did not form part of the 2011 planning approval. The result is that the number of patrons sought, as part of this application, matches the scale of the existing facility.

APPLICABLE LAW

Planning and Development (Local Planning Schemes) Regulations 2015

- 24. The assessment of planning applications is required to consider the 'matters to be considered' which can be found in Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* 'deemed provisions'. As required by planning legislation, the detailed planning assessment is attached to this report.
- 25. The associated recommendation is based on due regard being given to all relevant matters to be considered, with the level of due regard at the discretion of the decision maker.

City of Kalamunda Local Planning Scheme No.3

- 26. Site Requirements
Table 2 – Site Requirements of the Scheme sets out requirements for the siting and location of development on 'Rural Landscape Interest' zoned land.
- 27. The City notes that the site requirements in Table 2 typically apply to applications where new buildings are proposed. In this situation, the buildings are existing and are not subject to modifications. However, site works are proposed for wastewater irrigation tanks and parking. To consider the consistency of those works with Scheme provisions, an assessment table is provided below:

Element	Requirement	Proposed	Compliance Level
Front Setback	20m	112m	Compliant
Minor Street Setback	15m	N/A	N/A
Side Setback	15m	3m to irrigation tanks. 1.5m to irrigation area.	Not Compliant

Rear Setback	15m	60m	
Site Coverage	N/A		
Plot Ratio	N/A		
Landscaping	N/A		

Note: The proposal does not involve new buildings, therefore boundary setbacks do not apply.

28. Based on the low visual impact of car parking, fill and inward-facing works required to establish the wastewater irrigation areas of the site, the City considers the works associated with the restaurant expansion to be appropriately located on the site. While the carpark areas are visible from Mundaring Weir Road, the new works required to facilitate the proposed additional capacity are unlikely to adversely impact the amenity of the street or neighbours to an unacceptable extent. For a setback variation to have an impact on the amenity of the street or neighbours, the works within the setback would need to have an increased impact, by virtue of the reduced setback. In this case, the works components of the carpark and irrigation areas would have the same limited impact whether they were within the setback areas or were setback compliant.

29. Buildings, wide crossovers and retaining walls are forms of development which someone can reasonably expect to see in the 'Rural Landscape Interest' zone. The expectation of the Scheme is not that works for new facilities have no impact at all, instead the expectation is that the visual impact related to site setbacks have an acceptable impact. It is on that basis that the City considers the proposed development to meet the site requirements of the Scheme, although they do not strictly apply as no new buildings are proposed.

30. Car Parking / Bicycle Facilities
 Clause 5.7 of the Scheme requires car parking to be provided for development in accordance with Table 3 of the Scheme.

31. Table 3 requires one car parking bay for every 4 persons to be accommodated. Based on a maximum capacity of the site (including staff), of 480 persons, a total of 120 car parking bays are required to be provided on the site.

32. The proposed plans show 104 car parking bays in the southern section of the site, with parking for 47 cars shown in the northern section of the site, for a total of 151 car parking bays to be provided on-site.

33. The City's review of the site plan notes that some proposed bays may need to be redesigned in order to meet Australian Standards for car parking areas, this would result in the loss of some car parking bays.
34. Given the proposed development provides more car parking than the minimum Scheme requirements, the City considers car parking requirements of the Scheme to be met. Any modifications to meet standards will be able to be accommodated without reducing the parking below the Scheme requirements.
35. The City considers the provision of bicycle parking 'U-racks' as a relevant consideration given Mundaring Weir Road is popular with road-cyclists, and the proposed use is located in close proximity to popular mountain-biking trails. Specific requirements for bicycle related infrastructure are discussed in the State Planning Policy section of this assessment.
36. Rural Landscape Interest Zone Requirements
Clause 5.10.2 of the Scheme specifies land use and development requirements which apply specifically to all land included in the Rural Landscape Interest zone.
37. Provisions (a), (b), and (d) of Clause 5.10.2 are relevant to development proposals which involve agricultural style activities, and are not relevant to the capacity increase of the restaurant.
38. *(c) The clearing of natural vegetation will be permitted only in accordance with Clause 5.18 'Tree and Vegetation Preservation' of the Scheme.*
39. Part (c) of Clause 5.10.2 will be addressed at the Tree and Vegetation Preservation section of the report below. For the purpose of this zone requirement, the installation of the carpark and wastewater irrigation areas are the elements of the proposal which would result in vegetation being removed. If Council approves the application, it will be giving permission for vegetation to be removed in accordance with the proposed plans. As a result, that will mean compliance with Clause 5.18 of the Scheme.
40. *(e) Local Government shall have regard for clauses 2.1, 2.2, 2.3 and 2.4 relating to Planning Policies of the Scheme when considering any application for development within the zone.*
41. The above quoted clauses relate to the preparation of new planning policies and the required administrative procedure. All relevant planning policies are considered in this planning assessment.

42. (f) *The minimum setback for structures and buildings from lot boundaries in this zone shall be as per Table 2, unless otherwise approved by the local government.*
43. As discussed in the Site Requirements section of this assessment, the proposal does not involve new buildings, therefore boundary setbacks do not apply. The City notes that the wastewater system does require the installation of underground tanks. These are proposed three metres from the side boundary of the site. Given that they are installed underground, the City considers these works to have no amenity impact. As there is, generally, no amenity impact of underground works, the City considers the proposed development to be consistent with Clause 5.10.2(f) of the Scheme.
44. Overall the City considers the proposed development consistent with the specific Scheme requirements for the Rural Landscape Interest zone, for the following reasons:
1. Vegetation removal is related to the historical use of the site and topography; and
 2. Works within setback areas have an acceptable amenity impact.
45. Tree and Vegetation Preservation
Clause 5.18 of the Scheme provides restrictions for the removal of vegetation, however if the application is approved, removal of vegetation to implement the approval will not require a clearing permit through DWER. It is likely that to install car parking areas and wastewater irrigation infrastructure required to facilitate the proposed development, vegetation will be required to be removed from the site. The irrigation area is 4,120m², within which understorey vegetation will be removed to install irrigation lines. Significant stands of vegetation will be able to be retained. As stated earlier, if Council approves this application, the landowner will be able to remove vegetation required to implement their approval.
46. Middle Helena Catchment Area
Clause 6.6 of the Scheme includes specific requirements and assessment criteria for development proposed within the Middle Helena Catchment Area (MHCA). This section overlaps with the next part of the assessment, which is State Planning Policies. For the purposes of a consolidated analysis, the City will cover the assessment relating to the public drinking water source here, as the Scheme requirements provide more detail, and thus impact the recommendation on the proposed development.

47. Clause 6.6.2 provides objectives for the MHCA as follows:
- (a) *To ensure that the long-term quality of the Middle Helena catchment as a public drinking water source is not compromised;*
 - (b) *reduce potential nutrient, contaminant and sediment export into the Helena River; and*
 - (c) *provide a planning framework for land use decision-making for landowners and local and state government.*

48. Clause 6.6.4 of the Scheme states that the City 'may' refer development applications in this area to the Department of Water (now known as the Department of Water and Environmental Regulation – DWER). This provision specifically applies to land uses identified as being either:

- Compatible with conditions; or
- Incompatible.

With regard to the DWER's Water Quality Protection Note 25 (WQPN 25) which provides land use planning guidance, separate to the land use permissibility of the Scheme, effectively meaning that land use permissibility in the MHCA has two tests to pass, rather than just the Scheme.

49. It is important to note that WQPN's do not overrule any statutory obligation or government policy statement.
50. For a Priority 2 (P2) area, the aim is to maintain or improve the quality of the drinking water source with the objective of risk minimisation.
51. Table 2 of WQPN 25 lists 'Restaurant/Café' as an 'Incompatible' land use in a P2 area. However, Table 2 also denotes that Condition 35 applies, stating that land uses such as a restaurant are considered to be compatible with conditions in P2 areas, provided that 'proposals for onsite wastewater disposal should be consistent with the Government Sewerage Policy and will be assessed on an individual basis to consider site characteristics and management practices proposed'.
52. In relation to the permissibility of a restaurant in a P2 area, it can be considered, provided that:
- Onsite wastewater disposal is consistent with the Government Sewerage Policy; and
 - Site characteristics and management practices achieve the objective of 'risk minimisation'.

53. Clause 6.6.4 (a) of the Scheme provides an augmentation of the list of uses in the WQPN 25, by stating clearly that Restaurants 'shall be compatible with conditions' which is consistent with points (a) and (b) above.
54. Clause 6.6.5 of the Scheme states that incompatible land uses shall not be approved, but allows for the augmentation of Clause 6.6.4(a), which means 'Restaurant' can still be considered, subject to conditions.
55. Clause 6.6.7 of the Scheme provides the 'matters to be considered' when assessing a planning application. Regard is required to be given to:
- (a) Any advice received from the Department of Water (now DWER)*
56. In this context, the City has considered the comments of DWER and have gone to the extent of having the applicant's information independently peer-reviewed and compared to the comments received from DWER in Attachment 16 to this report.
57. To avoid duplication, refer to the State Agency Comment section of this assessment for discussion on the comments of the DWER.
- (b) The Department of Water's land use compatibility table in the water quality protection note, 'Land Use Compatibility in Public in Public Drinking Water Source Areas', incorporating the variations to that table specific to the Middle Helena catchment area (clause 6.6.5);*
58. The City has concluded that the 'Restaurant' land use is capable of being compatible, subject to conditions to enforce management and operations which are consistent with the P2 objective of minimising risk.
- (c) The recommendations of the Middle Helena Catchment Area Land Use and Water Management Strategy, particularly those specific to the relevant priority classification area.*
59. The Middle Helena Catchment Area Land Use and Water Management Strategy is a guiding document prepared by the Department of Planning (now Department of Planning, Lands and Heritage) on behalf of the Western Australian Planning Commission. The Strategy states that the potential water quality risks of restaurants are nutrients and pathogens from wastewater disposal, and sediment and hydrocarbons from car park run-off. The City agrees that these elements of the proposal pose the greatest risk and are also the key elements of physical works required in order to facilitate the additional restaurant capacity.

60. Key components of the management strategy are the implementation of a Special Control Area (which is a planning mechanisms to ensure key issues are addressed as part of planning proposals), and the requirement to refer development applications to DWER for comment.
61. The City considers the proposed development to match the Middle Helena Catchment Area Land Use and Water Management Strategy, with all relevant elements forming part of the assessment under the Scheme. The application has demonstrated that the development can be serviced with an appropriately sized wastewater irrigation area. On review of the application by the City from an Environmental Health perspective and on the recommendations within the peer review commissioned by the City, the proposal minimises risk to an acceptable level, this is further outlined in Table 12 of Attachment 10.
62. In addition to the measures outlined in Attachment 10, conditions of approval will be required to ensure the development continues to pose minimal risk to the PDWSA for the duration of its operation – should the restaurant expansion be approved.
63. Bushfire
Clause 6.7 of the Scheme refers to the requirements of development which is proposed in a bushfire prone area. The subject site is within a bushfire prone area, and the provisions of State Planning Policy 3.7 – Planning in Bushfire Prone Areas applies. To avoid duplication, discussion regarding bushfire impacts for the development are included in the State Agency Comment section of this report.

APPLICABLE POLICY

64. Local Planning Policy 11 – Public Notification of Planning Proposals

Advertising was undertaken in accordance with LPP11. The proposal was considered to have a localised impact which did not trigger ‘significant’ level advertising measures.
65. Instead the advertising radius was expanded from 300 metres up to 1000 metres, and the consultation timeframe was extended from 14 days to 28 days.
66. Detail of the consultation process and responses received are discussed in the Stakeholder Engagement section of this report.

STAKEHOLDER ENGAGEMENT

67. Overview
Consultation has occurred in accordance with Scheme provisions and is consistent with Local Planning Policy guidance.
68. Since the application was lodged, numerous revisions have been made to technical documents. To ensure that the level of information provided would have meaning for the community, documents were referred to State Agencies in advance of consultation with the community. As a result of this processes, documents and the proposal were revised. The revised proposal and documents were then referred to the community seeking feedback.
69. After advertising, the applicant was provided with a schedule of community submissions, and a copy of each State Agency submission.
70. Internal Referrals

Health

The City from an environmental health perspective, acknowledges that the application has undergone noteworthy modifications since the version which was subject to community consultation.
71. Further modifications are required to the Noise Management Plan as follows:
- Comparable values be added for noise sensitive premises;
 - Addition of Noise Contour Maps;
 - Noise complaints to be dealt with by the 'shift manager', rather than the owner of the venue; and
 - Identification of sources of external amplified music.
72. The irrigation areas are shown with a 1.5 metre setback, but this needs to be a minimum of 3 metres. This can be achieved with a modification to the site plan and Water Management Plan.
73. It is also noted that the amended design will require a new application and approval from the Department of Health.
74. *Engineering*

The City from an engineering perspective have noted that detailed design is required for car parking bays and crossover access.

75. It is common for applications to have limited engineering designs finalised at the planning application stage of development, as proposals are often subject to modifications.

76. In this instance, it has been demonstrated that the site has capacity to accommodate the required car parking and access.

77. Community

Landowners and occupiers within a 300 metre radius of the site were notified of the proposed development via letter, to meet the advertising requirements of LPP11. To ensure the City captured as many landowners and occupiers who may be affected by an amenity impact (noise, traffic), advertising extended beyond 300 metres across the valley, and between 800 metres to 1 kilometre along Mundaring Weir Road.

78. A total of 41 letters were sent. The technical documents were available to landowners, occupiers, and the general community on the City's website.

79. The advertising period was extended from 14 days to 28 days to provide additional time for the community to review the technical studies and provide comments.

80. At the conclusion of the advertising period, the City had received submissions from 67 different addresses and one petition objecting to the proposal with 82 signatures.

81.

Submission Comments	
Support	5
Object	56
Mixed	6
Total	67

82. The key areas of concern are outlined and discussed further below:

- Traffic Impacts;
- Noise from the Restaurant;
- Bushfire;
- Water Contamination; and
- Scale not consistent with the locality.

83. Traffic

The proposed development would increase the impact of traffic because of the increase in patronage and the fact that the restaurant would be a destination for visitors. Traffic can have impacts to safety, noise, and general rural amenity.

84. To address concerns regarding traffic safety, the City requested the Applicant provide a Traffic Impact Assessment (TIA), a copy of the traffic impact statement is contained within Attachment 11. The TIA indicates that the current entry to the site would not be able to accommodate safe turning movements into the site. Part of the existing crossover which leads to the future southern car parking area was not approved by the City and the verge will be required to be reinstated.
85. The City notes that improvements are required to the crossover and left turn movement into the site in order to safely accommodate the proposed development.
86. However, if the upgrades to the crossover and left turn lane were implemented, the access to the site would be sufficient to accommodate the traffic generated by the restaurant.
87. To address traffic concerns, the City recommends that conditions be added to the proposal to ensure the entry of the site is upgraded to a safe engineering standard and that the unapproved crossover is removed and reinstated to a verge standard.
88. Noise
The proposed development would increase the noise generated by the restaurant. To address noise concerns, the City requested the applicant provide a Noise Management Plan (NMP) to demonstrate how noise from the restaurant could be managed to a level where noise from the restaurant would have an acceptable noise impact on the locality. A copy of the NMP is contained in Attachment 9.
89. The City has reviewed the NMP and it sufficiently demonstrates that mechanisms can be put in place to ensure the development complies with the *Environmental Protection (Noise) Regulations 1997*, but some areas of the NMP require further detail.

The City recommends the following modifications to the NMP:

- Comparable values be added for noise sensitive premises
- Addition of Noise Contour Maps
- Noise complaints to be dealt with by the 'shift manager', rather than the owner of the venue.
- Identification of sources of external amplified music.

The City is satisfied that these modifications can be addressed through conditions of development approval.

90. The applicant has provided an Operational Management Plan demonstrating the day-to-day operations.

Operating hours are:

Sunday to Wednesday: 7.00am to 10.00pm

Thursday to Saturday: 7.00am to 12.00am

Public Holidays: 11.00am to 10.00pm

These times are reflective of the hours of a typical restaurant with the proposed capacity.

91. Citing the concerns of neighbouring residents, the applicant proposes the following management measures to manage noise levels:

1. The outdoor eating area will not be open to customers until 9.00am to ensure external noise is kept to a minimum during the breakfast shift (starting 7.00am)
2. The outdoor eating area will not be open to customers after 10.00pm to ensure external noise is kept to a minimum at night.
3. Once the restaurant ceases trading, it will remain open for an additional 30 minutes to allow the gradual exit of remaining patrons in a quiet manner rather than ejecting patrons all at once.

92. Bushfire

The City has considered the risk to bushfire. As the restaurant and buildings already exist, the City's focus is on the implications of intensifying the occupation of the restaurant.

93. The applicant has provided a Bushfire Attack Level (BAL) assessment and assessment against the bushfire criteria in a Bushfire Management Statement (BMS). The BMS indicates that the site is able to meet the 'acceptable solutions'.

94. The applicant has also provided an Emergency Evacuation Plan to demonstrate how patrons can be managed in the event of an emergency. This is not a requirement of the planning process but is indicative to the City that the bushfire risk to visitors is able to be managed in practical ways.

95. Water Contamination

The impact on the proposed development on the environment and groundwater is a consideration of the application. The Scheme is clear in its provisions regarding the drinking water source area, which is consistent with State Planning Policy.

96. To verify the consultant's proposal to address wastewater, the City had the documents independently peer-reviewed by a suitably qualified and experienced consultant. The review, contained in Attachment 16, confirmed that the proposed development provides sufficient protection from groundwater contamination subject to a number of recommendations.
97. The review also considered the comments of DWER, and the recommended restriction to 80 patrons. The review concluded that the measures proposed by the applicant to manage wastewater irrigation, which was modified since community consultation, was consistent with the objectives of the policies and water quality protection notes DWER used as guidance for its submission. While the City has given the comments of DWER particular regard, the City, on balance, is satisfied that the applicant has sufficiently demonstrated that risk can be managed and mitigated to facilitate an increase to 480 patrons.
98. Scale
The City acknowledges that a restaurant of the proposed scale is not consistent with the intensity or scale of activities in the general area. The area is predominantly rural residential, with no notable land use activities which have an impact on the amenity of the area.
99. If the application was the conversion of an existing residence to a restaurant, it would be difficult to justify its compatibility with the surrounding environment. However, in this case, the restaurant, while not currently operational, has existed on the land in various iterations as far back as 1946. The fact that a restaurant has historically existed on the property, is a significant mitigating factor with regards to compatibility, as it suggests that commercial activity on the subject site has long been contemplated. Given mitigating historical factors, compatibility should come down to whether the site has sufficient capacity to manage the scale of its impacts. Technical information confirms that traffic, noise and wastewater can be managed on site to acceptable levels.
100. The applicant has provided technical reports which indicate many of the impacts of the proposed scale of the activity can be managed. Notwithstanding this and the historic matters outlined in Point 98, the scale of the restaurant in terms of the number of patrons does not correlate to that of the prevailing area.
101. In deciding this application, Council must consider whether the scale of the activity is appropriate, even though there are no 'like' activities nearby.

102. As noted earlier in this report, it is important to consider whether the proposed patron numbers are an accurate reflection of the existing approved restaurant, given that car parking requirements can be met, along with wastewater disposal.

103. External

In accordance with the Scheme provisions, and in order to complete a thorough planning assessment, the City sought comment from the following State Government agencies:

- a) Department of Biodiversity, Conservation and Attractions;
- b) Department of Fire and Emergency Services;
- c) Department of Water and Environmental Regulation; and
- d) Department of Health.

104. As the application has progressed, multiple versions of documents have been submitted, and referred to State Agencies for comment. To avoid confusion and given that it is only the current set of information that is subject to the State Agency comments, with the exception of the Bushfire Management Statement, this report only refers to the most up to date comments. Previous versions of comments are not relevant because they are based on different restaurant capacities and different wastewater system design.

Department of Biodiversity, Conservation and Attractions (DBCA)

105. The DBCA advised on 7 April 2020 that it had no comment to make on the proposed expansion.

106. The City accepts that DBCA has no comment to make.

Department of Fire and Emergency Services (DFES)

107. The DFES provided updated comments on 5 May 2020, advising that the information provided by the applicant was not sufficient and requires further modifications.

108. The DFES notes that the development has the potential to increase the threat of bushfire to people, property and infrastructure and based on that, DFES emphasises that the Council ensure that bushfire risk and hazard reduction/bushfire protection measures are established and understood before making a determination.

109. The City agrees that the proposed development, which is an expansion in the number of approved visitors to the site per-day, does have the potential to increase the threat of bushfire, given more people will be

attending the site. The City notes that the proposal is not listed as a 'vulnerable' land use, nor is it defined as a 'high risk' land use. The City notes that the physical form of the buildings, and land use, have already been established through valid and existing planning and building approvals, which limits the capacity for the City to consider all the elements of State Planning Policy 3.7 and the associated guidelines.

110. The applicant has provided an assessment against the four elements of the bushfire protection criteria by a suitably qualified bushfire assessor, which concludes that the proposed development meets the acceptable solutions under the Guidelines for Planning in Bushfire Prone Areas.
111. Department of Water and Environmental Regulation (DWER)
The DWER advised on 26 February 2020 that it was not supportive of the application.
112. The issue is the development's location in the Middle Helena Public Drinking Water Source Area (PDSWA) which is Priority 2 (P2). In accordance with the Middle Helena Catchment Area Land Use and Water Management Strategy (LUWMS), restaurants are recommended to have a maximum capacity of 50 people. DWER has previously approved in excesses of 50 to a maximum of 80 people for this site.
113. The reason is that the proposed increase in patron numbers is an intensification of land use which would pose an unacceptable contamination risk to water quality. The concern being that even best management practices can fail, resulting in contaminants being released onsite and offsite.
114. The approximately 35 metre setback to Hacketts Gully, rather than the 100 metre setback recommended, is not supported by DWER. Notwithstanding DWER's position on the setback distance, the DOH approval requires only a 30m setback from local surface watercourses. Additionally, as a mitigation measure, recommended conditions of approval require irrigation areas to put measures in place to ensure they flow away from local surface watercourses.
115. The DWER also recommended that any proposal for a reduced setback of the effluent disposal field from Hacketts Gully be supported by a nutrient budget/balance (nutrient management plan). The nutrient management plan would need to demonstrate that the application/irrigation rate of effluent (particularly nitrogen) can be sufficiently removed via vegetation, before there is potential surface runoff or subsurface lateral runoff towards Hacketts Gully, or infiltration to the regional groundwater. This information has not been provided by the applicant.

116. In relation to the reduced setback, the City is satisfied that it can be implemented with mitigating measures that ensure any water run-off is directed away from the watercourse. Furthermore, the City has recommended a condition to prepare a Nutrient Management Plan which includes water monitoring to ensure that the mitigating measures are achieving the intended objectives of risk minimisation.
117. The DWER's final concern was stormwater management for the large carpark area, stating insufficient information had been provided.
118. Given the contrast between the applicant's consultant reporting, DOH's approval of the wastewater disposal, and the DWER's lack of support for the proposal - even though the applicant made significant modifications to the design of the effluent disposal elements of the proposal, the City engaged a suitably qualified and experienced consultant to undertake an independent review of the consultant reports provided by the applicant, and the comments made by the DWER.
119. The independent peer-review of the proposed development from the perspective of wastewater is contained in Attachment 16 of the report.
120. The conclusion of the review was that the applicant's proposed approach to wastewater management was acceptable. Key conclusions were:
- a) Sufficient information provided to satisfy wastewater disposal of 480 persons per day.
 - b) Documents provided by Evergreen Consultancy WA Pty Ltd adequately addressed all issues suggested by the DWER, with the exception of stormwater from hardstand areas.
 - c) Contour plan and concept terrace for wastewater disposal would assist the design and construction of the wastewater disposal area.
- These are addressed in Section 9.4 and 9.5 of Attachment 10.
121. Based on the recommendations of the peer review, the City recommends conditions of approval be added regarding a contour and terrace plan being provided prior to installation of the irrigation area, should the application be approved.
122. Department of Health (DOH)
The DOH provided general comment on the proposed development on 20 March 2020. There was no indication of support, or objection, to the proposal.

123. While only general comment was provided on the planning application, the City notes that the DOH has already approved an earlier version of the effluent disposal system, with the same size irrigation area, which would facilitate 480 patrons, including staff. The City has had regard to the existing DOH approval for 480 patrons in its planning assessment.
124. However, the DOH noted that a new application would be required for the on-site wastewater disposal system conforming with the parameters specified in the Ministerial exemption (60-17042 dated 20 June 2019). A new application is required due to the changes to the location of the irrigation areas since the planning application was initially submitted.
125. The Ministerial exemption occurred separately and is not a part of the planning process, as it does not fall under planning legislation. Notwithstanding this, the approval is relevant to the City's assessment as an indicator that the site is capable of achieving approval for a wastewater system which accommodates 480 persons including staff.
126. The City considers the amended wastewater plan to be a noticeable improvement on the previous version approved by the DOH and given that improvement, it is considered likely that DOH will, again, be supportive of the amended wastewater plan.
127. The DOH also noted that with regard to issues related to nutrient retention and setback distances to drinking water source protection areas, they are a matter for the DWER. In the City's view, the DOH should have conferred with DWER in providing advice and approval to the wastewater system to ensure consistency between the agencies.
128. The City acknowledges the comments of DOH and confirm that further comment has been sought from the DWER on the proposed development.

FINANCIAL CONSIDERATIONS

129. Nil.

SUSTAINABILITY

Social Implications

130. An expanded restaurant would provide a meeting space for local residents, as well as visitors to the City.
131. The proposal has the potential to impact the surrounding community. Having regard for this impact, a noteworthy number of conditions and management plans are required.

Economic Implications

132. Additional patrons to a restaurant will likely have flow on effects to additional staff and supplies required to run a larger restaurant. There are general economic benefits of a larger facility, however the City has not been furnished with any information regarding the likely demand for the increased facility.
133. The provision of tourism uses within the City is consistent with the City's adopted Tourism Strategy.

Environmental Implications

134. As discussed in the stakeholder engagement section of this report, the location of the development in a public drinking water source area means that environmental risk is a consideration.
135. On balance, the City considers that subject to strict compliance with the management and mitigation measures which can be applied to the proposal, the proposed development is shown to have minimal environmental implications.

RISK MANAGEMENT

136.	Risk: The intensification of the restaurant land use will have an impact on water quality and water courses within the public drinking water source area.		
	Consequence	Likelihood	Rating
	Significant	Possible	High
	Action/Strategy		
	Through implementation of the Water and Stormwater Management Report (specifically Part 9.4), coupled with conditions of approval requiring monitoring, ensure that the restaurant will be subject to stringent ongoing management measures that will ensure risk is minimised. This includes a commitment to post-development surface water monitoring and a conditional requirement for monitoring to occur, at minimum, every two years in perpetuity.		

137. **Risk:** Mechanical failure of the system contaminates the environment.
- | Consequence | Likelihood | Rating |
|--------------------|-------------------|---------------|
| Significant | Possible | High |
- Action/Strategy**
- As outlined in Table 12 of Attachment 10, the proposed system includes a in-built emergency storage capacity of over 24 hours (18,000 L) to ensure problems can be rectified before overflow. An alarm system (red flashing light and siren) is provided to warn of high-water level in the ATU. Should an alarm be activated, or an overflow be suspected, the approved maintenance provider will be contacted immediately. The approved provider is in the Perth region and less than 30 minutes travel distance from the site.
138. **Risk:** Power failure leads to the wastewater system not functioning.
- | Consequence | Likelihood | Rating |
|--------------------|-------------------|---------------|
| Significant | Possible | High |
- Action/Strategy**
- Recommend conditions requiring modification to the Operational Management Plan to ensure back-up power is provided on site and is readily available to ensure the wastewater system is operational.
139. **Risk:** Noise impacts on the amenity of the locality.
- | Consequence | Likelihood | Rating |
|--------------------|-------------------|---------------|
| Significant | Possible | High |
- Action/Strategy**
- Through conditions of approval and implementation of the Noise Management Plan, ensure that the restaurant will be subject to stringent ongoing management measures that will ensure noise is managed to acceptable levels.
140. **Risk:** The scale of the development sets a precedent for the size of tourism development in the City's hills areas.
- | Consequence | Likelihood | Rating |
|--------------------|-------------------|---------------|
| Significant | Possible | High |
- Action/Strategy**
- Council have regard for the fact that significant management plans are to be put in place and have regard for the fact that the site has been a

restaurant development historically and the proposed use is an evolution of this use.

CONCLUSION

141. The City's assessment has identified valid planning concerns in the areas of amenity, noise, traffic, and water contamination.
142. The City's assessment has given regard to the historical use of the site for commercial purposes, including a restaurant, and the scale of the existing building and supporting facilities which have been approved through previous planning and building applications. The City considers the proposed additional patrons to be a reasonable extension which appropriately reflects the scale of existing buildings.
143. Noting the planning concerns, through the application of planning conditions and information provided by the applicant, the planning concerns are able to be managed and mitigated to a level which is consistent with the planning framework. As the proposal is considered to be consistent with the planning framework, the application is capable of being supported.

Voting Requirements: Simple Majority

OFFICER RECOMMENDATION:

That Council APPROVE the application for the proposed Amendment to existing Restaurant (Increase in Patrons) at Lot 3 (415) Mundaring Weir Road, Piesse Brook subject to the following:

1) Planning Conditions

- a) The restaurant is restricted to a maximum of 480 patrons and staff, per day. A record is to be kept of patron and staff numbers for each service day and this record must be made available to City upon request.
- b) Prior to occupation of the restaurant, a Basic Left-Turn treatment must be constructed at the site crossover to Mundaring Weir Road with a minimum width of 3 metres and length of 10 metres from the southern edge of the upgraded driveway truncation to the specifications and satisfaction of the City of Kalamunda.

- c) Prior to occupation of the restaurant, the existing crossover to Mundaring Weir Road must be upgraded to the specifications and satisfaction of the City of Kalamunda.
- d) Prior to occupation of the restaurant, the existing unformed second access point to Mundaring Weir Road must be removed and reinstated with grass or landscaping to the satisfaction of the City of Kalamunda.
- e) Prior to occupation of the restaurant, a Stormwater Management Strategy must be submitted in accordance with the Stormwater Management Manual for Western Australia and the City of Kalamunda's Stormwater Design Guidelines for Subdivisional and Property Development, to the satisfaction of the City of Kalamunda. The Strategy, once accepted by the City of Kalamunda, is to be implemented in its entirety.
- f) Stormwater drainage including management of drainage for the car park areas must be designed and constructed in accordance with the Stormwater Management Strategy to the satisfaction of the City of Kalamunda.
- g) Prior to occupation of the restaurant, an Erosion Management Plan shall be prepared, detailing how the risk of erosion and sedimentation impacts into nearby water bodies and adjacent properties will be controlled during and after construction, to the satisfaction of the City of Kalamunda.
- h) Drainage easements and reserves will be required, in accordance with any approved Stormwater Management Strategy, by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of *the Planning and Development Act 2005*.
- i) An On-Site Effluent Disposal System Construction Plan to the satisfaction of the City of Kalamunda and the Western Australian Department of Health is to be submitted prior to the commencement of works of the on-site effluent disposal system. This plan, upon approval, is to be implemented and maintained in its entirety. The plan is to include the following:
 - i) 600mm free draining soil under the irrigation area, granite outcrops are to be avoided;

- ii) Details of how and when the Secondary Infiltrative Area is to be used;
 - iii) A contour plan with concept staging prepared by the installer to ensure that terracing is implemented in accordance with the Code of Practice for the Design, Manufacture, Installation and Operation of ATU's Serving Single Dwellings to ensure even and sequential distribution of the wastewater in the Primary Irrigation Area;
 - iv) Irrigation areas are to be designed such that wastewater will drain South and West, away from the nearby ephemeral creek, Hackett's Gully;
 - v) Bunding or an impermeable barrier is to be installed to prevent wastewater from the irrigation area and Aerobic Treatment Unit travelling toward Hackett's Gully;
 - vi) A suitably sized grease trap is to be installed and maintained such that grease is prevented from entering into the Aerobic Treatment Unit; and
 - vii) The irrigation lines are to be installed with a maximum of 1000mm separation as per the Australian/New Zealand Standard On-Site Domestic Wastewater Management (AS/NZS 1547:2012).
- j) Prior to occupation, a Nutrient Management Plan must be submitted, including a water quality monitoring schedule, to the satisfaction of the City of Kalamunda on the advice of the Department of Water and Environmental Regulation. The implementation of the water quality monitoring schedule will be at a minimum twice a year when both Hackett's Gully and Piesse Brook are flowing to ensure that water quality and water runoff is not being impacted by the disposal of wastewater.
- k) A Construction Management Plan must be submitted to the satisfaction of the City of Kalamunda prior to the commencement of works. The Construction Management Plan must detail how the construction of the development will be maintained including the following:
- i) Public safety and site security;
 - ii) Hours of construction;
 - iii) Noise and vibration controls;
 - iv) Air and dust management;

- v) Stormwater, groundwater and sediment control;
 - vi) Waste and material disposal;
 - vii) Traffic management plans for various phases of the construction, including any proposed road closures;
 - viii) The parking arrangements for contractors and sub-contractors;
 - ix) Workers toilets;
 - x) Fauna relocation;
 - xi) On-site delivery times and access arrangements;
 - xii) The storage of materials and equipment on site (no storage of materials on the verge will be permitted);
 - xiii) Complaint management procedure; and
 - xiv) Any other matters likely to impact upon the surrounding properties or road reserve.
- l) The approved Construction Management Plan must be implemented prior to and during development works to the satisfaction of the City of Kalamunda.
- m) The site plans must be modified prior to installation of the irrigation system to achieve a 3 metre setback from all property boundaries.
- n) Prior to occupation of the restaurant, the Noise Management Plan must be amended, to the satisfaction of the City of Kalamunda, to identify all potential noise sources likely to impact nearby noise sensitive premises and provide management strategies to ensure noise levels complies with the *Environmental Protection (Noise) Regulations 1997*. Once approved the noise management plan must be implemented for the duration of the development.
- o) Prior to occupation of the restaurant, the Operational Management Plan must be amended to the satisfaction of the City of Kalamunda, to include arrangements for backup power to be available at all times to ensure the restaurant's wastewater system is operational. Once approved, the Operational Management Plan must be implemented for the duration of the development.
- p) Prior to occupation of the restaurant, the Bushfire Attack Level Assessment must be amended to the satisfaction of the City of Kalamunda, to include amendments recommended by the Department of Fire and Emergency Services.
- q) Prior to occupation of the restaurant, a Waste Management Plan must be prepared by the landowner and approved by the City of Kalamunda. The Waste Management Plan must include the following detail to the satisfaction of the City of Kalamunda:

- i) The location of the bin storage areas and bin collection areas (all storage areas shall be screened from Mundaring Weir Road);
 - ii) The number, volume and type of bins, and the type of waste to be placed in the bins;
 - iii) Management of the bins and the bin storage areas, including cleaning rotation and moving bins to and from the bin collection areas; and
 - iv) Frequency of bin collections.
- r) Prior to the occupation of the restaurant, the facility must be connected to a suitable on-site effluent disposal system to the satisfaction of the City of Kalamunda and the Western Australian Department of Health.
- s) Prior to occupation of the development, all car parking areas must meet the following requirements:
- i) Provide a minimum of 120 car parking spaces, which are designed, constructed, sealed, kerbed, drained, and marked in accordance with Australian Standard AS2890.0;
 - ii) Provide a minimum of 2 car parking spaces dedicated to people with disability, which are designed, constructed, sealed kerbed, drained and marked in accordance with Australian Standard AS2890.0;
 - iii) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 (as amended); and
 - iv) Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1 (as amended).

The car park must be maintained with the above requirements for the duration of the development to the satisfaction of the City of Kalamunda.

- t) Fill used in creating the proposed carpark must meet the following requirements:
- i) The existing fill material is to be levelled and be comprised exclusively of "road base-like material",
 - ii) The existing fill material is to be covered with a minimum of 300mm of clean, suitable fill and compacted.
- u) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 and

Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1.

- v) Prior to the occupation of the development, external lighting shall be installed and maintained within the site boundary for all car parking areas, outdoor activity areas, and along all on-site pedestrian pathways, at no cost to the City of Kalamunda. The design and construction of the external lighting must:
 - iii) Meet minimum requirements of category P11b & P12 (for disabled bays) in accordance with Australian Standard AS/NZS 1158.3.1:2005.
 - iv) Be maintained for the duration of development.
 - v) Lighting within car parking areas having a greater height than the pedestrian area lighting, and be focused downwards.
 - vi) Lighting must not cause nuisance to adjoining residents or the travelling public and must comply at all times with the requirements stipulated under the Australian Standard 4282-1997.
- w) Prior to occupation of the restaurant, short-term bicycle facilities shall be provided in accordance with Australian Standard AS 2890.3 to the satisfaction of the City of Kalamunda. The facilities must be maintained for the duration of the development.
- x) Prior to occupation of the restaurant, a Loading, Delivery and Servicing Delivery Management Plan must be prepared to the satisfaction of the City of Kalamunda.

2) **Advice Notes**

- a) This approval does not relate to any signage, with a separate application to be lodged and approved by the City of Kalamunda.
- b) In respect of the drainage easements, these will be required for discharging stormwater within private property.
- c) The applicant is advised that the food premises must comply with the *Food Act 2008* and Food Standards Code. Further advice on these requirements is available from the City of Kalamunda.
- d) The applicant is advised to submit floor plans and elevations of the kitchen and bar areas detailing all fixtures, fittings and finishes to the City of Kalamunda so that assessment may be made against the requirements of the Food Standards Code and advice

can be provided before commencing construction. Such advice will aid in preventing expense and delays caused by the possible need to rectify structural non-compliances at the time of completion.

- e) The applicant is required to submit an Application for Registration of a Food Business accompanied with the appropriate registration fee a minimum of two weeks prior to commencing operation.
- f) The applicant must book a food premises inspection with the City of Kalamunda prior to commencing operations. The premise must meet all requirements and pass the inspection without requiring any corrective actions before it will be allowed to trade.
- g) The applicant is advised that if the proposed premises or part thereof will be available for hire then an application for a Certificate of Approval under the *Health (Public Buildings) Regulations 1992* must be submitted to the City of Kalamunda and approved prior to use of the building.
- h) A new effluent disposal system that complies with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulation 1974* must be installed.
- i) Clearances are to be maintained from the waste water disposal system(s) to new buildings and boundaries in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*.
- j) The applicant is advised that the Department of Health are to be contacted regarding variation to the approved "Application to Construct or Install an Apparatus for the Treatment of Sewage".
- k) The applicant is advised that under the Fly Eradication Regulations pursuant to the *Health (Miscellaneous Provisions) Act 1911*, it is an offence to place, throw or leave or permit or cause to be placed thrown or left on the land or premises any waste food, manure, refuse, garbage, waste matter or other matter whatsoever, which is likely to attract or be a breeding place for flies, unless that food waste, manure, refuse, garbage, waste matter or other matter is covered, protected, treated or dealt with in such a manner as to effectively prevent it attracting or being a breeding place for flies.
- l) The applicant is advised that sanitary facilities must comply with the *Sewerage (Lighting, Ventilation and Construction) Regulations 1971*.

During the adjournment period the City presented an amended officer recommendation for consideration. Cr Ritchie foreshadowed an Alternative Motion. Cr Thomas foreshadowed an amendment to the recommendation before the officer recommendation received a mover and seconder.

Pursuant to r 11(da) of the *Local Government (Administration) Regulations 1996*, the reason for the significant change to the Officer Recommendation is to reduce the scale of the development.

The mover and seconder accepted the amendment as proposed by Cr Thomas. Council debated the amended recommendation and sought clarification on various conditions contained within the approval. Cr O'Connor foreshadowed the inclusion of an addition condition to include a Fencing Plan. The mover and seconder accepted the inclusion of an additional condition to include the requirement of a Fencing Plan.

Pursuant to r 11(da) of the *Local Government (Administration) Regulations 1996*, the reason for the significant change to the Officer Recommendation is to improve safety between the surrounding properties.

The Recommendation was put to a vote.

MODIFIED OFFICER RECOMMENDATION:

That Council APPROVE the application for the proposed Amendment to existing Restaurant (Increase in Patrons) at Lot 3 (415) Mundaring Weir Road, Piesse Brook subject to the following:

1) Planning Conditions

- a) The restaurant is restricted to a maximum of 480 patrons and staff, **with a maximum number of 200 patrons at any one time**, per day. A record is to be kept of patron and staff numbers for each service day and this record must be made available to City upon request.
- b) Prior to occupation of the restaurant, a Basic Left-Turn treatment must be constructed at the site crossover to Mundaring Weir Road with a minimum width of 3 metres and length of 10 metres from the southern edge of the upgraded driveway truncation to the specifications and satisfaction of the City of Kalamunda.
- c) Prior to occupation of the restaurant, the existing crossover to Mundaring Weir Road must be upgraded to the specifications and satisfaction of the City of Kalamunda.

- d) Prior to occupation of the restaurant, the existing unformed second access point to Mundaring Weir Road must be removed and reinstated with grass or landscaping to the satisfaction of the City of Kalamunda.
- e) Prior to occupation of the restaurant, a Stormwater Management Strategy must be submitted in accordance with the Stormwater Management Manual for Western Australia and the City of Kalamunda's Stormwater Design Guidelines for Subdivisional and Property Development, to the satisfaction of the City of Kalamunda. The Strategy, once accepted by the City of Kalamunda, is to be implemented in its entirety.
- f) Stormwater drainage including management of drainage for the car park areas must be designed and constructed in accordance with the Stormwater Management Strategy to the satisfaction of the City of Kalamunda.
- g) Prior to occupation of the restaurant, an Erosion Management Plan shall be prepared, detailing how the risk of erosion and sedimentation impacts into nearby water bodies and adjacent properties will be controlled during and after construction, to the satisfaction of the City of Kalamunda.
- h) Drainage easements and reserves will be required, in accordance with any approved Stormwater Management Strategy, by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of *the Planning and Development Act 2005*.
- i) An On-Site Effluent Disposal System Construction Plan to the satisfaction of the City of Kalamunda and the Western Australian Department of Health is to be submitted prior to the commencement of works of the on-site effluent disposal system. This plan, upon approval, is to be implemented and maintained in its entirety. The plan is to include the following:
 - i) 600mm free draining soil under the irrigation area, granite outcrops are to be avoided;
 - ii) Details of how and when the Secondary Infiltrative Area is to be used;
 - iii) A contour plan with concept staging prepared by the installer to ensure that terracing is implemented in accordance with the Code of Practice for the Design, Manufacture, Installation and Operation of ATU's

Serving Single Dwellings to ensure even and sequential distribution of the wastewater in the Primary Irrigation Area;

- iv) Irrigation areas are to be designed such that wastewater will drain South and West, away from the nearby ephemeral creek, Hackett's Gully;
- v) Bunding or an impermeable barrier is to be installed to prevent wastewater from the irrigation area and Aerobic Treatment Unit travelling toward Hackett's Gully;
- vi) A suitably sized grease trap is to be installed and maintained such that grease is prevented from entering into the Aerobic Treatment Unit;
- vii) The irrigation lines are to be installed with a maximum of 1000mm separation as per the Australian/New Zealand Standard On-Site Domestic Wastewater Management (AS/NZS 1547:2012); and
- viii) A maintenance plan is to be submitted which will include provision for water samples to be taken from the pump out chamber at each quarterly maintenance period and submitted to a NATA accredited laboratory. The sample is to ensure the following effluent standards are being met;
 - (a) Biochemical oxygen demand - $\leq 20\text{mg/L}$
 - (b) Total Suspended Solids - $\leq 30\text{mg/L}$
 - (c) Faecal Coliforms - $\leq 10\text{cfu}/100\text{mL}$
 - (d) Residual Free Chlorine - $\leq 0.5\text{ mg/L}$
 - (e) pH - 6.5 – 8.5
 - (f) Total phosphorus - $\leq 1\text{ mg/L}$
 - (g) Total Nitrogen - $\leq 10\text{mg/L}$
- j) Prior to occupation, a Nutrient Management Plan must be submitted, including a water quality monitoring schedule, to the satisfaction of the City of Kalamunda on the advice of the Department of Water and Environmental Regulation. The implementation of the water quality monitoring schedule is to be undertaken independently and is to occur at least monthly from July to November when both Hackett's Gully and Piesse Brook are flowing to ensure that water quality and water runoff is not being impacted by the disposal of wastewater.
- k) A Construction Management Plan must be submitted to the satisfaction of the City of Kalamunda prior to the commencement of works. The Construction Management Plan must detail how the construction of the development will be maintained including the following:
 - i) Public safety and site security;
 - ii) Hours of construction;
 - iii) Noise and vibration controls;

- iv) Air and dust management;
 - v) Stormwater, groundwater and sediment control;
 - vi) Waste and material disposal;
 - vii) Traffic management plans for various phases of the construction, including any proposed road closures;
 - viii) The parking arrangements for contractors and sub-contractors;
 - ix) Workers toilets;
 - x) Fauna relocation;
 - xi) On-site delivery times and access arrangements;
 - xii) The storage of materials and equipment on site (no storage of materials on the verge will be permitted);
 - xiii) Complaint management procedure; and
 - xiv) Any other matters likely to impact upon the surrounding properties or road reserve.
- l) The approved Construction Management Plan must be implemented prior to and during development works to the satisfaction of the City of Kalamunda.
- m) Prior to occupation of the restaurant, the landowner must submit a Noise Impact Assessment, completed by a suitably qualified and accredited consultant, to the satisfaction of the City of Kalamunda, to determine the ability of the proposal to comply with the Environmental Protection (Noise) Regulations 1997. Where such an assessment finds the proposal fails to meet the legislative limits, the proponent must submit an amended Noise Management Plan for approval of the City of Kalamunda prior to occupation of the restaurant, addressing how the legislative requirements will be met. Once approved the noise management plan must be implemented for the duration of the development.
- n) Prior to occupation of the restaurant, the Operational Management Plan must be amended to the satisfaction of the City of Kalamunda, to include:
- i) Suitable arrangements for standby power to be available at all times to ensure the restaurant's wastewater system, external lighting and firefighting apparatuses (water-pumps etc.) are operational in the event of a mains power outage.
 - ii) Modification to the operating hours on Thursday to 10pm.
- Once approved, the Operational Management Plan must be implemented for the duration of the development.
- o) Prior to occupation of the restaurant, the Bushfire Attack Level Assessment must be amended to the satisfaction of the City of Kalamunda, to include amendments recommended by the Department of Fire and Emergency Services.

- p) Prior to occupation of the restaurant, a Waste Management Plan must be prepared by the landowner and approved by the City of Kalamunda. The Waste Management Plan must include the following detail to the satisfaction of the City of Kalamunda:
 - i) The location of the bin storage areas and bin collection areas (all storage areas shall be screened from Mundaring Weir Road);
 - ii) The number, volume and type of bins, and the type of waste to be placed in the bins;
 - iii) Management of the bins and the bin storage areas, including cleaning rotation and moving bins to and from the bin collection areas; and
 - iv) Frequency of bin collections.

- q) Prior to the occupation of the restaurant, the facility must be connected to a suitable on-site effluent disposal system to the satisfaction of the City of Kalamunda and the Western Australian Department of Health.

- r) Prior to occupation of the development, all car parking areas must meet the following requirements:
 - i) Provide a minimum of 120 car parking spaces, which are designed, constructed, sealed, kerbed, drained, and marked in accordance with Australian Standard AS2890.0;
 - ii) Provide a minimum of 2 car parking spaces dedicated to people with disability, which are designed, constructed, sealed kerbed, drained and marked in accordance with Australian Standard AS2890.0;
 - iii) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 (as amended); and
 - iv) Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1 (as amended).

The car park must be maintained with the above requirements for the duration of the development to the satisfaction of the City of Kalamunda.

- s) Fill used in creating the proposed carpark must meet the following requirements:

- i) The existing fill material is to be levelled and be comprised exclusively of “road base-like material”,
 - ii) The existing fill material is to be covered with a minimum of 300mm of clean, suitable fill and compacted.
- t) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 and Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1.
- u) Prior to the occupation of the development, external lighting shall be installed and maintained within the site boundary for all car parking areas, outdoor activity areas, and along all on-site pedestrian pathways, at no cost to the City of Kalamunda. The design and construction of the external lighting must:
- i) Meet minimum requirements of category P11b & P12 (for disabled bays) in accordance with Australian Standard AS/NZS 1158.3.1:2005.
 - ii) Be maintained for the duration of development.
 - iii) Lighting within car parking areas having a greater height than the pedestrian area lighting, and be focused downwards.
 - iv) Lighting must not cause nuisance to adjoining residents or the travelling public and must comply at all times with the requirements stipulated under the Australian Standard 4282-1997.
- v) Prior to occupation of the restaurant, short-term bicycle facilities shall be provided in accordance with Australian Standard AS 2890.3 to the satisfaction of the City of Kalamunda. The facilities must be maintained for the duration of the development.
- w) Prior to occupation of the restaurant, a Loading, Delivery and Servicing Delivery Management Plan must be prepared to the satisfaction of the City of Kalamunda.
- x) A Bushfire Management Plan must be prepared by a suitably qualified Bushfire Consultant to the satisfaction of the City of Kalamunda prior to occupation of the Restaurant and must be implemented for the duration of the development. The Bushfire Management Plan must determine:
- i) appropriate provisions to close on days where the ‘fire danger rating’ poses an evacuation risk
 - ii) distance from fire trigger points to begin implementing the Emergency Evacuation Plan

- iii) appropriate amount of on-site water storage for the purpose of defending the premises from a bushfire.
- y) A notification under section 70A of the Transfer of Land Act 1893 or section 6(1) of the Strata Titles Act 1985 being registered over the Certificate of Title of the subject lot, within 90 days, to notify owners and prospective purchasers of the land of the factors affecting the use of the land.

The notification is to be prepared and executed at the applicant's cost to the satisfaction of the City of Kalamunda and is to state as follows:

'This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan and Bushfire Evacuation Plan. Additional planning and building requirements may apply to development on this land'

- z) **Prior to the commencement of works, a Fencing Plan shall be submitted to the satisfaction of the City of Kalamunda and thereafter implemented for the duration of the development. The Fencing Plan shall contain details including height, location and materiality for safety purposes.**

2) **Advice Notes**

- a) This approval does not relate to any signage, with a separate application to be lodged and approved by the City of Kalamunda.
- b) In respect of the drainage easements, these will be required for discharging stormwater within private property.
- c) The applicant is advised that the food premises must comply with the *Food Act 2008* and Food Standards Code. Further advice on these requirements is available from the City of Kalamunda.
- d) The applicant is advised to submit floor plans and elevations of the kitchen and bar areas detailing all fixtures, fittings and finishes to the City of Kalamunda so that assessment may be made against the requirements of the Food Standards Code and advice can be provided before commencing construction. Such advice will aid in preventing expense and delays caused by the possible need to rectify structural non-compliances at the time of completion.

- e) The applicant is required to submit an Application for Registration of a Food Business accompanied with the appropriate registration fee a minimum of two weeks prior to commencing operation.
- f) The applicant must book a food premises inspection with the City of Kalamunda prior to commencing operations. The premise must meet all requirements and pass the inspection without requiring any corrective actions before it will be allowed to trade.
- g) The applicant is advised that if the proposed premises or part thereof will be available for hire then an application for a Certificate of Approval under the *Health (Public Buildings) Regulations 1992* must be submitted to the City of Kalamunda and approved prior to use of the building.
- h) A new effluent disposal system that complies with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulation 1974* must be installed.
- i) Clearances are to be maintained from the waste water disposal system(s) to new buildings and boundaries in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*.
- j) The applicant is advised that the Department of Health are to be contacted regarding variation to the approved "Application to Construct or Install an Apparatus for the Treatment of Sewage".
- k) The applicant is advised that under the Fly Eradication Regulations pursuant to the *Health (Miscellaneous Provisions) Act 1911*, it is an offence to place, throw or leave or permit or cause to be placed thrown or left on the land or premises any waste food, manure, refuse, garbage, waste matter or other matter whatsoever, which is likely to attract or be a breeding place for flies, unless that food waste, manure, refuse, garbage, waste matter or other matter is covered, protected, treated or dealt with in such a manner as to effectively prevent it attracting or being a breeding place for flies.
- l) The applicant is advised that sanitary facilities must comply with the *Sewerage (Lighting, Ventilation and Construction) Regulations 1971*.
- m) In accordance with Section 33 of the Bush Fires Act 1954 you are required to carry out fire prevention works on your property in accordance with the City of Kalamunda annual Fire Hazard Reduction Notice. If you consider, for any reason, that it is

impractical to meet the requirements as per the Notice, you may apply in writing to the City of Kalamunda by no later than 1 October each year, to request authorisation to employ other methods of fire prevention on your land.

Moved: **Cr Cameron Blair**

Seconded: **Cr John Giardina**

Vote:	<u>For</u>	<u>Against</u>
	Cr Geoff Stallard	Cr Janelle Sewell
	Cr John Giardina	Cr Mary Cannon
	Cr Cameron Blair	Cr Brooke O'Donnell
	Cr Dylan O'Connor	Cr Lesley Boyd
	Cr Margaret Thomas	Cr Sue Bilich
		Cr Lisa Cooper
		Cr Kathy Ritchie

LOST (5/7)

The Alternative Motion was presented by Cr Ritchie. The Presiding Member sought clarification from the mover that point z was to be included in this motion. The mover agreed to maintain point z. The Alternative Motion received a seconder. The Presiding Member invite council to debate the motion before being put to a vote.

Pursuant to r 11(da) of the *Local Government (Administration) Regulations 1996*, the reason for the significant change to the Officer Recommendation is to reduce the scale of the development.

ALTERNATIVE MOTION

That Council APPROVE the application for the proposed Amendment to existing Restaurant (Increase in Patrons) at Lot 3 (415) Mundaring Weir Road, Piesse Brook subject to the following:

1) Planning Conditions

- a) The restaurant is restricted to a maximum of 250 patrons and staff per day, with a maximum number of 150 patrons at any one time. A record is to be kept of patron and staff numbers for each service day and this record must be made available to City of Kalamunda upon request.
- b) Prior to occupation of the restaurant, a Basic Left-Turn treatment must be constructed at the site crossover to Mundaring Weir Road

with a minimum width of 3 metres and length of 10 metres from the southern edge of the upgraded driveway truncation to the specifications and satisfaction of the City of Kalamunda.

- c) Prior to occupation of the restaurant, the existing crossover to Mundaring Weir Road must be upgraded to the specifications and satisfaction of the City of Kalamunda.
- d) Prior to occupation of the restaurant, the existing unformed second access point to Mundaring Weir Road must be removed and reinstated with grass or landscaping to the satisfaction of the City of Kalamunda.
- e) Prior to occupation of the restaurant, a Stormwater Management Strategy must be submitted in accordance with the Stormwater Management Manual for Western Australia and the City of Kalamunda's Stormwater Design Guidelines for Subdivisional and Property Development, to the satisfaction of the City of Kalamunda. The Strategy, once accepted by the City of Kalamunda, is to be implemented in its entirety.
- f) Stormwater drainage including management of drainage for the car park areas must be designed and constructed in accordance with the Stormwater Management Strategy to the satisfaction of the City of Kalamunda.
- g) Prior to occupation of the restaurant, an Erosion Management Plan shall be prepared, detailing how the risk of erosion and sedimentation impacts into nearby water bodies and adjacent properties will be controlled during and after construction, to the satisfaction of the City of Kalamunda.
- h) Drainage easements and reserves will be required, in accordance with any approved Stormwater Management Strategy, by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of the *Planning and Development Act 2005*.
- i) An On-Site Effluent Disposal System Construction Plan to the satisfaction of the City of Kalamunda and the Western Australian Department of Health is to be submitted prior to the commencement of works of the on-site effluent disposal system. This plan, upon approval, is to be implemented and maintained in its entirety. The plan is to include the following:

- i) 600mm free draining soil under the irrigation area, granite outcrops are to be avoided;
- ii) Details of how and when the Secondary Infiltrative Area is to be used;
- iii) A contour plan with concept staging prepared by the installer to ensure that terracing is implemented in accordance with the Code of Practice for the Design, Manufacture, Installation and Operation of ATU's Serving Single Dwellings to ensure even and sequential distribution of the wastewater in the Primary Irrigation Area;
- iv) Irrigation areas are to be designed such that wastewater will drain South and West, away from the nearby ephemeral creek, Hackett's Gully;
- v) Bunding or an impermeable barrier is to be installed to prevent wastewater from the irrigation area and Aerobic Treatment Unit travelling toward Hackett's Gully;
- vi) A suitably sized grease trap is to be installed and maintained such that grease is prevented from entering into the Aerobic Treatment Unit;
- vii) The irrigation lines are to be installed with a maximum of 1000mm separation as per the Australian/New Zealand Standard On-Site Domestic Wastewater Management (AS/NZS 1547:2012); and
- viii) A maintenance plan is to be submitted which will include provision for water samples to be taken from the pump out chamber at each quarterly maintenance period and submitted to a NATA accredited laboratory. The sample is to ensure the following effluent standards are being met;
 - (a) Biochemical oxygen demand - $\leq 20\text{mg/L}$
 - (b) Total Suspended Solids - $\leq 30\text{mg/L}$
 - (c) Faecal Coliforms - $\leq 10\text{cfu}/100\text{mL}$
 - (d) Residual Free Chlorine - $\leq 0.5\text{ mg/L}$
 - (e) pH - 6.5 – 8.5
 - (f) Total phosphorus - $\leq 1\text{ mg/L}$
 - (g) Total Nitrogen - $\leq 10\text{mg/L}$
- j) Prior to occupation, a Nutrient Management Plan must be submitted, including a water quality monitoring schedule, to the satisfaction of the City of Kalamunda on the advice of the Department of Water and Environmental Regulation. The implementation of the water quality monitoring schedule is to be undertaken independently and is to occur at least monthly from July to November when both Hackett's Gully and Piesse Brook are flowing to ensure that water quality and water runoff is not being impacted by the disposal of wastewater.
- k) A Construction Management Plan must be submitted to the satisfaction of the City of Kalamunda prior to the commencement of

works. The Construction Management Plan must detail how the construction of the development will be maintained including the following:

- i) Public safety and site security;
 - ii) Hours of construction;
 - iii) Noise and vibration controls;
 - iv) Air and dust management;
 - v) Stormwater, groundwater and sediment control;
 - vi) Waste and material disposal;
 - vii) Traffic management plans for various phases of the construction, including any proposed road closures;
 - viii) The parking arrangements for contractors and sub-contractors;
 - ix) Workers toilets;
 - x) Fauna relocation;
 - xi) On-site delivery times and access arrangements;
 - xii) The storage of materials and equipment on site (no storage of materials on the verge will be permitted);
 - xiii) Complaint management procedure; and
 - xiv) Any other matters likely to impact upon the surrounding properties or road reserve.
- l) The approved Construction Management Plan must be implemented prior to and during development works to the satisfaction of the City of Kalamunda.
- m) Prior to occupation of the restaurant, the landowner must submit a Noise Impact Assessment, completed by a suitably qualified and accredited consultant, to the satisfaction of the City of Kalamunda, to determine the ability of the proposal to comply with the Environmental Protection (Noise) Regulations 1997. Where such an assessment finds the proposal fails to meet the legislative limits, the proponent must submit an amended Noise Management Plan for approval of the City of Kalamunda prior to occupation of the restaurant, addressing how the legislative requirements will be met. Once approved the noise management plan must be implemented for the duration of the development.
- n) Prior to occupation of the restaurant, the Operational Management Plan must be amended to the satisfaction of the City of Kalamunda, to include:
- i) Suitable arrangements for standby power to be available at all times to ensure the restaurant's wastewater system, external lighting and firefighting apparatuses (water-pumps etc.) are operational in the event of a mains power outage.
 - ii) Modification to the operating hours on Thursday to 10pm.

Once approved, the Operational Management Plan must be implemented for the duration of the development.

- o) Prior to occupation of the restaurant, the Bushfire Attack Level Assessment must be amended to the satisfaction of the City of Kalamunda, to include amendments recommended by the Department of Fire and Emergency Services.
- p) Prior to occupation of the restaurant, a Waste Management Plan must be prepared by the landowner and approved by the City of Kalamunda. The Waste Management Plan must include the following detail to the satisfaction of the City of Kalamunda:
 - i) The location of the bin storage areas and bin collection areas (all storage areas shall be screened from Mundaring Weir Road);
 - ii) The number, volume and type of bins, and the type of waste to be placed in the bins;
 - iii) Management of the bins and the bin storage areas, including cleaning rotation and moving bins to and from the bin collection areas; and
 - iv) Frequency of bin collections.
- q) Prior to the occupation of the restaurant, the facility must be connected to a suitable on-site effluent disposal system to the satisfaction of the City of Kalamunda and the Western Australian Department of Health.
- r) Prior to occupation of the development, all car parking areas must meet the following requirements:
 - i) Provide a minimum of 120 car parking spaces, which are designed, constructed, sealed, kerbed, drained, and marked in accordance with Australian Standard AS2890.0;
 - ii) Provide a minimum of 2 car parking spaces dedicated to people with disability, which are designed, constructed, sealed kerbed, drained and marked in accordance with Australian Standard AS2890.0;
 - iii) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 (as amended); and
 - iv) Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1 (as amended).

The car park must be maintained with the above requirements for the duration of the development to the satisfaction of the City of Kalamunda.

- s) Fill used in creating the proposed carpark must meet the following requirements:
 - i) The existing fill material is to be levelled and be comprised exclusively of “road base-like material”,
 - ii) The existing fill material is to be covered with a minimum of 300mm of clean, suitable fill and compacted.
- t) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 and Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1.
- u) Prior to the occupation of the development, external lighting shall be installed and maintained within the site boundary for all car parking areas, outdoor activity areas, and along all on-site pedestrian pathways, at no cost to the City of Kalamunda. The design and construction of the external lighting must:
 - i) Meet minimum requirements of category P11b & P12 (for disabled bays) in accordance with Australian Standard AS/NZS 1158.3.1:2005.
 - ii) Be maintained for the duration of development.
 - iii) Lighting within car parking areas having a greater height than the pedestrian area lighting, and be focused downwards.
 - iv) Lighting must not cause nuisance to adjoining residents or the travelling public and must comply at all times with the requirements stipulated under the Australian Standard 4282-1997.
- v) Prior to occupation of the restaurant, short-term bicycle facilities shall be provided in accordance with Australian Standard AS 2890.3 to the satisfaction of the City of Kalamunda. The facilities must be maintained for the duration of the development.
- w) Prior to occupation of the restaurant, a Loading, Delivery and Servicing Delivery Management Plan must be prepared to the satisfaction of the City of Kalamunda.
- x) A Bushfire Management Plan must be prepared by a suitably qualified Bushfire Consultant to the satisfaction of the City of

Kalamunda prior to occupation of the Restaurant and must be implemented for the duration of the development. The Bushfire Management Plan must determine:

- iv) appropriate provisions to close on days where the 'fire danger rating' poses an evacuation risk
 - v) distance from fire trigger points to begin implementing the Emergency Evacuation Plan
 - vi) appropriate amount of on-site water storage for the purpose of defending the premises from a bushfire.
- y) A notification under section 70A of the Transfer of Land Act 1893 or section 6(1) of the Strata Titles Act 1985 being registered over the Certificate of Title of the subject lot, within 90 days, to notify owners and prospective purchasers of the land of the factors affecting the use of the land.

The notification is to be prepared and executed at the applicant's cost to the satisfaction of the City of Kalamunda and is to state as follows:

'This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan and Bushfire Evacuation Plan. Additional planning and building requirements may apply to development on this land'

- z) Prior to the commencement of works, a Fencing Plan shall be submitted to the satisfaction of the City of Kalamunda and thereafter implemented for the duration of the development. The Fencing Plan shall contain details including height, location and materiality for safety purposes.

2) Advice Notes

- a) This approval does not relate to any signage, with a separate application to be lodged and approved by the City of Kalamunda.
- b) In respect of the drainage easements, these will be required for discharging stormwater within private property.
- c) The applicant is advised that the food premises must comply with the *Food Act 2008* and Food Standards Code. Further advice on these requirements is available from the City of Kalamunda.
- d) The applicant is advised to submit floor plans and elevations of the kitchen and bar areas detailing all fixtures, fittings and finishes

to the City of Kalamunda so that assessment may be made against the requirements of the Food Standards Code and advice can be provided before commencing construction. Such advice will aid in preventing expense and delays caused by the possible need to rectify structural non-compliances at the time of completion.

- e) The applicant is required to submit an Application for Registration of a Food Business accompanied with the appropriate registration fee a minimum of two weeks prior to commencing operation.
- f) The applicant must book a food premises inspection with the City of Kalamunda prior to commencing operations. The premise must meet all requirements and pass the inspection without requiring any corrective actions before it will be allowed to trade.
- g) The applicant is advised that if the proposed premises or part thereof will be available for hire then an application for a Certificate of Approval under the *Health (Public Buildings) Regulations 1992* must be submitted to the City of Kalamunda and approved prior to use of the building.
- h) A new effluent disposal system that complies with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulation 1974* must be installed.
- i) Clearances are to be maintained from the wastewater disposal system(s) to new buildings and boundaries in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*.
- j) The applicant is advised that the Department of Health are to be contacted regarding variation to the approved "Application to Construct or Install an Apparatus for the Treatment of Sewage".
- k) The applicant is advised that under the Fly Eradication Regulations pursuant to the *Health (Miscellaneous Provisions) Act 1911*, it is an offence to place, throw or leave or permit or cause to be placed thrown or left on the land or premises any waste food, manure, refuse, garbage, waste matter or other matter whatsoever, which is likely to attract or be a breeding place for flies, unless that food waste, manure, refuse, garbage, waste matter or other matter is covered, protected, treated or dealt with in such a manner as to effectively prevent it attracting or being a breeding place for flies.

- l) The applicant is advised that sanitary facilities must comply with the *Sewerage (Lighting, Ventilation and Construction) Regulations 1971*.
- m) In accordance with Section 33 of the Bush Fires Act 1954 you are required to carry out fire prevention works on your property in accordance with the City of Kalamunda annual Fire Hazard Reduction Notice. If you consider, for any reason, that it is impractical to meet the requirements as per the Notice, you may apply in writing to the City of Kalamunda by no later than 1 October each year, to request authorisation to employ other methods of fire prevention on your land.

Moved: **Cr Kathy Ritchie**

Seconded: **Cr Lesley Boyd**

Vote: For
Cr Janelle Sewell
Cr Mary Cannon
Cr Lesley Boyd
Cr Lisa Cooper
Cr Kathy Ritchie

Against
Cr Geoff Stallard
Cr John Giardina
Cr Brooke O'Donnell
Cr Cameron Blair
Cr Sue Bilich
Cr Dylan O'Connor
Cr Margaret Thomas

LOST (5/7)

As the motion was lost the Presiding Member called for any other motion from the floor. The meeting adjourned for 5 minutes to consider other motions. The meeting adjourned at 7:40pm and recommenced at 7:43pm. All councillors, staff and members of the public remained.

An Alternative Motion was presented by Cr O'Donnell. Cr O'Donnell provided rationale to support the motion. The Alternative Motion received a seconder. The Presiding Member invite council to debate the motion before being put to a vote.

Pursuant to r 11(da) of the *Local Government (Administration) Regulations 1996*, the reason for the significant change to the Officer Recommendation is to reduce the scale of the development.

RESOLVED SCM 88/2020

That Council APPROVE the application for the proposed Amendment to existing Restaurant (Increase in Patrons) at Lot 3 (415) Mundaring Weir Road, Piesse Brook subject to the following:

1) Planning Conditions

- a) The restaurant is restricted to a maximum of 350 patrons and staff per day, with a maximum number of 200 patrons at any one time. A record is to be kept of patron and staff numbers for each service day and this record must be made available to City of Kalamunda upon request.
- b) Prior to occupation of the restaurant, a Basic Left-Turn treatment must be constructed at the site crossover to Mundaring Weir Road with a minimum width of 3 metres and length of 10 metres from the southern edge of the upgraded driveway truncation to the specifications and satisfaction of the City of Kalamunda.
- c) Prior to occupation of the restaurant, the existing crossover to Mundaring Weir Road must be upgraded to the specifications and satisfaction of the City of Kalamunda.
- d) Prior to occupation of the restaurant, the existing unformed second access point to Mundaring Weir Road must be removed and reinstated with grass or landscaping to the satisfaction of the City of Kalamunda.
- e) Prior to occupation of the restaurant, a Stormwater Management Strategy must be submitted in accordance with the Stormwater Management Manual for Western Australia and the City of Kalamunda's Stormwater Design Guidelines for Subdivisional and Property Development, to the satisfaction of the City of Kalamunda. The Strategy, once accepted by the City of Kalamunda, is to be implemented in its entirety.
- f) Stormwater drainage including management of drainage for the car park areas must be designed and constructed in accordance with the Stormwater Management Strategy to the satisfaction of the City of Kalamunda.
- g) Prior to occupation of the restaurant, an Erosion Management Plan shall be prepared, detailing how the risk of erosion and sedimentation impacts into nearby water bodies and adjacent properties will be controlled during and after construction, to the satisfaction of the City of Kalamunda.
- h) Drainage easements and reserves will be required, in accordance with any approved Stormwater Management Strategy, by the local government for drainage infrastructure being shown on the diagram

or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of *the Planning and Development Act 2005*.

- i) An On-Site Effluent Disposal System Construction Plan to the satisfaction of the City of Kalamunda and the Western Australian Department of Health is to be submitted prior to the commencement of works of the on-site effluent disposal system. This plan, upon approval, is to be implemented and maintained in its entirety. The plan is to include the following:
- i) 600mm free draining soil under the irrigation area, granite outcrops are to be avoided;
 - ii) Details of how and when the Secondary Infiltrative Area is to be used;
 - iii) A contour plan with concept staging prepared by the installer to ensure that terracing is implemented in accordance with the Code of Practice for the Design, Manufacture, Installation and Operation of ATU's Serving Single Dwellings to ensure even and sequential distribution of the wastewater in the Primary Irrigation Area;
 - iv) Irrigation areas are to be designed such that wastewater will drain South and West, away from the nearby ephemeral creek, Hackett's Gully;
 - v) Bunding or an impermeable barrier is to be installed to prevent wastewater from the irrigation area and Aerobic Treatment Unit travelling toward Hackett's Gully;
 - vi) A suitably sized grease trap is to be installed and maintained such that grease is prevented from entering into the Aerobic Treatment Unit;
 - vii) The irrigation lines are to be installed with a maximum of 1000mm separation as per the Australian/New Zealand Standard On-Site Domestic Wastewater Management (AS/NZS 1547:2012); and
 - viii) A maintenance plan is to be submitted which will include provision for water samples to be taken from the pump out chamber at each quarterly maintenance period and submitted to a NATA accredited laboratory. The sample is to ensure the following effluent standards are being met;
 - (h) Biochemical oxygen demand - $\leq 20\text{mg/L}$
 - (i) Total Suspended Solids - $\leq 30\text{mg/L}$
 - (j) Faecal Coliforms - $\leq 10\text{cfu}/100\text{mL}$
 - (k) Residual Free Chlorine - $\leq 0.5\text{ mg/L}$
 - (l) pH - 6.5 – 8.5
 - (m) Total phosphorus - $\leq 1\text{ mg/L}$
 - (n) Total Nitrogen - $\leq 10\text{mg/L}$

- j) Prior to occupation, a Nutrient Management Plan must be submitted, including a water quality monitoring schedule, to the satisfaction of the City of Kalamunda on the advice of the Department of Water and Environmental Regulation. The implementation of the water quality monitoring schedule is to be undertaken independently and is to occur at least monthly from July to November when both Hackett's Gully and Piesse Brook are flowing to ensure that water quality and water runoff is not being impacted by the disposal of wastewater.

- k) A Construction Management Plan must be submitted to the satisfaction of the City of Kalamunda prior to the commencement of works. The Construction Management Plan must detail how the construction of the development will be maintained including the following:
 - i) Public safety and site security;
 - ii) Hours of construction;
 - iii) Noise and vibration controls;
 - iv) Air and dust management;
 - v) Stormwater, groundwater and sediment control;
 - vi) Waste and material disposal;
 - vii) Traffic management plans for various phases of the construction, including any proposed road closures;
 - viii) The parking arrangements for contractors and sub-contractors;
 - ix) Workers toilets;
 - x) Fauna relocation;
 - xi) On-site delivery times and access arrangements;
 - xii) The storage of materials and equipment on site (no storage of materials on the verge will be permitted);
 - xiii) Complaint management procedure; and
 - xiv) Any other matters likely to impact upon the surrounding properties or road reserve.

- l) The approved Construction Management Plan must be implemented prior to and during development works to the satisfaction of the City of Kalamunda.

- m) Prior to occupation of the restaurant, the landowner must submit a Noise Impact Assessment, completed by a suitably qualified and accredited consultant, to the satisfaction of the City of Kalamunda, to determine the ability of the proposal to comply with the Environmental Protection (Noise) Regulations 1997. Where such an assessment finds the proposal fails to meet the legislative limits, the proponent must submit an amended Noise Management Plan for approval of the City of Kalamunda prior to occupation of the restaurant, addressing how the legislative requirements will be met.

Once approved the noise management plan must be implemented for the duration of the development.

- n) Prior to occupation of the restaurant, the Operational Management Plan must be amended to the satisfaction of the City of Kalamunda, to include:
 - i) Suitable arrangements for standby power to be available at all times to ensure the restaurant's wastewater system, external lighting and firefighting apparatuses (water-pumps etc.) are operational in the event of a mains power outage.
 - ii) Modification to the operating hours on Thursday to 10pm.

Once approved, the Operational Management Plan must be implemented for the duration of the development.

- o) Prior to occupation of the restaurant, the Bushfire Attack Level Assessment must be amended to the satisfaction of the City of Kalamunda, to include amendments recommended by the Department of Fire and Emergency Services.
- p) Prior to occupation of the restaurant, a Waste Management Plan must be prepared by the landowner and approved by the City of Kalamunda. The Waste Management Plan must include the following detail to the satisfaction of the City of Kalamunda:
 - i) The location of the bin storage areas and bin collection areas (all storage areas shall be screened from Mundaring Weir Road);
 - ii) The number, volume and type of bins, and the type of waste to be placed in the bins;
 - iii) Management of the bins and the bin storage areas, including cleaning rotation and moving bins to and from the bin collection areas; and
 - iv) Frequency of bin collections.
- q) Prior to the occupation of the restaurant, the facility must be connected to a suitable on-site effluent disposal system to the satisfaction of the City of Kalamunda and the Western Australian Department of Health.
- r) Prior to occupation of the development, all car parking areas must meet the following requirements:
 - i) Provide a minimum of 120 car parking spaces, which are designed, constructed, sealed, kerbed, drained, and marked in accordance with Australian Standard AS2890.0;

- ii) Provide a minimum of 2 car parking spaces dedicated to people with disability, which are designed, constructed, sealed kerbed, drained and marked in accordance with Australian Standard AS2890.0;
- iii) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 (as amended); and
- iv) Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1 (as amended).

The car park must be maintained with the above requirements for the duration of the development to the satisfaction of the City of Kalamunda.

- s) Fill used in creating the proposed carpark must meet the following requirements:
 - i) The existing fill material is to be levelled and be comprised exclusively of “road base-like material”,
 - ii) The existing fill material is to be covered with a minimum of 300mm of clean, suitable fill and compacted.
- t) All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 and Loading bays, car parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained, clearly marked and maintained in accordance with AS2890.1.
- u) Prior to the occupation of the development, external lighting shall be installed and maintained within the site boundary for all car parking areas, outdoor activity areas, and along all on-site pedestrian pathways, at no cost to the City of Kalamunda. The design and construction of the external lighting must:
 - i) Meet minimum requirements of category P11b & P12 (for disabled bays) in accordance with Australian Standard AS/NZS 1158.3.1:2005.
 - ii) Be maintained for the duration of development.
 - iii) Lighting within car parking areas having a greater height than the pedestrian area lighting, and be focused downwards.
 - iv) Lighting must not cause nuisance to adjoining residents or the travelling public and must comply at all times with the requirements stipulated under the Australian Standard 4282-1997.

- v) Prior to occupation of the restaurant, short-term bicycle facilities shall be provided in accordance with Australian Standard AS 2890.3 to the satisfaction of the City of Kalamunda. The facilities must be maintained for the duration of the development.
- w) Prior to occupation of the restaurant, a Loading, Delivery and Servicing Delivery Management Plan must be prepared to the satisfaction of the City of Kalamunda.
- x) A Bushfire Management Plan must be prepared by a suitably qualified Bushfire Consultant to the satisfaction of the City of Kalamunda prior to occupation of the Restaurant and must be implemented for the duration of the development. The Bushfire Management Plan must determine:
 - i) appropriate provisions to close on days where the 'fire danger rating' poses an evacuation risk
 - ii) distance from fire trigger points to begin implementing the Emergency Evacuation Plan
 - iii) appropriate amount of on-site water storage for the purpose of defending the premises from a bushfire.
- y) A notification under section 70A of the Transfer of Land Act 1893 or section 6(1) of the Strata Titles Act 1985 being registered over the Certificate of Title of the subject lot, within 90 days, to notify owners and prospective purchasers of the land of the factors affecting the use of the land.

The notification is to be prepared and executed at the applicant's cost to the satisfaction of the City of Kalamunda and is to state as follows:

'This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan and Bushfire Evacuation Plan. Additional planning and building requirements may apply to development on this land'

- z) Prior to the commencement of works, a Fencing Plan shall be submitted to the satisfaction of the City of Kalamunda and thereafter implemented for the duration of the development. The Fencing Plan shall contain details including height, location and materiality for safety purposes.

2) Advice Notes

- a) This approval does not relate to any signage, with a separate application to be lodged and approved by the City of Kalamunda.
- b) In respect of the drainage easements, these will be required for discharging stormwater within private property.
- c) The applicant is advised that the food premises must comply with the *Food Act 2008* and Food Standards Code. Further advice on these requirements is available from the City of Kalamunda.
- d) The applicant is advised to submit floor plans and elevations of the kitchen and bar areas detailing all fixtures, fittings and finishes to the City of Kalamunda so that assessment may be made against the requirements of the Food Standards Code and advice can be provided before commencing construction. Such advice will aid in preventing expense and delays caused by the possible need to rectify structural non-compliances at the time of completion.
- e) The applicant is required to submit an Application for Registration of a Food Business accompanied with the appropriate registration fee a minimum of two weeks prior to commencing operation.
- f) The applicant must book a food premises inspection with the City of Kalamunda prior to commencing operations. The premise must meet all requirements and pass the inspection without requiring any corrective actions before it will be allowed to trade.
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Moved: **Cr Brooke O'Donnell**

Seconded: **Cr John Giardina**

Vote:	<u>For</u>	<u>Against</u>
	Cr Geoff Stallard Cr John Giardina Cr Brooke O'Donnell Cr Lesley Boyd Cr Mary Cannon Cr Cameron Blair Dylan O'Connor Cr Margaret Thomas	Cr Janelle Sewell Cr Sue Bilich Cr Lisa Cooper Cr Kathy Ritchie

CARRIED (8/4)

9. Meeting Closed to the Public

9.1 NIL.

10. Closure

There being no further business, the Presiding Member declared the Meeting closed at 7:46pm on Tuesday 2 June 2020.

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

Signed: _____
Presiding Member

Dated this _____ day of _____ 2020.