



A G E N D A

SPECIAL MEETING

To Be Held

Wednesday, 3 July 2019
Commencing at 4.45pm

At

Shire of Dardanup
ADMINISTRATION CENTRE EATON
1 Council Drive - EATON

This document is available in alternative formats such as:
~ Large Print
~ Electronic Format [disk or emailed]
Upon request.



NOTICE OF A SPECIAL COUNCIL MEETING

Dear Council Member

A Special Meeting of the Shire of Dardanup will be held on Wednesday, 3 July 2019 in the Council Chambers, Shire of Dardanup - Administration Centre Eaton, 1 Council Drive, Eaton - commencing at 4.45pm. The purpose of the meeting is to consider the Application for Development Approval – Lot 30 (205) Lennard Road, Burekup – “Agritourism” use and “Micro-brewery” addition to Evedon Lakeside Retreat.



MR ANDRÉ SCHÖNFELDT
Chief Executive Officer

Date: 1 July 2019

Note: If interested persons would like to make comment on any items in this agenda, please email records@dardanup.wa.gov.au or hand deliver written comment to the Shire of Dardanup – Administration Centre Eaton, 1 Council Drive, Eaton. To be included in the meeting comments are to be delivered no later than 48 hours prior to the meeting.

The Chief Executive Officer will use his discretion as to whether the written comments are relevant and applicable to the meeting before approving their inclusion in the meeting.

TABLE OF CONTENTS

1	DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS	1
2	RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED	2
2.1	Attendance.....	2
2.2	Apologies.....	2
3	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	2
3.1	Response to Public Questions taken at the Ordinary Meeting of 26 June 2019	2
4	PUBLIC QUESTION TIME.....	2
5	APPLICATIONS FOR LEAVE OF ABSENCE	2
6	PETITIONS/DEPUTATIONS/PRESENTATIONS	2
7	CONFIRMATION OF MINUTES OF PREVIOUS MEETING.....	2
7.1	Ordinary Meeting Held 26 June 2019.....	2
8	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION	3
9	ANNOUNCEMENTS OF MATTERS FOR WHICH MEETING MAY BE CLOSED.....	3
10	QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN.....	3
11	DECLARATION OF INTEREST	3
12	REPORTS OF OFFICERS AND COMMITTEES	4
12.1	Title: Application for Development Approval – Lot 30 (205) Lennard Road, Burekup – “Agritourism” use and “Micro-brewery” addition to Evedon Lakeside Retreat- (Charles Anthony Jenour)	4
13	ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN.....	15
14	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING.....	15
15	PUBLIC QUESTION TIME.....	15
16	MATTERS BEHIND CLOSED DOORS.....	15
17	CLOSURE OF MEETING	15

COUNCIL ROLE

Advocacy	When Council advocates on its own behalf or on behalf of its community to another level of government / body /agency.
Executive/Strategic	The substantial direction setting and oversight role of the Council eg. Adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
Legislative	Includes adopting local laws, town planning schemes and policies.
Review	When Council reviews decisions made by Officers.
Quasi-Judicial	<p>When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.</p> <p>Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg: under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</p>

DISCLAIMER

"Any statement, comment or decision made at a Council or Committee meeting regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.

Any person or entity that has an application before the Shire must obtain, and should only rely on, written notice of the Shire's decision and any conditions attaching to the decision, and cannot treat as an approval anything said or done at a Council or Committee meeting.

Any advice provided by an employee of the Shire on the operation of a written law, or the performance of a function by the Shire, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the Shire. Any advice on a matter of law, or anything sought to be relied upon as a representation by the Shire should be sought in writing and should make clear the purpose of the request."

SHIRE OF DARDANUP

AGENDA FOR THE SHIRE OF DARDANUP SPECIAL MEETING OF COUNCIL TO BE HELD ON WEDNESDAY 3 JULY 2019, AT SHIRE OF DARDANUP – EATON ADMINISTRATION CENTRE, COMMENCING AT 4.45PM.

1 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member to declare the meeting open, welcome those in attendance and refer to the Disclaimer, Acknowledgement of Country, Emergency Procedures and the Affirmation of Civic Duty and Responsibility on behalf of Councillors and Officers:

Acknowledgement of Country

The Shire of Dardanup wishes to acknowledge that this meeting is being held on the traditional lands of the Noongar people. In doing this, we recognise and respect their continuing culture and the contribution they make to the life of this region by recognising the strength, resilience and capacity of Wardandi people in this land.

Affirmation of Civic Duty and Responsibility

Councillors and Officers of the Shire of Dardanup collectively declare that we will duly, faithfully, honestly and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the Shire's Code of Conduct and Standing Orders to ensure efficient, effective and orderly decision making within this forum.

Emergency Procedure

In the event of an emergency, please follow the instructions of the Chairperson who will direct you to the safest exit route. Once outside, please proceed to the Assembly Area points located to the western side of the front office car park near the skate park and gazebo where we will meet (and complete a roll call).

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED

2.1 Attendance

2.2 Apologies

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

3.1 Response to Public Questions taken at the Ordinary Meeting of 26 June 2019

Note: Responses to previous public questions taken on notice will be addressed at the next Ordinary Council Meeting on Wednesday, 17 July 2019.

4 PUBLIC QUESTION TIME

5 APPLICATIONS FOR LEAVE OF ABSENCE

None.

6 PETITIONS/DEPUTATIONS/PRESENTATIONS

None.

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Ordinary Meeting Held 26 June 2019

Note: The Minutes of the Ordinary Council Meeting held on Wednesday, 26 June 2019 will be confirmed at the next Ordinary Council Meeting on Wednesday, 17 July 2019.

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**9 ANNOUNCEMENTS OF MATTERS FOR WHICH MEETING MAY BE CLOSED**

None.

10 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

None.

11 DECLARATION OF INTEREST

“Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences.”

Key Management Personnel (which includes Elected Members, CEO and Directors) are reminded of their requirement to disclose biannually transactions between Council and related parties in accordance with Council Policy CP039.

Discussion:

Shire President, Cr. M T Bennett to ask Councillors and staff if there are any Declarations of Interest to be made.

- *Shire President, Cr. M T Bennett declares a Financial Interest in Item 12.1 Application for Development Approval – Lot 30 (205) Lennard Road, Burekup, as his wife sells art work from the Evedon Lakeside Retreat.*
- *Cr. T G Gardiner declares a Proximity Interest in Item 12.1 Application for Development Approval – Lot 30 (205) Lennard Road, Burekup, as he is a landholder opposite the property at Evedon Lakeside Retreat.*

12 REPORTS OF OFFICERS AND COMMITTEES

- 12.1 Title: Application for Development Approval – Lot 30 (205) Lennard Road, Burekup – “Agritourism” use and “Micro-brewery” addition to Evedon Lakeside Retreat- (Charles Anthony Jenour)

Reporting Department: Development Services
Reporting Officer: Mrs Cecilia Muller - Principal Planning Officer
Legislation: Planning and Development Act 2005

DECLARATION OF INTEREST

Cr. M T Bennett declared a Financial Interest in this item as his wife sells artwork at the Evedon Lakeside Retreat.

Cr. M T Bennett advises he will leave the room.

DECLARATION OF INTEREST

Cr. T G Gardiner declared a Proximity Interest in this item as he is a landholder opposite the property at Evedon Lakeside Retreat.

Cr. T G Gardiner advises he will leave the room.

Overview

Council has received an Application for Development Approval under the Shire of Dardanup Town Planning Scheme No. 3 (TPS3) for a proposed “Use Not Listed” - “Agritourism” development which includes works and land use associated with a “Micro-brewery” to accommodate an extension of the liquor licence at Lot 30 (205) Lennard Road, Burekup (subject lot). Officers do not have delegated authority to determine applications for a “Use Not Listed”. Therefore, the application is referred to Council for determination. Officers are recommending the proposal be approved subject to the appropriate conditions.

Location Plan



Site Plan



Background

Council has received an Application for Development Approval under the Shire of Dardanup Town Planning Scheme No. 3 (TPS3) for a proposed “Use Not Listed” - “Agritourism” development which includes works and land use associated with a “Micro-brewery” to accommodate an extension of the liquor licence at Lot 30 (205) Lennard Road, Burekup. Copies of the development plans are contained in (Appendix ORD: 12.1A).

Lot 30 is 140,4660ha in area and is zoned “General Farming” and is located within the Landscape Protection Area under the Shire of Dardanup Town Planning Scheme No.3 (TPS3). The property is surrounded by “General Farming” lots and abuts Lennard Road to the south and Catalano Road to the north.

Evedon Lakeside Retreat also known as Evedon Park Bush Resort is a short stay facility with a restaurant and function centre. The premises is licenced under the Liquor Control Act 1988 as a “hotel restricted” venue. The restaurant and function centre building is 500m² and built to take in the view over the artificial lake. It is a two storey building with the main entrance level having direct access from the parking area. It has an internal staircase that leads to the main restaurant and function level that has access to an outside area. The proposed microbrewery extension is 106m² in floor area and is to be located at the lower main building level. A new 150,000lt water tank will be installed next to the existing 90,000lt water tank to facilitate the new fire hydrants.

The Micro-brewery is proposed to:

- Establish a 2.5bbl (400L/day) brewery;
- A batch process will be undertaken with an expected annual daily wastewater volume of 500L/day;
- A sump will collect all the waste water, which will be pumped to the wastewater treatment system approximately 12m higher and 100m away from the Micro-brewery; and
- The wastewater treatment system is to be located south of the Micro-brewery behind the shed.

Several development approvals have been granted for the site as the land use and development has evolved. Relevant to the proposal are the following development approvals:

- P02/03 – DA granted for a Restaurant (Evedon Lakeside Retreat Bush Resort), this approval was granted by Council at its meeting of 26 February 2003.
- P43/07 – DA granted for Hotel Restricted Licence, this approval was granted by Council at its meeting of 14 June 2007, subject to the following conditions:

1. *All development being generally in accordance with the approved development plans which form part of this Development Approval.*
2. *This approval is valid provided that the development is substantially commenced within two (2) years and completed within three (3) years after the approval date. If development has not been substantially commenced within two (2) years and completed within three (3) years, the approval shall lapse and no further works shall be carried out without further approval from Council.*
3. *The hereby approved development shall not prejudicially affect the amenity of the neighbourhood due to the emission of light, noise, vibration, electrical interference, odour, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, liquid wastes or waste products.*
4. *All of the sales and supply shall conform to the requirements of the 'hotel restricted license' as defined in the Liquor Control Act 1988.*

Advice Note

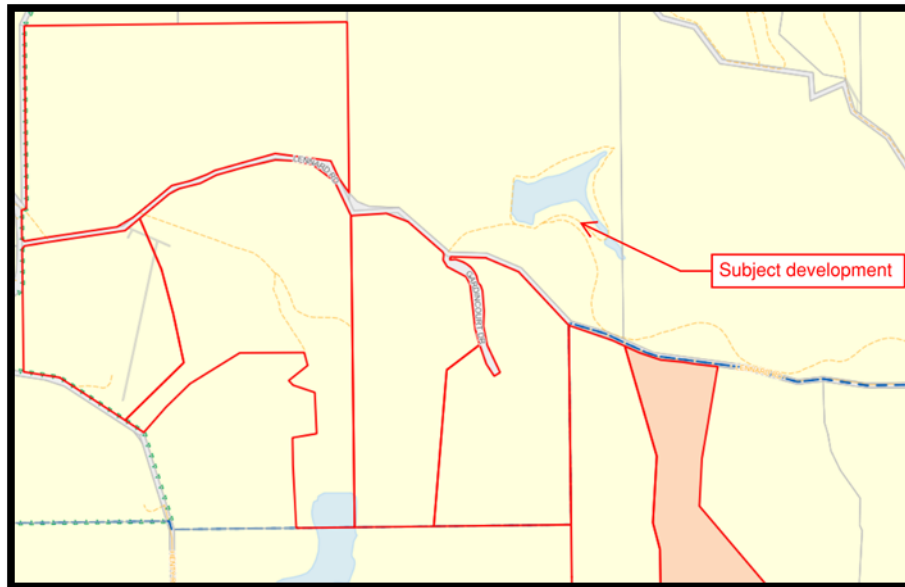
- * *The applicant is advised that a licence is required from the Department of Racing, Gaming and Liquor, in accordance with the Liquor Licensing Act 1988.*
- P24/11 – DA granted for the extension to the existing restaurant, this approval was granted by Shire Officers under delegated authority, a copy of the approval is contained in (Appendix ORD: 12.1B). Approved plans show 10 apartments and 6 cottages. The approved land use is a “Chalet – Short Stay Accommodation with Function Centre/Restaurant” under the Shire of Dardanup Town Planning Scheme No. 3.
- Lavan Legal provided advice to the landowner with regards to the proposed land use and to support an unconditional section 40 certificate for liquor licensing purposes. The advice was provided to permit a “hotel” liquor licence to be granted for the Evedon Lakeside Retreat, details are contained in (Appendix ORD: 12.1C) and summarised below:
 - Evedon Lakeside Retreat currently operates as a short stay accommodation facility with a restaurant and function centre capability. The premises are licensed under the Liquor Control Act 1988 (WA) as a hotel restricted venue.
 - The Shire previously approved this usage and issued an unconditional section 40 certificate for a hotel restricted licence on the basis that the land usage was not listed in the Town Planning Scheme.
 - The proposed development of the microbrewery at the premises would authorise tourists, visitors and those staying at Evedon Lakeside Retreat to consume liquor onsite as well as purchase packaged liquor for takeaway. The microbrewery would be designed to attract tourists and day trippers to come to Evedon Lakeside Retreat to try the craft beer produced onsite as part of their holiday experience. Boutique or craft breweries have become a popular tourist attractions across Western Australia and perhaps most notably in the South West, particularly through the Dunsborough and Margaret River area. For example, there is now a dedicated tour operator in Margaret River which only attends breweries. Further, the best craft breweries in the region are already marketed directly on Tourism Australia’s website.
 - The proposed development of the microbrewery at Evedon Lakeside Retreat would ensure that the facility would attract significant visitation from the public, such as day trippers, rather than the premises relying solely on those persons staying at the Retreat.
 - In order for the microbrewery to attract custom from tourists, visitors and day trippers to the area, it is necessary for those people to be able to purchase the craft beer for

takeaway as well. The craft beer experience is all about visiting the brewery, learning about how the particular beer is made, trying the different varieties produced and then taking some of those beers away with you for consumption at home. The takeaway component is a key part of the experience and allows people to reminisce about their experience.

- The land use definition for this type of facility to incorporate the existing uses and the proposed additional uses, is not defined in the relevant local planning scheme.
- This kind of facility and its tourism offering is often referred to as Agritourism. Agritourism has been defined as the act of going to a region to visit a farm or food-related business (including restaurants, markets, produce outlets or natural attractions) for enjoyment, education, or to participate in activities and events. A recent Deloitte article stated that Agritourism is “becoming an increasingly important sector of the Australian economy, providing direct and indirect benefits to Australian agribusinesses and regional economies.” The article went on to state that key agribusiness products prominent in Agritourism include “...wine, craft beer and spirits, gourmet foods...”
- In our view the Evedon Lakeside Retreat already operates as an Agritourism business. The approval of the microbrewery will allow the applicant to enhance its Agritourism offering and the microbrewery has been specifically selected for its ability to attract tourists, visitors and day trippers to the Retreat. If approved, the microbrewery would benefit other tourism related businesses nearby as visitors would likely seek out other places to attending in addition to visiting the microbrewery.
- In light of the above, the applicant proposes to make the development application on the basis that the microbrewery constitutes an Agritourism land usage. This usage is not listed in the Town Planning Scheme. The applicant would request that the Shire exercise its discretion to approve the development application.
- Following on from the development application, the applicant would need to apply to the licensing authority for a new category of licence because a hotel restricted licence does permit the sale of packaged liquor (except for lodgers). For a variety of important reasons, it is appropriate for the entire Evedon Lakeside Retreat to operate under a single licence. Indeed, the microbrewery has been specifically designed to seamlessly fit in with the existing operations at the site. A hotel licence is the only type of licence that will allow the applicant to operate the Evedon Lakeside Retreat in the manner proposed.
- A liquor licence application is required to be accompanied by an unconditional section 40 certificate from the local government confirming that the proposed usage complies with the local planning scheme. With respect to this application, the land on which the microbrewery is proposed to situate is zoned as General Farming. Regrettably, a hotel usage is not permitted on land zoned as General Farming.
- However, the applicant is seeking to have Agritourism as the approved usage for the site. The grant of a hotel licence will not alter the proposed usage. The premises will not operate as a hotel in the traditional sense, however, a hotel liquor licence is required in order to operate the facility in the manner proposed.

- *Notification of Application*

The application was advertised by giving notice of the proposal to the owners of properties in the vicinity of the development. Letter correspondence was sent to landowners (shown with a red border) requesting comment on the application. A total of seven letters were sent out, no submissions were received.



Legal Implications

Appeal rights exist at the State Administrative Tribunal.

Strategic Community Plan -

- Strategy 2.3.1- Continue to implement integrated environmental, social and land use planning which meets diverse community needs. (Service Priority: Very High)
- Strategy 2.6.1- To provide a variety of places to live, work and play that meet the current and future needs of the community. (Service Priority: Very High)
- Strategy 4.1.1- To create connectivity; Support business success by efficient movement and exchange of people, business, goods, services and ideas.
- Strategy 4.2.3- Foster and promote the Ferguson Valley as a tourism destination. (Service Priority: Very High)

Environment

None

Precedents

Council resolved [230/08] to approve an Application for Development Approval for a Micro-brewery at Lot 85 Ferguson Road, Ferguson subject to conditions. Council also determined the proposed Micro-brewery to be consistent with the objectives of land zoned "General Farming", contained within Clause 3.13.1 of the Shire of Dardanup Town Planning Scheme No.3. Following on from this the Department of Racing, Gaming and Liquor which uses different classifications from the land use classes under TPS3 has issued a "Hotel Tavern licence" to the premises.

Council at its meeting of 14 June 2007 granted approval for a Hotel Restricted Licence (P43/07), subject to conditions.

Neither a "Hotel" nor a "Tavern" is a use class that is permitted in the "General Farming" zone. Notwithstanding this, the current liquor licenses provide flexibility in accordance with the permitted use. From a planning point of view, the use on each of the premises mentioned above is to be managed by the operator in accordance with the Development Approval conditions to ensure compliance with TPS3.

Budget Implications

None

Budget – Whole of Life Cost

None

Council Policy Compliance

The following provisions of CP011 – *Tourism Policy* is relevant to the proposal and states that:

7. *Council will encourage tourism product development and investment throughout the area and will facilitate the development application process.*
8. *Council will demand a high standard of design and aesthetics in all forms of tourist development.*
9. *Council will consider the welfare of the whole community when supporting tourism development and the provision of facilities.*
10. *When considering tourism developments, Council will consider the social, cultural, economic and environmental impact of the proposal within the area.*
12. *Council will support the provision of facilities sufficient to cater for destination and day trip visitors to appropriate areas within its boundaries.*

Risk Assessment

Low

The proposal complements the existing resort operations on Lot 30 and is unlikely to impact on any surrounding properties and agricultural uses due to extensive setbacks from public roads and other sensitive uses.

Officer Comment

The application has been assessed under the relevant planning requirements as follows:

- Shire of Dardanup Town Planning Scheme No.3 (TPS3) and *Planning and Development (Local Planning Schemes) Regulations 2015*.
- Landscape Protection Area
- Planning in Bushfire Prone Areas
- Liquor License

Each of these will be addressed individually:

- *Shire of Dardanup Town Planning Scheme No.3 (TPS3) and Planning and Development (Local Planning Schemes) Regulations 2015*

Lot 30 is zoned “General Farming” and is located within the Landscape Protection Area under the Shire of Dardanup Town Planning Scheme No.3 (TPS3).

The proposed “Agritourism” and “Micro-brewery” uses are not specifically referred to in the zoning table for TPS3 (“Use Not Listed”). Pursuant to Clause 64, Part 8, Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* the local government is to determine whether the use may be consistent with the objective of the zone.

The objectives of the “General Farming” Zone are contained in Clause 2.2 of TPS3 and reads as follows:

- *To provide for a wide variety of productive farming activities, ranging from broad acre grazing to horticulture, which are compatible with the capability of the land and retain the rural character and amenity of the locality.*
- *To protect areas of significant agricultural value, particularly those in irrigation districts, from conflicting land uses.*
- *To facilitate low-key tourist development where it is incidental to the use of the land for farming purposes and where land use conflict can be minimised.*

Council has previously considered (Council resolution [230/08]) and approved an application for development approval for a “Micro-brewery” at Lot 85 Ferguson Road, Ferguson and also determined the use to be consistent with the objectives of the “General Farming” zone.

Lavan Legal has advised that Evedon Lakeside Retreat already operates as an Agritourism business and that the approval of the Micro-brewery will allow the applicant to enhance its Agritourism offering which aims to attract tourists, visitors and day trippers to the Retreat. There is likely to be a flow-on effect where visitors may seek out other nearby tourism related businesses in addition to visiting the Micro-brewery. Therefore the applicant suggests that the Micro-brewery constitutes an Agritourism land use.

Lavan Legal has also advised that following on from the development application, the applicant intends applying to the Department of Racing, Gaming and Liquor for a new category of liquor licence. The current hotel restricted licence restricts the sale of packaged liquor to in-house guests on the property and therefore the intended sale of packaged liquor for consumption off-site requires a new development application approval for a land use that supports the intended new category of licence, a hotel licence. A new liquor licence application would require the local government to confirm that the proposed usage complies with TPS3.

Under the Liquor Control Act 1988:

- *A hotel licence authorises the sale and supply of liquor, for consumption on and off the licensed premises and must provide accommodation.*
- *A hotel restricted licence authorises the sale and supply of liquor for consumption on the premises only (i.e. no packaged liquor sales except to a lodger and only in such quantities that might be reasonably consumed by that lodger on that day). It is also subject to the conditions that it provides accommodation.*

In this regard, a planning approval cannot be issued for a 'Hotel' use as the use is not permitted in the zone. Pursuant to TPS3, hotel means “*premises providing accommodation the subject of a hotel licence under the Liquor Licensing Act 1988, and may include a betting agency on those premises, but does not include a tavern or motel*”. Approval of the proposed Agritourism use and associated Micro-brewery with the existing short stay accommodation component will provide the basis for Council to support a new category liquor licence, a hotel licence. The Department of Racing, Gaming and Liquor is the approving authority and it has the ability to issue a hotel licence. However, the issuing of a hotel liquor licence under the Liquor Licensing Act does not equate to a planning approval for a 'Hotel' use under TPS3.

- *Landscape Protection Area*

Clause 5.2.3 (a-d) of TPS3 is relevant to this proposal and states:

5.2.3 In considering applications for planning consent to commence development on or subdivision or rezoning of any land within a Landscape Protection Area or to do any of the other things mentioned in the preceding clause the Council shall have regard to the following:

- (a) The areas included within Landscape Protection Areas are considered to be areas of significant landscape beauty.*
- (b) Buildings and associated services should be regarded as being secondary to the natural features of the area and should not usually be permitted in visually exposed areas.*
- (c) Buildings should be set back at least one hundred metres from public roads except where the natural vegetation is such that buildings sited closer to a*

road will be screened by natural vegetation or dense planting of native vegetation.

- (d) *Farm outbuildings should where possible be clustered with the farm house and other outbuildings.*

Officers consider the proposal complies with the above development standards for the Landscape Protection Area for the following reasons:

- The Landscape Protection Area provisions mainly relate to new works to ensure that buildings and associated services are appropriate from an amenity perspective. Officers consider the proposed addition to the existing building will not adversely impact on the amenity of the area as the plans submitted demonstrates that the development would be of a high quality and in keeping with the exiting appearance of the main building.
- The proposal involves the construction of a new water tank which will be placed close to an existing concrete water tank which is setback at least 129m from Lennard Road. The proposed water tank will not be screened by the existing vegetation and officers consider the proposed 150 000lt water tank will be less visual if the colour of it matches the existing concrete water tank.

- *Planning in Bushfire Prone Areas*

Lot 30 is partially designated as being bushfire prone. A package of reforms was introduced during December 2015 to help protect lives and property against the threat of bushfires throughout Western Australia. This included *State Planning Policy 3.7- Planning in Bushfire Prone Areas* (SPP 3.7); *Guidelines for Planning in Bushfire Prone Areas* (Guidelines); and the *Planning and Development (Local Planning Schemes) Regulations 2015 Part 10A – Bushfire risk management* which contains deemed provisions relating to bushfire risk management.

Planning Bulletin 111/2016 states that exemptions from the requirements of SPP 3.7 and the deemed provisions should be applied pragmatically by the decision maker and where it is demonstrated that the proposal does not result in the intensification of development (or land use), does not result in an increase of residents or employees; or does not involve the occupation of employees on site for any considerable amount of time, then there may not be any practicable reason to require a BAL Assessment.

The application included bushfire advice from Lush Fire & Planning Ref 18-073, a copy is contained in (Appendix ORD: 12.1D) and summarised below:

- It is noted that the proposal is for a 106m² addition to the existing function centre.
- The development is subject to a Liquor Licence which provides for a maximum of 200 patrons on the site. There will not be any increase in the number of patrons for the microbrewery.
- The proposed development can be defined as being a habitable building.
- A BAL Assessment would be required, Clause 78B of the Regulations specifically refers to “construction” which is separately defined in Part 10A as including the erection, assembly or placement of a building **but does not include** the renovation, alteration, **extension**, improvement or repair of a building.
- As the proposal is maintaining the current limit on the number of patrons at the facility it can be argued that there is no intensification of the land use. Planning Bulletin 111/2016 states that if the proposal does not result in the intensification of development (or land use), does not result in an increase of residents or employees; or does not involve the occupation of

employees on site for any considerable amount of time, then there may not be any practicable reason to require a BAL Assessment.

- The National Construction Code (Building Regulations 2012) only applies the AS3959 Construction Standards to Class 1, 2 or 3 buildings or associated Class 10a buildings i.e. dwellings and outbuildings. There is no ability through the building permit process to impose these standards to other building classes. As the proposed microbrewery is not a Class 1, 2 or 3 building then the AS3959 construction standards are not applicable.
- It is noted that a bushfire management plan has been prepared for the existing development and this includes a requirement for all buildings to have a 20m wide building protection zone.
- The proposed microbrewery is an extension to the existing building and no BAL Assessment is required for this under the Local Planning Schemes Regulations 2015. In considering the development application, the Shire may request that a bushfire assessment be undertaken. Any such assessment should contain a level of detail appropriate to the nature and scale of the proposal recognising that:
 - There is no intensification of the land use; and
 - There is an existing bushfire management plan for the development.
- If it is considered necessary to update the existing bushfire management plan or to prepare an emergency evacuation plan, then this should be as a condition of development approval.

It is recommended that the subject application for the proposed ‘Agritourism’ use and works and use associated with a “Micro-brewery” to accommodate a new category of liquor licence, hotel licence at Lot 30 (205) Lennard Road, Burekup be approved subject to appropriate conditions.

Council Role - Quasi-Judicial

Voting Requirements - Simple Majority

Change to Officer Recommendation

No Change. **OR:**

As per Local Government (Administration) Regulations 1996 11(da) Council records the following reasons for amending the Officer Recommended Resolution:

OFFICER RECOMMENDED RESOLUTION “A”

That Council determines that the proposed Micro-brewery at Lot 30 (205) Lennard Road, Burekup is consistent with the objectives of the “General Farming” zone, contained within Clause 2.2 of the Shire of Dardanup Town Planning Scheme No.3.

OFFICER RECOMMENDED RESOLUTION “B”

THAT Council Approves the Application for Development Approval for an “Agritourism” use including works and use for a “Micro-brewery” at Lot 30 (205) Lennard Road, Burekup subject to the following conditions:

- 1. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plans (DWG No. 1A up to and including 9A, dated 6/03/2019) and must not be altered or modified without the further written consent of Council.**

2. The hereby approved development shall not prejudicially affect the amenity of the neighbourhood due to the emission of light, noise, vibration, electrical interference, odour, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, liquid wastes or waste products.
3. All stormwater from the proposed building addition shall be contained on site in accordance with the Shire's specifications (Policy CP060 – *Stormwater Discharge from Buildings*) to the satisfaction of the Shire of Dardanup prior to occupation of the proposed development.
4. The hereby approved development shall not result in an increase in the number of patrons on site, which is currently limited to a maximum of 200 patrons.
5. The existing bushfire management plan is to be updated to include consideration of the Micro-brewery addition and an emergency evacuation plan prepared by a suitably qualified bushfire consultant.
6. The colour of the proposed 150 000lt water tank is to match the existing concrete water tank next to it to the satisfaction of the Shire of Dardanup.

Advice Notes:

- a) If the development, the subject of this approval is not substantially commenced within a period of two years, or another period specified in the approval after the date of the determination, the approval will lapse and be of no further effect.
- b) Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.
- c) All signage for the proposed development including painted signs are subject to a separate application being lodged and approved by the Shire prior to their installation or erection.
- d) The applicant is advised of the following requirements of other legislation that require further consideration and ongoing compliance:
 - The applicant is advised that this is not a Building Permit. A Building Permit should be obtained prior to commencement of construction. A Building Permit is required for the 150,000ltr capacity water storage tank, and the proposed retaining walls which also requires a structural engineer design for walls of masonry or similar material.
 - Attention is drawn to the requirements for access to buildings for people with disabilities in accordance with the Building Code of Australia and AS1428.1. Detailed drawings are to be submitted with the building permit application identifying means of access from car parking areas to the entrance of the building and throughout the building, as required by AS1428.1.
 - Bar and brewery areas must comply with Standard 3.2.3 of the Food Standards Code, and with AS 4674-2004.

- **An Application to Install a Septic Apparatus must be submitted and approved before construction of any part of the system commences. As it is for a commercial operation, approval is reported on by Shire Environmental Officers and issued by the Western Australian Department of Health.**
 - **An application to alter a public building must be made before work commences. An amended Public Building Approval Certificate must be applied for and issued before use of the building occurs.**
 - **As the proposed addition to the premises will result in changes to the exit doors from the conference room and function room, confirmation of compliance with the Building Code will be required from a Building Certifier before an amended Public Building Approval Certificate will be issued. This Certificate is likely to contain maximum occupancy details for different areas of the premises where rooms are separated by doors or dividers.**
- e) **If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.**

13 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

None.

14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

None.

15 PUBLIC QUESTION TIME

16 MATTERS BEHIND CLOSED DOORS

None.

17 CLOSURE OF MEETING

The Presiding Officer advises that the date of the next Ordinary Meeting of Council will be Wednesday 17 July 2019, commencing at 5.00pm at the Shire of Dardanup - Administration Centre Eaton.

There being no further business the Presiding Officer to declare the meeting closed.