



Agenda

Special Council Meeting

Tuesday, 6 February 2024

Date:	Tuesday 6 February 2024
Time:	6:30pm
Location:	Clem Thompson Sports Pavilion, Stadium Road, Tom Price
Distribution Date:	Thursday 01 February 2024



**Shire of Ashburton
Special Council Meeting**

Please be informed a Special Council Meeting will be held at 6:30pm on Tuesday 6 February 2024 at Clem Thompson Sports Pavilion, Stadium Road, Tom Price.

A handwritten signature in black ink, appearing to read 'Kenn Donohoe'.

Kenn Donohoe
Chief Executive Officer
01 February 2024

Disclaimer

The Shire of Ashburton warns anyone who has an application lodged with Council must obtain, and should only rely on, written confirmation of the outcomes of the application following the Council meeting, and any conditions attaching to the decision made by Council in respect of the application. No responsibility whatsoever is implied, or accepted, by the Shire of Ashburton for any act, omission, statement, or intimation occurring during a Council meeting.

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1 Declaration Of Opening

The Presiding Member declared the meeting open at [enter time](#).

1.1 Acknowledgement Of Country

As representatives of the Shire of Ashburton Council, we respectfully acknowledge the local Indigenous people, the traditional custodians of this land where we are meeting upon today and pay our respects to them and all their elders past, present and emerging.

2 Announcement Of Visitors

To be informed at the meeting.

3 Attendance

3.1 Present

Elected Members:	SP A Smith Cr K White Cr L Rumble JP Cr A Sullivan Cr M Lynch	Shire President Deputy Shire President, Onslow Ward Paraburdoo Ward Paraburdoo Ward Tom Price Ward
Employees:	K Donohoe I Bishop C McGurk D Kennedy R Miller A Johnston J Bray A Furfaro	Chief Executive Officer Deputy Chief Executive Officer Director Community Development Director Corporate Services Director Infrastructure Services Manager Media and Communications Manager Governance Governance Officer
Guests:	Enter names	
Members of Public:	There were enter number members of the public in attendance at the commencement of the meeting.	
Members of media:	There were enter number members of the media in attendance at the commencement of the meeting.	

3.2 Apologies

Cr M Gallanagh Pannawonica Ward
Cr R De Pledge Ashburton-Tablelands Ward
Cr B Healy Tom Price Ward

3.3 Approved Leave Of Absence

Nil

4 Question Time

4.1 Public Question Time

To be informed at the meeting.

5 Declaration By Members

5.1 Due Consideration By Councillors To The Agenda

Councillors will be requested to note they have given due consideration to all matters contained in this agenda.

5.2 Declaration Of Interest

A member who has an Impartiality, Proximity or Financial interest in any matter to be discussed at this meeting must disclose the nature of the interest either in a written notice, given to the Chief Executive Officer, prior to the meeting, or at the meeting immediately before the matter is discussed.

A member who makes a disclosure in respect to an interest must not preside at the part of the meeting which deals with the matter, or participate in, or be present during any discussion or decision-making process relative to the matter, unless the disclosing member is permitted to do so under Section 5.68 or Section 5.69 of the *Local Government Act 1995*.

The following declarations of interest are disclosed –

Nil

6 Announcements By The Presiding Member And Councillors Without Discussion

To be informed at the meeting.

7 En Bloc Resolutions

7.1 Agenda Items Adopted En Bloc

To be advised at the meeting.

8 Office of the Chief Executive Officer Reports

8.1 Unauthorised Development - Onslow, Western Australia

File Reference	BEA.561
Applicant or Proponent(s)	OMSB Pty Ltd
Author	L Advisory, LK Advisory Pty Ltd
Authorising Officer	I Bishop, Deputy Chief Executive Officer
Previous Meeting Reference	Ordinary Council Meeting – 10 October 2023 – 12.2 and 12.3 Ordinary Council Meeting – 14 November 2023 – Item 12.2 Ordinary Council Meeting – 12 December 2023 -Item 18.6
Disclosure(s) of interest	Author – Nil
	Authorising Officer – Nil
Attachments	1. DWER Prescribed Premises Licence 2. Summary of Legal Advice - Confidential 3. Compliance and Enforcement Actions - Confidential

Report Purpose

To inform Council of alleged unauthorised activities occurring at Beadon Creek Boat Harbour in contravention of the Shire's Local Planning Scheme No. 7 (LPS 7), and to seek Council's approval for enforcement and compliance actions in respect of those activities.

Background

The Beadon Creek Boat Harbour in Onslow is comprised of Lots 460, 561 and 3054 Beadon Creek Road, within Reserve 30711, which is under the care, control, and management of the Department of Transport (DoT).

On the western side of the Harbour under a land and seabed lease from Department of Transport (DoT) - referred to as Lot 13, is the Onslow Marine Support Base Pty Ltd (OMSB) operation.

The Onslow Community Boating Precinct is situated immediately to the south of OMSB's lease area, while the Discovery Park tourism development is located to the west. The eastern side of the Harbour comprises natural vegetation and is largely undisturbed. See location provided at **Figure 1**.

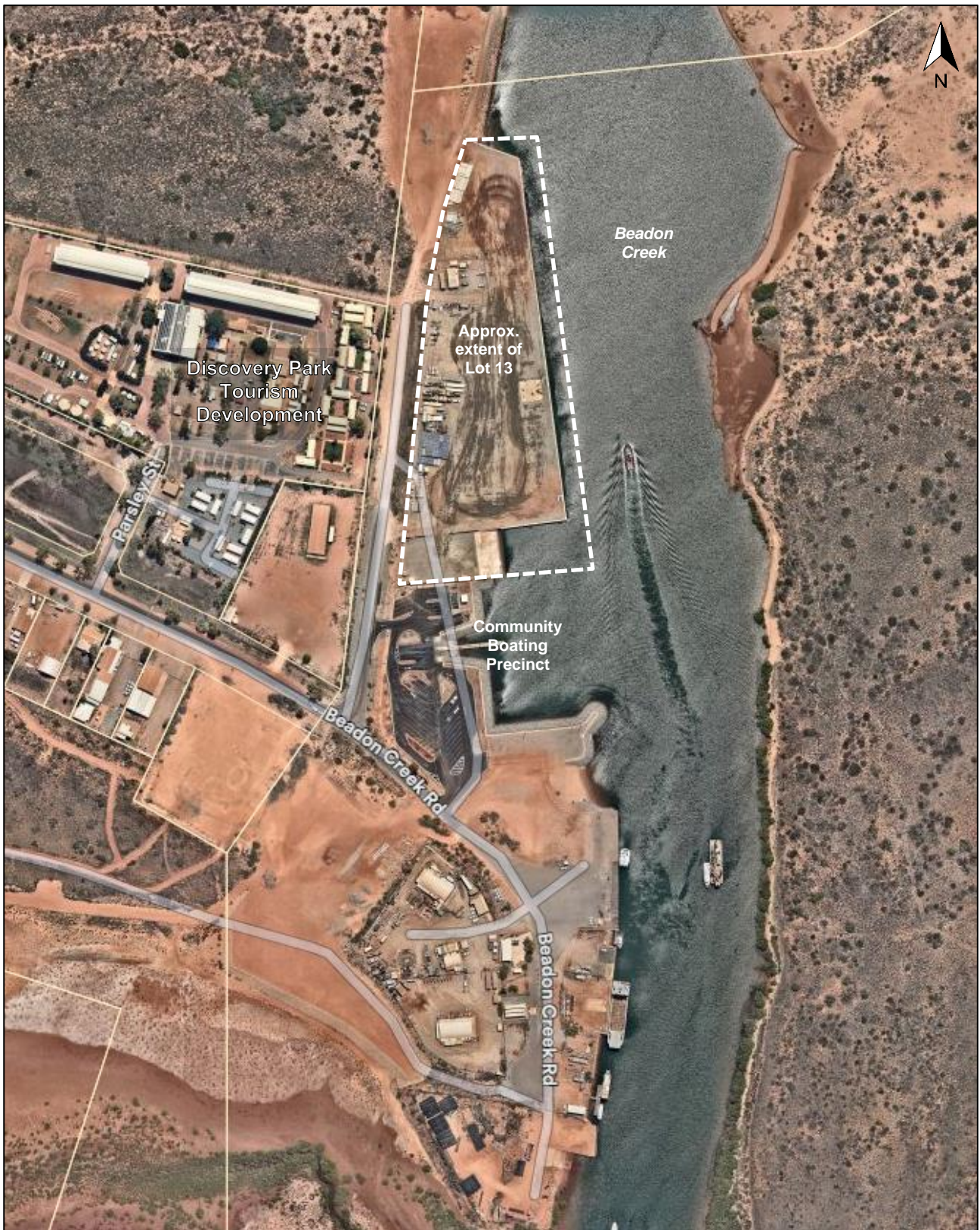


Figure 1: Location Plan – Beadon Creek Boat Harbour (Source: Nearmap, Aerial image: 19 September 2023)

On 21 December 2022, the Department of Water and Environmental Regulation (DWER) received a ‘Prescribed Premises’ licence application on behalf of OMSB to establish a solid waste depot and scrap metal recovery facility within its lease area (Lot 13) at Beadon Creek Boat Harbour. See layout plan shown in **Figure 2**.

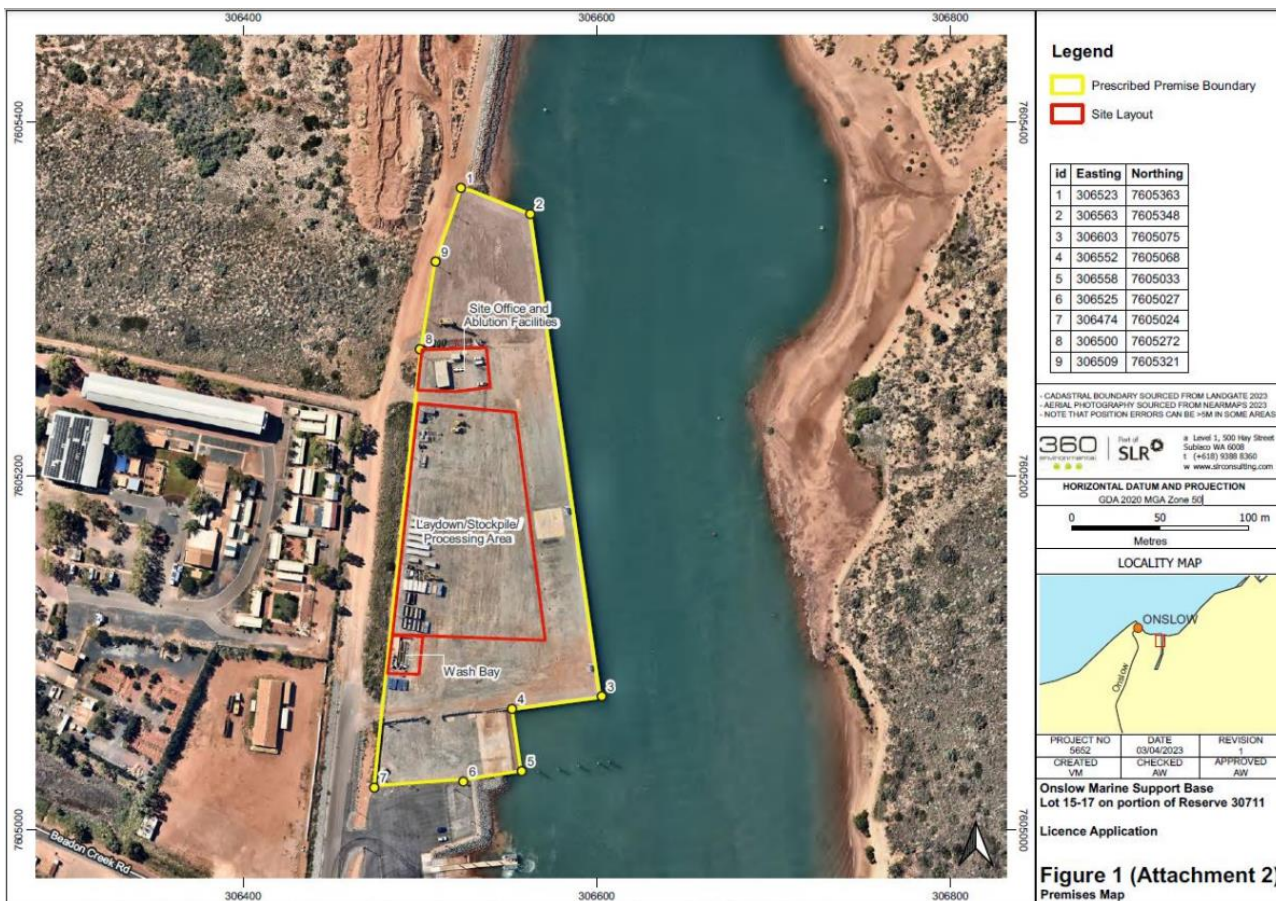


Figure 2: DWER Approved Site Layout Plan (Prescribed Premises Licence L9388/2023/1)

The facility is primarily intended to receive and dismantle decommissioned offshore oil and gas infrastructure, initially from Chevron Australia.

The facility would process up to 10,000 tonnes/annum of scrap metal and 3,500 tonnes/annum of other waste, including:

- General waste (plastics, electrical waste, concrete, subsea infrastructure)
- Bio-fouled waste (marine organic matter)
- Hazardous waste (naturally occurring radioactive material, hydrocarbons, explosives, toxic and corrosive materials)
- Medical waste (clinical waste, syringes, sanitary products, etc)
- Liquid waste

The processing of metal in this context would occur using hydraulic sheers and grinders to cut/fragment the waste into smaller pieces for further processing/storage and subsequent loading onto ships or trucks for disposal or sale elsewhere. This would involve the removal of marine growth and other potentially contaminated substances and the isolation, storage, and separate disposal of Naturally Occurring Radioactive Materials (NORMs).

The Shire objected to the licence application on 9 June 2023 and advised DWER that the licenced activities cannot occur without development approval under the Shire’s Local Planning Scheme No. 7 (LPS 7). Reasons for the Shire’s objection to the licence application included:

- a) The proposed facility is in close proximity (40m) to the Onslow Discovery Park which provides short and long-term tourist accommodation. This land use is a 'sensitive use' under the Environmental Protection Authority's (EPA's) Guidance Statement No. 3: 'Separation Distances between Industrial and Sensitive Land Uses' (Guidance Statement No. 3).
- b) The proposed shearing and processing of scrap metal best fits the 'scrap metal recycling works' description of industry under Guidance Statement No. 3, which recommends a minimum buffer distance of 300-500m for this type of activity.
- c) The Shire has not considered any noise management or mitigation plan associated with the proposal.
- d) In the absence of any noise management or mitigation measures, the proposal is expected to have an unacceptable impact on the amenity of the nearby sensitive use.

On 15 September 2023, despite the Shire's objection, DWER issued Prescribed Premises Licence L9388/2023/1 to Onslow Port Services Pty Ltd (OPS) (Entity name changed to OMSB Pty Ltd on 3 July 2023), a wholly owned subsidiary of OMSB, with a licence duration of nine years – expiring 14 September 2032.

A copy of DWER's Licence is included as **Attachment 1** while its decision report is available on DWER's website [here](#).

The Shire was aggrieved by DWER's decision to grant the Prescribed Premises Licence and in early October 2023 lodged an appeal against the conditions of the Licence, under Section 102(3) of the *Environmental Protection Act 1986*. A response to the Shire's appeal was due by DWER in November 2023 but to date, has not been determined and is still under consideration by the Office of the Appeals Convenor. In the meantime, the Licence remains valid and in effect. It is the Shire's understanding from discussions with the Office of the Appeals Convenor that the DWER has requested multiple extensions to consider the Shire's objection which has delayed their ability to consider the matter.

Condition 1 of DWER's Licence requires a bunded and lined laydown/stockpile/processing area to contain any potentially contaminated runoff from the waste materials, as shown in **Figure 2** earlier.

In November 2023, on behalf of Chevron Australia (owner of the decommissioned infrastructure), Liberty Industrial Pty Ltd (Liberty) began constructing the required containment bund within OMSB's lease area, without the required development approval from the Shire. This occurred despite the Shire having specifically and repeatedly advised both OMSB and Chevron of the need to obtain development approval for:

- The containment bund works; and
- Any proposed offshore decommissioning and waste processing activities, beyond the narrow scope of activities permitted under Shire development approvals granted for port operations in 2014, 206 and 2022.

At the time, Chevron Australia had notified the Shire that Liberty would soon commence decommissioning activities at the Harbour on Chevron's behalf under OMSB's DWER Licence. According to Chevron Australia, these activities would involve the processing of an estimated 2,490 tonnes of decommissioned offshore platforms using the methods described earlier, for a duration of 90 – 120 days, operating 7:00am – 7:00pm Monday to Saturday, excluding public holidays. Whilst the Shire has not yet observed these activities occurring on site, it is understood the receipt and processing of decommissioned offshore infrastructure is imminent and could commence in the coming weeks.

Notwithstanding the Shire's repeated advice to OMSB and Chevron Australia, works on the containment bund continued (and have recently been completed in late December/early January with all works now ceased) without any development approval from the Shire. Conducting and completing these works without approval represents a contravention of LPS 7 and constitutes 'illegal development' under the *Planning and Development Act 2005*.

On 8 December 2023, the Shire commenced formal compliance action against Onslow Marine Support Base Pty Ltd, OMSB Pty Ltd, and Liberty Industrial Pty Ltd by serving Direction Notices under s.214(2) of the *Planning and Development Act 2005*, requiring them to stop and not recommence the 'illegal development' that was occurring to build the containment bund.

On 14 December 2023, OMSB appealed against the Shire's direction notice to the State Administrative Tribunal (SAT) (Matter DR 189/2023). The appeal is still before the SAT. Mediation in SAT has not been successful in fully resolving the matter. In the meantime, the Shire's Direction Notice to OMSB has been held in abeyance, pending further Orders from SAT.

While SAT mediation proceedings are generally confidential and 'without prejudice', the Shire can confirm that on 28 December 2023, OMSB lodged a development application under the Shire's LPS 7 for retrospective approval of the containment bund only, not for any decommissioning, scrap metal, or waste processing activities – which the Shire contends cannot occur on the site without development approval.

The Shire promptly reviewed OMSB's development application for completeness and compliance with the *Planning and Development (Local Planning Schemes) Regulations 2015* and notified OMSB (on 4 January 2024) that the application was deficient and incomplete, and that further information was needed for the application to be accepted for assessment.

The Shire has received some of the information it requested from OMSB and expects to receive the remaining information by mid-February 2024. Once received, the Shire will be able to formally assess and determine the application under LPS 7.

In contrast to OMSB, Liberty did not respond to the Shire's Direction Notice, did not appeal to SAT, and continued undertaking works without any development approval. Liberty's failure to comply with the Shire's Direction Notice and contravention of LPS 7 have been referred to the Shire's solicitors for further action.

At its meeting on 12 December 2023, Council considered Confidential Report 18.6 which provided legal advice on the unauthorised development activity at Beadon Creek Boat Harbour. In response, Council resolved to (Decision 249/2023):

1. *Note the contents of this report and legal advice received.*
2. *Note that the Shire of Ashburton intends to enforce its planning requirements for development approvals pursuant to Local Planning Scheme No. 7 and the Planning and Development Act 2005.*
3. *In accordance with the Local Government Act 1995, authorises a Special Meeting of Council to be called, if deemed necessary, to consider future action to ensure planning and development compliance pursuant to the Local Planning Scheme No. 7 and the Planning and Development Act 2005.*

Comments

Confidential Attachment 2 provides Council Members with a more detailed appraisal of the current status of OMSB's SAT appeal and the recommended compliance and enforcement action to be taken (**Confidential Attachment 3**):

- Depending on future SAT Orders and Decision(s);
- If further illegal works occur on site;
- If decommissioning activities and scrap metal/waste processing begins to occur on site in contravention of LPS 7.

The Shire has always been supportive of the DoT and OMSB's port operations at Beadon Creek Boat Harbour, and of Chevron Australia's contribution to the Shire and the Pilbara. The Shire also acknowledges the demand for, and need for decommissioning of resource sector waste material.

Critically however, the Shire's support for these activities has never obviated the need for the relevant parties to apply for, obtain and comply with *all* necessary approvals, from the Shire and other relevant decision-making bodies. This position was specifically and repeatedly reinforced in the Shire's numerous representations to OMSB and Chevron Australia, emphasising the need to obtain development approval before commencing any decommissioning works (construction) or related activities (use of land).

Conducting works (and any future activities) on the site without development approval is a contravention of LPS 7 and constitutes an offence under the *Planning and Development Act 2005*, in response to which the Shire is obligated to act to ensure good governance.

The enforcement powers available to the Shire to respond to unlawful development are prescribed in the *Planning and Development Act 2005* and can be summarised as follows:

a) Direction Notice (s.214)

The responsible authority may give a written direction (Direction Notice) to a person or entity to stop, remove, pull down, take up, or alter the development, or to restore the land to its prior condition. Failure to comply with such a direction is an offence.

The person or entity receiving the Direction Notice can appeal to SAT against that direction. In deciding the matter, SAT can dismiss the appeal and uphold the direction, or vary the direction, or uphold the appeal and dismiss the direction. A decision of SAT may be appealed to the Supreme Court, but only if SAT has made an error at law.

b) Injunction (s.216)

The responsible authority may apply to the Supreme Court for an injunction (s.216). A Supreme Court decision to grant an injunction can be appealed to the Court of Appeal.

An injunction stops a person from doing something that would violate the Act or a Planning Scheme or stops the continuation, completion, or use of a development that has not followed the conditions set by the local government, until those conditions are met.

c) Prosecution (s. 218)

The responsible authority may commence prosecution action in the Magistrate's Court against the person or entity alleged to have contravened the Act or Planning Scheme.

d) Infringement Notice (s.226)

The responsible authority may issue infringement notices (\$500 penalty) for every day that an alleged offence continues. Failure to pay an infringement notice constitutes a further offence, but payment bars the responsible authority from commencing further enforcement proceedings for the same matter.

A person found guilty of an offence under the *Planning and Development Act 2005* is typically liable for a fine of up to \$200,000 and a further fine of up to \$25,000 for each day that the offence continues (s.223). However, under s.40(5) of the *Sentencing Act 1995 (WA)*, a body corporate may be liable for a fine of up to five times the maximum amount that could be imposed on an individual, meaning a company found guilty of an offence may be fined up to \$1,000,000 and up to \$125,000 per day for each day the offence continues.

Consultation

In formulating this report, extensive consultation has occurred between key Shire personnel, the Shire's consultant planners LK Advisory, and the Shire's appointed solicitors.

All correspondence with and advice from the Shire's solicitors is protected by legal privilege, cannot be publicly disclosed, and must be treated confidentially in accordance with s.5.23(2)(d) of the *Local Government Act 1995*.

Strategic Community Plan

Shire of Ashburton Strategic Community Plan 2022-2032

Strategic Objective	2. Place - We will provide sustainable, purposeful, and valued built and natural environment opportunities for the community.
Strategic Outcome	2.6 Land use opportunities to benefit current and future communities
Strategy	2 Incorporate appropriate planning controls for land use planning and development.

Council Policy

Nil.

Financial ImplicationsCurrent Financial Year

Legal costs will vary depending on the specific actions of the Shire and the actions of the alleged offender(s) in response.

Future Financial Year(s)

SAT and legal/court proceedings on this matter could continue into future financial years and the costs will vary depending on the outcome.

Legislative Implications

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015.

Shire of Ashburton Local Planning Scheme No. 7

Local Government Act 1995

Shire of Ashburton Delegation and Authorisation Register, 15 August 2023.

- 08.01.01 Directions Regarding Unauthorised / Illegal Development.

AA01.02 Planning and Development Act 2005 – Commencing a prosecution for contravening a provision of the planning scheme (s. 218) and commencing a prosecution for failure to comply with directions (s. 214).

Risk Management

Risk has been assessed against the Shire of Ashburton Risk Management Framework.

Theme	Risk	Likelihood	Consequence	Inherent Risk Rating	Risk Treatment
Reputation (social/community)	Impact to the community regarding noise, traffic, odour, boating/community facilities and airport operations	Likely (4)	Major (4)	High (10-16)	Commence appropriate compliance action to mitigate the risk
Compliance	Project commences without development approval, precedent set for future development	Likely (4)	Major (4)	High (10-16)	Commence appropriate compliance action to mitigate the risk
Natural environment	Waste facility adjacent to Beadon Creek waterway, possible impact to marine life, community boating facility and future desalination plant (Onslow town water supply)	Possible (3)	Major (4)	High (10-16)	Commence appropriate compliance action to mitigate the risk

Based on the inherent risk rating and risk treatments, the residual risk to the Shire is considered to be high.

Voting Requirements

Simple Majority

Officer Recommendation

That with respect to the Unauthorised Development – Onslow, Western Australia, Council:

1. Notes the contents of this report:
2. Approves the legal enforcement actions and related legal proceedings discussed in Confidential Attachment 2 to enforce compliance with the Shire of Ashburton's Local Planning Scheme No. 7 (LPS 7) and the *Planning and Development Act 2005*; and
3. Support the implementation of the actions and approach referenced in 2 above in respect of any illegal development (works and/or use) at Beadon Creek Boat Harbour, Onslow.

9 Next Meeting

The next Ordinary Council Meeting will be held at 2:00pm on Tuesday 20 February 2024 at Council Chambers. Onslow Shire Complex, Second Avenue, Onslow.

10 Closure Of Meeting

There being no further business, the Presiding Member closed the meeting at [enter time](#).