

CITY OF COCKBURN

SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON TUESDAY, 18 NOVEMBER 2003 AT 7:00 PM

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CITY OF COCKBURN

MINUTES OF ORDINARY COUNCIL MEETING HELD ON TUESDAY, 18 NOVEMBER 2003 AT 7:00 PM

PRESENT:

ELECTED MEMBERS

| | | |
|-------------------|---|--------------|
| Mr S Lee | - | Mayor |
| Mr R Graham | - | Deputy Mayor |
| Ms A Tilbury | - | Councillor |
| Mr I Whitfield | - | Councillor |
| Mr A Edwards | - | Councillor |
| Ms L Goncalves | - | Councillor |
| Mrs S Limbert | - | Councillor |
| Mr M Reeve-Fowkes | - | Councillor |
| Mrs V Oliver | - | Councillor |

IN ATTENDANCE

| | | |
|----------------|---|--|
| Mr R. Brown | - | Chief Executive Officer |
| Mr D. Green | - | Director, Community Services |
| Mr A. Crothers | - | Director, Finance & Corporate Services |
| Mr S. Hiller | - | Director, Planning & Development |
| Mr B. Greay | - | Director, Engineering & Works |
| Mrs B. Pinto | - | Secretary/PA, Finance & Corporate Services |
| Mr C. Ellis | - | Communications Manager |

1. DECLARATION OF MEETING

The Presiding Member declared the Meeting open at 7.00 pm.

2. APPOINTMENT OF PRESIDING MEMBER (If required)

3. DISCLAIMER (Read aloud by Presiding Member)

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.



4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS (by Presiding Member)

Nil

5 (OCM 18/11/2003) - APOLOGIES AND LEAVE ABSENCE

Clr K Allen - Apology

6 (OCM 18/11/2003) - ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Cheryl Smith – Public Question Time – Ordinary Council Meeting 21/10/03 – in relation to Council’s Circus Policy, asked “*who is responsible for the payment of liability to claims in the event of any injury, loss or damage caused by a circus animal, whether it be negligence, loss of control or any other reason and in the event that any insurance coverage held by the circus not be approved or recognised within Australia, will Council cover any liability for cost or can Council guarantee liability payments by any other party or organisation?*”

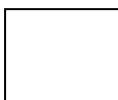
In a response dated 29 October 2003, Ms Smith was advised that firstly, Council resolved at the meeting to amend the relevant clauses of its Policy in relation to Public Liability Insurance and Emergency Procedures.

After discussions with Council’s Insurers, it is considered that there is sufficient coverage for the City, should an incident occur. However liability can depend on circumstances surrounding each incident and therefore, it is not possible to issue a “blanket” guarantee. Any such incidents could be subject to legal action taken against any party dependent upon the circumstances involved.

Secondly, regarding recognition of insurance held that is not of a type approved within Australia, it was successfully argued at the Council Meeting that “off shore” insurance is as valid a form of protection as can be obtained within Australia and on that basis, should be an acceptable form of coverage to Council. Again, the question of accepting liability can depend on circumstances and are always subject to possible legal action.

As a standard, Council is now comfortable that its Policy places sufficient responsibility on Circuses proposing to perform within Cockburn, to ensure public safety is of paramount priority and adequate insurance coverage is held to protect it against potential claims.

John Grljusich – Public Question Time – Ordinary Council Meeting 21/10/03 – in relation to his request for reimbursement of legal costs as a result of the Douglas Inquiry. *He queried that the legal advice stated that there were a number of adverse findings against the CEO and yet the CEO’s*



legal expenses were paid by Council, and the advice does not show any adverse findings against him and yet he has not been reimbursed. He asked "Why has the City of Cockburn taken such a prejudicial and unfair course of action against myself and given such unduly favourable treatment to Mr Brown."

In response to his query a letter was forwarded to Mr Grijusich dated 7 November 2003, which stated:

The legal advice was in fact obtained by and addressed to the City of Cockburn. Will you please explain how you came to be in possession of a document that is a confidential document of the City, and is the property of the City?

You indicate in your letter that you presented to the meeting that you believe that you had not acted adversely and therefore that you should have been reimbursed for your legal expenses. Before commenting on this statement it is necessary to set out the background on Council's Policy on legal expenses that applied at the time of the Inquiry.

The policy on Legal Representation dated 13 July 1999, a copy of which was signed by you, sets out the guidelines under which payment of legal expenses would be made and the procedure for applying for reimbursement of those expenses. Clauses 18 and 19 of that Policy stated as follows

"18. An indemnity or authority given under this Policy or a contingent authorisation under clause 15 shall be and is hereby revoked, in the following circumstances: -

- (a) If in the Inquiry or otherwise, it is found that a person has acted illegally, dishonestly, against the interests of the City of otherwise in bad faith in connection with the matter for which the person was granted financial support or given contingent authority; and*
- (b) All opportunities for appealing against or otherwise challenging that finding have been exhausted; or*
- (c) Information provided to the CEO in the application is materially false or misleading.*

19. If under the preceding clause, the indemnity or authority or a contingent authorisation is revoked, then the person who sought or obtained the financial support shall be taken to have released the City absolutely from any liability to provide financial support and when called upon by the City, shall repay any moneys provided under the revoked indemnity, authority or contingent authorisation. The City shall take action to recover any such moneys in a court of competent civil jurisdiction and/or shall deduct such moneys from any allowance or salary payable by the City to the person."

The Policy provided for reimbursement of up to \$3,000, with a proviso that



the express authority of Council was required if any amount was claimed above \$3,000.

In a letter dated 7 September 1999, Hammond Worthington Lawyers, acting on your behalf requested that Council review its policy and agree to provide funding of \$40,000 for your legal expenses.

At its meeting on 28 September 1999 Council decided that it was;

“ prepared to contribute in total up to a maximum amount of \$40,000 by way of reimbursement of legal expenses on production of an itemised statement of costs following the outcome of the Inquiry subject to Policy A1.18, which provides for the payment to be made if a person has not acted illegally or dishonestly against the interests of the City of otherwise in bad faith.”

Council also decided to advise Hammond Worthington that *“the general thrust of the Inquiry is to examine if Councillors and Staff have provided good governance for the City and should any adverse findings relating to any issue, be made against Mr. Grijusich by the Inquirer, Mr Douglas, relating to good government, then Council will not make any contribution towards legal expenses”*.

Hammond Worthington Lawyers advised by letter on 4 November 1999 that you accepted Council's offer of legal assistance while reserving the right to lobby any future Council and noting your disagreement with the Policy.

Against that background the Douglas Inquiry made the following findings against you:

(a) Finding F2(d)

This was a finding in respect of the decision by the Council on 6/4/93 in regard to the extension of the cleaning contract, and was a finding that--

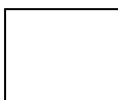
“(d) the elected members who voted to support the extension--

- (i) did so because they wanted to retain MP Cleaning as the City's cleaning contractor; and*
- (ii) failed in their responsibilities as elected members to act in the best interests of the City.”*

You were one of the elected members who voted to support the extension.

(b) Finding F4(e)

This was a finding in respect of the recommendation by the Administration and Community Services Committee on 20/6/99 to extend Contract No.22/93 for 3 years adopted without discussion by the Council at its meeting of 5 July, 1994. The finding was that--



"(e) *the elected members who voted to support the extension--*

- (i) did so because they wanted to retain MP Cleaning as the City's cleaning contractor; and*
- (ii) failed in their responsibilities as elected members to act in the best interests of the City."*

You were one of the elected members who voted to support the extension.

(c) Finding F8(d)

This was a finding in respect of the Council's decision on 6 June 1995 to rescind its resolution to extend Contract Nos.35/91 and 36/91 for 1 year, and the finding was that--

"(d) *The elected members, including, Deputy Mayor Grljusich and who voted to support the extension--*

- (i) did so because they wanted to retain MP Cleaning as the City's cleaning contractor; and*
- (ii) failed in their responsibilities as elected members to act in the best interests of the City."*

(d) Finding F9(e)

This was a finding in respect of the recommendation of the Works and Parks Committee on 21 May 1996, that MP Cleaning be awarded Tender Nos.21/96, 22/96 and 23/96. The finding was in the following terms:--

"(e) *if, as he claimed he did, Mayor Grljusich made his decision on the basis that the three Tenders should be considered as one, his decision--*

- (i) was unjustified and baseless;*
- (ii) was unfair on the tenderers who submitted their Tenders on a different basis;*
- (iii) resulted in the elimination of 12 of the 18 companies that did not tender for all three contracts;*
- (iv) was unlawful in that it took into account an irrelevant consideration;*
- (v) unfairly and improperly favoured MP Cleaning;*
- (vi) undermined the tender process; and*
- (vii) was not in the best interests of the City."*

(e) Finding F18(d)

This again was a finding in connection with the MP Cleaning



Contracts, and the relevant finding was as follows--

"(d) Mayor Grljusich and Councillors in voting to recommend that the Tender be awarded to MP Cleaning--

- (i) did so because they wanted to retain MP Cleaning as the City's cleaning contractor; and*
- (ii) failed to act in accordance with their statutory obligation to select the 'most advantageous' tender for the City".*

(f) Finding F28(b)

This finding appears under the heading "Deputy Mayor Grljusich's role" and refers to the decision of the Council on 5/7/94 to defer Amendment No.91 until the Council had received legal advice on a matter referred to in the letter to Deputy Mayor Grljusich from Urban Focus dated 19/1/94. In regard to that matter the finding was as follows--

"(b) in respect of each of these matters Deputy Mayor Grljusich acted as he did for the purpose of achieving the deferral of Amendment No.91 to his personal advantage."

(g) Finding F33

This finding was in respect of the events relating to and including the Planning, Building and Health Committee recommendation of 29 November 1994 and the Council decision of 6 December 1994 to exclude Lot 17 from Amendment No.91.

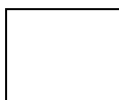
"(a) Deputy Mayor Grljusich failed to comply with his duties, and abused his position, as an elected member and as the then Deputy Mayor.....

(b) in each of these matters, Deputy Mayor Grljusich acted as he did for the purpose of achieving the exclusion of Lot 17 from amendment No.91 to his personal advantage.

(h) Finding F41

The finding was in regard to your direct contact with City employees--

- "a) the contacts occurred frequently over the period from August 1997 to the suspension of the Council in April 1999;*
- (b) Mayor Grljusich was often forceful and demanding;*
- (c) in respect of many of the contacts the City's employees were required to meet Mayor Grljusich in the mayoral parlour;*
- (d) Mayor Grljusich demanded and received priority because of his position as Mayor;*
- (e) Mayor Grljusich received from the City documents and*



information in relation to the matters in which he had a financial interest that he would not otherwise have received or have been entitled to receive;

(f) *Mr Grljusich's evidence on oath that on every occasion when he made contact, by telephone or in a face to face conversation with an employee of the city in relation to Lot 17, he--*

(i) *began by indicating that he was approaching them in his private capacity, not as Mayor;*

(ii) *sought their approval to do so; and*

(iii) *did not continue unless he obtained their approval;*

was fabricated;

(g) *the overwhelming weight of the evidence is that there were many instances in which Mayor Grljusich did not indicate to City employees that he was approaching them in his private capacity."*

(i) Finding F42

This finding was in relation to your claim for POS compensation--

"(a) *Mayor Grljusich sought to be treated more favourably than any other Packham Area landowner in that he insisted on being paid POS compensation from the City's funds--*

(i) *without contributing towards infrastructure costs - when all other Packham Area landowners had contributed, or made arrangements to contribute, to infrastructure costs;*

(ii) *in respect of POS land in excess of 10% - when all other Packham Area landowners (who paid their share of infrastructure costs) were entitled to POS compensation only in excess of 16%; and*

(iii) *at a rate that was significantly greater than the rate applying to all other Packham Area landowners (who paid their share of infrastructure costs); and*

(b) *this special deal sought by Mayor Grljusich would have benefited him financially at the expense of the City of which he held the highest office; and*

(c) *Mayor Grljusich's behaviour in making these claims and pursuing them against the City for over 12 months was a breach of the standards of conduct expected of a person occupying the position of Mayor and, in the circumstances, constitutes improper conduct."*

(i) Finding F43



This finding was in relation to a meeting between the Grljusich family and the Director, Planning and Development--

- "(a) Mayor Grljusich abused his position as Mayor of the City by--*
- (i) demanding, in a rude and insulting manner, that Mr Hiller, without any advance notice, attend the meeting;*
 - (ii) using the mayoral parlour for his own private purposes in pursuing his claim against the City for POS compensation;*
 - (iii) demanding that Mr Hiller give him and the other owners of Lot 17 (or their spouses or representatives) immediate answers to their questions;*
 - (iv) adopting intimidating tactics, including intense staring at Mr Hiller, to increase the pressure on Mr Hiller to succumb to the persistent POS compensation demands by Mayor Grljusich and the other owners of Lot 17; and*
 - (v) being a party to the threat of legal action by the owners of Lot 17 against the City if the Council did not quickly resolve the POS compensation issue; and*
- (b) Mayor Grljusich's behaviour was a gross departure from the standards of conduct expected of a person occupying the position of Mayor and, in the circumstances, constitutes improper conduct".*

(k) Finding F48

This finding refers to your pursuit of your compensation claim by lobbying elected members--

- "(a) the purpose of the lobbying was to persuade his colleagues to assist him in securing the best financial deal for himself in respect of his POS compensation claim;*
- (b) the lobbying increased the pressure on the City's employees to support the POS compensation claim; and*
- (c) in the circumstances, particularly--*
- (i) Mayor Grljusich's position as mayor of the City;*
 - (ii) Mayor Grljusich's relationship with the elected members; and*
 - (iii) that his claim was against the City itself;*

the lobbying constituted undue influence and was clearly inappropriate."

(l) Finding F52(h)

This finding was in respect of the terms of a deed entered into between the City and Peremate--



- "(h) *the Deed would not have been entered into had it not been for the abuse by Mayor Grljusich of his position as Mayor by--*
- (i) repeatedly insisting that the City had to become involved in a matter that should have involved only the Planning Commission and the owners of Lot 17;*
 - (ii) applying enormous pressure on the City's employees and elected members, over a long period of time, to find a way for Mayor Grljusich and the other Lot 17 owners to avoid their obligations in complying with a subdivision condition imposed by the Planning Commission;*
 - (iii) using the City's information that was provided to him in his capacity as an elected member to pursue his claim for compensation against the City; and*
 - (iv) using the City's resources, including its personnel, documents, equipment and the mayoral office, to pursue his claim for compensation against the City."*

On conclusion of the Inquiry it was necessary for Council to consider the payments it had made for reimbursement of legal expenses to various elected members and staff under Policy A1.18 and whether it was necessary to recover the moneys paid.

At its meeting on 17 October 2000 Council resolved to advise you and others that the City considered that, by virtue of Clause 18 and 19 of Policy A1.18, the City's authorisation of financial assistance to you in respect of the Douglas Inquiry was revoked. You were advised of this decision in a letter dated 18 October 2000.

As set out earlier in this letter, in October 1999 Council advised your lawyers, Hammond Worthington, that it was:

" prepared to contribute in total up to a maximum amount of \$40,000 by way of reimbursement of legal expenses on production of an itemised statement of costs following the outcome of the Inquiry subject to Policy A1.18, which provides for the payment to be made if a person has not acted illegally or dishonestly against the interests of the City of otherwise in bad faith."

and also that:

"the general thrust of the Inquiry is to examine if Councillors and Staff have provided good governance for the City and should any adverse findings relating to any issue, be made against Mr. Grljusich by the Inquirer, Mr Douglas, relating to good government, then Council will not made any contribution towards legal expenses."

Hammond Worthington advised that you accepted the offer, which included the conditions set out in the Council decision.

Council considers that a number of findings were made against you as set



out above which could be considered as acting either illegally, or dishonestly, against the interests of the City or otherwise in bad faith. It is therefore not willing to further consider any request by you for reimbursement of legal expenses in respect of the Douglas Inquiry unless you are successful through the appeal process in having the findings of the Douglas Inquiry overturned.

In relation to your question regarding Mr Brown, Council concluded that in the case of Mr Brown the findings in regard to him did not fall under the provisions of Clauses 18 and 19 of the Policy. It was therefore not necessary to revoke any authorisation for payment in respect of Mr Brown.

7 (OCM 18/11/2003) - PUBLIC QUESTION TIME

Patrick Thomson, Spearwood queried what works were taking place at the front of the Administration Building fronting Rockingham Road? Mayor Lee replied that the electrics and cabling were being laid for the installation of the Christmas lights. Mr Thomson queried why was it taking so long for the job to be done and what was the tender price? Mayor Lee responded that he is unable to provide an answer as to how long it was taking to lay the cabling. The contractor tendered for the job at a fixed price of \$44,000, to which the Council agreed to.

Mayor Lee thanked Mr Thomson for his comments.

Andrew Sullivan, representing the Coogee Coastal Action Coalition Inc.. He expressed concern that the Group was disturbed by the various aspects of the consultation process on the Port Coogee development, in particular, the advertisements only mentioned the Town Planning Scheme Amendment and not the Structure Plan, timeframe on signs advertising the TPS Amendment, consultation period too short, documents and submission forms not immediately made available, copy of the Structure Plan to this Group not forthcoming and Council not willing to conduct any workshops in relation to this development.

Mr Sullivan requested Council:

1. extend the consultation period until the end of February 2004;
2. to provide the Group with a copy of the Structure Plan provided by the developer;
3. to conduct a series of at least 3 professionally facilitated workshops to include a general information forum in order to seek comment from the public.

As time was running out, Mayor Lee replied that in relation to the questions mentioned it was not his understanding that the Council was able to extend the statutory time as specified by the WAPC. The Structure Plan and maps



were now available on the web. As far as the workshops were concerned it was his knowledge that three workshops were being conducted, two by the proponent and one by the Australian Democrats. Mayor Lee mentioned that should Mr Sullivan wish to have a written response to his questions, this will be forwarded to him.

John Schappus, member of the Port Coogee Committee and also a ratepayer. The Committee represents members of the community who felt that the whole process associated with the development of Port Coogee has taken long enough. He was representing the Committee as a coastal engineer. He said in response to Mr Sullivan's query about extending the advertising period, the Committee believes that sufficient information was disseminated from the developer and it is time to make a decision and requested Council that the timeframe for public consultation not be extended. As he was representing a significant amount of the ratepayers of Cockburn, he requested Council that their concerns be taken into consideration.

Mayor Lee thanked Mr Schappus.

Chris Lewis, Australand, read a statement on Port Coogee development. His statement was that the public consultation process for this development spans over 10 years with the community actively participating in the design process that had lead to the current proposed plan. Through ongoing advertising the general public really have a very high level of awareness of this proposed development. It was his belief that the advertising period allowed was adequate time for all of those who were interested and serious in submitting their thoughts. In order to ensure maximum opportunity for the public to ask questions on the proposal, the developer will be conducting two open days early in December and a further public meeting on the 27 November. In addition to this, a series of information notices will regularly appear in both the local newspapers providing thorough detailed information in relation to the development and also answer some commonly asked questions they have received on the development.

Mayor Lee thanked Mr Lewis for providing such information.

Gregg Patterson, Coolbellup also raised concern in relation to the advertising period for submissions on the Port Coogee development. He requested Council to give consideration to extend the deadline to February, so that the community would have sufficient time to make their submissions, due to the fact that it was nearing the Christmas period when families leave on holiday.

Mayor Lee thanked Mr Patterson for his comments.

Robyn Shea, Coogee spoke in relation to the Port Coogee project. She said



it was about the community and the citizens of Cockburn having adequate time to get the information and make a proper submission. It is not about the Coogee Coastal Action Coalition or Australand.

Mayor Lee thanked Ms Shea.

Bert Renner, Spearwood had some concerns in relation to comments made by the developer of uninterrupted access to the beaches and the canal development in Coogee.

He also mentioned that the position of Mayor was an honoray position sometime ago, but now this position and other elected members get paid to attend meetings, which means that these were more part-time positions and no longer honorary positions.

Zoe Inman, Coogee spoke in relation to the Port Coogee consultation process. She said having three workshops is inadequate. Council has not taken the initiative to conduct any workshops either. She said that in her opinion the Council should conduct an independent community workshop.

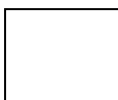
Mayor Lee thanked her for her input.

Guiseppe Rottendella ratepayer of Cockburn and landowner surrounding the Port Coogee development. He expressed that he has waited a very long time for this development to take place and therefore is requesting Council to not extend the advertising period.

Mayor Lee thanked Mr Rottendella for his comments.

George Grasso spoke on behalf of the President of the Western Australian Croatian Association. He was making a submission in relation to Item 17.4 which referred to the cancellation of the Lease pertaining to Lot 22 Progress Drive, Bibra Lake. He said the lease required approvals to be obtained by the Association in relation to the development of the land by October. The Association was unable to comply with this requirement for the following reasons:

- a. the architect for the project compassing both Lot 22 and Lot 21 was away in Europe between the period of July and late September.
- b. the Association secretary was seriously ill between the period of July and October. The Association Secretary handled all administrative duties in relation to the Association, hence the Association was unaware of the non-compliance.
- c. the Association was deeply embarrassed and apologetic in relation to the breach and failing to comply with the lease requirements and requests for a further 90 day extension, in relation to the



requirements.

Mr Grasso requested Council to reconsider its position in relation to the cancellation of the lease and take into account the many benefits that such a facility would bring to the community.

Finally, the Western Australian Croatian Association have in their possession currently the final plans, a cheque to facilitate lodgement of those plans with the WAPC and the completed application ready to lodge with the WAPC.

Mayor Lee thanked Mr Grasso for his comments.

Chris Lewis, Australand spoke in relation to Item 14.4. He asked whether Council was aware of a letter from Main Roads on 30 October sent to Development Engineering Consultants with a copy to the Chief Executive Officer of the City, stating their preference of the proposed option, which, in part states, *.....Main Roads preference is for Option 1 (which is Australand's option) as the additional separation between the roundabout and traffic signals allows for reasonable length in the right turn pocket, and greater stacking capabilities, decreasing the probability of traffic congestion at both the roundabout and signals.* He said, that Australand has also undertaken a road safety risk analysis which is nationally recognised in identifying black spot hazard areas. Mr Lewis said that both the proposals, the existing realignment and Australand's proposal offer the same level of safety on Russell Road. He also queried whether Council was aware that Australand had been approached by one of the Council officers to discuss amending the current Structure Plan for this area because there was some concern about noise factors. Australand's proposal provides for a buffer that will minimise noise impact emanating from Russell Road. Australand's planners had previously briefed Council on the benefits of the urban plan and sense of community that their proposed model would create, that will allow people to walk about the community areas more safely. He emphasised that Australand's proposal was a better urban plan and a safe one in terms of pedestrian movement. He continued to emphasise that Australand has the buffers which are clearly indicative that this would reduce noise and requested Council to vote against the Officer's recommendation.

Mayor Lee thanked Mr Lewis for his input.

Marko Ascic, Bibra Lake spoke relative to Item 14.3. The matter before Council was an application to construct a parapet wall for the shed on Lot 612 (51) Forillion Avenue, Bibra Lake which was considered at the October Meeting of Council. The application was recommended for refusal which was adopted by the Council but was subsequently the subject of a recision notice. The refusal was based on the neighbouring residents raising objections. Mr Ascic strongly requested Council to approve his application with the amended plans for the outhouse or shed on Lot 612 Forillion Avenue, based on the ground levels of the block in question, the excavations



and the retaining walls that had to be done. It was only logical, practical and cost-effective to construct a shed on two levels.

Mayor Lee thanked Mr Ascic and replied that the matter is before Council and will be deliberated at the appropriate time.

Joel Baker, Youth Mayor for the City. He thanked Deputy Mayor Graham for his time and effort with the Youth Advisory Council and welcomed Clr Goncalves as a member of the Youth Advisory Council.

Mayor Lee thanked Mr Baker for his comments.

John Grljusich, Spearwood read a letter seeking reimbursement of his legal expenses in relation to the Douglas Inquiry. In his opinion, he says that the Terms of Reference in the Douglas Inquiry was structured, so that he was denied of natural justice and procedural fairness. He again requested Council to reconsider its position to reimburse Mr Grljusich the legal expenses incurred as a result of the Douglas Inquiry.

Mayor Lee thanked Mr Grljusich.

Mayor Lee advised of some Awards which had been recently received, namely:

An award presented by the Premier to the Fremantle Community Policing Group which involves the City of Cockburn, an initiative of the City of Cockburn and Fremantle Community Policing. It is the Marine Intervention Program, which assists youth, who are unable to attend school and handle a disciplined environment. This program was instigated and taught them about fishing boats and how to work on a fishing boat. Mayor Lee mentioned that a 95% success rate was expected as a result of this program. Having completed the course, these youth would be able to return to TAFE or seek employment.

Through the Urban Development Institute of Australia, Council won the President's Award for the Rebirth of an Urban Community, a project which the City is proud of. He acknowledged Dave Webb who was very much part of the program - a partnership deal between the State Government, Local Government and the Property Resource Group. Mayor Lee acknowledged the efforts of Dave and the Committee.

An award presented by the Australian Association of Planning Consultants - the Russell D Taylor Award for Design Excellence, which was presented to Mr Allen Blood - Manager Planning Services for the Southern Suburbs Districts Structure Plan - Stage 2 Banjup.



The President's Medal was presented by the Coogee Beach Surf Life Saving Club for the excellent work done in such a short time span, achieved through partnerships between the community, Council and the workers committed in the Club.

Mayor Lee thanked the community for their co-operation and for working together and also thanked the other Elected Members and staff. The fact that these Awards were presented now was the response of a professional group of people.

8. CONFIRMATION OF MINUTES

8.1 (MINUTE NO 2196) (OCM 18/11/2003) - ORDINARY COUNCIL MEETING - 21/10/2003

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting held on Tuesday, 21 October 2003, be confirmed as a true and accurate record.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr L Goncalves that the recommendation be adopted.

CARRIED 9/0

9. WRITTEN REQUESTS FOR LEAVE OF ABSENCE

Nil

10. DEPUTATIONS AND PETITIONS

Nil

11. BUSINESS LEFT OVER FROM THE PREVIOUS MEETING (If adjourned)

Nil

12 (OCM 18/11/2003) - DECLARATION OF COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS IN THE BUSINESS PAPER

Nil



THE PRESIDING MEMBER PRESENTED THE MINUTES OF THE CITIZEN OF THE YEAR AWARDS' SELECTION COMMITTEE MEETING OF 8 OCTOBER 2003

13. COUNCIL MATTERS

13.1 (MINUTE NO 2197) (OCM 18/11/2003) - CITIZEN OF THE YEAR AWARDS' SELECTION COMMITTEE 8 OCTOBER 2003 (1610) (DMG) (ATTACH)

RECOMMENDATION

That Council receives the Minutes of the Citizen of the Year Awards' Committee dated 8th October, 2003, and adopt the recommendation contained therein.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr S Limbert that that the recommendation be adopted.

CARRIED 9/0

Background

The Inaugural Meeting of the Committee was conducted on 8 October, 2003, to consider recommendations on the level of Council participation in "Citizen of the Year Awards".

Submission

N/A

Report

Refer to Committee Minutes. In summary, the Committee supports Council's participation in both the Australia Day Citizen Awards (sponsored by the Australia Day Council of WA) and the Foundation Day Award to coincide with the annual Foundation Day "Pioneers" function sponsored by the City of Cockburn.

Strategic Plan/Policy Implications

Key Result Area "Facilitating the Needs of Your Community" refers.



Budget/Financial Implications

There are no funds currently allocated. Funds of up to \$1,000 per annum may be required for nominee incentives and Award prizes.

Legal Implications

N/A

Community Consultation

Awards to be promoted through normal Council publicity channels and nominees encouraged for "Foundation Day Award" by sending information with guest invitations.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

13.2 (MINUTE NO 2198) (OCM 18/11/2003) - ANNUAL REPORT 2002/2003 (1712) (DMG) (ATTACH)

RECOMMENDATION

That Council:

- (1) receive the Draft Annual Report for the 2002/2003 Financial Year, as attached to the Agenda; and
- (2) defer accepting the Report, including the Financial Statements, until the December 2003 Council Meeting, in accordance with the provisions of the Local Government Act, 1995.

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Cllr A Tilbury that Council:

- (1) receive the Draft Annual Report for the 2002/03 Financial Year, as attached to the Agenda, subject to the inclusion of Council's Mission, Vision and Value Statements; and
- (2) defer accepting the Report, including the Financial Statements, until the December 2003 Council Meeting, in accordance with the provisions of the Local Government Act, 1995.

CARRIED 9/0



Explanation

The inclusion of Council's Mission, Vision and Value Statements in Annual Reports has been a standard practice.

Background

Council is required to accept the 2002/2003 Annual Report to enable it to be available for the Annual Electors Meeting, scheduled to be held on Tuesday 3 February, 2004. The Act requires Council to accept the Report no later than 31 December, 2003.

Submission

N/A

Report

The Draft Annual Report for the 2002/2003 Financial Year is in conformity with the following requirements of the Act and contains:

- (1) Mayoral Report
- (2) Chief Executive Officer's Report
- (3) 2002/03 Principal Activities Report and assessment against performance.
- (4) Legislative Review Report / Competitive Neutrality Statement.
- (5) Overview of Principal Activities proposed during the 2003/04 Financial Year.

The Financial Statements and Auditor's Report were not available for inclusion at this stage. However, it is considered appropriate for Elected Members to familiarise themselves with the format of the Report at this time, and formally adopt the consolidated document at the December 2003 Council Meeting.

Strategic Plan/Policy Implications

Key Result Area "Managing Your City" and Council Policy AES1 refers.

Budget/Financial Implications

The cost of producing 300 copies of the Report (\$7,920 GST inclusive) is provided for in Council's Governance Budget.

Legal Implications

Council required to accept Report by 31 December, 2003.

Sec. 5.54 of the Local Government Act, 1995, refers.



Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

13.3 (MINUTE NO 2199) (OCM 18/11/2003) - ESTABLISHMENT OF CODES OF CONDUCT REVIEW COMMITTEE (1054) (DMG) (ATTACH)

RECOMMENDATION

That Council:-

- (1) pursuant to Sec. 5.8 of the Local Government Act, 1995, (the Act) establishes a Codes of Conduct Review Committee;
- (2) pursuant to Sec. 5.10 of the Act, appoints Elected Members _____, _____ and _____ to be members of the Committee, with Director Community Services as an advisor to the Committee; and
- (3) adopts the Terms of Reference for the Committee, as shown in the Attachment to the Agenda.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Cllr S Limbert that Council:

- (1) pursuant to Sec. 5.8 of the Local Government Act, 1995, (the Act) establishes a Codes of Conduct Review Committee;
- (2) pursuant to Sec. 5.10 of the Act, appoints Mayor Lee, Deputy Mayor Graham, Cllrs Limbert, Tilbury and Reeve-Fowkes to be members of the Committee, with Director Community Services as an advisor to the Committee; and
- (3) adopts the Terms of Reference for the Committee, as shown in the attachment to the Agenda.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 9/0



Background

This matter was deferred from the October Council Meeting to enable the establishment of a Review Committee to advise Council on this matter.

Pursuant to Sec. 5.103 of the Local Government Act, 1995, Council is required to adopt a Code of Conduct to be observed by Elected Members and employees. In addition, Council is required to review the Codes within 12 months of its Ordinary Elections.

Submission

To establish a Council Committee to review the Codes which are currently applicable to the City of Cockburn.

Report

The Codes of Conduct applicable to local government in this State are currently the subject of a review by the W.A. Local Government Association (WALGA) and the Department of Local Government and Regional Development.

The main purpose of the review is to endeavour to incorporate into a Model Code, some measures of disciplinary procedures to deal with non-compliance and to investigate the potential to regulate the Code through a legislative process.

While the establishment of a Working Group to progress the matter is encouraging, it is considered doubtful that any outcomes will be finalised within the next six (6) months, which corresponds with the timeframe for the Council's requirement to review its current Codes.

Recent information has been received which suggests that WALGA will be considering a draft proposal of a document entitled "Local Government (Rules of Conduct) Regulations" at its December, 2003, State Council Meeting, relative to Elected and Committee Members of Council. Regardless of this information, it remains uncertain as to the introduction date of the legislative change necessary to apply any new Regulations. Therefore, it is recommended that the establishment of a Committee still be pursued.

As there do not appear to be many particular flaws in the current Codes applicable to the City of Cockburn and given that the review process currently underway is likely to produce something of a significantly different nature, it is considered a reasonable position for Council to review its current Codes for any obvious modifications at this time and review them again, if necessary, following the results of the WALGA and Department joint exercise.



The establishment of a Review Committee to perform this function will assist in this process.

Strategic Plan/Policy Implications

Key Result Area “Managing Your City” refers.

Budget/Financial Implications

N/A

Legal Implications

Sec. 5.103 of the Local Government Act, 1995, refers.

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

13.4 (MINUTE NO 2200) (OCM 18/11/2003) - AMENDMENTS TO THE CITY OF COCKBURN (LOCAL GOVERNMENT ACT) LOCAL LAWS 2000 (1116) (LJCD) (ATTACH)

RECOMMENDATION

That Council, pursuant to Section 3.12(4) of the Local Government Act 1995, resolve to amend the City of Cockburn (Local Government Act) Local Laws 2000 as attached to the Agenda as Appendix A and publish the amendments in the Government Gazette.

TO BE CARRIED BY ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 9/0



Background

Council resolved on the 19 August 2003 to amend its local laws to provide a legislative means for dealing with unregistered dogs and clarifying issues dealing with illegal parking.

The requirements of section 3.12.(3) of the Local Government Act 1995, were satisfied by publishing two advertisements in The West Australian on 23 August 2003 and 27 August 2003.

Submission

N/A

Report

The public submission period in relation to this matter closed on the 7 October 2003 and no submissions were received. Therefore, the amendments as presented to Council on the 19 August 2003 are presented again for final adoption.

The proposed amendment to Part II "Animals" is to enable a process to be put in place whereby Council Rangers have the authority to make application for the seizure of dogs where it is apparent that owners will not register them, as required under the Dog Act 1976.

The Rangers are having difficulties with dog owners who are not registering their dogs according to the Dog Act 1976. Infringement notices can be issued for an unregistered dog and despite having issued three infringements to a dog owner, a dog can still remain unregistered, which means Council has the onus of being required to pursue the owner for the registration fee. There is no appropriate mechanism within the Dog Act 1976 to deal with this problem.

There are also circumstances where it is apparent that the issue of multiple infringements will not result in the registration of the dog being effected, in which case a warrant could be applied for after a prescribed period, recommended to be two (2) months.

In an effort to overcome this problem, an amendment has been drafted to deal with the issue thereby providing the Rangers with more ability to resolve the issue of unregistered dogs through the Court system.

The other proposed amendments to the Local Laws in Part IX "Streets and Public Places", are clarification measures to make the Local Laws more operational, by better defining areas which are subject to traffic control such as roads, carriageways and nature strips.



Strategic Plan/Policy Implications

Key Result Area “Facilitating the Needs of Your Community” refers.

Budget/Financial Implications

N/A

Legal Implications

Section 3.12 of the Local Government Act 1995 refers.

Community Consultation

The community had an opportunity to lodge submissions regarding the proposed amendments to the local laws but no submissions were received.

Implications of Section 3.18(3) Local Government Act 1995

Nil.

14. PLANNING AND DEVELOPMENT DIVISION ISSUES**14.1 (MINUTE NO 2201) (OCM 18/11/2003) - SALE OF LOT 14 HAMMOND ROAD, SUCCESS (5513436) (KJS) (ATTACH)****RECOMMENDATION**

That Council:

- (1) accept an offer of \$300,000 to purchase Lot 14 Hammond Road, Success, by Goldzen Corporation subject to the purchaser receiving planning approval for a retirement village on this and the adjoining land within 9 months and that the offer be conditional upon satisfying the requirements of Section 3.58 of the Local Government Act 1995;
- (2) funds received from the sale of Lot 14 Hammond Road be placed in the Land Development Reserve Fund.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Cllr M Reeve-Fowkes SECONDED Cllr I Whitfield that:

- (1) Council not proceed with the sale of Lot 14 Hammond Road to

Goldzen Corporation as it is required for a one-in-one hundred year storm; and

- (2) the proponents be advised that Council would be prepared to consider the sale of Lot 14 Hammond Road, provided they are able to demonstrate that the drainage requirements can be accommodated as part of the proposed redevelopment of the land, including the obtaining of necessary approvals.

CARRIED 9/0

Explanation

Since preparing the report, it had been determined that the drain is still required for a one-in-one hundred year storm.

Background

Lot 14 is a freehold lot being 12 metres wide and approximately 340 metres long and was formerly used as an open drain. Since a piped system was constructed within Hammond Road, the land is no longer required as a drain.

Submission

An offer to purchase Lot 14 Hammond Road has been received from Goldzen Corporation Pty Ltd.

Report

Goldzen have made similar offers to adjoining owners and propose to consolidate the land parcels to develop as an aged persons complex. Planning approval is required and the necessary applications will be made. The City as owner of Lot 14 will need to co-sign the application. The offer is conditional on Goldzen receiving planning approval within 9 months of the City signing the contract.

Section 3.58 of the Local Government Act requires that the proposal be advertised stating what the consideration is and also the market valuation as determined by a Licensed Valuer.

The area of Lot 14 is 4072 square metres, making the consideration equal to \$73 per square metre. This offer demonstrates the importance of the City's land to the success of the proposed development.



Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost effective without compromising quality."*

Budget/Financial Implications

Proceeds from the sale of Lot 14 Hammond Road will be placed in the Land Development Reserve Fund.

Legal Implications

N/A

Community Consultation

The proposal will be advertised under Section 3.58 of the Local Government Act.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.2 (MINUTE NO 2202) (OCM 18/11/2003) - PURCHASE OF LOT 4 ROCKINGHAM ROAD AND LOT 6 MOYLAN ROAD, HENDERSON - LANDFILL SITE (3411103; 3412267) (KJS) (ATTACH)

RECOMMENDATION

That Council for the purpose of expanding the landfill site:

- (1) offer R M Caratti \$586,000 for Lot 4 Rockingham Road, Henderson, made up of \$580,594 for the land and \$5,406 for the Right of Carriageway interest;
- (2) offer R M Caratti and G A Caratti \$936,000 for Lot 6 Moylan Road, Henderson, made up of \$930,594 for the land and \$5,406 for the Right of Carriageway interest; and
- (3) subject to one or both offers being accepted, draw funds for the purchases from the Rubbish Disposal Development Fund.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL



COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 9/0

Background

Council at its meeting of 21 November 2000 resolved to:

“for the purpose of expanding the landfill site;

- (1) offer Mrs B M Caratti \$392,500 for Lot 4 Rockingham Road, Henderson;*
- (2) offer Mrs B M Caratti \$541,000 for Lot 6 Moylan Road, Henderson; and*
- (3) authorise the Chief Executive Officer to negotiate and finalise an increased offer subject to any such offer being supported by a valuation from a Licensed Valuer and within Budget.”*

Submission

N/A

Report

This matter has been the subject of ongoing deliberations between the Council and the parties. Lot 4 on Rockingham Road is owned by R M Caratti and Lot 6 on Moylan Road is owned in equal shares by R M Caratti and G A Caratti.

A valuation report has been prepared by Licensed Valuer Jeff Spencer which has determined the market value of Lot 4 to be \$580,594 and Lot 6 to be \$930,594.

Linking Lot 4 and Lot 6 there is a Right of Carriageway easement in favour of Lot 4 and Lot 6 which burdens the City of Cockburn’s Lot 52.

The valuation report has determined that the value to the City for the extinguishment of the Right of Way easement to be \$10,812 which is equally payable to Lots 4 and 6.

The report has determined the rate per square metre for Lot 4 on Rockingham Road to be \$12 and for Lot 6 on Moylan Road to be \$9.



The valuation is based on the premise that the land has a long term future use for industrial purposes. This view stems from an Indicative Future Land Use Plan dated November 2002, which is understood as being utilised by LandCorp. The land is within the area the subject of the Hope Valley-Wattleup Redevelopment Act. The lots are on either side of the City's landfill site. The houses on each of Lot 4 and 6 are not within the statutory buffer zone required to operate the current cells. However, the acquisition of these properties would be in line with best practice to ensure an enhanced buffer can be achieved and to allow the possibility to expand the site in the future.

The acquisition is not with the intention of generating a profit to the City and is therefore exempt from the provisions of Section 3.59 (Major Land Transaction/Business Plan) of the Local Government Act 1995.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost effective without compromising quality."*
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*

Budget/Financial Implications

Sufficient funds are held in the Rubbish Disposal Development Reserve Fund for this transaction.

Legal Implications

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.



14.3 (MINUTE NO 2203) (OCM 18/11/2003) - PROPOSED REVOCATION OF MINUTE NO. 2180 (AGENDA ITEM 14.10) COUNCIL MEETING 21 OCTOBER 2003 - RETROSPECTIVE APPROVAL - SHED PARAPET WALL HEIGHT - LOT 612 (51) FORILLION AVENUE, BIBRA LAKE - OWNER: M & A ASCIC - APPLICANT: M ASCIC (1108029) (CP)

RECOMMENDATION

That Council revoke Minute No.2180 (Agenda Item 14.10) as adopted by Council at its meeting of 21 October 2003, as follows:-

That Council:

- (1) refuse the application to permit the construction of a parapet wall for the shed on Lot 612 (51) Forillion Avenue, Bibra Lake, as outlined in the application for the following reasons:
 1. Given the ground level of the subject land, there is ample scope to design a shed to meet the needs of the owner without it impacting on the amenity of the adjoining property. As such, there is insufficient justification to warrant approval of the application in the circumstances;
 2. The adjoining property owners have objected to the proposal and have requested that the wall be reduced in height to that shown on the approved building licence.
- (2) require the applicant to reduce the parapet wall height to the level shown on the approved building licence plans (RL50.04) within 28 days of the date of this decision.
- (3) issue a Schedule 9 Notice of Determination on Application for Planning Approval – Refusal.
- (4) advise the submitter of this decision.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Cllr M Reeve-Fowkes SECONDED Cllr A Tilbury that Council defer the proposed revocation of Minute No.2180 in relation to the parapet wall height of the shed on Lot 612 (51) Forillion Avenue, Bibra Lake, owned by M and A Ascic, to the December Council Meeting.

CARRIED 9/0



Explanation

It is understood that the owner of the adjoining Lot 613 (No. 53) Forillion Avenue Bibra Lake, has requested the Council to consider issuing a retrospective planning approval for a pergola which has been constructed closer to the side boundary than provided for under the building licence.

The owner of Lot 613 has objected to the owner of Lot 612 (No. 51) Forillion Avenue erecting a parapet wall to an outbuilding not in accordance with the planning approval.

Given this, it would be preferable for the requests from both owners to be dealt with at the same Council Meeting with a view to the owners coming to a mutual agreement about their respective structures which are located adjacent to a common side boundary.

Background

At the Council Meeting conducted on 21 October 2003, Council carried the above resolution, refusing approval to increase the height of a parapet wall on Lot 612 (51) Forillion Avenue, Bibra Lake.

Submission

By facsimile letter dated 27 October 2003, a notice of intention to revoke the Council decision was received with the required number of signatures, being Mayor Lee, Deputy Mayor Graham, Clr Reeve-Fowkes and Clr Oliver.

Report

The notice of intention to revoke the decision advised that the reason for seeking the revocation was *“that the removal of the additional height of the parapet wall does not seem justified given the minor nature of the additional height.”*

Should the revocation be carried, it will be necessary for Council to reconsider the item. As this is a matter of which Council has a discretion to approve, it is suggested that an alternative resolution could be:-

“That Council:

- (1) approves the application to permit the construction of a parapet wall for the shed on Lot 612 (51) Forillion Avenue, Bibra Lake, as outlined in the application for the reason that the additional height of the parapet wall is of minor nature;
- (2) grant retrospective approval to a R-Code variation for the development of an outbuilding parapet wall on the southern



boundary of Lot 612 (51) Forillion Avenue, Bibra Lake, subject to the following conditions:

STANDARD CONDITIONS

1. The development is to proceed in accordance with the approved plans.
2. All stormwater must be contained and disposed of on-site.

SPECIAL CONDITIONS

3. The surface finish of the parapet wall of the outbuilding abutting the adjoining lot is to be constructed to Council's satisfaction.

FOOTNOTES

- a) The development is to comply with the requirements of the Building Code of Australia.
 - b) In regards to Special Condition No. 3, the surface finish of the boundary parapet wall abutting Lot 613; 53 Forillion Avenue should be to the satisfaction of the adjoining landowner and is to be completed as part of the building licence. In the event of a dispute the boundary retaining wall must be constructed with a clean or rendered finished to the satisfaction of the Council.
- (3) Issue a Schedule 9 Notice of Determination on Application for Planning Approval valid for 24 months to the applicant; and
- (4) Advise those who made a submission of the Council's decision."

The Local Government Act, 1995, provides that an Absolute Majority of Council (ie. six) must support the revocation, otherwise the original Council decision to refuse the application stands.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
2. Planning Your City



- *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
3. Conserving and Improving Your Environment
- *"To conserve the quality, extent and uniqueness of the natural environment that exists within the district."*
 - *"To conserve the character and historic value of the human and built environment."*

Budget/Financial Implications

N/A

Legal Implications

Possibility of an appeal and the cost of defending the Council decision.

Community Consultation

Advertised for comment to the potentially affected party.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.4 (MINUTE NO 2204) (OCM 18/11/2003) - PROPOSED REALIGNMENT OF RUSSELL ROAD - FRANKLAND SPRINGS ESTATE, HAMMOND PARK - OWNER: AUSTRALAND HOLDINGS - APPLICANT: TAYLOR BURRELL AND DEPARTMENT FOR PLANNING & INFRASTRUCTURE (450011) (AJB) (ATTACH)

RECOMMENDATION

That Council:

- (1) receive the report;
- (2) advise the Department for Planning and Infrastructure and Australand that the proposed alternative alignment for Russell Road is not supported on the basis of reduced safety, and because there are no tangible land use or community benefits; and
- (3) provide a copy of the Agenda report to the Department for Planning and Infrastructure for their information.



COUNCIL DECISION

MOVED Mayor S Lee SECONDED Cllr S Limbert that Council:

- (1) receive the report;
- (2) advise the Department for Planning and Infrastructure that given the conflicting safety reports, Council is not prepared to make a recommendation on the proposed alternative alignment for Russell Road at this stage;
- (3) provide a copy of the Agenda Report and the letter from Australand dated 6 November 2003, to the Department of Planning and Infrastructure for their information; and
- (4) approach main Roads to reduce the speed limit on Russell Road between the Freeway and the Harry Waring Marsupial Reserve to 70 kms per hour.

CARRIED 6/3

Explanation

Given that there are reasons to adopt Australand's preferred alignment such as a wider buffer between the road and the residents, and the fact that it will be a residential and local shopping precinct, it would be wise to ultimately have traffic progressing through this area at 60 kms per hour. However in the interim, Council should seek to reduce the limit to 70 kms per hour so as to minimise the immediate impact that will occur when development is finalised in this area. There are conflicting safety reports, Australand's specialists say their preferred option is safe, Council officers say their preferred option is safer. This would clearly indicate a need for the DPI's specialists to adjudicate on this issue so it is reasonable for Council not to make a recommendation at this stage in the process.

Background

The Western Australian Planning Commission has requested Council's views on a proposal by Australand to realign the MRS alignment for Russell Road.

Council at its meeting held on 16 September 2003 resolved to:

- “(1) distribution to Elected Members of the Taylor Burrell Report commissioned by Australand; and*



- (2) *briefing sessions be arranged to allow for presentations by Council staff and representatives of Australand."*

Copies of the Taylor Burrell report were circulated to Elected Members on 26 September 2003. Australand and Council technical officers briefed Elected Members on 23 October 2003.

At the briefing Elected Members requested copies of the legal advice provided by Mullins Handcock. This is forwarded under separate cover as a confidential attachment.

The recommendation remains unchanged.

Earlier background information on the proposal is outlined below.

Council at its meeting held on 16 July 2002 approved a local structure plan for the Frankland Springs Estate (Item 14.11).

The Agenda report provided the following detail on the alignment of Russell Road;

"Russell Road is an "Other Regional Road" in the Metropolitan Region Scheme (MRS) and identified by Main Roads Western Australia as a designated freight route. The continued expansion of the Australian Marine Complex at Cockburn Sound and the future extensive industrialisation of Wattleup (FRIARS) will further reinforce the role of Russell Road as a critical component of the regional freight network. Russell Road will also be important in providing access between Kwinana Freeway and the future residential communities that will develop in Success and Hammond Park, including the Frankland Springs estate.

The Southern Suburbs district Structure Plan reflects the MRS alignment for Russell Road. The Frankland Local Structure Plan Option 2 (Figure 11) also reflects the MRS alignment. This has previously been established as Council's preferred alignment, whereas the proponent favours retaining Russell Road close to its constructed alignment as shown in Option 1 (Figure 9). The proponent and Officers of the City have, for some time, debated the comparative merits and problems with the two alignments.

Officers of the City and the Department of Planning and Infrastructure recently met with Australand and its representatives, where a process to have the two alternative alignments reviewed and compared was agreed. This process has only just commenced and will be some time before being completed and it is possible the Metropolitan Region Scheme will have to be amended as a result. It is not reasonable to delay consideration of the Frankland Local Structure Plan until this review is completed and on the basis of the agreed process of review, the City consented to advertising and assessing the two plan options



concurrently. It should be made clear to the proponent that in concurrently assessing both options, Council is not making a determination of the appropriateness of the road alignment, but rather the proposed layout and nature of abutting development. Furthermore, the proponent should be informed that subdivision proposals for development affected by either alignment option, will not be considered favourably until the road alignment issue is resolved.”

The relevant portions of Councils resolution relating to Russell Road are as follows;

- “(1) *noted that the proposed Frankland Local Structure Plan includes two options for the development of Lot 202 Russell Road.*
6. *Council’s acceptance of Option 1 (Figure 9) should not be construed as support for the Russell Road alignment proposed by this option, as this is a matter still to be resolved through the process agreed by the City of Cockburn, the Department for Planning and Infrastructure and Australand and its representatives for determining the most appropriate alignment and land requirements for Russell Road and, if necessary, the progression of an amendment to the Metropolitan Region Scheme;”*

Submission

Taylor Burrell, of behalf of Australand, has requested the Department for Planning and Infrastructure (DPI) to support an alternative alignment for the Russell Road through lot 202 between Hammond Road and Frankland Avenue to that currently included in the Metropolitan Region Scheme. A detailed report has been prepared in support of the proposal.

Prior to formally considering the matter DPI has sought Councils comments as the proposal is unlikely to proceed without the City’s support. A copy of correspondence from DPI dated 9 June 2003 is included in the Agenda attachments.

Report

Russell Road is designated “Other Regional Road” in the Metropolitan Region Scheme and is a designated Primary Freight Route in Main Roads WA classification. It plays an extremely important role in the road network providing a direct connection between the Kwinana Freeway and the Australian Marine Complex, Henderson industrial area and access to the northern end of the Hope Valley - Wattleup industrial area. As a result it is expected that Russell Road will carry a high volume of trucks including B doubles that are permitted on designated Primary Freight Routes.



Recent traffic studies prepared for Council by Uloth and Associates forecasts that traffic volumes on Russell Road will be in the order of 11,000 to 15,000 vehicles per day by 2026. This modelling was with the Roe Highway (Stage 8) in the network and its possible deletion is likely to further increase traffic volumes and the number of trucks on Russell Road. The forecast traffic volumes confirm the need for Russell Road to be constructed as a high standard four lane median divided arterial road.

The existing alignment of Russell Road does not meet the required design requirements for this standard of road. The Metropolitan Region Scheme provides for the realignment of Russell Road south of its current alignment between Frankland Avenue and a point to the east of existing Hammond Road. Consultants to Australand are promoting an alternative alignment to that in the MRS. The existing Russell Road, the current MRS reservation for its realignment and the alternative proposed by Taylor Burrell are shown on the plan included in the Agenda attachments.

The proposal to realign Russell Road by Australand is not new. There have been discussions with City Officers for some 2-3 years and in each instance, City Officers have advised that the proposal was not supported given the strategic role of Russell Road in the road network and this should not be compromised to simply suit Australand's apparent marketing needs and requirements. The proposal has been primarily driven by financial and marketing considerations given that there was a small severed portion of the original land holding north of the current MRS alignment. However the current justification also includes matters of land use scenarios and amenity.

The supporting report prepared by Taylor Burrell details the existing MRS and the alternative alignment for Russell Road, provides plans showing the resultant developments in respect to each and discusses their relative merits. Development proposals for the land adjacent to Russell Road for both the alternative promoted by Australand (Option 1) and the existing MRS alignment (Option 2) are included in the Agenda attachments.

The supporting report prepared by Taylor Burrell sets out the relative advantages of the alternative alignment for Russell Road. These points are detailed in the following section together with the views of councils engineering and planning services and other agencies as appropriate.

1. Road requirements.

Taylor Burrell Report

"The existing alignment has been proposed on an efficient freight transport route.



Acknowledge that Russell Road is a freight route but consider the road should be designed to suit the residential objectives as opposed to the design of the residential area acknowledging and responding to the road requirement. The consultant engineers have confirmed that the horizontal and vertical alignment of the revised road has been undertaken for an 80 kph design speed. It is noted that the intersection geometry was designed to 70 kph design standards. This affects the length of turning lanes which can be revised during the detail design phase.

The report also includes a safety audit of the proposed alignment.”

Officer comments.

The safety audit was undertaken to address any road safety concerns, not to rate or compare the designs of the existing or alternative alignments.

The design plans assessed in the safety audit only show the intersection of Russell Road with existing Hammond Road and the future Frankland Avenue. The plans did not include the proposed direct access points into the service station, fast food outlets and commercial sites shown on the alternative land use strategies Options 1 and 2.

Councils engineering services do not support any direct access off Russell Road for safety reasons.

Engineering Services are strongly of the view that Russell Road should not be designed to the minimum design standards as per the alternative alignment (Option 1) given it is a strategic freight route which will have a high number and percentage of heavy and over length trucks which require increased stopping distances.

The main difference between the existing and alternative alignment from a safety aspect is the reduced sight distances along Russell Road when approaching the Hammond Road intersection from the east and Ashendon Boulevard from the west. This reduced sight distance significantly increases the risk of accidents at these two intersections (It should be noted that the safety audit does not assess or take into consideration the potential for accidents).

Department for Planning and Infrastructure (DPI) comments

The letter from the Department for Planning and Infrastructure dated 9 June 2003 states;

- *“Russell Road is and will continue to be an important east – west regional road in the South West Corridor for regional traffic, particularly freight traffic and as such is designated as a designated Freight Route in Main Roads Classification. Due to the significant*



role of Russell Road it is important that the long term planning of the road meets best practice and most desirable engineering standards rather than the minimum standards”.

- *“The department is yet to be convinced of the relative merits of the proposal on the basis of long term road network grounds. Whilst the Australand proposal satisfies minimum engineering and safety requirements, the existing reservation may provide a better safety margin for future road improvements”.*

The above comments by DPI are consistent with the views and concerns expressed by Councils Engineering Services.

Transport Forum WA

In an article in the West Australian on August 25 2003 the Chief Executive of Transport Forum WA states the following in respect to freight routes;

- Freight routes need to be direct, with reasonable gradient, sufficient lanes and few stops.
- It is important to plan freight routes well to minimise disruption to residents and ensure efficiency for the industry. Too often roads originally designed for heavy freight use such as Leach Hwy ended up with commercial premises fronting them.
- People perceived more of a problem with big trucks when they stopped and started. When the traffic flowed smoothly, trucks were noticed less.

It is clear that mistakes have been made in the past in the planning of freight routes and the lessons of the past should be recognised and new freight routes designed accordingly. It is considered that the alternative alignment and the proposed direct access from Russell Road to abutting development does not adequately reflect sound principles for the design of freight routes.

2. Noise, Buffers, land use interface and pedestrian movements

Taylor Burrell Report

“The report states that the proposed alignment (Option 1) provides a better land use solution with greater separation between residential uses and Russell Road and the provision of a main street pedestrian based neighbourhood centre.

The preferred option is likely to result in less pedestrian cross movements at the Hammond Road/ Russell Road intersection than the existing alignment option.”



Officer comments

The extent of urban development adjacent to Russell Road between Frankland Avenue and the Kwinana Freeway is approximately 1.4 km. The section under consideration is only 0.5 km or 35% of the total length.

With the exception of a small area on the southern side of Russell Road near the Freeway, this is the last area adjacent to Russell Road to be planned. The issue of the need for buffers has never been raised in any of the previous planning of the area adjacent to Russell Road by either Australand, Taylor Burrell or any other landowner or consultant.

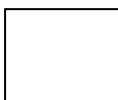
Option 2 shows 12 lots separated from Russell Road by a service road. This is exactly the same design solution Taylor Burrell used for land on the north side of Russell Road and east of Hammond Road where the projected traffic volumes are higher and hence potential impacts are greater than for the section that is under consideration.

Option 2 shows 12 lots fronting the service road to the South of Russell Road. If there were significant impacts this could be reduced by reorientating the lots to front the side streets thus reducing the number of lots facing Russell Road to six.

The land use plans for both the proposed alignment (Option 1) and the existing alignment (Option 2) include proposed main street pedestrian based neighbourhood centres. Accordingly neither plan has a distinct advantage in this regard.

There is no guarantee that the neighbourhood centre will be developed on the basis of main street principles. There is still major market resistance to main street development with a strong preference by retailers for the conventional doughnut big box centres with the shopping centre located in the centre of the site surrounded by a sea of car parking. Unless there is a total commitment by Australand to the main street concept, and it can be secured by way of a legal agreement between Australand and Council, there is every likelihood that development of the neighbourhood centre will not be based on main street principles.

The proposed intersection of Hammond Road and Russell Road is designed to be traffic light controlled under both scenarios. Traffic lights provide the highest level of pedestrian and cyclist safety. The potential neighbourhood centre catchment population to the north and south of Russell Road is not significantly different and accordingly there is no basis to the claim that the location of the neighbourhood centre as per the alternative alignment will result in less pedestrians crossing Russell Road. Notwithstanding that, both land use scenarios (Options 1 & 2) show the main street retail development south of the respective Russell



Road alignments. Uses such as service station and fast foods are predominantly car based activities and accordingly are not a relevant consideration.

3. Severance, land requirements and costs.

Taylor Burrell Report

"The alternative alignment (Option 1) has significantly less impact of severance on lot 202 than the existing alignment. Australand advises that if the alternative alignment is adopted it will not seek compensation for the severed portion of the land (650m²).

Development Engineering Services estimate that the differences in cost for the two options is as follows:

| | <u>Current MRS</u> | <u>Proposed alt alignment</u> | <u>Difference</u> |
|------------------|--------------------|-------------------------------|-------------------|
| Severed area | 1.6140 ha | 0.0650 ha | 1.5490 ha |
| Road land area | 2.3090 ha | 1.3930 ha | 0.9160 ha |
| Road land value | \$ 578,408 | \$ 314,344 | \$264,064 |
| Works | \$ 831,408 | \$ 711,558 | \$119,730 |
| Total (excl GST) | \$1,409,816 | \$ 1,025,902 | \$383,794 |

The major savings incurred are in respect to the land and in particular any payment for severance. As would be expected savings in construction are relatively minor give the overall road lengths are similar."

Officer comments

Australand purchased the land knowing that a portion of the land was severed by the MRS alignment for Russell Road. On this basis it is unlikely that payment for severance could be substantiated.

Moreover, due diligence by the Company prior to purchase should have provided an indication of the discounted value of the purchase price because of this impediment and the severance it caused.

The 1.6140 ha severed area associated with the existing MRS alignment is of sufficient area and dimension to enable it to be sensibly developed as demonstrated on the Option 2 plan.

In early discussions with the previous General Manager of Australand, Mr Nick Perrignon, the major issue was that the severed area would not be able to be developed and marketed as part of the Frankland Springs Estate. Subsequently Australand purchased land to the immediate north of the severed area and accordingly now it can form a logical part of the total development and marketing strategy.



The cost of providing land required for Russell Road and the construction of full earthworks, single carriageway and dual use path is a cost shared by all landowners to the north and south of Russell Road in accordance with the requirements of Development Contribution Areas 2 (Success Lakes) and 3 (Gaebler Road). Accordingly the savings will be to the landowners and has no implications for Council.

The cost of construction for the alternative alignment may be under estimated given that very little if any of the current carriageway can be used due to changes in the horizontal curvature to the existing road, that the existing carriageway forms part of the ultimate east bound and west bound lanes and hence a significant portion ends up in the median area and that the tie in to the existing carriageway west of Frankland Avenue is likely to be much further west for the alternative alignment than for the current MRS alignment.

4. Other matters.

Officer comments

To the east of Hammond Road, the alternative alignment more adversely affects the property located on the north side of the road. In this respect the alternative alignment shifts some of the disbenefits of land adjacent to Russell Road from Australand's holding to that of another owner.

East of Frankland Avenue the alternative alignment extends outside the existing MRS Reserve and will require a portion of the Thomsons Lake Nature Reserve to be required for road purposes. It should be noted that part of the existing Russell Road carriageway already traverses a portion of the Thomsons Lake Nature Reserve. CALM will need to be consulted on this matter.

Council support for an alternative alignment that is less safe than the existing alignment could expose it to future claims for damages if, through the frequency and severity of road accidents, it is determined that the road has been developed to inappropriate standards when it was previously open to Council to have the road built to a higher standard. Moreover, the DPI has stepped away from its responsibility in respect to the future alignment of Russell Road in the MRS, by leaving the final decision of the preferred alignment to the Council to make.

It is the firm opinion of the Council's Planning and Development and Engineering and Works Division staff that the existing reserve alignment of Russell Road is a safer and preferable route.



5. Conclusions

Taylor Burrell report

“Considers that the alternative alignment (Option 1) is superior on the basis of noise and buffers, land use and landscaping buffer, severance and land costs.

It is difficult to justify the additional cost of some \$383,794 (excl GST) for the current MRS alignment.”

Officer comments

Council officers concur with DPI comments that Russell Road is and will continue to be an important east – west regional road in the South West Corridor for regional traffic, particularly freight traffic and accordingly it is important that the long term planning of the road meets best practice and most desirable engineering standards rather than the minimum standards to reduce the cost to landowners.

Further it is considered that the alternative alignment does not deliver any tangible land use benefits. The issue of buffers and setbacks of residential development from Russell Road has not been previously raised as a concern in other planning undertaken along Russell Road by either Taylor Burrell and Australand and both options provide the opportunity for the development of a main street retail centre on the south side of the Russell Road alignment.

6. Recommendation

Based on the above assessment of the relative merits of the 2 alignments, it is recommended that Council advise the Department for Planning and Infrastructure that the proposed alternative alignment for Russell Road is not supported on the basis of reduced safety, the potential for increased accidents at proposed intersections with Russell Road and that there are no tangible land use or community benefits.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

2. Planning Your City
 - *“To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens.”*
 - *“To ensure that the development will enhance the levels of amenity currently enjoyed by the community.”*

5. Maintaining Your Community Facilities



- *"To construct and maintain roads, which are the responsibility of the Council, in accordance with recognised standards, and are convenient and safe for use by vehicles, cyclists and pedestrians."*

The Planning Policies which apply to this item are:-

SPD4 'Liveable Neighbourhoods'

Budget/Financial Implications

Costs associated with the provision of land and the construction of one carriageway of Russell Road are part of developer contributions required under DCA 2 (Success Lakes) and DCA 3 (Gaebler Road).

In the event that the alternative alignment is supported it will be necessary for Council to commission consultants to prepare detailed designs and costings for the road and land valuations in accordance with the Development Contribution Area provisions in TPS 3. These costs will be included in Development Contribution Plan. There are adequate funds in the relevant contribution plans for this purpose.

Legal Implications

N/A

Community Consultation

The proposal only directly affects Australand and accordingly wider community consultation is not required at this time. If the Australand proposal is supported then it will need to be advertised for public comment as part of an amendment to the Metropolitan Region Scheme and Councils Town Planning Scheme No 3.

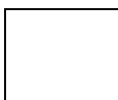
Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.5 (MINUTE NO 2205) (OCM 18/11/2003) - DISPLAY HOME BUILT WITHOUT APPROVAL - LOT 169 HARMONY AVENUE, ATWELL - OWNER: J-CORP PTY LTD (6000839) (JW/NO) (ATTACH)

RECOMMENDATION

That Council authorise the Principal Building Surveyor to initiate legal action against J-Corp Pty Ltd for commencing building works on Lot 169 Harmony Avenue, Atwell without a building licence, in contravention of the Local Government (Miscellaneous Provisions) Act s.374 and the Building Regulations 1989.



COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Cllr L Goncalves that the recommendation be adopted.

CARRIED 9/0

Background

On 21 February 2003 a Development Application was lodged with the City for construction of a display home on Lot 169 Harmony Avenue, Atwell. A Planning Approval was issued on 28 February 2003 for a proposed two storey residence.

On 14 March 2003 a building licence application was lodged for the proposed two storey display home. The subdivision had not been cleared and no Land Title existed. The application was placed in the Building Section's file cabinet for applications awaiting Title clearance.

On 20 June 2003 the building application was logged into the building licence computer system for processing as Title clearance had been received.

On 23 July 2003 initial correspondence was sent to the builder J-Corp Pty Ltd (Perceptions) requesting further information so the application could be fully assessed. Between this date and the 12 August numerous correspondence was exchanged with the builder and also a number of telephone conversations with different staff members at J-Corp (Perceptions) to arrange the submission of details required to allow issue of the building licence.

At no time was there any suggestion by the staff members of J-Corp (Perceptions) that construction had in fact commenced.

On 15 August 2003 the building licence was posted to J-Corp (Perceptions). The proposed dwelling included a boundary wall. As part of the standard process a letter was sent to the owner of the adjoining lot, informing them that a building licence had been issued, which included a boundary wall abutting their property.

On 19 August a phone call was received from the adjoining owner. This phone call revealed it was likely building works had commenced about six weeks prior to issue of the building licence.

On 20 August 2003 an inspection confirmed construction was well advanced with almost all the ground floor brickwork erected and the first floor concrete slab formwork in place ready for pouring of the concrete. In addition, it was noted that the boundary wall construction



did not comply with the plans approved. The height exceeded that approved and the proposed termite barriers to the wall had not been installed. A series of photos were taken on the day. The photos clearly indicate that work would have commenced many weeks prior to issue of a building licence.

A letter was sent to J-Corp Pty Ltd (Perceptions) informing them that the City was aware that construction had commenced on Lot 169 a number of weeks prior to the City issuing the building licence and that some of the works did not comply with the plans and details approved. They were reminded of their requirement to comply with the Local Government (Miscellaneous Provisions) Act 1960 and the Building Regulations 1989 that require any person proposing to commence building works on any land to have a licence issued by the local government for that district. The letter also informed them that any work commenced must be in accordance with the plans and specifications approved. In addition they were asked to provide an explanation as to why work had commenced without a licence.

On the 28 August 2003 a phone call from the Construction Manager at J-Corp (Perceptions) advised the approval to start without a building licence was an administrative oversight. The Construction Manager also said he would arrange for the alteration to the work that did not comply with the approved plans and then arrange for an inspection by one of Council's Building Surveyors to confirm compliance. He was advised that legal action was likely to be pursued in regard to the breach that had already taken place.

Submission

N/A

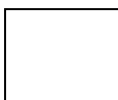
Report

J-Corp Pty Ltd are a well established building company in the Perth residential building market and have been building all over the state for many years.

The company and their staff would be well aware of the procedures involved in getting the necessary statutory approvals prior to proceeding with any building works on land. As such it is recommended that prosecution of the builder be initiated in accordance with s.374 of the Local Government (Miscellaneous Provisions) Act 1960..

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-



2. Planning Your City
- *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
 - *"To foster a sense of community within the district generally and neighbourhoods in particular."*

Budget/Financial Implications

N/A.

Legal Implications

Local Government (Miscellaneous Provisions) Act 1960 s.374.

Community Consultation

N/A.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.6 (MINUTE NO 2206) (OCM 18/11/2003) - OMNIBUS AMENDMENT - TOWN PLANNING SCHEME NO. 3 (93006) (MR) (ATTACH)

RECOMMENDATION

That Council:

- (1) adopt the following modifications to Amendment 6:-

TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED) RESOLUTION DECIDING TO AMEND CITY OF COCKBURN TOWN PLANNING SCHEME NO. 3.

AMENDMENT NO. 6

Resolved that Council, in pursuance of section 7 of the Town Planning and Development Act 1928 (as amended) to amend the above Town Planning Scheme as follows:-

Amending the Scheme Text and Maps in accordance with Schedule 1

Dated this Tuesday 18th day of November 2003

Chief Executive Officer



- (2) sign the modified documents, and advise the Western Australian Planning Commission of Council's decision;
- (3) following the receipt of formal advice from the Environmental Protection Authority that the Scheme Amendment should not be assessed under Section 48A of the Environmental Protection Act, advertise the amendment under Town Planning Regulation 25 without reference to the Western Australian Planning Commission;
- (4) notwithstanding (3) above, the Director of Planning and Development may refer a Scheme or Scheme Amendment to the Council for its consideration following formal advice from the Environmental Protection Authority that the Scheme Amendment should not be assessed under Section 48A of the Environmental Protection Act, as to whether the Council should proceed or not with the Amendment; and
- (5) following formal advice from the Environmental Protection Authority that the Scheme Amendment should be assessed or is incapable of being environmentally acceptable under section 48(A) of the Environmental Protection Act, the Amendment be referred to the Council for its determination as to whether to proceed with the Amendment.

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Cllr L Goncalves that Council:

- (1) defer consideration of this item to the December Council Meeting;
- (2) provide a printed copy of its Town Planning Scheme No.3 Text and Maps (as amended) to Elected Members, on request; and
- (3) conduct a workshop to brief Elected Members on Town Planning Scheme No.3 Text and Maps (as amended).

CARRIED 9/0

Explanation

It is recommended to Council that it initiate 54 amendments to its Town Planning Scheme No.3. Some Elected Members have indicated they would like to undertake a more detailed analysis of the proposed



amendments than is possible in the seven(7) day time period between being provided with the proposed amendments and the Council Meeting.

Background

The City of Cockburn Town Planning Scheme No 3 (“TPS3”) was gazetted on 20 December 2003. There are various improvements and corrections that are required identified through the course of application and administration of TPS3. The amendments necessary are a reflection of the significant number of changes that were required by the Minister for Planning and Infrastructure that lead to the final gazettal of TPS3.

Submission

The proposed changes to the Scheme Text and Scheme Map are set out in Schedule 1.

The key amendments proposed are outlined below:-

- Expanding the Zoning Table 1 to insert new uses derived from Part 12 – Schedule 1 – Land Use Definitions such as Bed & breakfast, Agriculture Intensive (ie Market Gardens), Cinema/Theatre, Hardware Store, Market etc.
- Quarry operators to prepare annual rehabilitation reports outlining progress.
- Updating the classification of Statement of Planning Policies to correspond with the changes to the Statement of Planning Policy referencing derived from the classification system of the Statement of Planning Policy Amendments 2003 by the Western Australian Planning Commission (“WAPC”). For example Statement of Planning Policy No 6 – Jandakot Groundwater Protection changed to Statement of Planning Policy No 2.3
- New Scheme Provisions for the identification and protection of Native Flora and Wetlands, where a planning approval requires a flora report to identify significant vegetation, protection of Conservation Category Wetlands and Resource Enhancement Wetlands and provision for wetland buffers.
- Advertising provisions for the concurrent advertising of a scheme amendment in conjunction with a structure plan.
- The requirement of planning approval for any proposals that are inconsistent with a Structure Plan or Council Policy.
- Revised clause that enables the Council to revoke an approval where the development is in breach of TPS3. A notice period for the owner is proposed to explain why an approval should not be revoked. This conforms with the provisions of the MRS.



- New clause dealing with the powers of entry onto land to ensure compliance with TPS3 that incorporate provisions of section 3.33 of the Local Government Act 1995 – obtaining a warrant where entry to a premises is refused.
- Rewording notes of TPS3 to reflect changes to the Town Planning Act relating to offences and notice periods.
- Changes to the definitions of Nett Lettable area to include outdoor display and sales areas and changes to the Health Studio definition to permit the incidental sale of health and sports goods.
- Deleting Additional Use 16 (Fashion Leather Park) from the Scheme Map and Scheme Text. A fashion leather park is unlikely to eventuate within the North Coogee Industrial Area – Rollinson Rd.
- Correcting referencing between clauses and other minor changes.

Report

Council has used TPS3 for almost a year and during this time it has become evident that refinement of the scheme provisions is required. A series of changes to the Scheme Text are proposed together with minor changes to the Scheme Maps. These are fully documented and explained in Schedule 1, which should be read in conjunction with this report.

It is not uncommon for local governments to prepare omnibus amendments to a new Town Planning Scheme within a year of implementation.

Town Planning Scheme No 3 is an evolving document that will require constant refinement and amendment. This omnibus amendment is an important aspect of “fine tuning” and “improving” TPS3 that will ultimately assist the Council in the administration of the scheme.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*

Budget/Financial Implications

Costs incurred relate to the administration, advertising of the scheme amendment documents and reporting to the Council.



Legal Implications

City of Cockburn Town Planning Scheme No 3.
Town Planning & Development Act 1928 (as amended)
Metropolitan Region Scheme
Planning Regulations

Community Consultation

The proposed Scheme Amendment would be subject to community consultation requirements as set out in the Planning Regulations.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.7 **(MINUTE NO 2207) (OCM 18/11/2003) - BUDGET AMENDMENT - PLANNING AND DEVELOPMENT DIVISION - EMPLOYMENT OF CASUAL STAFF (5405) (SMH)**

RECOMMENDATION

That Council:

- (1) receive the report; and
- (2) amend the Budget as follows:
 1. Zoning Statement Fees - Account No.500-5426, increase from \$100,000 to \$117,200.
 2. Salaries - Account No.500-6000 from \$380,525 to \$395,525.
 3. Computer Equipment - Account No.1204-6210, increase from \$122,760 to \$124,960.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr L Goncalves that the recommendation be adopted.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 9/0



Background

The Statutory Planning Service is receiving an increasing number of requests to provide Zoning Statements to the real estate agents in relation to the sale of properties within the district.

The preparation of Zoning Statements is taking a significant amount of time by the Services' Administration Officers, to the point where it is reducing the time available for other administrative duties. The situation is likely to continue, unless additional hours are allocated to processing Zoning Statements.

Submission

This submission is based on increasing the salaries budget to enable the Director Planning and Development to employ casual staff to assist the Administration Officers to process Zoning Statements.

Report

The necessary funds can be sourced from the Zoning Statement Fees Account.

The income from the issue of Zoning Statements is increasing and sufficient to self-fund a part-time or casual employee, as demonstrated in the table below:-

| Calendar Year | Number of Statements | Income | Per month | Increase % Since 1998 |
|---------------------|----------------------|-----------|-----------|-----------------------|
| 1998 | 538 | \$26,937 | \$2,858 | - |
| 1999 | 888 | \$44,425 | \$3,702 | 165% |
| 2000 | 855 | \$42,737 | \$3,561 | 158% |
| 2001 | 1490 | \$74,520 | \$6,210 | 277% |
| 2002 | 1988 | \$99,415 | \$8,284 | 369% |
| 2003 ⁽¹⁾ | 2,200 | \$110,000 | \$11,000 | 408% |
| 2003 ⁽²⁾ | 2640 | \$132,000 | \$11,000 | 490% |

Note: (1) Year to date – October 2003.

(2) Estimate for full year 2003.

It can be seen that there are significant funds being generated by this income source, with the increased number of requests being handled by the same number of staff in 2003 as in 1998.

It is estimated that an extra 4 hours per day or 20 hours per week would be required to assist in alleviating the problem, while the current high levels of development are being experienced.



To employ a Level 2 Officer on casual rates for 20 hours per week would cost \$25,000 in a full year. A computer would also need to be purchased.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

The cost of employing casual staff to assist in the processing of Zoning Statements and purchase of a computer can be off-set by the increased fees received. Salary costs for the period December 2003 to June 2004 would be \$15,000.

Legal Implications

An amendment to the Budget requires the support of an absolute majority of Council.

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.8 (MINUTE NO 2208) (OCM 18/11/2003) - SALE OF 9 RESIDENTIAL LOTS - LOT 9050 BARTRAM ROAD, SUCCESS (6000473) (SMH) (ATTACH)

| |
|--|
| <p>RECOMMENDATION That Council:</p> <ul style="list-style-type: none">(1) receive the report;(2) proceed with the valuation of the 9 Council owned lots on Bartram Road, Success, and once the asking price of each of the lots has been established, advertise the lots for sale as appropriate and undertake the conveyancing and settlement of each transaction;(3) accept the offer and acceptance for each lot, following the advertising of the offer in accordance with Section 3.58 of the Local Government Act, subject to the offer not being less than the published asking price; and |
|--|



(4) advise Richard Noble and Co of the Council's decision.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr L Goncalves that the recommendation be adopted.

CARRIED 9/0

Background

The background to this report is contained in the Council Minute 2718 dated 21 October 2003 relating to item 14.8.

At its meeting held on 21 October 2003, the Council accepted the proposal to undertake civil works provided by Gold Estates of Australia for \$249,405 and also set aside a bond of \$40,000 to upgrade Bartram Road.

Submission

A letter from Richard Noble and Co is attached to the Agenda which contains a marketing and selling proposal for the 9 Council owned lots, to be included as part of Stage 5 of Magnolia Gardens, Thomsons Lake, being undertaken by Gold Estates.

The letter is self explanatory.

Report

Due consideration has been given to the Richard Noble and Co proposal which in essence proposes to market and advertise the lots at a cost of \$1,000 per lot and a selling fee of 3½%, which would amount to around \$4,000 per lot. For the 9 lots this would amount to \$45,000.

Given that the potential fee payable to Richard Noble and Co is less than \$50,000, there is no requirement to call tenders, as required under the Act for this service.

For Richard Noble and Co to market and sell the Council's land as part of Stage 5 of Magnolia Gardens would be very convenient and straight forward. For this reason it is an attractive proposition.

Because of the statutory obligations applying to the Council in relation to the sale of land it would be too cumbersome to have Richard Noble and Co to act on the Council's behalf in respect to these lots.



The 9 Council owned lots form part of a stage of 50 lots, which will be ready for sale by the end of November 2003, following the completion of the subdivision works.

The officer's report to Council on 21 October 2003, advised that following advice from Property Resource Consulting (PRC), that the 9 lots would be best sold by public auction. However, following discussions with Richard Noble and Co and further consideration of the provisions of the Act, it has now been determined that sale by private treaty would be the preferred approach, subject to any offer received being advertised for 14 days by public notice, prior to any offer being accepted. The Council has used this practice in the past.

Informal advice from Richard Noble and Co, is that selling lots subject to a 14 day advertising of the offer would make them less attractive compared to the other lots for sale within Stage 5 of Magnolia Gardens. This could represent difficulties for both the agent and the Council, and could delay sales.

Given this, together with the other statutory requirements it is considered to be in the Council's best interest to undertake its own advertising and sales of the Council owned lots because:-

- since the Council decision of 21 October 2003 to proceed with the development of the lots, 2 enquiries to purchase the lots have already been received, which indicates an interest in the land.
- the Titles for the land may not be available for settlement until January or February 2004.
- the Council does not have the same imperative to sell the land quickly as does the land developer.
- the Council has the resources and the capacity to advertise and complete the sales transactions in-house.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost effective without compromising quality."*
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*



Budget/Financial Implications

It is estimated that the lots could sell for between \$110,000 to \$115,000 based on the current market expectations for land sales in the Success and Banjup localities, which could result in a gross return of \$990,000 to \$1,035,000.

The asking price for the lots has yet to be determined by valuation.

The net return to Council could be between \$700,595 and \$745,595 excluding marketing and selling costs. Should the Council decide to market and sell the lots through Richard Noble and Co, it could be expected that the net return could be reduced to between \$655,595 and \$700,595.

There are enough funds in the land operations budget to cover the incidental costs associated with the valuation, advertising and sale of 9 lots.

Legal Implications

The provisions of the Local Government Act apply. All land transactions must be dealt with in accordance with section 3.58 of the Act.

Community Consultation

The development and sale of the lots was undertaken as a Business Plan as required under the Act. The Business Plan was advertised for public comment. No submissions were received.

When each offer to purchase the lots is received, the offer is to be advertised for public comment for 14 days before acceptance.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

- 14.9 (MINUTE NO 2209) (OCM 18/11/2003) - RETROSPECTIVE APPROVAL - PATIO - LOT 232 (34) RIDGE ROAD, JANDAKOT - OWNER/APPLICANT: J DAMA & L TEMPLEMAN (5518769) (VM) (ATTACH)**

RECOMMENDATION

That Council:

- (1) grant retrospective approval to an existing Patio on Lot 232 (34) Ridge Road, Jandakot, subject to the following conditions:



Standard Conditions

1. Development may be carried out only in accordance with the terms of the application as approved herein and any approved plan.
2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
3. All stormwater being contained and disposed of on-site to the satisfaction of the Council.

Footnotes

1. The development is to comply with the requirements of the Building Code of Australia.
- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval valid for 24 months to the applicant;
- (3) advise the owner that because the patio has been constructed the Council is unable to issue a building licence retrospectively;
- (4) approach the Minister for Housing and Works and the Building Control Section of the Department of Housing and Works, with a request that the current legislation be changed to allow for retrospective building licence approval in appropriate circumstances.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr L Goncalves that the recommendation be adopted.

CARRIED 9/0

Background

| | | |
|------------|---|-------------------|
| ZONING: | MRS: | Urban |
| | TPS3: | Residential (R40) |
| LAND USE: | Single Dwelling | |
| LOT SIZE: | 543m ² | |
| USE CLASS: | House Single (R-Code) – ‘P’ (Permitted) | |



On 21 July 2003 the City Building Services received a request for an inspection of an unauthorised patio structure given that the landowner wanted to sell the house and the prospective purchaser as part of an offer and acceptance condition wanted the confirmation by Council of the approval of the patio.

The City Building Services identified that the patio construction was not the subject of a Building Licence. During August 2003 the landowner was not contactable. On 5 September 2003 Council's Building Services wrote to the applicant and requested a planning application, given that the patio is setback 750mm from the secondary boundary. A report from a suitably qualified structural engineer for the patio was also requested.

Submission

On 17 October 2003 the applicant provided a Schedule 6 Application requesting a variation to the Residential Design Codes ("R-Codes") from a required 1.0 metre setback to a secondary street to the erection of a patio setback 0.75m to the boundary.

Council's Planning Officers contacted the applicant and sought a justification why the patio was built without a building licence. The applicant has advised that he did not understand the statutory requirements from the Council, and upon receiving development plans from a construction company the applicant appointed a home improvements contractor to erect the patio. The owner regrets that the patio was erected without prior approval from Council.

Report

Council has the discretion to grant planning approval to development retrospectively, pursuant to Clause 8.4 of Town Planning Scheme No. 3.

The patio does not comply with Table 1 column 8 of the Residential Design Codes which specify that buildings should be setback at least 1.0 metre from a secondary street. The erected patio is setback 0.75 metre from the secondary street (Abbey Court). In determining the application the Council is to have regard to Clause 3.2.2 of the Codes under the performance criteria which states: "*minor incursions and projections not to detract from the character of the streetscape.*"

From a site inspection it was determined that the minor incursion of the support post of 0.25m into the required setback distance (1.0 metre) from the secondary street does not detract from the character of the streetscape.

The roof of the patio is setback 0.75 metres from the boundary and comply with the R-Codes requirements in particular Clause 3.3.1 –



Buildings setback from the boundary. Therefore, given that the posts of the patio are in line with the roof the impact to the streetscape is minimal.

No further action is recommended in respect to the unlawful development, given that the owner has now sought approval and that the patio does not detract from the streetscape.

It should be noted that a building licence cannot be issued retrospectively and the owner should be advised of this.

This situation has highlighted a discrepancy between Planning Legislation (TPS 3) and Building Legislation (Local Government (Miscellaneous Provisions) Act 1960). Legal opinion predominantly confirms that a building licence cannot be issued retrospectively as current legislation makes no provision for such an occurrence. In order to address the situation Building Legislation should be reviewed with a view to permitting a retrospective building licence to be issued in appropriate circumstances. The City should address this matter with the State Government Minister for Housing and Works and the Building Control Section of the Department of Housing and Works.

Given this, the issue of retrospective planning approval for conforming pre-constructed development is totally ineffective and the building application needs to be changed.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
2. Planning Your City
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
 - *"To foster a sense of community within the district generally and neighbourhoods in particular."*
3. Conserving and Improving Your Environment
 - *"To conserve the character and historic value of the human and built environment."*
 - *"To ensure that the development of the district is undertaken in such a way that the balance between the natural and human environment is maintained."*
 -

The Council Policies which apply to this item are:-



APD17 Standard Development Conditions and Footnotes.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.10 (MINUTE NO 2210) (OCM 18/11/2003) - NOTICE OF DEMOLITION - LOT 4 PARKES STREET, YANGETUP - OWNER: ROCCO ROSSI (4109591) (JW) (ATTACH)

RECOMMENDATION

That Council:

- (1) initiate a complaint to obtain a conviction, penalty and a daily penalty as defined in Section 9.14 of the Local Government Act 1995, against the owner of Lot 4 Parkes Street, Yangebup, with a view to compelling the land owner to demolish the seven (7) dilapidated buildings and remove the debris from site;
- (2) proceed with legal action against the owner of Lot 4 Parkes Street, Yangebup, because the owner has:-
 1. ignored the requisitions of the City's Notice (dated 19 November 2002) issued to the owner of Lot 4 Parkes Street, Yangebup, pursuant to Section 408 of the Local Government (Miscellaneous Provisions) Act 1960, requiring demolition of seven (7) buildings on Lot 4;
 2. appealed against the requisitions of the City's Notice, to Referees and the subsequent Referees' Award required the removal of six buildings by 30 April 2003 and a seventh building by no later than 30 September 2003, and the Referees' Award has not been complied with;
 3. has failed to comply with the City's Notice and a subsequent Referees' Award which required removal of



the seven (7) buildings, is an offence under Section 670 of the Local Government (Miscellaneous Provisions) Act 1960.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr L Goncalves that the recommendation be adopted.

CARRIED 9/0

Background

| | | |
|-----------|----------------|--------------------|
| ZONING: | MRS: | Parks & Recreation |
| LOT SIZE: | 4.0646 Hectare | |

An elected member of Council brought the condition of the buildings on Lot 4 Parkes Street, Yangebup to the City's attention in June 2002.

The previous use of the site was the former Jandakot Cement Works. The cement works has not been operating from the site for at least a year and possibly up to three years. The land is reserved as "Parks and Recreation" under the Metropolitan Region Scheme, and has yet to be acquired by the Western Australian Planning Commission (WAPC). A discussion with an Officer at the WAPC has revealed that the WAPC intends to reopen negotiations next financial year with the landowner to purchase the land. It is understood negotiations in 2002 broke down because the owner rejected the WAPC offer.

There are seven (7) buildings on site, a main factory building (about 2400m²) and six smaller ancillary buildings (in aggregate 675m²). The large factory building houses some plant and machinery (see attachments).

The City's Building Surveyors carried out a site inspection in June and again in November 2002 to assess the condition of the buildings. The buildings were considered to be dilapidated. Subsequent to the inspections a Notice under Section 408 of the Local Government (Miscellaneous Provisions) Act 1960 was issued (19 November 2003). The requisitions of the Notice required the removal of seven dilapidated buildings from the site within 35 days. The Notice provided an appeal right if the owner was aggrieved by the City's requirement that the buildings be demolished.

The owner appealed against the City's requisition, and was heard by two Referees who were appointed in accordance with the Local Government (Miscellaneous Provisions) Act 1960. The appeal was dismissed and required that the six ancillary buildings be demolished



and removed by no later than 30 April 2003 and the large factory building be demolished and removed by no later than 30 September 2003. Additional time was permitted for removal of the large factory building so as to allow time for the relocation of the plant and machinery inside the building.

A Demolition Licence was issued to Mr Rocco Rossi on 7 January 2003 for the demolition of the six (6) smaller ancillary buildings. The licence was conditional upon all demolition works being completed within 4 calendar months of issue of the licence.

A site inspection by one of the City's Building Surveyors on 8 October 2003 has confirmed some of the smaller buildings have been demolished however, rubble from those buildings still remains on site. The large factory building is still standing.

Report

To pursue this matter further there are two options open to Council, to either:-

- initiate further action in accordance with Section 408 of the Local Government (Miscellaneous Provisions) Act 1960.

As the appeal has been dismissed the City may now enforce the requisitions in the Notice, by lodging a complaint with the Court of Petty Sessions. If successful an order would be obtained requiring the owner to remove the buildings and in default of compliance the City would be empowered to carry out the terms of the Notice.

- initiate action in accordance with Section 670 of the Local Government (Miscellaneous Provisions) Act 1960, and Section 9.14 of Local Government Act 1995.

As the Notice has not been complied with nor has the Referees' Award the City may take action for the offence under Section 670 of the Local Government (Miscellaneous Provisions) Act 1960. The penalty for an offence under Section 670 if convicted is a fine of up to \$5000 and if the offence is of a continuing nature, a further fine of up to \$500 per day (Section 9.14 of the Local Government Act 1995).

If Council is to further pursue this matter it is recommended that the second option be implemented. This would mean that subject to a conviction the owner would be penalised for not complying with the Notice and the Referees' Award. While not enforcing removal of the buildings, it is envisaged that a penalty of up to \$5000 and a daily penalty of up to \$500 if the offence is on going would likely lead to the removal of the dilapidated buildings.



Should Council choose the first option it may result in the City having to arrange for the demolition work to be carried out and then having to attempt to recoup costs from the landowner through the Court or by sale of the demolition material.

Should the City implement option one, the issue of the plant and machinery in the large factory building needs to be considered. This could cause a problem for the City as the Notice only deals with building/s and not contents. The issue of storage of machinery and damage or alleged damage in the event of the City or its contractors undertaking the demolition work could be a significant problem. By implementing the second option the City would not be drawn into such an issue.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
2. Planning Your City
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
3. Conserving and Improving Your Environment
 - *"To conserve the quality, extent and uniqueness of the natural environment that exists within the district."*

Budget/Financial Implications

The City may incur legal costs at the Court's discretion.

Legal Implications

Local Government (Miscellaneous Provisions) Act 1960, Section 408.

The Local Government (Miscellaneous Provisions) Act 1960, Section 670 and Section 9.14 of Local Government Act 1995.

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.



14.11 (MINUTE NO 2211) (OCM 18/11/2003) - EXTENSION TO A CHILD CARE PREMISES (INCREASE CHILD NUMBERS AND ADDITIONAL FACILITY ROOMS) - LOT 800 (504) ROCKINGHAM ROAD, MUNSTER - OWNER: DMARCHIOLI, MM MARCHIOLI, M J MATTHEWS (3313707) (MD) (ATTACH)

RECOMMENDATION

That Council:

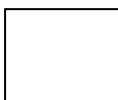
- (1) Grant approval for an extension to a Child Care Premises (increase child numbers and additional facility room) on Lot 800 (504) Rockingham Road, Munster subject to the following conditions:

STANDARD CONDITIONS

1. Development may be carried out only in accordance with the terms of the application dated 8 August 2003 as approved herein and any approved plan.
2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
3. All stormwater being contained and disposed of on-site to the satisfaction of the Council.
4. Provision and maintenance of a minimum of fifteen (15) paved car parking spaces measuring 5.5m x 2.5m and clearly marked on the ground in accordance with the amended plan dated 31 October 2003, with a minimum 3.9m wide paved accessways and satisfactory manoeuvring areas.
5. The carparking areas and accessways being constructed, drained and maintained to the Council's specifications and satisfaction.

SPECIAL CONDITIONS

6. A brick wall shall be erected along the northern boundary for the purpose of screening the operations of the child care premises from the residences to the north within 3 months of the commencement of this approval to the satisfaction of Council.
7. The proposed development shall be clad or coloured to complement the surroundings, in which it is located to the satisfaction of Council. The existing building shall be reclad or coloured to match the proposed development.



8. Hours of operation are limited to 6.45am to 6.00pm Monday to Friday and not at all on Saturday, Sunday or public holidays.
9. The crossover extending from the lot boundary to the Rockingham Road seal being upgraded and thereafter maintained to the satisfaction of Council.
10. This approval is for a maximum of 60 children as per the proposal documentation.

COMPLIANCE PRIOR TO APPLYING FOR A BUILDING LICENCE

11. A landscape plan must be submitted to the Council and approved, prior to the issue of a building licence, and shall include the following:
 - (1) the location, number and type of existing and proposed trees and shrubs, including calculations for the landscaping area being in conformity with the City of Cockburn Greening Plan;
 - (2) any lawns to be established;
 - (3) any natural landscape areas to be retained;
 - (4) those areas to be reticulated or irrigated;
 - (5) landscaping to be undertaken in the street verge adjacent to the lot; and
 - (6) verge treatments.
12. The approved landscape plan shall be implemented within 3 months of the commencement of this approval and shall thereafter be maintained to the satisfaction of Council.
13. A schedule of colours, materials and finishes must be submitted to the Council and approved, prior to the issue of a building licence, to satisfy condition 7 above to the satisfaction of the Principal Planner.

FOOTNOTES

1. The development is to comply with the requirements of the Building Code of Australia.
2. This approval is issued by the Council under its Town Planning Scheme, and approvals or advice by other agencies may be required, and it is the responsibility of the applicant to ensure that all other approvals/advice are issued prior to commencing development or use of the



land, and a copy of the approval/advice should be provided to the Council.

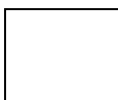
3. Until the Council has issued a Certificate of Classification under Regulation 20 of the Building Regulations 1989, there shall be no approval to use the building for the purposes of the development herein conditionally approved and the land shall not be used for any such purpose.
 4. Access and facilities for disabled persons is to be provided in accordance with the requirements of the Building Code of Australia.
 5. The development is to comply with the Environmental Protection Act 1986 which contains penalties where noise limits exceed the prescribed by the Environmental Protection (Noise) Regulations 1997.
 6. Approval being granted by the Child Care Services Board of Family and Children's Services.
 7. The applicant shall obtain all relevant approvals from Council's Health Services, including public building approval.
- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval to the applicant accordingly; and
 - (3) advise those who lodged submissions of the Council's decision.

COUNCIL DECISION

MOVED Cllr S Limbert SECONDED Cllr A Edwards that Council adopt the recommendation subject to sub-clause (6) of the Special Conditions to read as follows:

- (6) A brick wall shall be erected along the northern boundary, as agreed between the applicant and the adjoining owner, for the purpose of screening the operations of the childcare premises from the residences to the north within three(3) months of the commencement of this approval to the satisfaction of Council.

CARRIED 9/0



Explanation

Despite the recommendation contained in the Officer's Report that landscaping would be preferable, it is understood that the applicant and the adjoining owner have jointly agreed that a brick wall be erected along their common boundary.

Background

| | | |
|------------|------------------------------|-----------------|
| ZONING: | MRS: | Urban |
| | TPS3: | Residential R20 |
| LAND USE: | Existing Child Care Premises | |
| LOT SIZE: | 1506 m ² | |
| AREA: | 73.84 m ² | |
| USE CLASS: | Child Care Premises "A" | |

An application for the development of a child care premises on the subject property was refused by Council on 2nd May 1995 for the reason that "it would create a traffic conflict on Rockingham Road with parents dropping off and picking up children in proximity to the Marvell Avenue intersection, the Gull service station and St Jeromes School".

In August 1995, the Minister for Planning upheld the Appeal subject to:-

- “1. *The access to the parking area being from Marvell Avenue. All crossovers to be designed and installed to Council's satisfaction.*
2. *The portion of the Lot shown to be excised not to be created as a separate lot and to be landscaped as part of the development in order to provide an effective visual separation from the lot to the rear.*
3. *The development complying with such conditions as the City of Cockburn might reasonably impose on a development of this type.”*

Council subsequently issued approval for a child care premises on the 11 October 1995 subject to a number of conditions.

A copy of the Form 2 Approval dated 11 October 1995 is with the Agenda Attachments.

The current operations of the child care premises fail to comply with Conditions 1, 2 and 3 of the planning approval dated 11 October 1995 in the following respects:

1. Onsite car parking is not in accordance with the approved plan.
2. Access / egress to the site does not comply with Council requirements.
3. Landscaping has not been provided as per the approved plan.



Submission

On 14 August 2003, an application was received for 3 additional facility rooms. The proposal involves enclosing three existing patio areas, two at the front of the building and one at the rear of the building. The application also proposes to create a staff room from the existing garage, which is no longer in use.

The application also proposes an increase in the number of children being cared for from 39 to approximately 60. The staff levels are proposed to increase from 7 to 10 to meet the increase in children being cared for.

The applicant has provided the following information in support of the application in italics below:

“Since taking over this business in January 2001, I have seen the enquiry’s escalate...There has been an unprecedented demand for working mothers to have care for babies and before and after school care at our centre.

We currently have St Jerome’s School recommending us to their parents for before and after school care...”

“Babies

My application to increase the babies’ section by four to twelve in the new rear section would cater for approximately five working mothers. These parents are on our waiting list and desperately require care, as all neighbouring childcare centres babies area are full.

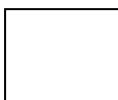
...I am applying for the increase of the babies’ area; because of the lack of baby care facilities available in the immediate area”.

“Before and after school care

I would like to utilize the new extensions in the front section of the centre for the before and after care children. This area could cater for up to seventeen before and after school children, subject to the licensing board’s requirement policy, which is under review”.

“Traffic Flow

The traffic flow from before school care is created early in the morning. These current five working mothers who require the care, start work at 7-8pm, hence most of them arriving before opening time around 7am, when the traffic flow is at a minimum. This is five less cars arriving at the St Jerome’s school at the busy 8.30pm normal opening time.



The after school care at our centre takes the pressure off the...rush at schools at 3.30pm each day, as our current seven working parents pick their school children up after work between 5-6pm each day....We are looking to have our major increase in child numbers catered for in the after school area, as the extra traffic created by these increased numbers will happen after working hours between 5.15 to 6pm, when the parents finish work”.

“Proposed Increase

If you were to allow us to increase our child numbers to sixty, they would be used in the following manner:

| | | |
|----------------------------------|-----------|--------------------------|
| <i>Babies</i> | <i>12</i> | <i>Increased by four</i> |
| <i>Toddlers</i> | <i>15</i> | <i>Remains the same</i> |
| <i>Kindy</i> | <i>16</i> | <i>Remains the same</i> |
| <i>Before & After School</i> | <i>17</i> | <i>extra”</i> |

“Staff

The staff numbers would increase to ten, being nine child caregivers and one cook”.

The application plans are contained in the Agenda Attachments.

Report

Scheme Requirements

The subject land is zoned Residential (R20) under Council’s Town Planning Scheme No.3. A Child Care Premises is a use that is not permitted unless the council has exercised its discretion and has granted planning approval after advertising the proposal.

The application has been referred to Council for determination following receipt of submissions in objection to the application from adjoining landowners.

Car Parking

Assessment of the proposal under Town Planning Scheme No. 3 indicates the following car parking requirements in respect to the proposed use:

A total of 16 car parking bays would be required for 10 full-time employees and a total of 60 children. The site can only accommodate a total of 15 car parking bays and therefore does not comply with Council’s Scheme parking requirements. As the revised parking layout provides a better design, with respect to manoeuvrability, safety and



provision of landscaping, it is considered that a variation (1 bay) less to Council's Scheme requirements is acceptable in this instance.

Landscaping

The amended plans propose a total area of 90 m² for landscaping. This equates to approximately 6 percent of the total developed area of the site. Council's Town Planning Scheme does not require the provision of landscaping for a child care premises.

As the centre is in a prominent location, (a corner block on Rockingham Road) and also due to the lot being developed to its full potential it is considered appropriate to require additional landscaping to visually soften the development.

This can be achieved by the owner landscaping and maintaining all of the street verge abutting the subject property.

Floor Area

The combined floor area of the three proposed facility rooms is approximately 73.84 m².

Rockingham Road Crossover

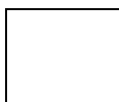
The current condition of the Rockingham Road crossover is degraded as a result of traffic generated from the subject site. It is recommended that the applicant be required to upgrade and maintain the crossover to the satisfaction of Council.

Amenity

It is considered that currently the development does not blend in with the surrounding residential development, given that minimal landscaping has been undertaken and due to the colours and materials previously chosen for the original development not blending in with the surrounding locality. It is considered that the current application can be appropriately conditioned to address the amenity issue, by way of requiring landscaping to be undertaken and the building being upgraded externally with more appropriate colours and materials to the satisfaction of Council.

Community Consultation

In accordance with Clause 9.4 of the Scheme, the application was advertised to nearby owners that are likely to be affected by the proposal. At the close of the advertising period, two letters of objection were received. The following table is a summary of the issues raised in the submission:



| Submitter | Objection/ Support/ Neutral | Summary of Submission |
|--|-----------------------------------|---|
| D & C Goncalves 7 Amy Court Munster | Objection | <p>Toys and junk are being thrown over fence, which creates a nuisance.</p> <p>Concern that the expansion of the child care premises will result in increase noise generated from the child care premises.</p> <p>The existing dividing fence is inadequate and does not provide an adequate visual or noise barrier to the adjoining child care premises.</p> <p>The submitter recommends that the applicant replace the existing dividing fence with a sufficient brick wall.</p> |
| P-Slog Sprlyan 496 Rockingham Road Munster | Objection | <p>Concern that the child care premises devalues nearby properties.</p> <p>Concern that the proposed expansion will result in increased noise level.</p> <p>Concern raised that the service station opposite the subject site will have a detrimental impact on the children being cared for at the facility due to cars and trucks using the petrol station creating excess fumes.</p> |

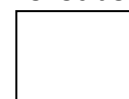
Discussion

The concerns raised in the table of submissions are addressed below:

- 1) It is considered that toys being thrown over the boundary fence can be prevented through appropriate landscape screening measures and perhaps restricting access of the children to a distance from the boundary fence.
- 2) As a comparative examination of noise generated from a child care premises, an acoustic report in support of a proposed child care premises at Pt Lot 113 Rockingham Road, Hamilton Hill (13 October 2003) is reviewed here. The acoustic report showed that the noise level generated from an operating centre at the closest residence as a result of 83 children playing was 40 dB(A), which complied with the Regulations (maximum level of 53dB(A)). The calculations also demonstrated that before 0700 hours noise received at the neighbouring premises will also comply with the regulatory requirements.

The owner must at all times ensure that the premise complies with the Environmental Protection (Noise) Regulations 1997.

- 3) The statement that the existing dividing fence is inadequate is acknowledged. The child care premises has views into the neighbouring property, as the subject property is substantially



higher than the adjoining properties to the north of the site. It is recommended that rather than requiring a brick wall along the boundary, which may be required to be built to an inappropriate height in a residential area in order to achieve an appropriate screen, it is recommended that the applicant be required to plant vegetation along the boundary, at a height no less than 3 metres, for the purpose of screening the site from the properties to the north.

- 4) The claim that the operation of the child care premises devalues the surrounding residential properties is unsubstantiated and is not a relevant planning consideration.
- 5) The concern raised that the service station opposite the subject site will have a negative impact on the children's health is unsubstantiated.

Outstanding Conditions

As previously identified in this report, Conditions 1, 2 and 3 of the previous development approval of the child care premises have not currently been met. These conditions were originally imposed on the development while another operator was undertaking the operation. The business has since changed hands, and the current applicant/operator has committed in writing the following:

"I will undertake to complete the council requirements in regards to the original approvals given to the previous owner /applicants in 1996. These being the landscaping and the side and front boundary [limestone] fence, which I will undertake to complete to the council's satisfaction.

...I will take upon oneself to complete any council requests to have these extensions approved and completed before school restarts in February, 2004".

The outstanding conditions relating to the original approval issued in 1996 is a related matter to the current application but can be dealt with in accordance with the above undertaking.

Furthermore, the previous car parking and landscaping requirements will not be relevant due to the revised parking and landscaping layout.

Conclusion

It is considered that the application has merit as it involves the upgrading and expansion of an existing child care premises, which is located in a prime location for such a use, in that it is a corner block and situated opposite a primary school.



It is recommended that the application be approved, in accordance with the amended plans and subject to appropriate conditions to address concerns raised by adjoining residents.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*

4. Facilitating the needs of Your Community
 - *"To facilitate and provide an optimum range of community services."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

Application advertised. Two letters of 'Objection' were received.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.12 (MINUTE NO 2212) (OCM 18/11/2003) - HOME BUSINESS - GATE FABRICATION HO554 - 25 MUIR COURT, BANJUP - OWNER: LA & KM CRANNAGE - APPLICANT: LA CRANNAGE (5514613) (ACB) (ATTACH)

RECOMMENDATION

That Council:

- (1) grant approval for the proposed Home Business (Gate Fabrication) on Lot 3 (25) Muir Court, Banjup subject to the following conditions:-

STANDARD CONDITIONS



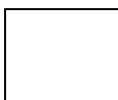
1. The development complying with the Home business provisions and definition set out in Statement of Planning Policy No. 6 with the exception of item (d).
2. The home business can only be undertaken by the owner of the land and is not transferable.
3. On the sale of the property or change in ownership of the land the home business entitlement ceases.
4. All materials and/or equipment used in relation to the Home Business shall be stored within the residence or an approved outbuilding.
5. The Home Business Approval may be withdrawn by the Council upon receipt of substantiated complaints.

SPECIAL CONDITIONS

6. The subject land is located within the Jandakot Underground Water Pollution Control Area, which is gazetted for Priority 2 (P2) source protection. P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas. As described in the Water and Rivers Commission's *Water Quality Protection Note: Land Use Compatibility in Public Drinking Water Source Areas*, home businesses area a conditional land use.
7. No more than 25 litres of Toxic and Hazardous Substances (THS) shall be stored, handled or used on the above site. Storage of THS shall be bunded, weatherproof and impermeable surfaces, which exclude or contain run off and within a ventilated area.
8. The workshop floor shall be impermeable (i.e. reinforced concrete floor).
9. Any wastes as a result of the proposed activity shall be disposed of off-site as approved by regulatory agencies.

FOOTNOTE

1. The development is to comply with the *Environmental Protection Act 1986*, which contains penalties where noise limits exceed that prescribed by the *Environmental*



Protection (Noise) Regulations 1997.

2. It should be noted that under the *Environmental Protection Act 1986*, a person who emits or causes or allows to be emitted noise, which unreasonable interferes with the health, welfare, convenience, comfort or amenity of any person, commits an offence.
3. The Chief Executive Officer (CEO) of the local government may request that a noise management plan be submitted for the manufacturing work at any time.
4. Work hours and deliveries shall be limited between Monday to Saturday, 7am to 7pm, and not at all on Sundays or public holidays.
5. In regards to Condition 7 THS include substances described in the Schedule of the *Poisons Act 1964*, concentrates and substances listed in the Schedules Classes 3 to 9 of the *Explosives and Dangerous Goods Act, Classification Order of 1988* and substances that have the potential to contaminate waters (whether treated or otherwise) so they become unsafe for human, plants or animal use, or may significantly disrupt animal processes.
6. The Home Business on Lot 3 Muir Court, Banjup is defined in Statement of Planning Policy No. 6 as "...a business, service, trade or similar activity carried on in the dwelling or on land around a dwelling which may employ, in addition to the resident of the dwelling, no more than two persons but which-
 - (a) does not entail the retail sale, display or hire of goods of any nature;
 - (b) does not cause injury to or prejudicially affect the amenity of the neighbourhood;
 - (c) does not detract from the residential appearance of the dwelling house or domestic outbuilding;
 - (d) does not entail employment of any persons not a member of the occupier's household;
 - (e) does not occupy an area greater than 50m²;
 - (f) will not result in traffic difficulties as a result of the inadequacy of on-site and off-site parking;
 - (g) will not result in a substantial increase in the amount of vehicular traffic in the vicinity; and
 - (h) does not entail the presence, parking and garaging of a vehicle of more than 3.5 tonne tare weight."

- (2) issue an MRS Form 2 approval and a Schedule 9 Notice of Determination on Application for Planning Approval valid for a period of 12 months only.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

| | | |
|------------|---|--------------------------|
| ZONING: | MRS: | Rural – Water Protection |
| | TPS3: | Resource |
| LAND USE: | Residential / Home Business (Gate Fabrication) | |
| LOT SIZE: | 2.0016ha | |
| AREA: | Approx. 96m ² of shed used for Home Business | |
| USE CLASS: | AA (Discretionary having due regard for WRC advice) | |

The City has recently been made aware that a Gate Fabrication business has been operating on the subject site without the prior planning approval of the Council. On 3 September 2003 the City advised the owner that in order for the business to continue operating on the premises, it must be brought into compliance with the 'Home Business' provisions of the City of Cockburn Town Planning Scheme No. 3 and approved by Council.

In response to the above, the Council received an application for a Home Business (Gate Fabrication) on 11 September 2003.

The landowner/applicant has a history of carrying out illegal uses on the premises without seeking the necessary planning approvals prior to commencing the use. The following provides a historical summary of the events occurred to date.

- 12 April 1988 – Planning approved a shed with standard conditions and special conditions that specified the shed walls being colorbond or painted in earth tonings, screen planting to be installed around the shed and the use being confined to special rural purposes only.
- 12 March 1990 – Letter to landowner resulting from a site inspection undertaken by planning staff on 8 March 1990. This inspection revealed that the shed walls were not constructed in



colorbond or painted in earth tonings. In addition, no screen planting had been undertaken.

- 23 March 1998 – A site inspection was undertaken by planning staff as a result of a referral received from the Water and Rivers Commission stating that a mechanical workshop was operating on the subject site.
- 27 March 1998 – Letter to landowner requesting that the use be ceased within 28 days.
- 6 April 1998 – Planning Application for a Mechanical Workshop was received by the City and on 19 May 1998 Council refused the application and resolved to instruct solicitors to initiate legal action within 3 months if the use is not ceased.
- 21 May 1998 – Landowner made a Planning Application for a Home Occupation for Mining Storage (Amended) where on 20 October 1998 Council resolved to refuse the application as the use is not compatible with the objectives of the Rural – Water Protection Zone.
- 10 February 1999 – A site inspection undertaken by planning staff revealed there was no evidence of a business operating from the premises and the matter was finalised.

Submission

The Home Business application involves the making of rural type gates and lightweight portable panels. This activity is confined to an existing shed. The applicant submits that only 96 square metres of the shed is being used as part of the Home Business activities.

The applicant submits the following: -

“We are situated on 5 acres in Banjup and would not contribute to any noise or traffic problems”

“There is no pollution, minimal noise and no nuisance to my neighbours. All waste is removed by way of a dump bin and the surrounding area is kept clean.”

“Although I don’t own or intend to purchase a 3.5 tonne truck, once a month I receive pipe and mesh to manufacture my products.”

The list of machinery used in gate manufacturing is:

- *Massey Ferguson 35 Fork Lift*
- *Cut off saw*
- *Angle Grinder*



- *Drill*
- *Pipe Bender*
- *Welder (MIG)*

Working hours are between Monday and Friday 8am to 4pm but the necessary machinery is not being used all the time and two machines are not used together or continuously.”

The Applicant has verbally advised the process of Gate Fabrication involves the bending and welding together of pipes. The process does not involve the use of chemicals or oils. Orders are taken over the phone and the gates are transported to the client’s premises. The business employs one full time employee and occasionally one casual employee when workload demands extra help. These employees are not members of the occupier’s household.

The applicant confirms that the area can be restricted to the 50 sqm requirement under Statement of Planning Policy No. 6 to comply with this requirement.

A locality map and a copy of the site plan associated with the Home Business are included in the agenda attachments.

Report

The Applicant proposes a Home Business from his place of residence being 25 Muir Court, Banjup that is akin to a rural industry.

A Home Business is defined below in accordance with Statement of Planning Policy No. 6 – Jandakot Groundwater Protection.

“...a business, service, trade or similar activity carried on in the dwelling or on land around a dwelling which may employ, in addition to the resident of the dwelling, no more than two persons but which-

- (a) does not entail the retail sale, display or hire of goods of any nature;*
- (b) does not cause injury to or prejudicially affect the amenity of the neighbourhood;*
- (c) does not detract from the residential appearance of the dwelling house or domestic outbuilding;*
- (d) does not entail employment of any persons not a member of the occupier’s household;*
- (e) does not occupy an area greater than 50m²;*
- (f) will not result in traffic difficulties as a result of the inadequacy of on-site and off-site parking;*
- (g) will not result in a substantial increase in the amount of vehicular traffic in the vicinity; and*
- (h) does not entail the presence, parking and garaging of a vehicle of more than 3.5 tonne tare weight.”*



The applicant complies with every requirement under the definition of a 'Home Business' with the exception of item (d) above.

The objective of the Resource Zone under Town Planning Scheme No. 3 is *"to provide for the protection of the Perth Metropolitan underground water resource in accordance with the requirements of Statement of Planning Policy No. 6 published by the Western Australian Planning Commission on 12 June 1998."*

The purpose of the policy is to ensure development over the Jandakot public groundwater supply mound is compatible with the long-term use of the groundwater for human consumption.

Statement of Planning Policy No. 6 enables Council to exercise its discretion to approve a Home Business following regard to advice from the Water and Rivers Commission.

The application was referred to the adjoining neighbours and the Water and Rivers Commission for comment. The owners of No. 37 Muir Court, Banjup provided a letter of no objection. In addition the owners of No. 38 Muir Court, Banjup advised by phone they have no objection to the proposal. The site plan within the agenda attachment depicts the location of these submissioners.

The Water and Rivers have no objections subject to a number of conditions and advice notes.

The shed is located approximately 130 metres from the nearest residential dwelling.

The proposed Home Business is supported from a planning viewpoint for the following reasons: -

1. The nature of the business does not involve the use of chemicals or oils and it is considered that there is no increased risk of pollution to the water source.
2. The business will not generate additional vehicular movements over what a normal household, as the orders are received by phone and gates are dispatched by the business.
3. The rural lot size of 2ha assists in managing impacts of the business on-site.
4. The Home Business generally complies with the criteria from the 'Home Business' definition under Statement of Planning Policy No. 6 with the exception of (d);
5. The proposal is supported by neighbouring landowners and the Water and Rivers Commission;
6. The environmental implications of the business can be managed to ensure there is no adverse impact on Groundwater;
7. The end product is used on rural properties.



Strategic Plan/Policy Implications

2. Planning Your City

- *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
- *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
- *"To foster a sense of community within the district generally and neighbourhoods in particular."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.13 (MINUTE NO 2213) (OCM 18/11/2003) - FINAL ADOPTION - AMENDMENT NO. 4 TO TOWN PLANNING SCHEME NO. 3 - REZONING FROM 'PUBLIC PURPOSES' TO 'DEVELOPMENT' LOTS 3 AND 4 LYON ROAD, BANJUP - OWNER: WATER CORPORATION - APPLICANT: ROBERTS DAY GROUP (93004) (CP)

RECOMMENDATION

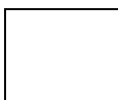
That Council:

- (1) grant final adoption to the following amendment:-

TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED) RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME CITY OF COCKBURN – TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 4

Resolved that Council, in pursuance of section 7 of the Town Planning and Development Act 1928 (as amended) amend the above Town planning Scheme by:-



1. amending the Scheme Maps by re-zoning Lots 3 and 4 Lyon Road, Banjup from “Public Purposes (WC)” to “Residential Development”;
- (2) in anticipation of the Hon. Minister’s advice that final approval will be granted, the documents be signed, sealed and forwarded to the Western Australian Planning Commission; and
- (3) advise the applicant of Council’s decision accordingly.

COUNCIL DECISION
 MOVED Clr M Reeve-Fowkes SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

| | | |
|-----------|---|--------------------------------------|
| ZONING: | MRS: | Urban |
| | DZS: | Local Reserve “Public Purposes” (WC) |
| LAND USE: | Vacant land | |
| LOT SIZE: | 2400m ² and 1600m ² | |

At the Ordinary Council Meeting on 18 February 2003, the following was resolved (Minute No 1926):

“Resolved that Council, in pursuance of section 7 of the Town Planning and Development Act 1928 amend the above Town Planning Scheme by:-

1. rezoning Lots 3 & 4 Lyon Road, Banjup from “Public Purposes” to “Development” and amend the Scheme Map accordingly”.

Submission

The proposal is to rezone two lots owned by the Water Corporation from “Public Purposes” reserve to “Development” zone in Town Planning Scheme 3.

The Water Corporation has indicated the land is surplus to requirements and is located within the Harvest Lakes residential estate at Atwell. The intention is to enable the subject land to be developed for urban purposes.



Report

The scheme amendment was referred to the Environmental Protection Authority for consideration as well as publicly advertised. At the close of the submission period, other than an EPA response, the City received no submissions.

The EPA indicated that the environmental impact of the proposal did not warrant formal assessment under the Environmental Protection Act. The EPA response advised that:

- the land is located within the Priority 3 (P3) Public Drinking Water Source Area (PDWSA), and
- the land is within the 300m well head protection zone, located around other production wells in the P3 area. As a consequence, there may be restrictions on some activities undertaken on the land (such as the storage and use of chemicals).

The scheme amendment is a straight forward proposal that is based upon sound planning grounds and simply seeks to rezone two small parcels of land the same zone as the surrounding land. For these reasons the proposal is supported and final adoption is recommended accordingly.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are: -

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
2. Planning Your City
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
3. Conserving and Improving Your Environment
 - *"To conserve the quality, extent and uniqueness of the natural environment that exists within the district."*

The Planning Policies which apply to this item are:-

Budget/Financial Implications

N/A

Legal Implications

N/A



Community Consultation

Scheme amendment was advertised for comment. No submissions received.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.14 (MINUTE NO 2214) (OCM 18/11/2003) - COUNCIL REPRESENTATIVE - PEEL HARVEY CATCHMENT COUNCIL (9334) (AJB) (ATTACH)

RECOMMENDATION

That Council:

- (1) agree to be a member of the Peel Harvey Catchment Council;
- (2) nominate Clr _____ as a member to the Peel Harvey Catchment Council; and
- (3) advise the Peel Harvey Catchment Council accordingly.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr S Limbert that Council:

- (1) agree to be a member of the Peel Harvey Catchment Council;
- (2) nominate Mayor Lee and Clr Reeve-Fowkes as members to the Peel Harvey Catchment Council; and
- (3) advise the Peel Harvey Catchment Council accordingly.

CARRIED 9/0

Background

Council at its meeting held on 19 August 2003 confirmed an affiliation with the South West Catchment Council for the purpose of attaining funding at a regional level once the restructuring of The National Heritage Trust is complete.



Submission

By letter dated 30th September the Peel Harvey Catchment Council which is one of 6 subregions of the South West NRM Region advised that there are currently two vacant seats on the Peel Harvey Catchment Council for members representing Local Government (a copy of the letter is included in the Agenda attachments).

The City of Cockburn has been invited to nominate a person if it so desires.

Report

In August 2003 the City of Cockburn together with the City of Rockingham and the Town of Kwinana agreed to affiliate with the South West Catchment Council for the purpose of accessing Natural Heritage trust funding for environmental projects. The Peel Harvey Catchment Council which is one of the 6 subregions of the South West Catchment Council has asked if the City is interested in nominating a person to one of the two vacant seats on the Peel Harvey Catchment Council which were created for local government representatives.

At this time the City has resolved to affiliate with the South West Catchment Council but has not agreed to be a member of the Peel Harvey Catchment Council.

If Council wishes to have a representative on the Peel Harvey Catchment Council it can resolve accordingly at the same time as making a nomination.

The Council meets in the morning (9.00 – 12.00) of the second Thursday of each month at rotating venues of the participating local governments (ie. from Cockburn in the north, Harvey in the south and Cuballing in the east) with every second or third being held in Mandurah.

No staff members are nominated as currently there is no capacity to meet this commitment.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

There are no direct fees or levies associated with membership of the Peel-Harvey Catchment Council. As has previously been the case, matching funding will be required for any project promoted by Council. This will be identified at the time of seeking approval for specific projects.



Attendance at meetings of the Peel-Harvey Catchment Council will involve travelling to country locations. This may incur travel and other incidental costs and, depending on location, accommodation costs. No funds have been allocated for this purpose in the 2003.04 budget.

Community Consultation

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.15 (MINUTE NO 2215) (OCM 18/11/2003) - SOUTHWELL NEW LIVING PROJECT - PROPOSED MEMORANDUM OF UNDERSTANDING WITH HOMESWEST (9512) (AJB) (ATTACH)

RECOMMENDATION
That Council:

- (1) note Council's obligations under the Southwell Memorandum of Understanding;
- (2) note the objectives of Homeswest set out in the Southwell Memorandum of Understanding;
- (3) agree to sign the Southwell Memorandum of Understanding with Homeswest; and
- (4) advise Homeswest accordingly.

COUNCIL DECISION
MOVED Clr S Limbert SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0



Background

N/A

Submission

Homeswest has requested Council to enter into a Memorandum of Understanding which sets out the objectives and guiding principles for the proposed Southwell New Living project.

Report

Homeswest is progressing the proposed Southwell New Living project and is in the process of appointing a project Manager.

As with the Coolbellup New Living project, Homeswest is seeking Councils agreement to a Memorandum of Understanding (MOU) which sets out the objectives of each party together with the guiding principles that will be applied to the project. A copy of the draft MOU is contained in the Agenda attachments.

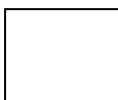
In respect to financial commitments the MOU notes that Council's contribution to the improvement of agreed infrastructure and upgrading of local reserves will be in the context of Council's overall Budget and subject to specific budget allocations. The extent and timing of works will be an outcome of the preliminary planning phase of the project which will be undertaken in the first half of 2004 and will be the subject of a further report to Council at that time.

It is recommended that Council advise Homeswest that it is prepared to sign the submitted MOU.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost competitive without compromising quality."*
2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
 - *"To foster a sense of community within the district generally and neighbourhoods in particular."*



Budget/Financial Implications

Agreed works as described in the MOU will be the subject of consideration for inclusion in the Budget and future budgets.

Community Consultation

Nil at this time. The Southwell New Living Project will involve extensive public consultation.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.16 (MINUTE NO 2216) (OCM 18/11/2003) - CLOSURE OF PEDESTRIAN ACCESSWAY - LOT 11 HAMILTON ROAD, COOGEE (3317422) (KJS) (ATTACH)

RECOMMENDATION

That Council:

- (1) subject to the owner agreeing to purchase the land and meeting all costs request that the Minister for Planning and Infrastructure:
1. Close the 0.1m wide pedestrian accessway adjoining Lot 11 Hamilton Road, Coogee;
 2. Dedicate the land in (1) above as road reserve pursuant to section 56 of the Land Administration Act 1997; and
- (2) indemnify the Minister against reasonable costs in considering and granting the request;

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

Council at its meeting held on 17 June 2003 resolved to:



“request that the Department of Land Administration close 4.5 metres of the 0.1m wide Pedestrian Accessway adjoining Lot 11 Hamilton Road, Coogee subject to the following:

1. *The owners of Lot 11 Hamilton Road, Coogee agreeing in writing to the endorsement of a memorial on the Certificate of Title of Lot 11, advising current and future owners that the City of Cockburn will not modify the median strip in Hamilton Road adjoining Lot 11 to allow access across the median strip to the southbound lane.*
2. *The owners of Lot 11 agreeing in writing to purchase the pedestrian accessway and meeting all other costs associated with the closure.”*

Submission

N/A

Report

The original request was forwarded to the Department for Planning and Infrastructure. The owner endorsed the memorial as required and then lodged a survey strata plan at the Department of Land Information.

Unfortunately the original proposal to only close 4.5 metres of the 25 metre in length pedestrian accessway has caused administrative problems within the Department of Land Information. To proceed there would be a requirement to formally subdivide the PAW before the survey strata could be dealt on. Administratively it is better to close all of the PAW and dedicate the land to road purposes. The memorial on the Title protects the City’s objective in alerting all future owners of lots within the strata plan that access is restricted onto Hamilton Road from some of the lots.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

2. Planning Your City
 - *“To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens.”*

Budget/Financial Implications

N/A



Legal Implications

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.17 (MINUTE NO 2217) (OCM 18/11/2003) - DEDICATION OF LAND PURSUANT TO SECTION 56 OF THE LAND ADMINISTRATION ACT 1997 (2200398; 450022) (KJS) (ATTACH)

RECOMMENDATION

That Council:

- (1) request the Minister for Planning and Infrastructure to dedicate unallocated crown land the subject of CT 399/103, 335/179 and 1055/46 as road reserve pursuant to Section 56(1) of the Land Administration Act 1997; and
- (2) indemnify the Minister for Planning and Infrastructure against reasonable costs incurred by considering and granting this request.

COUNCIL DECISION

MOVED Cllr S Limbert SECONDED Cllr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

The land is generally that land below the railway bridge just south of Spearwood Avenue intersecting with Hamilton Road.

Submission

This matter is being considered following a report from WA Railways.



Report

The land has been used for road purposes for many years. The public have had free use of the land as the City has maintained the pavement within the bounds of the land area. The land should be dedicated as a public road reserve to formalise the current situation.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil

- 14.18 (MINUTE NO 2218) (OCM 18/11/2003) - PROPOSED LINED LAKES - THE SANCTUARY BANJUP - STOCKLAND - LOT 199 GAEBLER ROAD, BANJUP - OWNER: STOCKLAND TRUST GROUP - APPLICANT: MCNALLY NEWTON LANDSCAPE ARCHITECTS (9645A) (AJB) (ATTACH)**

RECOMMENDATION

That Council advise the proponent that the proposed lined ornamental lake within the Sanctuary Estate Banjup being developed by Stockland is supported subject to:

- (1) the lake system being maintained by the subdivider for an initial period of not less than two years after its development;
- (2) the preparation and implementation of water quality and maintenance plans to Council's satisfaction; and



- (3) the applicant demonstrating that the overall average cost to maintain open space within the Sanctuary Estate will not exceed \$15,000 /ha/pa in accordance with Council's requirement.

COUNCIL DECISION

MOVED Cllr S Limbert SECONDED Cllr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

Council at its meeting held on 19 November 2002 (Item 14.22) considered the Local Structure Plan for Lot 199 Gaebler Road Banjup (The Sanctuary Estate) and resolved not to support the plan until the requirements and treatment of Lyon Road and a vegetation study had been completed.

The required studies have been completed and submitted to the Council. A subdivision approval has been issued by the Western Australian Planning Commission (26 May 2003).

The advertised Structure Plan showed a lake within the POS area. Development Planning Strategies lodged a submission on behalf of the Stockland Trust Group supporting the inclusion of the lake on the basis of its value as part of the overall estate presentation and marketing as well as its drainage function (Submission No 9, item 1 POS – point 5 as per Agenda attachments for that meeting).

Council's recommendation to the Western Australian Planning Commission on the submission was that the need for the ornamental lakes would need to be justified. Development Planning Strategies and Stockland Trust Group were notified accordingly.

In respect to the subdivision the approval noted the need for Stocklands to obtain separate approval for the ornamental lake from Council and Waters and Rivers Commission.

Submission

McNally Newton on behalf of Stocklands has made an application for approval to construct lined lakes in the Sanctuary Estate in Banjup. A copy of the submission is attached to the Agenda and provides details of the proposed lakes and comments on issues relevant to the development and maintenance of lined lakes.



Report

The previously submitted Local Structure Plan for Lot 199 Gaebler Road showed a proposed lined lake in the central northern public open space area. Councils recommendations on the Local Structure Plan and subsequent support for the plan of subdivision expressly excluded the lakes as there was insufficient information on how they were to operate and the likely environmental impacts and effects. Much of the officer concerns related to potential water quality, the potential for algal blooms and subsequent midge problems. Such problems have been experienced to some degree in other subdivisions.

McNally Newton on behalf of Stocklands have had further discussion with the Council officers on this matter and have lodged a detailed proposal for Councils consideration. An important difference between the original and current proposal is that that the lake is not to have any drainage function which significantly reduces the potential for water quality issues.

Relevant facts regarding the lake are as follows;

- The lake is to be provided for aesthetic/amenity reasons and as an integral part of the park irrigation system. It does not form part of the drainage system. Ground water will be pumped into the lake and then aerated to reduce the iron content in the water prior to it being used for parkland irrigation purposes. This will eliminate the potential for iron stains that occur through ground water in this area. In this regard the proposed lake irrigation system is the same as for Frankland Springs and Harvest Lakes Estates.
- Removal of the iron will increase the efficiency and total lifespan of the irrigation system while minimising ongoing maintenance issues.
- The entire water volume of the lake will be totally replaced every 9.5 weeks over the summer period resulting from evaporation and irrigation requirements.
- The bore inlet and irrigation outlet are at opposite ends of the lake to ensure water movement through the system.
- The lake contains two central lake aerators and a linking rocky weir to further oxygenate and mix the water to limit stratification and stagnation.
- The bottom profile of the lake has been designed to ensure floating of the liner does not occur.



Harvest Lakes has been used as a water source for aerial fire fighting. These lakes will provide an important alternative water source in close proximity to the major Bush Forever site that abuts the land.

1 Environmental aspects

a) Midge Potential

If there is a deterioration in water quality there is a potential for algal blooms and midge.

The proponents submit that :-

- The proposed system provides for continuous injection of fresh water as water is drawn out for irrigation purposes with the entire water volume of the lake will be totally replaced every 9.5 weeks.
- The system ensures water circulation and aeration through the rocky weir system between the two lakes and the two fountains.
- The lake is deep enough to moderate the water temperature in the lake.
- There are no nutrient inputs given the lake does not have a drainage function.

b) The lined lake will not allow ground water recharge.

The proponents submit that:-

- Direct rainfall into the lake system will be available for irrigation purposes saving ground water resources. Alternatively if the water level in the lakes exceeds the level of the liner rainfall will naturally seep back into the surrounding ground and ground water.
- The area of the lake is approx 5600 m² being 1.2 % of the total Lot area or 3.8 % of the total open space provided as part of the development. In the overall context of the estate the reduction in potential for local groundwater recharge is small.
- Recharge of storm water will not be affected as the lake has no drainage function.

c) The use of ground water resources to fill a lake.

The proponents submit that;

- There are natural ground water losses through evapo-transpiration by natural vegetation and evaporation from the adjoining wetlands and lakes.



- The loss of water through evaporation from the lake is relatively low when compared to an irrigated landscaped area of a similar size (calculations are provided in the submission).

2 Social Aspects

Lakes create very attractive focal points within residential estates which appear to be better used than other passive areas of public open space.

Lakes enhance the visual qualities of the area.

- Lakes provide quality of life benefits such as encouraging walking/cycling/active recreation and community events.
- The creation of an additional grassed or landscaped area in lieu of the lake will not enhance the level of recreational opportunities or activities within the area.

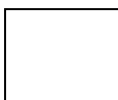
3 Economic aspects

- The total cost to run and maintain the lake is higher than if the area was grassed and landscaped. Notwithstanding this, the proponents have advised that the cost to maintain the remaining areas of open space will be lower and hence the average cost to maintain open space within the Sanctuary Estate will meet Councils requirement of \$15,000 ha/pa.
- The heat welded PVC liner as proposed has a typical 15 year warranty. A similar system installed in Alcoa's tailings treatment works dam has been in place 25 years in a highly caustic environment and shows no sign of damage or breakdown. Smart Park Spearwood which was developed some 20-25 years ago with two lined lakes is a further example of the longevity of the liners.
- Locating a failure in the liner is a simple and inexpensive task.

4 Conclusion

The above analysis shows there are no significant economic or environmental consequences or costs. Notwithstanding that the social benefits are reasonably subjective, there is no major reason why an ornamental lake should not be supported.

It is recommended that McNally Newton be advised that the proposed ornamental lake is supported and its approval will be subject to appropriate conditions including maintenance of the lake system by the subdivider for an initial period of not less than two years after its development. The preparation and implementation of water quality and



maintenance plans and agreement that overall the average cost to maintain open space within the Sanctuary Estate will not exceed \$15,000 /ha/pa in accordance with Councils requirement.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost competitive without compromising quality."*
2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
3. Conserving and Improving Your Environment
 - *"To ensure that the development of the district is undertaken in such a way that the balance between the natural and human environment is maintained."*
5. Maintaining Your Community Facilities
 - *"To construct and maintain parks which are owned or vested in the Council, in accordance with recognised standards and are convenient and safe for public use."*

Budget/Financial Implications

The proponents have advised that whilst the cost of maintaining the lake is relatively high, the total average cost of POS maintenance for whole of the Sanctuary estate will be in accordance with the Council's maximum cost of \$15,000 ha/pa.

The lake and POS area will be managed and maintained by the proponents for a minimum of 2 years after development.

Legal Implications

N/A

Community Consultation

N/A



Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.19 (MINUTE NO 2219) (OCM 18/11/2003) - COOGEE CAFÉ/KIOSK - EXPRESSIONS OF INTEREST TO DEVELOP/OPERATE OR TENANT (3319158) (AJB) (ATTACH)

RECOMMENDATION

That Council:

- (1) not accept the Expression of Interest submission lodged by Joy Anne Capon;
- (2) terminate the Expression of Interest process;
- (3) advise Joy Anne Capon accordingly;
- (4) continue to pursue necessary planning and environmental approvals for the proposed café/kiosk;
- (5) require the Chief Executive Officer to undertake discussions over the next four months with parties that may be interested in taking up the ground lease for the café/kiosk (Option A) with such discussion being in general accordance with the key terms expressed within the Expression of Interest document; and
- (6) require the preparation and presentation of a report to a meeting of Council no later than May 2004 on the potential and options for the upgrading of the existing shop in the event that there are no detailed proposals at the expiry of the four month period referred to in (5) above for progressing a ground lease on the proposed café/kiosk.

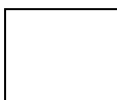
COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

At its meeting held on 18 February 2003 Council resolved to proceed with the proposal to design and construct a café/kiosk at Coogee



Beach within the Powell Road Reserve subject to a number of conditions.

Condition (4) is as follows;

- (4) simultaneously re-advertise for Expressions of Interest (EOI) from private organisations and individuals to take up a ground lease of 1320m² to build and operate a Café/Kiosk at Coogee Beach on the basis of:-
1. a lease period of 20 years with an option for a further 20 years, subject to the approval of DOLA; and
 2. Council gaining all the necessary development approvals and installing the required utility services to the lease area.

At its meeting held on 6 May 2003 Council agreed to accept the tender submitted by APP (WA) to manage the Coogee Beach café/kiosk project.

The EOI for the ground lease or tenant was advertised and closed on 22 October 2003.

Submission

N/A

Report

The Expressions of Interest (EOI) document was prepared for the purposes of seeking public interest in participating in the Coogee Beach café/kiosk development in either of the two options as follows;

Option A Ground lease – A developer would build and operate the facility

Option B Tenant – The City would build the facility and a tenant would undertake the fit out and operate it.

The EOI was advertised extensively in the Western Australian, WA Business News and the Australian between 10 and 17 September 2003 and there were several media stories printed. In addition McGees made direct contact with potential interested parties.

A total of 51 documents were issued during the EOI period and nine parties attended the mandatory site briefing/site inspection on 30 September 2003.



At the close of the EOI period no submissions had been received for Option A and only one for Option B being from Joy Anne Capon. A late submission was received from Delaware North Australia Pty Ltd.

In order to gain feed back from those who attended the briefing session and did not make a submission, seven of the eight who did not submit were contacted by phone. Several parties did not sufficiently understand the EOI process to be able to comply with its requirements. Of the balance the reasons for not responding were;

- did not feel they had sufficient financial capacity
- did not believe the project was viable
- were concerned about the Port Coogee development
- ran out of time to respond

The project manager has assessed the EOI documentation lodged by Joy Anne Capon, and is of the view that the submission is not acceptable for the reasons outlined in assessment dated 22 October 2003 and letter dated 31 October 2003 (confidential attachment forwarded under separate cover). On this basis the project manager recommends that the EOI process be brought to a close and to notify the party that the submission was not considered acceptable. This is a view shared by Council officers.

Upon termination of the EOI process it is possible for Council to negotiate with any interested parties. Should Council wish to retain this flexibility, it is recommended that the Chief Executive Officer undertake discussions with interested parties for Option A - Ground Lease.

Experienced people in the industry have advised that at this time the viable restaurant businesses are generally those which own the buildings rather than rent. From Councils perspective the Ground Lease (Option A) also represents the least capital required and least financial risk.

It is considered that a specified period of four months be established to achieve an outcome after which time consideration should be given to the future upgrading of the existing shop.

The existing shop is need of repairs and upgrading and the current lease is on a month by month basis. If there is nothing tangible forth coming in respect to the new site within the next four months then consideration should be given to tendering out a lease for the shop for a further period of time subject to the successful lessee agreeing to significant capital works and upgrading including the possible establishment of a shaded seating area and expanded services.

It is by no means certain that future negotiations with any party might lead to a successful outcome. Notwithstanding this, Council should continue to pursue planning approvals for the proposed café/kiosk so



that it can act in the event that a suitable proposal is forthcoming. An Approval to Commence Development issued by the Western Australian Planning Commission would be valid for a period of 2 years from the date of issue.

Strategic Plan/Policy Implications

The Corporate Strategic Plan Key Result Areas which apply to this item are:-

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost competitive without compromising quality."*
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
4. Facilitating the needs of Your Community
 - *"To facilitate and provide an optimum range of community services."*

The Planning Policies which apply to this item are:-

Nil

Budget/Financial Implications

Nil at this time.

Legal Implications

Regulation 11(2)(c) of the Local Government (Functions and General) Regulations 1996 provides that tenders are not required to be publicly invited for the supply of goods or services if, within the last 6 months, the local government has sought expressions of interest with respect to the supply of the goods or services, but no person was, as a result, listed as an acceptable tenderer.

Any negotiations with other parties following the termination of the Expression of Interest process must be carried out on the clear understanding that the Council cannot award any contract unless and until the requirements of s.3.59 (regarding major land transactions), and s.3.58(3) (relating to state wide public notice where the intention is



to dispose of property otherwise than by public auction or public tender) are satisfied.

Community Consultation

There has been extensive community consultation in respect to the preparation of the Coogee Beach Development Plan. Further consultation is to be undertaken as part of the Business Plan process.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

15. FINANCE AND CORPORATE SERVICES DIVISION ISSUES

15.1 (MINUTE NO 2220) (OCM 18/11/2003) - LIST OF CREDITORS PAID (5605) (KL) (ATTACH)

RECOMMENDATION

That Council receive the List of Creditors Paid for October 2003, as attached to the Agenda.

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

It is a requirement of the Local Government (Financial Management) Regulations 1996, that a List of Creditors be compiled each month and provided to Council.

Submission

N/A

Report

N/A



Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

16. ENGINEERING AND WORKS DIVISION ISSUES

16.1 (MINUTE NO 2221) (OCM 18/11/2003) - TENDER NO. RFT 42/2003 - INSITU CONCRETE FOOTPATH CONSTRUCTION (4437) (IS) (ATTACH)

RECOMMENDATION

That Council accept the tender submitted by Sandtech Pty Ltd for "Insitu Concrete Footpath Construction" – Area A and B, for Tender No. RFT 42/2003 in the fixed rates of:

| | | |
|-----|-------------------|---------------------------|
| (1) | Footpaths | \$25.85 per square metre |
| (2) | Other Paths | \$25.30 per square metre |
| (3) | Verge Restoration | \$11.00 per square metre. |

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0



Background

Council has a program of calling tenders each year for the regular supply of materials and services to facilitate Council’s roads and parks programs. This tender was for the replacement of most of the existing slab footpaths with insitu concrete within the City to assist with reducing any possible litigation being taken against Council and to provide improved safety for pedestrians.

Submission

Tenders were called for the “Insitu Concrete Footpath Construction” – Area A and Area B for the 6 months period of December 2003 to June 2004. Four (4) tenders were received, the details of which are attached to the Agenda.

Report

There are two parts to this tender, being “Area A”, and “Area B”, and the tender lends itself to be split if it proves beneficial.

The tenders have been assessed under the following criteria, which were outlined in the tender documents:

| | <u>Weighting</u> | |
|----|--------------------------------|-----|
| 1. | Price | 35% |
| 2. | Technical conformance | 10% |
| 3. | Demonstrated safety management | 15% |
| 4. | Delivery response performance | 20% |
| 5. | Quality endorsement | 5% |
| 6. | References | 10% |
| 7. | Insurance | 5% |

Tenderers were required to provide adequate information in their tender submission to allow for scoring each criterion. Where information was not supplied, the particular criterion was not scored.

The assessments under these criteria, as determined by Council's Road Services, are as follows:

| <u>Supply & Lay</u> | <u>Assessment</u> | <u>Contract Estimate</u> |
|----------------------------------|-------------------|--------------------------|
| 1. Peter Hegarty | 77.3% | \$ 698,360 GST included |
| 2. Sandtech Pty Ltd | 94.4% | \$ 649,110 GST included |
| 3. Westside Concrete Contractors | 76.6% | \$ 587,180 GST included |
| 4. Dowsing Concrete | 69.7% | \$ 649,000 GST included |

The tender for the “Insitu Concrete Footpath Construction” – “Area A” and “Area B” as a result of the evaluation criteria being implemented,



shows that Sandtech Pty Ltd is the most advantageous to Council. Sandtech Pty Ltd is considered to be a reputable company within the concrete construction industry. Hence their tender in this instance should be supported.

While Sandtech Pty Ltd were not the lowest tenderer on price, through the tender evaluation criteria, they came out on top. This is mainly due to the reports received from the references provided on their work quality and timeliness.

Strategic Plan/Policy Implications

A Strategic Plan commitment in Maintaining Your Community Facilities is –

To construct and maintain roads, which are the responsibility of the Council, in accordance with recognised standards, and convenient and safe for use by vehicles, cyclists and pedestrians.

The provision of a safe footpath system is an integral part of this commitment.

Budget/Financial Implications

Council has allocated \$1M on the current Budget to replace slab footpaths in the City with in-situ concrete. This will be undertaken this financial year using a combination of contractors and day labour. The recommended contract can be accommodated in this Budget allocation.

Legal Implications

N/A

Community Consultation

The local community will be consulted as required for the footpath slab replacement works in each affected street.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

16.2 (MINUTE NO 2222) (OCM 18/11/2003) - TREE PLANTING IN BERRIGAN DRIVE (450503) (BKG)

RECOMMENDATION

That Council:

(1) does not proceed with the current proposal to plant trees and



install tree guards in the painted median in Berrigan Drive between North Lake and South Lake Drive; and

- (2) an alternative landscaping plan be prepared.

COUNCIL DECISION

MOVED Mayor S Lee SECONDED Clr L Goncalves that Council proceed with the current proposal to plant trees and install tree guards in the painted median in Berrigan Drive between North Lake Road and South Lake Drive.

CARRIED 8/1

CLR TILBURY REQUESTED THAT HER VOTE AGAINST THE MOTION FOR ITEMS 14.4 AND 16.2 BE RECORDED

Explanation

The people of South Lake have waited long enough. Cockburn has trees in the middle of the road and on the side of the road in many locations throughout the City. It is not Council's policy to not plant trees because of safety, in fact, it is Council's policy to plant trees and to green the City.

Background

As part of the Greening Plan for Cockburn, the Parks staff prepared a proposal to plant trees and protect them with tree guards in the painted median of Berrigan Drive between South Lake Drive and North Lake Road.

The proposed was endorsed by the Greening Plan Reference Group. The design has now been formalised. The South Lake community has been advised of the proposal.

Submission

N/A

Report

The proposal to plant trees in the median of Berrigan Drive is not supported by the Council's traffic services staff. They maintain it will be hazardous to plant trees in the median. The aim for safety in road reserves is to have a 'forgiving' one. The desirable aim is to only have frangible structures. Frangible structures are those that when hit by a



vehicle will give way and cause minimum damage to a vehicle. Hence stop signs, give-way signs etc. easily yield when force is applied. All of the aluminium street light poles give way when struck.

Wooden power poles can be a problem with car crashes as they do not yield. The trees proposed for this section of road are not likely to give way easily when they are mature trees. The type of the tree is Eucalyptus Maculata. As Berrigan Drive is an urban arterial road and seen as an important distributor, the installation of trees is not recommended in the narrow median. An alternative plan can be produced showing medians protected by barrier kerbing so they can be landscaped, or there can be landscaping carried out on the verges. Guidelines for the landscaping of roads in the categories of regional, district and local distributors and local roads needs to be developed to ensure the safety of the road user but also enhance the environment.

Strategic Plan/Policy Implications

One of the aims of the Strategic Plan is:

"To construct and maintain roads which is the responsibility of Council in accordance with recognised standards which are convenient and safe for use by vehicles, cyclists and pedestrians."

Budget/Financial Implications

The estimated cost of installing the trees and guards is \$75,000. This can be accommodated within the funds budgeted for the Greening Plan.

Legal Implications

N/A

Community Consultation

This proposal has been discussed by the residents' group, "Connecting South Lake" and they have requested the trees be planted.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.



17. COMMUNITY SERVICES DIVISION ISSUES

**17.1 (MINUTE NO 2223) (OCM 18/11/2003) - CITY OF COCKBURN
COMMUNITY NEEDS STUDY (9621) (DMG) (ATTACH)**

RECOMMENDATION

That Council accepts the tender submitted by Research Solutions (Option A) for Tender No.38/2003 to undertake the City of Cockburn Community Needs Study at a total cost of \$54,978, including G.S.T.

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr A Tilbury that the recommendation be recorded.

CARRIED 9/0

Background

This item was originally presented to the October, 2003, Council Meeting where it was resolved that:-

- “(1) Council defer consideration of this item to the November Council Meeting;*
- (2) the CEO ensure the November Agenda Report includes more detailed information regarding this item;*
- (3) Elected Members be provided a detailed briefing at the November Agenda Briefing regarding the reasons Research Solutions (Option A) is the recommended tender; and*
- (4) the CEO establish a uniform format for all future Agenda Reports regarding tenders.”*

The following Report addresses parts (1) – (3) of the Council resolution. Part (4) is being separately dealt with, in order to establish a uniform reporting mechanism to Council, regarding Tenders required for presentation to Council.

Council has resolved to budget for funds in 2003/04 to facilitate its triennial comprehensive Community Needs Survey of residents and ratepayers of the District. This is the third such survey undertaken by Council, with the previous ones being conducted in 1997 and 2000.



Submission

Having adopted its annual budget, Tender documentation was prepared and tenders called for the provision of consultancy services to facilitate the study to include:-

- Qualitative Research (face to face, or similar technique) and,
- Quantitative Research (telephone, or similar technique)

At the close of tenders, eleven (11) submissions were received from nine (9) separate tenderers, as summarised in the Agenda attachment.

Report

All tenders were able to demonstrate enough background knowledge of Council's requirements to satisfy the Compliance Criteria as required by the Tender documentation. All tenders supplied information to allow for an assessment under the following criteria:-

| | <u>WEIGHTING</u> |
|---|-------------------------|
| • Demonstrated experience in completing similar projects | 10% |
| • Skills and experience of key personnel | 15% |
| • Demonstrated understanding of the required tasks | 10% |
| • Outline of the study approach, proposed methodology and statistical techniques to be used, including the expected integrity of the data produced. | 25% |
| • Cost criteria based on price submitted | 40% |

The intent of the contract is for the successful tenderer to be the lead consultant and employ specialist sub-consultants for undertaking community based research into the service standards and satisfaction levels in the community of Council's service functions. The tender prices generally reflected this, although to varying extents with regard to techniques to be used in gaining feedback from the community. Some tenderers undertake the majority of tasks in-house, while others almost exclusively use sub-consultants to undertake the data gathering aspect of the consultancy.

The tenders were independently assessed by:-

- Director – Community Services;
- Manager – Community Services; and
- Communications Manager.

in accordance with the above criteria and weightings.



It is important to understand that there is no collaboration during the assessment stage between officers, to ensure integrity of the “scores” is not compromised.

The weighted criteria assessment provided the following results, with the non-cost criteria figure shown being the average of the three assessments. The cost criteria is a standard formula, based on the recommended system as adopted by the W.A. Local Government Association.

| TENDERER | NON-COST CRITERIA | + | COST | = | ASSESSMENT SCORE % |
|--------------------------------------|----------------------|---|------|---|--------------------------|
| 1. Research Solutions (A) | 52.8 | | 22.8 | = | 75.6 |
| 2. Patterson Market Research | 45.3 | | 29.4 | = | 74.7 |
| 3. Market Equity (B) | 48 | | 23.5 | = | 71.5 |
| 4. Market Equity (A) | 48.8 | | 20.5 | = | 69.3 |
| 5. Research Solutions (B) | 49.5 | | 11.6 | = | 61.1 |
| 6. Australian Market Intelligence | 51.8 | | 8.9 | = | 60.7 |
| 7. Human Science | 33.7 | | 24.9 | = | 58.6 |
| 8. C.S.S. Strategic Management | 35.6 | | 20.8 | = | 56.4 |
| 9. Estill | 30.4 | | 25.3 | = | 55.7 |
| 10. Creative Links | 35 | | 14.7 | = | 49.7 |
| 11. South Metro Youth Link | 26.5 | | 17.7 | = | 44.2 |

A more detailed report on the assessment of the two highest ranked submissions, from Research Solutions (Option A) and Patterson Market Research, to address the concerns mentioned by Council at the October 2003, Meeting follows.

The non-cost criteria for these two tenderers were examined. Research Solutions (RS) (Option A) was ranked highest, or equal highest, by each of the three assessors. Patterson Market Research (PMR) was ranked sixth by two assessors and equal first by the third.

Further investigation was then focussed on the study approach, methodology and techniques to be used, which was the highest weighted single non-cost component requested.

Both companies have identified a suitable number of quantitative assessments as being 500 and it can only be assumed that one assessing officer believed that component to be one of the most important factors in adjudging the PMR tender on an equal basis to R.S.

Research Solutions has included in its qualitative research stage an allowance for 3 focus groups, specifically one in each Ward. The PMR tender allows for 2 focus groups. The R.S. tender also allows for 16 in-depth interviews with businesses (or key stakeholder groups e.g.



ratepayer organisations) while PMR specifies 5 in-depth interviews with businesses only.

R.S. also has made allowance for conducting a public meeting, whereas PMR has not.

In the quantitative research stage, R.S. has identified a sample size divided evenly amongst the Wards (i.e. 167 per Ward) with a total of 150 random business responses included, to enable a comparison of feedback between the residential and business sectors.

PMR only identified that they would be contacting a sample of 500 respondents upon which feedback from the community would be analysed. The sample would be randomly chosen from a pool of 2,500 contacts to whom preliminary notice of the survey had been sent.

Overall, the 500 sample is considered a statistically valid number and represents an accuracy level estimated at + or - 4.4% at the 95% confidence level. That is, it is 95% likely that the research findings would be within 4.4% either way of the stated data, if the total population was surveyed.

R.S. conducts a pilot study of the quantitative questionnaire to validate its suitability as a research document.

If there are indications that any of the questions need amending or clarification, R.S. would undertake to make the necessary alterations, and have them approved, prior to embarking on that stage of the project.

In terms of timeliness, the more expansive methodology submitted by R.S. has implications on the estimated time frame required to complete the study.

In summary, R.S. has estimated that it will be necessary to allocate 3 weeks for the qualitative research stage, while PMR is estimating 1 week.

R.S. estimates the quantitative stage to take 10 weeks (including the pilot study), while PMR anticipate this stage will require 5 weeks to complete.

Added to the preliminary and post research components of the study, R.S. has estimated a total of 22 weeks to complete the study, while PMR estimates 15 weeks.

By dividing the tender price submitted by the time allocated by each tenderer to complete the project, R.S. equates to a weekly charge out rate of \$2,449, while PMR is calculated at \$2,268 per week – a differential of \$181 per week over the term of the contract.



Therefore, based on this information, the overall conclusion of the assessments is that the tender submitted by Research Solutions (Option A) provides the best overall value to Council and is therefore recommended.

Strategic Plan/Policy Implications

- Key Result Are “Meeting the Needs of Your Community” refers.
- Policy SES3 “Evaluation of Tenders” refers.

Budget/Financial Implications

Funds of \$100,000 are provided for in the 2003/04 Municipal Budget for Community Consultation.

Legal Implications

Sec. 3.57 of the Local Government Act, 1995 and Part 4 of the Local Government (Functions and General) Regulations, 1995, refer.

Community Consultation

The outcome of the exercise is a process of community consultation.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

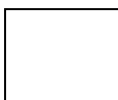
DECLARATION OF CONFLICT OF INTEREST

The Chief Executive Officer advised that Clr Oliver had declared a Conflict of Interest in the following item. The nature of the interest being that she is a member of that Committee.

CLR OLIVER LEFT THE MEETING THE TIME BEING 8.09 PM

17.2 (MINUTE NO 2224) (OCM 18/11/2003) - LEASE FEE - CO-SCOPE/JOB LINK (INC.) (2206549) (RA)

| |
|--|
| <p>RECOMMENDATION That Council:</p> <p>(1) donate \$3,000 p.a. to Co-Scope/Job Link Inc. for the use of the Southwell Community Hall; and</p> |
|--|



- (2) amend the Budget to reflect the donation by Council as part of the December 2003 Budget Review.

TO BE CARRIED BY ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Cllr M Reeve-Fowkes SECONDED Cllr S Limbert that the recommendation be adopted.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 8/0

Background

Co-Scope/Job Link (Inc.) has leased the Southwell Community Centre in Caffery Place for many years from which it has operated employment based education, training and placement programs. They currently pay a lease fee of \$6,000 p.a. plus outgoings which they have paid regularly and on time.

The request by Co-Scope/Job Link (Inc.) to have their fee reviewed was raised at the Budget briefing session held on 21 July 2003, but was not raised by Elected Members at the Council Budget Meeting of 29 July 2003. A copy of the letter detailing the activities of the group was provided to the 21 July 2003 meeting.

It is considered appropriate for a formal decision of Council to be made on the request made by Co-Scope/Job Link (Inc.).

Submission

A letter has been received from Co-Scope/Job Link (Inc.) requesting that Council waive their current rent of \$6,000 p.a.

Report

Due to recent cuts in State and Commonwealth Grants, the organisation advises that it is no longer able to afford the rent fee.

A copy of the Budget for 2003/04 for the organisation has been provided which shows a deficit of \$9,473.

It may be of assistance for Elected Members to be aware that the Cockburn Vocational Centre provides a somewhat similar service as Co-Scope and leased premises adjoining the Coolbellup Library. In this case, the City charges the Cockburn Vocational Centre 50% of the



rent i.e. (\$8,547.00) of the market value of the property and donates the balance of the value.

Should Council have a desire to assist Co-Scope/Job Link (Inc.) with a lease fee subsidy, it is proposed that it should be on the basis that the Association pays 50% of the rent i.e. \$3,000 and there is a donation of the balance.

The Southwell Community Centre is a small facility that is poorly located at the end of a cul de sac. Prior to the occupation of the Centre by Co-Scope, the building was under utilised and ran at a cost to the City with little community benefit. Co-Scope is one of very few organisations in the district with any interest in the building. Should Co-Scope vacate the premises, it is problematic whether another financial tenant could be found.

The Department of Housing and Works have agreed to give consideration for a new community centre better located in Southwell as part of its redevelopment proposals and hence arrangements for the use of the facility are likely to be short term.

Strategic Plan/Policy Implications

Managing the City in a competitive, open and accountable manner.

Facilitating a range of services responsive to community needs.

Budget/Financial Implications

The Council has budgeted the sum of \$6,000 as income from the lease. There will be a real loss of income of \$3,000 should the recommendation be adopted.

Legal Implications

An amendment will be required to the current lease to identify the change in fee.

Community Consultation

Community consultation is not considered to be required for a minor matter of this nature.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

CLR OLIVER RETURNED TO THE MEETING THE TIME BEING 8.10 PM



17.3 (MINUTE NO 2225) (OCM 18/11/2003) - APPOINTMENT OF BUSH FIRE CONTROL OFFICERS (1550) (RA)

RECOMMENDATION

That Council:

- (1) request FESA, under Section 38A of the Bush Fires Act 1954, to appoint Mr Don Johnston as the City of Cockburn Chief Bush Fire Control Officer; and
- (2) revoke the appointment of Mr James Johnson as the City of Cockburn Chief Bush Fire Control Officer.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Cllr A Edwards that the recommendation be adopted.

CARRIED 9/0

Background

Council, at its meeting of the 30th June, 2003, resolved to enter an arrangement with the Fire and Emergency Services Authority (F.E.S.A.) for the employment of a jointly funded Community Fire Manager. A significant role of this position is that of the Chief Bush Fire Control Officer.

The position of Community Fire Manager was duly advertised by F.E.S.A. and the appointment of a Mr Don Johnston duly made.

Submission

N/A

Report

Under Section 38A of the Bush Fires Act 1954 (the Act) FESA is empowered, at the request of a Local Government, to appoint a member of its staff (as defined in the FESA Act) as the Chief Bush Fire Control Officer (CBFCO) for the district of that Local Government for the purposes of the Act.

Accordingly, a Council decision is required to make a formal application to FESA to appoint a Chief Bush Fire Control Officer employed by FESA for the City of Cockburn.



Strategic Plan/Policy Implications

Key Result Are “Managing Your City” refers.

Budget/Financial Implications

Costs associated with the transfer to F.E.S.A. are included in the 2003/04 Municipal Budget.

Legal Implications

Bush Fire Officers are required to be appointed by Council under the Bush Fires Act, 1954.

Community Consultation

Not appropriate or required in this situation.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

17.4 (MINUTE NO 2226) (OCM 18/11/2003) - WA CROATIAN ASSOCIATION (INC) - BREACH OF LEASE AGREEMENT FOR LOT 22 PROGRESS DRIVE, BIBRA LAKE - APPLICATION FOR AN EXTENSION OF TIME (1117891) (LJCD)

RECOMMENDATION

That Council:

- (1) advises the WA Croatian Association (Inc) (WACA) that it is not prepared to grant an extension of time for the Association to obtain planning approval for the development of a soccer pitch on Lot 22 Progress Drive, Bibra Lake and that the Lease Agreement is at an end; and
- (2) take possession of the land in accordance with the requirements of the Agreement.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr A Tilbury that Council:

- (1) advise the WA Croatian Association (Inc) (WACA) that it is not prepared to grant an extension of time for the Association to obtain planning approval for the development of a soccer pitch



on Lot 22 Progress Drive, Bibra Lake and that the Lease Agreement is at an end;

- (2) take possession of the land in accordance with the requirements of the Agreement; and
- (3) request the Environmental Management Service to investigate rehabilitation and management options for Lot 22 as part of the Management Plan being prepared for Bibra Lake.

CARRIED 8/1

Explanation

The Environmental Management Service is currently developing a Management Plan for the Bibra Lake Conservation Reserve. The Plan will deal with issues ranging from rehabilitation to recreation uses. The Plan will be undertaken in-house, apart from the consultation process which will be undertaken by consultants. As part of this process, the environmental and community needs and preferences for the future of Lot 22 Progress Drive, can be assessed prior to preparing a Plan for the land in the context of the whole Bibra Lake reserve. This is important because Lot 22 is highly visible, has important wetland and bushland on it and has the potential to be a strategic conservation area.

Background

In 1998 Council decided to subdivide Lot 14 Progress Drive, Bibra Lake to create Lots 21 and 22. The former lot was to be sold to the WA Croatian Association (Inc). The Association took up the Lease for Lot 22 and under the terms and conditions of the Lease the Association is required to develop a soccer pitch on the Lot.

A Lease Agreement was put into place to cover the arrangements in respect of Lot 22. The Lease contained a number of conditions. One of these conditions was that the Association had to apply for and obtain planning approval for development of the Soccer Pitch within 12 months of the date of execution of the Lease and the soccer pitch was to be completed within two years of the date when planning approval is issued.

Submission

The WACA has formally applied for Council to approve an extension of ninety (90) days to obtain Council planning approval for the development of a soccer pitch on Lot 22.



Report

In accordance with the conditions of the Lease Agreement the WA Croatian Association (Inc) were required to have obtained planning approval by the 29 August 2003. The Association had not secured planning approval by that date and therefore a Notice of Default was served on the Association on the 1 October 2003 giving the Association twenty-eight (28) days to rectify the breach. The Notice of Default expired on the 29 October 2003.

Council has received a letter from the Association requesting a ninety (90) day extension to allow the Association to submit plans for the soccer pitch development. The Association has engaged an architect who is currently working on the plans needed for the soccer pitch development. If the extension requested is granted, the plans will be forwarded to Council's statutory planning section where they will be reviewed to determine if they comply with all the requirements stipulated for the project. When this is done the plans will be referred to the WAPC for approval. The approval process at the WAPC usually takes sixty (60) days. The time frame set out above is tight but it still can be achieved within a period of ninety (90) days, if an extension period is approved.

The Association is responsible for the management of its own affairs and within the time frame outlined had ample time to have the necessary plans prepared and obtain the necessary approval for the development of the soccer pitch. Now the Association is seeking an extension of time to obtain planning approval for the development. It would have been more appropriate for the Association, once it realised that it could not honour its commitment under the Lease, to approach Council for an extension of time rather than allowing a Notice of Default to be issued. The breach which has occurred can only be satisfied by allowing more time to prepare the plans and to obtain planning approval.

Council as the Lessee can grant an extension of time.

If Council were of the view that an extension be granted it is considered that Council should require the Association to demonstrate its capacity to develop Lot 22 within the two(2) year timeframe, prior to agreeing to the extension.

The rational behind this approach is based on the view that granting planning approval may result in further application by the Association for an extension of time to meet the obligation to build the soccer pitch, should the Association not have the necessary resources. There is no reason to believe the foregoing until this occurs, however it is a possibility and one which Council may wish to address.



In essence Council is faced with a dilemma in that if it grants the extension time based on evidence that the Association has demonstrated that it has the capacity to complete the soccer pitch within the stipulated time frame following the receipt of planning approval but, in fact, does not, it is likely a further application for an extension of time to commence the works will be submitted by the Association.

For the reason that the Association has not been able to comply with the required time constraints in the past, it is recommended the application for an extension of time of ninety (90) days submitted by the WA Croatian Association (Inc), be refused and the Association be advised that the Lease is at an end and arrangements be formalised to take possession of the land.

Strategic Plan/Policy Implications

Key Result Area "Facilitating the Needs of Your Community" refers.

Budget/Financial Implications

Council's future funding commitments to this project, if it were to proceed, amount to \$38,700, as per the Business Plan adopted by Council, in relation to drainage and revegetation issues associated with the construction of facilities on Lots 21 and 22.

Legal Implications

As contained in the Lease Agreement between Council and WACA, in respect of Lot 22 Progress Drive.

Community Consultation

An extensive community consultation program has been conducted in relation to this matter, at the time the Business Plan was published.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

17.5 (MINUTE NO 2227) (OCM 18/11/2003) - COCKBURN CENTRAL COMMUNITY FACILITIES (81364) (RA) (ATTACH)

RECOMMENDATION

That Council:

- (1) approve the brief for the Cockburn Central Community Youth Facilities Study as attached to the Agenda; and



- (2) appoint two (2) Elected Members, namely _____ and _____ to the Cockburn Central Community Youth Facilities Study Reference Group.

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Cllr M Reeve-Fowkes that Council:

- (1) approve the brief for the Cockburn Central Community Youth Facilities Study as attached to the Agenda;
- (2) amend the text under the heading "Supervision" on Page 3 of the brief to read as follows:

"The successful applicant will liaise with an 'in-house' Reference Group. The Reference Group will:

(i) comprise

- (a) three Elected Members;*
(b) the Chief Executive Officer;
(c) the Youth Advisory Council Youth Mayor and Youth Deputy Mayor;
(d) the Manager Community Services; and
(e) the Youth Services Co-ordinator

(ii) be facilitated by the Manager Community Services.

The successful applicant will ultimately be responsible to the Manager Community Services."

- (3) appoint three Elected Members, namely Deputy Mayor Graham and Cllrs Goncalves and Whitfield to the Cockburn Central Community Youth Facilities Study Reference Group.

CARRIED 9/0

Explanation

Previously Council has convened working parties and reference groups without specifying membership. This has led to uncertainty of process. This project should involve a 'whole or organisation' approach. The project has financial and town planning impacts, in addition to community services impacts. The Chief Executive Officer's membership is required to facilitate this approach.



Background

Council, at its meeting of the 16 September, 2003, resolved in part as follows:-

- (2) in relation to the Cockburn Central Community Facilities:
- (i) Recognises:
 - (a) there will be a need for broad-based activities at Cockburn Central with an emphasis on youth-focused activities.
 - (b) there is an opportunity to provide benchmark standard facilities during the development of the Regional Centre.
 - (ii) Establishes the goal of providing at Cockburn Central:
 - (a) facilities that serve the needs of a broad-based community.
 - (b) a youth focused facility, combined with sport and recreation-based activities.
 - (iii) Directs the Chief Executive Officer to:
 - (a) undertake the Cockburn Central Youth Facilities Feasibility Study as a priority project and fast-track its presentation to Council.
 - (b) provide a report to Council within the next two(2) months on a process for Council to undertake, which should include public consultation, in order to achieve the goal referred to in Clause 2 (ii)
 - (c) provide a report to a future Council Meeting in relation to extending the Virtual Public Library Service.

In accordance with the requirement of (2) (iii) (a) and (b) above the following report is provided.

Submission

N/A

Report

A brief for a Cockburn Central Youth Facility Feasibility Study has been prepared and is attached to the Agenda for consideration in



accordance with the Council decision of the 16th September, 2003, Minute No. 2161, part recommendation (2) (iii) (a).

Clarification was sort from the mover of the motion, Deputy Mayor Graham in regard to the intention of 2(ii) (a) and (b). The intention is to provide for a broad-based youth focussed facility combined with sport and recreation activities and not broad-based community facilities.

The attached brief satisfies 2 (ii) (a) and (b).

The brief requires the formation of a reference group to assist the consultants to progress the issue. It is proposed that there be two (2) Elected Members on this group who need to be appointed by Council. It is to be noted that this is not a Committee of Council established under section 5.8 of the Local Government Act, 1995, but simply a 'reference group'.

Strategic Plan/Policy Implications

Key Result Area "Managing Your City" refers.

Budget/Financial Implications

\$15,000 has been allocated for this consultancy in the 2003/04 Budget, with up to an additional \$5,000 to come from the Chief Executive Officer's Consultancy fund, if required..

Legal Implications

The Consultancy will be chosen through an expression of interest selection process and be subject to normal contractual obligations.

Community Consultation

The terms of the brief require community consultation and needs assessment to be undertaken.

Implications of Section 3.18(3) Local Government Act, 1995

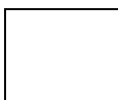
Nil.

17.6 (MINUTE NO 2228) (OCM 18/11/2003) - NAVAL BASE HOLIDAY ACCOMMODATION - APPLICATION FOR CONSENT TO CARRY OUT WORKS (1911) (DMG) (ATTACH)

RECOMMENDATION

That Council:

(1) adopts the Design and Building/Development/Other Works



Guidelines for Reserve 24308, described as the Naval Base Caravan Park, Cockburn Road, Henderson, as attached to the Agenda;

- (2) advises Hilda Shroy and Aaron Johnson that:
- (i) the application to construct a new Chalet on Site 515, as shown in the attached Plan, is refused due to the impact the structure will have on surrounding Sites because of its dimensions; and
 - (ii) Council would approve an alternative application to construct a new Chalet on Site 515, including one of dimensions in excess of the Guidelines, subject to:-
 - (a) conforming with any approval requirements of the owner of the Reserve (Department of Planning and Infrastructure) in respect of the proposal;
 - (b) completion and submission of an Application Form NBHA1 and associated documentation as required by the Guidelines referred to in sub-recommendation (1) above; and
 - (c) agreement being reached with the owners of Chalet Nos 516 and 403A on any encroachment by the proposed structure within a distance of 1.8 metres from those Chalets; and
- (3) deals with all future applications for consent to carry out works on the Reserve strictly in accordance with the Design Guidelines, as adopted.

COUNCIL DECISION

MOVED Mayor S Lee SECONDED Cllr S Limbert that Council defers consideration of this item to enable the applicant to discuss the application with surrounding neighbours, with a view to reaching an acceptable compromise on the dimensions of the proposed structure for Site 515.

CARRIED 9/0

Explanation

The officer's report indicates there is a willingness to display some leniency for the proposed application to go ahead, provided some



arrangements can be reached with the surrounding chalet owners. To achieve this, it is suggested that the item be deferred to allow discussions between the applicant and affected owners to take place, with the objective of presenting an agreed alternative proposal to Council for consideration.

Background

Elected Members have been verbally informed of the consent process which would now be required to be complied with before approvals for building renovations / other works would be granted to chalet owners at the Naval Base Caravan Park.

Attached is a copy of the procedures which have been agreed to in consultation with the relevant State Government agencies.

The requirements are quite prescriptive to ensure certain standards are maintained at the Park in the future, given that there has been irregular supervision of works in recent times due to uncertainty surrounding the tenure of the Park.

While all endeavours have been made for a smooth implementation of these guidelines, there have been some applications held in abeyance, pending the establishment of the Guidelines. In some instances, these relate to minor refurbishment works which have been reasonably easy to deal with and have achieved satisfactory outcomes for the applicants. In one case, however, being Site 515, an application has been forthcoming from Hilda Shroy and Aaron Johnson for a new structure to be built, the dimensions of which are far greater than those allowed for in the Guidelines.

Submission

To approve an application to construct a new Chalet at the Park which does not comply with guidelines administratively accepted as being of a reasonable standard to impose as minimum requirements.

Report

In February, 2003, Messrs Shroy and Johnson purchased Chalet 515 at the Naval Base Caravan Park.

In March, Ms Shroy made enquiries with Council regarding a refurbishment of the Chalet and was informed of the required procedure, involving applying to the Department of Land Administration and the W.A. Planning Commission, as the owners of the land, for the necessary approvals.

These approvals were duly received by the applicants. The applicants then claim that, while they were stripping the interior wall cladding in



preparation for refurbishment, they discovered a significant termite infestation in the interior beams, which they felt could not be repaired. They then turned their attention to the possibility of demolishing the Chalet and rebuilding a new one.

The applicants claim they contacted Council's Building Department staff to clarify requirements for this process and were given verbal approval to demolish the current structure and re-submit plans for a new proposal.

Upon receiving the plans for the proposed new structure, Building Department staff noted the design was more elaborate than structures normally associated with the Park and, accordingly, were unable to determine if a Building Licence could be issued for the proposed structure, because it did not comply with a classification for which approval could be given.

Following that, staff met with Council's Solicitors about the extent of involvement for Council in such circumstances. Staff were informed that, as the land is a Crown Reserve, it was exempted from Council's statutory requirements and, therefore, the issuing of a Building Licence was not appropriate.

It then became apparent that was the reason applications for structural alterations and renovations had not been subject to a formal process in the past, and that the only requirement for Council involvement was through the Memorandum of Agreement (Lease) between Council and each individual Chalet owner.

It was at that stage that Council's Solicitors advised Council to prepare some Guidelines to reflect the requirements for altering / refurbishing the Chalets. This process was commenced immediately and involved senior staff from Council's Building, Planning and Executive Service departments.

Once the Guidelines and processes were internally agreed to, the procedure for dealing with all such applications was transferred from the Building Department to Administrative Support, as the internal area responsible for monitoring the Leases at the Park.

Simultaneously, all applications which had been received during the interim period, including Site 515, were transferred from Building to Administrative Support. Subsequently, all applications were assessed against the Guidelines and Site 515 was identified as being well in excess of the dimensions permitted. The Guideline dimensions stipulate a floor dimension of 5.2m x 5.2m maximum, a height of 3m, or thereabouts and a Patio/Pergola 1.8m wide. In addition, no building or structure is to be closer than 1.8m to an adjacent building.



The proposal for Site 515 is for a structure of 6.6m x 6.7m with a verandah of 2.0m located on the western side, a 1.2m roof overhangs on the eastern side, with a retaining wall adjacent to the cliff face. Therefore, a total length of the proposed structure is 9.9m or thereabouts.

Having assessed the proposal against the newly introduced Guidelines, there was little alternative but to refuse the application due to the size of the discrepancy with the Guidelines, particularly with the floor size. The plan depicting the proposal as overlaid on the foot print of the previously demolished structure, is attached.

Accordingly, a letter refusing approval was forwarded to the applicants on 22 September, 2003. In response to this, the applicants have sought to have the decision reviewed, claiming that they have been led to believe by Council staff that there were no concerns with the proposal registered by staff and they had done everything asked of them to ensure conformity with the processes required.

Although there is no formal record of the discussions which took place between the applicants and Council staff, it has been ascertained that at no time were there any concerns raised by Council staff on the quality of the application, and that it was only the internal processes which required clarification before the application could be addressed.

In compiling the Guidelines, standards which have been informally applied to the Park in the past have now been included as requirements to be adhered to. From a viewpoint of consistency, this would appear to be a fair and proper application of the rules and regulations which have existed in the past.

It should also be noted that building alterations of varying magnitude have taken place to many chalets at the Park in the past in an ad-hoc manner without Council approval, formal or otherwise. In more recent times, this is primarily due to the State Government's unclear position on the tenure of the Reserve. However, now that this issue has been resolved, there is no reason why Council should not apply some form of controls to the sites.

The major concern with a development of this type is that it is of such a size and standard, it will be very prominent and, in its proposed location, will impact on neighbouring and surrounding Chalets. Letters registering such concerns have been received from neighbouring chalet owners.

However, because of the delays in deciding on this matter originally, through no fault of the applicant, Council may consider the application in a lenient light and grant approval on the basis that the Guidelines were not in place at the time the original application had been lodged



and there had been no suggestion that the proposal was inadequate or non-compliant at any time.

In either circumstance, it is imperative for Council to adopt the Guidelines to ensure that all future proposals can be assessed without any query over the requirements.

Strategic Plan/Policy Implications

Key Result Area “Maintaining Your Community Facilities” refers.

Budget/Financial Implications

N/A

Legal Implications

As stipulated in a Memorandum of Agreement, applicable to all Chalets located on Reserve 24308, between the Department of Planning and Infrastructure (land owner), the City of Cockburn and individual Chalet owners

Community Consultation

The owners of the two immediate neighbouring Chalets have been consulted for their opinion on the effect of the proposal on their Chalet.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

18. EXECUTIVE DIVISION ISSUES

Nil

19. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

- 19.1 (OCM 18/11/2003) - ELECTED MEMBER REPRESENTATION - YOUTH ADVISORY COUNCIL AND CULTURAL ADVISORY COUNCIL; MELVILLE-COCKBURN CHAMBER OF COMMERCE (1701) (DMG)**

RECOMMENDATION

That Council:

- (1) removes Deputy Mayor Graham as a Committee Member of the Youth Advisory Council;



- (2) appoints Councillor Goncalves as a Member of the Youth Advisory Council;
- (3) removes Councillor Goncalves as a Committee Member of the Cultural Advisory Committee and appoint her as a Deputy Member, pursuant to Clause 17.2 of Council's Standing Orders; and
- (4) replace Deputy Mayor Graham with Cllr Allen as its delegate to the Melville-Cockburn Chamber of Commerce with Cllr Limbert as Deputy Delegate.

TO BE CARRIED BY ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

That the recommendation be adopted.

MOTION LAPSED DUE TO NO MOVER OR SECONDER

Explanation

There was no mover or seconder to the motion, as it was considered appropriate to deal with the matter under Item 21.4.

Background

By letter dated 7th November 2003, Deputy Mayor Graham submitted the following Notice of Motion:-

"That Council:-

- (1) cease the appointment of Deputy Mayor Graham as a delegate to the Youth Advisory Council, and the Melville-Cockburn Chamber of Commerce*
- (2) cease the appointment of Cr Goncalves as a delegate to the Cultural Advisory Committee*
- (3) cease the appointment of Cr Allen as a deputy delegate to the Melville-Cockburn Chamber of Commerce*
- (4) appoint Cr Goncalves as a delegate to the Youth Advisory Council*
- (5) appoint Cr Goncalves as a deputy delegate to the Cultural Advisory Committee*
- (6) appoint Cr Allen as a delegate to the Melville-Cockburn Chamber of Commerce."*



Submission

N/A

Report

At a Special Meeting of Council conducted on 6 May 2003, appointments were made to various committees established by Council at the Meeting. Since then, Deputy Mayor Graham and Councillor Goncalves have reconsidered their positions on the Youth and Cultural Advisory Committees and have concluded that the suggestions proposed by the Deputy Mayor in the Notice of Motion would be more appropriate. In addition, Clr Allen will be taking a more active role in the Chamber of Commerce and his status as a Delegate is more consistent with this role.

The suggested changes are in order and are supported accordingly.

Strategic Plan/Policy Implications

Key Result Area "Managing your City" refers.

Budget/Financial Implications

N/A

Legal Implications

Local Government Act, 1995 (Sec. 5.11(2)(b) refers.

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil

20. NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING

Nil



21. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY COUNCILLORS OR OFFICERS

21.1 (MINUTE NO 2229) (OCM 18/11/2003) - OBJECTION TO NOTICE SERVED PURSUANT TO SEC. 3.25 OF THE LOCAL GOVERNMENT ACT, 1995 - LOT 10 (354) CARRINGTON STREET, HAMILTON HILL - OWNER: V. R. SCAFETTA AND S. MONDELLO (2202599) (DMG) (ATTACH)

RECOMMENDATION

That Council informs the owners of Lot 10(354) Carrington Street Hamilton Hill, that:

- (1) the objection lodged against the Notice served on them pursuant to sec. 3.25 of the Local Government Act, 1995, is dismissed; and
- (2) removal of all disused materials on the land (namely old bricks, drums, timber and sheds) is required to be undertaken by 11 December 2003, unless an appeal is lodged pursuant to sec. 9.7 of the Act.

COUNCIL DECISION

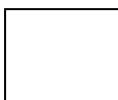
MOVED Cllr A Edwards SECONDED Cllr I Whitfield that Council informs the owners of Lot 10 (354) Carrington Street, Hamilton Hill, that:

- (1) the objection lodged against the Notice served on them pursuant to sec. 3.25 of the Local Government Act, 1995, is dismissed; and
- (2) removal of all disused materials on the land (namely, old bricks, drums, timber and sheds) is required to be undertaken by 11 December 2003, unless an appeal is lodged pursuant to Sec. 9.7 of the Act, or a fence is constructed, to the satisfaction of Council, obscuring said material, by 17 January 2004 (ie. 60 days).

CARRIED 9/0

Explanation

It is felt that given the circumstances, it is reasonable to allow a longer time period to either remove the disused materials or to construct a fence to block them from vision on this high traffic road.



Background

As a result of an increase in complaints received by Council on the unsightly state of some properties within the District, a programme aimed at identifying properties deemed as unacceptable and having the concerns rectified, was initiated.

The programme was notified to the public through the local newspapers and more recently 'Cockburn Soundings', explaining the primary reason for this action was to promote Council's Mission Statement and encourage conformity throughout the District with its ideals.

From that point on, properties were identified as being sub-standard through a number of sources, being reports from either members of the public, Elected Members or staff.

Affected property owners were originally sent a letter seeking their cooperation in addressing the concerns highlighted.

If, following a period of time allowed for remediation works to be undertaken, the property was still unsightly, the owner of the property was served with a Notice pursuant to Sec. 3.25 of the Act, requiring specific works to be undertaken to correct the identified problem. Should the recipient of the Notice disagree with its requirements, an Objection or Appeal against the decision may be lodged, pursuant to Sec. 9.5 or Sec. 9.7 of the Act.

Submission

An objection has been lodged by the owner of Lot 10 (354) Carrington Street, Hamilton Hill, against the Notice requiring the removal of all disused materials from the property.

Report

The property at Lot 10 (No. 354) Carrington Street, Hamilton Hill was identified as containing unsightly material, namely bricks, timber, drums and old sheds, during a routine inspection of the District.

A letter requesting the removal of the offending materials was sent to the landowner, however, no action was taken and subsequently a Notice requiring the removal of the materials from the property was sent.

The owners lodged an objection against the requirement citing the material and sheds had been on the property since 1980 and no approaches, or complaints, have been received by them in the meantime, regarding the appearance of the property.



In a letter sent to Council on 1 September, 2003, a representative of one of the owners approached Council seeking some leniency on the grounds of financial hardship at the time. In addition, it is claimed that a fence on the Carrington Street alignment has been constantly knocked down over the years, thus exposing the materials. As insurance cover is no longer available, the fence has not been replaced.

However, the owners acknowledge that the fence should be replaced, but they are unable to afford the associated costs. Hence, they are seeking Council's assistance in not requiring the materials to be relocated, on the basis that a fence will be installed at some unspecified time in the future.

As the offending material is clearly visible from a major thoroughfare (Carrington Street) and the matter has remained unchanged for nearly three months, with no foreseeable resolution, it is recommended that the appeal against the objection be dismissed and that the owners be required to remove the material from the premises within 21 days, unless an appeal against the decision is lodged.

Strategic Plan/Policy Implications

Council's Mission Statement "To make the district of the City of Cockburn the most attractive place to live, work and visit in the Perth Metropolitan Area" refers.

Budget/Financial Implications

Any costs incurred by Council in ensuring compliance with the Notice will be recoverable from the owner.

Legal Implications

Part 3 Division 3 Subdivision 2 and 3 and Part 9 Division 1 of the Local Government Act, 1995, refers.

Community Consultation

Advertising of the programme to target unsightly properties was undertaken through local newspapers and more recently "Cockburn Soundings".

Implications of Section 3.18(3) Local Government Act, 1995

Nil.



21.2 (MINUTE NO 2230) (OCM 18/11/2003) - NAVAL BASE HOLIDAY ACCOMMODATION - APPLICATION FOR CONSENT TO CARRY OUT WORKS (1911) (DMG) (ATTACH)

RECOMMENDATION

That Council advises Kim Shortland that:

- (1) the application to install a replacement storm shutter to Site 314 Naval Base Caravan Park, measuring 2.5 metres x 2.2 metres, is refused;
- (2) the application to erect a tool shed to replace the current lock box on the northern side of the existing Chalet is refused; and
- (3) it would be prepared to approve the installation of an external shutter to cover the existing windows located on the western wall of the Chalet.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0

Background

The owner of Site 314, Mr Kim Shortland, has forwarded an application for the installation of a storm shutter and a garden tool shed, both structures being non-compliant with the recently accepted Design Guidelines which administration proposes to apply to the Naval Base Reserve.

Submission

To approve the installation of a storm shutter measuring 2.5 metres x 2.2 metres and a garden shed measuring 3 metres long, 1.6 metres high and 1.2 metres wide at Chalet Site No. 314.

Report

Mr Shortland has owned Chalet 314 since 2002. At the time of purchase, he claims the previously fitted shutter was worn and rusted, hence it was removed. The proposal is to replace it with a larger fitting (2.5m x 2.2m) with a capacity to open out and be held aloft by posts. The dimensions of the proposed shutter seem excessive given the size of the existing window which it is covering.



If the proposal was allowed, it would extend in a westerly direction to an extent that would not enable a vehicle to park safely next to the bitumen thoroughfare. As the application is primarily to install a fitting which provides for protection from the weather, and as an additional security device, it is considered that such an elaborate structure is excessive for this purpose alone. However, a less intrusive shutter, or awning, to cover the window on the western side, would be acceptable.

The garden shed proposed would replace an existing lock (tool) box located at the rear and to the north of the site. The existing box is 2.55 metres long, .9 metre wide and .9 metre high. The dimensions of the proposed shed are 3m long, 1.2m wide and 1.6m high. The primary purpose of the structure would be to accommodate gardening equipment such as a lawn mower, whipper snipper and generator, which are required to maintain the surrounds of the Chalet in an acceptable condition.

This equipment is too big to fit in the current box, hence the request for a large facility. While this proposal is not likely to adversely impact on any neighbouring Chalets, given that there is already a sizeable facility on site in the proposed location, approval is not recommended, as it would be likely to set a precedent for other Chalet owners to apply for the same, or similar facilities.

While maintenance of the Chalet surrounds is encouraged, the permanent location of tools and equipment on site could be incompatible with the purpose of the Reserve as a holiday location.

Strategic Plan/Policy Implications

Key Result Area "Maintaining Your Community Facilities" refers.

Budget/Financial Implications

N/A

Legal Implications

As stipulated in a Memorandum of Agreement, applicable to all Chalets located on Reserve 24308, between the Department of Planning and Infrastructure (land owner), the City of Cockburn and individual Chalet owners.

Community Consultation

N/A



Implications of Section 3.18(3) Local Government Act, 1995

Nil.

21.3 (MINUTE NO 2231) (OCM 18/11/2003) - CONTAINER REFRIGERATION PTY LTD - LOT 121 O'CONNOR CLOSE, HAMILTON HILL - TOWN PLANNING APPEAL 40/2001 AND PROSECUTION (2213440) (SMH)

RECOMMENDATION

That Council:

- (1) receive the report; and
- (2) advise McLeods that the Council is prepared to:-
 1. Consent to the discontinuance of Town Planning Appeal No. 40/2001 between the City of Cockburn and Container Refrigeration Pty Ltd and others, on the basis that \$5,000 is paid as a contribution to the City's costs by the appellant.
 2. Reconfirm its decision to defer the action commenced to prosecute Container Refrigeration Pty Ltd for using Lot 121 O'Connor Close (No. 46 Rollinson Road), Hamilton Hill to store containers without Council approval until after 28 February 2004, and reserves the right to recommence the prosecution should Container Refrigeration Pty Ltd not sell the land as advised in a letter from Hardy Bowen, Lawyers, to the Council's Solicitor dated 13 August 2003 and vacate the property by 28 February 2004.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0

Background

Council at its Ordinary Meeting held in August 2003, resolved to discontinue Town Planning Appeal No. 40/2001 subject to:-



- “(i) the appellant agreeing to pay to the Council all reasonable costs expended by the Council as respondent to the appeal as negotiated by Council’s Solicitors;*
- “(ii) the Council applying to the Town Planning Tribunal for an order of costs, in the event that the appellant does not agree to pay to the Council all reasonable costs expended by the Council as respondent to the appeal;”*

Refer to Council Minute No. 2136 dated 19 August 2003.

Despite the Council’s solicitor lodging a claim with the appellant in accordance with the Council resolution, there has been no response.

It is understood that the other parties to the appeal have agreed, unconditionally, to withdraw from the appeal. The conditional withdrawal of the City continues to apply.

Submission

On 12 November 2003, the Council’s solicitor, McLeods, wrote requesting instructions from the City as to whether it wanted to continue with the action to recover the costs, based on a written request from Container Refrigeration for McLeods to seek the Council’s agreement to discontinue the claim for costs. This request was in a facsimile, with attachments, sent to McLeods on 11 November 2003.

On 15 November 2003, McLeods advised that the appellant had offered to pay \$5,000 towards the City’s cost in responding to the appeal.

Report

Given this advice, it is suggested that the Council agree to discontinue the appeal, subject to the appellant paying \$5,000 towards the cost incurred by the City in responding to the appeal.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Funds are available in Account 500-6267 – Legal Expenses to provide for the defence of appeals lodged against the Council.

The \$5,000 paid by the appellant would be placed in the Fines and Penalties Account 500 – 5323.



Legal Implications

The matter is before the Town Planning Tribunal as a planning appeal.

Community Consultation

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

21.4 (MINUTE NO 2232) (OCM 18/11/2003) - ELECTED MEMBER REPRESENTATION - NEIGHBOURHOOD WATCH COMMITTEE, YOUTH ADVISORY COUNCIL AND MELVILLE-COCKBURN CHAMBER OF COMMERCE (1701) (DMG)

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Clr S Limbert that Council:

- (1) remove Deputy Mayor Graham as a Committee Member of the Youth Advisory Council;
- (2) appoint Clr Goncalves as a member of the Youth Advisory Council;
- (3) remove Clr Goncalves as a delegate to the Woodman point Management Planning Committee;
- (4) replace Deputy Mayor Granam with Clr Allen as its delegate to the Melville-Cockburn Chamber of Commerce with Clr Limbert as Deputy Delegate;
- (5) remove Clr Oliver as a member of the Neighbourhood Watch Committee; and
- (6) appoint Clr Limbert as a member of the Neighbourhood Watch Committee.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 9/0

Explanation

Clr Goncalves has indicated she would like to remain as a member of the Cultural Advisory Committee, and that she is unable to attend the Woodman Point Management Planning Committee. Clr Limbert has



indicated she would like to become Council's delegate on the Neighbourhood Watch Committee.

Deputy Mayor wishes to be removed from the Youth Advisory Council and Chamber of Commerce, being replaced by Clr Goncalves and Clr Allen, respectively.

22 (OCM 18/11/2003) - MATTERS TO BE NOTED FOR INVESTIGATION, WITHOUT DEBATE

Mayor Lee requested that a report be prepared on:

- (1) methods of preventing hooligan behaviour in the northern Coogee Beach car park. The report is to address issues such as the installation of in-road lift-up bollards to prevent access to the car park afterhours and the removal of the vegetation that obscures vision between Cockburn Road and the northern car park, plus any other solutions that may be applicable.
- (2) the issue of rubbish on the Council verge outside residential properties located opposite or in the vicinity of high rubbish generators such as fast food outlets and other commercial ventures eg: Rockingham Road, Spearwood. The report is to address issues such as cost, frequency and viability of Council conducting rubbish patrols in these areas.

23. CONFIDENTIAL BUSINESS

Nil

24. (MINUTE NO 2233) (OCM 18/11/2003) - RESOLUTION OF COMPLIANCE (SECTION 3.18(3), LOCAL GOVERNMENT ACT 1995)

RECOMMENDATION

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (a) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (b) not duplicated, to an extent Council considers inappropriate, services or facilities as provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (c) managed efficiently and effectively.



COUNCIL DECISION

MOVED Clr A Tilbury SECONDED Clr M Reeve-Fowkes that the recommendation be adopted.

CARRIED 9/0

25 (OCM 18/11/2003) -

MEETING CLOSED 8.21 PM

CONFIRMATION OF MINUTES

I, (Presiding Member) declare that these minutes have been confirmed as a true and accurate record of the meeting.

Signed: Date:/...../.....

