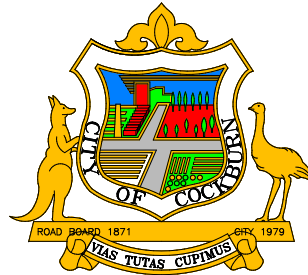


# **CITY OF COCKBURN**



## **SPECIAL COUNCIL**

## **AGENDA PAPER**

### **FOR**

### **TUESDAY 29 MAY 2001**



## CITY OF COCKBURN

### SUMMARY OF AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON TUESDAY, 29 MAY 2001 AT 7:00 P.M.

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## CITY OF COCKBURN

### AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON TUESDAY, 29 MAY 2001 AT 7:00 P.M.

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1. **DECLARATION OF OPENING**
  
2. **APPOINTMENT OF PRESIDING MEMBER (IF REQUIRED)**
  
3. **DISCLAIMER (To be 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)**
  
5. **APOLOGIES AND LEAVE OF ABSENCE**
  
6. **PUBLIC QUESTION TIME**
  
7. **DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS PAPER PRESENT BEFORE THE MEETING**
  
8. **PURPOSE OF MEETING**
  - 8.1 **(scm1\_5\_2001) -**

The purpose of the meeting is to determine Council's position with

regard to land dealings and development of soccer and recreation facilities proposed for the former Lot 14 Progress Drive, Bibra Lake.

## 9. COUNCIL MATTERS

### 9.1 (scm1\_5\_2001) - SOCCER AND RECREATION DEVELOPMENT - LOT 14 PROGRESS DRIVE, BIBRA LAKE (ASSESSMENT # 1076) - CHANGE OF PROPONENTS (1100231) (LJCD)

#### RECOMMENDATION

That Council note the letter dated 26 April 2001 received from Mr Bernard Bowen, Chairman of the Environmental Protection Authority which states that the City of Cockburn and the WA Croatian Association (Inc.) are now joint proponents for Lot 14 Progress Drive project.

#### COUNCIL DECISION

#### Background

The issue of proponency for this project had been understood to be a joint responsibility between the City of Cockburn and the WA Croatian Association (Inc.) (WACA), since correspondence received in 1998 from the (then) Minister for Environment indicated that, it was more appropriate for the WACA to be installed as joint proponents with Council, as the City is retaining ownership of Lot 22 and the residue of Lot 14.

However, following further discussions with staff of the Department for Environmental Protection (DEP), it was confirmed that the 1998 correspondence did not formally appoint Council and the WACA as joint proponents, but merely suggested it would be a more appropriate arrangement than having Council as sole proponent, which was officially the case, even though the intent of Council decisions made subsequent to the Minister's advice was to formally install both parties as joint proponents.

Consequently, Council wrote to the DEP on 6 March 2001, to have this position clarified. Again, further discussion took place between officers of Council and the DEP in an endeavour to expedite the process. During these discussions, it was mentioned that the Minister for the Environment may require some evidence of the WACA's stability and

financial capacity prior to allowing the WACA to be installed as joint proponent.

As a courtesy, Council conveyed this information to the WACA, the response to which was a request from the WACA for Council to provide further details of this requirement.

Subsequently, Council wrote again to the DEP, with a further request that any necessary requirements to be met which would enable the joint proponenty to proceed, be conveyed to Council.

### **Submission**

N/A

### **Report**

The Chairman of the Environmental Protection Authority by letter dated 26 April 2001 replied to Council's request stating that the City of Cockburn sole proponentship had been revoked, and that the WA Croatian Association (Inc.) and Council are now jointly responsible for the project.

### **Strategic Plan/Policy Implications**

Key Result Area *Managing Your City* refers.

### **Budget/Financial Implications**

N/A

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

Nil.

## **9.2 (scm1\_5\_2001) - LOT 14 PROGRESS DRIVE - WA CROATIAN ASSOCIATION (INC.) (1100231) (LJCD)**

### **RECOMMENDATION**

That Council:

- (1) implement the necessary action to finalise the sale of Lot 21 Progress Drive, Bibra Lake to the WA Croatian Association (Inc.) in accordance with the Contract of Sale prepared by Council's Solicitors:
- (2) advise the WA Croatian Association (Inc.) that:

1. Council holds an amount of \$33,315, being the balance of the works contribution the Association paid to Council, of which \$6,115 is refundable, whilst the remaining balance of \$27,200 is to be held in case there is a need to service the bank guarantee relating to the sewerage condition of subdivision.
2. Council requires a formal Development Application to be approved prior to the commencement of any works occurring on Lot 21 relative to the construction of the clubroom facilities;
3. Council requires a formal Lease Agreement to be approved by Council prior to the commencement of any works to develop the soccer playing facilities on Lot 22.
4. Council's decision is based on the independent review of the process undertaken by Council since the commencement of the project, which indicates that community/Council concerns relevant to potential environmental and financial impacts of the project can be adequately managed with minimal or no exposure of public (Council) funds being at risk because of non-compliance with the environmental commitments on the development. And
5. Council does not intend to provide any additional funding towards the development of Lots 21 and 22, other than that which formed the initially adopted Business Plan prepared by Council and including those minor adjustments recommended as a result of the independent review.

## COUNCIL DECISION

### Background

On the 20 March 2001 Council in relation to this matter adopted the following resolution.

“That Council:

- 1) instruct the Chief Executive Officer not to proceed with settlement of the transfer of land of Lot 14 Progress Drive to the West Australian Croatian Association (WACA), until Council has



the opportunity to fully consider community concerns raised in respect to on-going environmental commitments associated with the project; and

- 2) as settlement is due within 120 days of the issue of title, a report based on findings of the independent consultants report, be presented as soon as possible to a future Council meeting addressing such issues as:
  - Proponency
  - Financial Implications
  - Environment Impact
  - Legal Implications Placed on Council”

Furthermore, at a meeting Council held with representatives of the WA Croatian Association (Inc.) on the 28 March 2001 the Association presented a letter requesting that Council release \$70,000 of its funds.

### **Submission**

Advice provided by Council’s solicitors implies that Council has a legal obligation under the Contract of Sale to proceed with the transfer of Lot 21 Progress Drive, Bibra Lake to the WA Croatian Association (Inc.). Also the sum of \$6,115 can be returned to the Association, as project expenditure commitments have been satisfied, except that amount which is related to the bank guarantee of the sewerage condition of subdivision.

### **Report**

The report entitled “Review of Environmental Issues associated with the CER and subsequent Environment Approvals for the ‘Soccer and Recreation Development,’ Progress Drive, Bibra Lake (Assessment 1076, Statement 475)” prepared by the consulting firm Brown & Root Services Asia Pacific Pty Ltd, has been received by Council. The report addresses the issues raised by Council on the 20 March 2001.

In the opening paragraph of the Summary of the report it states “The development proposed for Lots 21 and 22 Progress Drive, Bibra Lake does not pose any insurmountable environmental difficulties. Providing the proposal is implemented and operated in a manner that is consistent with Statement 475, the risk of unacceptable effects on the adjacent environment is minimal.”

Section 1 of the report sets out the terms of reference. Section 2 reviews the environmental commitments established under the Minister’s Statement 475, and provides control mechanisms to deal with the issues. It is important to note that the Consultative Environmental Review prepared by Council set out 32 commitments in

relation to the project, however the Minister decided to impose only 13 of these commitments.

The issue of proponentcy has been reported upon and discussed at length, and the report emphasizes that at this point in time Council is the sole proponent for the project, notwithstanding the fact that there was a letter from the Minister, which implied that a joint proponentcy existed between Council and WACA. It has been revealed that this position is not correct and Council has approached the Department of Environmental Protection to install the WA Croatian Association (Inc.) as a joint proponent to the project. Although no response has yet been received, there is no impediment to Council transferring the environmental commitments to the WA Croatian Association (Inc.) through the Lease for Lot 22, however this does not abdicate Council from its responsibility as the sole proponent of the project, in the meantime. The following table contains the mechanisms in place to provide Council with the required protection and places the burden of responsibility for compliance with the development conditions upon the WA Croatian Association.

Code	Description	Control Mechanism
M4.1/ M4.2	Site Access Plan	<u>Development Approval Process</u> All final plans submitted for the Development Approval must be consistent with the approved Site Plan (as per Appendix B of the Brown and Root report).
M5.1/ M5.2	Nutrient and Irrigation Management Plan	<u>Development Approval Process</u> Should include conditions to ensure compliance with construction techniques, final form and characteristics as described in the NIMP (as per Appendix D of the Brown and Root report).  <u>Lease Conditions</u> Should include conditions to ensure operation, review, monitoring, compliance and reporting are consistent with NIMP requirements (as per Appendix D of the Brown and Root report). Should include a condition to the effect that any detrimental effects on Tappers Lake or Bibra Lake that can be attributed to non-compliance with the criteria in the NIMP shall be remediated by the Lessee.
M5.3	Approval to go to Stage 2	<u>Development Approval Process</u> Should only be supported subject to demonstrated compliance with NIMP criteria for Stage 1. <u>Note:</u> The NIMP would require review and updating to accommodate Stage 2. This review and associated costs may be passed on to the WACA as a condition of Council allocating funds to proceed to Stage 2.

M6	Compliance Auditing (Project Compliance Reports)	<p><u>Lease Conditions</u> Should include conditions requiring the preparation of PCRs within a timeframe suitable for Council to review and approve prior to submission to the DEP to meet reporting timelines.</p>
P1:1	Clearing and Dieback	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> Should include conditions to:</p> <ul style="list-style-type: none"> <li>• Tag trees to be retained within works areas prior to works on ground;</li> <li>• Clearly mark <i>extent of works*</i> prior to works on ground through the use of suitable barriers, fencing, and/or signage;</li> <li>• Confine storage, movement and operation of all machinery and other goods to within the area to be cleared;</li> <li>• Ensure all goods, vehicles and other equipment brought to site, and leaving the site, are free of soil and plant material; and</li> <li>• Ensure any fill material brought to the site is certified as <i>dieback free</i>.</li> </ul> <p><u>Lease Conditions</u> Should include conditions that are consistent with the Development Approval process. The Lease Conditions should include provision for penalties and any costs associated with remediation in the event of non-compliance.</p>
P1.2:1 P1.2:2	Revegetation and Landscape Program	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> Should include conditions requiring:</p> <ul style="list-style-type: none"> <li>• Implementation of the Revegetation and Landscape Program approved by the DEP (as per Appendix C of the Brown and Root report);</li> <li>• Implementation of the Program as soon as practical following completion of bulk earthworks.</li> <li>• Notes regarding seasonal requirements for establishment success; lead time required to pre-order seeds and seedlings to ensure adequate seeds and seedlings are available for planting, should also be included on the approval.</li> </ul> <p><u>Lease Conditions</u> Should include conditions consistent with the Development approval. The Lease Conditions should include provision for penalties and any</p>

		costs associated with remediation in the event of non-compliance.
P2	Protection of tortoises – monitoring, signage, fencing	<p><u>Council Activities</u> Erect signs advising of tortoise crossing consistent with advice from CALM.</p> <p><u>Development Approval Process</u> Should include conditions to alter fencing if necessary to address obvious effects on tortoise movements based on advice from CALM.</p> <p><u>Council Activities</u> Monitor tortoise movements and population during the breeding season to report on any changes in numbers.</p> <p><u>Lease Conditions</u> Should include conditions that are consistent with the Development approval. The Lease Conditions should include provision for penalties and any costs associated with remediation in the event of non-compliance.</p>
P3	Rehabilitation of Tappers Lake and part of Bibra Lake	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> Should include conditions to require implementation of the Revegetation and Landscape Program consistent with requirements under P1.2:2.</p> <p><u>Lease Conditions</u> The Lease Conditions should include provision for penalties and any costs associated with remediation activities in the event of non-compliance. Should Council wish to involve WACA in future responsibilities for the development of the remaining portion of Lot 14 (ie. Stage 2) then additional Lease conditions to this effect would be appropriate. <u>Note:</u> It is important to advise DEP of the boundary that defines Stage 1 and 2. The current approval is for both Stages with no clear <i>line</i> between the two. There is a possibility that DEP would expect some of this work to be carried out as part of Stage 1 activities when the intent is that this work is tied to Stage 2.</p>
P4:1	Surface drainage to prevent flow to Bibra Lake	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p>

		<p><u>Development Approval Process</u> The Development Proposal must include detailed drainage plans supported by correspondence from WRC specifically stating that WRC believe the proposed drainage plans are consistent with Commitment P4:1.</p>
P8:1	Midges	<p><u>Lease Conditions</u> Should include a condition to ensure any proposed night time activities are consistent with the City of Cockburn's Integrated Midge Control Strategy.</p>
P8:2	Maintenance of vegetation	<p><u>Lease Conditions</u> Should include a condition requiring monitoring and management of landscaped and revegetated areas under the Revegetation and Landscaping program are maintained in an appropriate condition. Reporting would be via the PCR prepared annually.</p>
P9:1	Surface drainage to contain water on site.	<p><u>Development Approval Process</u> The Development Proposal must include detailed drainage plans including correspondence from WRC specifically stating that WRC believe the proposed drainage plans are consistent with Commitment P9:1.</p>
P9:2	Amendments in swales	<p><u>Development Approval Process</u> Should include a condition to ensure swales include soils consistent with removal of nutrients (ie: PRI &gt;10).</p>
P9:3	Plantings in swales	<p><u>Development Approval Process</u> Should include a condition to ensure appropriate species of sedge, shrub and wetland plants are established in the swales to help remove nutrients from stormwater. The developer (in this case WACA) should be required to demonstrate the species selected are consistent with current advice from WCS. Ensure the species of plants selected are consistent with WRC publications and general advice.</p>
P9:4	Management of drainage water from Adventure World and Forrest Road	<p><u>Development Approval Process</u> The Development Proposal must include detailed drainage plans that are consistent with correspondence from the City of Cockburn to the DEP dated 5 October 2000 regarding management of this drainage water.</p>
P11	Provision of adequate car parking	<p><u>Development Approval Process</u> The Development Proposal must include detailed plans that are consistent with the site plan approved by the DEP (As per Appendix B of the Brown &amp; Root report).</p>
P13	Community Consultation	<p><u>Development Approval Process</u> This process should ensure adequate</p>

		<p>consultation with the community when the development approval is being considered including:</p> <ul style="list-style-type: none"> <li>• Signage at the lot;</li> <li>• Advertising in the local newspaper;</li> <li>• Detailed plans being made available for perusal at council offices; and</li> <li>• Availability of appropriate Council staff to respond to 'over the counter' enquiries.</li> </ul>
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- \* *Extent of works is the area that will be disturbed during construction. The purpose of demarcating this area is to ensure contractors on the site are fully aware of where they are permitted to go. There should be no disturbance of any kind beyond this area.*

The report has reviewed the community concerns and has stated that they are generally unfounded, nevertheless some minor extra expenditure is recommended. Table 5.1 depicts the additional expenditure recommended to cover such activities as "Council Inspection of Works", "Community Consultation" and "Clearance of Outstanding Conditions." There is scope within the existing project budget to fund these activities due to the budget surplus. For example, Council's budget is \$172,450 and expenditure to date amounts to \$78,970, therefore there is sufficient surplus to cover the additional suggested expenditure of \$18,400.

The report briefly covers the legal position of the project and it makes reference to five primary legal issues regarding the project as follows:

- \* Proponent status and proponent responsibilities under the *Environmental protection Act (1986)*;
- \* The ability of a proponent to transfer environmental requirements to third parties via contractual arrangements;
- \* Current status of the Contract of Sale of Lot 21 to the WACA;
- \* Implications for Council should the contract be binding and Council wish to withdraw; and
- \* The ability of Lease Conditions to effectively transfer financial risk associated with environmental issues to a third party.

Proponency – Council is the sole proponent, however there is a possibility that a joint proponency may exist in the future, subject to approval of the Minister.

Transfer of Environmental Requirements – it is possible to transfer the environmental requirements to the WA Croatian Association (Inc.) through mechanisms mentioned earlier in the report.

Contract of Sale – a legally binding Contract of Sale exists between Council and the WA Croatian Association (Inc.) and Council could be exposed to financial risk if it elects to withdraw from the contract.

Lease Conditions – it is possible to transfer financial risk associated with environmental issues related to the establishment and operation of the soccer playing facilities to the WA Croatian Association.

Turning now to the letter dated 28 March 2001, from the WA Croatian Association (Inc.), in which Council was requested to release \$70,000 of the Association's funds. Council does not hold such an amount – details are provided below. It is true that the Association has paid to Council the amount of \$152,487.00 and this amount is made up as follows.

Payment of Deposit – Lot 21	\$10,000.00*
Contribution to the preparation of additional documents to facilitate EPA process	\$16,924.00*
Contributions to Works	\$125,563.00
<b>TOTAL</b>	<b>\$152,487.00</b>

\*These amounts are non-refundable.

#### WACA Subdivisional Works Program Costs

	<b>Contribution Paid</b>	<b>Amount Spent</b>	<b>Balance</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Electricity	21,813	13,763	8,050
Sewerage	34,000	28,678*	5,322
Water	65,000	64,891	109
Headwork Charges	4,000	4,445	(445)
Drainage Headwork Charges	750	3,456	(2,706)
Legal Fees	Nil	1,442	(1,442)
Survey Costs	Nil	2,773	(2,773)
	<b>125,563</b>	<b>119,448</b>	<b>6,115</b>

\* Contained within this amount is the sum of \$27,200 being the Association's financial commitment to the bank guarantee. Therefore, the sum of \$27,200 and the surplus of \$6,115 equals \$33,315.

#### Strategic Plan/Policy Implications

Key Result Area *Managing Your City* refers.

#### Budget/Financial Implications

As per the Business Plan previously adopted by Council.

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

Nil.

**9.3 (scm1\_5\_2001) - LEGAL ARRANGEMENT FOR LEASE OF LOT 22 PROGRESS DRIVE, BIBRA LAKE - WA CROATIAN ASSOCIATION (INC.) (1100231) (LJCD) (ATTACH)**

**RECOMMENDATION**

That the City of Cockburn and the WA Croatian Association (Inc.) enter into a legal arrangement at the cost of the Association whereby if the lease for Lot 22 Progress Drive is not taken up by the Association and that Lot 22 is transferred or leased to a third party by the City the third party would be required to pay to the WA Croatian Association (inc.):

- (1) half of the current cost of the land on which the access road to Lot 21 Progress Drive is situated;
- (2) half of the current cost of constructing the access road; and
- (3) half of the maintenance cost for the access road.

**COUNCIL DECISION**

**Background**

N/A

**Submission**

N/A

**Report**

A meeting was held on the 18 May 2001 between four representatives of the WA Croatian Association (Inc.), the Mayor and officers of Council. The purpose of the meeting was to discuss the issues and outcome schedule prepared in relation to Lot 14 Progress Drive, Bibra Lake. During the meeting the President of Club, Mr V Jackovich asked; what if the Club did not take up the lease for Lot 22 Progress Drive, then Council decide to transfer or lease Lot 22 to a third party,



could the Club be compensated for its costs associated with the construction of the access road to Lot 21 Progress Drive by the third party.

Lot 22 Progress Drive was created with its own battle-axe access from Progress Drive. This course of action was taken to create a separate Certificate of Title for the Lot in case the Association decided to exercise its rights under the proposed lease to purchase Lot 22 Progress Drive. If such an arrangement was not put in place and the Association did decide to purchase Lot 22 Progress Drive then a fresh application to subdivide in respect to Lot 22 would have to be lodged because there was no access to the Lot. However, it would be a condition of the lease that the access road to Lot 22 Progress Drive from Progress Drive is not to be constructed because of the possible damage to the Moreton Bay fig trees on Pt Lot 14 Progress Drive. Therefore, Council decided that a right-of-way be registered over the access road to Lot 21 Progress Drive to provide access to Lot 22 Progress Drive.

The extent of the legal arrangement under consideration is shown in the attached diagram.

#### **Strategic Plan/Policy Implications**

N/A

#### **Budget/Financial Implications**

N/A

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

Nil.

### **10. RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)**

#### **10.1 (scm1\_5\_2001) - RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)**

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (a) integrated and coordinated, 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.

## **11. CLOSURE OF MEETING**

Nil