

CITY OF COCKBURN

SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON THURSDAY, 11 FEBRUARY 2010 AT 7:00 PM

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CITY OF COCKBURN

MINUTES OF ORDINARY COUNCIL MEETING HELD ON THURSDAY, 11 FEBRUARY 2010 AT 7:00 PM

PRESENT:

ELECTED MEMBERS

| | | |
|--------------------|---|--------------------------|
| Mr L Howlett | - | Mayor (Presiding Member) |
| Mr K Allen | - | Deputy Mayor |
| Ms H Attrill | - | Councillor |
| Mr I Whitfield | - | Councillor |
| Ms L Smith | - | Councillor |
| Mrs C Reeve-Fowkes | - | Councillor |
| Mr T Romano | - | Councillor |
| Mrs S Limbert | - | Councillor |
| Mrs V Oliver | - | Councillor |
| Mrs R O'Brien | - | Councillor |

IN ATTENDANCE

| | | |
|-----------------|---|---|
| Mr S. Cain | - | Chief Executive Officer |
| Mr D. Green | - | Director, Administration & Community Services |
| Mr S. Downing | - | Director, Finance & Corporate Services |
| Mr M. Littleton | - | Director, Engineering & Works |
| Mr D. Arndt | - | Director, Planning & Development |
| Mrs B. Pinto | - | PA to Directors – Finance & Corporate Services/Administration & Community Services |
| Ms L. Boyanich | - | Media Liaison Officer |

1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 7.00 pm.

The Presiding Member made a few announcements as follows:

Australia Day Celebrations

The City hosted a citizenship ceremony for 79 new citizens on Australia Day and received excellent feedback from new citizens and their families and friends on the professional nature of the service.

Mayor Howlett and his wife also attend the City of Fremantle citizenship ceremony on the same day.



A part of the Australia Day celebrations included the 2010 City of Cockburn Premier's Australia Day Active Citizens Awards. These awards celebrate the contribution that active people made to the community and the extraordinary difference they make to the community and the fostering of Australian pride and spirit through active citizenship.

There were three category winners:

Over 25 years - Mr Tony Armarego OAM for his contribution to the Cockburn community in general.

Under 25 years recipient was Dean Huxley for his contribution to Native Ark.

The Community organisation recipient was the Coogee Primary School for their inaugural Father/Son Bonfire Night that provided the opportunity for fathers and sons to share time together given the inability of many fathers to attend school activities due to work commitments.

Bibra Lake Upgrade Stage 1

A \$2M upgrade of the Bibra Lake recreational area was officially launched on 19 January by Melissa Parke MP, the Federal Member for Fremantle given their \$623M contribution.

The City has received very positive feedback on the work done to date given it is only Stage 1.

Summer of Fun Concerts

The third Summer of Fun Concert is scheduled for this Saturday night 13 February at the Lakelands Reserve, South Lake (The Las Vegas legends - Tom Jones, Neil Diamond, Cher and Dusty Springfield).

The Summer of Fun concerts have also showcased some of the City's young entertainers in what has become a very popular 'Cockburn Idol' competition.

Each concert sees two entertainers selected to move through to the final at the regional concert to be held in Manning Park on Saturday, 6 March where Jessica Mauboy, Wes Carr and Dean Geyer will be performing.

Holiday Programs

I commend the staff and volunteers at our libraries, Youth Centre, Cockburn Wetlands Education Centre and Azelia Ley Homestead Museum for the excellent range of activities they provide during the school holiday period.



Special Meeting of Council – Thursday, 25 February 2010

Resulting from a Council decision to defer making a decision on Australand's revised structure plan submission, Australand, exercised their right to refer their submission to the State Administrative Tribunal for determination.

Subsequently the parties agreed to enter into mediation. Several meetings have been held between the parties to discuss the agreed list of items with the aim of coming to a mediated agreement that could be put before Council for consideration and recommendation back to the SAT who will 'rule' on the matter in terms of acceptance of the mediated outcomes, or in the case of the Council not supporting the mediated items, then a Tribunal hearing would be listed in order for the tribunal to determine the matter between the parties.

Subsequently, a Special Meeting of the Council will be called for Thursday, 25 February 2010 at which time the mediated items will be presented to Council for consideration.

2. APPOINTMENT OF PRESIDING MEMBER (If required)

Nil.

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 (OCM 11/02/2010) - ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (BY PRESIDING MEMBER)

The Presiding Member advised the meeting that he had received Declarations of Financial Interest from the following Elected Members which will be read at the appropriate time:

| | |
|-------------------|-----------|
| Clr Lee-Ann Smith | Item 15.1 |
| Clr Ian Whitfield | Item 15.1 |
| Clr Robyn O'Brien | Item 15.4 |
| Clr Sue Limbert | Item 16.2 |
| Clr Val Oliver | Item 16.2 |

5. APOLOGIES AND LEAVE OF ABSENCE

Nil



6. ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

7 (OCM 11/02/2010) - PUBLIC QUESTION TIME

I & A Gaglia, Hammond Park

Agenda Item 14.2 – Consideration of the Possible Realignment of Metropolitan Region Scheme other Regional Roads Reservation for Frankland Avenue/Hammond Road, Wattleup

Q1 If the Council will support its local landowners in their opposition to the new plan for the extension of Hammond Road, what delays in the actual construction of this road are expected given the inevitable consequences of conflict which will arise as a result of this Council support?

A1 The extension of Hammond Road is proposed as an infrastructure item in Development Contribution Plans for Hammond Park and Wattleup (DCA 9 & 10). The actual timing of land acquisition and construction of the road is dependant on the rate of development occurring in the area, the traffic demand for the road, the aspirations of the affected owners and the availability of funds in the DCA accounts. The Plan for the District 2008 -2018 indicates potential land acquisition and design during the period 2010 - 2014 with construction following in the 2015/16 period. If the WAPC proposes and decides to initiate changes to realign Hammond Road, it will have to go through detailed consultation process as part of an MRS amendment, which would lead to some delays.

Gerald Martin, Kardinya

Agenda Item 19.1 – Additional Use for Retailing – Stock Road Markets

Q1 Why should the Planners at the City of Cockburn determine which small business should survive and which dies? Why should they force the traders into two major zones privately owned by massive companies that they are unable to compete with in these areas? The affects all of at the Stock Road markets. He asked the Council to recognize the pre-market changes which have occurred and the rise of retail shops and requested to incorporate that area as a retail under TPS No.3.

A1. Your questions will be taken on notice and responded to in writing as soon as possible.



Denise Ellement, Hammond Park

Agenda Item 14.2 – Consideration of the Possible Realignment of Metropolitan Region Scheme other Regional Roads Reservation for Frankland Avenue/Hammond Road, Wattleup

Q1. It is mentioned in the report that the land value of the affected properties is in excess of \$5.6m. I would like to point out that this figure is a gross underestimate as we were offered more than that, immediately prior to the realignment being made public, for our lot alone. With this in mind, a few different options for compensation for the affected landowners are mentioned in the report. Which option would be the quickest?

A1 The value of the land is an estimate based on advice provided to the City by McGees in June 2009 for land affected by the existing Frankland Ave/Hammond Road reserve. The processes for proclaiming a Planning Control Area and subsequent compensation by the Commission are totally outside the control of the City and accordingly officers are not in a position to offer any opinion as to which process would be quickest.

David Ellement, Hammond Park

Agenda Item 14.2 – Consideration of the Possible Realignment of Metropolitan Region Scheme other Regional Roads Reservation for Frankland Avenue/Hammond Road, Wattleup

Q1 Given that many of the benefits mentioned in the report to Council are generic and could be applicable to any piece of bushland, would it not be just as beneficial to sell the area of the reserve severed by the current road alignment and purchase bushland elsewhere with the proceeds to provide environmental and social benefits in another area and community?

A1 The value of the western severed land is unlikely to enable the City to acquire any alternative bush land property of a size that would be considered to be viable as a conservation area. There are also difficulties arising from the Bush Forever proposal and the impact on Carnaby's Black Cockatoos. Notwithstanding that, it is a matter that could be investigated.

Gary Ellement, Hammond Park

Agenda Item 14.2 – Consideration of the Possible Realignment of Metropolitan Region Scheme other Regional Roads Reservation for Frankland Avenue/Hammond Road, Wattleup



- Q1 Have there been any environmental investigations of Frankland Reserve that has revealed evidence of Carnaby's Black Cockatoo's using the reserve as a roosting and foraging habitat?
- A1 The Banksia Jarrah woodland vegetation of Frankland Reserve has been identified as the type which typically supports foraging by Carnaby's Black Cockatoo's. Officers are aware that an area to the east of Frankland Reserve is a confirmed foraging area for Carnaby's Black Cockatoo's and the owners are having discussions with the Federal Department of Environment, Water, Heritage and Arts regarding offsets to enable the land to be developed. Accordingly it is highly probable that Frankland Reserve, given the same identical vegetation and close proximity to an enclosed area is also a foraging area.

Ann Taylor, Munster

Agenda Item 17.2 – Sport and Recreation Strategic Plan 2009 (Second Revision)

- Q1. Why were local sporting groups and the SFDFDC contacted and invited to peruse and make any subsequent submissions regarding the COC Sports and Recreation Strategic Plan 2009 in it's earliest format last year and yet the residents whose properties are located on 3 sides of Santich Park and who will be most affected by the 'change of use' not invited to do so ?
- A1. Following Council receiving the first draft of the Plan in October,2009, residents and sporting clubs were invited to make comments and suggestions during the initial consultation period held from October 20 to November 16 2009. The Plan was advertised on Councils website and a notice was placed in the Community Gazette on October 20 2009 advertising the consultation period and inviting public comment.
- Q2. If the COC Sports and Recreation Strategic Plan 2009 is 'adopted' is it then 'set in concrete' or will issues and concerns raised by the residents of Santich Park be listened to and acted upon by Councilresidents do not want to lock the gate AFTER the horse has bolted.
- A2. Further consultation with sporting groups, the public and other stakeholders will be under taken prior to the implementation of actions in the Plan to ensure that the City is implementing measures in the most suitable way. Furthermore, Council staff would be happy to meet with any residents at any time to discuss their concerns.

Wendy Rudge, Munster

Agenda Item 17.2 – Sport and Recreation Strategic Plan 2009 (Second



Revision)

- Q1 In the minutes of last week's Agenda briefing for the City of Cockburn's ordinary meeting of Feb 11, 2010 it stated (on page 95) that a number of local residents have expressed concerns regarding the relocation of a senior AFL club to the ground with 10 submissions to council in the second consultation period. It is my understanding that 22 residents around Santich Park sent in submissions before the consultation period closed against the proposal - what happened to the other 12 submissions?
- A1. A total of 21 submissions were received. 10 were received by email prior to the report being prepared and were included in the Report while 11 came in by mail and were not included in the Report as they were not received by the staff preparing the report at that time.
- Q2. So will tonight's decision on the adoption of the COC Sport and Rec Strategic Plan 2009 be based on the Councillors knowledge and concerns of 10 submissions or the 22 that were submitted before the consultation period closed?
- A2 The Draft Plan will include all 21 submissions as an appendix. The Minutes will also note that Council has been subsequently advised that 21 submissions have been received regarding this issue.

Jaroslav Kincinski, Munster*Agenda Item 17.2 – Sport and Recreation Strategic Plan 2009 (Second Revision)*

- Q1 When the original decision about moving the Senior Football Club venue to Munster was taken ?
- A1 The proposal to move the Cockburn Lakes Senior Football Club came out of the analysis phase of the Strategic Plan Development and was first proposed to Council at the October 2009 Council Meeting.
- Q2 Was the previous installation of the light at Santich Park, the prelude to this move ?
- A2 No.
- Q3 What is the real reason for moving the venue to Santich Park?
- A3 The strategy is to ensure a suitable balance of Senior Football across the City, to improve the sustainability of both junior and senior football clubs by collocating them to provide transitional opportunities and to make appropriate use of Santich Reserve which is seen as a strategically significant oval given its size and location.



- Q4 How the security is going to increased?
- A4 This will be further determined in subsequent consultation and consideration by Council in the building and site development stage if it goes ahead.
- Q5 Will the Council take the responsibility for any potential problems generated by the move or will the Council simply wash it's hands? Who (specific person(s)), will be held responsible for the move?
- A5 Council will work closely with the clubs and local residents moving forward. The Recreation section of the Council will take responsibility for the implementation of any move and will be involved in the ongoing operation of the facility to ensure that any issues are suitably addressed
- Q6 In the event that the move goes ahead, how the Council is going to protect the residents ?
- A6 This will be further determined in subsequent consultation and consideration by Council in the building and site development if the proposal goes ahead.
- Q7 Why there was hardly any prior warning from the Council about the move ?
- A7 The move is not expected to be considered until 2013. The proposal was first presented to Council in October 2009 as part of the Strategic Plan.
- Q8 What steps the Council took to keep the effected residents informed ? Is it the standard Council procedure ?
- A8 Following Council receiving the Strategic Plan, the Plan was advertised for public comment as per council procedures.

Glen Diggins, Coogee

Agenda Item 19.1 – Additional Use for Retailing – Stock Road Markets

- Q1 Why was the retail space of 800 square metres selected as the appropriate area?
- A1 This figure was selected as it accommodates the largest of the current unauthorized retail shops. If a smaller figure was selected obviously that use would no longer be compliant, even if the Scheme Amendment was finalized.



- Q2 In the event that this motion is passed tonight can further guidance be given on what steps the Mayor and Council Officers will take to ensure that trading in its current form can continue at the Markets?
- A2 If the motion is passed tonight, the scheme amendment process will be initiated. The process will take a number of months possibly 12 months or more and the City cannot speculate on the eventual outcome of the Scheme Amendment process. The City will however ensure that the unauthorized traders can continue to operate without threat of compliance action from the Council, whilst the scheme amendment process is being dealt with.

Denise Ellement, Hammond Park (on behalf of Melinda Marshall)

Agenda Item 14.2 – Consideration of the Possible Realignment of Metropolitan Region Scheme other Regional Roads Reservation for Frankland Avenue/Hammond Road, Wattleup

- Q1 The current plan requires 1.5 hectares of Franklin Reserve for the extension of Hammond Road. The area of private land affected by the realignment is 7.07 hectares. Is this reasonable given the social and economic cost to save 1.5 hectares of bushland?
- A1 This is a matter that has been addressed in the Agenda report and for Councillors to determine its response to the WAPC in relation to the matter.
- Q2 Has the Council considered the proximity of Harry Waring Reserve, which is 300 metres from Frankland Reserve and approximately 280ha in area in determining the importance of the retention of Frankland Reserve as a whole?
- A2 Frankland Reserve is in close proximity to Harry Waring Reserve and is a factor that Councillors will take into account when making their decision.
- Q3 What environmental, economic and social investigations, with regard to the realignment, have been undertaken by the Department of Planning since the Council requested them to do so in 2003?
- A3 The City is not aware of any social or economic investigations being carried out by the Department of Planning. The regional significance of the vegetation in Frankland Reserve is based on advice received from the Department of Planning and Infrastructure in July 2003.

Colin Crook, Spearwood

- Q1 What are the standard protocols for the public to be asked to state



their full name and address? On privacy grounds it is not necessary to give the full name and address.

- A1 It is not legally required to give the name and address. It is only for the record, where Council is asked to provide a response to questions. If the person asking a question does not wish to do so, then it is not a requirement for Council to provide a response.

Irima Gaglia, Hammond Park

- Q1 Is it fair and reasonable to continue driving to the nearest train station for an indefinite period of time to access free public transport?

- A1 It is a very fair question and one that should be directed to the Public Transport Authority (PTA). Provision of public transport is not provided by the City. The PTA look at demand based on residential density.

Wendy Rudge, Munster

Agenda Item 17.2 – Sport and Recreation Strategic Plan 2009 (Second Revision)

- Q1 Where did other submissions go that were received before the consultation period that were not emailed in?

- A1 Unable to provide an answer to the above. The report was prepared with what was available at the time acknowledging that there were a number of submissions that came in. Following preparation of the report there was a lead up time for the report to be compiled. There was an internal process that took some days. Further to this it will be acknowledged in the Minutes that those submissions were received and they will form part of that process.

CLR O'BRIEN LEFT THE MEETING AT THIS POINT THE TIME BEING 7.45 PM

Libby Hocking, Coogee

Agenda Item 19.1 – Additional Use for Retailing – Stock Road Markets

- Q1 If the recommendation put before Council is successful, how many of the premises at the Stock Road Markets will (a) be permitted to undertake Retail Trading activities, (b) be excluded from Retail Trading and (c) why are all premises not included in the recommendation?



- A1 The consideration of retail activity at the Stock Road Markets is subject to an alternative recommendation. The alternative recommendation would essentially mean that retail activity would be able to be undertaken from all premises within the site, subject to Council approval, should the amendment be finalized and gazetted.

John Cunai, Spearwood

Agenda Item 14.7 – Proposed Scheme Amendment No.81 – Introducing Developer Contribution Area No.13 Relating to Community Infrastructure

- Q1 When will the process of community consultation take place?
- A1 The community consultation process is set out in the Town Planning Regulations relating to scheme amendments and schemes.
- Q2 What process is going to be undertaken for community consultation in relation to Item 14.7?
- A2 In relation to the actual process, Council will undertake to ensure all landowners within the area are advised of the affected changes. It potentially impacts on the entire City of Cockburn. The City will ensure that there are a series of newspaper adverts in both local papers indicating what the proposed changes are.

Geoffery Sach, Spearwood

Agenda Item 19.1 – Additional Use for Retailing – Stock Road Markets

- Q1 Why has the City Staff not recommended that all of the Stock Road market complex be rezoned to allow retail trading for all of the land bounded by Spearwood Avenue, Port Kembla Drive, Port Pirie Street and Stock Road?
- A1 The proposal only relates to the area known as Stock Road markets which includes the markets and the warehouse units around that area. It is not envisaged that Council will look at the entire locality on the southern portion of land because that involves a number of properties and if anything, would be contrary to both, the WAPC and Council Policy. So therefore, it is only looking at those premises within the vicinity of the Stock Road markets as this is the issue that currently is for consideration by Council.

CLR O'BRIEN RETURNED TO THE MEETING THE TIME BEING 7:48 PM



- Q2 Given the many retail outlets in Port Kembla Drive and Port Pirie Street, why were the traders in Stock Road markets targeted?
- A2 There is a public misconception that there are limitations as to where retail trading can occur. A lot of the businesses mentioned are either the retail component is just that component which is an incidental use to the main use, ie. manufacturing or repair of goods, so retail is only an ancillary or a part of that activity or alternatively falls under the definition of a showroom, which is the sale of larger, bulky goods, permitted within an industrial area. The situation has arisen around the Stock Road markets where a number of approved showrooms units are being used solely for retail purposes and being defined as shops and shops are not permitted within the 'mixed business' area. Some retail activity is allowed to be conducted from industrial use but only where it is incidental to the main or predominant use that has been approved by Council or alternatively relates to showrooms which is the sale of large bulky goods.
- Q3 Can the Mayor advise whether the Council can support retail trading in Stock Road markets and also given an undertaking that actions to ensure that traders in Stock Road markets are able to sell their business in the future as a retail business and provide ongoing financial security to all traders?
- A3 The Council will be deliberating on the matter at tonight's meeting.

Ann Taylor, Munster

Agenda Item 17.2 – Sport and Recreation Strategic Plan 2009 (Second Revision)

- Q1 Why weren't the local sporting groups and the South Fremantle District Development Council contacted and invited to peruse the City of Cockburn's Sport and Recreation Strategic Plan. Other than through the public forum newspapers residents were not informed, yet when footpaths were proposed 18 months ago, every resident in the same street were informed by letter asking for their comments. Why the change in protocol?
- A1 The Sport and Recreation Strategic Plan is a district-wide plan. It involves facilities across the district and not specifically located to one particular area. If that was the case the City would have had to write letters to every resident in the City to be able to do that full consultation. Hence the City advertises the way it does for this purpose.

Ray Woodcock, Spearwood



*Agenda Item 13.2 – Review of City of Cockburn (Local Government Act)
Local Laws 2000*

Q1 Is this the Local Government Laws to be adopted in its entirety and no proposed amendments at a future date?

A1 The proposal is to adopt the laws for public consultation. They will be advertised and submissions will be invited for a period of a minimum of 42 days. The community will be invited to make comment on any part of those local laws during the advertising period.

Dan Scherr, Coogee

Q1 What happens if the City of Cockburn rejects the mediated outcomes of the State Administrative Tribunal (SAT)? What is the next step?

A1 If Council refuses to accept a mediated solution or conditions of the mediated solution, that decision will be referred back to the SAT. The SAT will then call a formal hearing to make a determination on the matter.

Q2 Is there a strategy to avoid this or is Council ready to wrestle on?

A2 This will be for Council to determine in its deliberations on the matter.

Q3 At the meeting on 25 February do you envisage that there would be a long period at which Council will be meeting behind closed doors as the public would like to know what is happening and waiting to know what the outcome is?

A3 There will be significant debate on the item but unable to say how long it would go until, depending on the length of debate of the Elected Members.

Bob Poole, Coogee

Q1 How many heritage listed properties are there in Cockburn? If so, is Vic Dadley's listed as well?

A1 Your question will be taken on notice.

Ari Hall, South Lake

Q1 Is there any feed back available yet on the questions which were raised on the safety at the South Fremantle Power Station?

A1 Following the Annual General Electors Meeting officers have been out



on site. They have identified that the land in question is owned by the State Government and not under Council control. However, the City has taken water samples to ascertain any health issues. The analysis has only just come back and it is clearly shown that there is no health risk and no pathogens in the water. The only issue of concern is the public safety. The officers will return to investigate the water depth and if there is a perceived issue in relation to public safety the City will notify the relevant State Government Departments and advise them of what the City has identified and request that action needs to be taken.

Q2 What about the rotting concrete structure at the water front?

A2 As indicated before the actual structure is located on State Government land and it is land that Council does not have any control. In relation to the structure itself, Council officers have assessed that there is no immediate danger or risk to the public.

Colin Crook, Spearwood

Q1 Is there an update on the state of the dual use path through Port Coogee development?

A1 There is no further update to the response made at the Annual Electors Meeting.

8. CONFIRMATION OF MINUTES

8.1 (MINUTE NO 4149) (OCM 11/02/2010) - ORDINARY COUNCIL MEETING - 10/12/2009

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting held on Thursday, 10 December 2009, be adopted as a true and accurate record.

COUNCIL DECISION

MOVED Clr V Oliver SECONDED Clr S Limbert that the recommendation be adopted.

CARRIED 10/0

9. WRITTEN REQUESTS FOR LEAVE OF ABSENCE

Nil



10 (OCM 11/02/2010) - DEPUTATIONS AND PETITIONS

Mr Gerald Martin, Kardinya presented a petition of some 3,300 signatures requesting Council to do everything in their power to guarantee continuation of the Stock Road Central Markets.

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

Nil

12. DECLARATION OF COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS IN THE BUSINESS PAPER

Nil

13. COUNCIL MATTERS

NOTE: AT THIS POINT IN THE MEETING, THE TIME BEING 7.54 PM, THE FOLLOWING ITEMS WERE CARRIED BY AN “EN BLOC” RESOLUTION OF COUNCIL:

| | | | | |
|------|------|------|------|------|
| 13.1 | 14.2 | 15.2 | 16.2 | 19.2 |
| 13.2 | 14.3 | 15.3 | | |
| | 14.4 | | | |
| | 14.5 | | | |
| | 14.6 | | | |
| | 14.8 | | | |

13.1 (MINUTE NO 4150) (OCM 11/02/2010) - PROPOSED AMENDMENTS TO POLICY SC15 'ELECTED MEMBER COMMUNICATION ALLOWANCE' AND SC32 'ELECTED MEMBER INFORMATION TECHNOLOGY ALLOWANCE' (1705) (D GREEN) (ATTACH)

RECOMMENDATION

That Council adopts proposed amendments to Policy SC15 ‘Elected Member Communication Allowance’ and SC32 ‘Elected Member Information Technology Allowance’, as attached to the Agenda.



COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

Following the Extra-Ordinary Council Elections in March, 2009, the issue of the use of Council resources relative to telephone and information technology equipment for electoral purposes was raised.

It was considered that this may have been in conflict with the intent of Local Government (Rules of Conduct) Regulations, 2007, which were not in effect for the 2007 local government elections, but have been ever since.

As there was some doubt in relation to the application of this Regulation, legal advice was sought to ensure that candidates for the (then) upcoming Council elections were informed of the status and of their rights and obligations.

While the legal advice recommended a precautionary approach be taken by local governments on this subject, the Department of Local Government undertook to seek a definitive response in time for the 2009 elections. However, this was not forthcoming and Council maintained a cautious position and amended its Policies to ensure there was no transgression of legislation. The Department has since clarified this issue, the effect of which is that Council should amend its Policies to reflect this advice.

Submission

To amend the relevant Policies, on the basis of advice received from the Department of Local Government.

Report

In April 2009, Council amended its Policies SC15 and SC32 to ensure that sitting elected members were compliant with the recently introduced Regulations which prohibited the use (directly or indirectly) of Council resources for electoral purposes.

As the Department of Local Government was unable to ascertain the intent of the relevant legislation, the Policies remained in place for the 2009 Council elections.



However, as the advice has now been confirmed (see attached) it is considered appropriate for Council to delete the requirement for sitting elected members not to use equipment, which has been provided from Council allowances, for electoral purposes.

The intent of the advice from the Department is that where Council allowances are provided in lieu of equipment, and these allowances are used to offset the cost of equipment purchased by the member, this does not represent an infraction of the legislation.

Only in circumstances where a member chooses to have the equipment covered by Policy SC32 provided to them, and the equipment remains the property of Council, is it considered inappropriate for that member to utilise that equipment for any electoral purposes (direct or indirect).

As all elected members of the City of Cockburn are paid the communication allowance in accordance with Policy SC15, Council only 'provides' equipment associated with information technology.

Therefore, while the requirement not to utilise or advertise telephone numbers can be deleted from Policy SC15, given that all elected members receive the communication allowance in accordance with this Policy, it is recommended that it remain in a modified form in Policy SC32, as this Policy provides for elected members to choose either to accept the statutory allowance able to be claimed (ie. \$1,000 p.a.) or to utilise Council provided information technology equipment (computer and software) for the duration of their tenure on Council. In the case of the latter, members will not be able to use this equipment for electoral purposes as it is deemed to be the 'resources' of Council.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

Funds are allocated within Council's Municipal Budget to cover Elected Members expenditure and allowances relevant to these Policies.

Legal Implications

Section 5.99A of the Local Government Act, 1995 and Regulation 34A of the Local Government (Administration) Regulations, 1996 refer.



Community Consultation

N/A

Attachment(s)

1. Proposed amended Policy SC15 'Elected Member Communication Allowance'.
2. Proposed amended Policy SC32 'Elected Member Information Technology Allowance'.
3. Advice – Department of Local Government.

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

13.2 (MINUTE NO 4151) (OCM 11/02/2010) - REVIEW OF CITY OF COCKBURN (LOCAL GOVERNMENT ACT) LOCAL LAWS 2000 (1116) (P WESTON) (ATTACH)

RECOMMENDATION
That Council:

- (1) approve the Draft City of Cockburn (Local Government Act) Local Laws 2000, as attached to the Agenda; and
- (2) advertise the proposed Local Laws for public comment pursuant to Section 3.16(2) of the *Local Government Act 1995*.

COUNCIL DECISION
MOVED Clr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.
CARRIED 10/0

Background

Pursuant to Section 3.16 (1) of the *Local Government Act 1995* a local government is required to conduct a periodic review of local laws to



determine whether or not it considers that any local laws are to be repealed or amended.

Council's consolidated (Local Government Act) Local Laws were introduced in 2000 and are now due for statutory review.

Submission

N/A

Report

The City is required to conduct a periodic review of its local laws pursuant to Section 3.16 of the *Local Government Act 1995*.

Pursuant to Section 3.16 (2) of the *Local Government Act 1995* if a local government determines that a local law is to be repealed or amended Statewide public notice is to be given stating that;

- (a) the local government proposes to review the local law,
- (b) a copy of the local law may be inspected and obtained at any place in the notice; and
- (c) submissions about the local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks (42 days) after the notice is given.

When Council considers a further report at the conclusion of this period it may determine (with an absolute majority) whether or not it considers the local law should be adopted.

The purpose of the Local Law, as proposed, is to ensure compliance with the review provisions of the Act. The effect is to amend the Street Numbering provisions of the Local Laws contained in Part 9, Division 5 of the Local Laws.

The proposed amendments have been drafted in consultation with Council staff who have the responsibility for the administration and enforcement of such laws.

If Council resolves to proceed with this matter, an advertisement will be placed in the 'West Australian' newspaper giving notice of Council's intention to promulgate the City of Cockburn's (Local Government Act) Local Laws 2010.

Interested parties will be able to inspect a copy of the local laws or obtain a copy of the local laws from Council or from one of the City's Libraries as mentioned in the advertisement and may make a



representation to Council in response to the proposed amendments to the current local laws. The submission period for representations is 42 days from the date of the advertisement.

Council staff have proposed amendments to Clauses 9.13 to 9.15 of the City's local laws.

The proposed amendments are highlighted in the attached report (Note pages 74,75, 87 and 88).

The amendments are intended to improve functionality of street numbering requirements.

The amendments clarify that both Council or an authorised person can appropriately deal with the administration and enforcement of the local laws relating to street numbering.

This is an important aspect to have clearly clarified so that authorised persons are not left with any doubt in relation to the enforceability of the local laws. Currently there is some ambiguity in this respect.

It is also proposed to increase the fines for non-compliance with the local laws to \$250, reflecting the extent of time which has passed since the fines were last increased.

Authorised Council Staff do however only view the use of fines as an absolute last resort, and in most cases are able to deal with property owners in an appropriate way to achieve the correct level of compliance.

It should be noted that Local Laws that have been initiated independently of these Consolidated Local Laws (eg. Waterways Management, Parking and Standing Orders) are not included in in this review.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.
- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

Budget/Financial Implications

N/A



Legal Implications

Section 3.16 of the Local Government Act refers.

Community Consultation

Advertisement of the proposed amendments to be placed in a Statewide public notice.

Attachment(s)

Copy of the Draft Local Laws identifying proposed amendments/deletions to Part 9 Division 5 'Street Numbering'.

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

14. PLANNING AND DEVELOPMENT DIVISION ISSUES

14.1 (MINUTE NO 4152) (OCM 11/02/2010) - RETROSPECTIVE APPLICATION FOR EXISTING HOME BUSINESS (MOBILE FOOD CATERING) - LOCATION: LOT 455 (NO.11A) RECREATION ROAD, HAMILTON HILL - OWNER: I & S SCARPUZZA - APPLICANT: I SCARPUZZA (2213712) (R COLALILLO) (ATTACH)

RECOMMENDATION

That Council:

- (1) approve the application for retrospective approval for a Home Business (Mobile Food Catering) at Lot 455 (No. 11A) Recreation Road, Hamilton Hill subject to the following conditions:
 - 1. The Home Business can only be undertaken in accordance with the terms of the application as approved herein and any approved plans.
 - 2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of development.
 - 3. All materials and/or equipment used in relation to the Home Business shall be stored within the residence or an

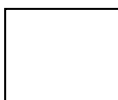


approved outbuilding.

4. The Home Business can only be undertaken by the owner of the land and is not transferable pursuant to Clause 5.8.5 (a) (ii) of Town Planning Scheme No. 3.
 5. On the sale of the property or change in ownership of the land the Home Business entitlement ceases pursuant to Clause 5.8.5 (a) (iii) of Town Planning Scheme No. 3.
 6. The maximum number of clients being restricted to 2 per day with at least 15 minutes between each appointment.
 7. The hours of client visitation being restricted to 7:00 a.m. – 7:00 p.m. Monday to Saturday and not at all on Sundays or Public Holidays.
 8. All parking is to be contained completely within the Lot. Clients are required to park on the driveway of the property and NOT on the verge, to preserve the amenity and convenience for the adjoining neighbours.
 9. In the instance that the City receives substantiated complaints regarding the operation being run contrary to the conditions of this approval, the City reserves the right to revoke this approval notice.
 10. No retail sale of food products is permitted to occur from the site at anytime. The business is hereby restricted to operate only as a mobile food catering service as stipulated in the application for approval.
 11. Waste being stored and removed from the site to the satisfaction of the City's Health Services and Waste Manager.
- (2) issue a Notice of Determination of Application for Planning Approval under the City of Cockburn Town Planning Scheme No. 3; and
 - (3) advise the applicant and submissioners of Council's decision accordingly.

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr H Attrill that the recommendation be adopted subject to the inclusion of the following Footnotes as part of recommendation (1):



FOOTNOTES

1. Detailed plans and specifications of the kitchen, dry storerooms, coolrooms, bar and liquor facilities, staff change rooms, patron and staff sanitary conveniences and garbage room, are to be submitted to and approved by the City's Health Service. The plans to include details of:
 - (i) the structural finishes of all floors, walls and ceilings;
 - (ii) the position, type and construction of all fixtures, fittings and equipment (including cross-sectional drawings of benches, shelving, cupboards, stoves, tables, cabinets, counters, display refrigeration, freezers etc); and
 - (iii) all kitchen exhaust hoods and mechanical ventilating systems over cooking ranges, sanitary conveniences, exhaust ventilation systems, mechanical services, hydraulic services, drains, grease traps and provisions for waste disposal.

These plans are to be submitted separately to those submitted to obtain a Building Licence.

The application must be in accordance with the Health (Food Hygiene) Regulations 1993 and Chapter 3 of the Australian New Zealand Food Standards Code (Australia Only) and also include any information about the existing facilities to be retained and used.
2. The use of the premises must comply with the health (Food Hygiene) Regulations 1993 and Chapter 3 of the Australian New Zealand Food Standards Code (Australia Only).

CARRIED 9/1**Reason for Decision**

The obligations for a Food Premises Licence are covered by a separate legislation to the Planning and Development Act and therefore are not included as conditions of any planning approval; they are normally included as a footnote to any planning approval. It is the standard procedure that footnotes are generally not included as part of the Officer's recommendation but are included once the Council has determined the application, as the footnotes are essential advice to the applicant and do not constitute a legal obligation. In this case it is recommended that the footnotes relating to the health requirements are included to ensure that the applicant is clearly aware of their statutory



obligations outside those covered by the Planning and Development Act.

Background

| | | |
|------------|---------------|-------------------|
| Zoning: | MRS: | Urban |
| | TPS3 | Residential 'R20' |
| Land use: | Home Business | |
| Lot size: | 1032 sqm | |
| Use class: | 'A' | |

In October 2009, the City was made aware of a potential home business being operated from the subject site. The matter was investigated and it was found that the landowners had constructed a purpose built kitchen of a commercial nature. The landowners confirmed that since April/May 2009 they had been operating a food catering business from their dwelling. The dwelling in question is located on a battleaxe lot within the Residential Zone (refer to the attachments to this report).

The landowner was subsequently advised of the requirement to obtain planning approval for the use in accordance with the provisions of Town Planning Scheme No.3 ('Scheme').

An application for retrospective planning approval for a home business was subsequently submitted. This application is referred to Council for determination as an objection was received from a surrounding landowner following the advertising of the proposal.

Submission

The applicant seeks to formalise approval for a home based food catering business which involves the:

- Preparation and cooking of savoury and sweet foods onsite;
- Delivery of cooked foods offsite to external parties using an appropriate vehicle (food van);
- Up to two (2) clients a day visiting the site to select and order food products for functions/parties and to collect food orders.

Deliveries and visitors to the site typically occurs during normal business hours and during the day on weekends. However, the applicant has stated that the hours of operation are required to be flexible as it depends on the quantity and scale of orders.



Report

Development Framework

Development of the subject lot is dictated to by the provisions of Scheme.

Town Planning Scheme No. 3

Under the provisions of the Scheme, a Home Business is defined as:

”a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which —

- (a) does not employ more than 2 people not members of the occupier's household;*
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood;*
- (c) does not occupy an area greater than 50 square metres;*
- (d) does not involve the retail sale, display or hire of goods of any nature;*
- (e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and*
- (f) does not involve the use of an essential service of greater capacity than normally required in the zone.”*

In this case the operation complies with the requirements of (a), (b), (e) & (f), on the basis that:

- The business is staffed by members of the resident household who prepare and cook the food on-site.
- Whilst the subject property is located on a battleaxe block, the dwelling at the front of the subject lot, as well as that to the immediate east, are both owned and occupied by family members who raise no objection to the retention of the home business operation. In assessing the impact of the proposal on the amenity of residents of the locality, it is concluded that the occupiers of the property to the front (north), and those of the property located to the east, are most likely to be affected by the business activities associated with this type of activity.
- The fact that the business does not employ non resident workers coupled with the availability of ample car parking on site ensures that traffic difficulties do not result. In addition, the business requires the use of a modest standard sized van for deliveries which can enter and exit the site in forward gear without compromising traffic safety or flow.



- The nature of the business means it can operate without additional gas, electrical & water services. It should be noted that approval from the Water Corporation may be required for discharge of wastewater to the reticulated sewer. Non-liquid wastes are stored within a waste storage device provided by and serviced by a private waste removal company.

Despite the above, the size and scale of the operation means it does not strictly comply with requirements (c) & (d) above. The kitchen/workshop in which the preparation, cooking and storing of food is being undertaken is approximately 68sqm which is 18sqm larger than the 50sqm maximum requirement of the Scheme. The business also entails the retail sale of food items as clients are able to attend the site to collect and pay for their food orders.

Consultation

In accordance with Clause 9.4.1 of the Scheme, the application was advertised for public comment. At the conclusion of the advertising period, three (3) submissions were received, one (1) being an objection and two (2) stating no objection to the application.

The submission objecting to the proposal raised the following concerns:

- Inappropriate location for a commercial catering business; and
- Potential for increased traffic flow which causes a safety concern particularly as there is a park across the road which is frequented by large numbers of children.

While City Officers acknowledge the grounds of the objection, it is considered that the imposition of conditions restricting the operation to exclude the sale of food directly from the premises will address potential traffic impacts.

Conclusion

As outlined in the report, the development comprises some variations to the development requirements of the Scheme. Despite this, it is considered that the non-compliance in terms of the oversized floor area is minor given much of the space is designated for storage and administrative purposes, and the additional floorspace does not result in a need for additional employees. With respect to the retail sales of goods, it is considered suffice that a condition be imposed should approval be granted, to prohibit the sale of food products directly from the premises.

Given the above it is recommended that the home business be granted retrospective approval with appropriate conditions to minimise any



adverse impacts on surrounding landowners and the amenity of locality.

Strategic Plan/Policy Implications

Demographic Planning

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

Budget/Financial Implications

N/A

Legal Implications

Town Planning Scheme No. 3
Planning and Development Act 2005
State Administrative Tribunal Regulations

Community Consultation

In accordance with Clause 9.4.1 of the Scheme, the proposal was advertised to sixteen (16) surrounding landowners/occupiers for comment. Three (3) submissions were received, one (1) being an objection and two (2) stating no objection to the application

Attachment(s)

1. Location Plan
2. Site Plan
3. Floor Plan
4. Consultation Plan
5. **Letter of Objection (provided under separate cover)**

Advice to Proponent(s)/Submissioners

The Proponent and those who lodged a submission have been advised that this matter is to be considered at the 11 February 2010 Council Meeting.

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

Nil.



14.2 (MINUTE NO 4153) (OCM 11/02/2010) - CONSIDERATION OF THE POSSIBLE REALIGNMENT OF METROPOLITAN REGION SCHEME OTHER REGIONAL ROADS RESERVATION FOR FRANKLAND AVENUE/HAMMOND ROAD, WATTLEUP (4412178; 9669) (A TROSIC) (ATTACH)

RECOMMENDATION

That Council:-

- (1) not support the proposed realignment of the Metropolitan Region Scheme ("MRS") 'Other Regional Roads' reservation of Frankland Avenue/Hammond Road, Wattleup as shown on the plan prepared by the Department of Planning;
- (2) request the Department of Planning that the final boundaries of the Bush Forever site for Frankland Reserve exclude:
 1. The MRS 'Other Regional Roads' reservation of Frankland Avenue/Hammond Road, Wattleup which dissects through the western portion of Frankland Reserve.
 2. The portion of Frankland Reserve required for the future 'Primary Regional Roads' reservation of Rowley Road in accordance with MRS Amendment No. 1158/41; and
 3. An area of at least 4ha in the eastern portion of Frankland Reserve identified for active recreation purposes in Southern Suburbs District Structure Plan (Stage 3).
- (3) advise the Department of Planning and affected landowners accordingly.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

At its meeting held on 16 March 1999 Council considered the draft Bush Plan report (now Bush Forever) and nominated Frankland Reserve as an additional site for consideration.



At its meeting held on 17 July 2001 (Item 14.13 Minute No. 1218) Council considered a report on the application to mine sand within Frankland Reserve, and an associated land exchange. Council resolved not to support any proposed land exchange and to strongly object to the mining of sand within the reserve.

Council at its meeting held on 21 August 2001 (Item 14.1 Minute No. 1252) again considered the question of sand mining in Frankland Reserve and resolved to reconfirm its strong opposition to the sand mining within the land. Council also instructed its Solicitor to represent the City of Cockburn ("City") in the Mining Wardens Court to oppose the issue of a Mining Licence to Amity Holdings Pty Ltd to mine sand from Frankland Reserve.

Council at its meeting held on 16 September 2003 (Item 14.5 Minute No. 2146) considered a request from the Ministry for Planning for the inclusion of Frankland Reserve as an additional Bush Forever site. Council agreed to the nomination subject to:

- (i) acknowledgement that some 4ha of the site which includes an existing cleared area of 3.5ha be able to be developed for active recreation purposes in accordance with the Southern Suburbs District Structure Plan (Stage 3); and
- (ii) the Department of Planning investigate the possible realignment of the existing Frankland Avenue/Hammond Road 'Other Regional Roads' reservation (hereafter referred to as "Frankland Avenue") under the Metropolitan Region Scheme ("MRS") and future Rowley Road 'Primary Regional Roads' reservation to avoid Frankland Reserve so as to maximise the conservation values of the land.

In accordance with Council's resolution, owners of land adjacent to Frankland Reserve, some of who are affected by the realignment, were advised of the decision.

Council at its meeting held on 11 August 2005 (Item 14.19 Minute No. 2924) adopted the Southern Suburbs District Structure Plan (Stage 3). The plan showed Frankland Avenue in accordance with the MRS being the relevant statutory alignment. However Section 2.11 of the District Structure Plan text did refer to the September 2003 resolution of Council regarding the review of the alignment of Frankland Avenue and Rowley Road to minimise the impact on Frankland Reserve.

Submission

The Department of Planning recently completed a design of Rowley Road and Frankland Avenue which demonstrates that Frankland Avenue can be realigned to avoid Frankland Reserve. There is no indication that the alignment of Rowley Road has been reviewed to reduce impacts on the reserve.



Having received the design of Frankland Avenue demonstrating how it can be realigned to avoid Frankland Reserve, Council now needs to consider whether to support the realignment and to advise the Department of Planning accordingly.

Report

As requested by the City, the Department of Planning has prepared detailed alignment plans showing how Frankland Avenue can be realigned to avoid Frankland Reserve. The relationship between the current MRS alignment and the proposed alignment is shown in Plan 1 in the Agenda attachments and the detailed design on Plan 2. The plan also includes a strip of MRS 'Parks and Recreation' reserve of some 20m wide down each side of the proposed realigned Frankland Avenue. The 'Parks and Recreation' reserve on the west side of the alignment replaces the existing 'Parks and Recreation' reserve strip which accommodates the historic Baldivis tramway trail. The 'Parks and Recreation' reserve down the eastern side is not something the City requested and is of doubtful value given the significant cost to vegetate and maintain the strip.

It is clear from the plans that Frankland Avenue can be realigned to avoid Frankland Reserve but there are significant impacts on several landowners who were not previously affected, or were only partially affected. Table 1 in the Agenda attachments shows the current and proposed land requirements in this respect. It can be seen that particularly Lot 1 (increase in sterilised land from 13% to 48%), Lot 2 (increase in sterilised land from nil to 50%) and Lot 115 (increase in sterilised land from 28% to 97%) are significantly affected. The magnitude of these affects are such that they completely change the future potential of this affected land.

In view of the impacts, the plans were sent to affected landowners and the Town of Kwinana for comments. This was to enable such comments to be reported to Council, so that Council could be given the appropriate ability to make an informed judgement on the realignment based on social, economic and environmental criteria.

The following submissions were specifically received:

| Submission by | Landowner | Lot | Submission |
|-----------------------------------|----------------------|---|------------|
| Burgess Design Group | Primewest Management | 805 and 117 Wattleup Road | Object |
| Evans and Gianoli | M and A Dropulich | Lot 110 Wattleup Road | Object |
| QUBE (includes consultant advice) | | Lots 801, 122, 121, 71 and 75 Wattleup Road | Object |
| Town of Kwinana | | Impacts land within | Acceptable |



| | | | |
|---------|---------------------|----------------------------|-----------------|
| | | Town of Kwinana | |
| Whelans | A, A and F Gaglia | Lot 115 Wattleup Road | Strongly object |
| Whelans | G, D and D Ellement | Lots 1 and 2 Wattleup Road | Strongly object |

A summary of the main issues is included in the Agenda attachments. QUBE requested that their submission including advice from their consultants be provided to Councillors in their entirety. In accordance with the request, all submissions have been included in the Agenda attachments.

The issue is quite clear in that there is the opportunity to enhance the conservation values of Frankland Reserve by realigning Frankland Avenue for the benefit of the wider community but this is to the significant detriment of a number of landowners.

There is no doubt that Frankland Reserve has high quality bushland. A condition and structure survey undertaken in November 2003 concluded that overall the vegetation in Frankland Reserve was mostly in excellent condition and that there was no significant difference in the vegetation community structure within the land required for Frankland Avenue and other parts of the site. Within the Frankland Avenue reserve the vegetation was in excellent condition with only one small area of poor condition vegetation. The area west of the road reserve which would be severed once Frankland Avenue was constructed, demonstrated a greater range in condition containing two small areas of poor and several small area of good vegetation. The Department of Planning advise that in their view the vegetation is of regional significance.

The fundamental questions to be addressed are as follows:

- (i) Will the additional area of bushland that could be retained in Frankland Reserve by the realignment of Frankland Avenue significantly increase its conservation value and to what degree?
- (ii) Is there any downside in maintaining the status quo (i.e. not realigning Frankland Avenue)?
- (iii) Does the objective of retaining additional bushland outweigh personal hardship caused by the proposed realignment?

To assist Council considering this matter, the following points are made under the headings of environmental, social and economic factors. These cover both positive and negatives sides of the key arguments.

Environmental

- Retaining the whole of Frankland Reserve will reduce the environmental impact of development in this area and help maintain the existing habitat value of the reserve.



- Four hectares of the cleared and degraded portion Frankland Reserve is already earmarked for development as active open space. Further loss from this reserve will reduce the conservation viability of this reserve.
- Fragmentation of the reserve would increase the bushland maintenance costs for the site due to the increase in perimeter to area ratio or edge effects - note that the 1.7ha severed portion of the reserve west of the road alignment is not a viable area for conservation and would effectively become part of the public open space for the western residential area.
- The larger reserve maintains existing genetic diversity. Habitat fragmentation is one of the most important factors that lead to biodiversity loss.
- Reduced fauna road deaths - note no fauna survey has been conducted so the extent of this cannot be quantified.
- The larger reserve size will reduce the extent of penetration of weed seeds entering the reserve. Vehicular traffic invariably increases weed seed distribution.
- Retention of roosting and foraging habitat for the endangered Carnaby's Black Cockatoo will be maximised through the realignment.
- Retaining the whole of the reserve meets the objectives of Council's Bushland Conservation Policy and Council's Sustainability Policy viz to conserve the quality, extent and uniqueness of the natural environment that exists within the district and encouraging the protection and conservation of the natural environment.
- Retains the carbon sequestration capabilities of the existing vegetation.
- No carbon release due to decomposition of vegetation cleared for the road.
- Priority flora such as Hackett's Hopbush (*Dodonaea hackattiana*) not impacted.
- The inclusion of Frankland Reserve as a Bush Forever site has not yet been completed.
- Frankland Reserve was not identified in the Bush Forever report released in 2000 and accordingly was not seen as essential to meet the State Government's targets of retaining sufficient area of each category of bushland.
- The reported outcome of the assessment process for nominated additional Bush Forever Areas was to investigate potential for a land swap between the reserve and adjacent rural blocks. This indicates that Frankland Reserve does not represent the best area of this vegetation community and, if this option had been pursued, then Frankland Reserve would have been cleared for residential development.
- Cardno question the regional significance of the vegetation in Frankland Reserve.



- The realignment will have a minor impact on the Harry Warring marsupial reserve.

Economic

- Under State Government clearing legislation, there would be a requirement to provide offsets for any vegetation clearing within the reserve including that for the active recreation area. The minimum is a ratio of 4 to 1. At a cost of \$100,000 per ha, there would be a cost of at least \$600,000 if suitable offsets can be found. It should be noted that this would be a cost of the road and met either through the Development Contribution Scheme or by the State Government as appropriate and would not be a direct cost to the City.
- Clearing of vegetation that is likely to be Carneby's Black Cockatoo habitat will need to be assessed under the Commonwealth Environmental Legislation and may result in the requirement for additional offsets of up to 10 to 1.
- There may be future potential for bushland to be used for carbon offsets.
- Funding already expended on infrastructure and maintenance in the reserve will not be wasted - Council allocates \$9,500 pa for general maintenance of the reserve.
- The additional area of private land affected by the realignment of Frankland Avenue, the Rowley Road interchange and 'Parks and Recreation' reserve as per Table 1 in the Agenda attachments is 7.0706 ha which, in today's rates, could have a land value in excess of \$5.6m taking into account the land value, injurious affection, severance and solatium payments. This will need to be met partially by the City through the Development Contribution Plans and the State Government (at this time it is unclear as to the relative responsibilities). No land value is described to Frankland Reserve as this would be transferred from one reserve to another free of cost as is the usual case.
- The additional cost of Frankland Avenue in the Developer Contribution Plans will be paid pro rata by all developers within the development area and inevitably this will be passed on to purchasers in the form of higher land prices.
- Given the significant burden on the affected landowners and the fact that the only real buyer for the three most affected lots is likely to be either the Western Australia Planning Commission ("WAPC") or the City, consideration would need to be given to the early purchase in the event that the landowners wish to move on. This is consistent with the City's views in respect to the Hope Valley Wattleup Redevelopment Area in that there needs to be a financial exit strategy for affected landowners.
- The three worst affected properties are owned by private individuals and accordingly the impacts cannot be easily absorbed or defrayed over a large project area.



Social

- This matter is causing the families affected by the realignment proposals significant stress. If this proposal proceeds, this will continue for several years while the realignment is progressed as an amendment to the MRS and the costly matter of acquisition resolved.
- The realignment of Frankland Avenue will take several years to resolve and for planning of the area to be advanced. Accordingly development in this area will be sterilised at a time when the land is at the development front, plans are in the system and land supply is a major issue for the State Government and the City.
- Nature experiences relieve mental fatigue. The restorative effects of a natural environment (whether time in the wilderness setting or a walk in a local nature reserve) leads to renewed attention and positive affect.

Having regard to the matters raised in the submissions and the points set out above, there are two courses of action that Council can take. These are to either:

- (i) Support the realignment of Frankland Avenue to the west of Frankland Reserve to maximise the area being retained in a contiguous area; or
- (ii) To support the current MRS alignment and maintain the status quo.

If Council supports the realignment of Frankland Avenue in accordance with the plans prepared by the Department of Planning then it is considered necessary that both the WAPC and the City implement landowner exit strategies.

The exit strategy through the WAPC is normally once the land is reserved through the MRS. This would take 2-3 years to effect and be reliant on the willingness and capacity of the WAPC. It may also consider declaring the area a Planning Control Area which has acquisition provisions under the *Planning and Development Act 2005*. In respect to the City's obligations, Frankland Avenue is included as a cost item in Development Contribution Area's ("DCA's") 9 and 10. However DCA 9 and 10 do not include any provision for the ability for Council to borrow funds to acquire land the subject of the DCA and charge the interest back to the plan as a cost as is the case with DCA 11 Muriel Court or DCA 12 Packham North.

Accordingly under the current circumstances to achieve an early exit strategy the City would either need to:

- (i) purchase the land outright from Municipal funds and participate in the DCA Scheme as would any other landowner and wait till



- there were sufficient funds in the DCA account to meet the liability; or
- (ii) seek approval from the WAPC to amend DCA 9 and 10 to include interest provisions which would take some 18 months to achieve. The funding for Frankland Avenue would also need to be included in the Plan for the District as this project would be competing with other capital works for funding and will affect the timing and ability to deliver those items.

A significant issue in determining the appropriate course of action is how to value some of the environmental and social benefits and determine the extent to which it is essential to protect the whole of Frankland Reserve. This is in stark contrast to the very clear economic costs, exit strategy issues for the affected landowners and the impact on the timing of development in the area. On balance it is considered that Council should not support the proposed realignment of Frankland Avenue opting instead to maintain the status quo in respect to the conservation area and providing certainty to the landowners.

The fact also that so much time has passed since Council's resolution of 16 September 2003 which requested the realignment be investigated means that landowner expectations have shifted significantly. It is completely reasonable that landowners who were originally advised of Council's request to investigate the realignment in 2003 would have seen the passage of many years and assumed that the matter had been looked at but was not considered a priority. To now undertake the investigation over 6 years later creates an extremely difficult situation for affected landowners and Council.

In balancing all these issues, it is recommended that Council resolve not to support the proposed realignment of Frankland Avenue to the west of Frankland Reserve as shown on the plan prepared by the Department of Planning. It is also recommended that Council request the Department of Planning to exclude from the final boundaries of the Bush Forever site for Frankland Reserve:

- (i) The MRS 'Other Regional Roads' reservation of Frankland Avenue/Hammond Road, Wattleup which dissects through the western portion of Frankland Reserve.
- (ii) The portion of Frankland Reserve required for the future 'Primary Regional Roads' reservation of Rowley Road in accordance with MRS Amendment No. 1158/41.
- (iii) An area of at least 4ha in the eastern portion of Frankland Reserve identified for active recreation purposes in Southern Suburbs District Structure Plan (Stage 3).



Strategic Plan/Policy Implications

Infrastructure Development

- To construct and maintain parks and bushland reserves that are convenient and safe for public use, and do not compromise environmental management.

Lifestyle and Aspiration Achievement

- To identify community needs, aspirations, expectations and priorities for services that are required to meet the changing demographics of the district.

Natural Environmental Management

- To conserve, preserve and where required remediate the quality, extent and uniqueness of the natural environment that exists within the district.

Budget/Financial Implications

If the proposal proceeds and the DCA is amended to include funding of land acquisition, this project will need to be included in the Plan for the District and will have an impact on the borrowing capacity of the City for other capital works.

Legal Implications

N/A

Community Consultation

Directly affected landowners were consulted. If this matter proceeds then there will be further public consultation through the MRS amendment process.

Attachment(s)

1. Plan 2 - Comparison of current and proposed road alignments
2. Plan 1 - Detailed design prepared by Department of Planning
3. Table 1 - Comparison of land allocation to Frankland Avenue, Rowley Road and Parks and Recreation
4. Summary of submissions
5. Copies of submissions

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 11 February 2010 Council Meeting.



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

Nil.

14.3 (MINUTE NO 4154) (OCM 11/02/2010) - DEDICATION OF LAND AS ROAD RESERVE PURSUANT TO SECTION 56 OF LAND ADMINISTRATION ACT 1997 - PORTION OF LOT 3004 PLAN 44630 (RESERVE 48878) SPEARWOOD AVENUE, BIBRA LAKE (450007, 6005342) (K SIM) (ATTACH)

RECOMMENDATION

That Council:

- (1) request the Minister for Lands to dedicate portion of Lot 3004 on Plan 44630 (Reserve 48878) Spearwood Avenue, Bibra Lake as road reserve pursuant to Section 56 of the *Land Administration Act 1997*; and
- (2) indemnify the Minister for Lands against reasonable costs incurred in considering and granting this request.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

The land to be dedicated is a section approximately 50m wide across Reserve 48878 being Lot 3004 on Plan 44630. Reserve 48878 is a railway reserve under the control of the Public Transport Authority ("PTA"). The reserve is no longer used for railway purpose while the section to be dedicated will form part of re-aligned Spearwood Avenue.(Barrington Road to Sudlow Road), Bibra Lake.

Submission

PTA have responded favourably to a request from the City of Cockburn ("City") to give access to the land to facilitate the construction of Spearwood Avenue, Barrington to Sudlow Road, Bibra Lake.



Report

The section of land to be dedicated is shown on the Metropolitan Region Scheme as an 'Other Regional Roads' reservation and forms part of the land required for the construction of Spearwood Avenue, from Barrington to Sudlow Road, Bibra Lake. Construction of this road has been budgeted for with commencement anticipated mid 2010. The PTA has given a written consent to the dedication subject to the existing section of road reserve being closed and included in Reserve 48878. Action to close the existing section of road reserve adjoining the railway reserve has been initiated and will be presented to a future Council meeting.

As this is consistent with the ultimate planned function for Spearwood Avenue, it is recommended that Council facilitate the road widening by requesting the Minister for Lands to dedicate the required portion of land as road reserve. The procedure for dedication is set out in Section 56 of the *Land Administration Act 1997*, with Section 56(4) specifically requiring the local government to indemnify the Minister in respect to all costs and expenses reasonably incurred by the Minister in considering and granting the request. This forms the essence of the officer recommendation.

Strategic Plan/Policy Implications

Demographic Planning

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

Budget/Financial Implications

The dedication is pursuant to Section 56 of the *Land Administration Act 1997*, which requires the City to indemnify the Minister in respect to all costs and expenses, incurred considering and granting the request. These cannot be quantified at this time, but are expected to be minor.

Legal Implications

Land Administration Act 1997

Community Consultation

N/A



Attachment(s)

Location Plan

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

14.4 (MINUTE NO 4155) (OCM 11/02/2010) - STRUCTURE PLAN ADOPTION - LOT 74 HOWE STREET BEELIAR ; LF AND MH BULL (9687) (A BLOOD) (ATTACH)

RECOMMENDATION

That Council:

- (1) adopts the Schedule of Submission;
- (2) adopts the Structure Plan for Lot 74 Howe Street, Beeliar; and
- (3) advise the Western Australian Planning Commission, the current landowners and those who made a submission accordingly.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

Council at its meeting held on 8 December 2005 resolved to support the subdivision of the subject land into seven residential lots. The Western Australian Planning Commission ("WAPC") approved the plan of subdivision on 15 June 2006.

Submission

Nil.



Report

The subject land is zoned 'Development' and is located within Development Area 4 Yangebup which requires the adoption of a Structure Plan to guide subdivision and development. Subdivision of the subject land is nearing completion in accordance with the 2006 subdivision approval issued by the WAPC, and it is necessary to adopt a Structure Plan for the subject land. This will provide the appropriate zoning basis and land use controls pursuant to City of Cockburn Town Planning Scheme No. 3 ("Scheme").

While the City promotes Structure Plans for larger and more logical precinct areas, the fact that this proposal has already received subdivision approval and that the prevailing road network provides a logical basis to the subdivision, means that a selective Structure Plan is satisfactory. However, this approach will not be applied elsewhere within the surrounding precinct, as no further subdivision approvals have been issued for land.

The Structure Plan (which is based on the approved subdivision application) provides for six single residential lots (coded R20) and one grouped dwelling lot coded R25. Construction of the subdivision will include all the appropriate servicing and road construction/upgrading requirements as is normally appropriate. Other than that it is a very simple matter.

The Structure Plan for the land (Plan 1 in the Agenda attachments) was advertised for public comment between 15 October and 11 November 2009. This included a notice in the Cockburn Gazette, letters to current landowners, adjoining landowners and State Government agencies. A letter was also sent to the agent selling the lots requesting that they advise prospective purchasers.

At the close of advertising 12 submissions had been received, all from State Government agencies and servicing authorities. The submissions provided advice and raised no objections to the structure plan. The submissions are set out in the Schedule of Submissions in the Agenda attachments.

Having regard to the submissions, it is recommended that Council approve the Structure Plan for Lot 74 Howe Street, Beelihar and advise the WAPC accordingly.

Strategic Plan/Policy Implications

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.



- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Budget/Financial Implications

The subdivision approval requires a contribution to DCA 4 Yangebup West and cash in lieu of public open space.

Legal Implications

Nil.

Community Consultation

Public consultation was undertaken between 15 October and 11 November 2009.

Attachment(s)

1. Structure Plan
2. Schedule of Submissions

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 11 February 2010 Council Meeting.

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

Nil.

- 14.5 **(MINUTE NO 4156) (OCM 11/02/2010) - FINAL CONSIDERATION OF AMENDMENT NO. 29 TO CITY OF COCKBURN TOWN PLANNING SCHEME NO. 3 - REZONING LOT 196 BERRIGAN DRIVE, JANDAKOT FROM LOCAL CENTRE (RESTRICTED USE 6) TO RESIDENTIAL R40 - OWNER: M FATHI AND M FATHI ELZADI, N AND S TAFTI - APPLICANT: TUSCOM SUBDIVISION CONSULTANTS (93029) (M CARBONE) (ATTACH)**

RECOMMENDATION

That Council:

- (1) adopt the Schedule of Submission;
- (2) not proceed with Scheme Amendment No. 29 as the proposal does not comply with State Planning Policy No. 5.3 (*Jandakot Airport Vicinity*) as the subject land is within the Core Area (area defined by the 20 ANEF noise contour) whereby the Policy does



not allow rezoning which will permit residential dwellings, or an increase in density within this area; and

- (3) advise the proponent, people who made submissions and the Western Australian Planning Commission of Council's decision

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

Council at its meeting held on 13 October 2005 resolved to initiate Amendment No. 29 to City of Cockburn Town Planning Scheme No. 3 ("Scheme") for the purposes of advertising. The amendment proposed to rezone Lot 196 Berrigan Drive, Jandakot ("subject land") from 'Local Centre - Restricted Use 6' to 'Residential R40'.

The amendment was put on hold at the request of the proponent in 2007. The proponent has recently advised that they now do not wish to proceed with the amendment. This provides Council with the requirement to finalise the amendment, with the view to cancelling the amendment at the proponent's request.

Council must also be aware of State Planning Policy No. 5.3 (*Jandakot Airport Vicinity*) ("SPP5.3") which was introduced subsequent to Amendment No. 29 being initiated. This provides policy requirements which do not support the amendment proposal. This adds further impetus to the recommendation that Council not proceed with the amendment.

Submission

Tuscom Subdivision Consultants on behalf of the landowner submitted a Scheme amendment proposal to rezone Lot 196 Berrigan Drive, Jandakot from 'Local Centre - Restricted Use 6' to 'Residential R40'.

Report

The Scheme amendment was referred to the Environmental Protection Authority ("EPA") in accordance with Section 7 of the *Environmental Protection Act 1986*. The EPA advised that the overall environmental impact of the amendment would not be severe enough to warrant formal assessment under the *Environmental Protection Act 1986*. The



amendment was subsequently advertised seeking public comment in accordance with the *Town Planning Regulations 1967* for 42 days.

The Scheme amendment attracted five submissions, one from an adjoining landowner objecting to the proposal and four from State Government agencies/service authorities providing advice/comments. It is considered that the submissions do not require explanation over and above that outlined in the Schedule of Submissions contained within the Agenda attachments.

The purpose of the amendment was to rezone the subject land from 'Local Centre - Restricted Use 6' to 'Residential R40'. The current zoning limits the land uses on the subject land to Office, Restaurant, Fast Food Outlet, Veterinary Consulting Rooms, Reception Centre, Health Studio, Medical Centre, Shop and Showroom. The rezoning was therefore to permit for residential development to occur on the subject land.

Since the initiation of the Scheme amendment in October 2005, the Western Australian Planning Commission ("WAPC") approved State Planning Policy No. 5.3 (*Jandakot Airport Vicinity*). SPP5.3 applies to land in the vicinity of Jandakot Airport, which is, or may in the future, be affected by aircraft noise associated with the movement of aircraft. The stated objectives of SPP5.3 are to:

- (i) Protect Jandakot Airport from encroachment by incompatible land use and development, so as to provide for its ongoing, safe, and efficient operation.
- (ii) Minimise the impact of airport operations on existing and future communities with particular reference to aircraft noise.

Under SPP5.3 the subject land is located within the Core Area which is defined by the 20 ANEF noise contour, being affected by significant levels of aircraft noise exposure. SPP5.3 states that in the Core Area no rezoning of land is to take place which would permit residential dwellings to be developed. There should also be no changes to local planning schemes which would enable any increase in the density of housing. This includes increases in density coding as well as reductions in the minimum lot size.

The current zoning of the subject land does not allow for residential dwellings, whereas the proposed 'Residential R40' rezoning would permit for up to eight dwellings. This is directly contrary to SPP5.3 and therefore makes the amendment likely to not gain final approval from the WAPC and Hon Minister for Planning.

In light of this conflict with SPP5.3 and the fact that the proponent no longer wishes to proceed with the amendment, it is recommended that Council resolve not to proceed with the amendment, and advise the WAPC accordingly.



Strategic Plan/Policy Implications

Demographic Planning

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

Employment and Economic Development

- To plan and promote economic development that encourages business opportunities within the City.

Budget/Financial Implications

N/A

Legal Implications

Planning and Development Act 2005
City of Cockburn Town Planning Scheme No. 3
Town Planning Regulations 1967

Community Consultation

Following receipt of advice from the EPA, the amendment was advertised for a 42 day period. This concluded on 2 October 2007. The Scheme amendment attracted five submissions, one from an adjoining landowner objecting to the proposal and four from State Government agencies/service authorities providing advice/comments.

Attachment(s)

1. Location plan
2. Existing zoning plan
3. Proposed zoning plan
4. Schedule of submissions

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 11 February 2010 Council Meeting.

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

Nil.



14.6 (MINUTE NO 4157) (OCM 11/02/2010) - RESPONSE TO DRAFT INDUSTRIAL LAND STRATEGY 2009 PERTH AND PEEL - OWNER: VARIOUS - APPLICANT: N/A (SM/M010) (R DONG) (ATTACH)

RECOMMENDATION

That Council forward a submission regarding the Draft Industrial Strategy 2009 to the Department of Planning, advising that the City supports the Strategy subject to the following points being considered in the Strategy:

- (1) an additional action be included in the Recommendations and Actions Table under the heading of "*Planning*", which states as follows:
 - Review the Model Scheme Text to ensure clear definition for general and light industries and ensure the definition is adopted consistently across all local governments in the preparation and reviews of their local town planning schemes.
- (2) an additional action be included in the Recommendations and Actions Table under the heading of "*Planning*", which states as follows:
 - Review relevant State Planning Policies to enable the Western Australian Planning Commission to impose conditions for the provision of high speed broadband in industrial land subdivisions.
- (3) an additional action be included in the Recommendations and Actions Table under the heading of "*Land Supply and Delivery*", which states as follows:
 - Ensure the integration between industrial land use and transport planning; and coordinate the timely provision of public transport services to key industrial sites and locations.
- (4) in respect of industrial land delivery models, consideration should be given to employing a model that is entirely led by LandCorp or a redevelopment authority to deliver regionally significant priority industrial land projects; and
- (5) with respect to attachment 3 (Figure 5 - Current Industrial Land Development Program) of the Strategy, the Department of Planning should consult with the City of Cockburn regarding more updated figures on available industrial land for the City's key industrial sites.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

Industrial Land Strategy 2009 Perth and Peel ("Strategy") has been prepared by the State Government as a response to a recognised shortfall in industrial land supply. The Strategy (Attachment 1) was prepared collaboratively between the Department of Planning ("DoP"), LandCorp, the Department of State Development and the Department of Environment and Conservation, and its preparation was overseen by a taskforce.

The purpose of the Strategy is to:

- Identify the areas, type and locations of general and light industrial land required over the next 20 years.
- Review the industrial land development program and identify possible extension opportunities.
- Identify and evaluate the suitability of locations for new general and light industrial estates.
- Develop a strategy to facilitate the delivery of general and light industrial land and assist in the restoration of the Government's long-term general and light industrial land bank.

The DoP is currently seeking public comment on the Strategy. Submissions will be considered by the DoP before the final document is released. The closing date for submissions is 12 March 2010. This report discusses the Strategy and makes recommendation for Council's submission regarding the Strategy.

Submission

N/A

Report

Overview

As mentioned previously, Industrial Land Strategy 2009 has been prepared mainly to address the issue of a recognised shortfall in industrial land supply. The aim of the Strategy is to ensure that



adequate forward planning occurs for industrial land in both Perth and Peel regions over the next 20 years. Some of the key issues facing industrial land development were identified and summarised in the Strategy into the following five categories:

1. Importance of Industrial Land

The importance of industrial land for Perth and Peel regional economic growth overall is neither adequately recognised nor understood.

2. Current Supply Shortfall

- There is a marked shortfall of industrial land in both the Perth and Peel Regions, due to insufficient forward planning in identifying future industrial land.
- Existing identified future industrial land is heavily constrained.
- There is a need for more development-ready land to be available to the market for general and light industrial uses.

3. Governance Structure

- There is a need to improve coordination between infrastructure and industrial land provision in land use planning.
- There is a need for a stronger focus on industrial land use planning as part of the wider planning and economic framework for the Perth and Peel regions.
- There is an opportunity to improve the coordination of government agencies responsibility for the strategic policy and planning and the delivery of industrial land.
- There is an opportunity to strengthen current governance structures for planning and delivery of industrial land.

4. Monitoring Mechanisms

- The current monitoring of industrial land supply, demand and utilisation can be improved to better respond to the immediate needs of the industrial property market.
- There is a need for improved sharing of market and commercial intelligence that can be factored into current industrial land use planning and strategies to optimise planning outcomes.



5. Policy and Regulation Deficiencies

- Stronger planning policies and controls for industrial land use planning and strategies are needed to optimise planning outcomes.
- Industrial land use planning at a local government level needs to consider current operational advancements and innovations into planning regulations.
- There is a need for improved consistency across local government in how industrial land is defined and subsequently treated.

6. Competing Uses

- Existing industrial estates need to be protected from the increasing encroachment of non-industrial uses in industrial zoned areas and residential encroachment.
- Existing industrial land, particularly in the inner and middle areas, could be more efficiently utilised.
- There is a need to ensure industrial land development meets state needs as efficiently as possible.

The Strategy has examined each of the above issues and developed the following six recommendations (along with appropriate actions, responsible stakeholders and indicative timeframes; Attachment 2 refers):

- *Recommendation 1: Ensure there is suitable governance and coordination of the planning and delivery of industrial land.*
- *Recommendation 2: Develop and maintain a program to forecast and monitor the demand and supply of industrial land.*
- *Recommendation 3: Maintain a 20-year landbank to ensure a regular industrial land supply.*
- *Recommendation 4: Ensure the timely delivery of development-ready land.*
- *Recommendation 5: Maintain a significant Government role in industrial land supply to facilitate greater participation by the private sector.*



- Recommendation 6: *Ensure that industrial sites, particularly those considered having state and regional significance, and located within the inner and middle sectors, are preserved.*

The full report can be downloaded via web link <http://www.planning.wa.gov.au/Plans+and+policies/Public+comment/2044.aspx>

City's Comments on the Strategy

The City principally supports the objectives of the Strategy and the recommendations and shares the view on a number of the issues identified in the Strategy. However, there are some issues which need further attention, and more specific actions should be identified to address the issues. These issues (together with the City's corresponding recommendations) are discussed as follows:

1. The Strategy states: *"In the Perth metropolitan and Peel regions, there is significant variance in the manner in which general and light industries are defined and managed. Industry classifications also include special, cottage, service, noxious and hazardous land uses. Many local governments also include research and development, showroom, warehouse and mixed business development in the definition of industry. These uses are traditionally located in commercial areas, but increasingly they are occupying industrial land. This lack of consistency in planning for and the protection of industrial land has resulted in gradual erosion of some key industrial sites because of the encroachment of non-industrial land uses such as retail and commercial."*

The Strategy further states: *"Without unanimity between local governments and at state government level on the definition of industry, it has become increasingly difficult to manage and regulate the development and preservation of industrial land to optimise its use."*

The City shares the above concern. However, it is noted that the Strategy has not identified appropriate actions to address this issue. The issue of variance in the manner in which general and light industries are defined and managed in local town planning schemes, can be addressed through reviewing the Model Scheme Text ("MST") to ensure clear and consistent definition for general and light industries in the MST. Furthermore, the Western Australian Planning Commission ("WAPC") should ensure the definition is adopted consistently across all local governments in the preparation and reviews of their local town planning schemes.

It is therefore recommended that an additional action be included in the Recommendations and Actions Table (Attachment 2) under the heading of *"Planning"*, which states as follows:



- Review the Model Scheme Text to ensure clear definition for general and light industries and ensure the definition is adopted consistently across all local governments in the preparation and reviews of their local town planning schemes.
2. The Strategy identifies a number of issues in industrial land supply. “*Lack of available service infrastructure*” is one of the issues identified in Section 2.1.5 of the Strategy, which refers to electricity supply, water supply, access provision and inadequate public transport access. It has not however, included communication infrastructure such as the provision of high speed internet access which is essential to most businesses nowadays.

The issue of high speed internet access has become apparent recently in Cockburn Commercial Park, a newly subdivided industrial land supply area in Bibra Lake, bounded by North Lake, Phoenix, Sudlow Roads and Spearwood Avenue. The City has been approached by a number of business/property owners in Cockburn Commercial Park, requesting the City’s assistance in obtaining broadband internet access, after direct approaches to Telstra have proved fruitless.

Under the State Planning Policies, the WAPC can impose conditions to ensure service provisions on water, sewage, drains, roads and power. However, it does not have the legislative authority to impose a condition that falls under the Federal Government jurisdiction and its Act, in this case the Telecommunications Act. As such it can only suggest a minimum standard. To date this standard has been the implementation of voice communications and data of up to 4800 bits per second (the old modem), which does not support high speed internet access.

There is a need to develop or amend the relevant State Planning Policies which provide the legitimate power for the WAPC to impose conditions to ensure the provision of high speed broadband in industrial land subdivisions.

For the above reasons, it is therefore recommended that a further action be included in the Recommendations and Actions Table (Attachment 2) under the heading of “*Planning*”, which states as follows:

- Review relevant State Planning Policies to enable the Western Australian Planning Commission to impose conditions for the provision of high speed broadband in industrial land subdivisions.



3. Section 2.1.5 of the Strategy also identifies the following issue regarding public transport access to industrial areas:

“Inadequate public transport access is of particular concern to firms based in the more inaccessible areas of Perth and also the Peel Region. This is a problem for them in relation to moving employees to and from work, and will only serve to increase the pressure on road traffic”.

The City shares the above concern as this issue exists in a number of the City’s industrial areas, particularly in Bibra Lake industrial area where public transport service is severely inadequate. This promotes the use of the private car and consequently increases more pressure on road traffic.

It is therefore important to ensure suitable public transport provision is seriously contemplated at the beginning of the planning process in significant new industrial sites. Accordingly, it is recommended that an additional action be included in the Recommendations and Actions Table (Attachment 2) under the heading of “*Land Supply and Delivery*”, which states as follows:

- Ensure the integration between industrial land use and transport planning; and coordinate the timely provision of public transport services to key industrial sites and locations.

4. Section 4.3.2 of the Strategy discusses the models for industrial land delivery. Six models were examined:

Model 1. Old Wangara (local government authority led)

Model 2. Malaga (Private - large land owner)

Model 3. Forrestdale Business Park (Redevelopment authority with many private landowners)

Model 4. Latitude 32 (redevelopment authority with many private landowners and limited Crown land)

Model 5. Neerabup (government led with private owners)

Model 6. Perth Airport / Jandakot City (private leaseholders under Commonwealth Act).

The Strategy suggests that “the preferred and most appropriate model for the delivery of future industrial land was a hybrid of delivery, Model 5 (Neerabup)”. This is a facilitated delivery model whereby the key player, in varying capacities, is the State Government development arm, LandCorp.



The City believes that whilst this hybrid model has proved effective in some areas such as Neerabup, there are also some problems existing in this type of models (such as Models 4 and 5), particularly in terms of reaching consensus between LandCorp and the private owners regarding subdivision design, earthwork, built form control, infrastructure provisions, marketing strategies and so on. This affects the optimal land delivery outcome in many perspectives.

For the above reasons, the City believes that consideration should be given to employing a model that is entirely led by LandCorp or a redevelopment authority to deliver regionally significant priority industrial land projects. The State government may need to acquire certain land in some cases in order to carry out this type of industrial land supply projects. However, this model would be more efficient and effective in terms of optimising planning decisions, and hence delivering better outcomes in industrial land supply.

5. Figure 5 of the Strategy, namely, *Current Industrial Land Development Program* (Attachment 3 refers), shows available land supply in July 2009, July 2009-2015, and July 2015-2025. It is noted that the figures presented for Jandakot Airport, and Australian Marine Complex appear to be incorrect or outdated. It is therefore recommended that the DoP should consult with the City in order to obtain the updated figures.

Conclusion

The Industrial Land Strategy 2009 identifies a range of issues which have led to a shortfall in industrial land supply in the Perth and Peel regions. This report discusses issues that are significant from the City's perspective, but have not been adequately addressed by the Strategy. Whilst the City supports the principles and objectives of the Strategy, it is essential that these issues are addressed adequately in the Strategy. It is therefore recommended that Council adopt the officer's recommendation as a basis for the City's submission, and forward it the DoP for consideration.

Strategic Plan/Policy Implications

Employment and Economic Development

- To plan and promote economic development that encourages business opportunities within the City.
- To pursue high value employment opportunities for our residents.



Transport Optimisation

- To achieve provision of an effective public transport system that provides maximum amenity, connectivity and integration for the community.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

The Department of Planning is currently seeking public comment on this Industrial Land Strategy 2009. The closing date for submissions is 12 March 2010.

Attachment(s)

1. Industrial Land Strategy 2009: Perth and Peel – Executive Summary (Full report can be downloaded via web link <http://www.planning.wa.gov.au/Plans+and+policies/Public+comment/2044.aspx>)
2. Table 1 - Industrial Land Strategy - Key Recommendations and Actions
3. Figure 5:- Current Industrial Land Development Program

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

14.7 (MINUTE NO 4158) (OCM 11/02/2010) - PROPOSED SCHEME AMENDMENT NO. 81 - INTRODUCING DEVELOPER CONTRIBUTION AREA NO. 13 RELATING TO COMMUNITY INFRASTRUCTURE (93081) (A TROSIC) (ATTACH)

RECOMMENDATION

That Council:

- (1) in pursuance of Section 75 of the *Planning and Development Act 2005* ("Act"), initiates Amendment No. 81 to City of Cockburn Town Planning Scheme No. 3 for the purposes of:



1. Amending Clause 1.4.1(b) of the Scheme Text by deleting the number 25 and inserting 26 in its place.
2. Amending the Scheme Map by including new Sheet 26 - DCA 13 Community Infrastructure.
3. Amend Schedule 12 of the Scheme Text by inserting the following provisions for Development Contribution Area 13 - Community infrastructure.

| Ref No | DCA 13 - Community Infrastructure |
|--|--|
| Area | As shown on Sheet 26 of the Scheme Map. |
| Relationship to other planning instruments | The Development Contribution Plan generally conforms to the Plan for the District, Bibra Lake Landscape, Recreation and Environmental Management Plan, Bicycle Network and Footpath Plan, the Sport and Recreation Plan and the Review of COC Library Services which have been adopted by Council. |
| Infrastructure and administrative items to be funded | <p>Regional Coogee Surf Club Wetlands Education Centre/Native Ark Cockburn Central Recreation and Aquatic Centre Cockburn Central Community Facilities CES Headquarters Visco Park Bowling and Recreation Club Coogee Golf Complex Bibra Lake Management Plan Proposals Dixon Reserve/Walley Hagen Facility Development Success Recreation Facility - Hammond Road Atwell Oval</p> <p>Sub Regional - East Cockburn Central Library and Community Facilities Cockburn Central Playing Fields Anning Park Tennis Cockburn Central Heritage Park Bicycle Network - East</p> <p>Sub Regional - West North Coogee Foreshore Management Plan Proposals Phoenix Seniors and Life Centre Beale Park Sports Facilities Western Suburbs Skate Park Bicycle Network - West</p> <p>Local Lakelands Reserve</p> |



| | |
|--------------------------------------|--|
| | <p>Coolbellup Community Centre Southwell Community Centre Hammond Park Recreation Facility Frankland Reserve Recreation and Community Facility Munster Recreation Facility</p> <p>Administrative costs including - Costs to prepare and administer the Contribution Plan during the period of operation (including legal expenses, valuation fees, cost of design and costs estimates, proportion of staff salaries, computer software or hardware required for the purpose of administering the plan).</p> <p>Cost to prepare and review estimates including the costs for appropriately qualified independent persons.</p> <p>Costs to prepare and update the Community Infrastructure Cost Contribution Schedule.</p> |
| Method for calculating contributions | <p>The City's Plan for the District identifies the needs that impact on the Development Contribution Plan. The contributions outlined in this plan have been derived based on the need for the facilities generated by the additional development in the Development Contribution Plan. This calculation excludes the demand for a facility that is generated by the current population in existing dwellings.</p> <p>Notwithstanding Clause 6.3.4(b)(iv), contributions shall be calculated on the basis of the maximum number of dwellings that can be developed on a lot or lots under the applicable zoning and R Coding. Existing dwellings on a lot or lots to be subdivided or developed will be exempt from the contribution. Land required for public roads, public open space, drainage and other uses not including residential development will not be assessable.</p> |
| Period of operation | Until 30 June 2031. However the DCP may also be extended for further periods with or without modification by subsequent Scheme Amendments. |
| Priority and timing | In accordance with the Plan for the District. |
| Review process | <p>The plan will be reviewed when considered appropriate, having regard to the rate of subsequent development in the catchment areas since the last review and the degree of development potential still existing.</p> <p>The estimated infrastructure costs contained in the Community Infrastructure Cost Contribution</p> |

| | |
|--------------------------------|---|
| | Schedule will be reviewed at least annually to reflect changes in funding and revenue sources and indexed based on the Building Cost Index or other appropriate index as approved by an appropriately qualified independent person. |
| Participants and contributions | In accordance with Sheet 26 of the Scheme Map and the Community Infrastructure Cost Contribution Schedule adopted by the local government for DCA 13. |

- (2) That as the amendment is in the opinion of Council consistent with Regulation 25(2) of the *Town Planning Regulations 1967* ("Regulations"), and upon receipt of the necessary amendment documentation, the amendment be referred to the Environmental Protection Authority ("EPA") as required by Section 81 of the Act, and on receipt of a response from the EPA indicating that the amendment is not subject to formal environmental assessment, be advertised for a period of 60 days in accordance with the Regulations. In the event that the EPA determines that the amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the amendment;
- (3) That the amendment documentation be prepared in accordance with the standard format prescribed by the Regulations; and
- (4) That upon initiating Scheme Amendment No. 81, Council staff ensure appropriate notifications are given to all landowners and proponents of qualifying subdivision and/or development within the City of Cockburn advising of their financial liability in respect of community infrastructure contributions once final approval of the Scheme amendment by the Hon. Minister for Planning has occurred".

COUNCIL DECISION
 MOVED Clr S Limbert SECONDED Clr H Attrill that the recommendation be adopted.
CARRIED 8/2

Background

N/A



Submission

N/A

Report

On 20 November 2009, the Western Australian Planning Commission ("WAPC") gazetted State Planning Policy No. 3.6 ("SPP3.6") and Planning Bulletin 100. These set out new principles underlying contributions from developers for infrastructure including community facilities, and the form, content, and process for the preparation of development contribution plans ("DCP's").

Previous WAPC Planning Bulletin 18 set out guidelines for a DCP and generally limited contribution from developers to service based infrastructure (roads, drainage, servicing etc). The new SPP3.6 now enables local governments to include community infrastructure which is the land, structures and facilities which help communities and neighbourhoods function effectively. This includes facilities such as sporting and recreational facilities, community centres, child care and after care centres, libraries and cultural facilities.

SPP3.6 provides that a contribution can be sought from developers for new items of infrastructure, the upgrade in standard of an existing item of infrastructure, an extension to existing infrastructure and the total replacement of infrastructure once it has reached the end of its economic life. It also includes other costs associated with the preparation, implementation and administration of a DCP.

The City of Cockburn ("City") already has seven DCP's which levy developers primarily for the provision of servicing infrastructure including regional roads and drainage. More recently Council has adopted two DCP's which also include public open space and a range of other costs relating to the development of the area. The specific requirements for each DCP are set out in Schedule 12 of City of Cockburn Town Planning Scheme No. 3 ("Scheme") while Part 6.3 of the Scheme sets out the principles and administrative requirements.

In accordance with the recently approved SPP3.6, it is proposed to implement a new DCP for community infrastructure (DCP 13). This will apply to all land within the City to be subdivided and or developed for residential, rural residential or resource zone purposes and will be in addition to any other DCP requirements applying to an area. It will not apply to lots that have no subdivision or development potential. The area to which DCP 13 applies is shown on Plan 1 in the Agenda attachments.

The items of infrastructure to be included in the DCP have been previously identified in either the Plan for the District 2008 - 2018, Bibra Lake Landscape, Recreation and Environmental Management Plan,



the Bicycle Network and Footpath Plan, the Sport and Recreation Plan or the Review of COC Library Services. These documents establish the need for the proposed DCP infrastructure items and the link to the future development within the City .The specific items are as follows:

Regional Facilities - All suburbs

Coogee Surf Club
Wetlands Education Centre/Native Ark
Cockburn Central Recreation and Aquatic Centre
Cockburn Central Community Facilities
CES Headquarters
Visco Park Bowling and Recreation Club
Coogee Golf Complex
Bibra Lake Management Plan Proposals
Dixon Reserve/Walley Hagen Facility Development
Success Recreation Facility - Hammond Road
Atwell Oval

Sub Regional - Eastern Suburbs

Cockburn Central Library and Community Facilities
Cockburn Central Playing Fields
Anning Park Tennis
Cockburn Central Heritage Park
Bicycle Network - East

Sub Regional - Western Suburbs

North Coogee Foreshore Management Plan Proposals
Phoenix Seniors and Life Centre
Beale Park Sports Facilities
Western Suburbs Skate Park
Bicycle Network - West

Local - Specific Suburbs

Lakelands Reserve
Coolbellup Community Centre
Southwell Community Centre
Hammond Park Recreation Facility
Frankland Reserve Recreation and Community Facility
Munster Recreation Facility

One of the key principles of SPP3.6 is that the beneficiary pays which means developers will only fund infrastructure which has been identified as necessary to serve a development area or suburb and that they will only contribute to that proportion of the cost represented by the new development. For example, if 40% of the total estimated number of dwellings in a particular area are yet to be developed then only 40% of the total cost of the infrastructure item will be included in the DCP and paid for by developers. The balance 60% attributable to existing development must be met out of Council funds or loans. If the City was successful in accessing grant funding for a DCP item then the



total value of the project would be reduced according to the size of the grant, with this resulting in a reduced DCA contribution for that item.

It is proposed to apply the DCP on the basis of the number of dwellings given that the existing number of dwelling is known and the number of future dwellings can be estimated with a reasonable degree of accuracy. To establish the basis of the split between existing and future dwellings, the City appointed specialist demographic firm id Consulting to assess the future growth of the City on a suburb or group of suburbs basis. The forecasts to 2031 have been completed and are available on the City's website. These form the basis of the allocation between existing and future development and also between various suburbs.

The following extract from the Community Infrastructure Contribution Schedule shows infrastructure items, the estimated cost and the split between existing and future:

| Description | Estimated Total Cost | Du's Existing | Du's Future | DCP % Contribution |
|--|----------------------|---------------|-------------|--------------------|
| | \$m | % | % | \$m |
| Regional | | | | |
| Coogee Surf Club | 7,000,000 | 62.710 | 37.290 | 2,610,300 |
| Wetlands Ed/Native Ark | 2,500,000 | 62.710 | 37.290 | 932,250 |
| Cockburn Central Recn and Aquatic Centre | 32,000,000 | 62.710 | 37.290 | 11,932,800 |
| Cockburn Central Community Facility | 11,000,000 | 62.710 | 37.290 | 4,101,900 |
| CES Headquarters | 1,800,000 | 62.710 | 37.290 | 671,220 |
| Visco Park Bowling and Recreation Club | 6,950,000 | 62.710 | 37.290 | 2,591,655 |
| Coogee Golf Complex | 11,960,000 | 62.710 | 37.290 | 4,459,884 |
| Bibra Lake Management Plan | 13,190,000 | 62.710 | 37.290 | 4,918,551 |
| Dixon Reserve/Walley Hagen | 5,000,000 | 62.710 | 37.290 | 1,864,500 |
| Success Recreation Facility (Hammond Rd) | 3,680,000 | 62.710 | 37.290 | 1,372,272 |
| Atwell Oval | 1,000,000 | 62.710 | 37.290 | 372,900 |
| | | | | |
| Sub Regional | | | | |
| Cockburn Central Library and Community | 15,000,000 | 55.825 | 44.175 | 6,626,250 |
| Cockburn Central Playing Fields | 5,000,000 | 55.825 | 44.175 | 2,208,750 |
| Anning Park - Tennis | 3,000,000 | 55.825 | 44.175 | 1,325,250 |
| Cockburn Heritage Park | 5,210,000 | 55.825 | 44.175 | 2,301,518 |
| Bicycle Network East | 2,763,084 | 55.825 | 44.175 | 1,220,592 |
| | | | | |
| North Coogee Foreshore Management Plan | 2,400,000 | 68.406 | 31.594 | 758,256 |
| Phoenix Seniors and Life Learning | 16,000,000 | 68.406 | 31.594 | 5,055,040 |
| Beale Park Sports Facilities | 3,000,000 | 68.406 | 31.594 | 947,820 |
| Western Suburbs Skate Park | 350,000 | 68.406 | 31.594 | 110,579 |
| Bicycle Network West | 3,445,762 | 68.406 | 31.594 | 1,088,654 |
| | | | | |
| Local | | | | |
| Lakelands Reserve | 1,700,000 | 43.560 | 56.440 | 959,480 |
| Coolbellup Community Centre | 2,473,214 | 91.478 | 8.522 | 210,767 |

| | | | | |
|--|-------------------|--------------------|---------|-------------------|
| Southwell Community Centre | 500,000 | 84.290 | 15.710 | 78,550 |
| Hammond Park Recreation Facility | 500,000 | 24.733 | 75.267 | 376,335 |
| Frankland Park Recn and Community | 1,450,000 | 24.733 | 75.267 | 1,091,372 |
| Munster Recreation Facility | 950,000 | 61.260 | 38.740 | 368,030 |
| | | | | |
| Administration - yet to be determined | | | 100.000 | |
| | | | | |
| | Total cost | 159,822,060 | | 60,555,475 |

The above table shows the estimated total cost of the community infrastructure proposed to service the City is \$159.8 million of which \$60.5 million is attributable to future development and is therefore proposed to be included in the DCP.

The infrastructure items are broken up into regional, subregional and local to reflect the catchment that the infrastructure items serve and the \$60.5 million is allocated between suburbs based on the estimated number of future dwellings in accordance with a detailed assessment. This results in different levy rates for each suburb. The draft rates based on preliminary cost estimates for the infrastructure are set out in the following table. The administration costs will be determined during the advertising period.

| Suburb | Per dwelling cost |
|---|--------------------------|
| Atwell | 3,136.74 |
| Aubin Grove/Banjup south | 3,136.63 |
| Banjup north | 3,137.78 |
| Beeliar | 2,709.95 |
| Bibra Lake west | 3,427.66 |
| Bibra Lake east | 3,136.86 |
| Coogee/North Coogee | 2,709.94 |
| Coolbellup | 3,426.32 |
| Hamilton Hill | 2,801.42 |
| Hammond Park/Wattleup/Henderson | 3,657.37 |
| Jandakot | 3,137.67 |
| Leeming | 3,141.72 |
| Munster | 3,128.86 |
| North Lake | 2,710.77 |
| South Lake/Cockburn Central | 3,430.03 |
| Spearwood | 2,710.21 |
| Success | 3,277.07 |
| Yangebup | 2,709.86 |
| <i>Note</i> The above costs exclude administration costs etc which are yet to be determined | |

In accordance with the Scheme provisions, it is proposed to impose the DCA contribution at the subdivision stage where subdivision is



proposed. Where no subdivision is proposed, the DCA contribution will be imposed as a condition of development and be payable at the time of issuing a building licence. Where a contribution has been made at the subdivision stage, no further contribution will be required at the development stage. When levied at the subdivision stage, the contribution will be calculated on the maximum number of dwellings possible under the applicable zoning and R code. Where land to be subdivided or developed already has a dwelling or dwellings on it, the existing dwellings will be exempt from the DCA contribution as the contribution is only in respect to new dwellings. Similarly there is no DCP contribution required in respect to an existing vacant lot that only has the potential to be developed for a single dwelling. It is also important to note that the DCP levy does not apply to any landowner who has no subdivision or development potential.

In accordance with SPP3.6, the City will be able to impose a condition on a subdivision or development requiring developers to contribute to DCA 13 once the local government has received consent to advertise the DCP i.e. Amendment No. 81. However, the City will not be able to collect the funds until such time as the Scheme amendment has been gazetted. Once Amendment No. 81 is gazetted, payment of the DCA contribution would be at the time of seeking clearance to a Deposited Plan or Strata Plan in the case of subdivision or at the time of issuing a building licence where there is no prior subdivision. This is consistent with Clause 6.3.5 of the Scheme.

To implement the proposed developer contributions to community infrastructure, it is necessary to amend the Scheme to do the following:

Amend Clause 1.4.1(b) to increase the number of sheets forming the Scheme Map from 25 to 26.

Adopt Sheet 26 of the Scheme Map which shows the boundaries of the new DCP area - DCA 13 and the boundaries of the regional, subregional and local catchment boundaries (see Plan 1 in the Agenda attachments).

Amend Schedule 12 - Development Contribution Plan to include appropriate provisions for DCA 13 - Community Infrastructure. The details of DCA 13 are set out in the recommendations of this Agenda item.

It is proposed to advertise the amendment for 60 days. Advertising will include an advertisement in the local paper, an item in the Cockburn City Update in the Cockburn Gazette and the website and subject to timing, an article in Cockburn Soundings. It is not proposed to send out letters to everyone within the DCP area as this would include people with no subdivision or development potential which would cause confusion and unnecessary angst.

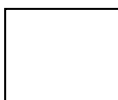


The advertised Scheme amendment document will provide the information included in this report together with plans showing the location of the proposed infrastructure items, the draft Community Infrastructure Cost Contribution Schedule, calculations of existing and future dwellings and the split up between the suburbs for regional, subregional and local facilities, address the subject of need and nexus required by SPP3.6 and a more complete description of the infrastructure works. Links will also be provided to relevant supporting documents.

The Plan for the District that is currently being prepared will provide sufficient detail to satisfy the requirements of the capital expenditure plan which identifies the capital costs of facilities, revenue sources and programs for provision.

Other relevant points in respect to the DCP are as follows:

- The funds collected can only be used for the specific facilities for which they are collected. Accordingly when payment is made it will be split up between the various pieces of infrastructure for that particular suburb and on a proportional basis.
- If additional facilities are planned then this will require an amendment to the Scheme to add it to DCA 13 in Schedule12.
- If a particular piece of infrastructure is subsequently deleted then monies collected will need to be refunded to contribution owners (The new draft Model Scheme Text provisions in SPP3.6 includes this requirement and will be incorporated into the City's Scheme either through a Scheme review or if these provisions become effective through regulation).
- As contributions will be allocated to each piece of infrastructure and over a long period of time, it is not expected that the DCP will have adequate funds to contribute to the infrastructure for many years. Accordingly Council needs to be mindful of this when considering the timing of projects in the Plan for the District and budgets and that the City will have to not only pay the proportion relating to the existing population but also prefund that relating to the DCP percentage.
- The process will be complex and time consuming and will require additional administrative support to ensure that the rules are followed meticulously and stand up to audit scrutiny as required by the Scheme.
- A system will need to be developed to ensure contributions are requested and paid at the appropriate time and payments can be tracked and ensure that payment is only made at either the subdivision or development stage.



It is recommended that Council adopt proposed Amendment No. 81 for the purpose of advertising.

Strategic Plan/Policy Implications

Demographic Planning

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

Infrastructure Development

- To construct and maintain community facilities that meet community needs.

Lifestyle and Aspiration Achievement

- To facilitate and provide an optimum range of community services and events.

Budget/Financial Implications

Changes to the proposed list of infrastructure or the period of operation of the DCP will have a negative impact on the ability of Council to fund Community Infrastructure and deliver future programs.

Administration of the DCP will require additional human resource support.

Legal Implications

Prepared in accordance with WAPC State Planning Policy No. 3.6 Developer Contributions for Infrastructure.

Community Consultation

To be undertaken as part of the Scheme amendment process.

Attachment(s)

Scheme Map Sheet 26

Advice to Proponent(s)/Submissioners

N/A



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

Nil.

14.8 (MINUTE NO 4159) (OCM 11/02/2010) - PROPOSED SCHEME AMENDMENT NO. 78 TO CITY OF COCKBURN TOWN PLANNING SCHEME NO. 3 - MODIFY CLAUSE 5.5 OF THE SCHEME TO ALLOW FOR THE VARIATION OR EXTINGUISHMENT OF OTHER RESTRICTIVE COVENANTS, EASEMENTS AND RIGHTS OF WAYS - OWNER: N/A - APPLICANT: CITY OF COCKBURN (93078) (M CARBONE) (ATTACH)

RECOMMENDATION

That Council:

(1) in pursuance of Section 75 of the *Planning and Development Act 2005* ("Act"), initiate Amendment No. 78 to City of Cockburn Town Planning Scheme No. 3 ("Scheme") for the purposes of:

1. Deleting existing clause 5.5 'Restrictive Covenants' and replacing it with the following new clause:

5.5 'Restrictive Covenants, Easements and Rights of Ways'

5.5.1 Residential Densities

Subject to clause 5.5.2 where a Restrictive Covenant:

(a) relates to a lot in the Residential Zone; and

(b) limits or has the effect of limiting the number of dwellings that may be developed or used on the lot to a number which is less than that which would have been otherwise permissible on that lot by the Scheme, or by the Scheme and the R-Codes,

Then the Council may resolve that the Restrictive Covenant be extinguished or varied to remove or reduce that inconsistency.

5.5.2 Where a restrictive covenant has been extinguished or varied under clause 5.5.1 the local government is not to grant planning approval to the development of the land which would, but for the operation of clause 5.5.1, have been prohibited unless the application has been dealt



with as an 'A' use and has complied with all of the advertising requirements of clause 9.4.

5.5.3 Other Covenants, Easements or Rights of Ways

Without limiting the generality of the preceding clause 5.5.1, the Council may resolve to vary or extinguish a Restrictive Covenant or covenant or easement or right of way where in the Council's opinion:

- (a) extinguishment or variation of the Restrictive Covenant or covenant or easement or right of way will not adversely affect the orderly and proper planning of the land in the locality and in particular the land benefited and the land burdened by Restrictive Covenant or covenant or easement or right of way; or
- (b) the retention of the Restrictive Covenant or covenant or easement or right of way may impede the orderly and proper planning of land in the locality and in particular the land benefited and the land burdened by the Restrictive Covenant or covenant or easement or right of way; and
- (c) the Restrictive Covenant or covenant or easement or right of way is no longer required to protect the amenity of the locality or the land benefited by the Restrictive Covenant or covenant or easement or right of way.

5.5.4 If the Council passes a resolution to vary or extinguish a Restrictive Covenant or covenant or easement or right of way notice of the proposal to extinguish or vary must be given:

- (a) by a sign to the City's satisfaction being erected on the front boundary of the lot or lots burdened by the Restrictive Covenant or easement or right of way, which is visible and readable from the street containing details of the proposed extinguishment or variation of the Restrictive Covenant and the period of time during which submissions may be given. The sign is to remain on site for the duration of the period during which the Council will receive submission; and

- (b) in writing, to the owners of all lots adjoining the land burdened by the Restrictive Covenant or easement or right of way, and to such other persons as the City considers may be affected by the proposed extinguishment or variation.

5.5.5 If the Council upon considering all submissions made to it and the merits of the proposed extinguishment or variation is satisfied that the Restrictive Covenant or easement or right of way should be extinguished or varied as proposed, the Council shall further resolve that particulars of the extinguishment or variation be included in Schedule 13 - Schedule of Extinguished or Varied Covenants. The extinguishment or variation shall have effect from the date of publication in the Government Gazette of the Minister's final approval of the Scheme Amendment inserting the details in Schedule 13.

5.5.6 The Council after considering any submissions made in regard to the proposed extinguishment or variation, or of its own motion, may resolve that the proposed extinguishment or variation be modified provided that the modification does not significantly increase the extent of the proposed extinguishment or variation.

5.5.7 Costs

The costs of dealing with a request for a variation or extinguishment of a Restrictive Covenant or easement or right of way under clause 5.5.3, or the costs as estimated by the Council may be recovered from an applicant, and the Council may require that the costs be paid or secured prior to the initiation of any Scheme Amendment to give effect to the variation or extinguishment."

- 2. Add new Schedule 13 'Schedule of Extinguished or Varied Covenants' as follows;

| Land Description | Area | Details |
|------------------|------|---------|
| | | |

- 3. Amending the Scheme Map accordingly.



- (2) That as the amendment is in the opinion of Council consistent with Regulation 25(2) of the *Town Planning Regulations 1967* ("Regulations"), and upon the preparation of the necessary amendment documentation, the amendment be referred to the Environmental Protection Authority ("EPA") as required by Section 81 of the Act, and on receipt of a response from the EPA indicating that the amendment is not subject to formal environmental assessment, be advertised for a period of 42 days in accordance with the Regulations. In the event that the EPA determines that the amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the amendment.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

The *Planning and Development Act 2005* defines one of the powers which can be included in a local planning scheme as "the extinguishment or variation of any restrictive covenant, easement or right of way". The current provisions of City of Cockburn Town Planning Scheme No. 3 ("Scheme") and indeed the Model Scheme Text are limited to only dealing with restrictive covenants against residential density - that is, the number of dwellings permitted on a lot.

A recent situation in Stratton Street, Hamilton Hill has highlighted the limitations of the existing Scheme provisions. The Department of Housing owns land which is affected by a restrictive covenant that limits land to business uses only, but wishes to use the land for residential purposes. They also own an adjoining right of way which is affected by an implied easement in favour of adjoining properties which is no longer required.

The current provisions of the Scheme do not allow Council to consider the extinguishment or variation of the restrictive covenant or easement. Accordingly, suitable clauses need to be added to the Scheme which allows for the extinguishment of restrictive covenants and easements where appropriate circumstances exist and where suitable consultation and process is undertaken. The City has sought legal advice on the most appropriate method of incorporating these provisions into the Scheme (refer confidential Agenda attachment). The proposed



amendment is consistent with the legal advice provided by the City's Solicitors.

Submission

N/A

Report

Clause 11(1) of Schedule 7 of the *Planning and Development Act 2005* ("Act") defines one of the powers which can be included in a local planning scheme as "*the extinguishment or variation of any restrictive covenant, easement or right of way*".

For some reason the Model Scheme Text and the City's Scheme has included a clause (Clause 5.5 in the case of the City's Scheme) which extinguishes or varies restrictive covenants of a particular kind only. They are restrictive covenants which relate to residential development where the restrictions are inconsistent with the provisions of the R Codes relating to the number of dwellings permitted on the land.

The recent example with the Department of Housing has highlighted that the City does not have suitable clauses within its Scheme which enables the City to vary or extinguish easements or restrictive covenants that relate to issues other than residential density. It is therefore appropriate to incorporate suitable clauses into the Scheme which will enable other inappropriate restrictive covenants, easements and rights of ways to be varied or extinguished consistent with the intent of the Act.

The idea behind Clause 11(1) of Schedule 7 of the Act is that a local government, through its local planning scheme, is expected to comprehensively plan for the distribution of appropriate uses throughout the Scheme area. If landowners make provisions contractually, for instance through restrictive covenants, to control land use in a way which is inconsistent with the local government's perception of orderly and proper planning, then it should be possible for the local government through its local planning scheme to vary or extinguish the inappropriate restrictive covenant or easement. That is the principle inherent in the Act which is not incorporated into the Model Scheme Text or the City's Scheme.

The proposed changes and additions to Clause 5.5 of the City's Scheme are summarised below:

- Clarify and simplify the existing provisions which relate to restrictive covenants applying to residential density.
- New clauses allowing Council to vary other restrictive covenants, easements and rights of ways where there is suitable justification and it is in accordance with orderly and proper planning.



- The process for varying or extinguishing the restrictive covenant, easement or rights of ways. This includes Council's resolution to extinguish or vary, the advertising process and requirements to undertake a separate Scheme amendment to list the extinguishment or variation in Schedule 13 of the City's Town Planning Scheme.
- The ability for Council to recover the costs of varying or extinguishing the restrictive covenant, easement or right of way.

It should be noted that this proposed amendment only involves incorporating the relevant clauses into the Scheme to enable the variation or extinguishment of restrictive covenants, easements and rights of ways. Any subsequent proposal to vary or extinguish would be subject to specific Council consideration, advertising and then a Scheme amendment to include the details into the Scheme. The process to vary or extinguish is subject to extensive consultation and consideration by Council and ultimately the WAPC and the Minister for Planning. Therefore, adequate checks are included within the process to ensure that only suitable restrictive covenants, easements and rights of ways are varied or extinguished.

The changes to Clause 5.5 are detailed below. This includes deleting existing Clause 5.5 'Restrictive Covenants' and replacing it with the following new Clause 5.5 'Restrictive Covenants Easements and Rights of Ways' as follows:

5.5 *Restrictive Covenants Easements and Rights of Ways'.*

5.5.1 *Residential Densities*

Subject to clause 5.5.2 where a Restrictive Covenant:

- (a) relates to a lot in the Residential Zone; and*
- (b) limits or has the effect of limiting the number of dwellings that may be developed or used on the lot to a number which is less than that which would have been otherwise permissible on that lot by the Scheme, or by the Scheme and the R-Codes,*

Then the Council may resolve that the Restrictive Covenant be extinguished or varied to remove or reduce that inconsistency.

- 5.5.2 *Where a restrictive covenant has been extinguished or varied under clause 5.5.1 the local government is not to grant planning approval to the development of the land which would, but for the operation of clause 5.5.1, have been prohibited unless the application has been dealt with as an 'A' use and has complied with all of the advertising requirements of clause 9.4.*



5.5.3 *Other Covenants, Easements or Rights of Ways*

Without limiting the generality of the preceding clause 5.5.1, the Council may resolve to vary or extinguish a Restrictive Covenant or covenant or easement or right of way where in the Council's opinion:

- (a) extinguishment or variation of the Restrictive Covenant or covenant or easement or right of way will not adversely affect the orderly and proper planning of the land in the locality and in particular the land benefited and the land burdened by Restrictive Covenant or covenant or easement or right of way; or*
- (b) the retention of the Restrictive Covenant or covenant or easement or right of way may impede the orderly and proper planning of land in the locality and in particular the land benefited and the land burdened by the Restrictive Covenant or covenant or easement or right of way; and*
- (c) the Restrictive Covenant or covenant or easement or right of way is no longer required to protect the amenity of the locality or the land benefited by the Restrictive Covenant or covenant or easement or right of way.*

5.5.4 *If the Council passes a resolution to vary or extinguish a Restrictive Covenant or covenant or easement or right of way notice of the proposal to extinguish or vary must be given:*

- (a) by a sign to the City's satisfaction being erected on the front boundary of the lot or lots burdened by the Restrictive Covenant or easement or right of way, which is visible and readable from the street containing details of the proposed extinguishment or variation of the Restrictive Covenant and the period of time during which submissions may be given. The sign is to remain on site for the duration of the period during which the Council will receive submission; and*
- (b) in writing, to the owners of all lots adjoining the land burdened by the Restrictive Covenant or easement or right of way, and to such other persons as the City considers may be affected by the proposed extinguishment or variation.*

5.5.5 *If the Council upon considering all submissions made to it and the merits of the proposed extinguishment or variation is satisfied that the Restrictive Covenant or easement or right of way should be extinguished or varied as proposed, the Council*



shall further resolve that particulars of the extinguishment or variation be included in Schedule 13 - Schedule of Extinguished or Varied Covenants. The extinguishment or variation shall have effect from the date of publication in the Government Gazette of the Minister's final approval of the Scheme Amendment inserting the details in Schedule 13.

5.5.6 *The Council after considering any submissions made in regard to the proposed extinguishment or variation, or of its own motion, may resolve that the proposed extinguishment or variation be modified provided that the modification does not significantly increase the extent of the proposed extinguishment or variation.*

5.5.7 *Costs*

The costs of dealing with a request for a variation or extinguishment of a Restrictive Covenant or easement or right of way under clause 5.5.3, or the costs as estimated by the Council may be recovered from an applicant, and the Council may require that the costs be paid or secured prior to the initiation of any Scheme Amendment to give effect to the variation or extinguishment."

Add new Schedule 13 'Schedule of Extinguished or Varied Covenants' as follows:

| <i>Land Description</i> | <i>Area</i> | <i>Details</i> |
|-------------------------|-------------|----------------|
| | | |

In conclusion, the proposed Scheme amendment will ensure that appropriate clauses are incorporated into the Scheme which enables the extinguishment or variation of any restrictive covenant, easement or right of way, consistent with the intention of Clause 11(1) of Schedule 7 of *Planning and Development Act 2005*.

This amendment will also bring the City's Scheme in to line with other local governments which have this more extensive power in dealing with restrictive covenants and easements which are limiting the City's ability in comprehensively planning a the local area.

It is therefore recommended that Council proceed to initiate Scheme Amendment No. 78.



Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.
- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

Budget/Financial Implications

N/A

Legal Implications

Planning and Development Act 2005
City of Cockburn Town Planning Scheme No. 2
Town Planning Regulations 1967

Community Consultation

The proposed Scheme amendment will be advertised for a period of 42 days with notices in the local paper and letters to relevant government agencies.

Attachment(s)

Legal advice from McLeods (provided under separate cover).

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

CLRS WHITFIELD AND SMITH LEFT THE MEETING AT THIS POINT
THE TIME BEING 8.24 PM

DECLARATIONS OF INTEREST

The Presiding Member advised the meeting that he had received declarations of financial interest on Item 15.1 from:



Clr Whitfield pursuant to Section 5.62 (1)(b) of the Local Government Act, 1995. The nature of the interest being that he is an employee of Coogee Primary School who were recipients of funds from Council.

Clr Smith pursuant to Section 5.62 (1) (b) of the Local Government Act, 1995. The nature of the interest being that she is an employee of the Halo Organisation who was a recipient of a community grant.

15. FINANCE AND CORPORATE SERVICES DIVISION ISSUES

15.1 **(MINUTE NO 4160) (OCM 11/02/2010) - LIST OF CREDITORS PAID - NOVEMBER 2009 AND DECEMBER 2009 (5605) (N MAURICIO) (ATTACH)**

RECOMMENDATION

That Council receive the List of Creditors Paid for November 2009 and December 2009, as attached to the Agenda.

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr C Reeve-Fowkes that the recommendation be adopted.

CARRIED 8/0

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

The list of accounts for October 2009 is attached to the Agenda for consideration. The list contains details of payments made by the City in relation to goods and services received by the City.



Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

List of Creditors Paid for November 2009 and December 2009.

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

CLRS WHITFIELD AND SMITH RETURNED TO THE MEETING THE TIME BEING 8.25 PM

THE PRESIDING MEMBER ADVISED CLRS WHITFIELD AND SMITH OF THE DECISION OF COUNCIL WHILE THEY WERE ABSENT FROM THE MEETING

15.2 (MINUTE NO 4161) (OCM 11/02/2010) - STATEMENT OF FINANCIAL ACTIVITY AND ASSOCIATED REPORTS (5505) (N MAURICIO) (ATTACH)

RECOMMENDATION

That Council receive the Statements of Financial Activity and associated reports for November 2009 and December 2009, as attached to the Agenda.



COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

Regulation 34(1) of the Local Government (Financial Management) Regulations 1996 prescribes that a local government is to prepare each month a Statement of Financial Activity.

Regulation 34(2) requires the Statement of Financial Activity to be accompanied by documents containing:–

- (a) details of the composition of the closing net current assets (less restricted and committed assets);
- (b) explanations for each material variance identified between YTD budgets and actuals; and
- (c) any other supporting information considered relevant by the local government.

Regulation 34(4)(a) prescribes that the Statement of Financial Activity and accompanying documents be presented to Council within 2 months after the end of the month to which the statement relates.

The regulations require the information reported in the statement to be shown either by nature & type, statutory program or business unit. The City has chosen to report the information according to its organisation structure and also by nature & type.

Financial Management Regulation 34(5) requires Council to annually set a materiality threshold for the purpose of disclosing budget variance details. To this end, Council has adopted a materiality threshold variance of \$100,000 for the 2009/10 financial year.

Submission

N/A

Report

As there was no meeting held in January, reports for the months of November and December 2009 are required to be received by Council.



However, this report will concentrate on the December results, being the most current and relevant.

Closing Funds

Council's closing funds (adjusted net current position) continues to reflect a healthy financial position. At \$38.7M, this is some \$12.7M higher than the forecast set for this time of year. Operating and capital under expenditures contribute mostly to this result.

Council's cash position (including restricted cash) stands at \$78.5M. Cash reserves and other restricted cash comprise \$38.7M of this total, with the balance of \$39.8M available to fund remaining commitments and operations for the 2009/10 year.

Operating Revenue

Overall, operating revenues are showing a small favourable variance of \$370k on a YTD basis. This comprises several items both over and under YTD budget.

Rubbish removal charges levied are \$422k ahead of YTD budget and \$137k ahead of the full year budget. However, these funds can only ever be applied to waste collection services and any year end surplus will need to be quarantined.

Operating grants and subsidies are showing favourable variances, although the majority relates to surplus funds brought forward. These are restricted in nature and will not contribute to any year end municipal result.

Income from building licences was \$124k ahead of budget and will outperform the full year budget target for 2009/10. This item has been addressed in the mid-year budget review.

Investment earnings on both municipal and reserve funds continue to outperform the budget, mainly due to rising yields from bank issued Term Deposits. To the end of December, this area contributed \$357k to the overall variance. The budget has been revised upwards in the mid-year budget review.

Landfill income is below YTD budget by \$1.1M. The majority of this variance is due to the delayed introduction of the new waste levy fee structure by the State Government. The reduced income is offset by budget savings in waste levy expenses payable. Both items have been addressed in the mid-year budget review.

Operating Expenditure

Cash operating expenditure is tracking well below the YTD budget at \$29.9M (\$5.5M below). The major contributing items at a nature and type summary level is materials and contracts at \$3.0M and other



expenses at \$2.0M. Councils biggest expense line item, employee costs, is closely tracking the budget in accordance with expectations.

All business units are tracking below budget, however several significant areas contribute mostly to the \$5.5M variance.

Waste Services have a YTD budget variance of \$3.0M comprising:

- RRRC entry fees - down \$880k;
- Waste Recovery Park operating expenses - down \$259k;
- Landfill levy expenses - down \$1.7M (offsetting reduced income) due to delayed introduction of new fee structure by the State Government.

Operating costs within the Parks & Environment and Community Services units are down \$852k and \$524k respectively.

The apparent underspending in materials and contracts across the board can be largely attributed to the lag in supplier invoicing and processing. This is a common phenomenon for the City each year and tends to rectify itself the closer we get to end of financial year.

However, it is safe to say that Council's overall financial performance with respect to operating costs is expected to be within budget.

Capital Expenditure

Council's capital spend continues to follow the historical pattern of underperforming the budget. As at 31 December, the actual spend was \$11.4M, being \$8.0M below YTD budget targets.

Several big items contribute to this result as follows:

- Coolbellup Community Centre Redevelopment - \$1.97M
- Several land subdivisions - \$1.25M
- Aubin Grove Facilities Construction - \$0.97M
- Bibra Lake Management Plan Implementation - \$0.65M
- Coogee Beach SLSC Earthworks - \$0.53M

However, these underspends are temporary only, as most of the funds have been committed to works and contracts.

Description of Graphs & Charts included within Statements

A liquidity graph shows the level of Council's net current position (adjusted for restricted assets) and trends this against previous years. This gives a good indication of Council's capacity to meet its financial commitments over the course of the year.

Council's overall cash & investments position is also provided in a line graph with a comparison to last year's numbers. This is currently showing a very strong position.



There is a bar graph tracking Business Unit operating expenditure against budget. This provides a very quick view of how the different areas are tracking and the comparative size of their budgets.

Pie charts included show the break up of actual operating income and expenditure by nature and type and the make up of Council's current assets and liabilities (comprising the net current position).

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

Where variances reported are of a permanent nature (ie. not due to timing issues), they will impact Council's end of year budget surplus/deficit position and will be assessed during the mid-year budget review.

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

Statements of Financial Activity and associated Reports for November 2009 and December 2009.

Advice to Proponent(s)/Submissioners

N/A

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

Nil.



15.3 (MINUTE NO 4162) (OCM 11/02/2010) - PROPOSED AMENDMENT TO POLICY AFCS1 'EMPLOYEE DEVELOPMENT' (1705) (M TOBIN) (ATTACH)

RECOMMENDATION

That Council adopt proposed amendment to Policy AFCS1 'Employee Development', as attached to the Agenda.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

The current Policy has been reviewed to ensure clarity as it has now been in place for eighteen months and there have been some implementation issues arise.

Submission

That Council adopt the revised Policy AFCS1 'Employee Development'.

Report

The Employee Development Policy has been reviewed to ensure it is clear and supports study which is of benefit to both the Council and the employee. The main changes are that statements which are repeated in various sections have been removed so that the assertion is stated once only. In addition, there is a requirement that a course of study be approved by the Manager, Human Resources in order to gain assistance from Council funds. The reason for this is that there have been several occurrences where assistance has been sought for courses which are not strictly related to a person's role at Council. Finally, the language has been refined to improve readability of the Policy.

Strategic Plan/Policy Implications

Governance Excellence

- To maintain a professional, well-trained and healthy workforce that is responsive to the community's needs.



- To maximise use of technology that contributes to the efficient delivery of Council's services.

Budget/Financial Implications

The application of this Policy is budgeted under Human Resources and approvals are delegated to the Manager, Human Resources (Delegations Register).

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

Proposed amended Policy AFCS1 'Employee Development'.

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

CLR O'BRIEN LEFT THE MEETING AT THIS POINT THE TIME BEING 8.26 PM

DECLARATION OF INTEREST

The Presiding Member advised the meeting that he had received a declaration of financial interest from Clr O'Brien pursuant to Section 5.60 (a) of the Local Government Act, 1995. The nature of the interest is that she is party to legal proceedings involved with the City of Cockburn.

15.4 (MINUTE NO 4163) (OCM 11/02/2010) - REVIEW OF BUSINESS PLAN 2009/10 AND BUDGET REVIEW PERIOD ENDING 31 DECEMBER 2009 (5402) (S DOWNING) (ATTACH)

RECOMMENDATION

That Council:

- (1) receive the Business Plan Review for 2009/10;



- (2) amend the Municipal Budget for 2009/10 as set out in the attached Schedule of Budget amendments; and

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Clr H Attrill SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 9/0

Background

Section 33A(1) of the Local Government (Financial Management) Regulations 1996 requires Council to review its annual budget between 1 January and 31 March in each year.

Council adopted its annual Business Plan at the Ordinary Council Meeting in June 2009. In accordance with Policy SC34 *Budget Management*, a formal report on the progress of the Plan is to be presented at the February 2010 Ordinary Council Meeting.

Submission

N/A

Report

Business Plan Review 2009/10

The attached Business Plan Review outlines the progress made in achieving Council's business activity plan and program budgets for the FY 2009/10. The review identifies that the operational income and expenditure forecasts are running close to expectations. There has also been considerable progress in achieving the program objectives of each of the City's Business Units.

The capital works program is progressing, but with year to date expenditure being behind projections on a cash basis. The majority of capital works will still be delivered as per the Budget. Further details on the Business Plan are available in the attachment.

Mid-Year Budget Review

A detailed report on the review of the Municipal Budget for the period 1 July 2009 to 31 December 2009 is attached to the Agenda. The



report sets out details of all proposed changes and a brief explanation as to why the changes are required. All forecasts are post allocation of ABC cost charges or income recoveries. A list of significant revenue and expenditure items are noted below with a detailed budget reference linking to the attached schedules.

Rating Income:

There is no additional income from interim rating for this budget review. Although, the City is still benefiting from growth in housing starts, there has been very little new subdivision work for the last six months.

Interest Income:

Interest rates on deposit funds with the major financial institutions have increased from a low of 3.5% to currently averaging 5.5% to 6%. This will mean an additional \$463k in income for the municipal fund. Interest from reserves will increase and will go directly to the Reserve fund.

Building Licences, Zoning statement and amendment fees:

The additional housing start has meant additional income from building licences. At this stage there will be approximately \$300k. There will also be additional income from built strata fees and zoning statement fees and zoning amendment fees of \$25k, \$25k and \$20k respectively.

Waste related income:

Sale of recyclable materials, the collapse of the recycling market for iron and non-ferrous metals has ceased with a resurgence of income in this area. Income is projected to rise from \$250k to \$600k for a full year. Sale of gas from the Henderson Landfill facility will increase from \$235k to \$295k. Landfill income (from gate fees) will reduce from \$10.8m to \$9.7m arising from a lower than allowed for budget stemming from the lower gate fee of \$85 per tonne rather than the \$100 thought possible until the introduction of the higher landfill levy in the first half of the financial year. There is also a higher amount of levies collected from the Rubbish Levy of \$137k. As noted, all funds from waste related activities are quarantined and any surplus carried to the Waste Reserve to fund waste related activities.

Major Expenditure Items

Sister City:

Provision of an additional \$10k to provide options if the City wishes to accept invitations from Sister Cities.

Greening Plan:

Additional \$39k in funds to complete 2008/09 program not carried forward for Spearwood Avenue (Hamilton Road to Cockburn Road). This is offset by several projects that have come in under budget.



Governance:

Reduction of \$14k in the WALGA advertising rebate over the prior year. This is because the City now places advertising with press directly at lower rates. Saving of \$20k on corporate training for the year. Additional \$23k for Mayoral allowance based on maximum allowance under the Local Government Act. Additional \$4k for Deputy Mayoral allowance based on maximum allowance under the Local Government Act.

Building Services:

Additional salaries and superannuation (\$72k), consultants (\$40k) and engineering costs (\$30k) all costs are stemming from the sustained building activity and offset with additional income from building licences. Legal costs are also being increased from increased legal advice (\$10k).

Planning Services:

Additional legal fees of \$30k are being provided because of legal challenges in SAT for their previously reported matters that the Planning Department is actioning and provided for in the detailed attachments.

City Facilities:

Coogee Beach and Manning Park public toilets refurbishment cost has increased by \$45k based on prices for the work. Audit of buildings is also being completed as part of the works and assets development (additional cost is \$132k). Work is more complex given the age and variety of Council buildings.

Waste Disposal:

To offset the reduction in gate fees of \$1.1m as a result of the lower gate fee, there is also a reduction of \$1.2m in the landfill levy paid to the DEC. The levy was originally calculated at \$28 per tonne for the whole of the financial year but was only paid at \$8 per tonne. The increase in the levy will result in lower margins for each tonne of waste received at Henderson for the post 1 January 2010 period. There is also a reduction in the costs paid to the SMRC of \$400k due to diversions from the SMRC, but this has been offset by increased gate fees from Henderson for accepting the diverted material.

Information Technology:

The PC Replacement Program for all outstations is underway with 200 PCs being replaced with virtual PCs using a "thick" Client technology. The cost includes an additional \$80k upfront cost for the virtual software but has been offset by a \$128k saving in leasing costs over four years. Additional costs of \$40k for the major upgrade to payroll and \$20k for the new budget module has been found by delaying other budgeted IS work.



Tapper Road Land Sales:

All funds from the sale of land in the development have now been received from settlements on the 42 blocks sold. Some additional costs were incurred and were not budgeted including settlement costs for \$42k. This cost does not impact of the municipal fund. Several other projects have also been delayed, notably Lot 702 Beelias Drive and Lot 65 Erpingham Road. This again does not impact on the municipal fund. The sale of Bourbon Street is dependent of \$30k of sewer works being completed including a retaining wall.

Developer Contribution Schemes:

Although there are a number of changes to the DCA's, no municipal funds are involved and no work is carried out unless funds are available. The amendments contained in this budget review are timing issues relating to the collection of funds.

Special Events:

Additional funds are required to complete the Special Event (Regional Concert) at Manning Park (\$45k). These funds are to cover the additional cost of hosting the event with Idol winner and Bran Nu Dae star, Jessica Mauboy plus a range of other acts and a significant upgrade in toilets and security.

Lease Revenue for COC Youth Centre:

This is an adjustment for doubling up of lease revenue of \$144k. The actual revenue was recorded in the Operational Budget (OP Budget) but was inadvertently included in the general ledger budget (GL Budget). This amendment corrects the overstatement.

NEW ITEMS

Coogee Caravan Park:

New sewer pump of \$110k. This will meet the needs of the Park itself resulting from the construction of the new surf club at Poore Grove. The funds are coming from the Land Development Reserve. Legal advice is being sought as to the recoverability of the cost from the lessee by way of increased rent. The work is being undertaken at the same time as work on the surf club.

Waste Services:

A new rear loading waste truck for \$280k is being acquired for litter bins, laneways and preparation for weekly collection of recycling materials. Council made the decision to fund a replacement truck for the landfill for \$80k and the current one is at the end of its life and beginning to incur significant repair costs. The former is funded from the Waste Reserve, from surplus funds on the waste collection account and the latter is from the Plant Replacement Reserve.



Roads, Footpaths, Drains and Sumps

There are a number of adjustments required in this Business Unit and those mentioned below are significant value:

- *Crown land acquisition at Hammond Road* – These funds (\$771k) are no longer required as the Dept of Agriculture will cede the land free of cost, as the land was given to them on this basis. The funds have been returned to the DCA fund.
- *North Lake Road (Bibra/Discovery)* – Additional works costing \$525k were undertaken as a result of design change and the federal govt's new environmental guidelines. The additional works will be funded from Roads to Recovery Stage 3 Grant
- *Verge Maintenance Litter* – Additional funds \$82k are required because of tipping fee increases and illegal dumping (which appears to have risen dramatically since the increase of the waste levy
- *Beeliar Dr [Watson/Stock]* - Construct single cwy Stage 2 – Additional funds \$100k, relocation Water main \$70,000 required by Water corporation, Underground power cost and new LV works \$140,000(50,000 above estimate)
- *Frankland Ave [Russell/Gaebler]* - Construct single cwy Stage 2 – Additional funds \$150k. Extensive earthworks costs and dual cwy tie in costs for future traffic signals at Russell Rd
- *Southwell Cr [Ely/Phoenix]* - Landscaped median treatment – Saving of \$75k. Reduced scope of works
- *Goldsmith St* - Sump relocation/ landscaping – Additional funds of \$66k. Extended earthworks required to create saleable lots
- *Drainage Maintenance* – Additional funds of \$50k. Cost of Gully educting and increased number stormwater pits increased health issues requiring additional on going maintenance (mossies)

Conclusion

Of the identified new initiatives of \$297k impacting on the municipal fund, \$150k come from savings generated from savings in the municipal fund. Only \$147k are truly new initiatives.

Municipal Budget Position as at 31 December 2009

Based on the attached budget amendments, the City's budget position for 2009/10 is projected to 30 June 2010 as follows:

Projected Budget Position at adoption of 2009/10:

| | |
|--|----------|
| Budget as at 1 July 2009 | Balanced |
| Budget | |
| Mid Year Budget Review – Existing Items (Fav.) | \$298k |
| Mid Year Budget Review – New Items (Unfav.) | \$298k |



New Projected Budget Position for 2009/10
After Mid Year Budget Review
Budget

Balanced

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

A number of amendments to the Budget are recommended as attached.

Legal Implications

Section 33A(1) of the Local Government (Financial Management) Regulations 1996 requires Council to review its annual budget between 1 January and 31 March in each year.

Community Consultation

N/A

Attachment(s)

1. Business Plan Review 2009/10
2. Schedule of Budget amendments

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

CLR O'BRIEN RETURNED TO THE MEETING THE TIME BEING 8.27 PM

THEPRESIDING MEMBER ADVISED CLR O'BRIEN OF COUNCIL'S DECISION WHILE SHE WAS ABSENT FROM THE MEETING



16. ENGINEERING AND WORKS DIVISION ISSUES

(MINUTE NO 4164) (OCM 11/02/2010) - REVOCATION MOTION - COUNCIL DECISION OF 10 JULY 2008 - REMOVAL OF COUNCIL TREES ADJACENT TO PROPERTY (2206443; 450037) (M LITTLETON)**COUNCIL DECISION**

MOVED Deputy Mayor K Allen SECONDED Clr T Romano that Council revoke the following decision of Council carried on 10 July 2008, pursuant to Regulation 10 of the Local Government (Administration) Regulations, 1996.

*16.1 (Minute No.3766) (OCM 10/07/2008)
Removal of Council Trees Adjacent to Property
Location: 47 Gerald Street, Spearwood
Owner: Gary Stack*

That Council does not agree to the removal of trees growing on Gerald Street Reserve, adjacent to the side boundary of 47 Gerald Street, Spearwood.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 7/3

16.1 (MINUTE NO 4165) (OCM 11/02/2010) - REMOVAL OF COUNCIL TREES ADJACENT TO PROPERTY AT 47 GERALD STREET, SPEARWOOD - OWNER: GARY STACK (2206443; 450037) (M LITTLETON) (ATTACH)**RECOMMENDATION**

That Council does not agree to the removal of trees growing on Gerald Street Reserve, adjacent to the side boundary of 47 Gerald Street, Spearwood.

COUNCIL DECISION

MOVED Deputy Mayor K Allen SECONDED Clr S Limbert that Council:

- (1) agree to the removal of the two trees growing on Gerald Street Reserve, adjacent to the northern side of 47 Gerald Street, Spearwood which are the subject of the report to Council;
- (2) pay for the removal of the trees;
- (3) at its cost, plant a minimum of four trees on both the western and eastern border of the reserve; and

- (4) review Policy PSEW15 'Removal and Pruning of Trees' at a future Council meeting.

CARRIED 7/3

Reason for Decision

Mr Stack's situation is a special situation/scenario/circumstance and Council should, in this instance, relax its very strict policy. Whilst it is potentially losing 20 years of growth, it is proposed that Council plant a minimum of four trees on both the eastern and western borders of the reserve. Planting the additional trees will provide far better solar protection for users of the reserve and, in 10-20 years, users of the reserve both human and wildlife will be five times better off than the current scenario and it will resolve an extremely stressful scenario for one of our senior ratepayers.

Background

At the Ordinary Council Meeting of 10 December 2009, Deputy Mayor Allen presented a Notice of Motion as follows:

That Council revoke its previous decision taken at the Ordinary Council Meeting of 10 July 2008, on the following matter:

...that Council does not agree to the removal of trees growing on Gerald Street Reserve, adjacent to the side boundary of 45 Gerald Street, Spearwood.

The Statutory Notice of revocation, as required has been received, signed by four(4) Elected Members.

To assist Council in its deliberation on the matter the report presented to Council in July 2008 is represented for your consideration.

From 2 February 2001, Mr Gary Stack has regularly requested that the City of Cockburn remove trees growing on Gerald Street Reserve, adjacent to the side boundary of his residence located at number 47 Gerald Street, Spearwood, as leaves falling from the trees block his roof gutters causing them to overflow during rain events, allowing water to enter the roof space and damage his house. On each occasion the City has advised Mr Stack that the trees will not be removed because they do not meet the criteria for removal, as detailed in the Council's Position Statement PSEW15 – Removal and Pruning of Trees.

Mr Stack has not been accepting of the City's decision not to remove the trees and has appealed to various agencies to intervene on his behalf. Persons canvassed by Mr Stack have been:



1. February 2002
Member of the Legislative Assembly Mr Francis Logan, the member for Cockburn.
2. May 2003
Member of the Legislative Assembly Mr Francis Logan, the member for Cockburn.
3. July 2003
Ombudsmen Western Australia

Following investigation of Mr Stack's complaint, the Ombudsmen's Investigating Officer concluded in her final report that:

It is my view that the decision of the City of Cockburn to not remove the trees was reasonably open to it to make in the circumstances.

The Ombudsmen advised Mayor Lee by letter on the 3 November 2003, that Mr Stack's complaint had not been upheld and that the file would be closed.

4. July 2007
Member of the Legislative Council the Honourable Sheila Mills, the member for South Metropolitan

Throughout the course of Mr Stack's complaints regarding damage to his house, he has consistently claimed that he is unable to clear the gutters himself because of a medical condition and that he doesn't have a family/friends support group that can assist him or the financial means to arrange for others to clear the gutters for him.

The City has not been unsympathetic to Mr Stack's claim and at the time of his request arranged clearing of his gutters and installation of gutter guard, at no cost to him. In a letter from Mayor Lee, dated 9 June 2003, Mr Stack was further advised:

In normal practice, in order for Council to provide home and community care assistance (HACC), an assessment of an applicant's financial situation and level of disability needs to be determined. This involves an interview process to establish whether, in fact, you are eligible under our policy to have HACC assistance.

...I think it important to clarify that the previous assistance you have received was above and beyond normal Council practice.

The offer to Mr Stack was to have his roof gutters cleaned every twelve weeks subject to a ten-dollar charge per service and conditional on him



agreeing to an assessment to determine if he was eligible to receive the service. Mr Stack declined to accept the offer of an assessment and therefore it lapsed. The City's Community Services no longer offer this service to the community.

Submission

N/A

Report

On 8 October 2007, the City received a letter from Mr Stack requesting that trees growing on Gerald Street Reserve, adjacent to the side boundary of number 47 Gerald Street, Spearwood, be removed on the grounds that (in summary):

- 1 Leaves falling from the tree block the roof gutters, causing water to overflow during wet weather and enter the roof space, damaging ceilings, walls and floor coverings.
- 2 Every winter it has been necessary for him to clean out the gutters and the roof valley and remove all leaves, twigs and sometimes branches of approximately 1 metre in length, on almost a daily basis.
- 3 By not having removed the trees, the City has caused him a lot of worry and stress and cost him a lot of time and effort and physical pain and put him at significant risk, because of his condition of health.

Officers have evaluated Mr Stack's request and recommended that the trees are not removed and that they are allowed to develop their natural habit as they do not meet the requirements of Council Position Statement PSEW15 for removal or pruning of trees.

Council's Position Statement PSEW15 states, in part, that -

*Trees shall **not** be removed unless they are:*

- 1 *dead;*
- 2 *in a state of decline to the point that survival is unlikely;*
- 3 *structurally unsound, to the point of constituting imminent danger to persons or property;*
- 4 *damaging or likely to damage property, where alternatives to prevent damage are not possible;*
- 5 *part of a tree replacement program; or*
- 6 *obstructing a Council approved works program, such as road and drainage works.*

and that;



Trees growing on land under the direct care, control and management of the City, that are considered to be unduly interfering with the amenity available to adjacent residents in the use of their land, may be removed at the discretion of the Council.

An inspection of the trees undertaken by an officer from the City indicates that they are Eucalyptus species of approximately ten metres in height with a combined crown spread of ten metres north south and twenty metres east west. No parts of the trees extend across the property boundary line of number 47 Gerald Street, Spearwood. They are healthy, vigorous, structurally sound and not damaging or likely to damage property - where alternatives to prevent damage are not possible. The trees are not part of a tree replacement program or obstructing a Council approved works program, such as road and drainage works.

A key component of Mr Stack's request to have the trees removed is that he claims they are causing damage to his house, in that leaves falling from them block the roof gutters, causing water to overflow during wet weather and enter the roof space, damaging ceilings, walls and floor coverings. The City's position regarding this claim is that the cause of damage is a direct consequence of not cleaning out the roof gutters before the onset of wet weather and not as damage caused by the trees.

For the purpose of determining if a tree(s) should be removed or pruned, "damaging or likely to damage property" is defined by the City as any damage to property caused by or likely to be caused by any part of a tree that is currently attached to the tree. For example, if the roots of a tree are lifting the foundations of a dividing wall causing the wall to crack, then it would be judged that the tree was causing damage to the wall. Similarly, if the branches of a tree are growing up and through overhead power lines, then it would be judged that the tree was likely to cause damage, particularly in stormy weather.

Uncertainties in how to categorise the effect of tree parts that become detached but do not cause immediate damage often exist. A particular example is the case in question, where tree debris such as leaves, twigs, floral parts and bark falling from trees block roof gutters, but the action of the tree debris falling and impacting with the roof or roof gutters has not caused damage to them or any other thing. When it rains, if the gutters have not been cleared, overflowing water enters the house causing damage to ceilings, walls and floor coverings. For the purpose of determining whether a tree(s) should be pruned or removed, officers from the City would determine that the tree(s) did not cause the damage. It would be judged that the damage was caused by water overflowing from blocked gutters.



The basis for categorising water damage to buildings because of gutters being blocked with leaves, twigs, floral parts and bark, as not having been directly caused by trees, is threefold. In the first instance it would be reasonable to presume that most people know that roof gutters blocked with foliage debris from trees may overflow during rainy weather and cause damage to their residence. In the second it would be reasonable to presume that most people are aware that nearby trees are likely to drop foliage debris into their gutters. And, thirdly, it would be reasonable to presume that most people are aware that if they clean out their gutters before rainy weather they can avoid water damage from overflowing gutters. In summary, it can be reasonably presumed that residents would:

1. Be aware of the risk (of water damage from blocked gutters).
2. Know the source of the risk (overflowing water from gutters blocked with foliage debris from nearby trees).
3. Know how to avoid the risk (by arranging to have the gutters cleaned out before the onset of wet weather).

Should the argument not be accepted that Mr Stack's house is not being damaged by the trees through the action of shedding leaf, bark and twig debris, but by the action of not clearing blocked gutters before rain events, then, it is rational to remove the trees in accordance with Position Statement PSEW15. However, Position Statement PSEW15 also requires officers to demonstrate that alternatives are not possible to prevent damage. In this instance, it is contended that clearing the gutters will prevent damage.

Should the argument be accepted that Mr Stack's house is not being damaged by the trees and/or the alternative of clearing the gutters is available to prevent damage, then, it follows that the issue to be resolved is a determination of whether the trees are considered to be unduly interfering with the amenity available to Mr Stack in the use of his land. It is proposed by officers that the trees are not unduly interfering with Mr Stack's ability to enjoy the amenity of his land because:

1. His situation is not significantly different from others in similar circumstances in the community.
2. Trees are a highly desirable part of the landscape and, wherever possible, a certain amount of any inconvenience associated with them should be tolerated (Legal Aid Western Australia 2000).
3. The level of inconvenience to be borne by him is reasonable when compared with benefits to be retained by the rest of the community, in not removing the trees.

In his request to have the trees removed, Mr Stack put forward that every winter it has been necessary for him to clean out the gutters and the roof valley and remove all leaves, twigs and sometimes branches of approximately 1 metre in length, on almost a daily basis, as a reason



for removal. It is accepted that clearing of the roof gutters is required, although the need to do this on a daily basis in winter is debatable. This situation is not different from thousands of other residents and ratepayers across the City of Cockburn who is affected by leaf debris falling from trees under the care and control of the Council, their neighbour's trees and their own trees. In most circumstances, although annoyed by the fact, many are prepared to tolerate the inconvenience because they regard trees as being highly desirable and integral to the urban landscape, providing a range of social, environmental and economic advantages. As such, they consider them to be an integral part of the total public landscape amenity affecting and benefiting all residents within the locality, individually and collectively.

Mr Stack also claims that by not having removed the trees, the City has caused him a lot of worry and stress and cost him a lot of time and effort and physical pain and put him at significant risk, because of his condition of health.

Substantiation of this claim would potentially give grounds for intervention by the Council in relieving him of the burdens he has detailed. Unfortunately, an offer by the City during 2003 to assess his financial situation and level of disability, to determine if his situation was significantly different from others in similar circumstances, was declined by Mr Stack. Accordingly, officers could only conclude that he either has the financial means to pay others to clear the gutters for him but chooses not to, because he believes the community should bear the cost via the Council; or his level of disability is not sufficient to prevent him from clearing the gutters. Either way, officers are left to determine if the inconvenience caused to Mr Stack in not removing the trees is reasonable, when compared with the benefits to be lost to the community if the trees were removed.

In summary, officers have not removed the trees because they believe:

1. The trees are not causing direct damage to Mr Stack's house.
2. Damage is being caused to Mr Stack's house by water overflowing from roof gutters that have not been cleared of debris.
3. The inconvenience caused to Mr Stack in having to clear roof gutters of tree foliage debris is reasonable, when compared with the benefits provided by trees to the community.
4. Mr Stack has not demonstrated that his circumstances are significantly different from any other member of the community in a similar situation, to warrant intervention by the Council.

Mr. Stack was accordingly advised of the officer's decision and reasons for the decision at a meeting held 10:00 a.m. Friday 26 October 2007, with the Council's Chief Executive Officer and Manager Parks and Environment.



On 18 April 2008, the City received a letter from Chris Stokes & Associates - Barristers and Solicitors, advising they act for Mr. Gary Stack in respect to a claim for nuisance against the City of Cockburn. The claim for nuisance is predicated on an allegation that the City of Cockburn:

1. planted the two trees in question;
2. is the owner of the land on which the trees were planted;
3. has actual knowledge the trees are shedding debris in the form of leaves, branches and twigs that are a nuisance and danger to Mr. Stack and are causing danger to him; and
4. has failed to respond to repeated requests by Mr. Stack over a number of years to stop the nuisance continuing to occur.

The letter from Chris Stokes and associates also advised that Mr. Stack is resolved on taking whatever legal measures are necessary to have the nuisance removed.

In response to the letter from Chris Stokes & Associates, advising they act for Mr. Gary Stack, officers sought legal advice from the Council's solicitor, McLeods, as to whether the trees constitute a nuisance at law and whether there is any legal basis for Mr. Stack's foreshadowed legal claim against the City. In summary, McLeods advised that, in their opinion, after reviewing similar cases, the leaves and/or small branches falling from the two trees would not constitute a nuisance sufficient to entitle Mr. Stack to either an award of damages or an injunction requiring removal of the trees.

Strategic Plan/Policy Implications

Governance Excellence

- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

If Council wishes to rescind the previous decision then any resolution to remove the trees should comply with Position Statement PSEW15 which states, in part:

Where the Council has resolved to authorise removal of a tree at the request of an adjacent property owner:

1. *The removal shall be at full cost to the property owner who made the request for removal.*
2. *The tree shall be dismantled to the ground, removed from the site and the stump shall be ground out.*
3. *The tree shall be removed by a suitable contractor engaged by the City for the purpose.*



4. *The tree shall not be removed until the City has received payment for the full cost of removal.*
5. *The City at the Council's cost shall plant a replacement tree suitable for the location, within six months of removing the original tree.*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

1. Position Statement PSEW15 'Removal and Pruning of Trees'.
2. Legal advice received from McLeods (provided under separate cover).

Advice to Proponent(s)/Submissioners

The Proponent(s) have been advised that this matter is to be considered at 11 February 2010 Council Meeting.

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

Nil.

16.2 (MINUTE NO 4166) (OCM 11/02/2010) - SUBMISSION FOR ROUND 5 OF THE UNDERGROUND POWER PROGRAM (9118) (D VICKERY) (ATTACH)

RECOMMENDATION

That:

- (1) Council endorses an Expression of Interest to the Office of Energy for participation in Round Five of the Underground Power Program – Major Residential Projects with the following areas being submitted:
 1. Hamilton Hill (East)
 2. Coolbellup (East)
 3. Spearwood (East)
- (2) the proposed manner for the City to meet its 50% contribution to



the project shall be determined during the detailed proposal stage however will be based on the following model:

1. Raising at least one-fifth of the local government contribution from the general rate base. This is in recognition of reduced tree pruning and other verge management costs, improved traffic safety and amenity, and generally improved value of the area to the local government.
2. Recoup the balance from the property owners/ratepayers where underground power is being provided calculated using the fixed serve fee methodology.
- (3) subject to confirmation of one or more projects being short-listed for further consideration, a further report be submitted to Council which details the scope of work, project estimate, outcomes of community consultation and proposed funding mechanisms for consideration and adoption.
- (4) subject to confirmation of one or more projects being short-listed for further consideration, a further report be submitted to Council which details the scope of work, project estimate, outcomes of community consultation and proposed funding mechanisms for consideration and adoption.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that the recommendation be adopted.

CARRIED 10/0

Background

The State Government recognised that placing power cables underground gave improved security of supply in severe weather conditions thus the Underground Power Program was established to replace the existing overhead supply. The Program is now in its fifth iteration.

The Program, which comprises the two streams of 'Major Residential Projects' and 'Localised Enhancement Projects', was established to contribute to the Government of Western Australia's long-term goal of improving the state of the electricity distribution network and to contribute to the State Government's objective of providing underground power services to 50% of residential properties in Perth. Whilst the 50% target is expected to be reached by the conclusion of the current Round Four of the Program, the Government has committed to the funding of a further Round Five.



The City of Cockburn has made application for both Programs in the past however as yet, have been unsuccessful in having any projects endorsed. The City's submission for Round Four of the Program, lodged in November 2005 (refer to OCM 10-11-2005, Item 14.5 - Minute No. 3009), nominated the locality of Hamilton Hill (East) and covered an area of approximately 330 hectares and 2,300 property lots.

Submission

The State Government (Office of Energy) has invited local governments to submit Expressions of Interest (EOI) proposals to participate in Round Five of the 'Major Residential Projects' of the Underground Power Program. This program will run until 2014 as can be seen in the timetable below.

Timetable

The steps in the Round Five 'Major Residential Project' processes are:

| | |
|---|-------------------------|
| • Deadline for lodgement of Expression of Interest proposals | 19 February 2010 |
| • Evaluation of Expression of Interest proposals | June 2010 |
| • Announcement of short-listed projects | July 2010 |
| • Detailed Proposal Stage for first short listed Major Residential Projects commences | July 2010 |
| • Implementation of first approved Major Residential Project | July 2011 |
| • Expected completion of all Round Five Major Residential Projects | Mid to late 2014 |

Scope and Size of Project Area(s)

'Major Residential' underground power projects include the replacement of existing suburban overhead power infrastructure with underground power, and provision of new street lighting (in place of the existing power pole mounted street lights).

The projects involve the delivery of underground distribution lines in suburban areas to typically between 800 and 1,300 residential properties. However for this Round Five of the Program, local authorities have been encouraged to submit proposals for undergrounding power to areas between 500 and 800 lots. This reduction in lot numbers is to minimise commercial exposure to single projects and spread the geographical coverage without losing economies of scale.

EOI Selection Criteria

The EOI will be assessed on the following criteria:

1. Energy Security and Power System Reliability (technical) Criteria, including:



- a) System reliability;
- b) Power quality;
- c) Network growth requirements; and
- d) Network characteristics

2. Project Feasibility (Non-Technical) Criteria, including:

Nominated area issues, including:

- Number and size of lots;
- Current density and current and proposed zoning;
- Proportion of commercial properties;
- Suitability of ground conditions;
- Amenity improvements achievable;
- Contiguity with underground power in adjacent areas; and
- Future use of state or local government owned vacant lands.

- a) Project budget – derived using a Western Power developed pricing model that takes account of project variables.
- b) Local government and community commitment and support, including:
 - demonstrated ability of the local government to meet its share of a projects likely cost; and
 - indicative level of Council and Community support and a commitment to maintain community support.

Report

In considering the criteria provided by the Office of Energy for this Round Five of the program, the City has identified a locality within the suburbs of Hamilton Hill, Coolbellup and Spearwood as being the most suitable for submission, and potentially the most likely to be short listed in the Expression of Interest process.

These localities have older infrastructure, including overhead power lines, have comparatively higher number of “outages” (based on information provided by Western Power), and are less likely to have subsurface rock that inhibits trenching and boring (adding significantly to the potential cost of the project).

The undergrounding of power in any of these localities would lessen council maintenance costs for verge maintenance, enhance the amenity of the area, and be in accord with the City’s current and longer term zoning plans for development opportunity.

Recommended Project Areas for Submission

The following locations (refer to plans attached) have been identified as being suitable for submission:



| | Project Area (Suburb Location) | No. of Lots | No. of Residences | Indicative Council Contribution (based on \$2,500 / lot) |
|---|-----------------------------------|----------------|-------------------------------------|--|
| 1 | Hamilton Hill (East) | 727 | 734 | \$1.82M |
| 2 | Coolbellup (East) | 830 | 834 (& 39 commercial properties) | \$2.075M |
| 3 | Spearwood (East) | 825 | 803 | \$2.06M |

The localities were chosen on the basis of being the most likely to be shortlisted based on the EOI selection criteria.

Hamilton Hill (East)

The boundaries of the proposed Hamilton Hill Project area are to the east - Stock Road, to the west - Frederick Road, to the south - Forrest Road, and to the north - Winterfold Road (the City of Fremantle border). The proposed Hamilton Hill project area covers 727 lots, incorporating 734 residential and 3 non-rateable properties (being City of Cockburn parks or recreation reserves). The lot sizes range from 370 m² to 4.6ha in area, with the average residential lot size is approximately 720 m². There are only a few residential lots that have not been developed, there are no commercial properties, and there are a number of Public Purpose sites, including primary school, high school and day care centre for aged.

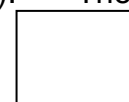
According to Western Power, the system Average Interruption Duration Index in the Hamilton Hill area to September 2009 was 414 minutes. This is significantly higher than most other areas in Cockburn.

The Council's parks service has identified Hamilton Hill as an area that would benefit from having underground power with respect to reducing verge tree maintenance costs. The undergrounding of power in Hamilton Hill will greatly improve the street appearance as it will reduce the need for street tree pruning and will remove the transmission power poles and lines within the verge, which is also a traffic safety benefit.

It is considered that given Hamilton Hill is an older and established suburb it is an ideal candidate for underground power, with the cost of providing underground power being relatively economical and feasible given it is largely developed.

Coolbellup (East)

The boundaries of the proposed Coolbellup (East) project area are to the east - Stock Road, to the west - Coolbellup Avenue, to the south - the MRS Roe Highway regional road reserve and to the north - Winterfold Road (the City of Fremantle border). There are



approximately 2660 lots within the Coolbellup area and 1920 in this locality without underground power. The proposed Coolbellup (East) project area comprises 830 lots, incorporating 834 residential, 39 commercial and 7 non-rateable properties. There are 4 City of Cockburn – Reserve Lots categorised as a park or recreation reserve, there are a number of Public Purpose sites including two primary schools, three homes for the aged and the community library.

According to Western Power, the System Average Interruption Duration Index in the Coolbellup area to September 2009 was 385 minutes. This is significantly higher than most other areas in Cockburn.

Since 2000 in particular, the City of Cockburn has been undertaking improvements in the Coolbellup area and has made funding available to undertake a redevelopment of the community facilities, roads, drainage system, and residential redevelopment with Department of Housing. The undergrounding of power in Coolbellup will greatly improve the street appearance as it will reduce the need for street tree pruning and will remove the transmission power poles and lines within the verge, which is also a traffic safety benefit.

Spearwood (East)

The boundaries of proposed Spearwood (East) project area, incorporating the eastern portion of Phoenix Central, are to the east - Stock Road, to the west - Coleville Crescent, to the South – Spearwood Avenue, and to the north - Phoenix Road. The proposed Spearwood (East) project area comprises 825 lots, incorporating 803 residential and 3 non-rateable properties. There are 12 City of Cockburn – Reserve Lots categorised as a park or recreation reserve. There is no commercial property within the proposed project. There are a number of ‘public purpose’ sites within Hamilton Hill, including primary school and .day care centre for children.

According to Western Power, the System Average Interruption Duration Index in the Spearwood area to September 2009 was 373 minutes. This is significantly higher than most other areas in Cockburn.

The proposed Spearwood (East) project area is zoned ‘Residential’ with a density code of R20, however in accordance Phoenix Central Revitalisation Strategy there is rezoning of various properties to ‘Residential’ R30, ‘Residential’ R30/R40, ‘Residential’ R60 and ‘Residential’ R860. It is hoped that undergrounding power in this residential area will be a further catalyst for urban development.

The undergrounding of power in Phoenix Central - Spearwood will greatly improve the street appearance as it will reduce the need for street tree pruning and will remove the transmission power poles and lines within the verge.



Conclusion

It is considered that locations within the suburbs of Hamilton Hill, Coolbellup and Spearwood will meet the selection criteria set by the Office of Energy for the Underground Power Program.

It is recommended that Council endorse the proposal to lodge an Expression of Interest submission to the Office of Energy for all three project areas (refer Attachment). Should Council be successful in having 1 or more project areas short listed for further review, a detailed report shall be submitted to Council outlining project delivery, costs, funding methodology and outcomes of community consultation.

Strategic Plan/Policy Implications

Demographic Planning

- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Lifestyle and Aspiration Achievement

- To deliver our services and to manage resources in a way that is cost effective without compromising quality.
- To conserve the character and historic value of the human and built environment.

The Council Policy which applies to this item is:-

Council Policy AES-10 – Underground Power, adopted in May 2003, states:

“The City supports the undergrounding of overhead power lines in its District which are subject to the State Government’s Underground Power Program, subject to:-

- benefiting property owner participation in the Program, where funded on a cost share basis with the State;*
- indicative community support for the specific area(s) identified;*
- any other criteria or required information specified by the Program being obtained and included in any Expression of Interest or Applications for Funding by Council.*

Financial support for the Program will be limited to pre-funding the benefiting properties’ share of contribution and collecting the funds from individual property owners by a method to be determined at the time Council is successful in obtaining funds from the Program.”



Budget/Financial Implications

Recent verbal advice from the Office of Energy is that, based on costs being incurred in the current Round 4 of the Program, the cost to convert a locality to underground power is around \$4,500 to \$5,000 per household. With 50% of the cost met by the State Government, this equates to approximately \$2,500 per lot sourced through the local authority.

It is proposed that Council, if successful in having one of its submitted project areas short listed, would look to recoup the greater proportion of the cost from the property owners that have benefitted from the project. The final detail of the extent of funds sought and the method of recoup of these funds will be determined as part of the Detailed Proposal Phase of the project and will be submitted to Council for final endorsement.

A range of funding proposals and funding obligations will be contemplated as part of the detailed proposal including:

- (a) Council funding a proportion of the costs (a one-fifth contribution is common) from the general rate base in recognition of reduced tree pruning and other verge management costs, improved traffic safety and amenity, including through replaced street lighting meeting current day standards, and generally improved value of the area to the local government; and
- (b) Recoup the balance from the property owners / ratepayers where underground power is being provided based on:
 - (i) using a fixed service fee or a variable Gross Rateable Value approach.
 - (ii) Providing a discount to pensioners.
 - (iii) Providing a discount to owners of properties adjacent to transmission lines (66,000 volts or more) which will not be placed underground.
 - (iv) Providing a discount to owners of properties where the connection is already underground.
 - (v) Providing special consideration to multiple connections on one lot.
 - (vi) Recoup through Council's annual rates notices, with the amount able to be paid in instalments over a set period of time



Should the City be successful in having 1 or more projects shortlisted, the subsequent item to Council will provide more clarity on these issues.

Legal Implications

N/A

Community Consultation

Given the tight time frame for submissions and the requirement only for an indicative level of Council and Community support at this early EOI stage, detailed community consultation has not been entered into.

It is noted that the survey conducted in 2005 for the Round Four Program, covering approximately 6300 residents within the suburbs of Spearwood, Hamilton Hill and Southwell, provided responses as detailed below.

| | Spearwood | Hamilton Hill | Southwell |
|--------------------------|------------------|----------------------|------------------|
| No. Surveys sent | 3616 | 2324 | 605 |
| No. Submissions received | 857 | 806 | 181 |
| Response rate | 23.7% | 34.7% | 29.9% |
| Support | 482 | 546 | 124 |
| Not support | 339 | 247 | 55 |
| % Support | 58.7% | 68.8% | 69.3% |

| | Spearwood | Hamilton Hill | Southwell |
|----------------------------|------------------|----------------------|------------------|
| 1 up front instalment | 68 | 56 | 11 |
| 2 instalments (in 1 year) | 27 | 28 | 5 |
| 4 instalments (in 1 year) | 34 | 51 | 12 |
| 5 instalments (in 5 years) | 342 | 386 | 84 |

Attachment(s)

Project Area Maps:

- Hamilton Hill (East)
- Coolbellup (East)
- Spearwood (East)

Advice to Proponent(s)/Submissioners

N/A

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

Nil.



(MINUTE NO 4167) (OCM 11/02/2010) - REVOCATION MOTION - COUNCIL DECISION OF 11 FEBRUARY 2010 - SUBMISSION OF ROUND 5 OF THE UNDERGROUND POWER PROGRAM (9118) (D VICKERY)

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr T Romano that Council revoke its decision of 11 February 2010, Minute No.4166 - Submission of Round 5 of Underground Power Program.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 10/0

Note: Deputy Mayor Allen, Clrs Whitfield, Romano and Reeve-Fowkes gave notice to revoke the above decision of Council carried at tonight's meeting, pursuant to Regulation 10 of the Local Government (Administration) Regulations, 1996.

CLRS LIMBERT AND OLIVER LEFT THE MEETING AT THIS POINT THE TIME BEING 8.45 PM.

DECLARATION OF INTEREST

The Presiding Member advised the meeting that he received declarations of financial interest on the following item from:

Clr Oliver pursuant to Section 5.60B of the Local Government Act, 1995. The nature of the interest being the proximity of the land owned by her in the proposed subdivision area.

Clr Limbert pursuant to Section 5.60B of the Local Government Act, 1995. The nature of the interest being the proximity of the land owned by her mother in the proposed subdivision area.

(MINUTE NO 4168) (OCM 11/02/2010) - SUBMISSION FOR ROUND 5 OF THE UNDERGROUND POWER PROGRAM (9118) (D VICKERY)

COUNCIL DECISION

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

CARRIED 8/0

CLRS LIMBERT AND OLIVER RETURNED TO THE MEETING THE TIME BEING 8.48 PM.



THE PRESIDING MEMBER ADVISED CLRS LIMBERT AND OLIVER OF THE COUNCIL DECISION WHILE THEY WERE ABSENT FROM THE MEETING.

17. COMMUNITY SERVICES DIVISION ISSUES

17.1 **(MINUTE NO 4169) (OCM 11/02/2010) - BUSINESS PLAN FOR PROPOSED SALE OF LOTS 14 AND 22 PROGRESS DRIVE, BIBRA LAKE (1100231; 1117891) (R AVARD) (ATTACH)**

RECOMMENDATION

That Council in accordance with the Business Plan and pursuant to the requirements of Section 3.59 of the Local Government Act 1995:

- (1) proceed to sell Lot 2 Progress Drive, Bibra Lake to Adventure World Pty Ltd subject to the following conditions:
 1. The land to be sold at the value as determined by McGees in accordance with the valuation criteria previously established.
 2. The area be developed for car parking with a requirement to preserve significant trees to the satisfaction of the City.
 3. The development being completed within two years of the date of settlement of the sale of the land.
 4. The development to be in accordance with all statutory requirements and Council policies.
- (2) proceed to sell Lot 3 Progress Drive, Bibra Lake to Cockburn Ice Arena (or related entity) under the following conditions:
 1. The land to be sold at the value as determined by McGees in accordance with the valuation criteria previously established.
 2. The land being developed for an ice skating facility.
 3. The development to be completed within 5 years of the date of settlement of the sale of the land.
- (3) proceed to sell Lot 4 Progress Drive, Bibra Lake in accordance with the requirements of Section 3.58 of the Local Government Act; and
- (4) seek the approval of the Minister for Lands to grant to the City the power to lease Reserve 26954.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL



COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Deputy Mayor K Allen Council in accordance with the Business Plan and pursuant to the requirements of Section 3.59 of the Local Government Act 1995:

- (1) proceed to sell Lot 2 Progress Drive, Bibra Lake to Adventure World Pty Ltd subject to the following conditions:
 1. The land to be sold at the value as determined by McGees in accordance with the valuation criteria previously established.
 2. The area be developed for car parking with a requirement to preserve significant trees to the satisfaction of the City.
 3. The development being completed within two years of the date of settlement of the sale of the land.
 4. The development to be in accordance with all statutory requirements and Council policies.:
- (2) incorporate into Lot 3, from the adjoining Lot 4, an area of land sufficient to accommodate the additional development, as identified in the attachment to the Minutes;
- (3) proceed to sell Lot 3 inclusive of the ceded land, to Cockburn Ice Arena (or related entity) under the following conditions:
 1. The land to be sold at the value as determined by McGees in accordance with the valuation criteria previously established.
 2. The land being developed for an ice skating facility.
 3. The development to be completed within 5 years of the date of settlement of the sale of the land.
 4. The development to be in accordance with all statutory requirements and Council Policies.
- (4) incorporate the residual land from Lot 4 into the proposed Conservation Lot to the south;
- (5) resolve that the amendments to the Business Plan referred to in sub recommendations (2) to (4) above do not differ significantly from what was proposed, in accordance with Section 3.59(5) of the Local Government Act, 1995;
- (6) seek the approval of the Minister for Lands to grant to the City



the power to lease Reserve 26954; and

- (7) modify the Management Plan for Lots 14 and 22 Progress Drive, Bibra Lake, to reflect Council's decision.

CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL 10/0

Reason for Decision

The alternative provides for the Cockburn Ice Arena development to include sufficient car parking. It also provides an increased level of vegetation linkage between Bibra Lake and South Lake, which will also assist as an acoustic barrier between the Ice Arena and nearby residential development. It is considered that these changes are of a minor nature and do not significantly differ from what was proposed in the advertised Business Plan, and only represent a minor modification to the Management Plan adopted by Council.

Background

At the meeting of 13 December 2007 Council resolved to call for Expressions of Interest in accordance with the requirements of Section 3.58 of the Local Government Act, for the possible development of Lot 14 and Lot 22 Progress Drive, Bibra Lake with the intent of creating a regional recreation and leisure precinct. At its meeting of 11 December 2008 Council resolved to prepare a plan for the development of the area and to seek the approval of the Western Australian Planning Commission for a land swap for Reserve 26954 for the revegetation areas shown on Concept Plan Option 2 should the Structure Plan for the development of the land proceed as proposed.

At the meeting of 8 October 2009 Council endorsed the Management Plan for Lots 14 and 22 Progress Drive, Bibra Lake. The Management Plan was prepared in accordance with Clause 16(3)(e) of the Metropolitan Region Scheme, and provides the guiding basis for subdivision, development and enhancement works on the subject land. It proposes the subdivision of the subject land into four lots (as shown on the attached plan), with three lots being made available for the development of private recreation uses. It identifies the remaining area of land to be reserved for 'Conservation and Recreation'.

Council at its meeting of 8 October 2009 also resolved (in part) as follows.

- (3) *proceed with the subdivision of Lots 14 and 22 Progress Drive, Bibra Lake, in accordance with the Management Plan;*
- (4) *advertise the Business Plan for the sale of land as identified in the Subdivision and Land Use Plan, in accordance with*



the requirements of Section 3.59 of the Local Government Act 1995;

- (5) authorise the CEO to seek new Expressions of Interest for Proposed Lot 4, with the outcome of this to be reported back to Council for future consideration and determination;*
- (6) clearly specify in the Business Plan that in addition to the purchase price of Proposed Lots 2, 3 and 4, prospective purchasers will be proportionately responsible for paying all servicing and conveyance costs associated with achieving subdivision of the land; and*

In accordance with the Council decision and the requirements of Section 3.59 of the Local Government Act 1995 the City advertised the Business Plan for the sale of the land in the 'West Australian' Newspaper on 21 October 2009.

Submission

There have been no submissions in response to this advertisement.

Report

As there has been no submission received in relation to the Business Plan the Council is free to again consider the matter of the sale of this land. The valuation for the land was made on 22 September 2009 (within the past 6 months) in accordance with the requirements of the Local Government Act 1995.

It is recommended that Council proceed to offer the land for sale to the applicants being Adventure World and Cockburn Ice Arena whose Expression of Interest were received by Council at its meeting of 8 October 2009 at the valuation price reported to Council.

The proposed Lot 4 shown on the attached plan has an area of 0.9134 hectares and abuts the proposed conservation area (Lot 5) of 1.113 hectares. The original applicant (Oceanic Water Babies) for Lot 4 has withdrawn their application, therefore it is recommended that Council proceed to sell this lot in accordance with the requirements of Section 3.58 of the Local Government Act 1995.

The sale of the proposed lots, including proposed Lot 4 to facilitate private recreation uses is consistent with the management Plan that has been endorsed by Council. The Management Plan will ensure that subdivision and development of the subject land adequately addresses the environmental constraints, and it has been supported by the Department of Environment and Conservation, the Heritage Council of Western Australia, Department of Water, and the Department of Planning (formerly Department of Planning and Infrastructure).



As an alternative, Council may consider not selling proposed Lot 4 and instead extend the conservation lot to include this area of land. This would result in the creation of conservation area of 1.113 hectares, 0.913 hectares and 3.27 hectares a total of 5.296 hectares. This alternative would provide an increased level of vegetation linkage between Bibra Lake and South Lake and have the additional benefit of providing an acoustic barrier between the development of Lot 3 and the residential development to the south of the site. However, it should be noted that the endorsed Management Plan identifies proposed Lot 4 for the development of private recreation uses, and this outcome was supported by the Department of Environment and Conservation.

In accordance with the Council decision of December 2008 discussions have taken place between officers from the City and the Department of Regional Development and Lands (DRDL) concerning a land swap of Reserve 26954 with the conservation land within Lots 22 and 14. DRDL has given in principle support to the land swap subject to any disparity in the valuation in the land parcels being accounted for. Officers from DRDL after discussions with the Valuer General's Office, have advised that the value per square metre for the conservation land would be considerably less than the car park land (Reserve 26954). This premise has been confirmed by Council's consultant Valuer McGees. Even taking into account the larger area of the conservation lots, the differential has been estimated to be in the order \$1.5m. This expenditure can not be justified as there is no obvious commercial use for the land at this time. The preferred option which has in principle support from DRDL officers is to apply for a Power to Lease.

The car park on Reserve 26954 is used by patrons of Adventure World and the Bungee facility.

It is anticipated that proceeds from a future lease arrangement will allow for improvements and regular maintenance of the car parking area of the Reserve.

Strategic Plan/Policy Implications

Infrastructure Development

- To provide an appropriate range of recreation areas that meets the needs of all age groups within the community.

Lifestyle and Aspiration Achievement

- To facilitate and provide an optimum range of community services and events.

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.



Budget/Financial Implications

| Purchaser | Lot | Land Size | Estimated Value (Incl. GST) |
|--------------------|-----|-----------|--------------------------------|
| Adventure World | 2 | 1.214 ha | \$632,500 |
| Cockburn Ice Arena | 3 | 2.0 ha | \$1,100,000 |
| Unallocated area | 4 | 0.9134 ha | \$528,000 |

In addition to the purchase price of the proposed sale of Lots 2, 3, and 4 the purchasers will be required to proportionally pay all servicing and conveyance costs associated with achieving the subdivision of the land.

Legal Implications

The advertising of the Business Plan for the sale of land has been done in accordance with the requirements of Section 3.59 of the *Local Government Act 1995*.

Community Consultation

The proposal to sell the land in question has been subject to extensive consultation including the Management Plan for the site. The advertising of the Business Plan for the sale of the land closed for public comment on 4 December 2009. The Business Plan was advertised in accordance with Section 3.59 of the *Local Government Act 1995*.

Attachment(s)

1. Business Plan
2. Site Plan

Advice to Proponent(s)/Submissioners

The Proponent(s) have been advised that this matter is to be considered at the February Council Meeting.

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

Nil.



(MINUTE NO 4170) (OCM 11/02/2010) - EXTENSION OF TIME**COUNCIL DECISION**

MOVED Deputy Mayor K Allen SECONDED Cllr C Reeve-Fowkes that Council extend the duration of the meeting for a further 30 minutes, the time being 9.00 pm in accordance with Clause 14.4 of Council's Standing Orders Local Law.

CARRIED 10/0

17.2 **(MINUTE NO 4171) (OCM 11/02/2010) - SPORT AND RECREATION STRATEGIC PLAN 2009 (SECOND REVISION) (8163) (S HARRIS) (ATTACH)**

RECOMMENDATION

That Council:

- (1) adopt the Sport and Recreation Strategic Plan 2009 (Second Revision) for the City of Cockburn, as attached to the Agenda;
- (2) undertake further consultation with the community, clubs and sporting associations regarding recommendations within the plan as part of the implementation of the strategies within the plan; and
- (3) update the Plan for the District to include items identified in the Sport and Recreation Strategic Plan 2009.

COUNCIL DECISION

MOVED Cllr S Limbert SECONDED Cllr V Oliver that Council:

- (1) defer the matter to an Ordinary Council Meeting following a community briefing;
- (2) undertake a briefing with local community members who have raised their concerns regarding recommendations associated with the change of use for Santich Park; and
- (3) advise the submissioners and local residents of Santich Park accordingly.

CARRIED 7/3



Reason for Decision

It is clear from the plans that the proposed change of use at Santich Park could have impacts on local residents. In view of the strong opposition and written concerns from the local residents, deferral of this item is important to allow a briefing by staff to occur for submissioners and residents affected by the changes.

A briefing would give community members and submissioners a clearer understanding of what is being proposed in the plan and provide an opportunity to discuss the proposal, address the community's concerns and issues face to face.

Whilst the plan was advertised for public comment with a notice in the Community Gazette and via the City's website, some residents were unaware of this. Letters were sent to Sporting Clubs and meetings were held with a number of clubs directly affected by recommendations within the plan. The local Santich Park residents would have appreciated the same opportunities of a letter and a meeting to discuss their concerns and issues. The matter is causing many residents who live in the vicinity of Santich Park significant concern, and it is therefore recommended that the briefing be held with the local residents and submissioners as soon as possible and before any plans are adopted.

Background

The Sport and Recreation Strategic Plan for the City of Cockburn was first presented at the October 2009 Ordinary Council Meeting. As per the Council decision from that meeting, the Plan was advertised for further public comment in the Cockburn Community Gazette, with letters sent to sporting clubs within the City of Cockburn. In addition to this a number of meetings were held with clubs and sporting associations regarding the content and recommendations within the Plan. At the conclusion of the first consultation period, 13 submissions had been received.

As required by the October 2009 Council decision, the revised Plan was presented at the December 2009 Ordinary Council Meeting. Council resolved to defer the matter to the February 2010 Council Meeting to provide an opprotunity to:

- (1) *undertake further consultation with the community and sporting clubs regarding the implementation of merge/relocation plans;*
- (2) *provide an extended window of opportunity for residents and sporting clubs to provide further feedback; and*



(3) *amend the Plan to include at Section 7 'Recreation Facility Development Plan' Developer Conditions as an additional funding source applicable to the following facilities:*

1. *Anning Park Tennis Club*
2. *Wally Hagan Stadium Upgrade*
3. *Beale Park Sports Facilities*
4. *Atwell Oval Hockey Facility*

Pursuant to the Council decision, the Revised Sport and Recreation Strategic Plan for the City of Cockburn was readvertised for public comment. The revised plan was placed on the City's website on 21 December 2009 advising that the City of Cockburn was inviting public submissions for the revised Sport and Recreation Strategic Plan, with the consultation period closing on 20 January 2010. Due to the Christmas period, a notice was placed in the Cockburn Community Gazette on 5 January 2010 and 12 January 2010 advertising the Plan and inviting feedback by 20 January 2010. Proponents were invited to download a copy of the plan or contact the City for a copy of the Plan if required.

In addition to advertising the Plan in the Community Gazette, sporting clubs and associations within the City of Cockburn were emailed on 21 December 2009 advising of the consultation period, how to access the plan and inviting responses by 20 January 2009.

Officers from the City of Cockburn also met with representatives of a number of sport clubs and sport associations to further discuss the revised plan and encourage feedback. These clubs/associations and the meeting dates are identified below.

| Date | Club/Association | Sport | Ground |
|-------------|---|------------------|-------------------|
| 11/1/10 | South Fremantle District Football Development Council | AFL | N/A |
| 12/1/10 | Hockey WA | Hockey | N/A |
| 12/1/10 | Bibra Lake JFC | AFL | Mellor Park |
| 14/1/10 | SMCA / WACA | Cricket | N/A |
| 14/1/10 | Cockburn Basketball Association | Basketball | Wally Hagan |
| 15/1/10 | Lakes JFC | AFL | Nicholson Reserve |
| 15/1/10 | Cockburn LAC | Little Athletics | Santich Park |
| 20/1/10 | Cockburn Cricket Club | Cricket | Davilak Reserve |

Submission

N/A



Report

At the close of the recent consultation and advertising period, 14 submissions were received. Given that this was the second round of consultation, the information received focussed on only a few of the recommendations within the Plan. The Schedule of Submissions is attached and identifies the party making the submission, main issues raised and Council response.

AFL

Recommendation:

Bibra Lake Junior Football Club and Lakes Junior Football Club will be encouraged to develop a closer relationship and maintain a focus on long term viability.

Based on meetings during the recent consultation period with Bibra Lake Junior Football Club and Lakes Junior Football Club and a submission from Lakes Junior Football Club, this proposal has been endorsed by both clubs. South Fremantle District Football Development Council (SFDFDC) has supported this recommendation and will work with clubs as they move forward.

Recommendation:

Relocation of Cockburn Lakes FC from Anning Park to Santich Park (2012-2014).

Based on the previous consultation, this recommendation was generally well received by Cockburn Lakes, South Coogee FC and the SFDFDC.

A number of local residents have expressed concerns regarding the relocation of a senior AFL club to the ground with 10 submissions to council in the second consultation period. The main issues raised by the residents are:

- Inadequate parking and heavy traffic
- Alcohol consumption
- Conduct of people using the site
- Litter after games

NOTE: It was confirmed at the meeting that 22 submissions had been received from local residents in the vicinity of Santich Park.

The issue of parking at Santich Park has been identified in the Strategic Plan. Given the additional usage recommended for the site, the parking around the facility will need to be upgraded to cater for the future needs. This is expected to resolve many of the issues that



residents and users of site have with parking. Additionally, adequate parking will remove the need for excessive street parking, improving traffic management.

The introduction of a senior club and liquor licence at the facility is not expected to adversely impact the usage of the facility or the local area surrounding the facility. The City of Cockburn has a number of reserves in areas close to housing where senior clubs have liquor licences and has found the clubs to be well managed and responsible. Given the restrictions imposed by liquor licensing regulations and lease requirements, the City is confident that the issue of alcohol consumption on the site will not negatively impact the local residents or neighbouring users of the reserve.

Issues of user conduct and litter will be addressed in usage agreements for the site. The City will address these issues with the existing users of Santich Park and ensure that usage agreements for proposed users cover both conduct and leaving the site in a suitable state after use.

Santich Park is a 5.6 Ha reserve and one of only two reserves within the City capable of housing two AFL fields. With the restricted active reserve space within the City of Cockburn, it is critical that the City optimises its use of its active reserves, particularly the larger reserves. As such, Santich Park is of strategic significance as a senior facility and the relocation of Cockburn Lakes to Santich Park is recommended.

The City intends to consult further with both the Clubs involved in the plans for Santich Park and the local residents with regard to the design of the facility and the use of the facility into the future as part of the implementation of the recommendation.

Little Athletics

Recommendation:

Relocation of Phoenix Park LAC from Edwards Reserve to Santich Park.

The Phoenix Park LAC are supportive of the move but have reiterated that additional storage space is required at Santich Park.

Additional storage to house Phoenix Park LAC will be considered in the facility upgrade for Santich Park.

Cricket

Recommendation:

Introduction of a senior cricket club in the East Ward (2011-2013).



Based on the meeting with SMCA during the recent consultation period, the SMCA has committed to working with existing clubs to ensure that cricket is sustainable. The SMCA will work with existing senior clubs and any new club within the City to ensure that clubs have suitable ties to junior clubs as they move forward.

Hockey

Recommendation:

Introduction of a Junior / Senior Club in the West Ward in the short term (2011-2013).

Based on the meeting during the recent consultation, Hockey WA are supportive of the need for Hockey facilities in Cockburn due to the lack of provision. The introduction of Hockey onto Edwards Reserve and Watsons Reserve are seen as overflow training and game opportunities for clubs based in neighbouring areas. As such, Hockey WA is supportive of neighbouring clubs using these reserves to introduce hockey within the City of Cockburn, particularly for junior programs.

Recommendation:

Development of dedicated Hockey facility in the East Ward (2017-2019).

Hockey WA understands the timeline in place for this development and is confident that a club can be established in the East Ward at Atwell Reserve.

Basketball

Development of Wally Hagan Stadium as a multi-purpose recreation facility (2014).

The Cockburn Basketball Association is supportive of the upgrade of the Wally Hagan Stadium to include dry side recreation and fitness facilities. The Association has raised concerns about management arrangements and access to the facility. The City has committed to further consultation with the Association to ensure that the most beneficial management arrangements for the facility and suitable access arrangements for the Association are put in place.

Conclusion

Following the second round of public consultation, recommendations within the Sport and Recreation Strategic Plan have not been modified. In accordance with the December Council Meeting recommendation,



funding sources for Anning Park Tennis Club, Wally Hagan Stadium Upgrade, Beale Park Sports Facilities and Atwell Oval Hockey Facility have been modified to include Developer Contributions. The City is committed to further consultation with Clubs, associations and local residents as part of the implementation of recommendations within the plan. Given the current inadequacies in sport and recreation provision, changing demographics and the considerable resources required to meet future needs, the City needs to adopt a proactive approach to recreation and sport provision. It is recommended that the Sport and Recreation Strategic Plan (Second Revision) for the City of Cockburn be adopted by Council and that the Plan for the District be updated to reflect the capital items identified within the plan.

Strategic Plan/Policy Implications

Infrastructure Development

- To construct and maintain community facilities that meet community needs.
- To provide an appropriate range of recreation areas that meets the needs of all age groups within the community.

Lifestyle and Aspiration Achievement

- To foster a sense of community spirit within the district generally and neighbourhoods in particular.
- To identify community needs, aspirations, expectations and priorities for services that are required to meet the changing demographics of the district.

Budget/Financial Implications

The proposed capital works program identifies a number of capital items and significant financial commitment to the City of Cockburn over the next 15 years. The existing Plan for the District identifies \$56.4m in recreation projects for the period 2010 to 2018 (including \$12m for the golf course), whereas the new plan for the district has identified \$72.0m in recreation projects over the period 2010 to 2020. The increase includes an allocation of funds for refurbishment as well as \$12m for a golf course (of which \$6m will be spent in each of 2020 and 2021). Further funds totalling \$11.2m have been allocated for 2021 to 2023

A cash flow of the works program has been included in the Plan. It is proposed that this is reviewed bi annually for inclusion in the Plan for the District.

Legal Implications

N/A



Community Consultation

Sport clubs throughout the City were surveyed in late 2008 and early 2009, with information derived from the survey included in the Sport and Recreation Strategic Plan.

The Plan was advertised for public comment with a notice in the Cockburn Community Gazette on October 20 2009 and via the City of Cockburn Website. Letters were sent to sporting clubs and meetings were held with a number of clubs directly affected by recommendations within the plan. The consultation period closed on Monday 16th November 2009.

The revised Plan was advertised for public comment on 21 December 2009 via the City of Cockburn website and emails to sporting clubs within the City of Cockburn. Additionally, the plan was advertised for comment in the Cockburn Community Gazette on January 5 2010 and January 12 2010. The consultation period closed on Wednesday 20th January 2010.

Additional community consultation with clubs, local residents and state sporting associations will be undertaken as part of the implementation of recommendations from the Plan.

Attachment(s)

1. Sport and Recreation Strategic Plan 2009 (Second Revision)
2. Schedule of Submissions - Sport and Recreation Strategic Plan 2009 (Revised)
3. Record of Club / Association Meetings

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 11 February 2010 Council Meeting.

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

Local Government traditionally provides the majority of sporting/leisure facilities in the community on a subsidised basis to the public. Some additional facilities are provided by the private sector.



17.3 (MINUTE NO 4172) (OCM 11/02/2010) - BEELIAR RESERVE - BEELIAR FLOODLIGHTING - INVESTIGATION INTO THE FAILURE OF LIGHTS DURING THE BEELIAR REGIONAL ADVANCEMENT GROUP (BRAG) CHRISTMAS CONCERTS 2008 AND 2009 (CR/F/007) (A LACQUIERE) (ATTACH)

RECOMMENDATION

That Council:

- (1) notes the information provided regarding the failure of floodlighting at Beeliar Reserve for the BRAG Christmas Concerts and the development of an event compliance checklist for future events held within the City; and
- (2) include the amount of \$10,000 in the 2010/11 Draft Budget (Donations Account) estimates as a donation to BRAG towards the conduct of its 2010 concert.

COUNCIL DECISION

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

- (1) notes the information provided regarding the failure of floodlighting at Beeliar Reserve for the BRAG Christmas Concerts and the Development of an event compliance checklist for future events held within the City;
- (2) include the amount of \$10,000 in the 2010/11 Draft Budget (Donations account) estimates as a donation to BRAG towards the conduct of its 2010 concert;
- (3) in writing advise the Electrical Contractor (responsible for the mistake) of the impacts to BRAG and the cost to the City; and
- (4) advise BRAG in writing of Council Decision.

CARRIED 10/0

Reason for Decision

In recognition of the inconvenience and embarrassment endured by BRAG as a result of floodlighting failure at Beeliar Reserve for the past two years, Council has included \$10,000 in the 2010/11 Budget. The City Administration has confirmed that it will develop an event compliance checklist to ensure this does not happen again. The checklist will identify the necessary tasks and assign responsibility to clarify the roles of the City and the event organisers in future. The electrical contractor has apologised in writing for the inconvenience caused and stated the reasons for the issue being due to their



Christmas overload and a breakdown in communication between their office staff and their electricians. Council believes its important to advise the Electrical Contractor in writing of the cost and impacts that this mistake has had on Council and its community. As a courtesy to BRAG Council will write to advise them of the planned improvement for events such as the event compliance checklist and of the donation proposed for their 2010 Christmas event.

Background

The Beeliar Residents Advancement Group (BRAG) had co-ordinated the annual community Beeliar Christmas Concert for local residents held on Beeliar reserve. In 2008 and 2009 the floodlights used on the night have, at some point during the event, automatically switched off due to the timer settings. As a result of the light failure in 2009, investigations have taken place to establish why the lighting failed and if correct procedures had taken place on behalf of the City.

Submission

N/A

Report

The Beeliar floodlights were installed on the reserve over a 2 year period starting in 2003 with completion of the lights in 2005 for sporting club use. The Beeliar Junior Soccer Club has been the users of the lighting on the reserve however, recent issues with the Club failing to turn the lighting off has seen the City install timers to ensure that they switch off each evening. The City installed the timers in June 2008 as an efficiency precaution to ensure the floodlights would not be left on over night and during the day as had been reported by the community. The floodlights were timed to automatically shut off at 10 pm in the event that the Club forgot to turn the lights off.

The Christmas Concert held on Beeliar Reserve in 2008 was the first year that floodlighting was required for this event. BRAG representatives had booked the reserve with Recreation Services and had asked that all keys were checked prior to the event being held. Keys were checked and access was granted to the lights, however, on the night the lights turned off during the pack up time of the event. The automatic timer had switched off the lights as designed. A letter dated 31 December 2008 was written to BRAG advising that, due to daylight savings, the floodlights turned off 1 hour earlier than expected. This was an oversight by Recreation Services as no clubs use the reserve over summer and therefore the timer was not adjusted.

The Christmas Concert in 2009 also experienced problems with the floodlighting due to the timers not being set accordingly. Following the



event an investigation took place to ascertain why the lighting was not programmed as requested.

The change of lighting times is currently only completed by the City's contracted qualified electricians. The contractor was formally advised by the City of the need to alter the timer for the floodlights, but unfortunately due to internal miscommunication within the contractors company, the job was not carried out prior to the event starting. The contractor did attend the site on the night to check whether the lights switch off time had been altered but unfortunately this was after the lights had gone out and notice had been given to patrons that the event would need to be terminated early. The contractor has provided in writing to the City why the timer was not changed as requested and has accepted responsibility.

The City has written to BRAG in response to a letter of complaint received on 30 November 2009 and has since apologised publicly for the inconvenience caused.

BRAG was contacted by the City to confirm their version of events that took place for the 2009 concert. The representative from BRAG confirmed that the lights were off on the night for up to 20 minutes and that the event was called off early as a result.

The City Administration has confirmed that it will develop an event compliance checklist to ensure this does not happen again. The checklist will identify the necessary tasks and assign responsibility to clarify the roles of the City and event organisers in future. This will ensure that tasks are able to be completed and checked prior to the event date.

Strategic Plan/Policy Implications

Lifestyle and Aspiration Achievement

- To foster a sense of community spirit within the district generally and neighbourhoods in particular.
- To facilitate and provide an optimum range of community services and events.
- To deliver our services and to manage resources in a way that is cost effective without compromising quality.

Budget/Financial Implications

It is proposed that \$10,000 be included for consideration in the 2010/11 Budget in recognition of the inconvenience endured by BRAG as a result of floodlighting failure at Beelihar Reserve for the past two years. This amount will substantially pay for the cost of conducting the event in 2010.



Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

1. City of Cockburn Action Request to Contractor
2. Letter from J. F. Covich & Co Pty Ltd

Advice to Proponent(s)/Submissioners

BRAG has been advised that this matter is to be considered at the 11 February 2010 Council Meeting.

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 (MINUTE NO 4173) (OCM 11/02/2010) - ADDITIONAL USE FOR RETAILING - STOCK ROAD MARKETS FOR LOTS 11, PART LOT 13, 14, 18, 20, 21, 22 AND 23 PORT PIRIE STREET, BIBRA LAKE (1116151; 1116153; 1116154; 1116158; 1116160; 1116161; 1116162; 1116163) (P PRENDERGAST)**

RECOMMENDATION

That Council:

- (1) in pursuance of Section 75 of the Planning and Development Act 2005 ("Act"), initiate an amendment to the City of Cockburn Town Planning Scheme No.3 for the purpose of:
 - "1. Allowing the additional use of shop at lots 11, 14, 18, 20, 21, 22, 23 and part of lot 13, of SP 20182, 40 Port Pirie Street, Bibra Lake.
 2. Inserting the new Additional Use No. 18 provisions into



Schedule 2 of the scheme text as follows:

| No. | Description of Land | Additional Use | Conditions |
|-------|--|---|--------------------|
| AU 18 | Lots 11, 14, 18, 20, 21, 22, 23 and Pt 13 on SP 20182, 40 Port Pirie Street, Bibra Lake. | Shop: subject to the retail floor space of individual premises being restricted to a maximum of 800 m ² GLA. | Planning Approval. |

3. Amending the Scheme map accordingly.”

- (2) as the amendment is in the opinion of Council not entirely consistent with Regulation 25(2) of the Town Planning Regulations 1967 (“Regulations”), and upon receipt of the necessary amendment documentation, the amendment be referred to the Western Australian Planning Commission (“WAPC”) with a request that it consider giving its consent for the amendment to be advertised for public inspection;
- (3) subject to the consent of the WAPC being received first as required by 2., the amendment be referred to the Environmental Protection Authority (“EPA”) as required by Section 81 of the Act, and on receipt of a response from the EPA indicating that the amendment is not subject to formal environmental assessment, be advertised for a period of 42 days in accordance with the Regulations. In the event that the EPA determines that the amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the amendment;
- (4) prepare the amended documentation in accordance with the standard format prescribed by the Regulations; and
- (5) hold in abeyance any compliance action in respect of the unauthorised uses operating from the lots referred to above, pending the outcome of (1) and (2).

COUNCIL DECISION

MOVED Deputy Mayor K Allen SECONDED Cllr C Reeve-Fowkes that Council:

- (1) in pursuance of Section 75 of the Planning and Development Act 2005 (“Act”), initiate an amendment to the City of Cockburn Town Planning Scheme No.3 for the purpose of:



- “1. Allowing the additional use of shop at Lots1 - 25 and part of lot 13, of SP 20182, 40 Port Pirie Street, Bibra Lake.
2. Inserting the new Additional Use No. 18 provisions into Schedule 2 of the scheme text as follows:

| No. | Description of Land | Additional Use | Conditions |
|------------|---|---|-------------------|
| AU 18 | Lots 1 – 25 and Pt 13 on SP 20182, 40 Port Pirie Street, Bibra Lake | Shop: subject to the retail floor space of individual premises being restricted to a maximum of 800 sq.m. GLA | Planning approval |

3. Amending the Scheme map accordingly.”

- (2) as the amendment is in the opinion of Council not entirely consistent with Regulation 25(2) of the Town Planning Regulations 1967 (“Regulations”), and upon receipt of the necessary amendment documentation, the amendment be referred to the Western Australian Planning Commission (“WAPC”) with a request that it consider giving its consent for the amendment to be advertised for public inspection;
- (3) subject to the consent of the WAPC being received first as required by 2., the amendment be referred to the Environmental Protection Authority (“EPA”) as required by Section 81 of the Act, and on receipt of a response from the EPA indicating that the amendment is not subject to formal environmental assessment, be advertised for a period of 42 days in accordance with the Regulations. In the event that the EPA determines that the amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the amendment;
- (4) prepare the amended documentation in accordance with the standard format prescribed by the Regulations; and
- (5) hold in abeyance any compliance action in respect of the unauthorised uses operating from the lots referred to above, pending the outcome of (1) and (2).

CARRIED 10/0

Reason for Decision

There have been discussions pertaining to this issue at tonight's meeting and required clarification. The retail traders at the subject location have been serving ratepayers of Cockburn and surrounding



suburbs for a number of years. There was a request for a zoning change in order for those retail traders to continue their business.

Background

The development of the Stock Road markets complex took place in the early 1980's after Council granted planning approval for the site to be developed for showroom, warehouse and weekend markets use. The development at that time included 22 small units to support the showroom warehouse component, whilst the outdoor markets use took place within the open area between the showroom units.

The details of the planning application were referred to the then Metropolitan Region Planning Authority who, whilst supportive of the proposal in principle, was so on the basis that the use would operate with conditions applied to:

1. Restrict access from Port Pirie Street only, with no access from Stock Road or Spearwood Avenue.
2. Not permit retail sales within the Showroom/Warehouse component of the development.
3. The weekend market being operative on Saturdays and Sundays only.

Since then, and as a result of a number of further planning submissions and determinations, the markets use was extended within an indoor structure. This meant that indoor markets operated daily, whilst the outdoor markets remained a weekend only affair. At the same time, the use of the 22 purpose built warehouse/showroom units remained as such, with no retail activities permissible.

Recent years have witnessed a decline in the popularity of the markets. This, coupled with the effects of extensive fire damage to the main markets structure, rendered the market use almost obsolete.

At the same time, it would appear that a number of retail and quasi retail shop businesses were established within the showroom/warehouse units that flank the car parking area adjacent to the markets.

Some of these businesses sought and were granted planning approval on the basis that they involved the sale of bulky goods, for example carpet and rug sales, or whose retail activities were classed as ancillary to another predominant activity, such as a butcher who operates a significant food processing operation and food supply business from the site as well as the retail sale of foodstuffs procured on the premises. The remainder are pure retail shop uses which do not benefit from planning approval to operate as such.



Unauthorised Business Activities:

This existence of a number of unauthorised business activities at the Stock Road Markets complex was brought to the direct attention of the Statutory Planning Team of the City in September 2009.

At that time, an application for a Section 40 Certificate, a requirement for Local Government certification under the Liquor Control Act 1988, was received by the City. This related to the potential sale of alcohol from premises at Unit 5/40 Port Pirie Street, located within the Stock Road markets complex.

In dealing with the Section 40 request, it was clear that planning consent had not been granted in respect of the use of the premises for retail shop purpose. Furthermore, the premises are located within an area defined as a "Mixed Business Zone" under the provisions of Town Planning Scheme No 3 (the Scheme). Within such areas, the use of premises for retail shop purposes is an "X" use, not permitted by the Scheme. Approval for an "X" use can only proceed by way of an amendment to the Scheme.

As a result, the Section 40 Certificate was duly completed and this confirmed that the premises would not comply with the relevant planning laws of the City.

The applicant was advised that the premises at unit 5/40 Port Pirie Street did not benefit from planning approval for use as a retail shop, by which stage the premises had been fitted out as such and was operating as a shop for the sale of East European food and groceries.

An appraisal of the various business uses operational within the complex followed, at which stage it was determined that, a total of seven (7) retail shop businesses operated without the benefit of planning approval.

These are as follows:

1. Unit 5/40 Port Pirie Street (Euro Delish Food store)
2. Unit 7-8/40 Port Pirie Street (Seafood Central)
3. Unit 9/40 Port Pirie Street (Children's Clothing, Jewellery)
4. Unit 12C/40 Port Pirie Street (Hairdressing/Ladies Clothing)
5. Unit 12D/40 Port Pirie Street (Bookshop)
6. Unit 15/40 Port Pirie Street (The Wot Not Shop-Fruit and Vegetables, Toys and Fancy Goods)
7. Unit 17/18/19, 40 Port Pirie Street (Galati and Sons, Fruit and Vegetable Sales)

It was determined that the owners and occupiers associated with each of the 7 unauthorised businesses would be advised that they operated



without the relevant planning approvals in place, and be given 60 days to cease retail trading.

Advice in this regard was included in the Elected Members Newsletter dated 8 January 2010, and as a result a number of Councillors expressed concern that this action should not be progressed, culminating in a Notice of Motion request by Councillor Allen. This calls for a Scheme Amendment to rezone the site to permit the inclusion of retail uses from it. In the interim the Notice of Motion also seeks confirmation that the City will not take any action in respect of the non-compliant businesses until the Western Australian Planning Commission determines its position on the amendment.

Submission

N/A

Report

The Notice of Motion request from Cllr Allen calls for the initiation of an amendment to the City of Cockburn Town Planning Scheme No 3 to enable retail uses to take place, in principle, in land use terms, from the Stock Road markets site. There will remain a need for such uses to obtain planning approval prior to occupation and trading.

There is an implicitly expressed view that the ability to use the units within this complex for retail purposes would, in land use terms, not conflict with the aims and provisions of the Scheme or any other relevant Planning Policy, nor would it conflict with the orderly and proper planning of the locality. The fact that a number of the units within the complex have operated as such for a number of years is considered to be indicative of that view.

For the purpose of this report, the planning merits of a scheme amendment to permit retail development at the Stock Road markets site will be explored, taking into account the objectives of the Scheme, as well as those of other Council Policies including the Local Commercial Strategy, and State Planning Policies relative to retail land use and development.

Policy Framework:

City of Cockburn Town Planning Scheme No. 3

The current Town Planning Scheme was gazetted in December 2003. Amongst other things, the purposes of the Scheme are as follows:

“(a) to set out the local government's planning aims and intentions for the Scheme Area;and



- (b) to zone land within the Scheme Area for the purposes defined in the Scheme;
- (c) to control and guide land use and development; and
- (d) To set out procedures for the assessment and determination of planning applications

In addition, the stated aims of the Scheme are to:

- “(a) ensure that development and the use of land within the district complies with accepted standards and practices for public amenity and convenience, and to
- (b) ensure that the future development and use of land within the district occurs in an orderly and proper way so that the quality of life enjoyed by its inhabitants is not jeopardised by poor planning, unacceptable development and the incompatible use of land.”

Land within the City is zoned in accordance with these objectives, and a zoning table is created which indicates, in accordance with the provisions of the Scheme, those uses that are permitted within the various zones, subject to the planning approval of the City. Land use activities are classified as follows:

'P' means that the use is permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme.

'D' means that the use is not permitted unless the local government has exercised its discretion by granting planning approval.

'A' means that the use is not permitted unless the local government has exercised its discretion and has granted planning approval after advertising in accordance with Clause 9.4.

'X' means a use that is not permitted by the Scheme.

The regulation of land use activity in accordance with the allocation of zones and the use of the zoning table ensures that development within the City is undertaken in compliance with the stated aims and purposes of the Scheme.

In the case of the Stock Road markets site, the land is zoned to be a “Mixed Business Area”, designed to cater for a wide range of light and service industrial, wholesaling, showrooms, trade and professional services, which, by reason of their scale, character, operation or land requirements, are not generally appropriate to, or cannot be conveniently or economically located within the Centre or Industry Zones.



State Planning Policy 4.2: Metropolitan Centre's Policy Statement for the Perth Metropolitan Region:

The purpose of this policy is to provide a broad regional planning framework to coordinate the location and development of retail and commercial activities in the Metropolitan Region. It is mainly concerned with the location, distribution and broad design criteria for the development of commercial activities at the regional and district level.

The objectives of the policy are to:

- establish a hierarchy of well-located centres in the metropolitan region that will:
 - promote the Perth central area as the dominant centre and the primary focus for retail, commercial, cultural, entertainment and tourist facilities;
 - promote strategic regional centres as “cities in the suburbs” and the preferred location for major offices and retailing as well as a mix of entertainment, recreation and community facilities;
 - promote regional centres as important suburban centres offering a focus for the community by providing a mix of retail, office, entertainment, recreation and community facilities;
 - promote district centres to meet the weekly shopping and service needs of the community including the provision of offices and community facilities; and
 - promote neighbourhood centres, local centres and corner shops as performing a vital role in providing the day-to-day convenience shopping for the neighbourhood as well as an important focus for neighbourhood services and community facilities;
- encourage centres to be developed as the focus of the community and employment activities comprising a range of appropriate commercial and community uses;
- ensure that centres are highly accessible, of a high standard of urban design and developed with due regard to the residential amenity of the locality;
- encourage local governments to develop local planning strategies to provide detailed planning mechanisms to implement the objectives of this policy; and
- provide policy measures and guidelines for the planning and design of centre developments.

It is envisaged that the overriding objectives of this policy will be secured via the implementation of more detailed local planning strategies. These, such as the City of Cockburn Local Commercial Strategy, are designed to provide more detailed guidance for planning



and development control in pursuit of the more global policy objectives outlined.

In June 2009, a draft State Planning Policy entitled “Activity Centres for Perth and Peel” was released. This will ultimately replace the Metropolitan Centres Policy Statement for the Perth Metropolitan Region, although until the draft Policy becomes final, the latter remains instrumental in terms of informing planning decision making in respect of commercial centre development.

The main aims of the Draft Activity Centre’s Policy are as follows:

- The distribution and types of activity centres should meet different levels of community need, and enable employment and goods and services to be accessed efficiently and equitably by the community by all transport modes.
- Apply the activity centre hierarchy as part of a long-term and integrated approach by public authorities to planning economic and social infrastructure.
- Activity centres should be located and planned to promote reduced transport energy demands and private vehicle kilometres per capita.
- Provide general land use, development and subdivision principles to guide planning decision-making and promote coordinated development.
- Activity centres should have levels of activity, accessibility and diversity sufficient to attract people and sustain public transport and a range of other services and economic activities.
- Localise employment opportunities and promote the accumulation of economic activity and cultivation of business synergies, including retail.
- Facilitate more housing supply in activity centres to improve urban land efficiency, housing variety and choice.
- Activity centres should offer a high standard of amenity and urban design, and be planned using public transport oriented principles

The hierarchical emphasis of centre development remains integral to the Draft Policy. The Policy is designed to complement the regional planning framework which seeks to reduce the overall need to travel, support the use of sustainable transport, and promote a more efficient urban form.

The implementation of this Policy will again rely on the existence of local planning strategies to guide development at a local level. It should be noted that once final, the existence of the Activity Centres Policy may require a review of the City’s Local Planning Strategy to reflect the changing policy provisions contained within it.



Local Commercial Strategy

The City of Cockburn Local Commercial Strategy exists to guide the future development of commercial centres within the City, and assists the City in guiding development in accordance with the directions set by the State Government via the release of State Planning Policies and Guidance, particularly The Metropolitan Centres Policy Statement for the Perth Metropolitan Region.

The main objectives of the Local Commercial Strategy are:

- To define and implement an appropriate system of centres as the focus of commercial and community activity.
- To place greater emphasis on the role and quality of neighbourhood and local centres within the City.
- To ensure that centres are viable, attractive and readily accessible to all members of the community.
- To facilitate provision for the widest practicable range of service functions within centres, including retail, office development, entertainment and other community services.
- To encourage an increase in local employment opportunities within centres.
- To facilitate the increased use of public transport to access centres;
- To discourage unattractive commercial ribbon development along main transport routes.
- To discourage the intrusion of inappropriate retail and other non industrial commercial uses into industrial areas.
- To encourage sustainable urban development in accordance with the Liveable Neighbourhoods Initiative.

In accordance with the hierarchical approach advocated by the Metropolitan Centres Policy, the Local Commercial Strategy identifies the existence of a range of commercial centres within the City. These included a Regional Centre at Gateways, a District Centre at Phoenix, and a number of Neighbourhood/Local Centres throughout the Municipality. The Strategy identifies the potential for The Gateways Regional Centre to be elevated in stature to a Strategic Regional Centre, recognizes the limitations in terms of growth for the Phoenix District Centre, and highlights the potential for additional Local Centres within the southern growth areas of the City.

The Local Commercial Strategy did not identify a need for the designation of Local Centre status in respect of the Stock Road Markets complex. This is notwithstanding the fact that the markets, which can be defined as “Other Retail Use” and the showroom uses adjacent to them, were fully operational at the time when the Local Commercial Strategy was framed and came into existence in 2002.

The Strategy did however reinforce the existence of “Mixed Business Areas” as defined by the Scheme. In doing so, it recognizes that there



is a tendency for some shop retail development that would be best located in defined shopping centres, to be attracted to Mixed Business Areas. The Strategy emphasizes that effective development controls are essential in ensuring that retail shop uses are directed towards defined retail centres, and not allowed in areas not so defined. In that way the economic viability and vitality of defined centres is safeguarded and bolstered, in accordance with the objectives of local and state planning strategies.

Options for the Stock Road Markets Complex:

Taking into account the planning policy framework provided by the City of Cockburn Town Planning Scheme No. 3, the Local Commercial Strategy, and State Planning Policy, it is firstly necessary to establish whether there is merit, in planning terms, in pursuing the necessary changes to enable retail shop uses to continue to operate from the Stock Road markets complex. If it is considered that there is such merit, there are a number of options available to the Council, and these will be outlined accordingly.

On the face of it, to allow retail development to take place within the Stock Road markets complex would, in planning terms, be inconsistent with and contradictory to, the existing planning policy framework. The area within which the Stock Road markets complex is located is defined as a "Mixed Business Zone" under the provisions of TPS No. 3. To allow retailing activity in this zone would undermine the objectives of identifying the zone in this location in the first place.

This conclusion is reached as the existence of retail shops in this location undermines the more overriding strategy advocated by State Planning Policies, (and upheld by the City's local planning policies including TPS No. 3 and the Local Commercial Strategy) to safeguard the economic viability and vitality of established Shopping Centres. This is the case as the importance of defined Retail Centres is diluted if retail trading takes place in areas not intended to be used for such purposes.

For this reason it is considered that the initiation of a Scheme amendment to re-zone the land from "Mixed Business" to "Local Centre" should be avoided.

The fact that retail activities have been undertaken from the subject site, albeit without the benefit of planning approval, is however, a material consideration for Council in its consideration of the issue the subject of this report. It could be argued that these unauthorized activities have been undertaken without compromise to the orderly and proper planning of the locality, as the retail activities in question are minor in terms of their floor area, and they comprise a minority of the total floorspace available within the complex, the remainder of which is



either vacant, or in use with the benefit of the necessary planning approvals in place.

In addition, the existence of a defined Local Centre in close proximity at the corner of Port Kembla Drive and Spearwood Avenue, lends support to the idea of allowing the “additional use” of retail shop to take place within the Stock Road Markets Complex. The existing Local Centre here exists to provide some level of retail advantage to occupiers and users of the wider commercial area located on the east side of Stock Road. It is however, limited in size and as such it could be seen to be failing to satisfy the day to day retail needs of users of the area.

Under the provisions of Clause 4.5 of TPS No. 3, land may be used for a specific use or uses that are listed in addition to any uses already permissible in the zone in which the land is situated. The existence of additional uses on a specific lot or in a defined area would be the subject of a scheme amendment in the same way that a proposal to re-zone the land would be. However, the acceptance or otherwise of the additional uses approach is more site specifically controlled, and this control allows the additional land use to take place without prejudice to the objectives of TPS No. 3.

There are other benefits to this approach, not least the ability for the Council to dictate maximum net retail floorspace, both for individual businesses within particular units and in a collective sense to ensure that long term, the area does not assume the characteristics of a bonafide retail centre. The objective of the Council in accommodating the various unauthorized retail businesses located within the Stock Road centre could be achieved, and the complex could continue to operate as it has been, albeit, subject to the determination of retrospective planning applications, in a lawful manner.

It is recommended therefore, that Council adopt this approach, and initiate an amendment to TPS No. 3 to allow the additional use for shop retail development on certain lots within the Stock Road markets complex.

Strategic Plan/Policy Implications

Demographic Planning

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

Budget/Financial Implications

N/A



Legal Implications

In accordance with the requirements of Town Planning Scheme No. 3.

Community Consultation

N/A

Attachment(s)

N/A

Advice to Proponent(s)/Submissioners

N/A

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

Nil.

19.2 (MINUTE NO 4174) (OCM 11/02/2010) - DONATION TO SALVATION ARMY TOODYAY BUSHFIRE APPEAL (5300) (R AVARD)

RECOMMENDATION

That Council donates \$10,000 from the unallocated portion of the 2009/10 Grants and Donations Budget to The Salvation Army Toodyay Bushfire Appeal.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Deputy Mayor K Allen that that the recommendation be adopted.

CARRIED 10/0

Background

By email received on 21 January 2010, Mayor Howlett submitted the following Notice of Motion for consideration at the February 2010 Council Meeting:

That Council allocate \$10,000 from the unallocated portion of the 2009/10 Grants and Donations Budget in order to make a donation to The Salvation Army Toodyay Bushfire Appeal.



Submission

N/A

Report

In support of his motion, Mayor Howlett has provided the following information.

The December 2009 bushfires in the Toodyay area have been extensively covered by the media including the aftermath where families have been left homeless and without any other material or personal possessions due to the intensity of the fire that raged through their community.

On surveying the devastation, Premier Colin Barnett declared the area around Toodyay a state natural disaster area and announced immediately a \$3000 grant for families left in desperate need by the fires. These were subsequently matched by a local Toodyay resident.

Many local governments across Western Australia have since responded in terms of providing direct financial support and/or co-ordinating fundraising efforts with their local communities in order to ensure the affected residents of Toodyay are assisted in their time of need. Several organisations have established Toodyay Bushfire Appeals including the Lord Mayor's Distress Fund, The West Australian – 7 News Fund and The Salvation Army Fund.

The City of Cockburn more recently provided a financial contribution of \$30,000 to the Victorian Bushfire Appeal in February 2009. Unspent funds are available in the Grants and Donations Budget for 2009/10.

Consideration is also being given to raising funds through a 'tin shake' at the 'Summer of Fun Concerts' and then combining the monies collected with the planned donation.

Strategic Plan/Policy Implications**Lifestyle and Aspiration Achievement**

- To foster a sense of community spirit within the district generally and neighbourhoods in particular.



Budget/Financial Implications

Funds of approximately \$108,000 remain in the Grants and Donations Budget established fro Community Grants. It is anticipated that approximately \$70,000 will be recommended to Council for distribution in the next round of submissions scheduled for April 2010.

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

N/A

Advice to Proponent(s)/Submissioners

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 COUNCILLORS OR OFFICERS

Nil

22. MATTERS TO BE NOTED FOR INVESTIGATION, WITHOUT DEBATE

Nil

23. CONFIDENTIAL BUSINESS

Nil



24 **(MINUTE NO 4175) (OCM 11/02/2010) - 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:-

- (1) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (2) 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
- (3) managed efficiently and effectively.

COUNCIL DECISION

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

CARRIED 10/0

25 **(OCM 11/02/2010) - CLOSURE OF MEETING**

9.10 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:/...../.....

