

# CITY OF COCKBURN

## SUMMARY OF MINUTES OF SPECIAL COUNCIL MEETING HELD ON WEDNESDAY, 8 DECEMBER 2004 AT 5:33 PM

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	Page
1. DECLARATION OF MEETING .....	1
2. APPOINTMENT OF PRESIDING MEMBER (IF REQUIRED).....	1
3. DISCLAIMER (READ ALOUD BY PRESIDING MEMBER).....	1
4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (BY PRESIDING MEMBER) .....	2
5 (SCM 08/12/2004) - APOLOGIES & LEAVE OF ABSENCE .....	2
6 (SCM 08/12/2004) - PUBLIC QUESTION TIME .....	2
7. DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS.....	3
8 (SCM 08/12/2004) - PURPOSE OF MEETING .....	3
9. COUNCIL MATTERS.....	3
9.1 <u>(MINUTE NO 2626)</u> (SCM 08/12/2004) - OFFER BY W.A. CROATIAN ASSOCIATION (INC.) (WACA) TO PURCHASE LOT 21 PROGRESS DRIVE, BIBRA LAKE (1117890; 1117891) (DMG) (ATTACH) .....	3
10. <u>(MINUTE NO 2627)</u> (SCM 08/12/2004) - RESOLUTION OF COMPLIANCE (SECTION 3.18(3), LOCAL GOVERNMENT ACT 1995).....	9
11 (SCM 08/12/2004) - CLOSURE OF MEETING.....	9



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## MINUTES OF SPECIAL COUNCIL MEETING HELD ON WEDNESDAY, 8 DECEMBER 2004 AT 5:33 PM

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### PRESENT:

#### ELECTED MEMBERS

Mr S Lee	-	Mayor
Mr R Graham	-	Deputy Mayor
Mr I Whitfield	-	Councillor
Mr A Edwards	-	Councillor
Mr K Allen	-	Councillor
Mrs S Limbert	-	Councillor
Mr M Reeve-Fowkes	-	Councillor
Mrs V Oliver	-	Councillor

#### IN ATTENDANCE

Mr S. Cain	-	Chief Executive Officer
Mr D. Green	-	Director, Administration & Community Services
Mr A. Crothers	-	Director, Finance & Corporate Services
Mrs B. Pinto	-	Secretary/PA, Finance & Corporate Services
Mr A. Jones	-	Communications Manager

### 1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 5.33 pm.

### 2. APPOINTMENT OF PRESIDING MEMBER (If required)

### 3. DISCLAIMER (Read aloud by Presiding Member)

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



**4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (by Presiding Member)**

Nil

**5 (SCM 08/12/2004) - APOLOGIES & LEAVE OF ABSENCE**

Clr A Tilbury - Apology  
Clr L Goncalves - Apology

**6 (SCM 08/12/2004) - PUBLIC QUESTION TIME**

**Colin Crook, Spearwood** read a letter in relation to Item 9.1. – Lot 21 Progress Drive, Bibra Lake. His concern was the officer's recommendation to Council to decline the offer of first refusal from the WACA. His letter contained some questions in relation to this matter.

Mr Crook also referred to the confidential attachment mentioned on Page 6 of the Agenda, which was sent under separate cover. Mayor Lee responded that it is confidential information which cannot be disclosed.

Mayor Lee thanked Mr Crook.

**Rex Sallur, Bibra Lake** also spoke in relation to Item 9.1. He asked the following questions:

Q1. When did the WA Croation Association purchase the land?

A1. Formally purchased in 2000.

Q2. What did the Association pay for the land?

A2. \$220,000.

Mr Sallur referred to the report from Pember Wilson and Eftos who made a valuation of \$620,000. He asked:

Q3. What category have these been valued at – are they residential?

A3. Mayor Lee responded that he is unable to make any comment as it is not a valuation that Council had undertaken.

This land was originally part of the natural bushland between South Lake and Bibra Lake. It was damaged quite badly by earlier practices such as horse hire facilities and also the bridge which was cut by the construction of North Lake Road. He said as a result of this much of the bushland had been lost at a very high rate, and also the wetlands surrounding the area are still under



threat of inappropriate development too close to them. The land up to Bibra Drive should have been revegetated back to its original state to reform a natural link between South Lake and Bibra Lake. Council should be putting much emphasis on reclaiming the land and bringing it back to its original state.

Mayor Lee thanked Mr Sallur.

**7. DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS**

Nil

**8 (SCM 08/12/2004) - PURPOSE OF MEETING**

The purpose of the meeting is for Council to consider the request by the W.A. Croatian Association (Inc.) for the City to purchase Lot 21 Progress Drive, Bibra Lake from the Association, in accordance with the contract of sale between the Association and the City of Cockburn.

**9. COUNCIL MATTERS**

**9.1 (MINUTE NO 2626) (SCM 08/12/2004) - OFFER BY W.A. CROATIAN ASSOCIATION (INC.) (WACA) TO PURCHASE LOT 21 PROGRESS DRIVE, BIBRA LAKE (1117890; 1117891) (DMG) (ATTACH)**

**RECOMMENDATION**

That Council declines the offer of first refusal to re-purchase Lot 21 Progress Drive Bibra Lake, from the W.A. Croatian Association (Inc.), pursuant to Clause 3.6 of the Contract of Sale between the City of Cockburn and the Association, stamped 4 May 2000.

**COUNCIL DECISION**

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

- (1) declines the offer of first refusal to re-purchase Lot 21 Progress Drive from the WA Croatian Association (inc), pursuant to Clause 3.6 of the Contract of Sale between the City of Cockburn and the Association, stamped 4 May 2000;
- (2) reaffirms its commitment to retain the covenants and restrictions placed on the land associated with the Conservation Section of the land (Notification H842947), and the size of the building envelope; and



(3) notifies the WA Croatian Association accordingly.

**CARRIED 5/3**

### **Explanation**

It was never Council's intention to allow development of the Conservation Section or to allow any increase in the size of the building envelope. Whilst Council believes that the Valuer General's valuation exceeds the price Council is prepared to pay for this land, Council wishes to reiterate its desire to see the conservation value of this land retained to the utmost.

### **Background**

In May 1998, the Valuer General's Office was requested to provide a market valuation (unserviced) for Lot 21 Progress Drive and the property was valued on the basis of the information in the diagram attached marked A.

The land in question was sold to the WA Croatian Association (Inc) for the sum of \$220,000 in accordance with the provided valuation for an unserviced lot with development restrictions. The sale was governed by a Contract of Sale and clause 3.6 thereof (see attached marked B) stated that "*If the City wishes to exercise the right of first refusal the City must, within 14 days ... serve on the Association an executed Contract of Sale.*" Council has certain obligations in that the purchase price is to be determined by the Valuer General.

Before subdivision of the original Lot 14 Progress Drive could be effected, the conditions of subdivision approval had to be cleared so as to create the lots the subject of the subdivision. Lot 21 Progress Drive was created for the purpose of selling it to the WA Croatian Association for the development of clubrooms and Lot 22 was to be leased to the Association and the Association had to develop a soccer pitch on Lot 22 within a specific time. The Association failed to satisfy the terms of the Lease for Lot 22 and therefore, Council issued a Notice of Default to the Association to rectify the default within 28 days. The default was not rectified within the specified time and therefore Council decided to cancel the Lease. The Association acknowledges that the anticipated potential of the development cannot be achieved and has decided to sell Lot 21 Progress Drive.

To clear the original conditions of subdivision relating to Lot 14 Progress Drive, Council supervised the provision of services to the Lot. The Water Corporation provided the sewer connection. The water connection to the property was funded by the Association (\$64,891)



and the provision of electricity funded jointly by Council (\$6,881) and the Association (\$13,763).

By letter received by Council on 31 March, 2004, the WACA informed Council that it proposed to sell Lot 21 Progress Drive, Bibra Lake and offered Council the first right of refusal to purchase the land pursuant to the original Contract of Sale, which involved obtaining a valuation from the Valuer General and subsequently received 7 April, 2004.

At a Special Meeting of Council held on 13 April, 2004, for this purpose, Council resolved as follows:-

*“ that Council purchases the land at the price nominated in the Valuation Report provided by the Department of Land Information, Valuation Services (previously known as the Valuer General's Office) on 7 April, 2004, in accordance with it's entitlement as provided in Clause 3.6 of the Contract of Sale between the City of Cockburn and the W.A. Croatian Association, stamped 4 May, 2000, with the required funds to be drawn from the Land Development Reserve Fund.”*

### **Explanation**

*Council has had considerable prior dealing in relation to the land and therefore, has corporate knowledge that is valuable to its future development. It is considered that there is a community benefit associated with Council involvement in the progress of the land's development, in whatever form that may take, and it is noted that purchase of the land does not affect the Council's financial position in the immediate term.”*

A signed Contract of Sale was forwarded to the W.A. Croatian Association (Inc.) on the 14 April, 2004, along with Council's cheque for \$32,500 being the required ten (10) percent deposit. The Association returned Council's cheque because it considered the offer made was inadequate owing to costs associated with the project which have improved the land. A letter dated the 7 May, 2004, was received by Council from the Association informing that the Association had received offers from other parties for Lot 21 Progress Drive and the offers ranged from \$380,000 to \$690,000 and requesting that Council reconsider the matter.

As the Contract of Sale provided a settlement date on or before 14 May, 2004, it was considered that an informal position on the Association's request be obtained from the Elected Members.

On the 11 May, 2004, at an Agenda Forum, Elected Members were informally asked for their view regarding the valuation of the land. The Elected Members were of the view that a Contract existed and that the terms of the Contract should be applied. This advice was conveyed to the Association by letter dated 13 May, 2004. The Offer and



Acceptance along with the deposit cheque for \$32,500 was returned to the Association on that date.

The legal firm of Mony De Kerloy acting on behalf of the W.A. Croatian Association (Inc.) wrote to Council on 27 May, 2004, taking issue with the market valuation provided by the Valuer General and requested for the land to be revalued.

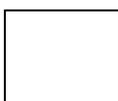
Based on the 11 May discussion, Mony De Kerloy were advised by letter dated 1 June, 2004, that the Valuer General would not be requested to revalue the land.

Council received a further letter from Mony De Kerloy dated 22 July, 2004, along with a copy of a valuation report for Lot 21 Progress Drive, Bibra Lake prepared by the firm of Pember Wilson and Eftos stating that the market value for the land was \$620,000. A further request was made to have the Valuer General revalue the land.

An analysis of both valuation reports suggests that each valuer used a different methodology to arrive at their valuation. The Valuer General provided a market valuation of \$325,000 using sales statistics of property in the Banjup area. This is considered reasonable since Lot 21 Progress Drive is situated in an environmentally sensitive area and the Banjup area with its resource zone, is also environmentally sensitive. An important factor is that it was valued on the same basis as it was originally sold by Council to the Association. The Pember Wilson and Eftos valuation report has utilised sales statistics of unrestricted developable land in Barrington Street and vacant industrial land in Cocos Drive.

Given the disparity between the market valuations it was considered appropriate to reaffirm the value of the land by the Valuer General. Accordingly, Council, at the Council meeting conducted on 17 August, 2004, resolved as follows:-

- "(1) *reserve its right to assert that the valuation of \$325,000 provided by the Valuer-General and dated 7 April 2004, is the operative valuation for the purpose of clause 3.6 of the original Contract for Sale between the City and the Association stamped 4 May 2000;*
- (2) *on a "without prejudice" basis, request the Valuer-General to review that valuation, subject to:*
- 1. An agreed statement between the City and the Association to the satisfaction of the City's Solicitors first being provided to the Valuer-General, setting out key assumptions on which the valuation is to be prepared, particularly ensuring that correct zoning, System 6*



*Reservations, the Ministerial Statement and any other applicable restrictions are taken into account in valuing.*

2. *The Association agreeing in writing to pay the costs of revaluation.*
- (3) *review its position on (1) above following receipt of the revaluation referred to in (2) above."*

### **Explanation**

*Clause 3.6 of the original Contract for Sale provides the City with a right of first refusal, not an option to purchase as such. The Association was under no obligation to accept the City's offer to buy, however the Association cannot sell the land to anyone else so long as the City remains interested in buying it at the Valuer-General's valuation. While it is open for Council to ask the Valuer-General to revalue the land, any such position taken by the City should be 'without prejudice' to the City's ongoing contention that only the first valuation provided by the Valuer-General is applicable for the purposes of Clause 3.6. If the revaluation proves acceptable to both parties, it would be open to the Association and the City to proceed on a Contract of Sale and purchase outside the scope of Clause 3.6. If the revaluation proves unacceptable, the City could revert to its formal position that the first valuation only is relevant for the purposes of Clause 3.6."*

### **Submission**

By letter received by Council on 26 November 2004, the WACA has informed Council that it proposes to sell Lot 21 Progress Drive Bibra Lake, and offers Council the first right of refusal to purchase the land pursuant to the original Contract of Sale.

### **Report**

Having regard for the information above, Council requested the Valuer General to review the market valuation for Lot 21 Progress Drive as a serviced lot, bearing in mind the formula and methodology used to arrive at the assessment of 7 April 2004.

This information was received by Council on 15 November 2004, and is provided under separate cover as a confidential attachment.

On receipt of this information, correspondence was forwarded to WACA informing that, owing to the Valuer General's office comment that the original valuation report of 7 April 2004, provides the best guide to the value of the subject land, Council reiterates its previous offer to purchase Lot 21 at the purchase price of \$325,000 as calculated by the Valuer General. WACA has since rejected this offer and returned Council's initial deposit cheque.



In assessing the latest Valuation Report, it is not considered that Council will benefit in any substantial way through the re-purchase of the property, bearing in mind its limited usage potential.

Similarly, the sale of the property by WACA to any third party could only be on the basis of its limited development capacity, owing to its land use zoning and location.

Unless Council had a specific intention for the future use of Lot 21, it is recommended that Council declines the first right of refusal for its purchase, as provided for in the Contract of Sale between WACA and the City.

The remaining two lots within the location, being Lot 22 and Part Lot 14, will continue to be owned in freehold by the City and would not require any amendment to their current form, in the event Council wished to pursue development suited to the land in future.

This scenario would also apply in the event Council decided to purchase Lot 21, as the three separate lots could be considered for future development in either a "broad acre" form, or within the scope of their separate boundaries.

On balance, there would appear to be no commercial or other advantage in Council re-purchasing Lot 21 at this time.

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

Key Result Area "Managing Your City" refers.

### **Budget/Financial Implications**

Nil, unless Council determined to purchase the land, in which case, funds would need to be drawn from the Land Development Reserve Fund, as no funds have been provided in the 2004/05 Budget.

### **Legal Implications**

This matter is subject to a Contract of Sale between Council and WACA, stamped 4 May 2000. Clause 3.6 of the Contract specifically refers.

### **Community Consultation**

N/A

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

Nil.



10. **(MINUTE NO 2627) (SCM 08/12/2004) - 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 I Whitfield SECONDED Clr S Limbert that the recommendation be adopted.

**CARRIED 8/0**

11 **(SCM 08/12/2004) - CLOSURE OF MEETING**

MEETING CLOSED 5.57 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: ...../...../.....

