

# CITY OF COCKBURN

## SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON THURSDAY, 11 JANUARY 2007 AT 7:00 PM

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# CITY OF COCKBURN

## MINUTES OF ORDINARY COUNCIL MEETING HELD ON THURSDAY, 11 JANUARY 2007 AT 7:00 PM

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### PRESENT:

#### ELECTED MEMBERS

Mr S Lee	-	Mayor
Mr R Graham	-	Deputy Mayor
Ms A Tilbury	-	Councillor
Mr I Whitfield	-	Councillor
Ms L Goncalves	-	Councillor
Mr T Romano	-	Councillor
Mrs J Baker	-	Councillor
Mrs S Limbert	-	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
Mr D. Arndt	-	Director, Planning & Development
Mr N. Evans	-	Communications Manager
Ms V. Viljoen	-	PA to the Chief Executive Officer

### 1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 7.00pm.

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

N/A

### 3. DISCLAIMER (To be read aloud by Presiding Member)

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written



advice from the Council prior to taking action on any matter that they may have before Council.

**4 (OCM 11/01/2007) - 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 a declaration of a conflict of interest from Clr Goncalves, which would be read at the appropriate time.

**5 (OCM 11/01/2007) - APOLOGIES AND LEAVE OF ABSENCE**

Clr Kevin Allen - Apology  
Mr Michael Littleton - Apology

**6. ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**7 (OCM 11/01/2007) - PUBLIC QUESTION TIME**

**Dan Scherr – Amity Boulevard, Coogee**

ITEM 23.1 – STATE ADMINISTRATIVE TRIBUNAL MEDIATION – PORT COOGEE LOCAL STRUCTURE PLAN VARIATIONS

Q1 Can Council advise what Australand is claiming regarding the Port Coogee Structure Plan - a public document - as raised in the State Administrative Tribunal?

A1 At Council's meeting on the 25 July 2006 Council approved a request from Australand to vary the approved Local Structure Plan for Port Coogee, subject to a number of conditions. Australand subsequently lodged an Application for Review (appeal) with the State Administrative Tribunal against some of the conditions imposed by Council.

Q2 I understand that the negotiations are confidential, but as a ratepayer I ask what is Australand claiming?

A2 The amended Local Structure Plan (approved 25 July 2006) for Port Coogee is a public document, together with the minutes of Council meeting which specifies the conditions imposed by Council. The grounds of review, lodged by Australand, are also available either from Council or the State Administrative Tribunal.



Q3 What can Council divulge about this activity?

A3 Council is however bound by the State Administrative Tribunal regulations and unable to disclose any of the mediation discussions or proposed grounds of settlement until a determination has been made by the Tribunal. Following which the determination of the Tribunal would be available to the public.

Q4 When will that determination be made?

A4 The Tribunal has scheduled a hearing for 9 February 2007 at which Council and Australand may put forward an agreed grounds for settlement. The Tribunal would then consider those grounds for settlement and make its own determination. That determination is probably about two to three weeks after the actual hearing, however as it is outside Council's control we cannot put an actual date on the outcome.

## 8. CONFIRMATION OF MINUTES

### 8.1 **(MINUTE NO 3355)** (OCM 11/01/2007) - ORDINARY COUNCIL MEETING - 14 DECEMBER 2006

#### **RECOMMENDATION**

That the Minutes of the ordinary Council Meeting held on Thursday, 14 December 2006 be adopted as a true and accurate record.

#### **COUNCIL DECISION**

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

**CARRIED 9/0**

## 9. WRITTEN REQUESTS FOR LEAVE OF ABSENCE

Nil

## 10. DEPUTATIONS AND PETITIONS

Nil



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

Nil

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

Nil

**13. COUNCIL MATTERS**

**13.1 (MINUTE NO 3356) (OCM 11/01/2007) - REVIEW OF WARD BOUNDARIES AND COUNCILLOR REPRESENTATION (1035) (DMG) (ATTACH)**

**RECOMMENDATION**

That Council:-

- (1) retain the current Ward boundaries to be effective for the City of Cockburn elections to be held in 2007;
- (2) following the 2007 elections, undertake community research to gauge current elector preferences in relation to Ward and Non-Ward systems of elected member representation for the City of Cockburn;
- (3) upon receipt of the results of (2) above, conduct a formal review of its Wards and Councillor representation, in accordance with schedule 2.2 of the Local Government Act, 1995; and
- (4) ensure the review undertaken pursuant to (3) above is presented to Council, with any recommendations, by no later than 18 July, 2008.

**COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 9/0**

**Background**

The Local Government Act, 1995, Schedule 2.2 Clause 6 (1) stipulates, as follows:





## 6. Local government with wards to review periodically

- (1) A local government the district of which is divided into wards is to carry out reviews of –
- (a) its ward boundaries; and
  - (b) the number of offices of councillor for each ward,
- from time to time so that not more than 8 years elapse between successive reviews.

The Act came into effect on 1 July, 1996, therefore requiring a formal review to be carried out by all local governments with a Ward system of councillor representation no later than 30 June, 2004.

In the case of the City of Cockburn, this review was conducted in 2000 and a position formally adopted by Council on 18 July, 2000.

Accordingly, the next formal review required to be undertaken by Council in relation to this issue is due by July, 2008, at the latest.

At the Council Meeting conducted on 18 July, 2000, Council resolved, as follows:-

That Council:-

- (1) recommends to the Local Government Advisory Board the making of an Order under Schedule 2.2(9) of the Local Government Act, 1995, to:-

Pursuant to Sections 2.2(1), 2.3(3) and 2.18(3) of the Act,

1. abolish the existing West, North, Coastal, South and East Wards of the City of Cockburn;
2. create three new Wards, being West, Central and East Wards, as designated on the attachment "Preferred Option Ward Structure (Current) and Proposed Suburb Boundaries";
3. reduce the number of offices of Councillor for the District of Cockburn from 14 to 9;
4. appoint three Councillors for each of the West, Central and East Wards, to take effect from the date of the next elections to fill the offices of Councillor; and



5. informs the Board of Council's decision taken on 12 October, 1999, changing the method of filling the office of Mayor of the City of Cockburn to be elected by the electors of Cockburn.

### **Submission**

N/A

### **Report**

#### 1. Objective

The primary purpose of this report is to determine the following outcomes:

- (1) the adequacy of the current situation relative to Councillor numbers and Ward representation in the City of Cockburn;
- (2) whether changes are desirable, as a result of the consideration of (1) above; and,
- (3) if changes are desirable, when they should be effected.

Recent statistics have been obtained confirming the following:-

- Number of electors (per Ward) in the District (as at 30 June, 2006).
- Estimated population growth of the District (to 2021).

#### 2. Findings

Currently, the City of Cockburn is comprised of three (3) Wards, West, Central and East, each represented by three (3) Councillors as shown in Attachment (1).

This Ward structure has been in place since the elections conducted on 6 December, 2000, to elect a new Council, following the dismissal of the previous Council earlier that year.

At the time, elector numbers in each Ward were as follows:-

WEST	-	16199	(38%)
CENTRAL	-	12269	(30%)
EAST	-	13428	(32%)
<hr/>			
TOTAL	-	41896	(100%)

The Council decision earlier that year to create these Wards was based on the following rationale of equitable population numbers:-



WEST	-	23.750	(36%)
CENTRAL	-	21.125	(32%)
EAST	-	21.125	(32%)
<hr/>			
TOTAL	-	66.000	(100%)

As can be seen, the overall percentage ratio (both in elector and population numbers) were generally consistent.

It should be noted that it was not possible to compare actual elector numbers because of the redistribution of Ward boundaries from the time of the previous Council elections in 1998. The current population of the City (around 80,000) is represented by the following elector numbers in the same Ward structure:-

WEST	-	16.832	(34%)
CENTRAL	-	13.462	(28%)
EAST	-	17.947	(38%)
<hr/>			
TOTAL	-	48.241	(100%)

The most obvious revelation from this exercise is confirmation of the rapid growth of population (and electors) in the East Ward, compared to small increases in both West and Central. In terms of equilibrium, the current ratio of electors to Councillors is as follows:-

WARD	OPTIMUM	ACTUAL	% VARIANCE
WEST	16080	16832	+4%
CENTRAL	16080	13462	-16%
EAST	16080	17947	+12%

On the basis of this evidence, it would appear that such an anomaly between the East and Central Wards should be addressed prior to the 2007 elections. Indeed, such an option could easily be accommodated by transferring the suburb of Success, with approximately 2500 current electors, from the East Ward to Central Ward (see Attachment (2)). Such an action would result in the following elector/Councillor ratio being the basis for Councillor representation at the 2007 elections, based on the current available data.

WARD	OPTIMUM	ACTUAL	% VARIANCE
WEST	16080	16832	+4%
CENTRAL	16080	15962	-
EAST	16080	15447	-4%



### 3. Considerations for the Future

Two major developments which were essentially in the early planning stages when the current Ward structure was adopted in 2000, are now clearly defined in the manner by which they will influence the distribution of the Cockburn population into the future.

There are:-

- Development of the “Cockburn Coast”; and
- Development of the “Cockburn Central” Town Centre.

The 2000 review did not contemplate an additional 9000 people populating the newly established suburb of North Coogee. This is partly because of the unknown attitude of the then state government to the development of the coastline, which was previously allocated for industrial/commercial and recreational purposes. The shift towards medium density residential to be spread throughout this suburb now significantly changes this outlook and adds approximately 6000 new electors to the West Ward. In addition, some 3500 residents are anticipated to populate the newly created suburb of “Cockburn Central”, which is accommodated in the East Ward within the “ultimate” scenario. This is in addition to the estimated 14000 extra people who will reside in the new southern suburbs of the East Ward over time.

With only an additional 14000 people expected to occupy suburbs in the newly created South Ward at the time of ultimate development, there is likely to be a disproportionate representation of Councillors to electors, should Council retain its current course.

### 4. Conclusions

Conservative estimates are that the ultimate population of the City of Cockburn will peak at 110000 by the year 2021. However, the Council’s own Planning professionals perceive the ultimate growth will extend to around 120000 and could well be achieved before the anticipated time (as early as 2016).

However, for the purpose of this exercise, the lower population figure has been used to calculate how the Ward boundaries and Councillor representation would appear at that time, assuming the “ultimate” model was retained by Council as its preferred model.

<b>WARD</b>	<b>ESTIMATED POPULATION</b>	<b>% POPULATION</b>
WEST	38000	35%
SOUTH	31000	28%
EAST	41000	37%
TOTAL	110000	100%



Based on this information, it is likely that a re-allocation of suburbs to Wards within the District would be necessary to satisfy the equality criteria.

In this regard, it is more likely that it would be possible to arrange a structure more aligned to the current West/Central/East Ward model, rather than ultimately replacing Central with South.

However, until development trends are more advanced, it is not considered of any great benefit to delve too deeply into this matter at this time.

Given the significant variance which has now arisen because of the manner in which the District is developing, it will be necessary to re-calculate the growth areas of the City through to its ultimate development stage. It is critical that the timing of these calculations is right, to maximise the accuracy of these predictions, in terms of both population extent and the timeframe for completing the population infill.

While such statistical data is imperative as a means of addressing this issue, another factor, that of community input and opinion, needs also to be considered.

Community research was pivotal in Council reaching its current position in terms of Ward representation. Any formal review of this position should also involve consultation with the community.

In summary, there would appear to be a compelling argument to make an adjustment to the current Ward boundaries to correct the imbalance of elector members in the current East and Central Wards. However, while a short term equilibrium would be achieved by such action, the longer term scenario would be a lot less clear and planning for any ultimate outcome may be meaningless if further unpredictable influences occur over this time.

Until population hubs and community nodes are finalised, there is not considered to be any long term benefit in tinkering with a current workable structure, merely to satisfy an equalisation in the number of electors within Ward boundaries. On the short term horizon, there is an election to replace four (4) retiring Councillors in October, 2007. While there is a current statistical disparity in elector numbers representing the East and Central Wards of the current structure, there does not appear to be any significant practical difficulties on behalf of incumbent Councillors in representing their elector base. The forthcoming election will be undertaken on behalf of Council by the WA Electoral Commissioner, using the postal ballot system.



## **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**

Schedule 2.2 of the Local Government Act, 1995, refers

## **Community Consultation**

N/A

## **Attachment(s)**

- (1) Map depicting current Ward boundaries.
- (2) Map depicting optional Ward boundaries, identifying the suburb of Success being transferred from East to Central Ward.

## **Advice to Proponent(s)/Submissioners**

Nil

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

Nil



## 14. PLANNING AND DEVELOPMENT DIVISION ISSUES

### 14.1 (MINUTE NO 3357) (OCM 11/01/2007) - PROPOSED AMENDMENT NO.53 TO TOWN PLANNING SCHEME NO. 3 - TO RECLASSIFY LOT 201 (NO. 33) MIGUEL ROAD, BIBRA LAKE FROM LOCAL RESERVE 'PUBLIC PURPOSE' TO 'INDUSTRY ZONE' (4413025) (SDS) (ATTACH)

#### RECOMMENDATION

That Council:

- (1) adopt the following amendment:-
 

PLANNING AND DEVELOPMENT ACT 2005  
RESOLUTION DECIDING TO AMEND CITY OF COCKBURN  
TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 53

Resolved that Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above Town Planning Scheme by:

  1. Amending the Scheme Maps by reclassifying Lot 201 Miguel Road, Bibra Lake from 'Public Purpose' to 'Industry Zone' in accordance with the amendment map.
- (2) sign the amending documents, and advise the WAPC of Council's decision:
- (3) forward a copy of the signed documents to the Environmental Protection Authority in accordance with Section 81 of the Planning and Development Act;
- (4) following the receipt of formal advice from the Environmental Protection Authority that the Scheme Amendment should not be assessed under Section 48A of the Environmental Protection Act, advertise the Amendment under Town Planning Regulation 25 without reference to the Western Australian Planning Commission;
- (5) notwithstanding (4) above, the Director of Planning and Development may refer a Scheme or Scheme Amendment to the Council for its consideration following advice from the Environmental Protection Authority that the Scheme Amendment should be assessed under Section 48A of the Environmental Protection Act, as to whether the Council should proceed or not proceed with the Amendment;
- (6) should formal advice be received from the Environmental



Protection Authority that the Scheme Amendment should be assessed or in incapable of being environmentally acceptable under Section 48(A) of the Environmental Protection Act, the Amendment be referred to the Council for its determination as to whether to proceed or not proceed with the Amendment; and

(7) advise the applicant of Council's decision accordingly.

**COUNCIL DECISION**  
 MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 9/0**

**Background**

ZONING:	MRS:	Industry
	TPS:	Local Reserves 'Public Purpose - WP'
LAND USE:	Public Purpose	
LOT SIZE:	1.168 Hectares	

Western Power has advised that the site is surplus to their land requirements. In the interest of orderly and proper planning it is proposed to re-zone the lot 'Industry' which is consistent with the zoning of the immediate surrounding area. Re-zoning is likely to facilitate Industrial development.

**Submission**

The applicant seeks approval from Council to initiate an amendment to the scheme for Lot 201 Miguel Road, Bibra Lake. The proposal involves reclassifying the subject land from 'Public Purpose' to 'Industry'.

**Report**

The subject land is zoned Local Reserves 'Public Purposes' with a Western Power denotation in the City of Cockburn Town Planning Scheme No 3. The site is surrounded by existing Industrial zoned land and Western Power does not require the lot for any public purpose. Development of the site for industrial purposes will result in a natural extension of the existing industrial area.

The site has excellent transport linkages to South Street and Leach Highway via Stock Road. Industrial development will result in maximum





utilisation of the land and is consistent with the existing pattern of the area.

Given that the proposed re-zoning amendment will facilitate use of the land for industrial development consistent with the immediate surrounding area, it is recommended that Council proceed to amend the scheme in accordance with the applicant's request.

### **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.*

The Planning Policies which apply to this item are:-

APD2 Industrial Subdivision Policy.  
APD5 Public Works and Development by Public Authorities

### **Budget/Financial Implications**

N/A

### **Legal Implications**

Planning and Development Act 2005  
Planning Regulations 1967

### **Community Consultation**

The proposed scheme amendment will be advertised for public comment for a period of 42 days, subject to acceptance of the proposal by the Department of Environment that the proposal raises environmental impacts that are manageable.

### **Attachment(s)**

- (1) Location Plan
- (2) Submission

### **Advice to Proponent(s)/Submissioners**

The Proponent(s) have been advised that this matter is to be considered at the 11 January 2007 Council Meeting.



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

Nil.

**14.2 (MINUTE NO 3358) (OCM 11/01/2007) - PROPOSED AMENDMENT NO. 48 TO TOWN PLANNING SCHEME NO. 3 - VARIOUS LOTS IN HENDERSON - OWNER: VARIOUS - APPLICANT: DEVELOPMENT PLANNING STRATEGIES (6004499) (MR) (ATTACH)**

**RECOMMENDATION**

That Council:

- (1) adopt the amendment for final approval without modification;
- (2) in anticipation of the Hon. Minister's advice that final approval will be granted, the documents be signed, sealed and forwarded to the Western Australian Planning Commission;
- (3) advise the applicant of Council's decision accordingly.

**COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 9/0**

**Background**

Council at its meeting on 11 May 2006 resolved to initiate an amendment to the City of Cockburn Town Planning Scheme No 3 to bring the City's Scheme into line with the Metropolitan Region Scheme Amendment 1071/33 that proposes the rezoning of land from 'Primary Regional Roads' and 'Other Regional Roads' to 'Industrial'. Council initiated the following corresponding changes to TPS3 as follows:-

- (1) 1. *Amending the Scheme Map by extending 'Special Use Zone No.2' and 'Development Area No.15' to include lots 4995 – 4997 Cockburn Road and portions of Quill Way & Stuart Drive.*
2. *Amending the Scheme Map by zoning Lots 500 – 502, 400, 303 & portion of Lot 4620 Cockburn Road, portions of Lots 4291, 21, 2 – 5 & 101 Russell Road, portion of 4895 Success Way, portion of Lot 4896 & 4898 Jessie*



*Lee Street, and portions of the Success Way, Jessie Lee Street & Crane Street road reserves 'Industry'; and*

3. *Amending the Scheme Map by zoning Lot 106 and portion of Lot 105 Russell Road 'Light and Service Industry'*
- (9) *during the public consultation process representatives from LandCorp, Main Roads WA and the Department of Planning and Infrastructure are to be invited to a meeting to discuss the scheme amendment in more detail with Mayor Lee, Cr Baker and the Director Planning and Development, and/or additional staff as deemed necessary by the Chief Executive Officer."*

Council at its meeting on 14 December 2006 resolved to grant final adoption to this scheme amendment and to seek the endorsement of the amendment from the Minister.

### **Submission**

The scheme amendment under consideration applies to land in the Henderson Industrial area that will be affected by the gazettal of MRS Amendment 1071/33. The MRS Amendment proposes the rezoning of the land from 'Primary Regional Roads' and 'Other Regional Roads' to 'Industrial'.

The land the subject of this proposal (10.5 ha area) stretches along 3 kilometres of Russell Road and Cockburn Road within the Henderson Industrial Area (see Agenda attachment 1).

The land is in a variety of ownerships, including both private and public, with various portions of the former MRS reservations having been acquired by the State Government to facilitate the Fremantle to Rockingham Highway.

### **Report**

The purpose of this report is for Council to reconsider the scheme amendment due to public submissions being received on the proposal. Five public submissions were received of which all submissions supported the amendment but it is necessary for Council to formally consider these submissions in its determination of the amendment. It was incorrectly reported that no submissions were received in respect to Item 14.4 from the meeting of Council on 14 December 2006. This was an administrative error, which has since been corrected.

Details of the proposal remain unchanged and are outlined as follows:-

The subject land is currently reserved under the Metropolitan Region Scheme (MRS) as either 'Primary Regional Road' and 'Other Regional



Road'. The City of Cockburn Town Planning Scheme No.3 (TPS3) currently reflects the existing regional road reservations over the subject land (see Agenda attachments 2 & 3).

Upon gazettal of MRS Amendment 1071/33, the land will be rezoned to 'Industrial' under the MRS (see Agenda attachment 4).

However, the subject land will become 'unzoned land' under the TPS3 as a result of its removal from the Fremantle – Rockingham Highway Primary and Other Regional Road Reserve upon the gazettal of MRS Amendment 1071/33. The Scheme Amendment seeks to extend the current TPS3 zones of the adjoining industrial estates to encompass the 'unzoned' land. The Scheme Amendment proposes the rezoning of the land from 'Primary Regional Roads' and 'Other Regional Roads' to 'Special Use' (SU2) and 'Development Area' (DA15) as well as 'Industry' and 'Light & Service Industry' Zone (see Agenda attachment 5).

The Scheme Amendment will provide the Council with development control commensurate with that which guides the adjoining industrial estates.

The amendment was advertised in accordance with the Regulations and 5 submissions were received.

A meeting was arranged by the Director Planning and Development the subject of item (9) of Council's resolution from its meeting on 11 May 2006. The meeting clarified the intent of the scheme amendment as not having any adverse impacts.

It is recommended that Council proceed to grant final adoption to the scheme amendment and seek endorsement from the Hon. Minister for Planning and Infrastructure.

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

#### ***Employment and Economic Development***

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

#### ***Transport Optimisation***

- *To ensure the City develops a transport network that provides maximum utility for its users, while minimizing environmental and social impacts.*
- *To achieve provision of an effective public transport system that provides maximum amenity, connectivity and integration for the community.*



**Budget/Financial Implications**

Nil.

**Legal Implications**

Planning and Development Act 2005  
Metropolitan Region Scheme  
Town Planning Scheme No 3  
Planning Regulations 1967

**Community Consultation**

Consultation was undertaken in accordance with the Regulations and at the close of the advertising period 5 submissions in support were received. No objections to the amendment were received from the following parties:-

1. Alinta Gas
2. Western Power
3. Department for Planning and Infrastructure
4. Department of Conservation and Land Management
5. Eastcourt Properties

**Attachment(s)**

- (1) Scheme Amendment Documents
- (2) Schedule of Submissions

**Advice to Proponent(s)/Submissioners**

All Submissioners have been advised that this matter is to be re-considered at the meeting on 11 January 2007.

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

Nil.

- 14.3 **(MINUTE NO 3359) (OCM 11/01/2007) - GROUPED (R-CODE) DWELLING - PROPOSED SECOND DWELLING - LOT 514 (NO. 46) HEBBLE LOOP, BANJUP - OWNER/APPLICANT: PB & PH SPITTLE (5513571) (MR) (ATTACH)**

**RECOMMENDATION**

That Council:

- (1) refuse the application for a second dwelling on Lot 514 (No 46) Hebble Loop, Banjup for the following reasons:-



1. The proposed development is interpreted as a “grouped dwelling” as distinct from a “dwelling” and therefore is not provided for in Statement of Planning Policy No. 2.3 – Jandakot Groundwater Protection Policy and is not permitted in the Resource Zone pursuant to Clause 5.10.11 (e) of the City of Cockburn Town Planning Scheme No. 3.
2. The proposed second dwelling is inconsistent with the objective of limiting land use and development over public groundwater to achieve an acceptable risk for contamination and where the continuation of existing approved levels of activity is provided as outlined in Statement of Planning Policy No. 2.3 – Jandakot Groundwater Protection Policy.
3. The proposed second dwelling will result in the land use intensification of a rural lifestyle lot and may give rise to future landowner expectation to subdivide the land into two lots based on separate occupancy of the same lot.

**FOOTNOTE**

1. The applicant is advised that a fresh application can be made to the Council for ancillary accommodation provided that the net area of the ancillary accommodation does not exceed 60m<sup>2</sup> pursuant to clause 5.10.2 (f) (iii) of the City of Cockburn Town Planning Scheme No. 3.
- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval – Refusal and an MRS Form 2 Notice of Refusal.

**COUNCIL DECISION**

MOVED Clr I Whitfield SECONDED Clr S Limbert that Council defer this item so that the applicant can submit a revised plan that would allow for an alternative proposal that complies with the statutory guidelines.

**CARRIED 9/0**

**Reason for Decision**

The applicant has sought legal advice and needs further time that would allow him to submit a proposal that meets statutory guidelines for ancillary accommodation.



## Background

ZONING:	MRS:	Rural Water Protection
	TPS3	Resource
LAND USE:	Residence & Outbuilding	
LOT SIZE:	2.0ha	
USE CLASS:	Land Use must be in accordance with Table 1 of Statement of Planning Policy No 2.6	

This item was considered by Council on 14 December 2006 and a decision was made for Council to defer a determination on this item, at the applicant's request, until the next meeting of Council in January 2007.

Prior to the gazettal of the Resource Zone in former District Zoning Scheme No 2 the subject property was zoned – Special Rural – 4.0 Tapper Road Banjup. The Sixth Schedule of the Scheme reinforced that only a single house was a permitted use. Other discretionary uses included limited rural activities. Grouped dwellings or second houses were not listed in the schedule and therefore were “not permitted”. The Scheme also included provisions requiring the minimum lot size to be 2.0 hectares and clearing restrictions and other requirements.

An application for approval for a second dwelling was previously refused on 20 October 2006 by the City under delegated authority of Council for the following reasons:-

1. *“The proposed second dwelling is a use that is not listed in Table 1 – Land use suitability for the Rural – Water Protection Zone in Statement of Planning Policy No 2.3 – Jandakot Groundwater Protection Policy (Gazetted 12/06/98) as amended and therefore is a land use that is generally not permitted.*
2. *The proposed second dwelling is inconsistent with the objective of limiting land use and development over public groundwater to achieve an acceptable risk for contamination and where the continuation of existing approved levels of activity is provided.*
3. *The proposed second dwelling may result in a landowner expectation to subdivide the land into two lots based on separate occupancy of the same lot.*
4. *The Jandakot Groundwater Protection Policy No 2.3 reinforces a minimum lot size of 2ha with a single house and restricted land uses. The proposed development fails to comply with this requirement.”*

The following footnote was included in accordance with Council’s Policy requirements:-

*“Alternatively, if you are dissatisfied with this decision you may write to the Council within 14 days of the date of this advice requesting that the*



*application be referred to the Council for its consideration and determination. This does not extinguish your right of appeal.”*

It was subsequently determined upon closer review of the City of Cockburn Town Planning Scheme No 3 that no discretion to approve the proposed development exists.

### **Submission**

The applicant has provided the following justification in support of the proposal which has been summarised accordingly:-

A copy of the applicant's full submission should be read in conjunction with this report and is contained in the agenda attachments.

- A second dwelling is not proposed and perhaps should be referred to as a new residence or new house;
- The second house will be left empty and will not be a prime place of residence;
- The new house would include the installation of a new alternative treatment unit for waste water called Envirosafe Septic System;
- Rural set backs on blocks are 20 & 10 metres from the front and back respectively. The proposed new house will not be built into rural setbacks;
- There are no preconceived ideas or expectations to subdivide the land into two lots based on separate occupancy of the same lot;
- Property was purchased for rural lifestyle reasons that will be maintained;
- The restricted land use requirements that apply under Jandakot Groundwater Protection Policy No 2.3 will remain unchanged with a new house on the lot;
- The option to redevelop the existing house is not an acceptable option;
- The applicant has an aging Mother who lives in Atwell. She is 79 years old. Although she lives alone at the moment, she will need closer care in the near future and this house may provide an ideal place for her to live. The family will be able to aid her in her aging years with assistance to do things she is no longer capable of.
- The immediate neighbours were contacted and the applicant has submitted 6 letters of no objection to the proposal from them, 3 are from Hebble Loop and 3 are from Bartram Road.

### **Report**

The subject land is zoned Resource under the City of Cockburn Town Planning Scheme No 3. The use and development of land within the





Resource Zone is in accordance with Statement of Planning Policy No 2.3 – Jandakot Groundwater Protection Policy. The SPP is a State Planning Policy that Council must have proper regard in its determination of planning applications within the Policy Area.

SPP2.3 permits a dwelling on each lot in Table 1. The use is "dwelling" in a singular sense not plural to mean "dwellings" or "grouped dwellings". SPP 2.3 and the City's Town Planning Scheme No 3 don't define "dwelling" but the Residential Design Codes do as follows:-

*"A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family or no more than six persons who do not comprise a single family."*

Thus the SPP 2.3 dwelling use class only permits a single dwelling and prohibits second dwellings or grouped dwellings. Various sections of the Resource Zoned area were previously included in Special Rural Zoned and Rural Zoned lots with 2ha minimum lot sizes and limited to a single house. These requirements were translated into the Resource Zone applied through SPP 2.3. The area is essentially a Rural Living Area with the ability subject to site conditions for subdivision down to a minimum lot area of 2ha.

Clause 5.10.11 (e) states that where any use is not provided for in Table 1 of Statement of Planning Policy No 2.3 – Jandakot Groundwater Protection Policy is not permitted 'X' in the Resource Zone. Accordingly Council doesn't have the ability to approve the proposed second dwelling.

An alternative to a second dwelling on the site is for the applicant to consider lodging an application for ancillary accommodation. Clause 5.10.2 of the Scheme allows the Council to approve ancillary accommodation on a lot where a single house already exists on the lot in the Resource Zone where the net area of the ancillary accommodation does not exceed 60m<sup>2</sup> and the area of the lot is to be greater than 2ha.

The applicant has already been given the opportunity to lodge a fresh application for ancillary accommodation and has rejected this option. In the interim if the applicant obtained an approval for two houses on the lot, (despite that this doesn't seem legally possible) it was intended to leave the existing house vacant leaving the applicant's family living in the (new) second house. If the family circumstances changed in the future then the house could be occupied by the applicant's mother.

The applicant has also questioned the approvals for Lot 515 Hebble Loop and Lot 513 Hebble Loop. In both instances the buildings have been granted approval for ancillary accommodation by Council.



### Recommendation

Council does not have the ability to approve the proposal for a second residence and therefore the refusal decision must apply.

The reasons for refusal have been refined to more accurately reflect the Scheme and Policy requirements that apply to the land.

### **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.*

#### ***Natural Environmental Management***

- *To conserve, preserve and where required remediate the quality, extent and uniqueness of the natural environment that exists within the district.*
- *To ensure development of the district is undertaken in such a way that the balance between the natural and human environment is maintained.*

The Planning Policies which apply to this item are:-

SPD1            Bushland Conservation Policy  
APD40         Response To Appeals

### **Budget/Financial Implications**

If the applicant lodges an appeal the City may incur costs in defending such an appeal despite the fact that an appeal right does not appear to exist.

### **Legal Implications**

Town Planning Scheme No 3  
Residential Design Codes 2002  
Planning and Development Act 2005  
State Administrative Tribunal Regulations

### **Community Consultation**

The applicant has included letters of support to the proposal from nearby neighbours.



**Attachment(s)**

- (1) Location Plan
- (2) Site Plan
- (3) Applicant's justification

**Advice to Proponent(s)/Submissioners**

The proponent and submissioners(s) have been advised that this matter is to be considered at the 11 January 2007 Council Meeting.

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

Nil.

**15. FINANCE AND CORPORATE SERVICES DIVISION ISSUES**

**15.1 (MINUTE NO 3360) (OCM 11/01/2007) - LIST OF CREDITORS PAID - NOVEMBER 2006 (5605) (KL) (ATTACH)**

**RECOMMENDATION**  
That Council received the List of Creditors Paid for November 2006, as attached to the Agenda.

**COUNCIL DECISION**  
MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.  
**CARRIED 9/0**

**Background**

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

**Submission**

N/A

**Report**

N/A



**Strategic Plan/Policy Implications**

**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**

Section 13 of the Local Government (Financial Management) Regulations 1996.

**Community Consultation**

N/A

**Attachment(s)**

List of Creditors Paid - November 2006.

**Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

**15.2 (MINUTE NO 3361) (OCM 11/01/2007) - STATEMENT OF FINANCIAL ACTIVITY - NOVEMBER 2006 (5505) (NM) (ATTACH)**

**RECOMMENDATION**

That Council receive the Statement of Financial Activity and associated reports for the period ended 30 November 2006, as attached to the Agenda.

**COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 9/0**



## 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 are to be presented to the Council.

## Submission

N/A

## Report

Attached to the Agenda is the Statement of Financial Activity for November 2006.

Note 1 shows how much capital grants and contributions are contained within the reported operating revenue.

Note 2 provides a reconciliation of Council's net current assets (adjusted for restricted assets and cash backed leave provisions). This provides a financial measure of Council's working capital and an indication of its liquid financial health.

Also provided are Reserve Fund and Restricted Funds Analysis Statements. These assist to substantiate the calculation of Council's net current assets position.

The Reserve Fund Statement reports the budget and actual balances for Council's cash backed reserves, whilst the Restricted Funds Analysis summarises bonds, deposits and infrastructure contributions held by Council. The funds reported in these statements are deemed restricted in accordance with Australian Accounting Standard AAS27.



### Material Variance Threshold

For the purpose of identifying material variances in Statements of Financial Activity, Regulation 34(5) requires Council to adopt each financial year, a percentage or value calculated in accordance with Australian Accounting Standard AAS5 - Materiality.

For the 2005/06 financial year, Council had adopted a materiality threshold of 10% or \$10,000, whichever is the greater. There is a need to review this for the 2006/07 financial year. For this purpose, a Position Statement will be developed and submitted to a future DAPPS Committee meeting.

### **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 are of a permanent nature, these will be noted and addressed at the mid-year budget review.

### **Legal Implications**

Section 6.4 of the Local Government Act, 1995 and Regulation 34 of the Local Government (Financial Management) Regulations 1996, refer.

### **Community Consultation**

N/A

### **Attachment(s)**

Statement of Financial Activity and associated reports – November 2006.

### **Advice to Proponent(s)/Submissioners**

N/A

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

Nil



**16. ENGINEERING AND WORKS DIVISION ISSUES**

Nil

**17. COMMUNITY SERVICES DIVISION ISSUES****17.1 (MINUTE NO 3362) (OCM 11/01/2007) - GRANTING OF A LEASE OVER THE WATSONS OVAL CLUBROOMS TO THE SOUTHERN SPIRIT SOCCER CLUB INC.- LOT 3 (PLAN 3176) ROCKINGHAM ROAD, SPEARWOOD (3209779) (SCD) (ATTACH)****RECOMMENDATION**

That Council:-

- (1) Enter into a Lease Agreement with the Southern Spirit Soccer Club (Inc.) (SSSC) for use of the Council owned building as shown on the plan attached to the agenda. The essential terms and conditions of the lease are to include the following:
  - The term is to be for a period of 5 years, at a rental of one peppercorn per annum.
  - The permitted purpose is to be for "Sporting and Associated Social Activities".
  - The lessee is to be responsible for the repair and maintenance of the property, as well as the payment of all outgoings.
  - The Phoenix Little Athletics Club (PLAC) are to be allowed continued use of the building for the purpose of conducting meetings, training sessions and member registration, as they have customarily done in the past. Such access is to be free of charge.
  - The SSSC be permitted to hire the premises for a reasonable fee to other sporting groups for the purpose of holding sporting related social activities, and retain the income so derived.
  - By prior arrangement, other occasional oval users are to be given access to the externally accessed visitors toilets and change rooms at no cost.
- (2) All other terms and conditions to be agreed to the satisfaction of the Chief Executive Officer.
- (3) On finalisation of the proposed Lease Agreement, support the granting of a Club Restricted Liquor Licence (*Liquor Licensing Act 1988*), which will enable the SSSC to run a small bar on the premises.



**COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 9/0**

**Background**

The City of Cockburn owns Lot 3 Rockingham Road (Watsons Oval) Spearwood upon which it has constructed a soccer pitch, with combined toilets, change-rooms, kitchen, storeroom and a clubroom in the north-eastern corner of the Reserve (“Clubrooms”) and a childrens playground towards the south-eastern corner. The land is zoned “Parks and Recreation” in Council’s Town Planning Scheme No. 3.

The Southern Spirit Soccer Club (SSSC) (originally the Cockburn Italian Soccer Club) were allocated Watsons Oval as their home ground in 1984 or thereabouts, whereupon they proceeded to utilise Council’s building as their clubroom(s). Originally the building consisted of just two shower/ablution blocks, and an attached hall. In response to submissions from the SSSC, Council agreed to the construction of two change rooms, a unisex bathroom and kitchen/clubroom refurbishment, which were completed in 2003. The current replacement value of the building is around \$800,000.

The Phoenix Little Athletics Club (PLAC) utilise the adjoining Edwardes Oval and a smaller set of toilet change rooms and kitchen located on the reserve. The PLAC have also used the Watsons Oval building at pre-arranged times for quite a number of years for the purposes of conducting their meetings, training sessions and enrolments.

**Submission**

The SSSC has sought to obtain formal Lease Agreement over the Watsons Oval Clubrooms, thereby allowing them to proceed with an application for a Club Restricted Liquor Licence on the premises.

**Report**

The SSSC have expressed a wish to obtain a Club Restricted Liquor Licence under the Liquor Licensing Act 1988, which requires Council support before it can be approved by the Department of Racing, Gaming and Liquor. However, under its Policy ACS 10, Council cannot support the issue of such a Licence unless there is a formal Lease Agreement in place over the premises. Section 37(5) of the Liquor Licensing Act 1988 also requires the applicant to demonstrate that the “licensee occupies, and retains a right to occupy, the licensed premises





to the exclusion of others” (i.e. exclusive possession), which requires a leasehold estate, at minimum.

The SSSC currently use the Watsons Oval clubrooms as their own and have assumed a sense of proprietorship concerning the premises. They have purchased and laid floor covering (carpets and tiles) for the building and have also fitted the hall out with tables and chairs, refrigerator(s), television, wall cabinets, chip and hamburger fryers and so forth. Currently, there is an informal arrangement with Council whereby the SSSC continue to utilise the premises as their clubrooms in exchange for undertaking basic caretaking, cleaning, maintenance and repair responsibilities.

The two clubs have generally co-operated with each other quite well in the past, with no real problems being reported, however in recent times there has been some minor conflict regarding perceived rights and obligations attaching to use of the facility. The City’s Community Services recently called a meeting between the two clubs, where it was agreed that a lease to the SSSC could be considered, subject to the PLAC being allowed continued use of the premises in much the same way they have traditionally enjoyed. It is proposed to insert special conditions into any Lease Agreement which will guarantee this continued access and which will effectively allow the City to act as arbitrator in the event of conflict arising between the two Clubs concerning such access.

The granting of a lease will also have the distinct advantage of formalising the existing arrangements for access and use of the building, thereby reducing the possibility for future conflict.

In conclusion, the SSSC have now occupied the Watsons Oval clubhouse for over twenty years and have kept the premises well during that time. They have invested a substantial amount of time and money in fitting out the premises and in its ongoing cleaning, repair, maintenance and general caretaking. The formalising of existing access and use arrangements in this situation is considered desirable and is in accordance with Council Policy. It is also considered that there is a case to support the issue of a Club Restricted Liquor Licence to SSSC, which will avoid the inconvenience of issuing Occasional Liquor Licences and the limitations associated therewith, as well as possibly providing additional income for the Club.

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

The granting of a lease to sporting clubs for this sort of purpose is in accordance with Council Policy ACS 10, Clause 1, which states as follows:



“Council’s preference for the management of its club change rooms is to enter lease agreements with an incorporated sporting club/association”.

### **Budget/Financial Implications**

The Peppercorn Lease will not yield any income for Council, however all outgoings, as well as maintenance and repair costs will be borne by the lessee, in accordance with normal Council practice when granting such a lease for a community purpose.

### **Legal Implications**

Disposal of Local Government property must be in accordance with Section 3.58 of the *Local Government Act 1995* and its associated regulations. The *Local Government (Functions and General) Regulations 1996*, Part 6, Clause 30 (2) states that a disposition of land (which includes a lease) is exempt from the normal public advertising and public auction/tender/sale requirements of Section 3.58 of the *Local Government Act 1995* if the land is disposed of to a body (whether incorporated or not), “*the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature*” and “*the members of which are not entitled or permitted to receive any pecuniary profit from the body’s transactions*”. As potential lessee, the SSSC clearly meets these criteria and is therefore exempt from the normal Section 3.58 requirements.

### **Community Consultation**

The Watsons Oval clubhouse has been used by the SSSC for many years as their home base. It is being proposed that the PLAC be allowed to continue their occasional use. It is not deemed necessary to seek community consultation where the proposed lease will simply formalise existing long term access and use arrangements.

### **Attachment(s)**

1. Location Plan

### **Advice to Proponent(s)/Submissioners**

The Proponent(s) have been advised that this matter is to be considered at the January 2007 Council Meeting.

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

Nil.



**17.2 (MINUTE NO 3363) (OCM 11/01/2007) - SOUTHWELL COMMUNITY CENTRE - LEASE (RA) (4610) (ATTACH)**

**RECOMMENDATION**

That Council enter a sub-lease with the Burdiya Aboriginal Corporation Inc. under the following terms and conditions:-

- (1) the lease fee shall be \$5,200 p.a. plus CPI (Perth);
- (2) the sub-lessee to be responsible for all outgoing and maintenance;
- (3) the term of the sub-lease shall be 2 years; and
- (4) all other terms and conditions of the sub-lease be subject to the agreement of the Chief Executive Officer.

**COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 9/0**

**Background**

The City currently leases from the Department of Housing and Works (previously Homewest) 1650m<sup>2</sup> of land on which the City constructed the Southwell Community Centre. The lease expires in 2032. The land is described as Cockburn Sound location 550, title volume 1564 folio 009 with a street address of 8 Caffery Place Hamilton Hill.

In recent times the building has been sub leased to Co-scope/Job Link (Inc), a community based employment and training agency. The group has advised that it no longer wishes to sub lease the premises as they have not received sufficient State/Commonwealth funding to retain the premises. The sub lease expired on the 30<sup>th</sup> of June 2004 and has been operating under the holding over clause since this date. The current tenants have left the premises in a sound condition.

**Submission**

Correspondence has been received from the Burdiya Aboriginal Corporation seeking approval to sub lease the Southwell Community Centre.



## Report

Burdiya Aboriginal Corporation has rented premises at 83 Hamilton Road in Spearwood for many years and have proven to be good tenants. The Corporations main activities are as an employment placement agency for aboriginal clients and to provide training and employment preparation for these clients. The Satterley Group as part of its commitments to the Department of Housing and Works New living Program have contracted the Burdiya Group to provide Aboriginal staff for refurbishment works on houses in the locality. By all accounts this has been a very successful program. The Corporation wishes to relocate from the premises in Hamilton Road to Southwell Community Centre as a more central administrative base for its activities.

The Southwell Community Centre is located at the end of the Caffery place cul de sac and its relatively small size and isolated location seriously limits the scope of the facility. The land is reserved for community purposes and hence its use is further constrained. The Department of Housing and Works has advised that it is prepared to contribute toward a new community centre for the locality of Southwell under its new living program funded by the sale of the land on which the Southwell community centre is located.

The Burdiya Aboriginal Corporate Inc. have been advised that any lease agreement that they may enter with the City will be for only a two (2) year period as the building could be demolished and the site used for housing. They have acknowledged this arrangement.

## Strategic Plan/Policy Implications

### ***Lifestyle and Aspiration Achievement***

- *To deliver our services and to manage resources in a way that is cost effective without compromising quality.*

## Budget/Financial Implications

In 2005/06 the City received an income of \$2,285 for the lease of the Southwell community Centre. Council at its meeting of 18 November 2006 resolved to reduce the lease fee payable by Co-Scope Job Link by \$3,000 p.a. The Burdiya Aboriginal Corporation has offered to pay the sum of \$5,200 plus CPI for the premises.

## Legal Implications

Sec 3.58 of Local Government Act, 1995, (Functions and General) Regulations 1996 section 30 (2) (b) (i) refers.

## Community Consultation

N/A



**Attachment(s)**

Site Plan

**Advice to Proponent(s)/Applicant**

The Proponent(s) have been advised that this matter is to be considered at the January 2007 Council Meeting.

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

Nil.

**17.3 (MINUTE NO 3364) (OCM 11/01/2007) - LOT 7 JUNCTION BOULEVARD COCKBURN CENTRAL- BUSINESS PLAN (9629) (RA) (ATTACH)**

**RECOMMENDATION**

That Council

- (1) proceed with the joint venture development proposal in accordance with the Business Plan (attached) between the City of Cockburn and Combined Equity Pty Ltd through the instigation of the following:-
1. signing of a Memorandum of Understanding (MOU) for the Joint Venture arrangement between the City of Cockburn and Combined Equity Pty Ltd.;
  2. preparation of the legal contract for the joint venture between the City of Cockburn and Combined Equity Pty Ltd.;
  3. preparation and development of the project design to ensure that Council adheres to Landcorp's development guidelines for consideration by Council at a future time; and
- (2) proceed to purchase lot 7 Boulevard Junction Cockburn Central from Landcorp in accordance with the Council decision of the 9<sup>th</sup> of March 2006.

**TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**



**COUNCIL DECISION**

MOVED Mayor S Lee SECONDED Cllr S Limbert that Council:

- (1) proceed with the joint venture development proposal in accordance with the Business Plan attached to the Agenda, between the City of Cockburn and Combined Equity Pty Ltd subject to the following conditions being met to the satisfaction of Council.
  1. signing of a Memorandum of Understanding (MOU) for the Joint Venture arrangement between the City of Cockburn and Combined Equity Pty Ltd;
  2. preparation of the legal contract for the joint venture between the City of Cockburn and Combined Equity Pty Ltd for presentation to a future meeting of Council, which includes a fixed management fee based on the final construction cost;
  3. preparation and development of the project design to ensure that Council adheres to Landcorp's development guidelines for consideration by Council at a future time; and
- (2) proceed to purchase Lot 7 Boulevard Junction, Cockburn Central from Landcorp in accordance with the Council decision of the 9<sup>th</sup> of March 2006.

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL 9/0**

**Reason for Decision**

While the Council is confident that the Joint Venture proposal will produce the best financial outcome for the development of this project, it is important that the management fees do not become unnecessarily inflated. Establishing a fixed management fee, based upon a fixed price contract, will ensure that the JV partner receives an adequate return for their efforts and that the City's level of return on this investment is not diminished through escalating costs. It gives certainty to both parties in the arrangement. Council can protect its own investment in relation to ratepayers' profits and the JV partner will have certainty on what it costs.



## Background

At its meeting of the 9<sup>th</sup> of March 2006 Council resolved as follows:

- (1) require for inclusion in the proposal for the development of lot 7 Cockburn Central for the City to own 2,850m<sup>2</sup> of floor space suitable for the purposes as identified in table 2 in the report;
- (2) enter an offer to purchase with Landcorp for lot 7 Cockburn Central with conditions that protect the interest of the City to the satisfaction of the Chief Executive Officer;
- (3) seek potential joint venture partners through an Expression of Interest process for the development of Lot 7 Cockburn Central and shortlist to tender; and
- (4) require the Chief Executive Officer to prepare a Business Plan in accordance with the requirements of section 3.59 of the Local Government Act for the project for presentation to Council following public notice being given in accordance with section 3.59 of the Act.

Subsequently as a result of the decision of Council of the 9<sup>th</sup> of March 2006 the City sought Expressions of Interest for the joint development of Lot 7 Cockburn Central. Council considered the one Expression of Interest received from Australand at its meeting of the 13<sup>th</sup> of July 2006 and resolved to

- (1) reject the Expression of Interest (EOI) (06/2006) Lot 7 Cockburn Central submitted by Australand;
- (2) in accordance with section 3.58 of the Local Government Act (1995) and (Functions and General) regulation 11(2)(ii) enter negotiations with Australand and/or any other interested party or parties for the development of Lot 7 Cockburn Central; and
- (3) require the Chief Executive Officer to prepare a report as a result of discussions in (2) above which includes but is not limited to the assessment criteria as described in the report, for future Council consideration.

The Council administration initiated negotiations with parties seeking agreement for the joint development of lot 7 Junction Boulevard Cockburn Central.

## Submission

N/A



## **Report**

In accordance with the Council decision of the 13<sup>th</sup> of July 2006 negotiations were initially held with Australand seeking to reach agreement on the arrangements for the joint venture development, however, agreement could not be reached to the satisfaction of the Chief Executive Officer.

Representatives of Combined Equity approached the City seeking an opportunity to enter a joint venture arrangement for the development of Lot 7 Cockburn Central. As a result of these negotiations a broad agreement on the principles of a joint venture arrangement between the City and Combined Equity has been reached. The broad principles for the terms and conditions of the agreement have been incorporated into the Business Plan.

In accordance with the requirements of Section 3.59 of the Local Government Act, 1995 a Business Plan was prepared for this proposed "Major Trading Undertaking". The Business Plan was advertised in the West Australian on the 11<sup>th</sup> of November 2006 with public comment closing on the 29<sup>th</sup> of December 2006. There have been no comments from any party received on the Business Plan as advertised.

A draft Memorandum of Understanding between the City of Cockburn and Combined Equity has been prepared.

This document sets out the parameters of agreement between the parties and will form the foundation of the legal agreement for the joint development. The draft MOU is provided under separate confidential cover.

## **Strategic Plan/Policy Implications**

### ***Demographic Planning***

- *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 deliver our services and to manage resources in a way that is cost effective without compromising quality.*
- *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 total construction cost is estimated to be in the vicinity of \$35,000,000 at today's costs. The MOU provides for the capital cost to be funded through a direct capital contribution of approximately \$7,000,000 from both the City of Cockburn and Combined Equity. The balance of the funds required will be equity capital raised through a financial institution against the property. The actual capital required for the project development will be more accurately estimated on the development of detailed construction plans and specifications.

The estimated return on cost is in the vicinity of 22%, with the actual return being dependant upon the final construction cost and the value of sales.

Administration's intent is for Council to be provided with a detailed financial plan for the project prior to the final Council decision to proceed with the project which is required by Landcorp by 30 June 2007.

### **Legal Implications**

- (1) To meet the requirements of section 3.58 of the Local Government Act (1995) the Council is required to determine the party with whom it intends to enter a contract within 6 months of its decision to negotiate a tender. The Council is required to consider this matter at its meeting of the 11<sup>th</sup> of January 2007 to meet this requirement.
- (2) Sec. 3.59(5) of the Act requires Council to formally decide to proceed with the undertaking.

### **Community Consultation**

The Business Plan for the proposed Major Trading Undertaking has been publicly advertised in the West Australian.

### **Attachment(s)**

- (1) Memorandum of Understanding – Confidential Attachment.
- (2) Business Plan for major undertaking.

### **Advice to Proponent(s)/Submissioners**

The Proponent of the proposal has been advised that this matter is to be considered at the January 2007 Council Meeting.



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

The provision of library and associated civic facilities is within Local Government's area of responsibility. An arrangement for a joint venture development with a private sector partner is in accordance with the intent of the State Government Public/Private sector partnerships.

**18. EXECUTIVE DIVISION ISSUES**

Nil

**19. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

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**

**(MINUTE NO 3365) (OCM 11/01/2007) - MEETING BEHIND CLOSED DOORS**

**COUNCIL DECISION**

MOVED Deputy Mayor R Graham SECONDED Cllr S Limbert pursuant to s5.23 (2)(d) of the Local Government Act 1995, Council move behind closed doors, the time being 7.16pm to discuss Item 23.1.

**CARRIED 9/0**



**DECLARATION OF INTEREST**

Clr Golcalves declared a conflict of interest in the following item, the nature of the interest being that a family member owns property in close proximity to the section of land subject to deliberations tonight.

CLR GONCALVES LEFT THE MEETING AT THIS POINT, THE TIME BEING 7.16PM.

**(MINUTE NO 3366) (OCM 11/01/2007) - SUSPENSION OF STANDING ORDERS**

**COUNCIL DECISION**

MOVED Deputy Mayor R Graham SECONDED Clr S Limbert pursuant to Clause 22.1 of Council's Standing Orders Local Law, Standing Orders be suspended the time being 7.17pm, to enable discussions to take place on Item 23.1.

**CARRIED 8/0**

**(MINUTE NO 3367) (OCM 11/01/2007) - RESUMPTION OF STANDING ORDERS**

**COUNCIL DECISION**

MOVED Deputy Mayor R Graham SECONDED Clr S Limbert that Standing Orders be resumed, the time being 7.39pm.

**CARRIED 8/0**

**23.1 (MINUTE NO 3368) (OCM 11/01/2007) - STATE ADMINISTRATIVE TRIBUNAL MEDIATION - PORT COOGEE LOCAL STRUCTURE PLAN VARIATIONS - OWNER: AUSTRALAND HOLDINGS PTY LTD - APPLICANT: TAYLOR BURRELL BARNETT (9662) (MR) (ATTACH)**

**RECOMMENDATION**

That Council advise the State Administrative Tribunal that it is prepared to vary its decision of 25 July 2006, in respect to the Port Coogee Local Structure Plan variations, in accordance with the Grounds for Settlement, as provided under separate, confidential cover.



**COUNCIL DECISION**

MOVED Mayor S Lee SECONDED Cllr T Romano That Council advise the State Administrative Tribunal that it is prepared to vary its decision of 25 July 2006, in respect to the Port Coogee Local Structure Plan variations, in accordance with the amended Grounds for Settlement, as agreed to behind closed doors and as provided in the Minutes of the meeting under separate, confidential cover.

**CARRIED 8/0**

**Reason for Decision**

These are minor changes that are necessary following further discussion with the appellant and Council's solicitors.

**Background**

On 25 August 2006 Australand lodged an Application for Review (Appeal) with the State Administrative Tribunal to vary the decision of Council made on 25 July 2006 to vary the Port Coogee Structure Plan, subject to several requirements.

**Submission**

To receive the Officer's Report and adopt its recommendation.

**Report**

The City's Solicitors and Senior Officers have attended three mediation meetings with Australand and their Solicitors and consultants since the First Directions Hearings on this matter on 22 September 2006. Following extensive negotiations this matter appears to be the subject of general agreement and is now referred to Council for its consideration. If Council accepts the mediation outcomes, the State Administrative Tribunal will issue Minute Consent Orders and the Appeal will have deemed to have been settled by agreement.

Section 54(6) of the State Administrative Tribunal Act 2004 requires mediation to be held in private, unless the Mediator directs otherwise. Accordingly, the Grounds for Settlement remain confidential.

**Strategic Plan/Policy Implications**

***Employment and Economic Development***

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



**Natural Environmental Management**

- *To ensure development of the district is undertaken in such a way that the balance between the natural and human environment is maintained.*

**Budget/Financial Implications**

Legal costs of \$2,867 have been billed to 24 October 2006 with total costs being expected to have doubled by the end of 2006. Legal representation has been required in the preparation of respondent statements, attendance at Directions Hearing and mediation, telephone attendance and drafting of conditions. These costs are covered within the 2006/07 budget.

**Legal Implications**

Planning and Development Act 2005  
State Administrative Tribunal Regulations 2004

**Community Consultation**

N/A

**Confidential Attachment(s)**

- (1) Officer's Report and Recommendations.
- (2) Grounds of Application Review (Appeal) 25 August 2006.
- (3) Applicant's Solicitor's letter on grounds for settlement.
- (4) Structure Plan Figures and Schedules.

**Advice to Proponent(s)/Submissioners**

Australand Holdings Pty Ltd have been advised that this matter is to be referred to the Council Meeting on 11 January 2007.

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

Nil.

**(MINUTE NO 3369) (OCM 11/01/2007) - MEETING OPEN TO THE PUBLIC****COUNCIL DECISION**

MOVED Deputy Mayor R Graham SECONDED Clr S Limbert that the meeting be resumed with open doors, the time being 7.39pm.

**CARRIED 8/0**



CLR GONCALVES RETURNED TO THE MEETING AT THIS POINT, THE TIME BEING 7.40PM.

The Presiding Member read aloud the decision of Council whilst Clr Goncalves was absent from the meeting.

**24 (MINUTE NO 3370) (OCM 11/01/2007) - 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 A TILBURY SECONDED Clr V OLIVER the recommendation be adopted.

**CARRIED 9/0**

**25 (OCM 11/01/2007) - 25 CLOSURE OF MEETING**

MEETING CLOSED AT 7.43PM

**CONFIRMATION OF MINUTES**

I, ..... (Presiding Member) declare that these minutes have been confirmed as a true and accurate record of the meeting.

Signed: ..... Date: ...../...../.....

