

CITY OF COCKBURN

SUMMARY OF MINUTES OF SPECIAL COUNCIL MEETING HELD ON THURSDAY, 23 DECEMBER 2004 AT 6:30 PM

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CITY OF COCKBURN**MINUTES OF SPECIAL COUNCIL MEETING HELD ON THURSDAY, 23
DECEMBER 2004 AT 6:30 PM**

PRESENT:**ELECTED MEMBERS**

Mr S Lee	-	Mayor
Ms A Tilbury	-	Councillor
Mr I Whitfield	-	Councillor
Mr A Edwards	-	Councillor
Mr K Allen	-	Councillor
Ms L Goncalves	-	Councillor
Mrs S Limbert	-	Councillor
Mr M Reeve-Fowkes	-	Councillor
Mrs V Oliver	-	Councillor

IN ATTENDANCE

Mr S. Cain	-	Chief Executive Officer
Mr A. Crothers	-	Director, Finance & Corporate Services
Mr S. Hiller	-	Director, Planning & Development
Mrs S. Ellis	-	Secretary to Chief Executive Officer
Mr A. Jones	-	Communications Manager

1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 6.30pm.

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 (SCM 23/12/2004) - ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (BY PRESIDING MEMBER)

The Presiding Member advised that he had received a written declaration of a Proximity Interest from Cllr Allen in relation to Item 9.1 which will be read at the appropriate time.

5 (SCM 23/12/2004) - APOLOGIES & LEAVE OF ABSENCE

Deputy Mayor Graham - Apology

6 (SCM 23/12/2004) - PUBLIC QUESTION TIME

The Presiding Member advised that a lengthy submission was tabled by Mr Sullivan at the Ordinary Council Meeting on 21 December 2004. Many of the questions are very good and have been addressed in the officer's report. A written response to the submission will be provided shortly. As requested, Elected Members were provided with a copy of the document.

Alan Davison, Coogee as a result of Port Coogee Now's research along Anchorage with the assistance of a marine biologist, believes that the Port Coogee Marina will enhance a highly modified coastal blight showcasing the benefits of sustainable developments by creating improved habitats for local flora and fauna. He asked if Council considered development of the waterways manager skill set essential given Council's commitment to ensure developments on the coastal strip are sustainable?

The Presiding Member responded with an emphatic yes that Council does support sustainable development along the coast.

Colin Crook, Spearwood tabled a letter regarding the Waterways Management Plan. Earlier in the process, doubts were raised on the thoroughness of the Rodgers Report into coastal processes. The 'Friends of Coogee Beach' are an informal, non-political group of regular beach users who have no interest in the Port Coogee development other than the health and survival of Coogee Beach as it is today and many of the members are very worried that the ill effects of the development cannot be managed successfully. As a group, all they can do is put their trust in their elected representatives and hope that they are capable of seeing the management of the waterways through to its conclusion without serious damage to either Coogee Beach or the financial stability of the City.



Rick Scoons, Mt Hawthorn as a marine biologist with 25 years experience in studying various marine eco systems in WA and an amateur diving and fishing person from local waters, has a strong interest in the well being of all Perth's waters including Cockburn Sound. The State Government has placed the health of Cockburn Sound in focus by vesting additional powers in the Cockburn Sound Management Council to monitor progress etc to ensure sound environmental management is achieved. He asked for confirmation that Council will take a leadership role in managing the most intensively used marine bay in WA that sets the role of waterways manager, as he believed that would be a desirable outcome since without an influence and demonstration of care for the local environment by concerned leadership, it is unlikely to be the best outcome for the community.

Mayor Lee confirmed that if Council takes this on, it will be quality leadership.

Marie Slyth, past resident reminded Council of its responsibility to all ratepayers, not a select few, regarding the protection and management of the waters and environment in Owen Anchorage. After witnessing examples of canal disasters in South Australia at Glenelg and West Beaches and also Port Geograph in Busselton, it was evident to her that management of waterways, in order to avoid a similar disaster at Port Coogee, is a top priority issue which can't be decided tonight without Council being able to provide its ratepayers with a complete financial plan as to how it intends to fully and successfully manage the waterways. In SA, trucks now have to cart sand from one end of the beach to the other at a yearly cost of \$1.7million to the ratepayers and is expected to increase each year. Ms Slyth asked the following questions:

- Q. How does Council propose to satisfy its ratepayers that they will not be hit with similar horrific upkeep expenses should the Port Coogee Marina go ahead, since the Office of the Minister for Planning has already decreed that the plan is to pipe sand from the northern side of the marina through to Coogee Beach?
- Q. How will Council manage the huge build-up of seagrasses on the northern side of the marina and the accompanying stench that will impact on residents close by?
- Q. How many ratepayers have been shown these essential management plans by Council to date; there must be some in existence if Council is going to take the role on. Ratepayers must know how much additional cost they are up for?

Ms Slyth reminded Council that its role is to serve the people it is elected to serve. Not to dominate, dictate and impose financial hardship upon them. The ratepayers are the employer and Council the employee. In this case, total costing of the waterways management must be provided first of all to ratepayers before any decisions are made, as well as how Council intends carrying out management of the waterways. She asked if this has been



done and if not, why not? To act without having provided the foregoing would indicate Council is neglecting its responsibility to its employer, the ratepayer.

The Presiding Member stated that some questions were rhetorical and the others will be answered in due course.

John Strachan, Yangebup was concerned that Council may be making a decision to take on an unforeseen financial burden. The officer's report states that Mirvac Fini feel that the management of Hillary's Boat Harbour is a poison chalice and that is mainly a boat harbour with pens that bring in money. This is a complicated engineering project which stands to be pumping sand forever. If it gets out of control or if turbidity gets to an extent that EPA ask for rectification, the Managers will have to bear the costs. Therefore he believed that somebody from the developer or a corporate body should bear the costs funded by the pens and not Cockburn ratepayers.

Andrew Sullivan, representing C.C.A.C., in relation to the submission he lodged at the Ordinary Council Meeting 48 hours before this meeting, was disappointed the answers had not been provided. He believed that meant that if there was insufficient information to answer the questions, then Council does not have all the information to make a decision on this issue tonight.

He has not seen any valid argument put forward as to why Council, as opposed to the State Government, should adopt the role of Waterways Manager when some other waterways are managed by the State. Why, when the City is not in the business of managing canals, would it want to adopt the recommendation when the State can clearly do it.

CCAC does not support Council adopting this role and is greatly disturbed that Council seems to feel like it has a gun to its head. The report states, "if you do not immediately adopt this role, it will jeopardise the development". No imperative timeframe has been demonstrated that suggests why a decision has to be made in haste. Council is accepting in perpetuity, something with a cost that is still not known.

The Presiding Member responded that he did not feel like he had a gun to his head and was sure the other Councillors don't feel that way. Any decision made will be based on quality information provided by the officers and will be made in the best interest of the ratepayers.

Teresa Panella, Coogee ratepayer given the Waterways Environment Management Program was subject to a public consultation period to which Council made a submission, was it satisfied that this program provides for sound management of the marina and surrounding area?



Mayor Lee responded that the decision would be apparent during debate of the item later.

Efron Gamper, Coogee understood the developer has put in place a financial plan that pays for full costs of the yearly waterways management and at the same time, provides a reserve fund for unusual events. On this basis, he asked if Council was satisfied with the financial aspects of the Waterways Management Agreement?

Mayor Lee responded that Council's position would be evident during debate of the item later.

Zoe Inman, Coogee following Tuesday's Council Meeting and at the Mayor's suggestion, contacted Bowman, Bisham & Gorham to ascertain the outcome of public submissions of the proposed waterways environmental management plan. Yesterday, the final draft report was still not available to persons who put in submissions and won't be available until after the EPA, DPI and City of Cockburn have approved it. So still, the residents do not fully know what Council is taking on the responsibility for that will eventually become the Coogee residents' problem.

Director Planning advised that a copy of the responses to all the submissions, particularly those from the City of Cockburn, were provided to officers some time ago and as seen in the report, the attachment includes responses in terms of Cockburn's submissions.

Ms Inman was concerned about some of the capital costs involved and the information contained on some spreadsheets such as funds necessary to employ staff to administer the marina. Major storms, tidal surges, global warming and associated ocean rises are all things that should concern the Waterways Manager. She asked Councillors if they could all unashamedly and individually put up their hands and accept that as representatives of the City of Cockburn and its community's welfare, it is safe to become the Waterways Managers of this development.

Angela Roberts, Hamilton Hill ratepayer, was concerned that any financial fallout if things go wrong with the project will mean funds will be directed away from other community projects to sustain the Coogee development.

The Presiding Member advised that it is not Council's intention to adopt a management plan that will commit that to happen.

Mary Jenkins, West Ward, in reference to Tuesday night's meeting when the Mayor said he didn't know anything about assurance of responsibility. She drew attention to two submissions she made where she asked who would be responsible and accountable for any decisions on Port Coogee.



Mrs Jenkins believed the individual Councillors should be held responsible for their decisions on this issue and any future Councillors should not be held responsible for the decisions of the current Council. Her submissions also asked that the State Government insist the developer put up an insurance bond of \$100 million. Her submissions also stated that the State Government should make a decision on the future of the power house and that the local members should be lobbying to have the building demolished before any development takes place.

Mayor Lee stated that the power house has nothing to do with the WEMP and reminded the gallery that all questions and statements must be restricted to the WEMP issue.

Glen Diggins, Coogee felt that in regards to waterways management issues, Council should be referring to the government agencies who are managing other waterways for advice. Then Council will be in a far better position to respond and to make a better judgement and it also gives Council an opportunity to develop, plan and anticipate issues that might arise. Secondly, Council should consider if there are sufficient and reasonable financial arrangements in place so that the citizens of the City are not overwhelmed by a financial burden. And if Council then considers and recognises the benefits of being the Waterways Management Authority, then he believed it should proceed that way.

Peter Minsherlon, Coogee and previous owner of the Coogee Beach Shop from 1977–1982. During that time, the industry along the coast was emanating a lot of effluent and rubbish into the Cockburn Sound and his business was affected by that rubbish in the water as it affected the swimmers. Now all that industry has been cleaned up and is no longer there yet there is still a blight on the land where the industry was. Where this development is proposed, is a shocking sight and now there is an opportunity to clean it up and he has faith in the Council to tidy up the mess.

Logan Howlett, North Lake asked the following questions:

Q. Asked the Mayor if any Elected Member had approached him in regard to the complexity of this matter, the fact that they have been bombarded with information and been given a very short timeframe in which to absorb it and have actually found it very complex and very difficult. Has any member or members approached the Mayor on this particular matter and if so, what action was taken?

A. Mayor Lee responded that one member had mentioned it.

Q. What happens to the tape of this meeting and other meetings?

A. It is kept with the Minute Clerk.



- Q. Has any Elected Member sitting at the table tonight, got a typed motion or recommendation in front of them to read to put before this Council?
- A. Absolutely.
- Q. What information or statements were made to Elected Members by the developer before the briefing session held on the 14th? Also were there any members of the administrative staff present at that briefing session made by the developer?
- A. There were members of the staff present. The session was conducted by Council and presented by the developer.
- Q. Can we have a short summary as to what the developer said to the Elected Members for the benefit of the community so we can all hear what was said.

Miguel Tobar, Coolbellup referred to page 22 of the report "*advice provided only assesses the veracity of the model and the assumptions made by the proponent, it does not address the financial risks, the potential liability and the commercial viability of the waterways management responsibilities*". So here is an independent body stating something about the financial risks and despite that, it will be resolved tonight for option 2, in good faith, Council is going to take the job of Waterways Manager. He hoped the conditions are fully addressed so that Council doesn't have a liability in the future.

Joe Rotondella, ratepayer in respect to the waterways, believed Council was adopting a similar program to the Mandurah model. He thought Council was being a bit too ambitious by expecting the developer to provide the pens, build them at a significant cost and then pass the ownership to the City of Cockburn and Council can then charge a fee. The City of Cockburn will effectively be donated 300 pens and all they have to do is manage it. He believed the City will be generously rewarded if they are successful and he hoped they didn't push the envelope too far because it may lead to a situation that is not viable.

Robyn Scherr, Coogee was concerned that pg13 states "*of importance was the advice by the proponent that should the Council not be prepared to become the Waterways Manager, the project could be jeopardised*". The very fact that this statement has been made does put pressure on Councillors and if any one of the Elected Members feels pressured that they have no choice but to agree to this management authority decision, then they must not do it. Ms Scherr was confused at where Council's income was coming from. There is mention of pens coming under Council's management in 5 years or 50 years but that is something that is undecided. She asked for



clarification on would there be both a special rate for people who live there in addition to paying the Council for those pens?

Presiding Member responded that the recommendation put forward is subject to negotiation and is that Council should take over the pens so that it gains income from the pens and that there should also be a specific area rate applied to the development area.

Ms Scherr asked what guarantee Council has got that it will be able to take over the pens in five years and who will control that?

Presiding Member responded that it is all part of the negotiations.

Paul Roberts, Spearwood stated that over 10 years ago when a developer was talking to the Shire of Busselton about their development and they believed that development was ok because the EPA said it was ok. They now live with that on their conscience. The item before Council is half-cooked and rushed without all the information to make a decision and therefore he asked Council to think about it because it could become our nightmare.

Presiding Member stated that there was no way he would describe the officer's report or the submissions from the specialists that Council employed to give advice as a half-cooked piece of information. There is still work to be done but it is definitely not half-cooked.

Amy Ottness, West Ward in view of tonight's information and discussions, it must be apparent that there is still a lot to be done and the information Council has had is not complete and therefore she requested that Council not adopt either option 1 or 2. Adopt option 3 if Council feels they have made commitments, but seriously consider option 4 because the management of navigable waterways is the responsibility of the Department of Planning and Infrastructure and they have the expertise and the backing of the State to undertake this.

Patrick Baker, Hamilton Hill mentioned that in Owens Anchorage and Coogee Beach, we have a 50 year model of what happens when we build out over the ocean. We know that when the power station groins were built in the 50's, it lead to the beaches disappearing down as far as Coogee. It would seem from the previous model the Sound has shown us, that the Port Coogee development will run out 4 times as far as the power station groins were and will have a profound effect on the whole of the beach and that should be carefully considered, especially when pumping sand back onto the beach.

Dan Scherr, Coogee asked the following questions:



- Q. Asked if anything the public has to say here will have any impact on the decision that Council is going to make because the Mayor said earlier that there was a series of written recommendations in front of him.
- A. Presiding Member advised that Council has been giving consideration to this matter for many years and to the WEMP since 2002 when it said it would adopt being the Waterways Manager subject to certain conditions, so it is an ongoing work in process and that work may or may not be finalised at this meeting depending on the outcome of Council's discussions.
- Q. In the advice that Council was provided by independent experts, it still failed to review whether the developer's assessment of coastal processes is acceptable to Council. Is the Council accepting at face value, all of the developer's predictions in relation to the extent of coastal erosion that will occur? Remember the government coastal engineers at DPI commented that Rodgers and Associates may have seriously underestimated the amount of sand that needs to be bypassed. What is Council doing about the sand figures and how are you addressing it?
- A. Presiding Member advised that Council does or does not have to take over the management of the marina. If it does decide to take it over after 5 years, during that 5 year period the books, the management, the costs etc will be audited and available for Council to peruse and should Council wish to extend that 5 years, it is the Mayor's understanding that it can do so. Council will be constantly monitoring the effects, impacts and costs of what it is to manage a marina.

Murray O'Brien, Munster asked if Council is aware that in the Shire of Gin Gin about 10 years ago, a developer constructed an 18 hole golf course. Within a 2 year period they provided proof to the council that they could not sustain the golf course financially and legally they did not have to and so it was demolished. His concern is that if the developer is losing money on Port Coogee, what recourse will Council have because the structures will all be in place and what happens then?

The Presiding Member responded that this was why Council sought a large amount of professional and specialist advice to guide it in its deliberations. It is not Council's intention to approve of something that will leave the Council stuck with the costs.

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

Nil



8. PURPOSE OF MEETING

The purpose of the meeting is to consider the Waterways Environmental Management Programme for Port Coogee.

DECLARATION OF INTEREST

Clr Allen declared a proximity interest in Item 9.1. The nature being due to the proximity of his property to the proposal.

Mayor Lee advised that written permission had been granted by the Department of Local Government and Regional Development, in accordance with delegated authority by the Minister, under s5.69(3) of the Local Government Act 1995, to allow Clr Allen to fully participate in the discussion and decision making process relating to the Port Coogee Marina development.

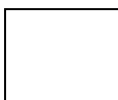
9. COUNCIL MATTERS

9.1 **(MINUTE NO 2665) (SCM 23/12/2004) - PORT COOGEE MARINA - WATERWAYS ENVIRONMENTAL MANAGEMENT PROGRAM (WEMP) (9662) (9101033) (SMH) (AC) (ATTACH)**

RECOMMENDATION

That Council:

- (1) receive the report;
- (2) receive the independent expert advice provided by:-
 1. GHD Consultants in respect to the Waterways Environmental Management Program (WEMP);
 2. KPMG Consultants in respect to the Financial Program associated with the implementation of the WEMP;
 3. Mullins Handcock Solicitors in respect to the Legal Agreement associated with the implementation of the WEMP;
- (3) advise the Western Australian Planning Commission that the Council is prepared to be the nominated Waterways Manager



for the Port Coogee Marina, subject to:-

1. The Western Australian Planning Commission formally advising the Council that following the final gazettal of Amendment No. 3 to TPS No. 3, the Commission will endorse the Structure Plan adopted by the Council on 16 March 2004 in order that the area, the subject of the Management Program, can be satisfactorily identified and the implications understood (Council decision 15 October 2002 Minute 1794);
 2. The Management Plan being reviewed in respect to:-
 - (i) all the matters raised by GHD Consultants contained in Attachment 1 to the Agenda;
 - (ii) the issues raised by the City's Environmental Management Service contained in Attachment 4 to the Agenda;
 3. The Financial Program being adjusted to reflect the comments made by KPMG Consultants as contained in Attachment 2 to the Agenda;
 4. The Legal Agreement being re-considered in accordance with the advice received by Mullins Handcock, Lawyers, as contained in Attachment 3 to the Agenda, and that Council enter into an In Principle/Facilitation Agreement;
- (4) will require as the nominated Waterways Manager, that on handover of the management responsibilities of the marina from the developer to the City as provided for in the proposed In Principle/Facilitation Agreement recommended by Mullins Handcock, the developer to transfer all its rights, interests and entitlements in the public boat pens (303 proposed) and any other leased or sub-leased areas associated with the operation and management of the marina to the City so that the City can derive an income to support its on-going responsibilities and obligations as the Waterways Manager under the WEMP, subject to (3)1, (3)2, (3)3 and (3)4 above, being resolved to the Council's satisfaction.
- (5) designate the project area as an area to which a Specified Area Rate be applied as provided for under section 6.37 of the Local Government Act, including the areas of coast immediately north and south of the marina groynes where it is proposed to operate the sand by-passing program in order that rates may be collected by the City to supplement the income derived from managing and operating the marina as provided for under the WEMP;

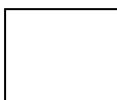


- (6) advise the Western Australian Planning Commission and the developer that the approach to the operation and management of the Port Coogee Marina should be modelled on that adopted for the Mandurah Ocean Marina;
- (7) advise Australand Holdings Pty Ltd, the Environmental Protection Authority and the Western Australian Planning Commission of the Council's decision accordingly.

COUNCIL DECISION

MOVED Mayor S Lee SECONDED Cllr M Reeve-Fowkes that Council:

- (1) receive the report;
- (2) receive the independent expert advice provided by:-
 1. GHD Consultants in respect to the Waterways Environmental Management Program (WEMP);
 2. KPMG Consultants in respect to the Financial Program associated with the implementation of the WEMP;
 3. Mullins Handcock Solicitors in respect to the Legal Agreement associated with the implementation of the WEMP;
- (3) advise the Western Australian Planning Commission that the Council is prepared to be the nominated Waterways Manager for the Port Coogee Marina, subject to:-
 1. The Western Australian Planning Commission formally advising the Council that following the final gazettal of Amendment No. 3 to TPS No. 3, the Commission will endorse the Structure Plan adopted by the Council on 16 March 2004 in order that the area, the subject of the Management Program, can be satisfactorily identified and the implications understood (Council decision 15 October 2002 Minute 1794);
 2. The Management Plan being reviewed in respect to:-
 - (i) all the matters raised by GHD Consultants contained in Attachment 1 to the Agenda;
 - (ii) the issues raised by the City's Environmental Management Service contained in Attachment 4 to the Agenda;



- (iii) the need to include water quality monitoring within the marina and the provision of a contingency plan to deal with any water quality issues.
 - (iv) where modifications are made to the Waterways Environmental Management Program in response to changes agreed between the developer and the City, that these be reflected in the Financial Plan so that the cost implications are fully understood;
 - (v) based on the Council decision of 21 December 2004 to not support extensive rehabilitation of the Parks and Recreation reserve east of the proposed Port Coogee Marina, alternative strategies for the remediation of the nutrified ground water should be investigated;
3. The Financial Program being adjusted to reflect the comments made by KPMG Consultants as contained in Attachment 2 to the Agenda;
4. The Legal Agreement:-
- (i) being reconsidered in accordance with the advice received by Mullins Handcock, Lawyers, as contained in Attachment 3 to the Agenda, and that the Council enter into an In Principle/Facilitation Agreement;
 - (ii) making provision for a guarantee by the developer that at the time of handover, the amount of money accumulated in the Reserve Fund will be at least \$1.6 million;
 - (iii) including provision for the handover of the marina to be in accordance with the requirement set out in (4) below, to the Council's satisfaction, and the handover date is to be at least 5 years after the completion of the marina or longer period as may be agreed between the developer and the City.
 - (iv) including a provision to ensure that an appropriate and adequate insurance policy is obtained to protect the Waterways Manager against claims arising from damage to the marina, its infrastructure, utilities and facilities.
- (4) will require as the nominated Waterways Manager, that on handover of the management responsibilities of the marina



from the developer to the City as provided for in the proposed In Principle/Facilitation Agreement recommended by Mullins Handcock, the developer to transfer all its rights, interests and entitlements in the public boat pens (303 proposed) and any other leased or sub-leased areas associated with the operation and management of the marina to the City so that the City can derive an income to support its on-going responsibilities and obligations as the Waterways Manager under the WEMP, subject to (3)1, (3)2, (3)3 and (3)4 above, being resolved to the Council's satisfaction.

- (5) designate the project area as an area to which a Specified Area Rate be applied as provided for under section 6.37 of the Local Government Act, including the areas of coast immediately north and south of the marina groynes where it is proposed to operate the sand by-passing program which does not include any existing residential areas, in order that rates may be collected by the City from the new development within the project area to supplement the income derived from managing and operating the marina as provided for under the WEMP;
- (6) advise the Western Australian Planning Commission and the developer that the approach to the operation and management of the Port Coogee Marina should be modelled on that adopted for the Mandurah Ocean Marina; and
- (7) advise Australand Holdings Pty Ltd, the Environmental Protection Authority and the Western Australian Planning Commission of the Council's decision accordingly.

Amendment

MOVED C/r Tilbury that point (7) be included to read:

- (7) in the event that the Council is not satisfied with the modifications to the WEMP, the Financial Plan or the Legal Agreement, the Council reserves the right not to be the nominated Waterways Manager for the Port Coogee Marina.

MOTION LOST THROUGH LACK OF A SECONDER

CARRIED 8/1

Explanation

There is a need to undertake water quality monitoring both within and outside the marina, unless this has been addressed in the Environmental Review dated August 2001. If the review of the WEMP



results in changes, then the changes need to be reflected in the Financial Plan.

It is important that the developer guarantees that \$1.6 million will be accumulated in the proposed Reserve Fund at the time of handover to ensure that this sum is achieved independently of the rate of sales of the allotments within the project.

In addition, because of the requirement of the Council for it to be able to manage and operate the public marina including the boat pens and other leased facilities, the developer be given the opportunity to be the Waterways Manager for a period longer than 5 years after the completion of the marina, subject to the agreement of the City, before handing over the management of the waterways and public marina to the City in perpetuity.

It needs to be made clear that the proposed designation of the Specified Area Rate will only apply to the land within the project area and does not affect any existing residential areas in Coogee, Spearwood or any other part of the City.

Because the proposed development is located on the coast, it is important that the Waterways Manager has appropriate and adequate insurance cover.

Background

- ***Council Decision – October 2002***

Council at its meeting held on 15 October 2002 made the following resolution:-

- “(1) *receive the report;*
- (2) *advise Australand and the Western Australian Planning Commission that because the Council has not had the opportunity to formally consider the Structure Plan for the Port Catherine Marina at Coogee, the Council is considering its position in respect to being the nominated management body in the absence of having established a position in respect to the plan;*
- (3) *advise Australand that in the event that the marina proceeds:-*
1. *It is prepared to be the nominated management body to implement the Waterways Environmental Management Program, subject to the program being financially and technically acceptable to the Council subject to;*



- (i) *the Waterways Environmental Management Program, prepared to the requirements of the Western Australian Planning Commission, being referred by the Council to an independent party for review and advice prior to making a final decision on becoming the nominated manager;*
 - (ii) *the management and implementation of the Waterways Environmental Management Program will need to be cost neutral to the Council through the utilisation of seed capital and the imposition of a Specified Area Rate, applying to the land within the project area, and the funds collected being used within the marina as well as for recreational betterment and coastal improvements in the areas located to the north and south of the marina facility, subject to confirmation that Council is able to utilise the funds for those purposes;*
 - (iii) *the implementation of the program must be capable of being undertaken by a suitably experienced contractor on behalf of the Council;*
 - (iv) *the Council having the opportunity of establishing a formal position on the proposed Structure Plan for the marina.*
- (4) *advise the Western Australian Planning Commission that in the event that the marina proceeds:-*
- 1. *it has responded to Australand in the terms set out in (2) above;*
 - 2. *unless the Waterways Environmental Management Program is acceptable to the Council it reserves the right to withdraw its acceptance of nominated management body;*
 - 3. *despite the fact that the program must be prepared prior to the approval of the local Town Planning Scheme Amendment, the Council will require a structure plan to have been prepared and accepted by the Council and the WAPC in order that the area the subject of the management program can be satisfactorily identified and the implications understood;*
 - 4. *it appears that there is nothing in either the Port Catherine Marina Project Agreement or the Environmental Report (Bulletin 1060) which obligates the local government to be the management body, for the implementation of the*



Waterways Environmental Management Program/Plan, and that the Commission is responsible for resolving this matter to the satisfaction of the EPA.

CARRIED 8/2”

- ***The Waterways Environmental Management Program (WEMP)***

A draft Waterways Environmental Management Program (WEMP) was prepared by RPS – Bowman Bishaw Gorham Consultants on behalf of the proponent as required by the EPA in relation to MRS Amendment No. 1010/33 – Port Catherine – Report and Recommendations as contained in Bulletin 1060 dated August 2002.

The Bulletin was advertised for public submissions and 6 appeals were lodged with the Office of the Appeals Convenor for the Minister for the Environment. All the appeals were dismissed.

On 20 October 2003, the Minister for the Environment published Statement No. 000636, “*Statement that a Scheme May be Implemented*” in relation to MRS Amendment No. 1010/33.

In respect to the WEMP, Statement 000636 states:-

“3-1 Prior to approval of a Town Planning Scheme Amendment for the land within the Metropolitan Region Scheme amendment area, or the consideration of an application for subdivision approval or development within the amendment area (other than an application for consolidation or minor modification to existing boundaries), whichever occurs first, the Responsible Authority shall require the preparation of a Waterways Environmental Management Program. The Program shall meet the following objectives:

- *Ensure that marine water and sediment quality, within the marina waterways, achieves the following Environmental Quality Objectives as defined in the Environmental Protection Authority document Perth’s Coastal Waters: Environmental Values and Objectives (Environmental Protection Authority, 2000):*
 - *Maintenance of ecosystem integrity such that a “moderate level” of protection is met within the marina waterways;*
 - *Maintenance of aquatic life for human consumption;*
 - *Maintenance of primary contact recreational values;*
 - *Maintenance of secondary contact recreational values;*
 - and*
 - *Maintenance of aesthetic values;*



- *To ensure the protection of the coastline and beaches within the area of likely influence of proposals within the amendment area from adverse changes in coastal processes; and*
- *By using methods consistent with similar monitoring and research programs in adjacent and nearby waters, contribute to the understanding of marine water quality in eastern Owen Anchorage.*

The Waterways Environmental Management Program shall be prepared to the requirements of the Responsible Authority with the concurrence of the Environmental Protection Authority on advice from the City of Cockburn and the Department of Environmental Protection. The Program shall be prepared in consultation with the community and the Program and associated data shall be made publicly available to the requirements of the Environmental Protection Authority.

The Program shall include:

1. *Identification of existing marine water and sediment quality;*
2. *Identification of factors affecting marine water and sediment quality;*
3. *Establishment of the Environmental Quality Criteria that are to be maintained within the marina waterways;*
4. *Measures to maintain marine water and sediment quality, including:*
 - *Design specifications for site drainage;*
 - *Design, maintenance and ongoing management specifications for the proposed groundwater extraction, reuse and re-injection facilities, including contingency measures and management;*
 - *Provision for regular inspection of the marina waterways;*
 - *Prohibition of boats having uniform antifouling paints containing tributyl tin (TBT); and*
 - *Prohibition of any discharge of sewage, hydrocarbons or litter from boats.*
5. *Provisions for ongoing monitoring and management of marine water and sediment quality, including contingency measures to ensure that the Environmental Quality Objectives are achieved and maintained in the event that the relevant Environmental Quality Criteria are exceeded;*



6. *The marina water quality monitoring program will use methods consistent with, and where practicable, will be coordinated with similar monitoring programs in adjacent and nearby waters, and will thereby contribute to the understanding of marine water quality in eastern Owen Anchorage;*
 7. *Provisions for ongoing monitoring and management of changes to coastal processes within the vicinity of the marina including contingency measures if monitoring reveals erosion or accretion of shorelines;*
 8. *An Oil Spill Contingency Management Plan;*
 9. *A Landscape Management Plan for the Metropolitan Region Scheme Parks and Recreation reserve, immediately east of the amendment area;*
 10. *Provisions for the management of stormwater disposal such that stormwater is retained and infiltrated on-land and stormwater discharge to the marina waterway or Owen Anchorage is avoided; and*
 11. *A detailed staging and planning of measures.*
- 3-2 *The Waterways Environmental Management Program shall be implemented to the satisfaction of the Department of Environmental Protection in consultation with the Department for Planning and Infrastructure.”*

- **Management and Implementation of the WEMP**

In respect to the management and implementation of the WEMP, Statement 000636 states:-

- “2-1 *Prior to the finalisation of a Town Planning Scheme Amendment for the land within the Metropolitan Region Scheme amendment area, or the consideration of an application for subdivision or development within the amendment area (other than an application for consolidation or minor modification to existing boundaries), whichever occurs first, the Responsible Authority shall resolve responsibilities for on-going environmental management of the proposed marina, to the satisfaction of the Environmental Protection Authority, such that a suitable entity, or entities, with adequate financial and technical resources and authority, will ensure that the objectives of the Waterways Environmental Management Program, as set out in Attachment 1 in the Minister for the Environment’s “Statement that a Scheme may be Implemented” No. [insert relevant Statement Number] published on [insert date], will be achieved.”*



The City has no obligation to become the Waterways Manager. However, there has been a persistent expectation that the City will take on the responsibility.

According to DPI the State Government does not have a fall back position in respect to the Waterways Manager, in the event that the City does not take on this responsibility.

If the City does not take on the role of Waterways Manager, then the only other option, according to the DPI, is for the proponent to identify a Waterways Manager, which would need to be either the developer or other private organisation.

For this reason, the WEMP, together with the financial plan and the legal agreement have been referred to external experts to provide advice prior to the Council considering the matter.

- ***Supreme Court Action***

On Friday 10 December 2004, Justice McClure considered the Order Nisi lodged by the Coogee Coastal Action Coalition (CCAC), against the Minister for Planning and Infrastructure, the Western Australian Planning Commission, the City and Others and determined that only 3 grounds of approximately 26 grounds of objection by CCAC were arguable in respect to the consideration of the proposed Port Coogee Marina project.

This means that the matter will now be considered by the Full Court.

The Justice did not agree to the stay and therefore the processes and procedures relating to the approval of the Port Coogee Marina can continue.

The 3 grounds held by the Justice to be arguable do not directly implicate the City, however, the outcome of the Full Court decision could have an impact on the processing of Amendment No. 3 to TPS No. 3 which provides for the planning and development of the Port Coogee Marina. (Refer to Attachment 6)

It is not certain when the matter will be heard before the Full Court, but most likely early in the new year.

- ***District Boundary***

On 17 March 2004, the City wrote to the Department for Local Government and Regional Development requesting that it proceed with the adjustment of the district boundary to be consistent with MRS Amendment 1010/33 for Port Catherine (Coogee).



The Department advised on 15 April 2004 that it could not proceed until the MRS Amendment had been gazetted. The amendment was gazetted on 26 October 2004. No formal response has yet been received since the gazettal.

According to the Department, the boundary adjustment has been forwarded to the office of the Minister for Local Government and a decision from the Minister is imminent. A follow up letter from the City was sent to the Department on 14 December 2004, in any event.

It is unlikely that Amendment 3 to TPS No. 3 can proceed to finalisation without the district boundary being amended to include Port Coogee.

- ***Department of Environment (DoE) Response on the WEMP***

According to advice received from both the DPI and the Consultants RPS Bowman Bishaw Gorham, no final response had been received on the WEMP from DoE as at 14 December 2004, however, it was understood that the issues were now resolved and formal confirmation would follow.

Until the DoE response has been received the WEMP cannot be finalised.

Despite this, the final version of the WEMP as at 3 December 2004, was circulated to external consultants for review so as to enable the assessment to be undertaken and reported on for the Special Meeting of the Council.

It is understood that the outstanding issue with DoE is a minor technical matter that would not impact on the intent, or composition of the WEMP, or the recommendations and undertakings made by the proponent.

- ***Department of Planning and Infrastructure (DPI) – WEMP***

According to the Department for Planning and Infrastructure, consideration of the WEMP by the PRP Committee of the WAPC will not occur until February 2005. This was confirmed by the proponent at a presentation to Elected Members on 14 December 2004.

- ***Department for Planning and Infrastructure(DPI) – TPS No. 3***

According to the Department for Planning and Infrastructure, TPS No. 3 Amendment No. 3 has been assessed to the point that some issues have been identified for further discussion with both the proponents and the City. These issues will not be pursued until the WEMP has been agreed to by the WAPC.



The DPI wants to ensure that a Waterways Manager has been identified, the WEMP is acceptable to DoE and the legal agreement and the financial plan is acceptable to the Department before reporting to the WAPC.

TPS No. 3, therefore, cannot be progressed until:-

- the district boundary is adjusted to include all of Amendment No. 3 to TPS No. 3 within the Municipality;
- the WEMP, Legal Agreement and Financial Plan have been accepted by the WAPC;
- a Waterways Manager has been identified;
- the issues relating to Amendment No. 3 as proposed have been resolved between the proponent, the City and the Department.

It will not be until Amendment No. 3 to TPS No. 3 has been gazetted that the WAPC will have the statutory power to “endorse” the Structure Plan adopted by the Council on 16 March 2004. However, to comply with the Council decision made in October 2002 in relation to the WEMP, the WAPC will be requested to formally advise that it will endorse the Structure Plan following gazettal of Amendment No. 3 to TPS No. 3.

At this stage it is not clear what the issues are relating to the scheme amendment that will need to be discussed prior to it being recommended to the WAPC for the final endorsement of the Minister for Planning and Infrastructure.

Submission

- ***Expert independent advice from:-***
- GHD Consultants in respect to the WEMP has been received and is attached to the Agenda. Refer to Attachment 1.
- KPMG Consultants in respect to the financial plan has been received and is attached to the Agenda. Refer to Attachment 2.
- Mullins Handcock, Solicitors, in respect to the financial plan has been received and is attached to the Agenda. Refer to Attachment 3.
- ***Copies of the WEMP circulated***

Copies of the following documents were circulated to the Elected Members under separate cover on 16 December 2004:-



- Port Coogee Waterways Environmental Management Plan prepared by RPS – Bowman Bishaw Gorham, Report No. G04058, dated November 2004.
- Port Coogee Waterways Management Reserve Fund – Financial Analysis for Discussion / Development prepared by MP Rogers and Associates, document No. J424, dated 16 December 2004.
- Port Waterways Management Agreement prepared by Mallesons Stephen Jaques, document No. RNK-LM1:09-5118-7855, dated 15 November 2004.

In addition to this as the independent expert advice was received it was immediately forwarded to the Elected Members for information.

Following distribution of the proposed WEMP, the Financial Plan and Legal Agreement to the Elected Members, copies of these documents together with the attachments to the Agenda were made available for the public to view at City Administration Centre and at the City Libraries, on 17 December 2004. The attachments were not available at the Success Library until 20 December 2004.

Report

Before presenting the independent expert advice it is important to discuss some other relevant matters in relation to the waterways management to ensure that the Council can make an informed decision on this important matter.

- ***Private Waterways Manager (Mindarie Quays)***

Advice from the Department for Planning and Infrastructure is that if the City does not take on the management responsibility, then it will be up to the developer to find an alternative Waterways Manager. It was made clear that the State is unlikely to take on the responsibility.

This presents a fundamental difficulty in that it is doubtful that the developer would be prepared to accept the responsibility of Waterways Manager in perpetuity unless the management and operation of the marina is profitable. Therefore one possibility is for the marina to be operated as a business, separate from the developer.

Mindarie Quays is operated by the developer of the Mindarie Estate. The current developer is Mirvac Fini. Mirvac Fini is the Waterways Manager by sub leasing the harbour from the DPI Coastal Facilities Branch. The lease is for 50 years with the potential to extend it another 50 years. Mirvac Fini does not regard the current arrangement as satisfactory, and neither does the DPI. Informal discussions with a representative of the City of Wanneroo indicated that at this stage the future management of Mindarie Quays had not been considered by the



City, however, if this was to arise, it is unlikely that the executive would recommend that Council take on this responsibility.

- ***Local Government Waterways Manager (Mandurah Ocean Marina)***

The Director of Finance and Corporate Services and Director of Planning and Development, met with the Manager of the Mandurah Ocean Marina on 15 December 2004 to discuss the operational aspects of this local government managed marina. This is the only comparable arrangement.

The Mandurah Ocean Marina is managed and operated by an independent business unit of the City of Mandurah.

The marina is managed by a team of 4 staff, and expends about \$1.3 million and received around \$1.1 million, with the shortfall being made up by the Department for Planning and Infrastructure.

The Department has provided a 5 year underwriting to the operation and management of the marina to a maximum total of \$800,000.

The marina participates in the annual by-passing of 100,000m³ of sand across the estuary entrance. The cost of doing this is around \$400,000, which is shared 1/3 by the State Government, 1/3 City of Mandurah and 1/3 marina.

The marina manager receives most funding from income derived from leasing the 175 recreation boat pens, 36 commercial fishing boat pens, and other lease sites within the marina. The income is also supplemented through the application of a Specified Area Rate which generates about \$37,000 income.

The marina management constructs the pens and eventually there will be 300 recreational pens, a similar size to that proposed at Port Coogee.

Within 5 years it is expected that the marina will be returning a profit.

The Mandurah Ocean Marina was built by LandCorp. The marina seabed is a separate lot, set aside as a 20A reserve, vested in LandCorp but novated to the City of Mandurah.

The marina is a self sufficient entity of the City of Mandurah. It would not be able to survive if it relied wholly on Specified Area Rating to fund its operational requirements. The marina manager doubts that the management responsibilities of Port Coogee could operate with only a Specified Area Rate as its source of income, and the future manager should have access to monies from leasing pens and other facilities.



The Mandurah Ocean Marina has been very successful both for LandCorp and the City of Mandurah and property values and the financial expectations are ahead of projections.

Ultimately when fully developed and based on the arrangements made for the Mandurah Ocean Marina it should be operating with a surplus and this will be reinvested in upgrading the marina.

The operations and management model adopted for the Mandurah Ocean Marina appears to be a suitable approach to be applied to the proposed Port Coogee Marina.

- ***Presentation to Elected Members***

On Tuesday 14 December 2004, the proponent and the consultant team presented the WEMP to Elected Members and senior staff. This provided the opportunity for the proponent to explain the WEMP proposal and to respond to any questions.

Of importance was the advice by the proponent that should the Council not be prepared to become the Waterways Manager, the project could be jeopardised.

- ***Ownership of the boat pens***

The issue of ownership and operation of the boat pens has always been understood to be retained by the developer or on sold to another private entity.

However, at the meeting with the proponent on 14 December 2004, the proponent advised that it was intended that the developer would construct and manage the 303 recreational boat pens and perhaps in 50 years time these may revert to the City as a source of income to manage the marina.

Up until this time neither the Structure Plan nor the WEMP have formally discussed the future ownership and management of the public boat pens. The proposed Waterways Agreement, received on 16 November 2004, addresses the matter indirectly as follows:-

- “4. (b) *the transfer from the Developer to the City of all plant, equipment, fixtures and fittings employed by the Developer for the purposes of complying with the WEMP and required by the City to comply with the WEMP, excluding the Public Marina;*
- (c) *the transfer of any proprietary interests held by the Developer in the area the subject of the WEMP, excluding the Public Marina.”*

and



“5.1 Lease of Public Marina by Developer

The City acknowledges and agrees that immediately following creation of the reserves for the Marina it will grant to the Developer a lease of the Public Marina for the maximum term permitted for no consideration.

5.2 Construction of Public Marina by Developer

The Developer will construct at its cost all the jetties and other structures necessary for the construction of the Public Marina. To the extent that the lease referred to in clause 5.1 is not granted at the time construction commences, the City grants to the Developer a licence to enter on to the Public Marina to carry out its construction works. No licence fee is payable.”

and

- “8. Public Marina means those areas of the Marina indicated on the plan attached being the areas within which the Developer will construct jetties and mooring pens for commercial use and which are to be the subject of a seabed lease and jetty licence in favour of the Developer, including all structures, plant, equipment, fixtures and fittings servicing, attached to or used in connection with the jetties and mooring pens within those areas.”*
(Refer to Attachment No. 5)

It is understood from officers at DPI that there is no reason under the State Development Agreement, that they were aware of, that requires the developer or prevents the City from owning or deriving an income from the boat pens.

Given the discussions with the Manager of the Mandurah Ocean Marina, it appears that the future ownership of the pens is an important consideration. Therefore, if the City is to become the Waterways Manager, the whole of the marina should perhaps be handed over after 5 years rather than at the end of 50 years, so the City can use the income from the pens to meet its management and maintenance responsibilities, as is the case at the Mandurah Ocean Marina.

• ***City comments on the WEMP***

The City lodged a comprehensive submission on the WEMP dated June 2004. A review of the responses to the City’s comments by the proponent together with the provisions of the November 2004 version of the WEMP was undertaken in an endeavour to establish the level of support for the City’s suggestion.

A memorandum prepared on the review is attached as Attachment 4.



In summary the following was accommodated:-

- *Section 1. Water and Sediment Quality Monitoring and Management Program*

There were 12 comments submitted. Of these there were 2 comments that were agreed to, 3 dealt with in part with the remaining 7 not accepted.

- *Section 2. Monitoring and Management of Coastal Process*

There were 8 comments submitted. Of these 6 were dealt with in part while the remaining 2 not accepted.

- *Section 3. Emergency Response Plan*

There was 1 comment submitted, but was not accepted.

- *Section 4. Groundwater Intercept Plan*

There were 5 comments submitted, but none of these were accepted.

- *Section 5. Landscape Management Plan*

There were 5 comments submitted, but none of these were accepted.

The proponents environmental consultants RPS – Bowman Bishaw Gorham, provided formal justification for its response to each of the comments made, except in one case, which related to the Landscape Management Plan.

The issues raised, the modifications made to the WEMP and the responses given are contained in Attachment 4.

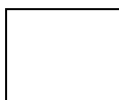
The City's Environmental Management Service is of the opinion that in some cases the reasons given in response to the City comments are inadequate or incomplete, namely:-

- *Section 1: Water and Sediment Quality Monitoring and Management Program*

- Page 5. There is very little detail on the construction of the subsurface intercept drain. Information regarding construction, maintenance, life expectancy, replacement value, qualifications required by the Waterways Manager, how to rectify blockages etc. This information should be investigated and supplied now so as to allow a true assessment of the costs associated with future operation.



- Page 5. Further investigation is required before reinjecting surplus nutrient rich ground water into areas north of the project area is acceptable. The nutrient content of the groundwater in proposed re-injection area should be gathered to insure that the introduction of nutrients will not add to already high levels of contaminants and thus have detrimental effects on local water quality. Alternatives to re-injection should also be investigated. There should also be records kept of the water being intercepted and the amounts of intercepted water being used for irrigation, re-injection, storage and any alternative disposal methods. These records should be forwarded to the DoE and the City of Cockburn monthly for monitoring purposes.
- *Section 2: Monitoring and Management of Coastal processes.*
 - Page 8. No mention is made in regards to how any blockages within the pipe, which transports sand slurry are to be addressed. There is also no indication as to the life expectancy of the slurry pipe. A sand water mixture is a relatively coarse medium and is bound to inflict wear on a Medium Density Polyethylene pipe. There should be details relating to the life expectancy of the pipe and costs associated with replacement including how the pipe can be accessed.
 - Page 8. Releasing sand slurry at outlet points spread along the seawall that is proposed to be built immediately north of Coogee Beach is unacceptable. Releasing large amounts of sand (15000 to 25,000 cubic metres) every three to five years will increase turbidity in the area and may also cause large sand shoals to be created, which may in themselves effect natural sand drift. More studies should be undertaken to discern the precise effects of depositing large amounts of sand in near shore environments. Impacts upon the wreck of the Omeo should also be taken into consideration.
- *Section 4: Groundwater Intercept Plan*
 - Page 4. There is a filter medium to be placed around the PVC pipe that intercepts the ground water. There needs to be an indication of whether this filter medium will become blocked over time and how this may impact on the interception of groundwater. Is there anything to indicate when the intercept drain ceases to function? Will it be possible to access the intercept drain for maintenance in the future?
 - Page 6. Re-injection bores are proposed to be used to disperse intercepted groundwater. Groundwater should be sampled in the proposed re-injection locations to insure that injecting intercepted groundwater will not increase



concentrations of heavy metals and other contaminants to levels where they may impact on water quality in these areas.

- There should be far greater detail supplied on the operation of the groundwater intercept system. The detail should include repair and maintenance provisions, estimated maintenance and running costs for future operation, estimated lifespan of equipment and infrastructure replacement costs and an indication of the skills required to operate and maintain such a system.
- *Section 5. Landscape Management Plan*
 - Page 9. The statement that the ‘plants chosen can cope with the proposed watering and can survive the cessation of water’ is not based on any known facts. The proposal to water the locally native species with 2100 cubic metres of water per day needs to be re-assessed. When local plants species are watered there are generally two scenarios that occur: 1. The plants either die because they have not evolved to cope with such large quantities of water or 2. they thrive in the conditions but do not develop a strong root system and generally die soon after watering is ceased. The amounts of nitrogen within the irrigation water may also have detrimental effects on local plants species as these species have evolved to cope with nutrient deficient soils. Excess nutrients may lead to the death of local species.
 - Page 12. The proposal to distribute 2100 cubic metres of water per day over an area of 31.4 hectares equates to approximately 7mm of water per day or 2.5 metres per year. This combined with Perth's average rainfall equates to a total of 3.2 metres per year. This is a substantial amount of water for any local plants to cope with. It would be expected that such large volumes of water in an area dominated by limestone may lead to water logging and erosion. Further studies and investigation of the impacts associated with the distribution of such large quantities of water in this area is needed. (According to a letter from Australand dated 26 November 2004, the area to be irrigated is proposed to be 18ha. If this is to be the case then the rate of watering during the summer will be around 6m per year rather than 3.2m. By comparison, the Amazon receives an annual rainfall around 3 metres and in the Daintree, Queensland, it is around 4 metres per annum).

These matters should also be re-considered as a condition of the City agreeing to accept the responsibility of Waterways Manager, and therefore form part of the recommendation relating to the WEMP.



A number of issues received by the City are common with those raised by GHD, in its expert advice.

- **Expert Advice**

The independent expert advice has been relied on to make a recommendation to the Council.

Each of the advices received will be briefly discussed in turn.

- **GHD Consultants – WEMP**

On 16 December 2004, the Director Planning and Development met with representatives of GHD to discuss their draft report and to clarify certain matters associated with the WEMP prior to finalisation of their advice to the City.

GHD based their comments on the WEMP document, but did not have the benefit of the background information and data that formed part of the Port Catherine Environmental Review prepared by RPS – Bowman Bishaw Gorham in August 2001. In addition they did not have ready access to the Structure Plan report or proposed Scheme Amendment.

GHD have concerns about the Water and Sediment Quality Monitoring and Management Program, in particular the water sampling regime. Those also imply that the cost of undertaking the sampling could be expensive. According to the Financial Plan, an allowance of \$5,000 has been made for the water monitoring. Based on the GHD figures, and a summer period of 4 months, the cost would be in the order of \$50,000. This generates some doubt about the basis to the figures used in the Financial Plan.

GHD have a fundamental concern about the approaches to the sand by-passing and believe that cheaper alternatives should be explored. Also more information about comparative operational and maintenance costs should be provided.

The Waterways Emergency Response Plan in its current form is deficient and should be extensively revised and be modelled on one currently adopted for another ocean marina, such as Hillarys Boat Harbour.

GHD have some serious concerns about the proposed intercept drain and raise issues about its suitability and whether other methods have been investigated. They also have concerns about potential environmental impacts.



The Landscape Management Plan was in part a matter for consideration of the Council at its Ordinary Meeting on 21 December 2004. GHD have some concerns about some of the proposals contained in the plan, and are of the opinion that to be a useful management plan it needs to be presented in greater detail.

It should be noted that some of the issues raised by GHD may have already been addressed in the Port Catherine Environmental Review, undertaken by RPS – Bowman Bishaw Gorham for the proponent in August 2001. Should a matter raised by GHD have already been resolved to the satisfaction of the EPA and the Council is satisfied with the outcome, then the matter raised may not need to be pursued further.

The GHD advice on matters requiring further consideration by Council is summarised as follows:-

1. Volume: 1 Water and Sediment Quality Monitoring and Management Program;
 - i. A review of the water sampling in terms of the sampling regime, the intensity of the program and the associated costs, unless this has been addressed in the Port Catherine Environmental Review dated August 2001.
 - ii. The definition of internal and external waters needs to be clarified.
 - iii. The preparation of a clearly structured monitoring chart showing the commitments, requirements and timing for each of the tasks undertaken under the program.
 - iv. The sediment sampling methods needs to be clarified, unless the sampling methods have been addressed in the Port Catherine Environmental Review dated August 2001 and the reference from DAL (2003) is to be included in the program document.
 - v. The TBT controls recommended in the program need to be made enforceable and monitoring undertaken on at least an annual basis.
 - vi. Introduced Marine Pests (IMP) monitoring is to be included in the program.
2. Volume 2: Coastal Management Plan.
 - i. Alternative methods of sand by-passing need to be explored to see if a less capital intensive and less expensive method can be



used given the small quantity of sand that is proposed to be moved.

- ii. Further explanation is required in support of the reasons for the selection of the survey lines associated with the coastal management plan. Grid co-ordinates may be useful to locate the position of the survey lines, unless this has been addressed in the Port Catherine Environmental Review dated August 2001.
- iii. The coastal management surveys should provide for additional surveys being undertaken following a major storm event.

3. Volume 3: Waterways Emergency Response Plan

- i. The proposed emergency response plan be abandoned and replaced with a new plan based on a working plan being used in a comparable ocean marina.
- ii. The revised plan make clear the ultimate authority for the emergency response plan, with clear and precise duty statements.
- iii. The revised emergency response plan be prepared following the final detailed design of the marina and marina facilities.

4. Volume 4: Water Drainage and Intercept Plan

- i. The water Drainage and Intercept Plan be reviewed to demonstrate that it will be efficient and effective and represents a sustainable solution for reducing and managing the nutrient enriched groundwater flowing into the Sound from the land east of the project area, unless this has been addressed in the Port Catherine Environmental Review dated August 2001.
- ii. Should the groundwater intercept plan continue to be the preferred approach, then the system needs to be designed and costed in detail to enable the environmental and management implications to be fully understood.
- iii. Ground water needs to be sampled around the injection bore locations to monitor water quality and changes to the environment.

5. Volume 5: Landscape Management Plan

- i. The objectives of the Landscape Management program needs to be linked with the design philosophy.



- ii. Performance indicators need to be established so that the success of the program can be measured against acceptable pre-determined criteria.
- iii. The program needs to be expanded to provide sufficient management strategies to enable the program to be used as a working document.
- iv. The Landscape Management Plan needs to be developed from being a concept plan to a detailed plan to provide for implementation and costing.

- ***KPMG Consultants – Financial Plan***

KPMG were engaged to perform an assessment of the financial analysis plan and expenditure calculations for the proposed waterways management plan. They assessed the logical integrity of the financial models, determined whether formulae expressed in the model were mathematically correct and reflected the assumptions stated in the plan. Information contained in the models was verified back to supporting documentation.

The results of their assessment were that apart from some minor exceptions, mainly in relation to presentation and appearance, the financial analysis plan and expenditure calculations were sound. They did not, however, review or consider the validity, completeness or reasonableness of the commercial assumptions that underpin the financial models.

The advice provided by KPMG only assesses the veracity of the model and the assumptions made by the proponent, it does not address the financial risks, the potential liability or the commercial viability of the waterways management responsibilities.

- ***Mullins Handcock – Legal Agreement***

Mullins Handcock recommend that the City does not enter into the legal agreement as proposed by the proponent. Instead they recommend that the City enter into an In Principle / Facilitation Agreement to provide for a detailed handover agreement being entered into in say 5 years time.

This view has been established based on the inadequacies and bias contained in the draft legal agreement prepared by the developer which appears to put the City at potential risk, together with the fact that there is uncertainty in relation to the land tenure of the marina.

However, should the City not accept the recommendation made by Mullins Handcock, then there is a need to re-negotiate the terms, conditions and obligations set out in the proposed legal agreement,



in accordance with the advice contained in the Mullins Handcock advice.

The advice from Mullins Handcock is contained in Attachment 3.

The Mullins Handcock advice requiring further consideration from Council is summarised as follows:-

1. If the developer, Port Catherine Developments Pty Ltd, constructs the Marina and if the land tenure issues are resolved as set out below, together with the resolution of all other outstanding issues relating to the Waterways Environmental Management Program to the Council's satisfaction, that the City will negotiate in good faith in approximately 5 years after entering into the In Principle/ Facilitation Agreement with the developer, to take over the management of the Marina and to become the Waterways Manager under the yet to be approved Waterways Environmental Management Program;
2. The land tenure issues need to be resolved such that where Crown land reserves are created that the City is appointed as the management body under a management order for those reserves and that the City has all necessary power under the management order to lease, sublease, licence and sublicense land within the reserve. Alternatively, that the Minister for Lands lease the reserves directly to the developer, and by so doing minimise the City's liability until handover, as otherwise it may be considered to be an occupier of the reserves under the Occupiers' Liability Act and at common law;
3. If such management orders are not created, then the City will only be able to negotiate in good faith to the extent that the Crown agrees on reasonable terms to assign any lease or licence of the Crown land from the developer (as lessee or licensee) to the City;
4. Any lease or licence that the City has power to grant is to be on terms to the satisfaction of the City, including appropriate indemnities from the developer in respect of any loss or injury at the Marina;
5. In the event that any land tenure issues are resolved to the City's satisfaction, that the following provisions be included in the In Principle/ Facilitation Agreement:
 - i. as an alternative to levying a specified area rate, once the pens to be constructed by the developer are constructed, that the developer transfer all its rights, interests and entitlements in those pens to the City for the purpose of the City receiving an income from the pens. This income can be used by the City



after handover to satisfy its assumed obligations as Waterways Manager and manager of the Marina;

- ii. a clause substantially similar to clause 2.2 of the draft Port Coogee Waterways Management Agreement, but altered to make the payment exclusive of GST and that the payment be made directly to the City to be deposited into the reserve fund and to the developer guaranteeing the receipt of the moneys specified in clause 2.2(b);
 - iii. a clause substantially in the form of clauses 1.1 and 1.2 of the draft Port Coogee Waterways Management Agreement;
 - iv. that the developer meet the City's legal costs of and in relation to the preparation of the In Principle/ Facilitation Agreement;
 - v. clauses be inserted containing ancillary and necessary terms (for instance, administrative, notice, interpretation and like provisions);
6. In the event that any land tenure issues are resolved to the City's satisfaction, that a handover agreement be negotiated approximately 5 years from the date of the In Principle/ Facilitation Agreement on terms that:
- i. the developer hand over all plant, equipment, fixtures and fittings in good working order and repair;
 - ii. the developer indemnify the City in relation to any liabilities or potential liabilities for unperformed or breached obligations under the Waterways Environmental Management Plan and under any contracts or agreements that the developer may have entered into concerning the Marina, including but not limited to any leases, subleases, licences and sublicences of land or buildings or any part thereof and maintenance contracts;
 - iii. the City may refuse to assume the developer's obligations under any contract, agreement, lease, sublease, licence or sublicense in the event that they will or may impose obligations or liabilities on the City which the City considers to be unreasonable;
 - iv. the assignment contracts and agreements necessary for the City to assume existing contracts and the like, are to be prepared at the developer's cost;
 - v. the developer at its cost is to assist the City for at least one month after the handover date or such other period as may be agreed, and the City is to be able to require a person with



experience in managing the Marina prior to the handover date, to assist the City in that regard;

7. In order to negotiate the handover agreement, at least 6 months prior to the time of the proposed handover or such other period as may be agreed, and up to the time of handover, the City is to be given complete and unfettered access to all records and documents of the developer or any of its agents or contractors in relation to its role as Waterways Manager and manager of the Marina. Without limiting the foregoing those records and documents shall include all financial statements and supporting books of account; all contracts entered into by the developer or its agents; all statutory approvals and licences to operate the Marina; all plans, including engineering and building plans and specifications for the Marina not already held by the City, all maintenance and repair records;
8. The developer is to prepare at the end of each financial year from the date of the In Principle/ Facilitation Agreement until the date that any handover agreement is entered into, financial and maintenance reports for the Marina and must provide those to the City;
9. A precise plan of the project area and Marina is to be attached to the agreement showing both the marina and associated facilities and the extent of the area that may be the subject of collecting and expending a Specified Area Rate;
10. A draft legal agreement be negotiated as the basis of the likely arrangement to be agreed for the future handover of the waterways management responsibilities to the City from the developer. The finalisation of the agreement be negotiated prior to handover.
11. The In Principle/Facilitation Agreement is to be binding on any other future developer of or landowner within the Port Coogee Marina Project.

- **Observations**

The decision of the Council to become the nominated Waterways Manager for the Port Coogee Marina is important and has long term implications for the City. Given this it is important that a precautionary approach be taken.

Based on the expert advice received, it appears that the WEMP and the responsibility of the Waterways Manager could be acceptable to the Council subject to certain conditions. These conditions relate to some of the proposals contained in the WEMP and the approach to the legal arrangements.



From the initial discussions with the proponent, a Specified Area Rate was identified as the most appropriate means of raising funds for the City should it become the Waterways Manager. This has been factored into the Financial Plan.

However, based on discussions with the expert advisors and the operator of the Mandurah Ocean Marina, it appears that to rely on Specified Area Rating as the sole means of income for the City to manage the marina may be inadequate and may therefore put the Council at financial risk.

Therefore, the operational and financial model adopted for the Mandurah Ocean Marina appears to be a preferred approach and should as far as possible be replicated for Port Coogee.

This means that instead of relying on the Specified Area Rate, the income should be primarily based on revenue from the leasing of boat pens and associated marina facilities. The Specified Area Rate would be used to supplement the marina income should there be a shortfall.

Although this is a fundamental change in position, it is important that this be considered prior to making any commitment to becoming the Waterways Manager.

Although GHD have questioned the desirability of using an in-situ pipe to by-pass sand from one side of the marina to the other, it seems appropriate to install the pipe during construction so that if the pipe is the preferred method, then this can be utilised at the time when compared to the cost efficiency and effectiveness of other methods such as dredging or trucking the sand.

Neither the WEMP nor the draft legal agreement discusses the relationships, the roles and the responsibilities between the manager of the waterways reserve and the operator/manager of the public marina. This is an important issue that needs to be addressed if the WEMP proceeds in the proposed form. However, if the Waterways Manager is responsible for the operation and management of the whole of the marina as a single entity, then this is no longer an issue.

Another concern is the fact that private property and road reserves are proposed to extend into the waterway of the marina. Refer to Attachment 5. Based on the Port Coogee Marina Land Use diagram of the proposed reserves to be applied to the marina basin, based on the "Typical Boundary Location" cross-section, the reserve for waterway is setback from the marina wall and therefore presumably the water is outside the control of the Waterways Manager. It would be expected that most pollution and litter would collect in this area and any damage to the marina walls would occur in this location. This is a technical and legal matter that does not appear to be addressed.



- **Conclusion**

Based on the independent expert advice, the advice of the City's Environmental Management Service, the advice of the Finance & Corporate Services Division and a review of the proposed WEMP, Financial Plan and Legal Agreement the following conclusion is drawn:-

- The outstanding concerns expressed by the City in response to the draft WEMP dated June 2004 need to be re-considered by the proponent.
- The concerns and issues raised through the expert advice needs to be responded to by the proponent, unless the matters raised have already been addressed in the Port Catherine Environmental Review, August 2001, to the satisfaction of the EPA, WAPC and the City.
- The need to ensure that there are sufficient sources of funds available to the Waterways Manager to adequately and sustainably undertake the obligations and requirements required under the WEMP. It appears to be the view that in principle the users of the marina should pay for its management and maintenance and that unless the manager of the marina has a reliable source of funds other than relying on Specified Area Rates, the ability to viably manage the marina in the long term could be doubtful. Given this, consideration needs to be given to the Waterways Manager having full control of the marina, rather than sharing responsibilities as proposed in the draft Legal Agreement between the Waterways Manager and the Public Marina Operator. This view has been formed based on recent discussions with the Mandurah Ocean Marina, the expert advisors and the senior staff of the City.
- The proposal to artificially subdivide the marina basin into a reserve for the waterway and a reserve for the public marina appears to have potential difficulties in terms of responsibilities and management. This is even further exacerbated because it is proposed that the public marina operator pay no lease fees and therefore does not contribute to the waterways management.
- The principle that "user" pays should apply. In retrospect this appears to be equitable and appropriate. If this principle is not applied then the public marina operator is receiving income from the boat pens and associated leased facilities at no cost and this is proposed to be achieved at the expense of the ratepayer by way of a Specified Area Rate. Initially this was seen as the preferred method of generating income to manage the marina to support the City in this role. However, it was never made clear that it was intended that the public boat pens would not be charged some sort



of lease fee. It is pointed out that if the City does not become the Waterways Manager and this was to be undertaken by the proponent or another private firm, then there would be no ability for the company to apply a Specified Area Rate. The cost of operating and managing the marina would therefore need to be funded from the income generated by the marina or other external source.

- It is understood that even if no lease fee was charged to the Operator of the Public Marina it might be possible to charge a Council rate for the use of the reserve.
- The project boundary should be used to designate the area where the Specified Area Rate will be applied. The purpose of this would be to provide supplementary funding to any income received by the City as Waterways Manager from the marina itself. Because the rates collected may be required to contribute towards the sand by-passing, it is necessary to ensure that the areas of coast to the north and south of the marina groynes are included within the Specified Area Rating boundary.
- The management of the Port Coogee Marina, if undertaken by the City, should be modelled on the Mandurah Ocean Marina, which appears to be a successful approach. However, the underwriting of the State Government in the case of Mandurah Ocean Marina is unlikely to apply, but instead the developer proposes to contribute to the establishment of a contingency reserve fund.

- **Options**

There are 4 decisions that the Council can consider in relation to the WEMP and the management of the waterways. The options are:-

- Option 1: To accept the WEMP as proposed and accept the responsibility of the Waterways Manager.
- Option 2: To conditionally accept the WEMP and subject to its review to the satisfaction of the Council accept the responsibility of the Waterways Manager.
- Option 3: To defer the matter until concerns about the WEMP are reviewed and resolved to the Council's satisfaction prior to considering the matter further.
- Option 4: To not accept the WEMP and not be prepared to accept the responsibilities of the Waterways Manager.



- **Recommendation**

Based on the expert advice it is recommended that Option 2 be considered by the Council, and this is detailed in the recommendation to the report.

Strategic Plan/Policy Implications

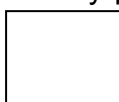
The Corporate Strategic Plan Key Result Areas which apply to this item are:-

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

Budget/Financial Implications

The financial implications for the management and implementation of the WEMP is contained in the Financial Plan, reviewed by KPMG. Refer to Attachment 2 to the Agenda.

The estimated cost of managing the WEMP by the City for the first 5 years is estimated to be \$1,528,000 assuming sand by-passing is required every five years (average \$305,600 per year). For the following five years the management cost would reduce to an average of \$248,000 per year because the groundwater interception system may not be required after 2014/15. It is estimated that the cost of sand by-passing will be in the order of \$104,000.



As the lots within the project are sold by mid 2012, the accumulated sum into a reserve fund managed by the City will be \$1.6M, assuming the sale of lots commences July 2006.

The cost of managing the WEMP may be based on contract sums accepted by the Council and paid for by income generated from the marina and if required supplemented by a Specified Area Rate applied to the project area.

The cost of the expert advice was:-

• GHD Consultants (Environmental Advisory Panel)	\$ 5,718.35
• KPMG Consultants (Internal Auditor)	\$ 8,750.00
• Mullins Handcock, Solicitors (Legal Advisory Panel)	\$ 935.00
Total	\$ 15,403.35

The cost of the expert advice will be drawn from Account GL 116-6229 Consultancy Expenses.

Legal Implications

Legal advice on the WEMP Legal Agreement was sought from Mullins Handcock, Solicitors. Mullins Handcock are on the City's Legal Advisory Panel.

Community Consultation

There has been extensive community consultation in respect to this project. However, in relation to Council's consideration of the WEMP, no consultation was required. The Council's role in this process is to provide advice to the WAPC and the EPA on the WEMP proposal and its willingness to be the nominated Waterways Manager.

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

Nil.



10. **(MINUTE NO 2666) (SCM 23/12/2004) - 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 Cllr A Tilbury SECONDED Cllr I Whitfield that the recommendation be adopted.

CARRIED 8/0

11 **(SCM 23/12/2004) - CLOSURE OF MEETING**

Mayor Lee thanked everyone for their efforts over the past year, he wished the Elected Members, Staff and members of the gallery, a Merry Christmas and a happy, safe and successful 2005.

Meeting closed at 8.10pm

CONFIRMATION OF MINUTES

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

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

