

Our Ref: 9235; 104081

18<sup>th</sup> June, 1998

**TO ALL COUNCILLORS**

Dear Councillor,

**Re: ADJOURNED ORDINARY COUNCIL MEETING - 22<sup>ND</sup> JUNE 1998**

This is to advise that, as per the Council decision of the 16<sup>th</sup> June 1998, the Adjourned Ordinary Meeting of Council is to be held on **Monday, 22<sup>nd</sup> June, 1998** commencing at 7:30pm in the Council Chambers (Dinner at 6:30pm).

The purpose of the meeting is to consider Item 8.2 (OCM6/98) - Packham Urban Development Area - Public Open Space Payment. Also to receive legal advice from Council's Solicitor, Mr Denis McLeod, in relation to Subdivision of Lot 17 Hamilton Road, Spearwood - Peremate Holdings Pty Ltd in line with the relevant Council decision of the 16<sup>th</sup> June 1998 (ie: CDC Item 23.1 and OCM Item 8.2).

The Agenda is now available for Councillors to phone in and receive.

Please advise my secretary if you are unable to attend.

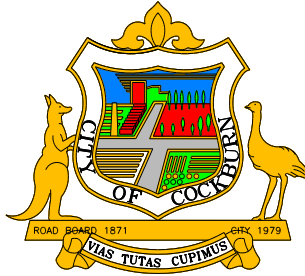
Yours faithfully,

**ROD BROWN**  
**CHIEF EXECUTIVE OFFICER**

RWB:SE



# **CITY OF COCKBURN**



**ADJOURNED ORDINARY COUNCIL**

**AGENDA PAPER**

**FOR  
MONDAY 22 JUNE 1998**

# CITY OF COCKBURN

## SUMMARY OF AGENDA TO BE PRESENTED TO THE ADJOURNED ORDINARY COUNCIL MEETING TO BE HELD ON MONDAY, 22 JUNE 1998 AT 7:30 P.M.

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## CITY OF COCKBURN

### AGENDA TO BE PRESENTED TO THE ADJOURNED ORDINARY COUNCIL MEETING TO BE HELD ON MONDAY, 22 JUNE 1998 AT 7:30 P.M.

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**1. APPOINTMENT OF PRESIDING MEMBER [IF REQUIRED]**

**2. APOLOGIES & LEAVE OF ABSENCE**

Mayor J. Grljusich - Apology

**3. ADMINISTRATION**

**3.1 (AOCM6/98) - Item 8.2 (OCM6/98) Packham Urban  
Development Area - Public Open Space Payment  
(SMH)(9235)**

**RECOMMENDATION**

That Council resolve to:

- (1) receive the report from the Department of Local Government entitled "*Audit of Monies Paid by Council in Relation to the Packham Development Area*", dated May 1998, the legal advice from Council's Solicitor McLeod & Co dated 16 February 1998 and 29 May 1998 and Urban Focus' responses dated 23 December 1997 and 30 March 1998;
- (2) seek the advice of the Department of Local Government in respect to:-
  1. the refund of \$63,700 to Urban Focus from the Council's Section 20C Public Open Space Account; and

2. the Council's payment of \$222,934 to Urban Focus in April 1995, being considered by the Council as a payment of interest monies from the Section 20C Public Open Space Account, separate from the principal held in the Account collected as cash-in-lieu payments from subdividers within the Packham Urban Development Area, as the means by which the Council can satisfy the intent of Section 20C of the Town Planning and Development Act;
- (3) seek reimbursement of the \$222,934 from Urban Focus, in the event that the Department of Local Government does not support the Council in respect to the advice sought in (2) 2. above, by a negotiated arrangement between Urban Focus and the Council. This arrangement being via the acquisition of future public open space in the balance of Stage 2 and Stage 14 of the Packham Urban Development Area and the subsequent reimbursement of funds by Urban Focus to the Council's Section 20C fund ;
  - (4) utilise the Section 20C Public Open Space funds held in the Cash-in-lieu Account to acquire part of a public open space buffer that may be required as part of a revised structure plan for the northern portion of the Packham Urban Development Area around the Watsons' factory in Hamilton Road, Spearwood.
  - (5) advise the Department of Local Government that the Council proposes the following in respect to "private arrangement" subdivision proposals :
    1. Council has initiated Amendment No 94 to its District Zoning Scheme No 2 which is currently awaiting public advertising consent from the Western Australian Planning Commission. This amendment will enable equitable cost sharing arrangements for public open space and other public infrastructure to be incorporated into the Scheme.
    2. An amendment to the existing Packham Urban Development Area Policy will be made to delete reference to "water and sewerage" services ; and an addition be made to the Policy as follows :
 

Council will only accept Section 20 C contributions from subdividers who are not participants in an Owners' Scheme which has already provided land for public open space or from subdividers who have not made a private arrangement with an Owners' Scheme for the provision of public open space

- (5) amend Policy PD 14 "Packham Urban Development Area" as outlined in (5) 2. Above.

**COUNCIL DECISION**

That Council:

**Background**

At the Special Council Meeting held on 4 December 1997 Council resolved to authorise the Chief Executive Officer to liaise with Council's Solicitors to investigate and address all associated issues, following which a full report be prepared and submitted for further consideration by Council through Council's Solicitors.

At the Council meeting of 24 February 1998, a background report was provided. The report included a file chronology, a financial summary of Council's 20C fund for Packham and a letter from Urban Focus dated 23 December 1997.

A meeting was held between the Chief Executive Officer, Director Planning and Development, the Minister for Planning and a representative of the WAPC on 12 February 1998 to discuss a possible amendment to Section 20C of the Town Planning and Development Act.

The Chief Executive Officer arranged for the Department of Local Government to conduct an independent process audit of the 1995 public open space payment.

**Submission**

The report from the Department of Local Government was received on 21 May 1998, entitled "*Audit of Monies Paid by Council in Relation to the Packham Development Area*" and was circulated to all Councillors on 29 May 1998.

Documents relevant to this matter are attached for Councillor information, namely:-

- Letter from Urban Focus to Council dated 23 December 1997.

- Letter from McLeod & Co to Council dated 16 February 1998. (Circulated separately as a Confidential memo).
- Letter from Urban Focus to Council dated 30 March 1998.
- Letter from McLeod & Co to Council dated 29 May 1998.
- Advice from Council's Insurers dated 18 March 1998 previously circulated to Councillors via the Councillors Newsletter.

The letters are self explanatory.

### Report

The recommendation to this report is based on the advice of Council's Solicitor, Denis McLeod.

Mr McLeod will be attending the Council meeting to present his report and to answer any questions that Councillors may have.

In support of the recommendations made, the following information is provided in respect to the Council's Section 20C Public Open Space Account.

1.	Balance of Section 20C A/C (Applicable to Packham Locality)	\$448,480.21
2.	Interest Accrued to Section 20C A/C (Total Interest)	\$237,812.24
3.	Amount Paid to Urban Focus in 1995	\$222,934
4.	Interest Balance after 1995 payment	\$14,878.24

In the event that Urban Focus is required to reimburse the Council for the \$222,934 incorrectly paid to them as a compensation payment in 1995, an arrangement could be made regarding the acquisition of proposed open space from:

- Portion of Stage 2                      \$63,926
- Stage 14                                      \$183,994
- **Total**    **\$247,920**

The \$222 934 would then be reimbursed to Council over time, as funds are contributed via the Owners' Scheme, such arrangement being secured by a legal agreement. This would regularise the 1995 compensation payment as funds would be applied for the purchase of public open space, however it would not need to be implemented if interest funds can be used to



replace the 1995 payment as outlined in (2) 2. of the Officer Recommendation.

As far as the \$63,700 is concerned, Urban Focus are of the opinion that the monies were paid contrary to the spirit of the Packham Urban Development Area, in that the money was required to be paid to the Council as a condition of subdivision clearance, when it should have been retained by Urban Focus to be distributed in accordance with the Owners Agreement.

Council's Solicitor is of the view that the Council could, subject to the agreement of the Department of Local Government, refund the monies to Urban Focus in the circumstances.

To make this refund to Urban Focus would finalise any possible obligation by the Council to make any further payments to Urban Focus in respect to public open space monies collected in Packham.

As the cash-in-lieu monies paid by Lambasa for \$62,737.33 were paid into a separate Trust Account No. 54846 (Lambasa) on 25 February 1998, while the Section 20C matter was subject to investigation, it may be appropriate, given that the funds are not currently 20C funds, the source from which Urban Focus can be reimbursed.

The Department of Local Government has asked the City to advise what actions are proposed in respect to "private arrangement" subdivision proposals. This is covered by points (5) and (6) of the Officer Recommendation.

It is also recommended that a strategy for the expenditure of the balance of Section 20C public open space funds be determined. A significant change to the Packham Structure Plan is required as a result of the Watsons odour buffer and new public open space areas will need to be provided to enable residential development to proceed. Council's funds could therefore be used to assist in the resolution of the buffer issue as proposed by point (4) of the Officer Recommendation.

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

Council Policy "PD 14 - Packham Urban Development Area" applies.

### **Budget/Financial Implications**

The Council may need to be prepared to reimburse the Section 20C POS Account \$222,934 from General Revenue if other means of reimbursement are unsuccessful.

**3.2 (AOCM6/98) - Legal Advice - Subdivision of Lot 17 Hamilton Road, Spearwood - Peremate Holdings Pty Ltd (104081) (SMH) (COASTAL)**

Council's Solicitor, Mr Denis McLeod, will remain in attendance to provide Council with an update on this matter, in line with the relevant Council decisions of the 16<sup>th</sup> June 1998 (ie: CDC Item 23.1 and OCM Item 8.2)

**COUNCIL DECISION**

That Council: