

CITY OF COCKBURN

SUMMARY OF MINUTES OF SPECIAL COUNCIL MEETING HELD ON TUESDAY, 29 MAY 2001 AT 7:00 P.M.

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CITY OF COCKBURN

MINUTES OF SPECIAL COUNCIL MEETING HELD ON TUESDAY, 29 MAY 2001 AT 7:00 P.M.

PRESENT:

COUNCIL MEMBERS

Mr S. Lee	-	Mayor
Mr R. Graham	-	Deputy Mayor
Mrs V. Oliver	-	Councillor
Mr M. Reeve-Fowkes	-	Councillor
Mrs N. Waters	-	Councillor
Mr I. Whitfield	-	Councillor
Mrs S. Rennie	-	Councillor
Mr A. Edwards	-	Councillor
Mr L. Humphreys	-	Councillor
Mr K. Allen	-	Councillor

IN ATTENDANCE

Mr R. Brown	-	Chief Executive Officer
Mr D. Green	-	Director Community Services
Mr S. Hiller	-	Director, Planning & Development
Mr L. Cetinic-Dorol	-	Admin. Support/Resource Officer
Mrs B. Pinto	-	Secretary, Finance & Corporate Services
Mr C. Ellis	-	Communications Manager

1138. (AG Item 1) DECLARATION OF OPENING

The Presiding Member declared the meeting open at 7.31 pm.

1139. (AG Item 2) APPOINTMENT OF PRESIDING MEMBER (IF REQUIRED)



1140. (AG Item 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.

1141. (AG Item) (scm1_5_2001) - PUBLIC QUESTION TIME

Mayor Lee read aloud the questions and the responses provided in reply to a letter from Mr Colin Crook, ratepayer of the district:

Q.1 Please advise who the Council Officers were who provided the "expertise" in order to keep the cost of Lot 21 at \$220,000 when the original Valuer General's assessment was \$295,000?

Was it ethical that Council resources should be used to provide a \$75,000 "discount" to a private club at the expense of all other ratepayers? Whose interests were these officers working for?

A1. No officers provided the expertise. The valuation was provided by the Valuer General.

There was no discount, the sale was in accordance with the Valuer Generals valuation of 13th May 1998.

Q2. Who signed the Sale Agreement on behalf of the Council (ie the citizens of Cockburn) which agreed that the sale price of Lot 21 would remain at the same valuation (ie \$10 per metre²) that it was back in pre-1996 days? Was it ethical to deny the City (ie the citizens of Cockburn) a fair return on the sale of one of its assets?

A2. The agreement was signed by the Mayor of the day and the Chief Executive Officer in accordance with the Council decision to sell the land at the Valuer Generals valuation.

Q3. If the total area of Lot 14 was valued at approximately \$1 million (ie \$10/metre) in 1994, what is the approximate value at today's prices and how much have the citizens of Cockburn "lost" on a total development which they never asked for, and is unnecessary even at this time for general recreation. In other words why didn't the Council in the interests of the wider community and the financial interests of the City sell all or part

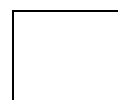


of Lot 14 to the highest bidder?

- A3. The current value is not known. The Council of the day reserved the land for the Western Australian Croation Association. It was a decision that the Council of the day made on the value that was put on it at that time and put a legal agreement place for sale.
- Q4. Who advised the Council that it was in order to sell Lot 21 to the W.A.C.A. when it had not been surveyed?
- A4. No one advised Council to sell Lot 21 to the W.A.C.A. without the Lot being surveyed. This land is not yet sold and an Offer and Acceptance was made after the land was surveyed.

Mr Joe Branco, representing the North Lake Residents Association. He stated although the community encouraged the sport and the culture of the WACA, they objected to the area that is proposed to be used in relation to the environment and also the potential cost to the community. He asked a series of questions, as follows:

- Q1. Has a letter been received from the Minister, stating that the joint proponentship was agreed to?
- A1. Mayor Lee responded that a letter was received from Mr Bernard Bowen, Chairman of the EPA under delegated authority from the Minister.
- Q2. The remainder of Lot 14 which is still under the ownership of Council – there are concerns that to develop Lot 14 into three playing fields will cost \$667,000. It is the community's belief that this should be determined on the need. Who determines that need, as the remainder of Lot 14 is attached to the contract of sale?
- A2. Mayor Lee replied that Council will determine that subject to a demonstrated need within the community and will also be subject to future Budget constraints.
- Q3. What happens if the community loses its Elected Members who are here and a new Council is elected, which puts the community again at risk of up to \$667,000 of ratepayers money?
- A3. Mayor Lee responded that it is hard to predict what the future will be in regard to that issue.
- Q4. How could the community and ratepayers be assured that a petition that is put forward as a legal document would not be left



out from being submitted to the EPA along with the other submissions for whatever project it may be? How can we be guaranteed by this Council that this incident will not happen again?

A4. Mayor Lee replied that this Council will do the best for the community.

Q5. How did the 27 submissions for the project get to the EPA before the petition was presented?

A5. Administration Support/Research Officer responded that the petition together with the submissions was considered by the EPA.

Q6. Why did the Officer-In-Charge of this project correspond with the Minister for Environment before the issue was presented to Council and approval was given?

A6. Mayor Lee replied that it is a staff matter and not at liberty to discuss the issue, but he was advised by the Chief Executive Officer that action had been taken with regard to this matter.

Mr Branco finally requested Council to defer the matter until such issues were dealt with, and the community has had some response to all issues raised tonight.

Ms Felicity McGeorge, resident of Bibra Lake spoke regarding the wetlands. She requested Council to take responsibility for the protection of the wetlands in the district.

Mr Rex Sallur, ratepayer of Cockburn also spoke in relation to the wetlands in the district. He asked why are the wetlands still be abused? He raised concerns on the level of algae bloom in Bibra Lake. He mentioned that this was actually quite toxic. He stated that if no action is taken now to rectify the problem, the lakes would rapidly deteriorate, thus destroying the wetlands around Cockburn. He strongly objected to any more development taking place around wetlands, and urged Council to replace the buffers surrounding these wetlands.

1142. (AG Item 8.1) (scm1_5_2001) - PURPOSE OF MEETING

The purpose of the meeting is to determine Council's position with



regard to land dealings and development of soccer and recreation facilities proposed for the former Lot 14 Progress Drive, Bibra Lake.

1143. (AG Item 9.1) (scm1_5_2001) - SOCCER AND RECREATION DEVELOPMENT - LOT 14 PROGRESS DRIVE, BIBRA LAKE (ASSESSMENT # 1076) - CHANGE OF PROPONENTS (1100231) (LJCD)

RECOMMENDATION

That Council note the letter dated 26 April 2001 received from Mr Bernard Bowen, Chairman of the Environmental Protection Authority which states that the City of Cockburn and the WA Croatian Association (Inc.) are now joint proponents for Lot 14 Progress Drive project.

COUNCIL DECISION

MOVED Cllr Waters SECONDED Cllr Whitfield that Council note the letter dated 26 April 2001 received from Mr Bernard Bowen, Chairman of the Environmental Protection Authority which states that the City of Cockburn and the WA Croatian Association (Inc.) are now joint proponents for the Lot 14 Progress Drive project.

CARRIED 10/0

Explanation

There was a minor amendment with the insertion of the word *the* before Lot 14 Progress Drive project.

Background

The issue of proponency for this project had been understood to be a joint responsibility between the City of Cockburn and the WA Croatian Association (Inc.) (WACA), since correspondence received in 1998 from the (then) Minister for Environment indicated that, it was more appropriate for the WACA to be installed as joint proponents with Council, as the City is retaining ownership of Lot 22 and the residue of Lot 14.

However, following further discussions with staff of the Department for Environmental Protection (DEP), it was confirmed that the 1998 correspondence did not formally appoint Council and the WACA as joint proponents, but merely suggested it would be a more appropriate arrangement than having Council as sole proponent, which was officially the case, even though the intent of Council decisions made subsequent



to the Minister's advice was to formally install both parties as joint proponents.

Consequently, Council wrote to the DEP on 6 March 2001, to have this position clarified. Again, further discussion took place between officers of Council and the DEP in an endeavour to expedite the process. During these discussions, it was mentioned that the Minister for the Environment may require some evidence of the WACA's stability and financial capacity prior to allowing the WACA to be installed as joint proponent.

As a courtesy, Council conveyed this information to the WACA, the response to which was a request from the WACA for Council to provide further details of this requirement.

Subsequently, Council wrote again to the DEP, with a further request that any necessary requirements to be met which would enable the joint proponency to proceed, be conveyed to Council.

Submission

N/A

Report

The Chairman of the Environmental Protection Authority by letter dated 26 April 2001 replied to Council's request stating that the City of Cockburn sole proponentship had been revoked, and that the WA Croatian Association (Inc.) and Council are now jointly responsible for the project.

Strategic Plan/Policy Implications

Key Result Area *Managing Your City* refers.

Budget/Financial Implications

N/A

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

Nil.

1144. (AG Item 9.2) (scm1_5_2001) - LOT 14 PROGRESS DRIVE - WA CROATIAN ASSOCIATION (INC.) (1100231) (LJCD)

RECOMMENDATION



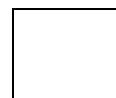
That Council:

- (1) implement the necessary action to finalise the sale of Lot 21 Progress Drive, Bibra Lake to the WA Croatian Association (Inc.) in accordance with the Contract of Sale prepared by Council's Solicitors:
- (2) advise the WA Croatian Association (Inc.) that:
 1. Council holds an amount of \$33,315, being the balance of the works contribution the Association paid to Council, of which \$6,115 is refundable, whilst the remaining balance of \$27,200 is to be held in case there is a need to service the bank guarantee relating to the sewerage condition of subdivision.
 2. Council requires a formal Development Application to be approved prior to the commencement of any works occurring on Lot 21 relative to the construction of the clubroom facilities;
 3. Council requires a formal Lease Agreement to be approved by Council prior to the commencement of any works to develop the soccer playing facilities on Lot 22.
 4. Council's decision is based on the independent review of the process undertaken by Council since the commencement of the project, which indicates that community/Council concerns relevant to potential environmental and financial impacts of the project can be adequately managed with minimal or no exposure of public (Council) funds being at risk because of non-compliance with the environmental commitments on the development. And
 5. Council does not intend to provide any additional funding towards the development of Lots 21 and 22, other than that which formed the initially adopted Business Plan prepared by Council and including those minor adjustments recommended as a result of the independent review.

COUNCIL DECISION

MOVED C/r Reeve-Fowkes SECONDED C/r Rennie that Council, bound by the decision of a previous Council:

- (1) implement the necessary action to finalise the sale of Lot 21



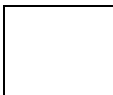
Progress Drive, Bibra Lake to the WA Croatian Association (Inc.) in accordance with the Contract of Sale prepared by Council's Solicitors:

- (2) advise the WA Croatian Association (Inc.) that:
1. Council holds an amount of \$33,315, being the balance of the works contribution the Association paid to Council, of which \$6,115 is refundable, whilst the remaining balance of \$27,200 is to be held in case there is a need to service the bank guarantee relating to the sewerage condition of subdivision.
 2. Council requires a formal Development Application to be approved prior to the commencement of any works occurring on Lot 21 relative to the construction of the clubroom facilities;
 3. Council requires a formal Lease Agreement to be approved by Council prior to the commencement of any works to develop the soccer playing facilities on Lot 22.
 4. Council's decision is based on the independent review of the process undertaken by Council since the commencement of the project, which indicates that community/Council concerns relevant to potential environmental and financial impacts of the project can be adequately managed with minimal or no exposure of public (Council) funds being at risk because of non-compliance with the environmental commitments on the development; and
 5. Council does not intend to provide any additional funding towards the development of Lots 21 and 22, other than that which formed the initially adopted Business Plan prepared by Council and including those minor adjustments recommended as a result of the independent review.

AMENDMENT TO MOTION

MOVED Mayor Lee SECONDED Cllr Rennie that:

5. Council does not intend to provide any additional funding towards the development of Lots 21 and 22, other than that which formed the initially adopted Business Plan prepared by Council and including those minor adjustments recommended as a result of the independent review.



and

The total Council expenditure for the project will not exceed \$236,834 which is made up of previous expenditure of \$64,384 and the Business Plan Budget of \$172,450 plus a stand-alone amount to a maximum of \$3,000 per annum for approximately five(5) years being Council's contribution to the compliance audit costs;

6. Council re-iterates its previous decision that facilities and associated infrastructure, identified as future costs of \$667,200 in the Business Plan prepared by Council, will not be considered for construction on Part Lot 14 until Council is satisfied there is a demonstrated need for more community soccer pitches within the City of Cockburn and any development will be subject to budget constraints.
- (3) instruct McLeod & Co that the amount of priority required within the Deed of Covenant between Council and any lending institution to protect Council's interests under the terms of the Contract of Sale inclusive of Ministerial Statement 475 is to be \$50,000.

AMENDMENT PUT AND CARRIED 10/0

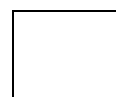
AMENDED MOTION PUT AS ORIGINAL AND CARRIED 9/1

Explanation

It was felt that as the present Council is bound by the decision of the previous Council it cannot defer the matter any further. Therefore, It has no option but to go ahead with the project. Most importantly Council is satisfied that it has been able to put in place a number of safeguards.

In relation to the addition of sub-clause (2) point 5, there has been a great deal of confusion over what Council was going to be responsible for, not only for the Elected Members but also the community and that huge costs may be incurred in the future. It seems that there has been an understanding by the WACA that Council would have to be responsible for an unknown amount of funds in the future. Therefore, the amendment clearly outlines what Council sees and recognises as its financial commitment to this project.

Sub-clause (2) point 6 has been amended to clarify any misunderstands that Council was going to make a commitment to a self-supporting loan. It is not the intention of this Council, neither was it the intention of the previous Council, for additional funds to be expended. There would



have to be a demonstrated need for any additional funds which would have to be to Council's satisfaction in the future.

With regard to Sub-clause (3), it was considered absolutely necessary for a Deed of Covenant to be entered into, should the WACA mortgage Lot 21. In this way the interests of Council are protected, specifically stating the amount of priority required to protect Council's potential exposure to Ministerial Statement 475. On advice from Council's Solicitors, an amount of \$50,000 was considered appropriate.

Background

On the 20 March 2001 Council in relation to this matter adopted the following resolution.

"That Council:

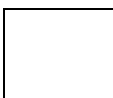
- 1) instruct the Chief Executive Officer not to proceed with settlement of the transfer of land of Lot 14 Progress Drive to the West Australian Croatian Association (WACA), until Council has the opportunity to fully consider community concerns raised in respect to on-going environmental commitments associated with the project; and
- 2) as settlement is due within 120 days of the issue of title, a report based on findings of the independent consultants report, be presented as soon as possible to a future Council meeting addressing such issues as:
 - Proponency
 - Financial Implications
 - Environment Impact
 - Legal Implications Placed on Council"

Furthermore, at a meeting Council held with representatives of the WA Croatian Association (Inc.) on the 28 March 2001 the Association presented a letter requesting that Council release \$70,000 of its funds.

Submission

Advice provided by Council's solicitors implies that Council has a legal obligation under the Contract of Sale to proceed with the transfer of Lot 21 Progress Drive, Bibra Lake to the WA Croatian Association (Inc.). Also the sum of \$6,115 can be returned to the Association, as project expenditure commitments have been satisfied, except that amount which is related to the bank guarantee of the sewerage condition of subdivision.

Report



The report entitled "Review of Environmental Issues associated with the CER and subsequent Environment Approvals for the 'Soccer and Recreation Development,' Progress Drive, Bibra Lake (Assessment 1076, Statement 475)" prepared by the consulting firm Brown & Root Services Asia Pacific Pty Ltd, has been received by Council. The report addresses the issues raised by Council on the 20 March 2001.

In the opening paragraph of the Summary of the report it states "The development proposed for Lots 21 and 22 Progress Drive, Bibra Lake does not pose any insurmountable environmental difficulties. Providing the proposal is implemented and operated in a manner that is consistent with Statement 475, the risk of unacceptable effects on the adjacent environment is minimal."

Section 1 of the report sets out the terms of reference. Section 2 reviews the environmental commitments established under the Minister's Statement 475, and provides control mechanisms to deal with the issues. It is important to note that the Consultative Environmental Review prepared by Council set out 32 commitments in relation to the project, however the Minister decided to impose only 13 of these commitments.

The issue of proponentcy has been reported upon and discussed at length, and the report emphasizes that at this point in time Council is the sole proponent for the project, notwithstanding the fact that there was a letter from the Minister, which implied that a joint proponentcy existed between Council and WACA. It has been revealed that this position is not correct and Council has approached the Department of Environmental Protection to install the WA Croatian Association (Inc.) as a joint proponent to the project. Although no response has yet been received, there is no impediment to Council transferring the environmental commitments to the WA Croatian Association (Inc.) through the Lease for Lot 22, however this does not abdicate Council from its responsibility as the sole proponent of the project, in the meantime. The following table contains the mechanisms in place to provide Council with the required protection and places the burden of responsibility for compliance with the development conditions upon the WA Croatian Association.

Code	Description	Control Mechanism
M4.1/ M4.2	Site Access Plan	<u>Development Approval Process</u> All final plans submitted for the Development Approval must be consistent with the approved Site Plan (as per Appendix B of the Brown and Root report).
M5.1/ M5.2	Nutrient and Irrigation Management Plan	<u>Development Approval Process</u> Should include conditions to ensure compliance with construction techniques, final

		<p>form and characteristics as described in the NIMP (as per Appendix D of the Brown and Root report).</p> <p><u>Lease Conditions</u> Should include conditions to ensure operation, review, monitoring, compliance and reporting are consistent with NIMP requirements (as per Appendix D of the Brown and Root report). Should include a condition to the effect that any detrimental effects on Tappers Lake or Bibra Lake that can be attributed to non-compliance with the criteria in the NIMP shall be remediated by the Lessee.</p>
M5.3	Approval to go to Stage 2	<p><u>Development Approval Process</u> Should only be supported subject to demonstrated compliance with NIMP criteria for Stage 1. <u>Note:</u> The NIMP would require review and updating to accommodate Stage 2. This review and associated costs may be passed on to the WACA as a condition of Council allocating funds to proceed to Stage 2.</p>
M6	Compliance Auditing (Project Compliance Reports)	<p><u>Lease Conditions</u> Should include conditions requiring the preparation of PCRs within a timeframe suitable for Council to review and approve prior to submission to the DEP to meet reporting timelines.</p>
P1:1	Clearing and Dieback	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> Should include conditions to:</p> <ul style="list-style-type: none"> • Tag trees to be retained within works areas prior to works on ground; • Clearly mark <i>extent of works</i>* prior to works on ground through the use of suitable barriers, fencing, and/or signage; • Confine storage, movement and operation of all machinery and other goods to within the area to be cleared; • Ensure all goods, vehicles and other equipment brought to site, and leaving the site, are free of soil and plant material; and • Ensure any fill material brought to the site is certified as <i>dieback free</i>. <p><u>Lease Conditions</u> Should include conditions that are consistent with the Development Approval process. The Lease Conditions should include provision for penalties and any costs associated with remediation in the event of non-compliance.</p>



<p>P1.2:1 P1.2:2</p>	<p>Revegetation and Landscape Program</p>	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> Should include conditions requiring:</p> <ul style="list-style-type: none"> • Implementation of the Revegetation and Landscape Program approved by the DEP (as per Appendix C of the Brown and Root report); • Implementation of the Program as soon as practical following completion of bulk earthworks. • Notes regarding seasonal requirements for establishment success; lead time required to pre-order seeds and seedlings to ensure adequate seeds and seedlings are available for planting, should also be included on the approval. <p><u>Lease Conditions</u> Should include conditions consistent with the Development approval. The Lease Conditions should include provision for penalties and any costs associated with remediation in the event of non-compliance.</p>
<p>P2</p>	<p>Protection of tortoises – monitoring, signage, fencing</p>	<p><u>Council Activities</u> Erect signs advising of tortoise crossing consistent with advice from CALM.</p> <p><u>Development Approval Process</u> Should include conditions to alter fencing if necessary to address obvious effects on tortoise movements based on advice from CALM.</p> <p><u>Council Activities</u> Monitor tortoise movements and population during the breeding season to report on any changes in numbers.</p> <p><u>Lease Conditions</u> Should include conditions that are consistent with the Development approval. The Lease Conditions should include provision for penalties and any costs associated with remediation in the event of non-compliance.</p>
<p>P3</p>	<p>Rehabilitation of Tappers Lake and part of Bibra Lake</p>	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> Should include conditions to require implementation of the Revegetation and</p>



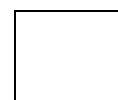
		<p>Landscape Program consistent with requirements under P1.2:2.</p> <p><u>Lease Conditions</u> The Lease Conditions should include provision for penalties and any costs associated with remediation activities in the event of non-compliance. Should Council wish to involve WACA in future responsibilities for the development of the remaining portion of Lot 14 (ie. Stage 2) then additional Lease conditions to this effect would be appropriate. <u>Note:</u> It is important to advise DEP of the boundary that defines Stage 1 and 2. The current approval is for both Stages with no clear <i>line</i> between the two. There is a possibility that DEP would expect some of this work to be carried out as part of Stage 1 activities when the intent is that this work is tied to Stage 2.</p>
P4:1	Surface drainage to prevent flow to Bibra Lake	<p><u>Contract of Sale</u> Includes an existing clause stating that the WACA shall comply with the requirements of Ministerial Statement 475.</p> <p><u>Development Approval Process</u> The Development Proposal must include detailed drainage plans supported by correspondence from WRC specifically stating that WRC believe the proposed drainage plans are consistent with Commitment P4:1.</p>
P8:1	Midges	<p><u>Lease Conditions</u> Should include a condition to ensure any proposed night time activities are consistent with the City of Cockburn's Integrated Midge Control Strategy.</p>
P8:2	Maintenance of vegetation	<p><u>Lease Conditions</u> Should include a condition requiring monitoring and management of landscaped and revegetated areas under the Revegetation and Landscaping program are maintained in an appropriate condition. Reporting would be via the PCR prepared annually.</p>
P9:1	Surface drainage to contain water on site.	<p><u>Development Approval Process</u> The Development Proposal must include detailed drainage plans including correspondence from WRC specifically stating that WRC believe the proposed drainage plans are consistent with Commitment P9:1.</p>
P9:2	Amendments in swales	<p><u>Development Approval Process</u> Should include a condition to ensure swales include soils consistent with removal of nutrients (ie: PRI >10).</p>



P9:3	Plantings in swales	<u>Development Approval Process</u> Should include a condition to ensure appropriate species of sedge, shrub and wetland plants are established in the swales to help remove nutrients from stormwater. The developer (in this case WACA) should be required to demonstrate the species selected are consistent with current advice from WCS. Ensure the species of plants selected are consistent with WRC publications and general advice.
P9:4	Management of drainage water from Adventure World and Forrest Road	<u>Development Approval Process</u> The Development Proposal must include detailed drainage plans that are consistent with correspondence from the City of Cockburn to the DEP dated 5 October 2000 regarding management of this drainage water.
P11	Provision of adequate car parking	<u>Development Approval Process</u> The Development Proposal must include detailed plans that are consistent with the site plan approved by the DEP (As per Appendix B of the Brown & Root report).
P13	Community Consultation	<u>Development Approval Process</u> This process should ensure adequate consultation with the community when the development approval is being considered including: <ul style="list-style-type: none"> • Signage at the lot; • Advertising in the local newspaper; • Detailed plans being made available for perusal at council offices; and • Availability of appropriate Council staff to respond to 'over the counter' enquiries.

** Extent of works is the area that will be disturbed during construction. The purpose of demarcating this area is to ensure contractors on the site are fully aware of where they are permitted to go. There should be no disturbance of any kind beyond this area.*

The report has reviewed the community concerns and has stated that they are generally unfounded, nevertheless some minor extra expenditure is recommended. Table 5.1 depicts the additional expenditure recommended to cover such activities as "Council Inspection of Works", "Community Consultation" and "Clearance of Outstanding Conditions." There is scope within the existing project budget to fund these activities due to the budget surplus. For example, Council's budget is \$172,450 and expenditure to date amounts to \$78,970, therefore there is sufficient surplus to cover the additional suggested expenditure of \$18,400.



The report briefly covers the legal position of the project and it makes reference to five primary legal issues regarding the project as follows:

- * Proponent status and proponent responsibilities under the *Environmental protection Act (1986)*;
- * The ability of a proponent to transfer environmental requirements to third parties via contractual arrangements;
- * Current status of the Contract of Sale of Lot 21 to the WACA;
- * Implications for Council should the contract be binding and Council wish to withdraw; and
- * The ability of Lease Conditions to effectively transfer financial risk associated with environmental issues to a third party.

Proponency – Council is the sole proponent, however there is a possibility that a joint proponency may exist in the future, subject to approval of the Minister.

Transfer of Environmental Requirements – it is possible to transfer the environmental requirements to the WA Croatian Association (Inc.) through mechanisms mentioned earlier in the report.

Contract of Sale – a legally binding Contract of Sale exists between Council and the WA Croatian Association (Inc.) and Council could be exposed to financial risk if it elects to withdraw from the contract.

Lease Conditions – it is possible to transfer financial risk associated with environmental issues related to the establishment and operation of the soccer playing facilities to the WA Croatian Association.

Turning now to the letter dated 28 March 2001, from the WA Croatian Association (Inc.), in which Council was requested to release \$70,000 of the Association’s funds. Council does not hold such an amount – details are provided below. It is true that the Association has paid to Council the amount of \$152,487.00 and this amount is made up as follows.

Payment of Deposit – Lot 21	\$10,000.00*
Contribution to the preparation of additional documents to facilitate EPA process	\$16,924.00*
Contributions to Works	\$125,563.00
TOTAL	\$152,487.00

**These amounts are non-refundable.*

WACA Subdivisional Works Program Costs



	Contribution Paid \$	Amount Spent \$	Balance \$
Electricity	21,813	13,763	8,050
Sewerage	34,000	28,678*	5,322
Water	65,000	64,891	109
Headwork Charges	4,000	4,445	(445)
Drainage Headwork Charges	750	3,456	(2,706)
Legal Fees	Nil	1,442	(1,442)
Survey Costs	Nil	2,773	(2,773)
	125,563	119,448	6,115

* Contained within this amount is the sum of \$27,200 being the Association's financial commitment to the bank guarantee. Therefore, the sum of \$27,200 and the surplus of \$6,115 equals \$33,315.

Strategic Plan/Policy Implications

Key Result Area *Managing Your City* refers.

Budget/Financial Implications

As per the Business Plan previously adopted by Council.

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

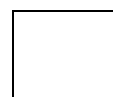
Nil.

1145. (AG Item 9.3) (scm1_5_2001) - LEGAL ARRANGEMENT FOR LEASE OF LOT 22 PROGRESS DRIVE, BIBRA LAKE - WA CROATIAN ASSOCIATION (INC.) (1100231) (LJCD) (ATTACH)

RECOMMENDATION

That the City of Cockburn and the WA Croatian Association (Inc.) enter into a legal arrangement at the cost of the Association whereby if the lease for Lot 22 Progress Drive is not taken up by the Association and that Lot 22 is transferred or leased to a third party by the City the third party would be required to pay to the WA Croatian Association (inc.):

- (1) half of the current cost of the land on which the access road to Lot 21 Progress Drive is situated;
- (2) half of the current cost of constructing the access road; and



- (3) half of the maintenance cost for the access road.

COUNCIL DECISION

MOVED Deputy Mayor Graham SECONDED Cllr Allen that the City of Cockburn and the WA Croatian Association (Inc.) not enter into a legal arrangement at the cost of the Association whereby if the lease for Lot 22 Progress Drive is not taken up by the Association and that Lot 22 is transferred or leased to a third party by the City the third party would be required to pay to the WA Croatian Association (inc.):

- (1) half of the current cost of the land on which the access road to Lot 21 Progress Drive is situated;
- (2) half of the current cost of constructing the access road; and
- (3) half of the maintenance cost for the access road.

CARRIED 8/2

Explanation

It was considered that when Lot 21 was purchased by the WACA, it was fully known that the WACA was purchasing the freehold land with an encumbrance on it. Although this was eventually to be an asset to the WACA, at the same time it was made aware that there was also a liability. When the contract of sale was carried out, the WACA was fully informed of the conditions that were imposed at that time.

Background

N/A

Submission

N/A

Report

A meeting was held on the 18 May 2001 between four representatives of the WA Croatian Association (Inc.), the Mayor and officers of Council. The purpose of the meeting was to discuss the issues and outcome schedule prepared in relation to Lot 14 Progress Drive, Bibra Lake. During the meeting the President of Club, Mr V Jackovich asked; what if the Club did not take up the lease for Lot 22 Progress Drive, then Council decide to transfer or lease Lot 22 to a third party, could the Club



be compensated for its costs associated with the construction of the access road to Lot 21 Progress Drive by the third party.

Lot 22 Progress Drive was created with its own battle-axe access from Progress Drive. This course of action was taken to create a separate Certificate of Title for the Lot in case the Association decided to exercise its rights under the proposed lease to purchase Lot 22 Progress Drive. If such an arrangement was not put in place and the Association did decide to purchase Lot 22 Progress Drive then a fresh application to subdivide in respect to Lot 22 would have to be lodged because there was no access to the Lot. However, it would be a condition of the lease that the access road to Lot 22 Progress Drive from Progress Drive is not to be constructed because of the possible damage to the Moreton Bay fig trees on Pt Lot 14 Progress Drive. Therefore, Council decided that a right-of-way be registered over the access road to Lot 21 Progress Drive to provide access to Lot 22 Progress Drive.

The extent of the legal arrangement under consideration is shown in the attached diagram.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

Nil.

1146. (AG Item 10.1) (scm1_5_2001) - RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)

COUNCIL DECISION

MOVED Cllr Allen SECONDED Cllr Waters that Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (a) integrated and coordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (b) 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
(c) managed efficiently and effectively.

CARRIED 10/0

MEETING CLOSED 8.05 PM

CONFIRMATION OF MINUTES

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

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

