

CITY OF COCKBURN

SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON TUESDAY, 13 JULY 1999 AT 7:30 P.M.

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CITY OF COCKBURN**MINUTES OF ORDINARY COUNCIL MEETING HELD ON
TUESDAY, 13 JULY 1999 AT 7:30 P.M.**

PRESENT:**COUNCIL MEMBERS**

Mr J F Donaldson	-	Chairperson of Joint Commission
Ms J L Smithson	-	Joint Commissioner
Mr M A Jorgensen	-	Joint Commissioner

IN ATTENDANCE

Mr R W Brown	-	Chief Executive Officer
Mr D M Green	-	Director Community Services
Mr A T Crothers	-	Director, Finance & Corporate Services
Mr S M Hiller	-	Director, Planning & Development
Mr B K Greay	-	Director, Engineering
Mr G MacMile	-	Manager, South Lake Leisure Centre
Mrs F Hide	-	Secretary to Director, Community Services

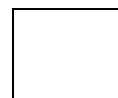
118. (AG Item 1) DECLARATION OF OPENING

The Chairperson declared the Meeting open at 7:30 pm.

**119. (AG Item 2) APPOINTMENT OF PRESIDING MEMBER (IF
REQUIRED)****120. (AG Item 3) DISCLAIMER**

The Presiding Member read aloud the following disclaimer:

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.



121. (AG Item 6.1) (OCM1_7_1999) - ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the Ordinary Meeting of Council held on the 8th June 1999, the following actions were taken on notice and subsequently dealt with by the Administration:-

Mr Peter Mirco raised concerns regarding the use of Hurst Road Henderson by trucks and urged Council to consider the potential dangers with respect to the condition of the road and intersection. A response dated 21st June 1999 advised that the work carried out on Hurst Road is in accordance with Australian Standards and that semi-trailers up to 19m can traverse the intersection safely. Vehicles longer than 19m have difficulties at nearly every intersection in the metropolitan area and Main Roads WA have been advised many times of that fact. Mr Mirco's personal design for the intersection was investigated by Council's design staff however the construction could not be justified on a cost/benefit analysis.

At the same Council Meeting, Mr Mirco advised that rubbish was being dumped on his company's property and asked what could Council do to assist them. Council's letter also informed Mr Mirco that Council did not have the powers to police this activity however, if he was able to identify the vehicle registration, the Health Department would write to the offenders.

Mr Andrew Brown addressed the Ordinary Meeting of Council on the 8th June 1999 regarding Tender No. 9/99 - Henderson Landfill Site and referred to a letter he had delivered that day which included a number of questions. At the meeting, Mr Brown requested that in light of the amount of questions mentioned in his letter, that Council defer the matter so that his letter could be responded to. The Director, Engineering & Works has since responded to Mr Brown's questions in a response dated the 28th June 1999. A copy of that letter was circulated to Commissioners for their information.

At the Ordinary Meeting of Council held on 22 June 1999, questions were asked regarding the alterations to the Coolbellup Library and its impact on the Cockburn Vocational Centre. The following response by Manager, Community Services was made by letter dated 5 July 1999:

The Council, at its Meeting of the 18th August, 1998, resolved to lease the area of the building previously used by Cockburn Skillshare to the Cockburn Vocation Centre at \$67m² p.a. for 166m². Council reserved the right to utilise the balance of the area (48m²) for extensions to the Coolbellup Library should it be required. In the meantime, the Cockburn Vocation Centre would be able to use the 48m² area at no



cost. The Association was notified again on the 17th March, 1999, that it was likely that Council would be extending the library into the area occupied by the Vocation Centre in 1999/2000.

Over the past month discussions have been held with Vocation Centre staff and a representative of the management committee on a draft plan. Following these discussions an alternative plan has been provided which will again be discussed with the Vocation Centre to seek the best compromise between the needs of the Coolbellup Library and the Vocation Centre.

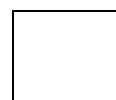
In respect to the Early Education Playgroup, the Early Education Program has reduced the hours of a part time staff member to meet its budget for 1999/2000. Members of the playgroup have not had the opportunity to speak to the coordinator of the Early Education Program to ascertain the level of support that could be provided. I advise that the Early Education Program will be providing support to the playgroup for next term. The vast majority of playgroups in the City are self managed and self run and it is expected that the Early Education Playgroup will work towards requiring a minimum of support over time.

In respect to the level of funding provided by Family and Children's Services the services provided for each program are on a fixed price contract basis with a growth allowance in line with the Consumer Price Index. Prior to contracts being signed Council has lobbied to have the grant funds for a number of programs increased, however, this has not been successful. Council has agreed to enter contracts to provide these services on the basis that operational alterations and adjustments can be made during the life of the contract to allow the services to remain within budget.

122. (AG Item 7.1) (OCM1_7_1999) - PUBLIC QUESTION TIME

Mr Paul Rokich representing CSR Readymix spoke to Item 14.2. In regard to the item Mr Rokich proposed that the application as submitted by CSR Readymix be supported. CSR Readymix has submitted supporting documentation that contains logical and sound planning reasons for support of the proposal. Additional information was provided at the site meeting which gives commitment to progressive and staged development as discussed on site. Mr Rokich advised that the proposal can be implemented and adequately managed.

Mr Luka Favro - Resident and President of the W.A. Croatian Association spoke to Item 17.2 and requested on behalf of the Association that Council extend the time frame to allow for fundraising for the project at Lot 14 Progress Drive, Bibra Lake.



Mary Jenkins - Ratepayer advised that at the last Council meeting she raised the issue of Equal Opportunity and affirmative action and was advised by the Commissioner that they were one and the same thing. Ms Jenkins has since done a lot of research and has produced a paper that she would like to present to Council that qualifies the fact that equal opportunity and affirmative action are not one and the same thing.

Secondly, she said that she would also like to present to the Council a submission to gain approval for funding to support a series of workshops for people interested in entering local Council. This is an opportunity to train people in the community that wish to nominate for Council. This submission is based on research as to what happened in Bunbury Council and as Convenor for the Women's Electoral Lobby she has taken a keen interest in women being represented in local Council as well as Aboriginals, the aged and disabled, and various ethnic groups being represented in Council.

Commissioner Donaldson thanked Ms Jenkins for her innovation and commitment in undertaking the studies and presenting them to Council and advised that they will certainly be read.

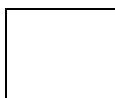
Mr Brown - Resident spoke to item 16.1 with regard to the Henderson Landfill site and raised some issues and submitted documentation in support of what he is highlighting.

"I have in my possession, regarding the tendering process, 3 signed statements from varying tenders which tend to make me believe that we have deep problems about statements being made by differing people about what has gone on with the process.

In regard to one, I am advised in a letter from Mr Greay, Director of Engineering, dated 28th June, that he has actually consulted all tenders and as I have said I now have 3 statements that do not back this up. In actual fact all three state they have not spoken to anyone at Council in regard to consultation about the tender involved.

The report highlights serious shortfalls in the whole way the tender process has been applied, not only in the way it has been done, but also in the way it appears to have been done. This is the view of a lot of residents that I have spoken to that are aware of this and have some knowledge on the matter.

Several issues have also been raised about the observation period and several of its shortcomings and in talking to different people we think we have come up with a solution that would benefit not only the Council and Council staff, but also the people of Cockburn.



What I ask is that we meet with Council and thrash out the issues raised in the submission. It would be of very little cost to Council and it means that Cockburn wins. As far as recycling goes it means that a lot of people will be looking to us as leaders and not followers.

Lastly, I would like to thank all concerned for the fine job that is being done."

Commission Donaldson thanked Mr Brown for his comments. Council will most certainly look at the submission and will consider it as requested.

123. (AG Item 8.1) (OCM1_7_1999) - CONFIRMATION OF MINUTES - ORDINARY MEETING OF COUNCIL - 22/6/1999

MOVED Commissioner Smithson SECONDED Commissioner Jorgensen that the Minutes of the Ordinary Meeting of Council held on Tuesday, 22 June 1999 be confirmed as a true and accurate record.

CARRIED 3/0

124. (AG Item 12.1) (OCM1_7_1999) - ADDITIONS TO THE AGENDA

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the following item be added to the agenda:-

TENDER NO. 12/99 RECALLED - INSPECTION OF PRIVATE SWIMMING POOLS (3211) (VG)

CARRIED 3/0

125. (AG Item 13.1) (OCM1_7_1999) - PROPOSED AMENDMENT TO COUNCIL POLICY A5.11 - PAYMENTS TO EMPLOYEES (1030) (DMG)

RECOMMENDATION

That Council adopt Policy A5.11 "Gratuity Payments For Staff" as per the attachment to the Agenda.



COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

CARRIED 3/0

Background

At the Council Meeting of 20th April, 1999, Council adopted a Policy relating to payments to employees, in excess of Award conditions or contractual arrangements.

Submission

N/A

Report

The Minutes of the Meeting indicate that the funding ceiling of \$1,500 applied to the entire Policy. However, the intent of the \$1,500 limit was for it to apply to Part 3 of the Policy only. The proposed amendment clarifies this intent.

Strategic Plan/Policy Implications

Policy A5.11 refers

Budget/Financial Implications

Funding provided for within "Governance" Budget allocation.

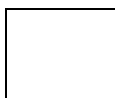
Implications of Section 3.18(3) Local Government Act, 1995

Nil

126. (AG Item 13.2) (OCM1_7_1999) - APPOINTMENT OF DELEGATE - PERTH AIRPORT MUNICIPALITIES GROUP (3200) (DMG)

RECOMMENDATION

That Council appoint Council's Principal Environmental Health Officer as its Delegate to the Perth Airport Municipalities Group.



COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

CARRIED 3/0

Background

In May, 1999, Council appointed its Delegates / Representatives to external organisations with whom Council had a shared interest in their objectives. At that time, Council rationalised its membership to such organisations by not providing a delegate to those whose functions did not seem to require this Council's involvement. These organisations, of which the Perth Airport Municipalities Group was one, were invited to contact Council if they wished reconsideration of the decision.

Submission

N/A

Report

Perth Airport Municipalities Group (P.A.M.G.) has contacted Administration requesting Council to provide it with a delegate as many domestic aviation issues affecting Jandakot Airport are also relevant to P.A.M.G. Accordingly, it is considered appropriate to appoint the same delegate who represents Council on the Jandakot Airport Flight Paths Review Committee, as this is one of the major issues being addressed by P.A.M.G.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

Nil



127. (AG Item 13.3) (OCM1_7_1999) - LEGAL REPRESENTATION FOR PRESENT AND FORMER ELECTED MEMBERS AND STAFF OF THE CITY - POLICY A1.18 (1030) (RWB)

RECOMMENDATION

That Council:

- (1) adopts the revised Policy A1.18 - Legal Representation, as attached to the agenda (proposed amendments highlighted); and
- (2) advise Mr Bill Thomas MLA, suspended and former Councillors of the change to the policy.

* **This Policy is subject to Delegated Authority DA-A82**

COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

CARRIED 3/0

Background

Council, at its meeting of the 8th June 1999, adopted Policy A1.18 relating to Legal Representation for Part 8 - Division 2 Inquiries.

Submission

By letter dated the 18th June 1999, Mr Bill Thomas MLA queried the aspects of Council's Policy on legal representation following the issue being raised by a constituent.

Mr Thomas respectfully suggested that Members and employees should be able to nominate their own legal representation as a matter of right, rather than be required to use Council's solicitors as presented in the Policy.

Mr Thomas also presented the view that, given the conflicting interests of the parties, the discretion given to the CEO to agree or otherwise for the use of legal representation other than Council's solicitors may be inappropriate.

Report

The issues raised by Mr Thomas have validity and it is considered appropriate that the Policy be amended to allow for requests for legal



representation other than by Council's solicitors to be considered by Council on a direct basis if requested, rather than the CEO.

The proposed amendments provide for the direct application to Council or the CEO.

The amendment to "Purpose b)" is to correct a typographical error.

A copy of the Policy adopted on the 8th June 1999 is attached together with the amended Policy.

Strategic Plan/Policy Implications

An amendment to Policy A1.18 is proposed.

Budget/Financial Implications

The draft budget provides for \$100,000 for the cost of the Inquiry including legal expenses.

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

Nil

128. **(AG Item 13.4) (OCM1_7_1999) - LEGAL EXPENSES - MR J. OSTOJICH - EXECUTIVE DIRECTOR DEPARTMENT OF LOCAL GOVERNMENT PART 8 - DIVISION 1 LOCAL GOVERNMENT ACT 1995 INQUIRY (1335) (RWB)**

RECOMMENDATION

That Council:

- (1) receive the request from Mr J. Ostojich dated the 16th June 1999, for Council to reimburse legal expenses incurred as a result of the Executive Director for Local Government's Inquiry into the City of Cockburn;
- (2) confirm to Mr Ostojich that Council's Policy A1.18 - Legal Representation, only relates to Part 8 - Division 2 Inquiries; and
- (3) advise Mr Ostojich that Council is not prepared to provide financial assistance for legal costs incurred for Part 8 - Division 1 Inquiries.



COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

CARRIED 3/0

Background

A report on matters concerning the City of Cockburn dated the 29th March 1999 from Martin and Vicary, was provided to the Executive Director - Department of Local Government. The report resulted from an Inquiry into the City under Section 8.13 Part 8 - Division 1.

The Report, together with decisions of Council not canvassed in the report, resulted in Councillors being suspended.

A Section 8.16 Part 8 - Division 2 Inquiry ('Douglas Inquiry') has since been required by the Minister for Local Government.

Council, at its meeting of the 8th June 1999, adopted a Policy on Legal Representation which specifically relates to Part 8 - Division 2 Inquiries.

Submission

By letter dated the 16th June 1999, Mr Ostojich requests Council to meet the costs of legal expenses incurred in relation to the Martin and Vicary Inquiry.

Mr Ostojich also wrote to Council on the 22nd April 1999 requesting that Council meet the cost of legal representation for costs which will be incurred *"in the lead up to, during and following the conclusion of the inquiry"*. The inquiry referred to is the 'Douglas Inquiry'.

Mr Ostojich pointed out that the Inquiry will cover the period of time he was a Councillor of the City and would therefore, be *"examining the discharge of my public duty"*.

Mr Ostojich was advised that a policy was being prepared for Council's consideration and once that had been adopted, the request would be considered.

The 16th June 1999 letter from Mr Ostojich, points out that his letter of the 22nd April 1999 related to legal expenses which may be incurred for the 'Douglas Inquiry'. Mr Ostojich acknowledges that his request for legal services does not comply with *"particular areas"* of the policy, but considers that *"the central principals that guided my actions would warrant the Council meeting the costs of the legal expenses"* incurred to date.



The legal expenses being sought are \$2,405.

Report

Council, at its meeting of the 8th June 1999, adopted a policy relating to legal representation.

The policy is specific in that it relates to Part 8 - Division 2 Inquiries. At the time of adopting the policy, Council was firm in its view that any assistance towards the cost of legal representation would be restricted to Division 2 Inquiries and would not be extended to Division 1 Inquiries.

Strategic Plan/Policy Implications

Council's Policy A1.18 adopted by Council on the 8th June 1999 relating to Legal Representation applies.

Budget/Financial Implications

The draft budget provides for \$100,000 for the cost of the Inquiry and legal expenses.

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

Nil

- 129. (AG Item 13.5) (OCM1_7_1999) - LEGAL EXPENSES - MOSENSONS BARRISTERS & SOLICITORS FOR MR M. PECOTIC - EXECUTIVE DIRECTOR, DEPARTMENT OF LOCAL GOVERNMENT PART 8 - DIVISION 1 LOCAL GOVERNMENT ACT 1995 INQUIRY (1335) (RWB)**

RECOMMENDATION

That Council:

- (1) receive the request dated 25th June 1999 from Mossensons for Mr M. Pecotic, for Council to reimburse legal expenses incurred as a result of the Executive Director for Local Government's Inquiry into the City of Cockburn; and
- (2) advise Mossensons that Council is not prepared to provide financial assistance for legal costs incurred for Part 8 - Division 1 Inquiries.



COUNCIL DECISION

MOVED Commissioner Smithson SECONDED Commissioner Jorgensen that the recommendation be adopted.

CARRIED 3/0

Background

A report on matters concerning the City of Cockburn dated the 29th March 1999 from Martin and Vicary, was provided to the Executive Director - Department of Local Government. The report resulted from an Inquiry into the City under Section 8.13 Part 8 - Division 1.

The Report, together with decisions of Council not canvassed in the report, resulted in Councillors being suspended.

A Section 8.16 Part 8 - Division 2 Inquiry ('Douglas Inquiry') has since been required by the Minister for Local Government.

Council, at its meeting of the 8th June 1999, adopted a Policy on Legal Representation which specifically relates to Part 8 - Division 2 Inquiries.

Submission

By letter dated 25th June 1999 Mossensons, under instruction from Mr M. Pecotic, requested Council to meet the cost of legal expenses incurred in relation to the Martin and Vicary Inquiry.

The letter advises that legal fees amounting to \$3,367.80 have been incurred for the following work: -

1. preparation of submissions on behalf of their client while their client was overseas;
2. communications with Mr Martin with respect to the submissions and queries Mr Martin had in relation to their client's submissions;
3. perusal of the Martin/Vicary report while their client was overseas;
4. reporting to their client in relation to the findings of the report, etc;
5. obtaining Counsel's advice in relation to the report.

Mossensons state that in their view, *"legal representation was required with respect to our client concerning the Martin/Vicary report due to the fact that our client was overseas at the time he was required to make submissions to the Inquiry, when the preliminary findings were made"*.



Mossensons further state that they believe it to be unfair and unjust for their client to be liable for costs he incurred with respect to legal fees concerning activities which directly relate to his Council duties.

Report

Council, at its meeting of the 8th June 1999, adopted a policy relating to legal representation.

The policy is specific in that it relates to Part 8 - Division 2 Inquiries. At the time of adopting the policy, Council was firm in its view that any assistance towards the cost of legal representation would be restricted to Division 2 Inquiries and would not be extended to Division 1 Inquiries.

Strategic Plan/Policy Implications

Council's Policy A1.18 adopted by Council on the 8th June 1999 relating to Legal Representation applies.

Budget/Financial Implications

The draft budget provides for \$100,000 for the cost of the Inquiry and legal expenses.

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

Nil

130. (AG Item 13.6) (OCM1_7_1999) - LEGAL REPRESENTATION - MOSSSENSONS BARRISTERS AND SOLICITORS FOR MR M. PECOTIC - 'DOUGLAS INQUIRY' INTO THE CITY OF COCKBURN (1335) (RWB)

RECOMMENDATION

That :

- (1) Council receive the letter dated 18th June 1999 from Mossensons;
- (2) subject to written confirmation from Mr Pecotic that he has engaged Mossensons to represent him at the 'Douglas Inquiry', Council: -
 - 2.1 advise Mossensons that it will be inappropriate for Council's solicitors to represent Mr Pecotic and therefore, Council will recognise the appointment of Mossensons by Mr Pecotic for the provision of legal representation for the



'Douglas Inquiry', subject to the provisions contained in Council's Policy A1.18 and specific decisions of Council relating to Mr Pecotic's request for financial assistance;

- 2.2 advise Mossensons that Council will reimburse Mr Pecotic legal expenses up to \$3,000 as per Policy A1.18 on the condition that the Policy is signed by Mr Pecotic pursuant to Clause 20;
- 2.3 advise Mossensons that in accordance with Clause 10 of the Policy Council will be prepared to contribute a further sum not exceeding \$3000 by way of reimbursement of legal expenses on production of an itemised statement of costs following the outcome of the Inquiry subject to Policy A1.18 which provides for the payment to be made if a person has not acted illegally dishonestly against the interests of the City or otherwise in bad faith; and
- 2.4 advise Mossensons that as the Inquiry may consider various issues a detailed statement separating (apportioning) the cost across the issues will be required;
- 2.5 advise Mossensons that Council is not prepared to contribute towards Queen's Counsel costs.

COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

CARRIED 3/0

Background

The Minister for Local Government has determined that an inquiry into the City of Cockburn will be held under Section 8.16 Part 8 - Division 2 of the Local Government Act 1995. An Inquiry known as the 'Douglas Inquiry' is presently underway.

Council has adopted Policy A1.18 relating to legal representation for Part 8 - Division 2 Inquiries.

The 'Douglas Inquiry' follows a Section 8.13 Part 8 - Division 1 Inquiry instigated by the Executive Director - Department of Local Government. The Inquiry findings (Martin & Vicary Report) together with decisions of Council not canvassed in the report, resulted in Councillors being suspended.



The Inquiry made several findings against Mr Pecotic.

Submission

By letter dated 18th June 1999, Council was advised as follows by Mossensons Barristers and Solicitors: -

"We confirm our oral advice to the effect that Mr Pecotic wishes this firm to represent him at the "Douglas Inquiry".

We believe it would be quite inappropriate for the solicitors acting for the City of Cockburn ("the City") to represent Mr Pecotic, for the following reasons:

- 1. If he is granted funding, Mr Pecotic wishes to put certain submissions before the Inquiry relating to the conduct of Members and certain aspects of the City's administration and operations. It would place his solicitors in a position of intolerable conflict of interest if they were to be at the same time acting for some or all of the people to whom his submissions relate. Mr Pecotic would also be placing himself in an untenable position.*
- 2. There will not necessarily be an identity of interests in relation to factual issues before the inquiry. The scope for conflicts of interests is wide.*
- 3. Mr Pecotic believes he should be permitted to engage solicitors and counsel of his choice, provided that his choices are reasonable and justifiable.*

Mr Pecotic has instructed this office to act as instructing solicitors to Mr. Roger Davis of Francis But Chamber as counsel, to represent him at the Inquiry. From initial discussions with counsel and Mr Pecotic, we believe that to achieve an adequate and appropriate level of the legal representation, our client will need funding in the order of \$20,000.00 for counsel and \$15,000.00 for this firm. Those estimates would cover the following:

- 1. Representation by Counsel at the Inquiry:*
 - 1.1. while Mr Pecotic is being interviewed or giving evidence;*
 - 1.2. where necessary, to protect Mr Pecotic's interests while other individuals, give evidence, which concerns him;*
 - 1.3. where it is dealing with matters and submissions Mr Pecotic has raised with Counsel assisting beforehand.*



2. *On the part of this firm, preparatory work by way of collation of documents, proofing of Mr Pecotic and other potential witnesses, investigation and preparation of submissions.*

Given the time constraints for the conduct of the Inquiry, if Mr Pecotic is to contribute usefully to the investigation and if his interests are to be properly protected, it is most important that this firm and counsel commence preparing his submissions as soon as possible. We understand that the Counsel assisting the Inquiry will begin collating information and his investigation of the terms of reference in July 1999 and that hearings will commence in August 1999. That leaves very little time for Mr Pecotic and his advisors to prepare for an approach by Counsel Assisting for an interview with a view to giving a statement.

Mr Pecotic has instructed us that he does not have the financial resources necessary to himself fund any level of legal representation for the Inquiry. In our respectful submission, it would be contrary to the requirements of natural justice for Mr Pecotic to be unrepresented. He is clearly a central character in the matters to be investigated and he has submissions that should be clearly and carefully put before the Investigator. As you know, it was the approach made by Mr Pecotic to the Minister which resulted in the inquiry by Messrs Martin and Vicary which, in turn, gave rise to the Douglas Inquiry. Mr Pecotic's good name has been put in issue in the Martin-Vicary report and justice requires that he have the resources required to see the matter through.

We therefore seek from you and the City Council the following:

1. *Approval for Mr Pecotic to be represented by this firm and Mr Davis.*
2. *A grant of the initial \$3,000.00.*
3. *Authorisation, subject to Council approval, for a grant in the order of our estimate above.*

We would be most grateful if you could treat this request as urgent."

Report

Council's Policy A1.18 allows the CEO to agree for a member or employee to obtain legal services other than Council's solicitors where it is considered inappropriate for Council's solicitors to provide such service.

The policy also allows for the matter to be referred to Council and given that the request from Mossensons requires Council's consideration as it is above the financial limit provided for in the Policy, it is appropriate that Council consider the request in its entirety rather than piecemeal.



Council's Policy provides that the provision of financial support exceeding \$3,000 may be considered by Council if full details of the additional expenses and the reason for it are provided.

The submission from Mossensons sets out the reasons why Mr Pecotic believes he requires financial assistance above the \$3,000 limit.

It is important to note that Mr Pecotic has instructed that he does not have the financial resources necessary to provide the funding himself for any level of legal representation for the Inquiry.

For the sake of consistency with any other request for support, it is proposed that Council deal with the request in two parts. Firstly, recognising the terms of the Policy which provides for a maximum payout of \$3,000 recoverable, should an adverse finding be made. Secondly, an additional sum Council may be prepared to pay, but only at the conclusion of the Inquiry on the basis of no adverse finding.

An approach along these lines would limit Council's exposure to pursue recovery, should reimbursement have been made during the course of the Inquiry.

As the Inquiry will consider a number of matters, it may be found that on some issues a person has acted appropriately and on others not acted appropriately. Therefore, an itemised account apportioned to the various issues will be required, if it is Council's intention to reimburse the legal costs associated with non-adverse findings.

This is in accordance with Clause 18 of the Policy which deals with the revocation of authorities. This Clause states in part:

"(a) if in the Inquiry or otherwise, it is found that a person has acted illegally, dishonestly, against the interests of the City or otherwise in bad faith in connection with the matter for which the person was granted financial support or given contingent authority."

The words "in connection with the matter" is interpreted to mean there may be various findings.

The recommended total reimbursement of legal expenses of \$6,000 should enable Council's exposure for potential legal costs, to be maintained within the \$100,000 provided for, in the Draft Budget without allowance for the potential cost of the Inquiry.

It would not be appropriate for Council's solicitors to represent Mr Pecotic as conflict of interest would certainly evolve.



Mossensons have advised that they represent Mr Pecotic, however this should be confirmed by Mr Pecotic.

Besides Mossensons, Mr Pecotic has engaged Mr Roger Davis of Francis But Chamber as Counsel.

Council will need to consider its preparedness to contribute towards Queen's Counsel costs.

Strategic Plan/Policy Implications

Council's Policy A1.18 adopted by Council on the 8th June 1999 relating to Legal Representation applies.

Budget/Financial Implications

The draft budget provides for \$100,000 for the cost of the Inquiry and legal expenses.

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

Nil

131. **(AG Item 13.7) (OCM1_7_1999) - LEGAL REPRESENTATION - HAMMOND WORTHINGTON FOR MR. J. GRLJUSICH - EXECUTIVE DIRECTOR, DEPARTMENT OF LOCAL GOVERNMENT, PART 8, DIVISION 1 LOCAL GOVERNMENT ACT, 1995 - INQUIRY AND "DOUGLAS INQUIRY" INTO THE CITY OF COCKBURN (1335) (RWB)**

RECOMMENDATION

That Council:

- (1) receive the letter dated 2 July 1999 from Hammond Worthington - Lawyers;
- (2) advise Hammond Worthington that Council is not prepared to provide financial assistance for legal costs incurred for Part 8 Division 1 Inquiry; and
- (3) subject to written confirmation from Mr. J. Grljusich that he has engaged Hammond Worthington to represent him at the "Douglas Inquiry" Council:
 1. advise Hammond Worthington that it will be inappropriate for Council's Solicitor to represent Mr. Grljusich and therefore, Council will recognise the appointment of Hammond Worthington by Mr. Grljusich for the purposes



of legal representation for the "Douglas Inquiry" subject to the provisions contained in Council's Policy A1.18 and specific decisions of Council relating to Mr. Grljusich's request for financial assistance.

2. advise Hammond Worthington that Council will reimburse Mr. Grljusich legal expenses up to \$3,000 as per Policy A1.18 on the condition that the Policy is signed by Mr. Grljusich pursuant to Clause 20
3. advise Hammond Worthington that in accordance with Clause 10 of the Policy Council will be prepared to contribute a further sum not exceeding \$3,000 by way of reimbursement of legal expenses on production of an itemised statement of costs following the outcome of the Inquiry subject to Policy A1.18 which provides for the payment to be made if a person has not acted illegally and dishonestly against the interests of the City or otherwise in bad faith; and
4. advise Hammond Worthington that as the Inquiry may consider various issues a detailed statement separating (apportioning) the cost across the issues will be required;
5. advise Hammond Worthington that Council is not prepared to contribute towards Queen's Counsel costs, should it be their intention to retain Queen's Counsel.

COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

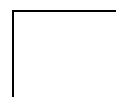
CARRIED 3/0

Background

The Minister for Local Government has determined that an Inquiry into the City of Cockburn will be held under Section 8.16 Part 8 - Division 2 of the Local Government Act 1995. An Inquiry known as the "Douglas Inquiry" is presently underway.

Council has adopted Policy A1.18 relating to legal representation for Part - Division 2 Inquiries.

The "Douglas Inquiry" follows a Section 8.13 Part 8 - Division 1 Inquiry instigated by the Executive Director - Department of Local Government. The Inquiry findings (Martin and Vicary Report) together with decisions



of Council not canvassed in the report, resulted in Councillors being suspended.

The Inquiry made several findings against Mr. Grljusich.

Submission

By letter dated 2 July 1999 Council was advised as follows by Hammond Worthington - Lawyers:

"We advise that we act for Mr. John Grljusich.

We have to had a copy of your letter to Mr. Grljusich of 11 June 1999 regarding legal representation. We also refer to Mr. Grljusich's letter to you of 28 April 1999.

We note that Council adopted a policy regarding legal representation at its meeting on 8 June 1999. We have a copy of that Policy.

The Martin/Vicary Inquiry

Mr. Grljusich's letter to you of 25 April 1999 requested assistance for legal expenses incurred in the course of an Inquiry by Mr. Gary Martin and Mr. Laurie Vicary.

We understand your letter of 11 June 1999 to suggest that Mr. Grljusich is not entitled to claim his legal expenses in respect of that inquiry as it is not provided for in the Legal Representation Policy A1.18 ("the Policy").

Legal Expenses

Mr. Grljusich's request for expenses was made to Council before the Policy was ratified, by which restrictions were imposed on the payment of legal expenses. In any event, the Policy purports to limit payment of legal expenses to those incurred relating to inquiries pursuant to Part 8 of the Local Government Act.

We suggest that it is, and was, within Council's discretion to approve the payment of legal expenses to Mr. Grljusich for legal representation at an inquiry initiated by the Department of Local Government.

It is not open to the Council to deny Mr. Grljusich's request on the basis that there is no provision in a subsequently adopted Policy for such expenses to be paid. The Policy does not operate retrospectively in our view.

Accordingly we repeat our request for compensation set out in our client's letter to Mr. Donaldson of 28 April 1999.



Inquiry - Part 8 - Local Government Act

You will be aware that Mr. Neil Douglas has been appointed by the Minister for Local Government to conduct an inquiry pursuant to Part 8 of the Local Government Act 1995.

Council Policy - Legal Representation - Part 8 Inquiries

The City of Cockburn's Policy, A1.18 - Legal Representation, provides that in certain circumstances the City of Cockburn will provide financial support for legal services for Members and employees in connection with a Part 8 inquiry. Item 14 of the Policy provides that financial support for legal services will only be provided where the relevant expenses are incurred pursuant to a Part 8 inquiry. The present "Douglas Inquiry" is such an inquiry.

Item 13 of the Policy requires application to be made to the Chief Executive Officer in advance.

Item 10 of the Policy limits the amount of financial support to \$3,000 except at the discretion of Council and subject to full details of the additional expense being provided.

Formal Request For Payment of Legal Representation

Pursuant to Item 13, of the Policy we hereby formally request that you approve financial support for legal services for the Part 8 Inquiry to assist Mr. Grljusich in being represented before the inquiry. We also indicate that we will be in a position to substantiate any claim for expenses in excess of \$3,000.00 by the provision of itemised accounts.

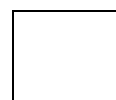
We are unable at the outset of the Inquiry to quantify the total amount required for legal fees, as this will depend directly on what the Inquiry requires of our client.

We note Item 3 of the Policy which states that:

"without the express written authority of the CEO of the Council to the contrary the legal services should be provided by the City's solicitors"

However we also note that Item 6 of the Policy provides that the CEO may authorise a Member or employee to obtain legal services elsewhere.

We now request the CEO's authority to allow Mr. Grljusich to obtain legal service from this firm.



The reasons for this are that:

- 1. we have extensive background knowledge on the matters raised by the Inquiry. Any new solicitors will need significant time to read the background material. This will increase costs needlessly.*
- 2. Council's legal representatives may be placed in a position of having a conflict of interest pursuant to Rule 7 of the Professional Conduct Rules of the Law Society of Western Australia, making it undesirable, if not impossible, for them to act for Mr. Grljusich.*

Pursuant to Item 15 of the Policy we request that you treat this letter as a formal application to you for financial assistance for legal representation for Mr. Grljusich in the matter of the Part 8 inquiry into the City of Cockburn. The legal services which will be required include advice and representation at the Inquiry.

We are seeking advice from Mr. Douglas as to the duration of the Inquiry and what will be required at each of the 3 phases of the inquiry. Once we have that information we will happy to provide you with further details of the representation required.

There is an element of urgency justifying the provision of interim support, in that Mr. Grljusich has already incurred considerable financial expense in preparing for the inquiry to date. Mr. Douglas has notified us of the commencement of the inquiry on 15 June 1999, and we note that the inquiry panel is required to report on or before 31 October 1999."

Report

Council's Policy A1.18 allows the CEO to agree for a member or employee to obtain legal services other than Council's solicitors where it is considered inappropriate for Council's solicitors to provide such service.

The policy also allows for the matter to be referred to Council and given that the request from Hammond Worthington requires Council's consideration as it is above the financial limit provided for in the Policy, it is appropriate that Council consider the request in its entirety rather than piecemeal.

The request from Hammond Worthington Lawyers is in three parts.

1. Legal Expenses - Part 8 Division 1 Martin and Vicary Inquiry.

On 25 April 1999 Mr. Grljusich requested assistance for legal expenses incurred for the Martin and Vicary Inquiry. The legal expenses amounted to \$6,906.08.



On 8 June 1999, Council adopted Policy A1.18 relating to legal representation. Mr. Grljusich was subsequently advised of the policy which does not provide for payments to be made for Part 8 Division 1 Inquiry.

Hammond Worthington pointed out that the report was made prior to Council adopting the Policy, and it is within Council's discretion to approve of the payment of the legal expense incurred. The view is expressed that the request should not be deemed refused on the basis that it does not form part of Policy A1.18

The view expressed by Hammond Worthington is correct in that the Policy does not state that Council will not contribute towards Part 8 Decision 1 - Inquiries. However, at the time of adopting the Policy, Council was firm in its view that any assistance towards the cost of legal representation would be restricted to Division 2 - Inquiries and would not be extended to Division 1 - Inquiries.

2. Legal Representation other than Council's Solicitors

The request for Mr. Grljusich to use other than Council's Solicitors for legal representation is provided for in Policy A1.18.

It will be inappropriate for Council's Solicitors to represent Mr. Grljusich as conflict of interest would certainly evolve.

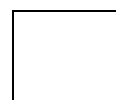
Hammond Worthington have advised that they represent Mr. Grljusich, however this should be confirmed by Mr. Grljusich.

3. Part 8 Division 2 - "Douglas Inquiry" - Legal Expenses

Council's policy provides that the provision of financial support exceeding \$3,000 may be considered by Council, if full details of the additional expenses and the reason for it are provided.

Hammond Worthington indicate that they will be in a position to substantiate any claim for expenses in excess of \$3,000 by the provision of itemised accounts, but are unable to quantify the total amount required for legal expenses.

For the sake of consistency with any other request for support, it is proposed that Council deal with the request in two parts. Firstly, recognising the terms of the Policy which provides for a maximum payout of \$3,000 recoverable, should an adverse finding be made. Secondly, an additional sum Council may be prepared to pay, but only at the conclusion of the Inquiry on the basis of no adverse finding.



An approach along these lines would limit Council's exposure to pursue recovery, should reimbursement have been made during the course of the Inquiry and an adverse finding be made.

As the Inquiry will consider a number of matters, it may be found that on some issues a person has acted appropriately and on others not acted appropriately. Therefore, an itemised account apportioned to the various issues will be required, if it is Council's intention to reimburse the legal costs associated with non-adverse findings.

This is in accordance with Clause 18 of the Policy which deals with the revocation of authorities. This Clause states in part:

"(a) if in the Inquiry or otherwise, it is found that a person has acted illegally, dishonestly, against the interests of the City or otherwise in bad faith in connection with the matter for which the person was granted financial support or given contingent authority."

The words "in connection with the matter" is interpreted to mean there may be various findings.

The recommended total reimbursement of legal expenses of \$6,000 should enable Council's exposure for potential legal costs, to be maintained within the \$100,000 provided for, in the Draft Budget without allowance for the potential cost of the Inquiry.

It would not be appropriate for Council's Solicitors to represent Mr Grljusich as conflict of interest would certainly evolve.

Hammond Worthington have advised that they represent Mr Grljusich, however this should be confirmed by Mr Grljusich.

Hammond Worthington have not made mention of the need to appoint Queen's Counsel, however it would be prudent for Council to determine its position on same.

Strategic Plan/Policy Implications

Council's Policy A1.18 adopted by Council on 8 June 1999 relating to Legal Representation applies.

Budget/Financial Implications

The draft budget provides for \$100,000 for the cost of the Inquiry and legal expenses.

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

N/A



132. (AG Item 14.1) (OCM1_7_1999) - DRAFT REVIEW OF THE BASIC RAW MATERIALS STATEMENT OF PLANNING POLICY (9124) (SMH)

RECOMMENDATION

That Council:

- (1) receive the report;
- (2) adopt the report as its submission to the Western Australian Planning Commission, on the draft review of the Basic Raw Materials Statement of Planning Policy 1999.

COUNCIL DECISION

MOVED Commissioner Smithson SECONDED Commissioner Jorgensen that the recommendation be adopted.

CARRIED 3/0

Background

The Commission published the "Basic Raw Materials Policy Statement for the Perth Metropolitan Region (1992)". The review updates the important resource areas in the Metropolitan Area and extends the coverage of the policy to include adjoining non-metropolitan local government areas.

The new policy is proposed to be prepared as a Statement of Planning Policy under Section 5AA of the Act.

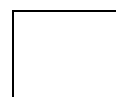
Submissions are to be lodged with the Commission by 23 July 1999.

Submission

The draft policy is referred to as "Statement of Planning Policy No. 10 - Basic Raw Materials" and received by the Council on 18 May.

The draft contains 6 Parts and is limited to only 7 pages. Attached to this was an inventory of current extractive industry operations within the policy area as at 1985, together with a comprehensive set of Maps, referred to as working plans.

The City of Cockburn is affected in relation to sand extraction south and east of the Jandakot Airport and for limestone quarrying along the ridge north and east of the Wattleup townsite. Refer to the attached plan.



The areas identified are generally in locations that are being or have been identified as quarry sites.

Report

Quarrying is an important issue for the City of Cockburn.

The following comments are made in relation to the proposed Policy:-

- **pp 1** *"... to protect basic raw material resources within non-urban zones of the metropolitan region and in local governments abutting the metropolitan region."*

Non urban zones includes all zones other than urban. Is the term "urban" relevant to the non-metropolitan local government areas? It is not clear if this statement is in conflict with the reference on page 2, under 4. - Application of the Policy - *"These include all local governments with land zoned rural in the Metropolitan Region Scheme (MRS) and the ..."* and again on page 3, under 6.1 - Local Planning Scheme Provisions - *"... must not prohibit extractive industries in the Rural (or similar) zone."* This needs to be made consistent and perhaps page 1 could be reworded to *"... resources within the **rural zone** of the metropolitan region and the **rural or similar zone** in local governments..."*

- **pp 2** *"These include all local governments with land zoned Rural in the Metropolitan Region Scheme (MRS) ..."*

Is the criteria for being in or out of the Policy for local governments in the Metropolitan Area that they have some MRS rural zoned land within their respective districts?

Or is this meant to imply that the Policy applies to rural zoned land in the MRS in accordance with the heading 4 - Application of the Policy?

Although the study area "excluded" predominantly the developed inner metropolitan Councils, it does not follow that part of the "rural" municipalities should be excluded for the purposes of the Policy.

It seems irrational to exclude a very small part of Cockburn from the area, even though this area may not be a basic raw material resource area, because there are greater areas of the district which are also not suitable and yet included.



For the sake of the exercise it would seem based on Figure 1 and the working plans that the Policy apply to the whole of the metropolitan district of:-

- Shire of Wanneroo
- Shire of Swan
- City of Gosnells
- City of Cockburn

and to take out of the Policy area:-

- City of Joondalup
- City of Canning

This makes far more sense from an administrative point of view and makes no difference to the application of the Policy.

- **pp 2** "5. Objectives"

The future needs of the metropolitan region for basic raw materials have not been demonstrated in this report.

Perhaps the first objective should be divided into two, namely:-

- " • *Identify the location and extent of known basic raw material resources;*
- *protect key extraction areas, priority resource areas and extraction areas from being developed for incompatible land uses which could limit future exploitation;"*

- **pp 2** "*Key extraction areas are major regional resource areas providing long term supply of basic raw materials" and "Priority resource areas are regionally significant resources which should be protected for basic raw materials extraction..."*

The difference between "Key extraction areas" and "Priority resource areas" is not clear.

- **pp 3** "*Extraction Areas are existing extractive industries operating with approvals under the Mining Act 1978, and the Local Government Act 1996, region scheme or a local planning scheme which should be protected in the short-term but will ultimately be replaced by urban or other uses."*



Presumably all extractive areas, including key and priority areas, will ultimately be replaced with other uses.

There is also a need to distinguish between long-term and short-term.

In the case of an extractive industry, can it be terminated by a proposed change in use or does the change in use have to follow the expiration of the extractive site? This is why short-term protection needs to be clarified.

- **pp 3** *"6.1 Local Planning Scheme Provisions."*

Presumably, prohibition of "extractive industries" in the Rural (or similar) zone, applies to all such land within and outside a "Special Control Area".

What is a similar zone?

Under the Model Scheme Text there are the Zoning Table categories of 'P', 'D' and 'A'. Why is 'A' omitted from the Council range of controls over this type of use? An 'A' use is one that requires compulsory advertising of the proposal prior to the Council exercising its discretion to approve or refuse a proposal.

But it becomes more complicated because under Bulletin 25, "extractive industries" proposed within the rural zone in the MRS must be referred to the WAPC under Clause 32. This applies because of the regional importance of raw materials.

Moreover, in the case of the Rural - Water Protection Zone, which is controlled by the Jandakot Groundwater Protection Policy (SPP No. 6), extractive industries are an 'AA' use with restrictions imposed by the WRC and DOME. Although rural in nature, the Clause 32 provisions do not apply to this zone. In the case of Cockburn, almost all of the sand extraction areas south of Jandakot Airport are over the mound, and therefore do not fall in the rural zone nor are they subject to call-in.

Prior to the finalisation of the Local Planning Scheme provisions, reference needs to be made to the hearing in the Mining Wardens Court between the City of Cockburn and Boral Resources in relation to sand extraction in Reserve 1820 on Warton Road, Jandakot.

This is an interesting case, which revolves around an application for a mining licence in a regional "Parks and



Recreation" reserve which is also part of the Jandakot Botanic Park. This case identified a number of issues in respect to the difference between raw materials and minerals, the zoning of land, the reservation of land under the MRS and whether or not it is classified under the Land Administration Act.

Depending upon the situation, some land may only require approvals under the Land Administration Act following consultation with the Minister for Lands and may not require any approvals from either the WAPC or the local government.

This aspect of the approval process needs elaboration.

For example a proposal to extract minerals may not require a planning application to be made, however, a similar application to quarry for raw materials may require planning approval.

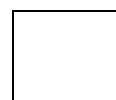
Reference here should be made to industry - mining as well as industry - extractive, so the difference is understood. If industry - mining is to be a scheme use class, will this be only a 'P' use in a Special Control Area where under the MST such areas can be applied to or across any zone, not just rural (or similar).

Given that the purpose of the Policy, albeit the Special Control Area, is to protect key and priority areas by making industry - extractive a 'P' use may not be sufficient, in that it may be competing with other 'P' uses within the area. Perhaps this direction should also apply so all other possible uses within the Special Control Area are 'D', 'A' or 'X', otherwise the protection of raw materials for the future may not be achieved.

- pp 3 "6.2 *Relevant Considerations in Determining Applications*"

This relates only to industry - extractive. It assumes that an approval is required from either the WAPC or the Council when in fact in the Metropolitan Area, such uses in the rural zone are subject to a Clause 32 call-in. Therefore it is understood two approvals are required, one under the local scheme and one under the MRS. Even so the provisions of Clause 32 are not clear.

In relation to the matters that an approving authority **must** consider, presumably in addition to those matters under Clause 10.2 of the MST, it will be necessary for



the authority to publicly demonstrate that full and frank consideration has been given to each of the 25 matters specified under the 7 areas of consideration listed under 6.2.

Some of these matters will require extensive investigation and evaluation.

- **pp 4** *"Before determining an application for a sensitive land use (for example, residential, rural-residential or a land use with a substantial residential or rural-residential component) within or in the vicinity of a basic raw materials interest area, the Commission or local government must consider, as appropriate."*

For the purposes of the Policy the term "sensitive land use" should be defined under Appendix 1.

The residential example given is understood, however rural-residential is more difficult, and given that the Policy essentially applies to the rural zone, this should be clear. Is it special residential (2000m² lots), rural-living (10,000m² lots) or Special rural/Hobby Farms (20,000m² lots)?

The Model Scheme Text only defines rural pursuit.

Moreover, what is a basic raw materials "interest" area?

How do you measure the 500 metres of the basic raw materials interest area? Is it from the work site, the boundary of the current approval/ licence, the edges to the key extraction, priority resource or extraction area? This makes a significant difference.

In the case of a key extraction area and priority resource area, the primary purpose is to protect these areas from incompatible uses in the long term in the region's interest, whereas an extraction area is only protected in the short-term and is to be developed for its ultimate use. Therefore the point from which the 500 metres is measured is important in terms of the intended outcome.

In addition, the Policy can't say "...*the Commission or local government must consider, as appropriate:*", because it is either a directive or a discretionary decision it can't be both.

The determination of **significance** of the resource area is relative to what? Scarcity, price, demand, location or



other consideration? Why is it necessary to decide this in terms of key extraction, priority resource or extraction area, given that this has been pre-determined in the Policy by way of the publication of the Resource Protection Working Plans. This implies that the Working Plan categorisation may be subject to challenge on an application by application basis and that the responsible authority may determine this. This is not understood.

The last paragraph under 6.2 is confusing, to the extent that the purpose of the Policy is to "protect" extractive industries from the encroachment of sensitive land uses, not "there should be a presumption against" as this de-emphasises the need for the policy provisions.

In addition, who or which party is to be responsible for implementing the measures to "ameliorate" the adverse impacts? Presumably it is the responsibility of the encroacher.

This can be applied in the case of existing extractive industries, but not so easily for future ones. It is highly likely, that where an incompatible use becomes established within or even beyond the 500 metres of a future quarry, then it will be the responsibility of the quarrier to deal with any potential conflicts under the 7 areas first mentioned under 6.2.

Section 6.2 probably needs further consideration.

- pp 4 "6.3 *Requirements for Management Plan*"

Such plans **are to be** not "should be" provided with an application for planning consent. At least it should be a standard condition.

Management plans are essential for the operation, monitoring and rehabilitation of quarry sites and need to be performance based tied to the provision of bonds and bank guarantees.

Based on the past performance and level of accountability of some quarry operators within the City of Cockburn there leaves a lot to be desired, and therefore management plans and bonds should be a mandatory requirement.

- pp 4 "6.4 *Sequential Land Use*"

Sequential land use planning should be **required** not



"encouraged" as this is fundamental to the depth of excavation, the final levels, contouring shape and the type and extent of rehabilitation.

This should form part of a Council's Local Planning Strategy under Part 2 of the MST.

There should be no ability for any application to be made to explore or mine minerals or basic raw materials in any public reserve set aside for parks and recreation or conservation, or any reserve classified 'A' under the Land Administration Act.

Mining should be specifically excluded from these "specially protected areas" reserved for public use and enjoyment, the conservation of flora and fauna, landscape value and the integrity of natural areas such as wetlands and coastlines.

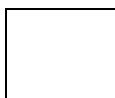
It would make sense to evaluate the potential of land for minerals and basic raw materials prior to it being designated a reserve.

The same principle as applies to Section 7AA of the TP & D Act, with scheme amendments, should apply to the creation of public reserves so that the "public" has certainty about its continued use and security of a reserve for its purpose into the future.

Based on the experience of the City of Cockburn for mining applications that have been made in the Jandakot Botanic Park and in the Beeliar Regional Park System, it is totally opposed to there being the scope for this to occur and has sought to have the Mining Act amended to protect National Parks, Regional and District Parks from mining claims.

Because of the recreational and environmental importance of parklands and reserves to the community the Council has expended significant sums of money opposing the issue of licences in these areas, money that would not need to have been spent if no application had been made in the first place.

Mining is an incompatible use in most public reserves. It is therefore difficult to understand how the Commission could favourably consider (approve) "limited" extraction operations within a reserve without jeopardising its public purpose.



- **pp 5** "6.5 *Other Relevant Approvals*"

This advice should be clearer. It should stipulate which approvals are required and which referrals must be made. There should be no doubt.

As it stands who is to know about any application, who is to receive it and who needs to see it and under what legislation, who provides advice, who provides a licence and who provides an approval?

In addition, is it the applicant who is responsible to gain all the necessary approvals and licences or is it up to the responsible authority receiving the application?

The list of relevant policies and guidelines is incomplete and in any event is of no value, given that each referral/ approving authority will be responsible for imposing or complying with its own policies and guidelines.

Moreover, who will be responsible for ensuring that the approval conditions are included on any approval issued and who will enforce them?

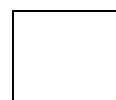
This is an important section of the Policy and needs to be expanded on to make clear the roles, responsibilities and the process to be followed for both zones and reserves.

- **pp 5** "6.6 *Planning Conditions*"

Even though the 4 groups of conditions outlined are general, other more specific conditions that should be included are:-

- dust management plan
- rehabilitation plan
- bonds and bank guarantees
- pre-works site assessment to evaluate flora and fauna and the action, if any, to protect certain flora and to relocate any native fauna.
- final contour plan/ levels and profiles
- access and egress to the excavation site and restrictions on the roads to be used to transport materials to and from the site.

could form part of a management plan



- contribution to the upgrading of local roads to accommodate quarry truck movements and towards the expansion of any additional public infrastructure that may be required as a direct result of the operation of the mine or in support of the workforce generated by the mine.
- road maintenance levy on roads used by quarry trucks and equipment.
- **pp 6** *"Appendix 1 - Definitions"*

The definitions:-

- Basic raw materials is not defined in the MST.
- Commission is not defined in the same words as in the MST.
- Discretionary or 'D' use is not defined in the same words as in the MST Clause 4.3.2.
- Extractive Industry should be Industry - Extractive as per the MST.
- Permitted use or 'P' is not defined in the same words as in the MST Clause 4.3.2.

Other definitions that should be included are:-

- Key extraction area from pp 2 to Appendix 1.
- Priority resource area from pp 2 to Appendix 1.
- Extractive area from pp 3 to Appendix 1.
- Industry - mining should be defined as per the MST.
- Minerals should be defined as per the MST.
- Special Control Area should be defined by reference to Part 6 of the MST. (It should be noted that Special Control Areas are in "addition" to the underlying zone. It is not a substitute for the provisions of the Scheme and therefore the proposal under 6.1 for 'P' use for quarry in a Special Control Area may not be possible if the rural zone shows extractive industry as 'D' or 'A' for example).



- Rural - residential should be defined.
- Sensitive land use should be defined.
- **pp 7** *"Appendix 2 - Basic Raw Materials Special Control Area"*

Under 2.2, "adverse" land use should be substituted with "incompatible" land use.

Under 3.1, the onus on the proponent of a new (should be proposed use) use to demonstrate that the use will be compatible should also be stated under 6.2 on page 4.

The heading *"3. Application Requirement"* does not contain advice under 3.1, 3.2 or 3.3, relevant to making an application.

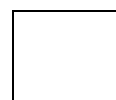
The matters under *"4. Relevant Considerations"* is incomplete and in its current form not useful given that the Policy itself covers referral and other planning matters, under 6.2, 6.3, 6.4 and 6.5
- **pp 8** In the last dot point under 4, there is an incorrect presumption that the urban zone is for residential land, but demand for urban land could also apply to service and light industrial uses.
- **pp 8** *"5. Referral of Applications"*

Reference to "rezoning" should be substituted with "scheme amendment" to not only be correct terminology but also to provide for textual changes that could affect land uses within a priority resource area.

Why is this clause limited to "priority resource areas" and not relate to key extraction and extraction areas as provided for under 3?

The advice under 5. needs further explanation because scheme amendments must first be referred to the EPA under Section 7AA of the Act, not the Commission, under Bulletin 28, Councils can advertise amendments without reference to the Commission and development applications in the rural zone of the MRS are a Clause 32 call-in.

Also the heading relates to the "referral" of applications and yet only the WAPC is identified.



In respect to the *"Inventory of Current Extractive Industry Operations as at 31 December 1995 Perth Metropolitan and Outer Regions"* there are corrections required to the City of Cockburn (23) in relation to current licences as at 31 December 1995, namely:-

- 2 - Boral Resources **to** Soils Ain't Soils?
- 4 - Lot 130 Mason Rd **to** Lot 130 Jandakot Rd
- 5 - Lot 146 Mason Rd **to** Lot 146 Jandakot Rd
- 6 - Lot 4 Forrest Road **to** Lot 4 Armadale Rd
- 7 - Lot 182 is not known
- 9 - Lot 80 **to** Lot 77
- 10 - Pt Lot 10 Miguel Rd **to** Pt Lot 10 Cocos Drive
- 16 - BGC **to** RCG
- 16 - Lot 20 Rockingham Road **plus** Lot 9
- 24 - Kayak Pty Ltd is not known
- 24 - Lot 52 Miguel Rd **to** Lot 6 Miguel Rd
- 25 - Homeswest **to** Peat Resources
- 25 - **Add** Lot 136 Armadale/ Fraser Road?
- 26 - Location required (R1820)?
- 27 - Location required?

The Resource Protection Working Plans of Perth Metropolitan Region and Outer Areas - 1999 - should delete the reference to "(Excluded from Study Area)" and instead say (Excluded from Policy Area).

All of the Cities of Canning and Joondalup should be excluded from the Study Area.

All of the districts of Wanneroo, Swan, Gosnells and Cockburn should be included in the Policy Area.

Within the City of Cockburn, the:-

- Urbanstone Work Processing Plant is not shown (Rocla 23/9)
- Boral (Calsil) Work Processing Plant is not shown (Boral 23/6)
- Henderson Landfill Site is filling completed quarries and for many years has not been a Priority Resource Area (limestone) (WA Limestone 23/17).

The Special Control Area Model should be re-written to align with Part 6 of the MST.

Reference should also be made to the MST Guidelines where "Minerals and Basic Raw Materials" are briefly discussed.

The important matter of rehabilitation needs to be discussed further, particularly in the rural zone. Based on recent Ministerial appeals, involving the Council, it is evident that in the rural zone, acceptable



rehabilitation of the site could be stabilisation and grass to suit a rural pursuit. From a Council point of view this is unacceptable, and requires completed quarry sites to be revegetated with indigenous plant species for the locality at a given density per hectare.

This is appropriate in areas where the land was originally virgin bushland prior to quarrying or where the end use could be rural-living.

This is an issue that needs discussion in an endeavour to assist local governments achieve satisfactory site rehabilitation.

The Policy should also be supported by a research or study document, which sets out the study methodology, findings and recommendations so that the demand for materials, their significance, exhaustion rates and the selection of the key extraction, priority resource and extraction areas can be understood.

Also any differences between the 1992 Basic Raw Materials Policy Statement for the Perth Metropolitan Region and the Draft review should be identified and explained.

Strategic Plan/Policy Implications

PD21 Extractive Industries.

Budget/Financial Implications

N/A

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

Nil.

- 133. (AG Item 14.2) (OCM1_7_1999) - SAND EXTRACTION - PT LOT 135 AND LOT 1 ARMADALE ROAD, BANJUP - OWNER: PT 135: CSR READYMIX CONCRETE, LOT 2: RURAL TRADERS - APPLICANT: PT 135: CSR READYMIX QUARRIES, LOT 1: RURAL TRADERS (5513296) (CC) (EAST)**

RECOMMENDATION

That Council:

- (1) refuse the proposal to excavate sand from the Armadale Road Important Regional Roads reservation and the 40 metre buffer on Lot 1 & Pt Lot 135 Armadale Road Banjup, for the following reasons:

1. The proposal would result in a loss of visual amenity by



- the removal of natural vegetation and ridgelines and increase potential for views to the pit area which would impact negatively on the rural character of the locality;
2. The proposal would set an undesirable precedent for other owner/occupiers of sand excavation sites to seek approval to similar proposals;
 - (3) issue a MRS Form 2 Notice of Refusal;
 - (4) advise the referral authorities of the Council's decision; and
 - (5) advise the Western Australian Planning Commission of the Council's decision, and that the Commission's determination of the application is required on the grounds that the advise of Main Roads WA regarding excavation in the Important Regional Roads Reservation is unacceptable to Council.

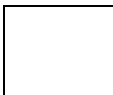
COUNCIL DECISION
 MOVED Commissioner Jorgensen SECONDED Commissioner Donaldson that the recommendation be adopted.
CARRIED 2/1

Background

ZONING:	MRS:	Rural Water Protection & Important Regional Roads
	DZS:	Rural
LAND USE:	Rural and Important Regional Roads	
LOT SIZE:	38 ha	
AREA:	2 ha	
USE CLASS:	SA use "Extractive Industries"	

The Commissioners at Council Meeting of 25 May 1998 resolved that, in respect to CSR application to excavate in the 40-metre buffer zone and the IIR reservation for the widening of Armadale Road, the following:

- (1) the matter be deferred;
- (2) the applicant be requested to provide:
 1. photo imagery showing the before and after buffer development scenarios and;
 2. a Revegetation Plan for the buffer area to be retained;



- (3) a site visit by the Commissioners be arranged; and
- (4) The matter be represented to Council for further consideration following receipt of the additional information.

Report

A letter of consent has been received by the adjacent landowner (Rural Traders) consenting to the inclusion of their land (Lot 1 Armadale Road) in the application. See Agenda Attachments for Location Plan.

CSR has submitted photo imagery, which is tabled for the Commissioner's perusal, and a Staging and Revegetation Plan which is included in the Agenda Attachments.

The following matters are raised in respect to the after excavation/revegetation image:

- The angle of the image (looking east from the north side of Armadale Road) is considered an inadequate and unsuitable angle to assess the likely final excavation rehabilitation outcome.
- The height of the vegetation depicted is comparable to that of mature trees and is therefore not considered a realistic short to medium term depiction of the final excavation and revegetation outcome. Further, the image is not a realistic interpretation of the long-term situation, as Armadale Road will be widened to dual carriageway and the closest bund and vegetation removed.

CSR proposes the following in respect to excavation and revegetation:

- 1999: Front bund to be created from clay soils and planted, including watering maintenance.
- 2000-2002: Excavation to occur inside Pt Lot 135 toward Armadale Road using topography to screen pit area but dependant on vegetation establishment. Grass and native seed mix proposed to be used to stabilise future road reserve.
- 2002-2003: Second clay soil bund to be constructed upon excavation completion with planting in winter months and water maintenance.

There are no objections in principle to the method of excavation, staging and revegetation proposed, although the use of mature seedlings in addition to seed is favoured. The retention of the existing situation over the excavation revegetation proposal is preferred for reasons outlined below.



The following is a summary of consideration for and against approval to the proposal:

For

- Excavation of the reserve will allow for a more economical reserve width and cost saving to Main Roads WA for land acquisition.
- No objections have been received by adjoining landowners.
- Ability to limit off site impacts such as negative views to the pit and dust via planning conditions for bunds, planting and dust management.
- Excavation would create a level landform conducive to special rural development.
- By laws and Proposed Amendment 186 allow for excavation of buffer zones subject to Council approval.

Against

- Excavation is contrary to current development approval, and conditions were not appealed.
- There is a general presumption against excavation of buffers in Council Policy PD 21 'Extractive Industries' and Proposed Amendment 186 'Extractive Industries'. Approval to excavate buffers is Council's prerogative, not the Applicant's right.
- Minimal buffer may have detrimental effect on rural amenity of the locality, especially in comparison to adjacent side of Armadale Road where land is well vegetated and of rural character. Small screen plants usually ineffective in the short term.
- Negative vista for Armadale Road users and as an important gateway to the City of Cockburn. A negative impact on the community at large would result.
- Development occurring well in advance of road construction. The application is therefore premature, especially considering there is still much resource in current approval areas.
- End use of the site not yet determined, and no approval issued for special rural development.



There is concern about the impact the proposal will have on amenity of locality and seeks to protect the community interest. It is considered that even if the commitments made in the excavation/revegetation plan were carried out, the short to medium term result would be less visually attractive than the existing situation.

A recommendation of Council to refuse the proposal would result in the application being referred to the Western Australian Planning Commission for a determination. This is a requirement of the Commission's Notice of Delegation 1997 which requires referral of applications where the advice of Main Roads WA is unacceptable to Council. Main Roads WA raised no objections to the proposal.

Strategic Planning Policy Implications

PD 21 Extractive Industries

Budget/Financial Implications

N/A

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

Nil

134. (AG Item 14.3) (OCM1_7_1999) - LOCAL PLANNING STRATEGY - DRAFT TOWN PLANNING SCHEME NO. 3 (9485) (SMH)

RECOMMENDATION

That Council:

- (1) receive the report;
- (2) acknowledge the informal advice received from the Ministry for Planning on the Council's Local Planning Strategy received on 24 June 1999;
- (3) write to the Ministry for Planning, requesting that the two copies of the Local Planning Strategy submitted on the 27 May 1999, be returned to the Council for revision in order to make the Strategy acceptable to the Ministry;
- (4) direct the Director Planning and Development to revise the Local Planning Strategy, having regard for the informal advice received from the Ministry for Planning on 24 June 1999, and that the review be based on the proposed format attached to the Ministry's advice;



- (5) re-consider the revised Local Planning Strategy following completion, prior to the Strategy being re-submitted to the Ministry for Planning for re-consideration;
- (6) request the Ministry for Planning to continue to assess draft Town Planning Scheme No. 3 while the Local Planning Strategy is being revised to minimise any delay in proceeding to public advertising;
- (7) retain the originally adopted Local Planning Strategy as an in-house reference document and be re-titled "Planning and Development Position Paper" May 1999.

COUNCIL DECISION

MOVED Commissioner Smithson SECONDED Commissioner Jorgensen that the recommendation be adopted.

CARRIED 3/0

Background

On the 25 May 1999, the Council adopted the draft Town Planning Scheme No. 3 Text and Maps and also the supporting document, the Local Planning Strategy.

The Local Planning Strategy was prepared for the sake of completeness, in the desire to comply with the requirements of the draft Model Scheme Text prepared by the WAPC.

The Council, in order to examine and review its existing Town Planning Scheme No. 2, prepared both an Examination Report and a Scheme Report as currently required under the Regulations.

The Local Planning Strategy is proposed to supersede the need for the Scheme Report.

The Local Planning Strategy was prepared primarily as a "benchmark" of information about the Council's position in respect to the planning and development of the district, major issues and community concerns and its vision for the future.

The Local Planning Strategy also questioned the need for Metropolitan Councils and provincial Councils affected by Regional Plans to prepare a Local Planning Strategy because of the imposition of the Metropolitan Region Scheme, the State Planning Strategy, Policies and guidelines which leaves very little room for local governments to prepare an independent vision for its community. More importantly, local schemes



are required to be consistent with the Metropolitan Region Scheme to be acceptable to the State.

A superficial examination of the planning controls and processes in the City of Cockburn found that around 83% of the district is planned or controlled by others such as the Federal Government and State Departments such as the WRC, EPA, MRWA and the WAPC.

Submission

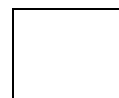
The Ministry for Planning provided the following informal advice, in the form of a memorandum of notes with the general reaction summarised as follows:-

"The LPS submitted by the Council is inadequate and inappropriate as a LPS envisaged by the MST and as set out in the Guidelines.

The main shortcoming is that much of content of the LPS is not relevant (to the purpose of the LPS) whereas relevant planning policies, strategies and actions have not been included.

Fundamentally:-

- 1) *The LPS has been used to critically analyse the planning system as it operates in WA particularly with regard to the degree of intervention at the State level rather than for its intended purpose of explaining the strategy, policies and proposals of the Council.*
- 2) *There are stated or implied criticisms of State and regional policies and the MRS, and the division of planning powers between State and local government, which appear to represent the views of the writer rather than a balanced account taking into account other views.*
- 3) *State and regional policies appear to have been deliberately misinterpreted in some areas to prove an underlying theme that the State is too involved in local planning and there is little value in a LPS because the State dictates local planning.*
- 4) *The LPS contains some useful descriptive and strategic planning content but it tends to be fragmented and dispersed throughout the document.*
- 5) *The LPS does not address some of the key strategic planning issues, for example, the character and quality of urban development or the location and pattern of commercial centres.*
- 6) *The LPS does not set out the key strategies and actions to be taken to achieve the Council's objectives with regard, for example,*



to key issues such as urban growth, local and regional employment, development of commercial centres, leisure and recreation opportunities, protection of environmental assets etc."

The Ministry also provided examples of how aims, strategies and actions should be included to reflect the provisions of Part 2 of the State Planning Strategy.

" • Example 1

- *aim: supporting housing choice and variety, in neighbourhoods with a community identity and high levels of amenity*
- *strategies: encourage diversity in subdivision and housing in terms of lot size and housing form*
- *actions: support increased diversity in lot size and design within residential estates by applying different Residential zones where appropriate*

• Example 2

- *aim: assisting provision of a transport network which serves the needs of the community by providing a range of alternatives, including public transport, cycling and walking in an integrated, safe, efficient, equitable and environmentally-friendly way*
- *strategy; provide for a safe and efficient network of local and arterial roads facilitating access and the distribution of traffic through the area*
- *recognise and plan for the following major road connections to form the future sub-arterial road network..."*

In conclusion the Ministry states:-

"The LPS does not follow the format set out in the Introduction and is unacceptable in its present form for the reasons outlined above.

It is recommended that the LPS should be modified in accordance with the format set out in the MST Guidelines. Further guidance is contained on the attachment."

The balance of the Ministry's advice deals specifically with the different parts of the Council's Local Planning Strategy, raising issues and queries about particular statements and observations contained in the strategy, which can be dealt with in technical terms.



Report

The response from the Ministry is not entirely unexpected from a Ministry viewpoint, and many of the issues raised can be satisfactorily addressed.

The examples given by the Ministry to describe the Aims, Strategies and Actions are not useful to local government and in the large part rely on other agencies to be achieved. Nevertheless, the principle could be applied to part of the LPS as appropriate.

Because of the amount of material used to prepare the Local Planning Strategy, most of it can be reviewed, reworded or re-arranged to reflect the requirements of the Ministry.

Nevertheless the information, data and position statements of the Council contained in the original Local Planning Strategy should be retained as a reference source and as the position of the Council in relation to a number of planning and development matters impacting on the district. The document should be retained as an in-house reference and an historic benchmark, and be retitled "Planning and Development Position Paper".

In the meantime, the two copies of the Strategy sent to the Ministry with draft Town Planning Scheme No. 3 should be returned and revised as quickly as possible to comply with the Ministry's suggested Local Planning Strategy format, so that TPS No. 3 can proceed to advertising without delay.

It is pointed out that at least 80% of the content of the Local Planning Strategy appears to be generally acceptable based on the Ministry's advice.

Hopefully, this position will lead to an expedited advertising period, and the Council will not experience the inordinate delays suffered by other local governments in the preparation, advertising and adoption of the Scheme.

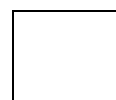
Strategic Plan/Policy Implications

Action 2.3.11 applies.

Budget/Financial Implications

The 1998/99 Budget provides:-

- \$19,545 for legal advice (Acc. 500476)
- \$20,000 for community consultation (Acc. 500474)



These amounts will be carried forward to the 1999/2000 Budget.

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

Nil.

135. (AG Item 14.4) (OCM1_7_1999) - PROPOSED GREENHOUSE - LOT 600 MANDOGALUP ROAD, WATTLEUP - OWNER: FEEGATE PTY LTD - APPLICANT: B WINTERBOURN (4411035) (MT) (SOUTH) (MAP 17)

RECOMMENDATION

That Council:

- (1) recommend to the Western Australian Planning Commission that the proposed greenhouse on Lot 600 Mandogalup Road, Wattleup be refused for the following reason:
 1. The proposed development is on land affected by Planning Control Area No. 39. The development would compromise the possible future extension of Rowley Road.

COUNCIL DECISION

MOVED Commissionier Smithson SECONDED Commissioner Jorgensen that Council

- (1) recommend to the Western Australian Planning Commission that the proposed greenhouse on Lot 600 Mandogalup Road, Wattleup be refused for the following reason:
 1. The proposed development is on land affected by Planning Control Area No. 39. The development would compromise the possible future extension of Rowley Road; and
- (2) advise the applicant of the basis for Council's decision accordingly, noting that Council is not the decision making authority, but is in fact only making a recommendation in this instance.

CARRIED 3/0



Background

ZONING:	MRS:	RURAL
	DZS:	RURAL
LAND USE:	SHEDS / MARKET GARDENING	
LOT SIZE:	2.6877 ha	
AREA:	2728m ²	
USE CLASS:	N/A	

In October 1998 the Minister for Planning declare Planning Control Area No. 39 – Rowley Road. The intent is to provide for the possible future extension of Rowley Road between the Kwinana Freeway and Rockingham Road. The effect is that all applications for development within the control area must be referred to the Western Australian Planning Commission for determination. Council provides a recommendation to the Commission for their consideration.

Submission

Application is made by “The Seedling Factory” for a greenhouse to complement to their existing facilities located on a neighbouring lot. The steel and perspex structure is to be 62 metres long, 44 metres wide and 4.6 metres high and the value of construction is stated as \$300 000. It will be setback 62 metres from the front of the property and 5 metres from the side boundary. A copy of the site plan and elevations are included in the Agenda Attachments.

Report

The need for the extension of Rowley Road has not been finalised. It is contingent on the private port at Naval Base being developed. However, in recognition that there is a strong possibility land will be required for the future link to the port, the Ministry has declared the Planning Control Area.

The entirety of Lot 600 is contained in the Planning Control Area. Talks with the Ministry for Planning have confirmed that, though detailed road design has not been undertaken, at least 45 metres will be required for the Rowley Road extension. Given that the greenhouse is proposed to cover 60 metres of the 100 metre wide lot, at least part will be on land required for the new road.

If the property was not required for the future road, the application could be approved. It meets all of the Scheme and Policy requirements. It is of a scale similar to many other existing greenhouses in this market gardening area.



Strategic Plan/Policy Implications

Council Policy PD 18 “Ancillary Outbuildings (Sheds) in Special Rural and Rural Zones” – stipulates that any shed in excess of 200m² be referred to Council for its determination. Further, the use must comply with Council’s requirements for the zone.

Council Policy PD 2 “Rural Setback Policy” states all buildings must be setback not less than 10 metres from the front and rear boundaries and 5 metres for the side boundary.

Budget/Financial Implications

N/A

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

Nil

136. (AG Item 14.5) (OCM1_7_1999) - PROPOSED STORE ROOM, COOL ROOM AND OFFICE - LOT 15 HENDERSON ROAD, MUNSTER - OWNER: SEA HAWK BAT PTY LTD - APPLICANT: SANTO MERENDA (4309592) (SA) (SOUTH) (MAP 9)

RECOMMENDATION

That Council:

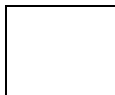
- (1) grants its approval for the proposed store room, cool room and administration centre on Lot 15 Henderson Road, Munster in accordance with the approved plan subject to the following conditions:

Standard Conditions:

1. Standard conditions contained in Council Policy PD 17 as determined appropriate to this application by the delegated officer under clause 7.6 of Town Planning Scheme - District Zoning Scheme No. 2.

Special Conditions:

1. The shed is to be clad in a material of a type or colour of natural or earth tonings to complement the surroundings or make the shed less conspicuous to the adjoining developments and environment which it is located.
2. The use of the shed must comply with Council’s requirements for the Rural zone and Council Policy PD 38 -



Storage of Produce	
3.	The use of the shed must comply with the provisions of the Health (Food Hygiene) Regulations 1993 to the satisfaction of Council's Environmental Services
4.	The applicant must provide details of finishes and colours to be used on proposed development.
(2)	issues a MRS Form 2 Notice of Approval valid for a period of 24 months.

COUNCIL DECISION			
MOVED	Commissioner Smithson	SECONDED	Commissioner Jorgensen that the recommendation be adopted.
			<u>CARRIED 3/0</u>

Background

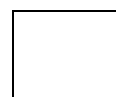
ZONING:	MRS:	Rural
	DZS:	Rural
LAND USE:	Residence and Vegetable growing and processing business	
LOT SIZE:	20259m2	
AREA:	450m2	
USE CLASS:	"P"	

Council previously approved a 603m2 warehouse and office development with a zero side setback on 22 July 1998. The approval has not being acted upon, and no construction works have commenced.

Submission

The submitted plans indicate the construction of a 200m2 administrative building, with five offices, a boardroom and reception area, the existing office area will become warehouse area. There is also a 250m2 extension to the existing warehouse, which will include a cool room/warehouse.

The plan also indicates proposed undercover car parking for five existing carbays.



Report

Council Policy PD18 - Ancillary Building Outbuildings (Sheds) in Special Rural and Rural Zones states that:

- “1. Any shed in excess of 200m² in area and/or 4.5 metres in height in a Special Rural or Rural zone must be referred to Council for development approval. The applicant must provide a statement of proposed use for the outbuilding for Council’s determination.”

The proposed extension to the existing warehouse is 250m² in area and six metres in height, creating a total warehouse area of 452.5m². The applicant has advised that the proposed building will be used for cool room, storage of vegetable produce and processing vegetables and salads. The proposed use of the shed meets with the rural zone provisions for a "Rural Industry", therefore approval is recommended.

The proposed office will replace the existing office, and as the office use is considered to be ancillary to the existing vegetable processing (which was approved by Council in July 1987) the application should be approved.

Strategic Plan/Policy Implications

The subject lot is included in the FRIARS study area.

Budget/Financial Implications

N/A

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

Nil

137. (AG Item 14.6) (OCM1_7_1999) - TENDER NO. 12/99 RECALLED - INSPECTION OF PRIVATE SWIMMING POOLS (3211) (VG)

RECOMMENDATION

That Council:

- (1) accept the tender submitted by the Royal Life Saving Society Australia Western Australia Branch (Inc) for retender No. 12/99 - Inspection of Private Swimming Pools for the lump sum tender price of \$62,375;
- (2) authorise the persons nominated by the Royal Life Saving Society to inspect private swimming pools within the District of the City of Cockburn for the purpose of ascertaining whether the



requirements of Part 10 of the Local Government (Miscellaneous Provisions) Act 1960, Building Regulations 1989, have been complied with as required by Section 245A(5) of the said Act;

- (3) set the pool inspection levy at \$32.00 per pool owner based on the tender price plus the estimated Council administration costs.

COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that the recommendation be adopted.

CARRIED 3/0

Background

Under Section 245A of the Local Government (Miscellaneous Provisions) Act 1960, Council is required to inspect all private swimming pools within the municipality on a regular basis so that not more than four years elapses between inspections.

Accordingly the next swimming pool inspection program must be completed by the 30th June 2000.

The swimming pool legislation requires private swimming pools to be inspected by authorised persons to ensure that pool fencing / gates and barriers comply with the Building Regulations.

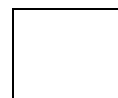
The Local Government (Miscellaneous Provisions) Act 1960 allows a local government for a financial year to fix a charge to be imposed on each owner or occupier of properties with private swimming pools to cover the estimated cost of carrying out the inspections. The Building Regulations 1989 state that the charge shall not exceed \$50.

Council resolved to retender for this service at its ordinary meeting held on 22 June 1999 following the revocation of its acceptance of tender 12/99 which was made at the ordinary meeting held on 8 June 1999 (Minute No. 79).

Report

Four tenders were received before the closing date of 12 July 1999. The basis of the tender was for 2 options.

Option 1 invited a cost to inspect all private pools within the district for the primary inspection and a follow up inspection when a notice of non compliance is issued. The second part of Option 1 invited a cost per



inspection for further inspections required by the Act or when directed by the Chief Executive Officer.

Option 2 invited a lump sum cost to inspect 2500 private pools up to 3 times per pool if required.

Royal Lifesaving

- Option 1 (a) \$22 per pool inspection
- (b) \$11 per extra inspection
- Option 2 \$62,375 lump sum fee

C E Nicholls & Son Pty Ltd

- Option 1 (a) \$22 per pool inspection
- (b) \$22 per extra inspection
- Option 2 \$62,500 lump sum fee

J A Conway

- Option 1 (a) \$28 per pool inspection
- (b) \$14 per extra inspection
- Option 2 \$75,000 lump sum fee

Carribbean Constructions

- Option 1 (a) No price tendered
- (b) No price tendered
- Option 2 \$87,500 lump sum fee

Submission

The lump sum tender price (Option 2) would seem the better option compared with Option 1 as follows:-

Royal Lifesaving	Option 1	
2500 pools @ \$22		\$55,000
estimated extra inspections 1250 @ \$11		<u>\$13,750</u>
		<u>\$68,750</u>
C E Nicholls	Option 1	
2500 pools @ \$22		\$55,000
estimated extra inspections 1250 @ \$22		<u>\$27,500</u>
		<u>\$82,500</u>

The lump sum fee submitted by Royal Lifesaving is only \$125 less than C E Nicholls but the estimated administration costs that would have to be added to C E Nicholls for overall costs is some \$5,548 extra due to that tenderer not advertising and requiring Council to provide a mobile phone and work station at the Council office. An estimate of administration costs for Royal Lifesaving and C E Nicholls is attached.

The estimated levy fee payable by pool owners is:-



Royal Lifesaving	\$62,375
Plus estimated Council administration costs	<u>\$17,572</u>
	<u>\$79,947</u>

Average estimated cost to pool owners \$31.98

C E Nichols	\$62,500
Plus estimated Council administration costs	<u>\$23,120</u>
	<u>\$85,620</u>

Average estimated cost to pool owners \$34.25

It should also be noted that Royal Lifesaving offer a free public awareness strategy which includes:

- Shopping Centre displays
- Press releases to local newspapers
- Articles in Local Government newspapers
- Displays at local aquatic centres and swimming clubs
- Seminars at local primary schools.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

As stated above

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

Nil.

138. (AG Item 15.1) (OCM1_7_1999) - ADOPTION OF PRINCIPAL ACTIVITIES PLAN (5406) (ATC)

RECOMMENDATION

That Council adopt the Principal Activities Plan for the four year period commencing 1 July 1999, as attached to the Agenda.

COUNCIL DECISION

MOVED Commissioner Smithson SECONDED Commissioner Jorgensen that the recommendation be adopted.

CARRIED 3/0



Background

At its Meeting on 22 June 1999, Council considered the adoption of Principal Activities Plan which had been advertised for public comment for the required six weeks. No public submissions were received on the Plan. Council deferred adoption of the Plan to give officers the opportunity to review its contents.

Submission

N/A

Report

Following the deferral by Council, staff have redrafted parts of the general overview of the Plan as well as reviewing and amending performance measures. Customer satisfaction measures have been added, as appropriate, and information for these will be obtained from an annual Customer Satisfaction Benchmarking Research Project being undertaken by the firm Australian Marketing Intelligence.

Strategic Plan/Policy Implications

The Principal Activities Plan outlines the proposed financial activity of Council for the next four years.

Budget/Financial Implications

The Principal Activities Plan forms the basis of Council's Budget.

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

N/A

139. (AG Item 16.1) (OCM1_7_1999) - TENDER NO. 9/99 - SALVAGE AND RECOVERY RIGHTS HENDERSON LANDFILL (4900) (BKG)

RECOMMENDATION

That Council:

- (1) decline to accept any tender for Tender No. 9/99 for the Salvage and Recovery Rights at Henderson Landfill Site; and
- (2) requests staff prepare a Waste Minimisation Strategy report addressing recycling and the construction of a transfer station for use by trailers and report back to Council within 3 months.



COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Donaldson that Council

- (1) decline to accept any tender for Tender No. 9/99 for the Salvage and Recovery Rights at Henderson Landfill Site; and
- (2) requires staff to prepare a Waste Minimisation Strategy which addresses issues such as recycling, tip passes, fees etc and this report be presented to Council within three (3) months.

CARRIED 3/0

Explanation

It is considered that rather than deal with this issue on an ad hoc basis Council needs to look at the whole strategy towards waste management and ensure that any changes like not having salvage and recovery rights at the Henderson Landfill site do not impact adversely on recycling and other related issues.

Background

At the Council meeting held on 8 June 1999 it was resolved that :

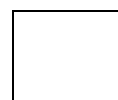
- (1) Council not award a tender at this stage;
- (2) as a matter of urgency, the Director Engineering & Works prepare a Code of Practice for the recycling operation, centring particularly on the safety issues;
- (3) once the Code of Practice is developed, it be monitored for one month and after that month, a report be prepared to Council on whether the operator is complying with the Code; and
- (4) the report be presented to Council for further consideration and to determine whether the operation should be re-tendered.

Submission

N/A

Report

An Occupational Health and Safety consultant, Dave Brindle, from Eastern Regional Metropolitan Council was employed to carry out a risk management analysis of the scavenging for recyclables at the



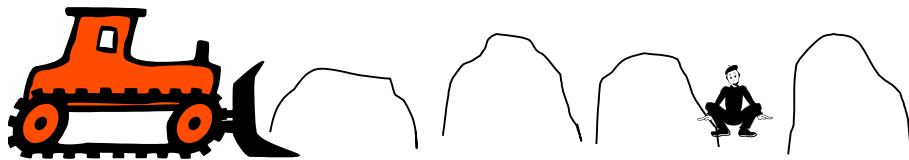
Henderson Landfill Site and assist in the preparation of a code of practice centring on safety issues at Henderson Landfill Site.

The report (attached to the Agenda), expresses concern on both the safety and health risks associated with the observed operation. Because of this verbal advice the current contractors have been instructed to stop working on the site.

There is a major concern with conflict between the staff of the scavenging contractor and the larger earthmoving and compaction equipment working on site.

The operators of these machines are required to level and compact the waste on a continuous basis.

This daily operation is hazardous enough in having to work with large volumes of materials of such a variable nature in a relatively confined and consequently congested environment. These problems are further heightened in having to operate next to the trailers and cars unloading. The practice of the contractor's staff also going through the waste behind these trailers is of even greater concern. The waste from the trailers is often quite high. When the machine comes to spread the material the operator may encounter a contractor staff member kneeling in the rubbish and not see him because he is obscured by the pile of rubbish in front of him.



Of equal concern is the major health risk associated with this operation.

The material being brought to the site has a high percentage of putrescible waste. Following compaction all materials will have high levels of bacterial contamination. The contractor's staff are walking over this all day. At times they even break open plastic bags to look through the contents. The risk of them contracting an infection is high.

Because of these concerns it is recommended that the salvage and recovery operation not continue.

To reduce the risk to the public who also use the site to dispose of their rubbish and may also be exposing themselves to injury or infection, it is recommended that an investigation be undertaken into establishing a transfer station.



This is compulsory on new sites. The Canning Council and Armadale Council sites are the only other sites in the metropolitan area where trailers are allowed on the tip face. Canning site will close in June 2001.

The three other operating sites have provided transfer stations. Residents then deposit their waste into larger containers so there is no direct contact with the waste. When the containers are full they are transported to the landfill face.

The report needs to be completed by February 2000 to allow sufficient time for consideration to be given to the funding required to built it in 2000/01.

Strategic Plan/Policy Implications

Safety & Health of the public and staff is important.

Budget/Financial Implications

There is no impact on the current budget.

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

Nil

140. (AG Item 16.2) (OCM1_7_1999) - TENDER NO. 21/98 - SUPPLY AND INSTALLATION OF LANDFILL GAS EXTRACTION AND UTILISATION SYSTEM - HENDERSON LANDFILL (4900) (RNJ)(BKG)(COASTAL)

RECOMMENDATION

That Council:

- (1) agree to the period for proving the commercial viability of the gas being amended from 2 years to 5 years;
- (2) agree to the lease of 500 square metres for Waste Gas Resources to include a 5 year option after the expiration of the 21 year lease period.

COUNCIL DECISION

MOVED Commissioner Smithson SECONDED Commissioner Jorgensen that the recommendation be adopted.

CARRIED 3/0



Background

At the meeting of full Council held on Tuesday 17th November 1998 it was resolved to:

- (1) accept Waste Gas Resources' submission for Tender No. 21/98 - Supply and Installation of Landfill Gas Extraction and Utilisation System at Henderson Landfill for a gas management extraction system and manage the recovered gas for a period of 2 years at no cost to Council;
- (2) take over the gas management infrastructure for the lump sum payment of \$55,000 if, following this two year evaluation and development phase, Waste Gas Resources consider the commercial sale of gas from this site not to be a viable option;
- (3) accept Waste Gas Resources' royalty payments as follows should the commercial sale of gas from the site become viable:

Year 1	5% of Gross Gas Sales
Year 2-10	15% of Gross Gas Sales
Year 11 onwards	17% of Gross Gas Sales

Subsequent discussions have been held between Waste Gas Resources, Council Officers, our consultants (Halpern Glick Maunsell) and solicitors McLeod & Co. to draw up a lease agreement and contract documents.

Submission

N/A

Report

The proposed contract is for Waste Gas Resources to extract methane gas from the Henderson landfill site. This involves the installation of bores, extraction pumps and delivery pipelines.

Waste Gas Resources provided the most advantageous submission. They were prepared to install the system free of cost and only be paid \$55,000 if they could not sell the gas. The total infrastructure cost is estimated to be in the vicinity of \$200,000.

Discussions have taken place with Waste Gas Resources to finalise an agreement. One of the key issues why this is being reconsidered by Council is the request that the original 2 years commitment to the project being commercially successful be extended to 5 years.



The other issue is they have requested the lease include an option to extend to a further 5 years after the 21 year lease period.

These proposals are supported to encourage the success of this project.

Strategic Plan/Policy Implications

The development and implementation of a waste gas management system satisfies Council's objective to protect "The Natural Environment" and the Department of Environmental Protection's licence requirements for Henderson Landfill.

Budget/Financial Implications

\$55,000 was set aside on the 1998/99 budget for tendering, development and implementation of a waste gas management system. Some fees have been submitted to date from McLeods and Halpern Glick Maunsell and the balance of the funds will be rolled over into the next financial year. No additional funding is anticipated to be required in the next financial year.

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

Nil

141. (AG Item 17.1) (OCM1_7_1999) - TENDER NO. 37/99 - CLEANING OF THE SOUTH LAKE LEISURE CENTRE (10155) (GMAC)

RECOMMENDATION

That Council:

- (1) Accept the tender for Tender No. 37/99 cleaning of the South Lake Leisure Centre submitted by Western Office Cleaning Services for the annual tender price of \$33,523.46; and
- (2) The contract period be for two (2) years from 1st August 1999 to 31st July 2001.

COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that Council:

- (1) Accept the tender for Tender No. 37/99 cleaning of the South Lake Leisure Centre submitted by Prestige Cleaning Services for the annual tender price of \$32,453.00;



- (2) The contract period be for two (2) years from 1st August 1999 to 31st July 2001; and
- (3) through the Manager of the South Lake Leisure Centre negotiate any minor adjustments to the spread of hours provided that it is within the framework of the tender document and the current budget submitted by Prestige Cleaning Services.

CARRIED 3/0

Explanation

The tender from Prestige Cleaning Services is the lowest compliant tender, however, the Centre Manager should be authorised to negotiate the spread of hours required to undertake the duties specified, provided there is no change to the tender amount, as submitted.

Background

Contractual arrangements with current cleaner, MP Cleaning company expired on the 30th June 1999. A report was presented to the June 1999 meeting of Council detailing information relating to the tender for cleaning services at the South Lake Leisure Centre. The matter was deferred to allow for further evaluation of tenders to be completed. The Centre's contract with MP Cleaning was extended until 29th July 1999 to accommodate this deferral of a decision.

Submission

N/A

Report

In summary, a total of eleven (11) tenders were received by the conclusion of the acceptance period, with one tender excluded for not being in accordance with tender documentation and incorrectly delivered.

Specifications for the cleaning services requested tenderers provide a series of information to be utilised in evaluating the merits of each submission. Tenderers were also afforded the opportunity to submit any additional information that may support their submissions.

The information requested and provided is reflected in the evaluation matrix attached to the agenda. The matrix has been separated into essential and desirable criteria, with the intention that submissions that receive a 'no' evaluation in the essential criteria are automatically excluded from consideration.



With this in mind, companies' Lists Cleaning Services, Office Cleaning Experts, Jason Cleaning and Bosworth Cleaning were excluded as their tender price exceeded the budget allowance of \$35 000.00

Dominant Property Services and Lukes Cleaning were eliminated from consideration as their previously held contracts did not support their ability to undertake cleaning in a high volume public facility. In both cases the company's previous experience concentrated in an 'office' environment, rather than a facility with a variety of public areas such as is present at the South Lake Leisure Centre.

MP Cleaning Company was eliminated from consideration because although providing three (3) references, only two (2) companies could be contacted with the third being a disconnected telephone number. Of the two (2) references contacted, one indicated satisfaction with the cleaning performance whereas the other company had been taken over with the contact person no longer working for the company. MP Cleaning Company however no longer held this contract.

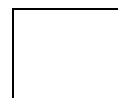
Prestige Cleaning, Western Office Cleaning and Reekie Property Services therefore are the only submissions to completely fulfil the essential selection criteria.

Evaluating the three (3) remaining companies against the desirable criteria indicates that Reekie Property Services is not a Quality Assured Company, where Western Office and Prestige Cleaning both are certified under ISO 9002. Further Reekie Property Services did not provide additional information relating to the company's human resource and environmental protection practices. Both Western Office and Prestige Cleaning provided detailed information in these areas, indicating that both are highly organised, well structured and accountable companies.

Western Office and Prestige Cleaning Services both fulfilled all essential and desirable criteria as detailed in the evaluation matrix. Both companies have submitted tenders similar in terms of annual price (\$33 523.46 and \$32 453.00 respectively) and total cleaning hours (1750 evening man hours and 206 daytime man hours p/a & 1300 evening man hours and 693 daytime man hours respectively).

References provided for Western Office Cleaning Services included Property Manager's Jones Lang LaSalle, P & O Facilities Management and Knight Frank Price Waterhouse. Those contacted all strongly advocated for this contractor's cleaning standard and recommended them without reservation.

References for Prestige Property Services included both the Domestic and International Airport Terminals, Garden City Shopping Centre and



the Reserve Bank. Contacted referees advised that the company maintained an excellent level of cleaning and employee supervision, as well as very good backup response.

In attempting to separate the two (2) remaining companies, reference needs to be made back to tender assessment information relating to evening cleaning presented to the June 1999 meeting of Council.

At that time, it was mentioned that it is the Centre Management's preference to have a greater concentration of hours afforded to the after hours component of the Contract.

As previously mentioned, Western Office Cleaning provide for an additional 450 evening cleaning hours per annum in its tender.

With this in mind, Western Office Cleaning's submission, emphasising more intensive evening cleaning, appears to be more suited to maintaining a high standard day-to-day basis.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Contained within the Centre's 1999 / 2000 operational budget is an allowance for contract cleaning of \$35 000.00

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

Nil

- 142. (AG Item 17.2) (OCM1_7_1999) - RE-AFFIRMATION OF COUNCIL DECISIONS - 3 JUNE 1998 AND 17 SEPTEMBER 1998 REGARDING LOT 14 PROGRESS DRIVE, BIBRA LAKE - SALE OF LAND TO THE WA CROATIAN ASSOCIATION (INC.) (1100231) (LJCD)**

RECOMMENDATION

That Council:

- (1) re-affirm the decisions of 3 June 1998, 3 August 1998 and 17 September 1998 regarding the sale of proposed Lot 21 Progress Drive, Bibra Lake and the leasing of proposed Lot 22 Progress Drive, Bibra Lake to the WA Croatian Association (Inc.);
- (2) advise the WA Croatian Association (Inc.) that although the decisions of 3 June 1998, 3 August 1998 and 17 September



1998 have been re-affirmed, the Association shall within seven (7) days of the receipt of the Contract of Sale sign the Contract of Sale and pay to Council the sum of \$120,813, being the Association's share of the works contributions to clear the subdivision of Lot 14 Progress Drive, Bibra Lake; and

- (3) shall terminate this arrangement forthwith, due to failure by the Association to comply with these requirements.

COUNCIL DECISION

MOVED Commissioner Donaldson SECONDED Commissioner Smithson that Council:

- (1) re-affirm the decisions of the 3 June 1998, 3 August 1998 and 17 September 1998 regarding the sale of proposed Lot 21 Progress Drive, Bibra Lake and the leasing of proposed Lot 22 Progress Drive, Bibra Lake to the WA Croatian Association (Inc.);
- (2) include in the Contract of Sale:
- (i) a clause which unequivocally states that if there is a shortfall in funding to cover any increase in costs the WA Croatian Association (Inc.) shall pay its share on demand;
 - (ii) a clause which states if there is an increase in costs which is Council's responsibility under the sharing arrangement and if the increase in costs cannot be covered by the contingency allocation any increase over that contingency amount shall be paid by the WA Croatian Association (Inc.) on demand;
- (3) advise the WA Croatian Association (Inc.) that although the decisions of 3 June 1998, 3 August 1998 and 17 September 1998 have been re-affirmed the Association shall within sixty (60) days of the receipt of the Contract of Sale sign the Contract of Sale and pay to Council the sum of \$125,563.00 being the Association's share of the works contributions to clear the subdivision of Lot 14 Progress Drive, Bibra Lake; and
- (4) failure by the Association to comply with these requirements shall terminate this arrangement forthwith.

CARRIED 3/0



Explanation

A revised Officer's recommendation was submitted to Council following discussions with the WA Croatian Association (Inc.) on 8 July 1999. The Association sought additional time to raise a loan for the balance of the works contribution costs. An additional seven (7) days was considered appropriate.

The Council, in considering the revised officer recommendation and following representation from the Association, considered that sixty (60) days was an appropriate time frame for the Association to raise the funds required.

Council adopted a line item budget for its contribution including a contingency. If that contingency is exhausted and considering the estimates are based on 1998 costs it is considered that the Association be responsible for any additional costs.

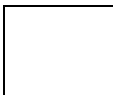
The original recommendation provided for the contribution of \$120,813.00. This should have been \$125,563.00, which includes the amount of \$4,750.00 for headwork's costs.

Background

This dealing commenced in July 1994 when Council resolved to reserve Lot 14 Progress Drive [excluding that portion set aside for an ice skating rink] for the WA Croatian Association (Inc.) for the purposes of establishing social, sporting and cultural facilities. Then on 4 April 1995, Council resolved that the Association be given the opportunity to purchase an area of land for the abovementioned purpose. The aforementioned decisions also provided for the sharing of costs on a pro-rata basis. Council adopted concept plans for the proposed development and the public was given an opportunity to comment on the proposal. Council considered the submissions received but was of the opinion that the development should proceed.

On 6 August 1996, Council resolved to proceed with the subdivision of Lot 14 Progress Drive and Mr Dave Everall, a Consulting Biologist was engaged to prepare/co-ordinate all the necessary approvals for the subdivision. Also, the resolution provided for the establishment of a Working Group comprising Councillors, Staff/Consultants and representatives from the WA Croatian Association.

The Working Group met and issues were considered and an understanding between all parties was reached with recommendations made to Council. Council on 3 December 1996 adopted Clause 1 of the Special Finance Committee meeting held on the 25 November 1996, which gave approval for the Lot 14 Progress Drive project to proceed.



The WA Croatian Association (Inc.) was informed of Council's decision by letter dated 6 December 1996 and the Association responded by letter dated 6 January 1997, accepting the decision of Council.

Mr Everall received advice that the project would be informally assessed and prepared an Environmental Management Plan, which was to be used by the Ministry for Planning, as the controlling document for the subdivision of Lot 14 Progress Drive. [An informal diagram of survey was prepared for the aforementioned property showing the subdivision as proposed Lot 1 and proposed Lot 2. However, when the formal Diagram of Survey was prepared and submitted to the LTO the Lots became Lot 21 and Lot 22 respectively.]

The Environmental Management Plan was lodged with the appropriate authorities and the plan was rejected. The Environmental Protection Authority decreed by virtue of its authority under the Environmental Protection Act, that the project should be formally assessed and therefore, became subject to a Consultative Environmental Review. The involvement of the Environmental Protection Authority made the decision of 3 December 1996 void and the process had to commence all over again.

The Environmental Management Plan was modified by Mr Everall to satisfy the requirements of the EPA for a Consultative Environmental Review. The CER stood for the prescribed period of time, public consultation sessions were held. Representations were made in person to the Environmental Protection Authority for its consideration of the project. There was an appearance before the Appeals Convenor to resolve issues, which were on appeal.

The Minister for the Environment approved the project and issued Statement 000 475 dated 5 May 1998, which set out the conditions and commitments relevant to the project. Condition 4.1 of statement 000475 stated, that a site access plan must be approved prior to any ground-disturbing activity. Also, the commitments stated that a landscape plan had to be approved.

After an exhaustive process Council on 3 June 1998 adopted a detailed resolution in respect to this matter. The decision of Council was relayed to the WA Croatian Association (Inc.) who was required to reply in writing stating its acceptance. The Association replied by letter dated 11 June 1998 accepting Council's decision.

The resolution of 3 June 1998 inter alia stipulated that the provisions of section 3.59 of the Local Government Act 1995 would apply to the dealing. The provisions of the beforementioned section were implemented whereby the Business Plan was advertised on 17 June 1998, inviting submissions from the public in relation to the Business Plan and the submission period closed on 28 July 1998.



A Special Council Meeting was convened on 3 August 1998 to consider the submissions received. At the aforementioned meeting, Council resolved to proceed with the dealing, however, the whole matter was dependent upon the implementation of part 6 of the resolution, which reads:

“That all of the above being subject to the Minister for the Environment agreeing to the proponent of the development being the WACA in regards to proposed Lot 1 and proposed Lot 2 and not the City of Cockburn.”

The Minister for the Environment was formally requested to accede to the decision of Council, but replied stating:

“As the City of Cockburn will retaining ownership of Lot 22 [proposed Lot 2] and the wetland, I believe it would be more appropriate for the City of Cockburn and the Western Australian Croatian Association to be joint proponents.

In light of the Minister’s reply the matter was listed on the Agenda for the Ordinary Council Meeting of 15 September 1998. At that meeting Council resolved, that the matter be dealt with at a Special Council Meeting to be held on 17 September 1998.

Council on 17 September 1998 revoked part 6 of the resolution of 3 August 1998 and Council adopted two resolutions. The first resolution dealt with matters relevant to the administration of the project. The second resolution dealt with the Development Approval for the proposed development of Lot 22 Progress Drive. The Association was informed by letter dated 22 September 1998, in relation to Council’s decision of 17 September 1998. Advice was received on 30 September 1998 that, the Association accepted the position.

No work could commence on the site until the Department of Environmental Protection had approved the landscape/site access plan. G Vassiliou was commissioned on 5 October 1998 to prepare the landscape/site access plan. At the same time, McDowall Affleck Pty Ltd a firm of consulting engineers was commissioned to prepare a concept-engineering plan for the project. On 6 October 1998, the Association was requested to pay the sum of \$16,924.00, being its share of the additional costs to secure approval for the project and the sum was paid.

The progression of the project hinged on a number of things happening and to save time, an Offer and Acceptance was sent to the Association. Eventually the Offer and Acceptance was returned along with a deposit of \$10,000 and the payment of the additional costs.



The Western Australian Planning Commission by letters dated 4 November 1998 set the conditions of subdivision in respect of Lot 14 Progress Drive and the development approvals in respect of the proposed Lot 22 Progress Drive. The Association was informed of the current position.

A draft Contract of Sale was prepared which inter alia that the works contribution had to be paid within 7 working days of the execution of the Contract and Sale. Furthermore, the balance of the purchase price had to be paid within 120 days of the issue of the Certificates of Title. A copy of the draft Contract of Sale was provided to the Association and repeated requests were made to finalize the matter.

Submission

The WA Croatian Association (Inc.) replied by letter 30 June 1999 in response to Council's letter of 21 June 1999 as follows:

"We refer to your letter dated the 21 June 1999. Our normal fund raising activities have not taken place in relation to the proposed purchase of Lot 21 Progress Drive Bibra Lake. Given the magnitude of the Project we have acquired the services of Funding-raising Management Consultants to take the matter in an efficient and professional manner.

The Fund-raising Consultants are still completing their feasibility study for the fund-raising plan, however we envisage fund-raising will commence by August 1999. In light of the above the committee have taken steps to obtain finance to meet the shortfall of the \$120,813 from what the Association has already collected. Documentation is with the financial institution and should be finalized in next 10 days or there about.

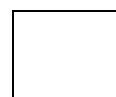
A small matter of concern has arisen after advice from our solicitor. The Offer and Acceptance has not been correctly executed by the Association because;

- 1. No common seal is affixed*
- 2. Document is not executed by two officers of the Association.*

It would be appreciated if you would forward a further offer and acceptance so as we may effect execution of the same.

In relation to you questions raised in your letter dated 21 June 1999.

- 1. When WACA will pay \$120,813, shortly after new Offer and Acceptance is re-executed.*
- 2. WACA will be in a position to pay \$210,000 within 120 days of the issue of the certificate of title."*



Council's letter of 21 June 1999 pointed out to the Association since the Commission had not endorsed the Diagram of Survey by 4 May 1999 then the Contract was at an end. That is, four months from 4 January 1999 as prescribed by condition 16 (4) (b) of the "Joint Form of General Conditions for the Sale of Land." Council's letter also asked if the Association could advise when the Association would be in a position to pay the works contribution and would the Association be in position to pay the balance of the purchase price, which is \$210,000.

Report

Based on an Offer and Acceptance dated 4 January 1999, which stated that the contract was subject to the Joint Form of General Conditions for the Sale of Land 1994 the contract was brought to an end on 4 May 1999.

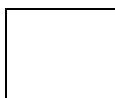
Although it could be argued that the Association incorrectly signed the Offer and Acceptance, nevertheless the Association had indicated its willingness to proceed by correspondence.

The contract was brought to end by virtue of conditions 16 (4) (b) of the Joint Form of General Conditions for the Sale of Land, which reads:

- "(4) Unless the Land is a Strata Lot, the Contract is conditional on:
- (a)
 - (b) the Commission endorsing its approval on the diagram or plan of subdivision before a date four months after the date of the written advice referred to in Condition 16 (4) (a) or the date of Contract, whichever is the later; and
 - (c)

Based on the foregoing the Diagram of Survey should have been endorsed by the Commission by 4 May 1999. Since this did not occur, verbal advice received suggested that the Contract was at an end and the deposit should be refunded. It is submitted that this point of view is acceptable, if the dealing was not subject to other processes.

As stated previously no ground-disturbing activity could occur until the site access plan and the landscape plan had been approved. The Department of Environmental Protection did not issue its approval until 5 June 1999. Therefore, assuming that the Diagram of Survey was available for endorsement by the Commission prior to 4 May 1999, nothing would have been achieved because the final clearance from Department of Environmental Protection had not been received. The



Commission would have checked to ascertain if all clearances had been given prior to endorsing the Diagram of Survey.

Given the nature of the events it is considered prudent to re-affirm the decisions of Council dated 3 June 1998, 3 August 1998 and 17 September 1998, and stipulated to the WA Croatain Association (Inc.), that the Contract of Sale must be signed within seven (7) days of presentation. Such conforms to the draft Contract of Sale.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

N/A

143. (AG Item 18.1) (OCM1_7_1999) - CHIEF EXECUTIVE OFFICER'S ORGANISATIONAL STATUS REPORT (1054) (RWB)

RECOMMENDATION

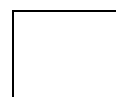
That Council receive the Organisational Status Report from the Chief Executive Officer dated July 1999.

COUNCIL DECISION

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that Council:

- (1) receive the Organisational Status Report from the Chief Executive Officer dated July 1999;
- (2) circulate the document to the relevant community associations; and
- (3) commend staff on the very valuable document which gives Commissioners and some of the community groups a very clear and concise status report we are working on in the community.

CARRIED 3/0



Explanation

Council was of the opinion that the information contained in the Report was of general significance to the Community and would be of interest to Ratepayers and Progress Associations.

Background

At its meeting of the 9th March 1999, Council determined that a report on matters of interest be provided to Council on a quarterly basis.

The Organisational Status Report replaces the report previously prepared relating to performance measurement.

Submission

N/A

Report

Directors, Managers and staff have generally contributed to the information report which has been titled "Organisational Status Report".

The Status Report will be provided to Council on a quarterly basis highlighting issues that may be of interest to Council.

The Report provides a snapshot of issues at a particular point of time, even though they may currently be in the process of being considered by Council.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Nil

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

Nil



144. (AG Item 24.1) (OCM1_7_1999) - RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)

MOVED Commissioner Jorgensen SECONDED Commissioner Smithson that Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (a) integrated and co-ordinated, 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 3/0

MEETING CLOSED: 8:22 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:/...../.....

