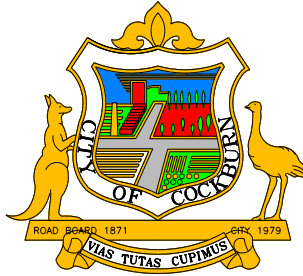


CITY OF COCKBURN



ORDINARY COUNCIL

AGENDA PAPER

**FOR
TUESDAY 16 FEBRUARY 1999**

CITY OF COCKBURN

SUMMARY OF AGENDA TO BE PRESENTED TO THE ORDINARY COUNCIL MEETING TO BE HELD ON TUESDAY, 16 FEBRUARY 1999 AT 7:30 P.M.

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CITY OF COCKBURN

AGENDA TO BE PRESENTED TO THE ORDINARY COUNCIL MEETING TO BE HELD ON TUESDAY, 16 FEBRUARY 1999 AT 7:30 P.M.

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

- 2. PUBLIC ADDRESS SESSION**

- 3. WRITTEN REQUEST FOR LEAVE OF ABSENCE**

- 4. CONFIRMATION OF MINUTES**
 - 4.1 (OCM2/99) - ORDINARY MEETING OF COUNCIL - 19/1/99**

 - 4.2 (OCM2/99) - SPECIAL MEETING OF COUNCIL - 20/1/99**

- 5. APOLOGIES AND LEAVE OF ABSENCE**

- 6. ADDITIONS TO THE AGENDA**

- 7. DEPUTATIONS**

8. COUNCIL MATTERS

8.1 (OCM2/99) - STRATEGIC & POLICY COMMITTEE REPORT - 2/2/99 (1055)

8.2 (OCM2/99) - COMMUNITY DEVELOPMENT COMMITTEE REPORT - 9/2/99 (1052)

9. ADMINISTRATION

9.1 (OCM2/99) - PROPOSED REVOCATION OF COUNCIL DECISION 19/1/99 - CDC ITEM 7.3 - FINAL ADOPTION - AMENDMENT NO.182 - LOT PT. 1 AND LOT 781 CNR NORTH LAKE ROAD AND BERRIGAN DRIVE, SOUTH LAKE - OWNER: B & R INVESTMENTS PTY LTD - APPLICANT: BSD CONSULTANTS (92182) (SR) (EA)

RECOMMENDATION

That Council considers the revocation of the decision of Council taken on the 19th January 1999 as follows :-

"That Council :

- (1) uphold the submissions objecting to the amendment; and*
- (2) advise the Minister for Planning that Council does not wish to proceed with the amendment, on the basis that the zoning of mixed business would not be compatible with the adjoining residential land."*

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

That Council:

Background

At the Council Meeting of the 19th January 1999, Council resolved as follows in respect to the abovementioned item:-

"That Council :

- (1) *uphold the submissions objecting to the amendment; and*
- (2) *advise the Minister for Planning that Council does not wish to proceed with the amendment, on the basis that the zoning of mixed business would not be compatible with the adjoining residential land.*

CARRIED"

A letter containing the requisite number of signatures pursuant to Regulation 10 of the Local Government (Administration) Regulations 1996, a request to revoke this decision was received. The signatories were Clr Humphreys, Clr Hunt, Clr Separovich, Clr Lee and Clr Lees.

Accordingly, no administrative action to carry out this decision of Council has taken place pending consideration of the proposal to revoke it.

Submission

N/A

Report

Pursuant to Regulation 10, Council must consider the request to revoke this decision of Council.

However, any decision to revoke the resolution, can only be effective if it is carried by an Absolute Majority of Council (ie: 8 Councillors irrespective of the number of Councillors in attendance at the Meeting at the time it is considered).

Should an Absolute Majority of Council not be obtained, then the Council decision of the 19th January 1999 will remain in force.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

9.2 (OCM2/99) - PROPOSED REVOCATION OF COUNCIL DECISION 19/1/99 - OCM ITEM 9.6 - PACKHAM DEVELOPMENT AREA OPEN SPACE FUNDS (9235; 104081) (CLR PECOTIC)

RECOMMENDATION

That Council considers the revocation of the decision of Council taken on the 19th January 1999 as follows :-

"That the Packham Development Area Public Open Space (POS) funds to take place as follows:

- 1. that the City of Cockburn distribute as progress payments all of the funds held for Packham Development Area POS purposes together with interest including funds held by Urban Focus, to all the landowners who contributed their land for POS in excess of 10% requirement;*
- 2. that the City of Cockburn demand repayment of all Packham Development Area POS funds held by Urban Focus together with interest for distribution purposes by this Council, in accordance with Council's 6th of June 1989 resolution and in accordance with District Zoning Scheme No.1 Amendment 240. The above complies with Section 20C of the Town Planning and Development Act;*
- 3. that distributions be made in correct proportions to all the landowners who contributed their land for POS in excess of the 10% requirement within 14 days of this meeting;*
- 4. that all Packham Development Area POS funds collected from the future subdivisions together with interest be paid in correct proportions to all the landowners who contributed their land for POS in excess of 10% requirement, within 14 days of the date the funds received by this Council and continue to do so until all the funds for Packham Development Area POS are received and paid in full to the landowners;*
- 5. that Council's authority to distribute the Packham Development Area POS funds is in accordance with the verbal and implied agreements by this Council and the landowners who contribute their land for POS purposes in excess of their 10% requirement.*
- 6. that with approval of this resolution this Council is ratifying verbal and implied agreements with the landowners who contributed their land for POS in excess of their 10% requirement. Furthermore, that the City of Cockburn prepare at its cost written agreements which reflect the verbal and implied agreements which are to be signed by both the landowners and*

this Council."

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

That Council:

Background

At the Council Meeting of the 19th January 1999, Council resolved as follows in respect to the abovementioned item :-

"That the Packham Development Area Public Open Space (POS) funds to take place as follows:

1. *that the City of Cockburn distribute as progress payments all of the funds held for Packham Development Area POS purposes together with interest including funds held by Urban Focus, to all the landowners who contributed their land for POS in excess of 10% requirement;*
2. *that the City of Cockburn demand repayment of all Packham Development Area POS funds held by Urban Focus together with interest for distribution purposes by this Council, in accordance with Council's 6th of June 1989 resolution and in accordance with District Zoning Scheme No.1 Amendment 240. The above complies with Section 20C of the Town Planning and Development Act;*
3. *that distributions be made in correct proportions to all the landowners who contributed their land for POS in excess of the 10% requirement within 14 days of this meeting;*
4. *that all Packham Development Area POS funds collected from the future subdivisions together with interest be paid in correct proportions to all the landowners who contributed their land for POS in excess of 10% requirement, within 14 days of the date the funds received by this Council and continue to do so until all the funds for Packham Development Area POS are received and paid in full to the landowners;*
5. *that Council's authority to distribute the Packham Development Area POS funds is in accordance with the verbal and implied agreements by this Council and the*

landowners who contribute their land for POS purposes in excess of their 10% requirement.

6. *that with approval of this resolution this Council is ratifying verbal and implied agreements with the landowners who contributed their land for POS in excess of their 10% requirement. Furthermore, that the City of Cockburn prepare at its cost written agreements which reflect the verbal and implied agreements which are to be signed by both the landowners and this Council.*

CARRIED"

By facsimile message dated the 27th January 1999, containing the requisite number of signatures pursuant to Regulation 10 of the Local Government (Administration) Regulations 1996, a request to revoke this decision was received. The signatories were Clr Separovich, Clr Hunt, Clr Lee, Clr Humphreys and Clr Waters.

Accordingly, no administrative action to carry out this decision of Council has taken place, pending consideration of the proposal to revoke it.

Submission

N/A

Report

Pursuant to Regulation 10, Council must consider the request to revoke this decision of Council.

However, any decision to revoke the resolution, can only be effective if it is carried by an Absolute Majority of Council (ie: 8 Councillors irrespective of the number of Councillors in attendance at the Meeting at the time it is considered).

Should an Absolute Majority of Council not be obtained, then the Council decision of the 19th January 1999 will remain. However, based on legal advice that the decision is illegal, if not rescinded, the decision will not be actioned by Council staff.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

9.3 (OCM2/99) - PACKHAM URBAN DEVELOPMENT AREA - CONSULTANCY BRIEF FOR INVESTIGATION (9235) (SMH) (ATTACH)**RECOMMENDATION**

That Council:

- (1) receive the report:
- (2) adopt the proposed brief as the basis of appointing a suitably qualified and experienced firm of consultants or person to undertake a review of the statutory basis, administration, operation and management of the Packham Urban Development Area;
- (3) formally request the Department of Local Government to review and agree to the brief and to accept responsibility for the management of the appointed consultant;
- (4) send a copy of the brief to selected consultants requesting a submission to undertake the work be lodged with the Chief Executive Officer by Tuesday, 9th March 1999, for the Council's consideration at its meeting of the 16th March 1999;
- (5) request submissions from the following selected consultants and individuals:-
 - Mr David Gray of Gray Lewis & Associates
 - Mr Gene Koltasz of Koltasz Smith & Partners
 - Mr Douglas Collins (retired) Ex-Deputy Commissioner of the Town Planning Department and currently member of the Ministerial Appeals Committee
 - Ms Cheryl Chaffer of Cheryl Chaffer and Associates, member of the PEER Review Committee (WAMA);
- (6) determine that, should additional monies be required to facilitate the appointment of the consultant, such funds be taken from the Chief Executive Officer's Consultancy Account No. 135310; and
- (7) nominate Cllr _____ and the Chief Executive Officer, to be the Council representatives on the Joint Committee for the appointment and overseeing the consultant in accordance with Clause 7 of the brief.

COUNCIL DECISION

Background

Issues and concerns about the Packham Urban Development Area remain unresolved and continue to occupy a considerable amount of Councillor and staff time.

As it stands at the moment, there does not appear to be a satisfactory solution to the number of questions continuing to be raised by Councillors and landowners from the Packham Area, despite the responses being provided by Council's Solicitors, professional staff and others such as Urban Focus.

Packham has been a major issue within Council for the past 9 months, commencing with an application to subdivide Lot 17 Hamilton Road, Spearwood by Peremate Holdings Pty Ltd.

Lot 17 was the subject of an appeal. The appeal to the Minister for Planning was dismissed and following this, the owner requested the clearances for the subdivision be issued. This resulted in the creation of 18 lots, a road reserve and an area of public open space and drainage reserved under Section 20A of the Act. The public open space and drainage reserve was given up to the Crown free of cost and without compensation.

The issuing of the clearances for Lot 17 brought the matter to an end.

However, the owners of Lot 17 together with others from Packham, believe that the Council has a role and a responsibility to recompense those owners, from the Council's Section 20C Cash-In-Lieu of Public Open Space Account, who have over contributed public open space and drainage.

There have also been general and specific accusations made by some Councillors and landowners, about the administration of the Packham Urban Development Area by Council's staff and Urban Focus, particularly in respect to the legality and consistency of actions taken and the implementation of Council decisions.

In response to these concerns, the staff have endeavoured to provide comprehensive and objective advice to Council and

where necessary, supported this by legal opinions from Council's Solicitors.

The various advice in the past which have sought to clarify the situation, most of which has been provided to Council on request, formed part of reports or in response to questions from Council or Councillors, the most important of which are summarised as follows:-

May 1989	Advice from Francis A Jones and Associates, Council Auditors, commenting on the appropriateness of the private owners agreement.
December 1996	Council seeks changes to the TP & D Act to enable payments to owners in a private subdivision agreement from the Section 20C Account to accommodate the \$222,934 paid to Urban Focus in 1995.
October 1997	Urban Focus requested the repayment of \$63,700 because it was incorrectly paid into the Council's Section 20C Account.
December 1997	Special Council meeting to receive advice from Denis McLeod.
December 1997	Legal Opinion from McLeod & Co on POS.
December 1997	Urban Focus advice on POS contributions.
December 1997	Council seeks to amend the TP & D Act.
January 1998	Legal Opinion from McLeod & Co on POS.
January 1998	Legal Opinion from McLeod & Co on POS Drainage Equalisation Arrangements.
February 1998	Draft Local Government Assessment Report by Department of Local Government on payment of monies by Council in relation to the Packham Development Area.
February 1998	Special Council meeting to receive advice from Denis McLeod.
February 1998	Legal Opinion from McLeod & Co on POS and Drainage.
March 1998	Special Council meeting to discuss Local Government Report.
May 1998	Department of Local Government Analysis Report on the payment of monies by Council

	in relation to the Packham Development Area.
May 1998	Urban Focus advice of POS Equalisation Arrangement.
May 1998	Legal Opinion from McLeod & Co on POS and Drainage.
June 1998	Report to Council on POS payments.
June 1998	Clr Pecotic required that the staff circulate 12 pieces of information relating to Packham to all Councillors.
June 1998	Response from the Hon Minister for Local Government.
July 1998	Report to Council on POS payments.
August 1998	Report to Council on Department of Local Government Audit.
August 1998	Hon Minister for Planning gives reasons to Peremate Holdings as to why its appeal was dismissed, which related to Packham situation generally.
September 1998	Report to Council on Packham.
November 1998	Department of Local Government advice on Section 20C payments.
December 1998	Response to Clr Pecotic by CEO.
January 1999	Response to Clr Pecotic by A/CEO.
January 1999	Response to Clr Pecotic by Director Finance
January 1999	Response to Clr Pecotic by A/CEO.
January 1999	Urban Focus advice on Private Owners Agreement.
January 1999	Department of Local Government advice on POS payments and 20C Account.
January 1999	Response to Clr Pecotic by A/CEO.
January 1999	Legal Opinion of McLeod & Co on Packham Resolutions of January 1999.
February 1999	Legal Opinion of McLeod & Co on Mr Claude Della-Bona's accusations.
February 1999	Urban Focus "Statement" on POS/Wetland Equalisation Arrangement sent to Council

and it is understood also to all participating landowners.

This summary only includes advice received in respect to Packham, and does not include complementary and related advice received in respect to Lot 17 Hamilton Road, Spearwood owned by Peremate Holdings Pty Ltd.

Since preparing this summary, the CEO has also sought a second legal opinion on specific questions relating to Packham from Mr John Woodhouse of Watts & Woodhouse, a firm which specialises in town planning matters, which has been circulated to all Councillors.

A similar request was made to the CEO of the Ministry for Planning in order to clarify certain points. It is hoped that this response from the Ministry for Planning will be available for tabling at the Council meeting on the 16th February 1999.

The investigation into certain matters dealt with by the Council by the Chief Executive Officer of the Department of Local Government under Section 8.3 of the Act, has yet to be presented to Council and the findings may have implications for Packham as a result of enquiries into the subdivision of Lot 17 Hamilton Road, Spearwood.

Submission

N/A

Report

Since December 1998, with the receipt of a series of questions from Clr Pecotic about Packham, there have been numerous questions raised by Councillors and landowners to which considered responses have been supplied.

On the 23rd December 1998, the Chief Executive Officer wrote a 4 page letter to Clr Ostojich in response to questions he raised about Packham during the Council meeting held on the 15th December 1998. The correspondence contained 6 attachments. The response was sent to all Councillors.

On the 23rd December, Clr Pecotic wrote to the Chief Executive Officer requiring answers to 18 questions on Packham. The Acting CEO responded on 4th January 1999, with a 3 page letter

to which there were 4 attachments. The response was also sent to all Councillors.

On the 5th January 1999, Clr Pecotic wrote to the Director of Finance and Corporate Services, asking answers to 5 questions to which a 2 page response was provided on 6th January.

On the 14th January, Clr Pecotic wrote again to the Director of Finance and Corporate Services, to which a reply was provided on the same day. A second advice was sent to the Councillor on the 5th January.

On the 15th January, Acting CEO provided a 4 page response to a request for information from Clr Ostojich dated 6th January to which 5 attachments were appended.

On the 18th January, Clr Pecotic again wrote to the Director of Finance & Corporate Services to which a response was provided on the 19th January.

On the 18th January, Urban Focus provided a 2 page letter to the Acting CEO in relation to the \$63,700 reimbursement from the Council 20C Account in accordance with the Department of Local Government's advice.

On the 18th January, Clr Pecotic wrote to the Acting CEO, to which a 3 page response was provided together with attachments.

On the 19th January, Mr Claude Della-Bona raised a number of questions relating to Packham at the Council meeting which were referred to Council's Solicitor for advice. This advice was received on the 8th February and on that day, was circulated by the CEO to Councillors.

Also at the Council meeting on the 19th January 1999, Mrs Sheila Grljusich asked a number of questions relating to Lot 17 and Packham. An acknowledgement letter has been forwarded but a full response cannot be sent until the Lot 17 Subdivision File is returned by the Local Government Investigators. The return of the file has been requested.

On the 20th January, Clr Ostojich wrote a 3 page letter to the CEO, to which the CEO replied on the 3rd February and was also circulated to Councillors.

On the 8th February 1999, an advice was received from Urban Focus about the POS/Wetland Equalisation Arrangement for

Packham. This 4 page advice was circulated to Councillors on the same day.

As can be seen from this brief chronology, the questions raised by Councillors and landowners have been responded to promptly.

The problem is that the staff responses and legal advice have not been acceptable to the enquirers.

The CEO and Directors are of the view that accurate and adequate advice has been provided to Council and landowners and the situation in respect to Packham and the entitlement of landowners, is clear and therefore, there should be no need for a consultant to be engaged to undertake an investigation.

However, based on the letter from Clr Ostojich dated 20th January 1999 where he states:-

"In any event, it should not be an option to allow a bad situation to continue in the hope that it might be incidentally corrected.

Even more importantly, critically in fact, it should never be the case that the Council's Administration are making unilateral decisions on the direction of Council. There is only one Council. It makes directional decisions. The Administration implement those directions. There is no scope to blur these functions.

The fact is that this situation is the root cause of the confusion that is associated with the public open space issue for Packham Development Area. It must therefore be corrected without delay.

Going forward, I would now be grateful if you would please advise me about what strategies you intend putting in place to resolve this matter."

The CEO responded to Clr Ostojich on the 3rd February 1999, advising that he would put a recommendation to Council that an independent party be engaged to undertake an investigation into the Packham Urban Development Area, supported by a brief for Council's consideration.

As the staff believe that they have exhausted all possible avenues of advice to Council and landowners, the only option seen as being available, is to have an independent firm or person to undertake a review of the statutory basis,

administration, operation and management of the Packham Urban Development Area.

Should the Council proceed with an investigation, the Department of Local Government would need to be involved and the CEO has already made the necessary request to the CEO, Mr John Lynch.

The response from the Department was:-

"Re: PACKHAM URBAN DEVELOPMENT AREA

I refer to your letter of February 3 1999 regarding the Department's ongoing willingness to be involved in the management of a person(s) appointed to undertake an audit of the above project.

I confirm that the Department is still prepared to undertake this role. I agree Council needs to set the terms of reference for the audit but if the Department is to have the management role it must have the right to negotiate on those terms of reference. We will not manage a project in which we have basic objections to the terms of reference.

With regard to appropriate consultants who have sound planning knowledge I offer the following:-

- *David Gray of Gray Lewis & Associates, and*
- *Gene Koltasz of Koltasz Smith & Partners.*

These are both planning firms of sound integrity.

I am sure you will appreciate that there is a very limited number of persons appropriately qualified and available to take on a project of this kind.

I note the amount you have set aside for the project. I submit that for a thorough review of the type that would settle this issue I envisage that you will need to budget considerably more."

The budget being considered by Council is \$10,000.

In addition to the two town planning firms suggested by the Department, it is suggested that two others be included in the list of consultants to be approached namely:-

- Mr Douglas Collins - Mr Collins is a retired town planner who was the Deputy Commissioner of Town Planning Department responsible to Dr David Carr. Mr Collins is currently working in a part-time capacity on the Hon. Minister of Planning's Appeal Committee. Mr Collins has extensive knowledge of statutory planning and is well respected within the profession.
- Ms Cheryl Chaffer - Ms Chaffer is the principal of Cheryl Chaffer and Associates, town planners and was previously the City Planner at the City of Fremantle. Since establishing her business, she has tended to provide specialised advice to WAMA in respect to statutory town planning and legal matters and serves on the recently formed PEER Review Committee established by the Hon. Minister for Planning, to examine processing and procedural matters within local government.

To broaden the list of consultants is considered worthwhile given the importance of the matter to be investigated and the time and cost involved.

It should be noted that none of the firms and individuals short listed, are aware of the proposed investigation and therefore, it cannot be certain that they are willing or able to accept such a specific commission.

A recommended brief is attached to the report for Council's consideration.

Strategic Plan/Policy Implications

N/A

Except that the Council has adopted a Policy for the Packham Urban Development Area - PD11 amended on the 21st July 1998.

Budget/Financial Implications

The Council is considering the setting aside of \$10,000 for an investigation if required, as part of the mid year Budget review.

It is expected that an investigation of the type outlined, could cost in the order of \$80.00 per hour plus the cost of specialist legal advice.

Based on this, the investigation could cost between \$3,000 and \$4,000 a week and over say 6 weeks, could cost between \$18,000 to \$24,000.

Therefore, to provide for a range of fee submissions, an allowance of \$25,000 or \$30,000 would be more appropriate.

In the brief, there is the scope for an indicative fee to be submitted because the final fixed cost will need to be determined following appointment, refinement of the brief and for the consultant to gain an understanding of the range and content of the background information.

The source of any additional funding could be available through the CEO's Consulting Account No. 135310.

9.4 (OCM2/99) - PACKHAM URBAN DEVELOPMENT AREA - PUBLIC OPEN SPACE PAYMENT (SMH) (9235) (ATTACH)

RECOMMENDATION

That:

- (1) the payment of \$222,934 made from the Section 20C Restricted Asset Account be deemed to have been made from interest held in that account.

COUNCIL DECISION

That Council:

Background

At the Council meeting held on the 21st July 1998, Council resolved to:-

- "(1) receive the report from the Department of Local Government entitled "Audit of Monies Paid by Council in Relation to the Packham Development Area", dated May 1998, the legal advice from Council's Solicitor McLeod & Co dated 16 February 1998 and 29 May 1998 and Urban Focus' responses dated 23 December 1997 and 30 March 1998;*

- (2) *seek the advice of the Department of Local Government in respect to:-*
1. *the refund of \$63,700 to Urban Focus from the Council's Section 20C Public Open Space Account; and*
 2. *the Council's payment of \$222,934 to Urban Focus in April 1995, being considered by the Council as a payment of interest monies from the Section 20C Public Open Space Account, separate from the principal held in the Account collected as cash-in-lieu payments from subdividers within the Packham Urban Development Area, as the means by which the Council can satisfy the intent of Section 20C of the Town Planning and Development Act;*
- (3) *seek reimbursement of the \$222,934 from Urban Focus, in the event that the Department of Local Government does not support the Council in respect to the advice sought in (2) 2. above, by a negotiated arrangement between Urban Focus and the Council. This arrangement being via the acquisition of future public open space in the balance of Stage 2 and Stage 14 of the Packham Urban Development Area and the subsequent reimbursement of funds by Urban Focus to the Council's Section 20C fund ;*
- (4) *utilise the Section 20C Public Open Space funds held in the Cash-in-lieu Account to acquire part of a public open space buffer that may be required as part of a revised structure plan for the northern portion of the Packham Urban Development Area around the Watsons' factory in Hamilton Road, Spearwood.*
- (5) *advise the Department of Local Government that the Council proposes the following in respect to "private arrangement" subdivision proposals :*
1. *Council has initiated Amendment No 94 to its District Zoning Scheme No 2 which is currently awaiting public advertising consent from the Western Australian Planning Commission. This amendment will enable equitable cost sharing arrangements for public open space and other public infrastructure to be incorporated into the Scheme.*

2. *An amendment to the existing Packham Urban Development Area Policy will be made to delete reference to "water and sewerage" services ; and an addition be made to the Policy as follows :*

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

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

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

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

The Department of Local Government's report concluded, in respect to the \$222,934 payment, that although the payment did not comply with Section 20C of the Town Planning and Development Act 1928, the payment was made as per the expectations of the landowners, developers and staff of the City of Cockburn.

Extracts from legal advice have been circulated separately to Councillors.

- Letter from McLeod & Co to Council dated 16th February 1998.
- Letter from McLeod & Co to Council dated 29th May 1998.

Report

The recommendation to this report is based on the advice of Council's Solicitor, Denis Mcleod and the Department of Local Government's response (attached) dated 11th January 1999.

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

1.	Balance of Section 20C A/C (Applicable to Packham Locality)	\$511,217.54
2.	Interest Accrued to Section 20C A/C (Total Interest)	\$237,812.24
3.	Amount Paid to Urban Focus in 1995	\$222,934.00
4.	Interest Balance after 1995 Payment	\$14,878.24

The Department of Local Government's advice means that it is open to the Council to deem that the \$222,934 incorrectly expended from that Account in April 1995 was from Interest monies and not the principal funds contributed by subdividers in the Packham area.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

The Council may need to be prepared to reimburse the Section 20C POS Account \$222,934 from General Revenue if the recommended means of reimbursement is not adopted.

9.5 (OCM2/99) - LOCAL AGENDA 21 CONFERENCE - MANDURAH, WA - 11/12 MARCH, 1999 (1027) (DMG)

RECOMMENDATION

That Council nominate Cllr(s) _____ as delegate(s) to attend the Local Agenda 21 Conference to be conducted in Mandurah on the 11th and 12th March 1999.

COUNCIL DECISION

That Council:

Background

Councillors were circulated with information on this Conference recently and requested to respond in time for the matter to be considered by Council, if interested in attending.

Submission

N/A

Report

Manager, Environmental Services will be attending the Conference.

Nominations to attend have also been received from Mayor Grljusich and Clr Separovich. In accordance with Council Policy, the matter is now referred to Council for further consideration.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Funds are provided for in the Councillors Conference Account (approximately \$18000 unexpended). The cost per delegate is estimated at \$600.

9.6 (OCM2/99) - MOTION CARRIED AT ANNUAL ELECTORS MEETING - 8 FEBRUARY 1999 - POSTAL VOTING (1713; 1700) (DMG)

RECOMMENDATION

That Council advises Mr Glen Head of 15 Mollerin Place South Lake and Mrs Val Oliver of 8 Malvolio Road Coolbellup (representing 68 petitioners), that:

- a) Council is unable to conduct its 1999 local government elections under the Postal Voting system, due to the time constraints imposed by Sections 4.20 and 4.61 of the Local Government Act 1995; and
- b) Council will re-consider the issue of Postal Voting for the 2001 municipal elections and, if applicable, any prior extra-ordinary elections, in advance of the election date, to ensure compliance with statutory timetables.

COUNCIL DECISION

That Council:

Background

At the Annual Electors Meeting conducted on the 8th February 1999, the following motion was carried:

"Moved Mr Glen Head seconded Mrs Val Oliver, that in accordance with Section 4.61 (2) of the Local Government Act 1995, the City of Cockburn conduct the 1999 elections as a postal election. If this is not possible due to time constraints, that postal elections be adopted for the following Local Government Elections."

Pursuant to Section 5.33 of the Local Government Act 1995, the decision is now required to be considered by Council.

Submission

N/A

Report

The decision carried at the Electors Meeting seeking Council to give urgent consideration at its February Meeting for the 1999 Council elections to be conducted as Postal Elections, is not capable of being carried out. Due to a change to the Local Government Act 1995, the timeframe for Council to decide whether it wishes a Postal Voting system of elections to be introduced, has been extended from 70 days to 80 days prior to the elections. In effect, this requires Council to have made this decision by the 10th February 1999, for it to be applicable for the 1999 elections. As that date has passed, it is not capable for Council to conduct its 1999 elections by any other method than by "voting in person" elections.

The second part of the motion, seeking a Council commitment to conduct future elections by Postal Voting, could technically be made at this time. However, it is considered more appropriate for the Council which will be in place at the time of the 2001 elections, to make that decision. It is possible that the make-up of Council could be different at that time and therefore, should be given carriage of making that decision.

Strategic Plan/Policy Implications

Corporate Strategic Plan Key Result Area 4 - "Facilitating the Needs of Your Community" refers.

Budget/Financial Implications

10. PETITIONS

Nil

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12. NOTICE OF MOTIONS FOR CONSIDERATION AT THE FOLLOWING MEETING IF GIVEN DURING THE MEETING

Nil

13. CONFIDENTIAL MATTERS

13.1 (OCM2/99) - REMUNERATION REVIEW - CHIEF EXECUTIVE OFFICER (003) (ATC)(ATTACH)

RECOMMENDATION

That Council move behind closed doors to consider the remuneration review for the Chief Executive Officer.

COUNCIL DECISION

That Council:

Background

The remuneration for the Chief Executive Officer was last reviewed in late 1996. Consultants, Gerard Daniels Australia Pty Ltd (GDA), were employed to review and make recommendations concerning the Chief Executive Officer's remuneration package.

Submission

N/A

Report

A copy of G.D.A's report to the Mayor has been circulated separately as a confidential document.

Included with the report, is a table setting out the Chief Executive Officer's remuneration package if G.D.A's recommendations are accepted.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

14. CLOSING