

CITY OF COCKBURN

SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON TUESDAY, 18 FEBRUARY 2003 AT 7:30 PM

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CITY OF COCKBURN

SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON TUESDAY, 18 FEBRUARY 2003 AT 7:30 PM

PRESENT:

ELECTED MEMBERS

Mr S Lee	-	Mayor
Mr R Graham	-	Deputy Mayor
Ms A Tilbury	-	Councillor
Mr I Whitfield	-	Councillor
Mr A Edwards	-	Councillor
Mr K Allen	-	Councillor
Mr L Humphreys	-	Councillor
Mr M Reeve-Fowkes	-	Councillor
Mrs V Oliver	-	Councillor

IN ATTENDANCE

Mr R. Brown	-	Chief Executive Officer
Mr D. Green	-	Director, Community Services
Mr K. Lapham	-	Acting Director, Finance & Corporate Services
Mr S. Hiller	-	Director, Planning & Development
Mr J. Radaich	-	Acting Director, Engineering & Works
Mrs S. Ellis	-	Executive Secretary
Mr C. Ellis	-	Communications Manager

1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 7.30 pm.

2. APPOINTMENT OF PRESIDING MEMBER (If required)

Nil

3. DISCLAIMER (Read aloud by Presiding Member)

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written



advice from the Council prior to taking action on any matter that they may have before Council.

4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS (by Presiding Member)

Nil

5. APOLOGIES AND LEAVE ABSENCE

Clr N. Waters - Apology

6. ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

7. PUBLIC QUESTION TIME

Mayor Lee advised that he had received a 7 page submission commenting on the Council report relating to the proposed deletion of the Fremantle Eastern Bypass Reserve from the Metropolitan Region Scheme.

Given the length of the submission, together with the short notice, he did not read the submission but responded to the questions raised.

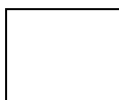
The submission was lodged by Mr Joe Branco, North Lake Action Convenor on behalf of the combined groups of North Lake Residents Association, Coolbellup Community Association, Bibra Lake Residents Association, Beeliar Conservation and Heritage Council and Friends of Clontarf Hill and requested that the submission be read to the meeting.

Before responding to the questions, he wanted to make it clear, that the officer's report contained in the Agenda was not a study or an analysis of environmental, social or traffic issues relating to road planning south of the river, but simply a response to the Metropolitan Region Scheme Amendment Report, Amendment No. 1055/33 which proposes the deletion of the Fremantle Eastern Bypass reservation.

The officer's report is based on objective professional advice for the Council's consideration. The Council will decide whether or not to accept the advice, and make a decision accordingly.

The Council, like the public, has the same opportunity to lodge a submission on any proposed Metropolitan Region Scheme Amendment.

In respect to the questions raised are the following responses, as provided for under the Standing Orders:-



Q: *What consultation has taken place with the community in recent times in order to reach the Recommendation?*

A: The most recent one took place in 1998.

Q: *Did the 2002 Community Needs Survey address the Fremantle Eastern Bypass (FEB) and other relevant matters?*

A: There was no Needs Survey in 2002. These have only been conducted in 1998 and 2000.

A related question was asked in 1998, about the need for the Fremantle to Rockingham Highway and of those surveyed 66.1% supported this road and 26.6% opposed it. If you took into account the previous Council decision was that if the FEB went ahead, the road to Stock Road should also be constructed.

In 2000 the Community Needs Survey asked whether the Roe Highway should be extended through the district. 57.4% said Yes and 32.2% said No.

Q: *Has Council responded in writing to the WAPC and City of Fremantle regarding the stated flaw in the advertising of the above amendments?*

A: No. This is a recommendation to be considered by the Council tonight. A submission could be put to that amendment but the item must go to Council first.

Q: *Do any of the following additional City of Cockburn's Corporate Strategic Plan Key Result Areas apply to this Recommendation:*

- *'to foster a sense of community within the district generally and neighbourhoods in particular;*
- *to conserve the quality, extent and uniqueness of the natural environment that exists within the district; and*
- *to conserve the character and historic value of the human and built environment'?*

A: No. MRS Amendment 1055/33 is wholly within the City of Fremantle, these issues would be addressed by the City of Fremantle.

Q: *Is the Council certain that there are no implications in respect to this*



section of the Act?

A: Yes. This is simply a submission on a proposed MRS Amendment to which submissions have been invited, in accordance with an existing statutory process.

Bob Retallack, Coogee spoke in relation to the visit by Council representatives to the East Coast Canals/Marinas. As the canal development proposed at Port Coogee will be the first of its kind in Western Australia (as the well known east coast developments are Mandurah style owner initiated excavations either in inland waterways or mangrove flats); and as the Mayor has a publicly stated preference for a Noosa style development which is misleading since Noosa's canals are on inland waterways and their beaches and headlands, rather than being covered by breakwaters, are vigorously protected; Mr Retallack felt it was imperative that Council ensure the Mayor and CEO's visit to the east coast results in "hard" data potentially of use to the community. He requested that a written report, substantiated by photographic evidence of the sites visited, be tabled in Council and placed in public domains so electors will have some documentation on which to base their opinions of the Port Coogee project.

Mr Retallack also said that he was pleased to see that a truckload of asbestos that was illegally dumped on land adjacent to the Omeo wreck had finally been removed. However the fence of the Shilken tannery site was apparently flattened during demolition and people are still walking through the area which is dangerous. In view of the damning report of the Asbestos Diseases Society's Occupational Health & Safety Officer, which indicates widespread dispersion of asbestos occurred during the demolition, is it Council's responsibility to demand repair of the fence and require public warnings to be posted.

Director Planning advised that a notice had been given to the owners of the property to make it safe but he would follow the matter up further.

John Marsden, representing the Yangebup Progress Association stated that they had, a few years ago, appealed to the then Commissioners to reject an application for a waste treatment plant in Bibra Lake. Fortunately the Commissioners deferred that decision and it was later rejected by the Elected Council. Recent events have now shown that there are possible problems with such plants.

It has been reported recently in the press, that the Water Corporation wants to locate the Brookdale Waste Treatment Plant and the Henderson Water Authority site was one option raised. He was very concerned at this suggestion and asked Council to put things in place now to ensure that does not occur. Mr Marsden asked what was Council's position on this possible option and if Council had a plan of attack to stop this from happening.



Mayor Lee advised that a briefing has been arranged by the Water Authority to occur soon and that once Council has all the information and made investigations, a position will be established.

Bert Renner, Spearwood referred to the latest edition of the Cockburn Soundings and in particular, the surveys that require completion and return. Firstly he stated that each household only receives one copy and where the occupants have different opinions, how were they to complete the form. Also that one survey was on the back of the nomination to become a Councillor at the next election so which form should he complete. He asked that his comments be considered next time a survey form is to be included in an edition.

Joe Branco, representing the North Lake Residents Association, stated that a few months earlier, he had tabled a report on the Council opposing Roe Highway Stage 8. He thanked Council for having the courage to support the community's viewpoint then. Now he is doing the same with a report from the EPA which follows through in saying how important that area is. He congratulated Council on supporting the protection of the environment and encouraged them to do so again.

Brett Wallington, Jandakot in regards to the surveys in the latest edition of the Cockburn Soundings and in the media, asked how those people in the rural areas are supposed to know if they do not receive the local papers or have the Soundings delivered.

Mayor Lee responded that 'The Soundings' is also distributed to the rural areas but if Mr Wallington did not receive the latest edition, the CEO would ensure one is sent out immediately. However with regards to the distribution of the local newspapers, he will need to take that issue up with the newspaper themselves.

Ros Caylif, ratepayer spoke in relation to item 14.1. She stated that the State Government's election promise was to delete the FEB from the MRS which was a result of community concern about the consequences of the construction of the FEB. At the eleventh hour, voices claiming to represent the interests of a large group of people questioned this decision with the main issue focusing entirely on transport issues. That stance ignores social, environmental, aboriginal and sustainability issues.

The City of Cockburn has a policy of reconciliation with the Aboriginal community; a sustainability policy and claims to conserve the quality, extent and uniqueness of the natural environment. Clearly construction of the FEB and Roe Stage 8 contravenes those policies.



Ms Caylif mentioned the significance of Clontarf Hill, Bibra Lake and North Lake's environmental and aboriginal importance. The Fremantle Green Plan also includes this area as an important corridor link, vital to the survival of various species. She tabled copies of a survey that the Friends of Clontarf Hill and residents of the adjacent bushland corridor conducted which indicates that the majority of the local community wish to retain and conserve this unique site for future generations and the enjoyment of the community.

Peter Tagliaferri, Mayor of Fremantle and Cockburn Ratepayer, felt that there were several shortcomings in the Officer's Report for item 14.1 such as the possibility of a more sustainable approach to transport planning (as adopted in the UK & USA) which has been totally overlooked; the TravelSmart program, which reduces car use, was not mentioned; does not take account of surveys conducted by the Dept of Transport that indicated the public favours investment in sustainable travel modes rather than more roads; opinion has changed since 1992 and sustainability is now firmly a public concern; is contradictory – on the one hand building a bypass takes traffic off Carrington St and Hampton Rd is regarded as a disadvantage to businesses on these streets and on the other, not building a bypass is a disadvantage to businesses in Fremantle; fails to acknowledge long term environmental effects on Clontarf Hill; and other points.

Mr Tagliaferri encouraged the Council to vote against the officer's recommendation and support the City of Fremantle's position.

Mayor Lee wished to clarify for all present that the officer's report was not a study or analysis of the environmental, social or traffic issues, but simply a response to the MRS amendment. It does not go into all the details.

Margaret Wheeler, resident of Fremantle stated that in the past year, she has found public transport in her area to be inadequate which has forced her to get a car. She felt highways produce more cars and make cars more necessary. Also she has been shocked by the lack of road reserves and the number of native plants that would be threatened by Stage 8 of the Roe Highway.

Mayor Lee advised that Elected Members would be going on a tour of the conservation areas in the community on Thursday. Council does allocate a substantial amount of funds to environment issues so it is an issue of great importance.

Joe Branco, in relation to item 13.1, supported the Council in not changing the border on Farrington Road but asked Council to reject that there is an opportunity for Melville Council to revisit this issue. The part of Farrington Road that has not been built should not be built. Request that Council does not look at negotiating with Melville to change the border.



In relation to item 14.1, he referred to a statement on page 17 “*any alternative for the Fremantle Eastern Bypass should have a lesser impact on the community than the FEB may have had*”. The Government has put out a six point plan offering alternatives and these alternatives have lesser impact on the communities. Based on that line alone, freight to rail improvement on traffic efficiency to the port needs to be looked at and unless the community oppose the deletion of this, nothing will occur. It is requested that Council not support the recommendation.

Robert Sheehey, Banjup regarding item 14.18 stated that the officer’s report was incorrect on some points that he wished to clarify being that their application did mention 6 sheep and they do pick up the manure. He also stated that half of his property is made up of peat which retains nutrients and he has planted several trees to reduce nutrients. The other half of his property has green grass that requires nutrients and he is allowed to fertilize that without any problem. It also seems laughable that the people who live across the road in Atwell (over the water mound), come and get all the manure from his property to fertilize their gardens and that is OK. He was also critical that the football oval and parks in the area are fertilized several times a year.

Mayor Lee clarified that it is DEWCP that has control over the water mound applications.

Jodie Tapp, Banjup stated that her parents purchased their land about 13 years ago because they could have horses. There is a pony club and trotting track operating up the road and yet her parents are not allowed to have horses, even though they do pick up the manure because they are responsible owners and she found it quite hard to comprehend how that works where people can fertilize their lawns and others can’t have horses. DEWCP has agreed to approve their application for 2 horses with some conditions that they are following and ask that Council now allow them to continue doing what they have done for the last 13 years.

Rosemary Sheehey, Banjup tabled a copy of a Chemical Water Analysis that was done on the drinking water of their property to show that the nutrients in their water are well within the allowable limits.

Darryl Smith Coogee, in relation to item 14.10, stated that he has been eagerly awaiting the new café to come and expressed extreme disappointment at the recommendation in the agenda and that the officer’s report stated they had not included sources of revenue. He felt that the consultants appear to have conducted a very basic study that was residentially driven. Also it has been perceived the development of the surf club as a negative for the café however, the surf life saving club brings people to the beach and the existing deli has benefited substantially from their



activities. He urged Council to pursue a business case to look at realistic revenue streams; look at other options and perhaps it would be appropriate to then test the market with more realistic options and also look at a business plan to improve Coogee Beach.

Patrick Thompson in regards to item 14.3, stated that he used to live near Watsons and now lives only a little further away in Spearwood. He agreed there was an odour on occasions but had improved dramatically and believed Watsons was making a definite effort to reduce odours. He believed a final decision needed to be made to have the industry here or not and that he did not have a problem with it.

Before closing Question Time, the Mayor showed a framed charcoal sketch to the gallery which was presented to Council by the makers of a small film called "Destine", filmed at Naval Base recently, in appreciation for Council's support.

8. CONFIRMATION OF MINUTES

8.1 (MINUTE NO 1907) (OCM 18/02/2003) - ORDINARY COUNCIL MEETING - 21/1/2003

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting held on Tuesday, 21 January 2003 be confirmed as a true and accurate record.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

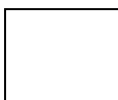
9. WRITTEN REQUESTS FOR LEAVE OF ABSENCE

Nil

10. DEPUTATIONS AND PETITIONS

10.1 (MINUTE NO 1908) (OCM 18/02/2003) –

Deputy Mayor Graham tabled a petition that reads "*We the undersigned would like the walkway closed due to robberies and unlawful use between Haring Green and Empress Crescent, Atwell.*"



COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Cllr A Tilbury that the petition be received and referred for the preparation of an officer's report.

CARRIED 9/0

11. BUSINESS LEFT OVER FROM THE PREVIOUS MEETING (If adjourned)

Nil

12. DECLARATION OF COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS IN THE BUSINESS PAPER

Nil

13. COUNCIL MATTERS

13.1 (MINUTE NO 1909) (OCM 18/02/2003) - PROPOSED BOUNDARY AMENDMENT - CITY OF MELVILLE (1113471) (DMG) (ATTACH)

RECOMMENDATION

That Council informs the City of Melville that:

- (1) it supports the relocation of the District boundary between the Cities of Melville and Cockburn to follow the northern side of the Farrington Road Reserve between North Lake Road eastwards to the point where the road becomes a dual carriageway and then becoming the central alignment from that point extending eastwards to the Kwinana Freeway (as per the attachment), at this stage; and
- (2) it commits to a review of the alignment to follow the central alignment of the Reserve following an opportunity to view the Murdoch University Development Plan for any traffic management implications the Plan may have on the presently unmade portion of Farrington Road.



COUNCIL DECISION

MOVED Clr L Humphreys SECONDED Clr M Reeve-Fowkes that Council informs the City of Melville that:-

- (1) it supports the relocation of the District boundary between the Cities of Melville and Cockburn to follow the northern side of the Farrington Road Reserve between North Lake Road eastwards to the point where the road becomes a dual carriageway and then becoming the central alignment from that point extending eastwards to the Kwinana Freeway (as per the attachment), at this stage; and
- (2) it commits to a review of the Boundary alignment should this be necessary once the Murdoch University Development Plan has been finalised.

CARRIED 9/0

Explanation

As Council has not agreed that Farrington Road should be a dual carriageway, this matter does not come into consideration during discussion on the boundary changes. This is in line with recommendations of a meeting held between representatives of Cockburn and Melville Council's at which Clrs Humphreys and Reeve-Fowkes were in attendance.

Background

This matter has been under consideration from Council since November 2001, when Council undertook a survey of residents in the portion of North Lake bounded by Farrington Road, North Lake Road and the City of Melville boundary. The survey favoured a re-alignment of the current boundary to follow Farrington Road, thus ceding that portion of North Lake to the City of Melville. However, the exact alignment has most recently been a point of conjecture between both Councils.

Submission

To agree to the northern boundary of the Farrington Road Reserve to form the boundary between the Cities of Melville and Cockburn, from North Lake Road eastwards until the point where Farrington Road becomes a dual carriageway and thereafter the central alignment, to the junction with Kwinana Freeway, with a review to a further amendment using the centre line, following the completion of the Murdoch University Development Plan.



Report

Following the most recent deferral of this matter in December 2002, the Local Government Advisory Board has informed both the Cities of Melville and Cockburn that it will not recommend any boundary changes between the Councils in the subject area, until some agreement between the Councils has been reached. With this in mind, representatives from both Councils met in January 2003, to discuss issues of importance and concern to both, in accordance with Council's directive.

Melville's issues were primarily associated with the Murdoch University Development Plan which is in the final planning stages. Of priority importance to the City of Melville will be access and egress issues to the southern side of the development, for which any internal road system will require use of Farrington Road.

These concerns are valid given that the adjoining development will require approvals to be given by a neighbouring authority in relation to access points on Farrington Road if the boundary remains along the northern alignment of the road reserve.

With the City of Cockburn concerned that its ability to properly plan for the construction of the unmade portion of Farrington Road will be compromised if the boundary is drawn along the central alignment initially, representatives of both Councils are confident that their concerns could be adequately addressed with the release of the Murdoch University Development Plan, which will identify its traffic management issues. While the timing of the release of this Plan is uncertain, it is probable that a Draft will be available during the latter half of the 2003 calendar year.

With this in mind, both Council's representatives were prepared to seek the approval of the representative Councils to agree to the northern alignment of Farrington Road as the boundary amendment point eastwards to where the road becomes dual carriageway and the central alignment thereafter to the junction of the Kwinana Freeway for the short term, in order to rationalise the ill-defined boundary as it currently stands. Both Councils will commit to a review of this position to a central alignment, having considered the Development Plan, and its impact on traffic management issues related to Farrington Road.

This is considered a fair and equitable position which will enable the relevant property "handover" issues to be dealt with in time for the forthcoming (2003/04) rating year, with the Murdoch University Development matter being able to be viewed in isolation without the same imperatives under consideration.



Strategic Plan/Policy Implications

Key Result Area “Maintaining Your Community Facilities” refers.

Farrington Road has been classified as a District Distributor Road “A” in Council’s adopted road hierarchy. To effectively perform its intended function in accordance with recognised standards, a carriageway will be required to be constructed in the foreseeable future due to excessive traffic currently using the road.

Budget/Financial Implications

No costs associated with the statutory procedures involving boundary changes are attributed to the City of Cockburn, as it is understood the City of Melville will accept these expenses. In any case, these costs are minor.

No road works are programmed to be undertaken in widening Farrington Road in the current (2002/03) budget.

Legal Implications

The Local Government Advisory Board is the Statutory Body responsible for boundary adjustments between Local Governments. The Board considers proposals in accordance with Part 3 of Schedule 2.1 of the Local Government Act, 1995. The Board may recommend to the Minister that any proposal be either accepted or rejected.

Community Consultation

Consultation with the residents of the affected area of North Lake has already been undertaken, resulting in a majority support for the boundary amendment.

Any consultation in respect of constructing Farrington Road to dual carriageway standard should be undertaken on a widespread basis, involving both affected residents of the area and road users from Cockburn alike.

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

Nil

- 13.2 (MINUTE NO 1910) (OCM 18/02/2003) - OBJECTION TO NOTICE SERVED PURSUANT TO SECTION 3.25 OF THE LOCAL GOVERNMENT ACT, 1995 - G. GUMINA, 3 GUMINA PLACE MUNSTER (3317187) (DMG) (ATTACH)**

RECOMMENDATION



That Council advises Mr G Gumina that it is prepared to vary the requirement for the overgrown vegetation at 3 Gumina Place, Munster, to be removed from within 14 days of the date of the Notice (i.e. 22nd January, 2003) to within 14 days of the time taken to remove overgrown vegetation from the verge adjoining 3 Gumina Place and from the nearby verge fence line adjoining Cable Ski Park which is the responsibility of Council.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0

Background

As a result of an increase in complaints received by Council on the unsightly state of some properties within the District, a programme aimed at identifying properties deemed as unacceptable and having the concerns rectified, was initiated.

The programme was notified to the public through the local newspapers, and, more recently, "Cockburn Soundings" explaining the primary reason for this action was to promote Council's Mission Statement and encourage conformity throughout the District with its ideals.

From that point on, properties were identified as being sub-standard through a number of sources, being reports from either members of the public, Elected Members or staff.

Affected property owners were originally sent a letter seeking their cooperation in addressing the concerns highlighted.

If, following a period of time allowed for remediation works to be undertaken, the property was still unsightly, the owner of the property was served with a Notice pursuant to Sec. 3.25 of the Act, requiring specific works to be undertaken to correct the identified problem. Should the recipient of the Notice disagree with its requirements, an Objection or Appeal against the decision may be lodged, pursuant to Sec. 9.5 or Sec. 9.7 of the Act.



Submission

An objection has been lodged by the owner of 3 Gumina Place, Munster, against the Notice requiring the removal of unsightly vegetation (wild oats) from the property.

Report

The property at 3 Gumina Place, Munster, was identified as containing unsightly material during a routine inspection of the District. Simultaneously, a nearby Council sump site and verge was also deemed to be unsightly and a works request was submitted to have the necessary works undertaken to ensure compliance with the programme.

In the meantime, no action has been taken on removing the overgrown wild oats from 3 Gumina Place.

Accordingly, the owner was sent a Notice requiring the removal of the vegetation from the property within 14 days, which expired on 22 January, 2003.

The owner has lodged an Objection against the requirement citing a nearby Council sump site and verge adjoining Cable Ski Park as being in a worse condition and believing that Council should be setting an example.

Although this is a valid point, it should be stated that an order has been lodged for the sump site and verge to be cleared. This task has been included in Council's works programme and will be completed in due course. The sump has since been cleared and the verge adjoining Cable Ski Park has been predominantly cleared, however, further work is required along the fence line. In addition, the verge adjoining 3 Gumina Place requires some attention by Council.

Even though it is not acceptable to refuse to undertake required works on the basis of Council controlled land also requiring attention, the overgrowth at 3 Gumina Place is not sufficiently bad to warrant its immediate removal and it is therefore not unreasonable to allow the owner a similar timeframe as that applicable to the Council itself.

Strategic Plan/Policy Implications

Council's Mission Statement "To make the district of the City of Cockburn the most attractive place to live, work and visit in the Perth Metropolitan Area" refers.



Budget/Financial Implications

Any costs incurred by Council in ensuring compliance with the Notice will be recoverable from the owner. Funds available to clear Council Sump Site and verges.

Legal Implications

Part 3 Division 3 Subdivisions 2 and 3 and Part 9 Division 1 of the Local Government Act, 1995, refers.

Community Consultation

Advertising of the programme to target unsightly properties was undertaken through local newspapers and, more recently, "Cockburn Soundings".

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

Nil.

13.3 (MINUTE NO 1911) (OCM 18/02/2003) - OBJECTION TO NOTICE SERVED PURSUANT TO SECTION 3.25 OF THE LOCAL GOVERNMENT ACT, 1995, A.S. RYAN, 179 YANGEBUP ROAD, YANGEBUP (4412361) (DMG) (ATTACH)

RECOMMENDATION

That Council inform the owner of 179 Yangebup Road, Yangebup, that::

- (1) the objection lodged against the Notice served on them pursuant to Sec. 3.25 of the Local Government Act, 1995, (the Act) is dismissed, and
- (2) clearing of the vegetation from the property is required to be undertaken by 10 March, 2003, unless an appeal is lodged pursuant to Sec. 9.7 of the Act.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0



Background

As a result of an increase in complaints received by Council on the unsightly state of some properties within the District, a programme aimed at identifying properties deemed as unacceptable and having the concerns rectified, was initiated.

The programme was notified to the public through the local newspapers, and, more recently, "Cockburn Soundings" explaining the primary reason for this action was to promote Council's Mission Statement and encourage conformity throughout the District with its ideals.

From that point on, properties were identified as being sub-standard through a number of sources, being reports from either members of the public, Elected Members or staff.

Affected property owners were originally sent a letter seeking their cooperation in addressing the concerns highlighted.

If, following a period of time allowed for remediation works to be undertaken, the property was still unsightly, the owner of the property was served with a Notice pursuant to Sec. 3.25 of the Act, requiring specific works to be undertaken to correct the identified problem. Should the recipient of the Notice disagree with its requirements, an Objection or Appeal against the decision may be lodged, pursuant to Sec. 9.5 or Sec. 9.7 of the Act.

Submission

An objection has been lodged by the owner of 179 Yangebup Road, Yangebup, against the Notice requiring the removal of unsightly vegetation from the property.

Report

The property at 179 Yangebup Road, Yangebup, was originally identified as containing unsightly dried vegetation during a routine inspection of the District.

Subsequently, the owner was sent a standard letter seeking cooperation in removing the unsightly material. A further inspection of the property in early January, 2003, revealed that no attempt had been made to remove the offending material and, consequently, it remained visually unsightly.

A formal Notice was issued pursuant to Section 3.25 of the Act requiring the property owner to remove the vegetation by 22 January, 2003. The owner was advised of the Objection and Appeal rights and, as a result, an Objection was received on 21 January, 2003.



The grounds of the Objection is that assistance was not available at that time of the year, due to the New Year's break, to enable the required work to be done.

It is apparent that no effort has been made to clear the vegetation and the objection did not specify a time by which the vegetation could or would be cleared.

Accordingly, it is not considered the Objection has any validity and should be dismissed.

Strategic Plan/Policy Implications

Council's Mission Statement "To make the district of the City of Cockburn the most attractive place to live, work and visit in the Perth Metropolitan Area" refers.

Budget/Financial Implications

Any costs incurred by Council in ensuring compliance with the Notice will be recoverable from the owner.

Legal Implications

Part 3 Division 3 Subdivisions 2 and 3 and Part 9 Division 1 of the Local Government Act, 1995, refers.

Community Consultation

Advertising of the programme to target unsightly properties was undertaken through local newspapers and, more recently, "Cockburn Soundings".

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

Nil.

13.4 (MINUTE NO 1912) (OCM 18/02/2003) - OBJECTION TO NOTICE SERVED PURSUANT TO SECTION 3.25 OF THE LOCAL GOVERNMENT ACT, 1995, V DROPULICH, LOT 303 (NO. 108) BARRINGTON STREET, BIBRA LAKE INDUSTRIAL ESTATE (3315372) (DMG) (ATTACH)

RECOMMENDATION

That Council advises Mr V Dropulich that it is prepared to vary the requirement for the overgrown vegetation at Lot 303 (No. 108) Barrington Street, Bibra Lake to be removed from within 14 days of the date of the Notice to a requirement that the vegetation be removed at



the same time as the annual firebreak is installed in 2003 (i.e. approximately October, 2003).

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0

Background

As a result of an increase in complaints received by Council on the unsightly state of some properties within the District, a programme aimed at identifying properties deemed as unacceptable and having the concerns rectified, was initiated.

The programme was notified to the public through the local newspapers, and, more recently, "Cockburn Soundings" explaining the primary reason for this action was to promote Council's Mission Statement and encourage conformity throughout the District with its ideals.

From that point on, properties were identified as being sub-standard through a number of sources, being reports from either members of the public, Elected Members or staff.

Affected property owners were originally sent a letter seeking their cooperation in addressing the concerns highlighted.

If, following a period of time allowed for remediation works to be undertaken, the property was still unsightly, the owner of the property was served with a Notice pursuant to Sec. 3.25 of the Act, requiring specific works to be undertaken to correct the identified problem. Should the recipient of the Notice disagree with its requirements, an Objection or Appeal against the decision may be lodged, pursuant to Sec. 9.5 or Sec. 9.7 of the Act.

Submission

An objection has been lodged by the owner of Lot 303 (No. 108) Barrington Street, Bibra Lake Industrial Estate against the Notice requiring the removal of unsightly vegetation (dried wild oats) from the property.



Report

The property at Lot 303 (No. 108) Barrington Street, Bibra Lake Industrial Estate, was identified as containing unsightly material (dried wild oats) in a routine inspection of the District.

Subsequently, the owner was sent a letter seeking cooperation in removing the unsightly material. A further inspection of the property in late December, 2002, revealed that no attempt had been made to remove the material.

A formal Notice was issued pursuant to Section 3.25 of the Act requiring the property owner to remove the vegetation by 27 January, 2003.

The owner was advised of the Objection and Appeal rights and, as a result, an Objection was received on 24 January, 2003.

The grounds of the Objection are quite lengthy and are shown on the attachment to the Agenda. Of significance, are items 2, 5 and 8 of the objection grounds.

The appearance of this lot should be fairly viewed in relation to its proximity and location within an Industrial Estate.

The general condition of the property is in keeping with its surrounds and it is doubtful whether the works being required would raise the level of visual amenity within the Industrial area.

Of further note, is the statement that the owner would have considered the works as part of the annual firebreak clearing which is undertaken around October of each year.

Given that the condition of this property does not have an impact on the appearance of the surrounding area, it is considered reasonable that, given the nature and volume of work required to reduce and remove the offending vegetation, **Council** defer the requisition and make it effective at a time coinciding with the installation of the annual firebreak to the property, estimated to be around October, 2003.

Strategic Plan/Policy Implications

Council's Mission Statement "To make the district of the City of Cockburn the most attractive place to live, work and visit in the Perth Metropolitan Area" refers.

Budget/Financial Implications

Any costs incurred by Council in ensuring compliance with the Notice will be recoverable from the owner.



Legal Implications

Part 3 Division 3 Subdivisions 2 and 3 and Part 9 Division 1 of the Local Government Act, 1995, refers.

Community Consultation

Advertising of the programme to target unsightly properties was undertaken through local newspapers and, more recently, "Cockburn Soundings".

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

Nil.

14. PLANNING AND DEVELOPMENT DIVISION ISSUES

14.1 (MINUTE NO 1913) (OCM 18/02/2003) - PROPOSED METROPOLITAN REGION SCHEME AMENDMENT 1055/33 - FREMANTLE EASTERN BYPASS SUBMISSION (9105533) (SMH) (ATTACH)

RECOMMENDATION

That Council:

- (1) receive the report;
- (2) oppose the deletion of the Fremantle Eastern Bypass from the Metropolitan Region Scheme as proposed by Metropolitan Region Scheme Amendment 1055/33, until such time as:-
 1. the effect of the six (6) point freight traffic plan published in "Better traffic planning for Perth's southern suburbs" by the Department for Planning and Infrastructure in 2002 to be implemented by the State Government has produced the desired outcomes, to the satisfaction of the affected local governments;
 2. a suitable alternative to the Fremantle Eastern Bypass alignment is identified which has a lesser impact on the community than may have been associated with the operation of the Bypass;
- (3) in the event that the Fremantle Eastern Bypass reservation is retained that it be planned to be constructed between Stirling Bridge and Stock Road, Hamilton Hill utilising the Roe Highway Stage 8 reservation as provided for in the Metropolitan Region



Scheme ;

- (4) forward a copy of the report to the Western Australian Planning Commission for its consideration;
- (5) challenge the validity of the public advertising period advertised in the Government Gazette published on 12 November 2002 and 17 December 2002, with the WAPC on the basis that the copies of the relevant plans and reports explaining the proposed changes to the City of Fremantle Town Planning Scheme No. 3 Amendment No. 57 were not made available at all the places nominated in the gazette and that it be re-advertised for the purposes of public comment.

COUNCIL DECISION

MOVED Cllr V Oliver SECONDED Cllr L Humphreys that Council:

- (1) receive the report; and
- (2) support the deletion of the Fremantle Eastern Bypass from the Metropolitan Region Scheme Amendment 1055/33.

CARRIED 7/2

Explanation

The Metropolitan Freight Network Review (Freight Planning Congress) recommended that the best way to address traffic growth problems with freight movement was to upgrade existing roads and other non-road building options. Another highway bisecting the suburbs is not required.

Background

The inclusion of the Fremantle Eastern Bypass (FEB) has been a contentious issue since its incorporation in the Metropolitan Region Scheme (MRS) by the Tonkin Government in 1973.

In 1992, the Lawrence Government had the FEB deleted from the MRS by Amendment 880/33A.

In 1998, the Court Government reinstated the FEB into the MRS by an Act of Parliament.

In 2002 the Gallop Government proposed to once again delete the FEB through MRS Amendment 1055/33.



The WAPC has called for public submissions on the proposed deletion of the FEB, which closes on 12 March 2003.

It should be noted that the advertising of the MRS Amendment 1055/33 and the complementary City of Fremantle Town Planning Scheme No. 3 Amendment No. 57 was not in accordance with the Government Gazettes published on 12 November 2002 or 17 December 2002.

The notice dealt with the MRS and local scheme amendments jointly and advised that “copies of the relevant plans and reports explaining the proposed changes to the schemes..... for public inspection at each of the following places –“

Copies of the City of Fremantle local scheme Amendment No. 57, were not made available in accordance with the notice.

Given this, the validity of the advertising period should be challenged.

It is important to point out that this amendment is to do with the deletion of the FEB reserve, and has nothing to do with the construction of the Bypass. The planning, design and construction of the Bypass is quite a separate issue, the timing of which is totally within the control of the State Government.

Submission

The WAPC proposes to delete the FEB primary regional road reserve from the MRS, between High Street, Fremantle and Healy Road, Hamilton Hill and reclassify the land to Urban.

This proposal is based on the Commission’s view that the FEB is not required to serve the needs of the region because of the need to:-

- achieve a more sustainable approach to addressing traffic growth;
- take account of changing land use in the region from when the Bypass was first determined; and
- recognise social and environmental values in the community.

The Metropolitan Freight Network Review (understood to be the Freight Planning Congress conducted in 2001/2002) recommended that the best way to address traffic growth problems with freight movement was to upgrade existing roads and other non-road building options.

Report

A comprehensive report on the proposed MRS Amendment 1055/33 is attached to the Agenda.



The MRS Amendment Report does not contain any substantiated technical reasons for deleting the FEB.

There is no doubt that the FEB is a strategically important regional road within the metropolitan road network.

The FEB has the potential to operate as a regionally important road even if the Roe Highway (Stage 8) is not built between the Kwinana Freeway and North Lake Road. The FEB has the potential to be constructed as either a grade separated or an at grade road link between High Street and either Stock Road or North Lake Road, utilising the Roe Highway (Stage 8) reserve as currently provided for in the MRS. This position is not contrary to the Council's reasons not to support the construction of Roe 8 through the Bibra wetlands.

The alternative option being examined to replace the FEB by the State Government is to upgrade Stock Road, Leach Highway and High Street as the route to Fremantle Port for freight traffic.

It is assumed that this localised road upgrade will be the focus of freight traffic converging towards the port from Leach Highway, South Street and Stock Road. Although it is not clear as to what road upgrade is contemplated, this option appears to have a number of difficulties associated with it, namely:-

- The west-south intersection of Leach Highway and Stock Road is:-
 - ❖ acute making intersection design difficult
 - ❖ in a natural depression making heavy vehicle movement difficult and inefficient
 - ❖ locked in by significant industrial development on the south-west corner.
- The road upgrade relies on the successful implementation of the non-road building options which assumes that:-
 - ❖ more container freight will be transported by rail
 - ❖ inland container terminals will be built
 - ❖ there will be improved management of the truck loading and booking system at the port.
- The non-road building options associated with the road upgrade are not within the control of the State, but to be implemented by the private sector and be subject to public and industry acceptance.
- The bringing forward of planning and construction of the Outer Harbour at Kwinana will be subject to EPA approval and public acceptance.
- The fact that the City of Fremantle does not support the widening of High Street to 6 lanes.



- The fact that residential properties between Chudleigh Street and Wood Street have direct driveway access onto High Street.
- The right-turn junction from High Street into Stirling Highway, which serves Fremantle Port with a two truck channelisation is not sustainable given the projected growth of container trade through the port, and will need substantial modification. Such modification may impact on all the existing residents immediately adjacent to the 'T' junction. The current junction also has an adverse camber.
- The fact that the extent of the impact of the proposed road upgrade on existing residents in Willagee, Palmyra and Fremantle will be about the same if not greater than those potentially affected by the FEB alignment. This is because the FEB mainly passes through industrial land, a landfill site and Clontarf Hill Reserve, with limited impact on existing residences.

Given the above points, it is clear that a satisfactory alternative route for freight and passenger traffic to serve the port and destinations north of the river has not been identified. The alternative proposal of limited road upgrading, together with the non-road building initiatives are not robust and may not be deliverable.

Moreover, the report concedes that the decision to initiate the deletion of the FEB from the MRS was undertaken without a:-

- road network analysis of traffic impacts
- social impact assessment
- cost/benefits analysis of alternatives including land acquisition and property implications
- environmental assessment of all alternatives

It would be undesirable at this stage to delete the FEB Reserve, without knowing that the six (6) point freight traffic plan promoted by the State Government in "Better traffic planning for Perth's southern suburbs" published by DPI in 2002, has been effective.

The successful deletion of the FEB relies on the other "non-road building" initiatives.

Another important point is that the initiative to delete the FEB from the MRS appears to be based solely on the outcome of the Freight Network Review (Freight Planning Congress). Freight is only a small part of the transportation using the regional road system. The FEB will provide for all traffic, including public transport, and cannot be seen as only serving the needs of freight travelling to and from the port. A total traffic analysis needs to be undertaken.

The State Government is solely responsible for the FEB, and even if the FEB Reserve continues to exist in the MRS, there is no obligation



on the Government to build it. Therefore, it is considered prudent for the Government to implement its 6 point plan, evaluate the outcome and if successful, then examine alternatives to the FEB. If on the other hand the 6 point plan is not successful, then at least the FEB option has not been prematurely eliminated as a means of addressing possible future regional traffic problems.

In addition, at this stage no decision has been made about the future of the Roe Highway Stage 8, which will also be subject to public comment. Until the future of this regional road is known it seems inappropriate to be considering the future of the FEB as the two roads are interrelated.

Given this, it is recommended that until such time as the Government has clearly identified a suitable alternative freight and passenger traffic route to replace the FEB, and the Government has demonstrated that the 6 point plan has been effective, the Council oppose the deletion of the FEB at this time. This is a responsible position to take.

Any alternative for the FEB, should have a lesser impact on the community, than the FEB may have had.

It is important to note that the EPA has not formally identified any social or environmental impacts associated with the operation of the FEB, except for Clontarf Hill. The environmental consultants, on behalf of MRWA, determined that the construction of the FEB through the Hill, a distance of less than 300 metres, was manageable.

If the FEB is retained, following the assessment of the public submissions, then the Council should consider re-affirming its resolution of August 1999, that the FEB be built from Stirling Bridge to Stock Road, utilising the Roe Highway (Stage 8) reserve.

Some of the advantages of retaining the FEB have been included in a number of reports prepared by Main Roads WA up until August 2000, such as:-

- Remove tens of thousands of motor cars, trucks and semi-trailers from local roads in Fremantle and Cockburn,
- Provide a vital north-south link in Perth's regional road network,
- Reduce accidents on local Fremantle roads,
- Increase efficiency of commercial freight transit to and from Fremantle's port,
- Reduce vehicle operating costs substantially over the next 30 years,
- Reduce vehicle accidents costs,
- Reduce business and commercial travel time,
- Reduce existing and future traffic noise, vibration and congestion on Fremantle roads,



- Reduce travel time from areas south of Fremantle to the northern suburbs and to the inner harbour,
- Help to reduce vehicle emissions in Fremantle,
- Provide the opportunity to calm traffic along Hampton Road.

There are various other advantages of retaining the FEB reserve contained in the report and in the attachment to the report.

Some of the disadvantages of retaining the FEB from the MRS could be:-

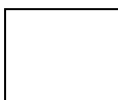
- The road will impact on part of the White Gum Valley and Beaconsfield localities between Stack Street and Lefroy Road by changing the existing land use pattern within the FEB reserve,
- By attracting traffic away from the commercial properties fronting Hampton Road and Carrington Street,
- Adverse traffic impacts on the City of Cockburn if the southern end of the Bypass is not connected to either Cockburn Road, Carrington Street or Stock Road. To terminate the FEB at Rockingham Road, could increase the through traffic using this road. This however is a design and construction issue not a matter relating to the retention of the reserve,
- The continued "holding" of the reserve, largely in government ownership, could cause the affected properties to become blighted.

The State Government's current six (6) point traffic plan involves:-

- Extend Roe Highway to Kwinana Freeway.
- Put more freight on rail.
- Build inland container terminals.
- Make better use of our roads.
- Plan now for the Outer Harbour at Kwinana.
- Improve existing roads.

The six (6) point traffic plan is fully supported, and is a proper approach to traffic and transportation planning, and this should not be seen as innovative but an expectation of the State's planning agencies.

However, the six (6) point traffic plan cannot necessarily be used as the rationale to delete the FEB from the MRS. The plan provides a sound basis for dealing with the traffic network and the interaction of the different transport types and modes of travel, of which the FEB forms part. The implementation of the plan does not logically lead to the conclusion that the FEB is not required in either the short or long term.



Some of the advantages of deleting the FEB from the MRS could be:-

- no change in the road pattern in the localities of Fremantle, White Gum Valley, Beaconsfield and Hamilton Hill.
- no impact on Clontarf Hill (Although the Environmental Consultants ERM, advise that the impacts are manageable).
- provide the community with certainty, given that the issue has been a point of discussion and community interest for the past 30 years. (Although the Liberal Party has said it will reinstate the FEB reserve if returned to Government Cockburn Gazette 14/12/02).
- re-development of the Government owned land for residential and other compatible uses.
- no potential adverse impact on the southern end of the FEB, if the FEB was to connect into Rockingham Road in Hamilton Hill.
- retain through traffic on Hampton Road and Carrington Street in the interests of street front businesses.
- continued use of Fremantle Traffic Bridge for freight traffic using Hampton Road, allowing better use of existing bridge infrastructure.
- reduced need for Roe Highway Stage 8, west of Stock Road.
- The need for the Fremantle to Rockingham Highway is significantly reduced.

Some of the disadvantages of deleting the FEB could be:-

- through traffic continues to use Hampton Road resulting from freight and general traffic travelling from the south using Cockburn Road to access the port and destinations north of Fremantle.
- through traffic continues to use Carrington Street as a defacto bypass link between Leach Highway and Rockingham Road serving the residential suburbs south to Spearwood and Munster.
- increased traffic using Stock Road, Leach Highway and High Street to connect to Stirling Bridge, the port and the northern coastal destinations.
- the 46,000 vpd projected to use the FEB by 2021, will need to be accommodated in the existing road network. Given that this traffic was predicted between Stirling Bridge and the Roe Highway (completed) and the Fremantle to Rockingham Highway, it must be assumed that without the FEB, these traffic numbers will need to be provided for along High Street, Leach Highway, South Street and



Stock Road. This will add to the decline in amenity for residents abutting these roads in terms of noise, vibration, air pollution and quality of life, in the same way as claimed by the opponents of the FEB in White Gum Valley and Beaconsfield, unless steps are taken to minimise the impacts on all of these roads. The primary difference between the two situations is that High Street, Leach Highway and South Street have not been designated as freight routes, whereas the FEB would be designed in accordance with Australian Standards and best practice. High Street and Leach Highway are substandard roads for freight and through traffic because they have frequent controlled intersections and direct property frontages. To retrofit these roads to acceptable standards will be expensive and very difficult.

- the external network benefits rely on the successful implementation of the six (6) point traffic plan, which requires the co-operation of the private sector and the timely development of major works that will be the subject of environmental and community acceptance. Therefore, there is uncertainty in relation to these proposals.
- that it precludes the opportunity to reconsider the construction of the FEB in the future, should it be deemed necessary. The construction of the FEB rests with the State Government.
- reduced access to Fremantle Port and thereby limit its ultimate growth potential.
- through traffic will not bypass Fremantle, and this may adversely affect the viability of the CBD.

For the above reasons, it would be reasonable and proper to retain the FEB reserve until such time as the local and regional implications of deleting it are known.

There is nothing contained in the Amendment Report which provides a logical rationale to support the deletion of the FEB from the MRS at this time.

Strategic Plan/Policy Implications

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

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*



5. Maintaining Your Community Facilities
- *"To construct and maintain roads, which are the responsibility of the Council, in accordance with recognised standards, and convenient and safe for use by vehicles, cyclists and pedestrians."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

Under Section 33 of the MRTPS Act the MRS Amendment 1055/33 is required to be advertised.

The public have until 12 March 2003 to lodge submissions on the proposal.

Under the Act, the Commission is obliged to consider all submissions that have been duly lodged and where a submission contains an objection to the amendment the Commission shall not dismiss the objection until the person making the submission or their agent has been given the opportunity of being heard.

The Commission shall not uphold an objection to the amendment until the hearings have been completed.

After considering all the submissions, a copy of the submissions and a report on the submissions, together with any modifications the WAPC thinks fit is made available to the Minister for consideration and recommendation to the Governor.

In 1992 MRS Amendment 880/33A was introduced to delete the FEB. There were 1032 submissions of which 56% opposed the deletion. The majority of those opposed were from White Gum Valley and Beaconsfield in the City of Fremantle.

Of the 1032 submissions, 271 (26%) were from localities within the City of Cockburn of which 85% opposed the deletion of the FEB and only 15% were in support.

Also from a Council point of view, the Community Needs Survey conducted in 1998 found that of all those surveyed, 66% supported and 26% opposed the development of a major road along the coast between Fremantle and Rockingham, being the proposed Fremantle to



Rockingham Highway (Primary Regional Road) which includes the FEB.

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

Nil.

14.2 (MINUTE NO 1914) (OCM 18/02/2003) - CITY OF FREMANTLE TOWN PLANNING SCHEME NO. 3 - AMENDMENT NO. 57 - LAND WITHIN THE FREMANTLE EASTERN BYPASS (9105533) (SMH)

RECOMMENDATION

That Council:

- (1) receive the report;
- (2) oppose the proposal to amend City of Fremantle Town Planning Scheme No. 3 Amendment No. 57, until such time as:-
 1. the effect of the six (6) point freight traffic plan published in "Better traffic planning for Perth's southern suburbs" by the Department for Planning and Infrastructure in 2002 to be implemented by the State Government has produced the desired outcomes, to the satisfaction of the affected local governments;
 2. a suitable alternative to the Fremantle Eastern Bypass alignment is identified which has the same or lesser impacts on the community than those that may have been associated with the operation of the Bypass;
- (3) provide a copy of the report for the consideration of the City of Fremantle;
- (4) challenge the validity of the public advertising period in the Government Gazette published on 12 November 2002 and 17 December 2002, by the WAPC on the basis that copies of the relevant plans and reports explaining the proposed changes to the City of Fremantle Town Planning Scheme No. 3 Amendment No. 57 were not made available at all the places nominated in the gazette and that it be re-advertised for the purposes of public comment.

COUNCIL DECISION

MOVED Cllr V Oliver SECONDED Cllr L Humphreys that Council:-

- (1) receive the report;



- (2) support the City of Fremantle Town Planning Scheme No.3 Amendment 57, subject to the deletion of the Fremantle Eastern Bypass Reserve from the Metropolitan Region Scheme under proposed Amendment 1055/33; and
- (3) advise the City of Fremantle accordingly.

CARRIED 7/2

Explanation

The City of Fremantle is a prime tourist destination. The Eastern Bypass would disrupt and almost cut Fremantle suburbs in half, creating large streams of traffic through Hamilton Hill and unacceptable environmental damage to Clontarf Hill areas. Urban development on FEB land will create a safer environment for the suburbs White Gum Valley, Beaconsfield and Hamilton Hill.

Background

The WAPC gave approval to the City of Fremantle to advertise an amendment to its Town Planning Scheme No. 3 to provide for the detailed zoning of the FEB reserve, in parallel with MRS Amendment 1055/33 to reclassify the FEB reservation to Urban.

The parallel advertising of the MRS and the local scheme is fully supported.

Public submissions on the City of Fremantle Scheme Amendment 3/57 were called as part of the notice for the MRS Amendment 1055/33.

The submission period closes on 12 March 2003.

It should be noted that the advertising of the MRS Amendment 1055/33 and the complementary City of Fremantle Town Planning Scheme No. 3 Amendment No. 57 was not in accordance with the Government Gazettes published on 12 November 2002 or 17 December 2002.

The notice dealt with the MRS and local scheme amendments jointly and advised that “copies of the relevant plans and reports explaining the proposed changes to the schemes for public inspection at each of the following places-“

Copies of the City of Fremantle local scheme amendment 3/57 were not made available in accordance with the notice.

Given this, the validity of the advertising period should be challenged.



Submission

Amendment No. 57, is confined to the zoning of the FEB reserve between High Street and Healy Road which is the southern boundary of the City of Fremantle.

The proposal, which covers around 18 hectares provides for zones that generally align with those existing on either side of the current FEB reserve.

The residential zone provides for R25, R30, an expansion to the White Gum Valley Primary School Reserve, a Development Zone (DP16) which applies to the industrial zone and the landfill site and an open space reserve over Clontarf Hill.

The inclusion of the Development Zone (DP16) appears to provide for environmental evaluation of suspect sites prior to development. This is considered contrary to the purpose of referring MRS and local scheme amendments to the EPA for assessment under Section 48(A) of the EP Act.

Report

The Amendment 57 is acceptable from a technical viewpoint.

However, as it has been recommended that Council oppose the deletion of the FEB until such time as a suitable alternative route or alignment is identified, it is considered that the same position should be taken in respect to Amendment 57.

The City of Fremantle supports the State Government's plan to delete the Fremantle Eastern Bypass from the MRS.

The City favours alternative proposals that would offer more viable and sustainable approach to addressing the movement of freight to and from Fremantle Port.

The City of Fremantle has held this view since the late 1980's according to Council records.

Local scheme amendment 57 will either proceed or lapse depending upon the outcome of MRS Amendment 1055/33.

Given this there is little value in preparing a comprehensive response on the City's amendment.

This report should be read in conjunction with the report on MRS Amendment 1055/33 to delete the FEB reserve from the MRS and to reclassify the land Urban.



Strategic Plan/Policy Implications

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

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

The Council has until 12 March 2003 to lodge a submission on the proposed City of Fremantle Town Planning Scheme No. 3 Amendment 57.

Neither the WAPC nor the City of Fremantle provided the Council or other nominated public places with copies of Amendment 57 for information and comment, in accordance with the notice in the Government Gazette.

The details provided to the Council attached to the Agenda were retrieved from the Fremantle City Council website.

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

Nil.

14.3 **(MINUTE NO 1915) (OCM 18/02/2003) - PACKHAM NORTH STRUCTURE PLAN - WATSONS FOODS (WA), SPEARWOOD (9654) (SMH) (ATTACH)**

RECOMMENDATION

That Council:

- (1) receive the report and the schedule of submissions;
- (2) defer consideration of the structure plan for the Packham North locality adjoining Watsons Foods (WA) on Hamilton Road



Spearwood, until such time as the current odour modelling study being undertaken for the plant is completed, subject to the recommendations from the study being formally adopted by the EPA as the basis for the planning and development of the area;

- (3) advise all those who lodge submissions, together with Watsons Foods (WA) and the consultant Planning Solutions (Aust) Pty Ltd of the Council decision.

COUNCIL DECISION

MOVED Cllr L Humphreys SECONDED Mayor S Lee that Council:

- (1) receive the report and the schedule of submissions;
- (2) defer consideration of the structure plan for the Packham North locality adjoining Watsons Foods (WA) on Hamilton Road Spearwood, until such time as the current odour modelling study being undertaken for the plant is completed, subject to the recommendations from the study being formally adopted by the EPA as the basis for the planning and development of the area;
- (3) advise all those who lodge submissions, together with Watsons Foods (WA) and the consultant Planning Solutions (Aust) Pty Ltd of the Council decision;
- (4) not proceed with the current Packham North Structure Plan prepared by Planning Solutions (Aust) Pty Ltd and that any future Structure Plan be prepared by Council Staff taking into consideration submissions received from adjoining residents and landowners; and
- (5) forward a copy of the report to the Secretary of the Independent Committee on Watsons Foods Odour issue.

CARRIED 9/0

Explanation

It appears that the current plan was hastily prepared without public input as verified by the submissions and petitions received. When the new odour contours are in place, Council will be in a position to prepare a plan based on the study and the public submissions received. It is also appropriate to forward a copy of the Officer's Report to the Committee monitoring this issue.



Background

Planning Solutions (Aust) Pty Ltd, planning consultants for Watsons Foods (WA), submitted a structure plan proposal for the planning and development of the Packham North locality, surrounding the Watsons Abattoir and food processing plant.

The land, together with Watsons is zoned urban under the Metropolitan Region Scheme (MRS).

Despite the fact that the local scheme is supposed to be made consistent with the MRS, Town Planning Scheme No. 3 was required by the WAPC to exclude the area from the Packham Urban Development Plan (DA1) and the land to the south and west of Watsons retained as rural. The original Packham Structure Plan no longer applies to the area.

The approach by the Commission was based on the advice of the EPA, which was first given in 1995 in relation to Amendment No. 121 to District Zoning Scheme No. 2 where a 500 metre generic buffer around Watsons applied.

Briefly the background to Amendment No. 121 was as follows.

In June 1996, the Council resolved to recommend to the Hon. Minister that Amendment No. 121 not be proceeded with due to the need for a review of land uses adjacent to the Watsons Factory.

Following the preparation of a revised structure plan the Council sought to have Amendment No. 121 re-advertised. Watsons strenuously opposed the Amendment.

In October 1997, the Minister for Planning refused to grant final approval to Amendment No. 12 because:-

1. noise, odour and amenity issues related to Watsons, and a suitable buffer remained unresolved.
2. an agreed buffer around Watsons was an essential pre-requisite to the re-zoning of the land.

Since this time odour studies have been undertaken in an endeavour to establish scientifically based odour contours to replace the 500m generic buffer. This was subsequently done and the contours agreed to by the DEP. the agreed contours were used by Planning Solutions to prepare the most recent Structure Plan.

Council at its meeting held on 19 November 2002 resolved to:-

“(1) *receive the report;*



- (2) *defer consideration of the Packham North Structure Plan until the Council has received advice from the Independent Committee on Watsons Food Odour Issue, in respect to the potential of the odour contours surrounding the Watsons Plant being reduced in order to allow alternate land uses to be established in the Packham North locality;*
- (3) *refer the proposed Structure Plan prepared for Watsons Foods (WA) by Planning Solutions, to the Independent Committee on Watsons Foods Odour Issue for advice on the possible contraction of the odour currently applying to the Watsons Plant on Hamilton Road, Spearwood;*
- (4) *circulate the Packham North Structure Plan as the basis for receiving public comment from nearby affected owners, before seeking comment from the wider community;*
- (5) *notify and seek comments on the Packham North Structure Plan from all owners within the Structure Plan Study Area and all owners of land within 1km of Watsons, south of the freight railway line; and*
- (6) *advise Watsons Foods (WA) and the consultants of the Council's decision and that they be provided with a copy of the Division Report."*

The explanation supporting the resolution was:-

"It was mentioned that there is a Committee in existence that is reviewing the Watsons issue and the Mayor is confident that the odour contours will be reduced once this Committee completes its work which is expected to be soon and therefore, Council should not support or otherwise, any Structure Plan until the work by the Committee is finished.

It was also mentioned that the Planning Consultants who prepared the Structure Plan on behalf of Watsons Foods (WA) has only undertaken limited consultation with owners within the Structure Plan Study Area. Prior to Council advertising the Plan to the wider community, only those owners who are major stakeholders directly affected by the Plan, should be consulted. Any issues with the Plan can then be resolved prior to seeking wider public comment"

On 27 November 2002, letters were sent to 500 property owners within 1 kilometre of Watsons, south of the railway line. The letter included a copy of the proposed plan, together with an extract of the Executive Summary and Recommendations from the Planning Solutions Structure Plan report, dated October 2002. The extracts from the report were issued with the approval of Planning Solutions and Watsons.



Those receiving the letter were requested to lodge any comments with the Chief Executive Officer by 24 December 2002.

As at the close of the submission period 64 submissions had been received, the majority of which opposed the plan.

On 21 November 2002, a letter was sent to the Chairman of the Independent Committee on Watsons Foods Odour Issues, in accordance with the Council resolution.

The Chairman of the Committee, Mr Fran Logan, responded in a letter dated 12 December 2002, a copy of which is attached to the Agenda.

Submission

Of the 500 letters circulated to property owners, 64 responses (12.5%) were received. Mostly in the form of letters from individuals and families, and included four (4) petitions.

The majority of submissions came from landowners within the rural zoned land to the south and west of Watsons, which objected to the proposed structure plan.

Of the 64 submissions:-

Object	Conditionally Support	Support	No Comment	Total
59	2	1	2	64
92%	3%	2%	3%	100%

The name, address and comments of the submitters are contained in the attached schedule.

No recommendations on each submission have been made because the public comment period was informal, and does not form part of a statutory process.

Of the 64 submissions:-

Inside Structure Plan Area	Outside Structure Plan Area	Total
23	41	64
36%	62%	100%

Although there was only a 12.8% response to the letters circulated it can be seen that 36% of those who responded were directly affected by the proposed plan.



There are 71 properties within the Structure Plan area. Although some are in multiple ownership only the owners of 23 properties or 32% responded to the invitation to comment on the proposal Plan.

The letter from the Chairman of the Committee, Fran Logan, advised that Watsons and the Water Corporation have agreed to an independent engineering review of the plant. This will be followed by additional odour modelling which should be completed by around May 2003.

The Committee believes that this will result in a noticeable reduction in the odour contours around Watsons.

Report

Given the strong landowner objection to the proposed structure plan for the Packham North locality, together with the fact that the Independent Committee on Watsons Food Odour Issues believes that the current plant upgrades will reduce the odour contours surrounding Watsons, the Council should defer this matter until the results of the odour modelling are known.

Importantly, the new odour contours should be formally adopted by the DEP as the basis for providing planning and development advice before the structure plan is reconsidered.

It is also important for the Council to appreciate the context surrounding the procedure for implementing the structure plan, which is briefly set out as follows:-

- The Packham North locality and Watsons are included in the Urban Zone under the MRS. Urban, by practice, usually provides for residential, retail, commercial, mixed business, service and light industrial land uses in the local scheme.
- The local scheme (TPS No. 3) should be made consistent with the MRS. However, where a scheme or an amendment is approved by the Minister inconsistent with the MRS, the local scheme prevails. Currently under TPS No. 3, the land is zoned rural.
- The WAPC can approve residential subdivision on land, such as rural zoned land, without regard for the zoning of the land. Given this, it could be possible for landowners to apply to subdivide the land without re-zoning, however, it is unlikely the DEP would support this and therefore be refused by the WAPC. If an application was refused then there would be a right of appeal, something not available where a scheme amendment is refused. This course of action is a decision to be made by the landowners.



- For a structure plan to be approved for the land, it is necessary for the land to be designated a Development Area (DA). The Development Area sets out the procedure for preparing and adopting structure plans, which is a public process. This would require a scheme amendment. Because the land is zoned rural it would be desirable to reclassify the land to an appropriate zone in the local scheme consistent with the Urban Zone.
- All amendments to the local scheme must firstly be referred to the EPA for assessment.
- The EPA will apply its buffer guidelines and is likely to oppose incompatible land uses being established inside any buffer established around Watsons. This would include residential uses.
- It is pointed out that all “buffers” established by the EPA are only advisory, unless the buffer forms part of an EPA approval or is included as a provision in a local scheme. The Watsons buffer is not statutory, it is only advisory. Never-the-less, in the scheme amendment process it is the WAPC that decides to accept the advice not the local government. This is because the WAPC advises the Minister on the finalisation of amendments.
- Scheme Amendments can only proceed to advertising if the EPA is satisfied that all environmental issues have been properly addressed.
- Environmental reviews and scheme amendments are undertaken as part of a public process.
- Should the EPA allow the WAPC to advertise an amendment to TPS No 3 for the Packham North locality, it would be advertised in conjunction with any proposed structure plan, and the submissions reviewed and recommendations made by the Council to the WAPC.
- The WAPC then recommends to the Minister and the Minister makes the final decision. There is no right of appeal.

As the land will need to be re-zoned, this will necessarily involve the EPA and the WAPC.

A structure plan will need to be prepared and adopted by the Council and endorsed by the WAPC.

Notwithstanding the final extent of the odour contours around Watsons (post May 2003), DEWCP have advised that no odour sensitive uses should be allowed within the 5-6 ODU.



Given this, regardless of community expectations that the land should be zoned residential, some parts of the land will necessarily have to provide for some other uses that are compatible with Watsons.

By deferring any decision on the future of the Packham North locality, and by retaining the land rural, retains the status quo and does not preclude other land use options in the future.

If the Council accepts this recommendation then when the future of Packham North is reconsidered later in 2003, following advice from the EPA or DEWCP, that the revised odour contours for Watsons have been formally adopted for planning purposes, the Council needs to consider who should prepare the plan and the amendment documentation.

Given the negative public reaction to the Planning Solutions proposed Structure Plan, the role of Urban Focus in representing the interests of some owners in the locality, and the strongly held views of the landowners, it may be prudent for the Council's Planning and Development Division to undertake the responsibility of preparing the structure plan and the amendment documentation, rather than it being undertaken by a party with a vested interest in the area. The Council should ensure that all affected ratepayers are consulted and their views appropriately considered in the planning of the area, when next considered by Council.

Strategic Plan/Policy Implications

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
3. Conserving and Improving Your Environment
 - *"To conserve the quality, extent and uniqueness of the natural environment that exists within the district."*

Budget/Financial Implications

N/A

Legal Implications

N/A



Community Consultation

The Council upon receipt of the proposed Structure Plan prepared for Packham North, immediately advised affected landowners and invited comments.

This was not a formal public comment period.

The purpose of this agenda item is to report on the community responses and recommend a course of action to the Council.

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

Nil.

14.4 **(MINUTE NO 1916) (OCM 18/02/2003) - NEW POLICY APD43 - OUTSTANDING DEVELOPMENT CONDITIONS (9003) (SMH) (ATTACH)**

RECOMMENDATION

That Council:

- (1) receive the report; and
- (2) adopt Policy APD43 "Outstanding Development Conditions" as attached to the Agenda and include it in its Policy Manual, together with the Delegated Authority APD66 as attached to the Agenda, being included in the Delegated Authority Register.

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Mayor S Lee that Council refer this item to the Delegated Authorities, Policies and Position Statements Committee for consideration.

CARRIED 9/0

Explanation

Council has established the Delegated Authorities, Policies and Position Statements Committee to act as a recommendatory body to Council on the adoption of new delegated authorities, policies and position statements. It is considered this new policy should therefore, be referred to the committee for review, prior to recommendation to Council.



Background

Town Planning Scheme No. 3 was gazetted on 20 December 2002. Clause 8.3.2 of the new scheme gives the power to refuse development applications where conditions of a previous approval have not been complied with.

Submission

N/A

Report

For Council to implement the provisions of Clause 8.3.2 which state “Where planning approval has been granted subject to conditions, and one of more of the conditions have not been complied with to the satisfaction of the local government, the local government may refuse to issue an approval for the further use or development of the land to which the conditions of a previous approval are outstanding”.

So that this clause can be implemented under delegated authority on behalf of the Council, it is necessary for a Policy to be adopted so that the staff can deal with applications in a consistent way.

Because the Clause 8.3.2 is explicit but provides for some discretion in that the Council “may refuse to issue an approval” there is a need for a procedure to be followed.

Where a site is inspected and it is found that previous conditions of approval are outstanding, a notice should be issued to the owner of the land advising of the breach in conditions and given 28 days to make the development compliant.

At the expiration of the 28 day period the site would be re-inspected and an assessment made as to whether or not the owner had completed any or all outstanding conditions and from this point the application for additional development on the land would be processed.

If, however, the landowner had not made the existing development compliant with existing conditions of approval, then the staff on behalf of the Council could issue a refusal. Any refusal issued under the Scheme would be subject to appeal.

This provision was inserted into the Scheme to assist the Council in enforcing its scheme provisions and development conditions. It is hoped that this method of requiring compliance will reduce the need for Council to take legal action against those landowners who do not have the complying development.



The attached Policy and Delegation provide for a procedure to deal with Clause 8.3.2 and is recommended for adoption.

It is considered unnecessary to advertise the Policy for public comment under Part 2 of the Scheme, because the Clause 8.3.2 is not being interpreted through the application of a Policy, it is only putting a Policy in place for the administration to follow in determining whether or not existing development complies with current planning approvals.

Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way."*
2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*

APD29 DEVELOPMENT COMPLIANCE POLICY

Budget/Financial Implications

N/A

Legal Implications

Clause 8.3.2 forms part of TPS No. 3. This clause gives the Council the power to refuse development applications on land where development already exists and the development does not comply with existing conditions of approval.

The proposed Policy does not seek to interpret the provisions of the Scheme, it only sets out an administrative procedure to deal with the implementation of Clause 8.3.2. In view of this it is not deemed necessary to advertise the Policy under Part 2 of the Scheme.

Community Consultation

N/A

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

Nil.



14.5 (MINUTE NO 1917) (OCM 18/02/2003) - DELEGATED AUTHORITY - SECTION 374(1B) LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1960 (3108) (JW)

RECOMMENDATION

That Council delegate its authority to approve or to refuse to approve plans and specifications under Section 374(1b) of the Local Government (Miscellaneous Provisions) Act 1960, to Council's Building Surveyor, Noel Raymond Olsen.

COUNCIL DECISION

MOVED Clr L Humphreys SECONDED Clr I Whitfield that the recommendation be adopted.

CARRIED 9/0

Background

Mr N R Olsen is due to commence his employment with the City of Cockburn on 4 March 2003 and part of his agreed duties, is to approve or refuse building plans and specifications under delegated authority of Council.

Submission

Mr Olsen has the necessary Local Government Qualifications to accept this delegation.

Report

N/A

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

Legal Implications

N/A



Community Consultation

N/A

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

Nil.

14.6 (MINUTE NO 1918) (OCM 18/02/2003) - REDEVELOPMENT OF THE CARRINGTON STREET / MEMORIAL HALL PRECINCT (9652; 8406) (AJB) (ATTACH)

RECOMMENDATION

That Council receive the report.

COUNCIL DECISION

MOVED Mayor S Lee SECONDED Cllr K Allen that Council:

- (1) receive the report; and
- (2) forward a copy of the Agenda Report and attachments to the Cockburn RSL for their information.

CARRIED 9/0

Explanation

It is important that the Cockburn RSL be consulted and kept informed on the project and in particular, the possible minor repositioning and upgrading of the war memorial that could occur subject to funding considerations and the outcome of discussions with the RSL.

Background

Council at its meeting held on 19 November 2002 considered a report on the redevelopment of the Memorial Hall and proposals of the surrounding area. Part 5 of the Council decision requires a progress report on the redevelopment to be presented to the February 2003 Council meeting (Minute No. 1838).

Submission

N/A



Report

Progress on the project since the November meeting of Council is as follows.

- The Department for Planning and Infrastructure (DPI) has been advised that Option A is supported as the basis of further detailed planning of the Carrington Street Shopping Centre and Bus interchange facilities. A brief report and Concept Plans were received from DPI in December and the Concept Plans are included in the Agenda attachments.
- The Greening Plan Review Group has not met since the November Council Meeting. Notwithstanding this, the Manager Parks has been requested to consider the options for the landscaping of the precinct and to list this matter on the agenda for the next meeting of the group.
- An advertisement inviting tenders from suitably qualified and experienced architects to prepare plans for the upgrading of Memorial Hall was placed in the West Australian on Saturday 18th January 2003 and closes on Thursday 27th February 2003. The brief requires the appointed consultant to undertake discussion with the RSL regarding the upgrading and possible minor relocation of the war memorial.

The redevelopment concept plan prepared by the DPI Urban Design and Major Places Unit is consistent with the general principles of Option A outlined in the November 2002 Agenda and is supported as the basis of more detailed design work that will need to be prepared as part of this project.

Council Members will be advised on the outcome of the Tender process after 27/2/03. Mr Robert Avard will be responsible for managing the brief.

Strategic Plan/Policy Implications

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

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
 - *"To foster a sense of community within the district generally and neighbourhoods in particular."*



3. Conserving and Improving Your Environment
 - *"To conserve the character and historic value of the human and built environment."*
4. Facilitating the needs of Your Community
 - *"To facilitate and provide an optimum range of community services."*
 - *"To identify current community needs, aspirations, expectations and priorities of the services provided by the Council."*
5. Maintaining Your Community Facilities
 - *"To construct and maintain community buildings which are owned or managed by the Council, to meet community needs."*

Budget/Financial Implications

There is no specific budget item allocating funds to the Memorial Hall project. The Chief Executive Officer proposes to fund the consultants from the general consultants Account No 116310 which has sufficient funds to cover the expected expenditure.

Legal Implications

N/A

Community Consultation

N/A

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

Nil.

14.7 (MINUTE NO 1919) (OCM 18/02/2003) - AMENDMENT TO TOWN PLANNING SCHEME NO. 3 - COCKBURN CENTRAL REGIONAL CENTRE REZONING (9629; 9103833) (AJB)

RECOMMENDATION

That Council:

- (1) resolve to initiate the following amendment to City of Cockburn Town Planning Scheme No 3 :-

TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED)
RESOLUTION DECIDING TO AMEND CITY OF COCKBURN TOWN PLANNING SCHEME NO. 3



AMENDMENT NO. 1

Resolved that the Council, in pursuance of Section 7 of the Town Planning and Development Act, 1928 (as amended), amend the above Town Planning Scheme by:

1. Rezoning all the land shown on the Scheme Map generally bounded by the Kwinana Freeway, Beeliar Drive, Poletti Road, North Lake Road and Kentucky Court known as Cockburn Central from unzoned land to Regional Centre zone and Development Area (DA 23) as depicted on the amendment map;
 2. Adding to the Eleventh Schedule – Development Areas in the Scheme Text, Development Area (DA 23), Cockburn Central and appropriate provisions.
- (2) require Strategic Planning Services to prepare the amending documents for adoption by Council; and
- (3) advise the Western Australian Planning Commission accordingly.

COUNCIL DECISION

MOVED Clr A Edwards SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0

Submission

Correspondence has been received from the Western Australian Planning Commission advising that Metropolitan Region Scheme Amendment No 1038/33 – Thomsons Lake Regional Centre (Cockburn Central) was granted final approval effective from 13th November 2002 and that Council is required to initiate action to amend its Town Planning Scheme so that it is consistent with the MRS. A copy of the correspondence is included in the Agenda attachments.

Report

Section 35A of the Metropolitan Region Town Planning Scheme Act requires Council to resolve to prepare an amendment to its zoning scheme within 3 months of the Region Scheme Amendment having the force of law to make it consistent with the MRS and within such



reasonable time after the passing of the resolution forward to the Minister for approval the amendment documentation.

The effective date for the MRS Amendment was 13th November 2002. The Department for Planning and Infrastructure has been advised that this matter will be considered by Council at its meeting to be held on 18th February.

Where an MRS amendment deals with land reserved for public purposes such as "Parks and Recreation" and "Other Regional Roads", the Metropolitan Region Town Planning Scheme Act provides these changes are automatically made to Councils District Planning Scheme without any further action. Changes that have automatically occurred in TPS 3 as a result of the approval of MRS Amendment as a result of these provisions are as follows;

- Land required for the extension of North Lake Road through the East Jandakot industrial estate to Armadale Road and reserved Other Regional Road by the MRS amendment is likewise reserved in TPS 3.
- Land previously zoned Parks and Recreation (Restricted Use) which was zoned Urban and Urban Deferred by the MRS amendment to allow for the development of the Cockburn Central area as part of the Thomsons Lake Regional Centre is unzoned in TPS 3.

It is proposed to zone all the unzoned land generally bounded by the Kwinana Freeway, Beeliar Drive, Poletti Road, North Lake Road and Kentucky Court as Regional Centre zone and include it as a Development Area in Schedule 11 together with appropriate provisions.

The stated objective of the Regional Centre Zone in TPS 3 is to provide for a full range of shopping, office, administrative, social, recreation, entertainment and community services consistent with the region-serving role of the centre and including residential uses. Cockburn Central together with the Gateways site form the hub of the regional centre and accordingly the proposed inclusion in the Regional Centre zone is appropriate. The Gateways site is already zoned Regional Centre and provides the major shopping facilities within the regional centre.

The inclusion of the Cockburn Central area as a Development Area In TPS 3 will give statutory force to the adopted Structure Plan to guide subdivision and development in the area and enable the inclusion of specific control provisions.

The resolution to amend Town Planning Scheme No 3 is included in the Agenda attachments. The detailed amendment including provisions to be included in Schedule 11 –Development Areas will be presented



to a subsequent meeting of Council for adoption and forwarding to the Minister as required by the MRS Act.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Cost to advertise the amendment.

Legal Implications

N/A

Community Consultation

To be undertaken as part of the Amendment process.

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

Nil.

14.8 (MINUTE NO 1920) (OCM 18/02/2003) - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1960, SECTION 245A - AUTHORISED PERSONS, PRIVATE SWIMMING POOLS (3211) (JW)

RECOMMENDATION

That Council endorse the following persons employed as Building Surveyors by the City of Cockburn as authorised persons pursuant to Part VIII, Section 245A of the Local Government (Miscellaneous Provisions) Act 1960:

Mr John West
Mr Michael Ward
Mr Desmond Worthington
Mr Keith Brameld
Mr Noel Olsen
Ms Emma Boswell

COUNCIL DECISION

MOVED Clr A Edwards SECONDED Clr A Tilbury that the recommendation be adopted.

CARRIED 9/0



Background

The Local Government (Miscellaneous Provisions) Act 1960, Section 245A requires that private swimming pools be inspected every 4 years. A person who is required to oversee or carry out this inspection function must be authorised by the local government for the purpose of Section 245A and have appropriate experience and or qualifications.

Submission

N/A

Report

Due to staff changes within the Building Service it is required that new persons be endorsed as authorised persons in regard to private swimming pools.

In order to implement publicly accountable practices and methods that permit flexibility in terms of provision of customer service by the Building Service, the persons nominated in the Recommendation should be endorsed as authorised persons for the purposes of Section 245A of the Act.

Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost competitive without compromising quality."*
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A



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

Nil.

14.9 (MINUTE NO 1921) (OCM 18/02/2003) - PROPOSED PETROL FILLING STATION AND CARPARK DECK - PHOENIX SHOPPING CENTRE - LOT 63; 254 ROCKINGHAM ROAD, SPEARWOOD (2206913) (VM) (ATTACH)

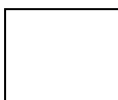
RECOMMENDATION

That Council:

- (1) grant approval to the development of a Petrol Filling Station and a carpark deck on Lot 63; 254 Rockingham Road, Spearwood, subject to compliance with the following conditions:-

Standard Conditions

1. Development may be carried out only in accordance with the terms of the application as approved herein and any approved plan.
2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
3. No person shall install or cause or permit the installation of outdoor lighting otherwise than in accordance with the requirements of Australian Standard AS 4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting".
4. Retaining wall(s) being constructed in accordance with a suitably qualified Structural Engineer's design and a building licence being obtained prior to construction.
5. The premises shall be kept in a neat and tidy condition at all times by the owner/occupier to the satisfaction of the Council.
6. A plan or description of all signs for the proposed development (including signs painted on a building) shall be submitted to and approved by the Council as a separate application. The application (including detailed plans) and appropriate fee for a sign licence must be submitted to the Council prior to the erection of any signage on the site/building.
7. No bunting is to be erected on the site. (Bunting includes streamers, streamer strips, banner strips or decorations of



similar kind).

8. The extension and/or alterations shall be in the same materials, colour and design as the existing building.
9. The proposed development shall be clad or coloured to complement the surroundings, and/or adjoining developments, in which it is located, and shall use non reflective materials and colours.
10. The proposed carpark structure must be screened where practicable from view from any public street or reserve and/or surrounding development by existing and/or proposed landscaping as approved by the Council.
11. The area of vegetation delineated on the approved plan for conservation is to be retained in accordance with the requirements of the Council and protected from damage by all on-site works to the satisfaction of the Council.
12. A minimum of three (3) disabled carbays designed in accordance with Australian Standard 2890.1 - 1993 is to be provided in a location convenient to, and connected to a continuous accessible path to, the main entrance of the building or facility. Design and signage of the bay(s) and path(s) is to be in accordance with Australian Standard 1428.1 - 1993. Detailed plans and specifications illustrating the means of compliance with this condition are to be submitted in conjunction with the Building Licence application.
13. Traffic control devices are to be designed and constructed in accordance with the requirements and specifications certified by a suitably qualified practicing Engineer to the satisfaction of the Council.
14. Access onto the site shall be restricted to that shown on the plan approved by the Council.
15. The parking area, driveways and points of ingress and egress to be designed, constructed, drained and marked in accordance with the plan certified by a suitably qualified practicing Engineer and thereafter maintained to the satisfaction of the Council. These works are to be done as part of the building construction.
16. Carbay grades are not to exceed 6% and disabled carbays are to have a maximum grade 2.5%.
17. The provision of bicycle parking facilities in accordance

with the approved plans is to be provided in the locations marked on the attached plans, and are to be installed prior to the development being occupied.

Conditions to be complied with prior to applying for a Building Licence:

18. A landscape plan must be submitted to the Council and approved, prior to applying for building licence and shall include the following:-

- (1) the location, number and type of existing and proposed trees and shrubs, including calculations for the landscaping area being in conformity with the City of Cockburn Greening Plan
- (2) any lawns to be established
- (3) any natural landscape areas to be retained;
- (4) those areas to be reticulated or irrigated; and
- (5) verge treatments

19. All earthworks and/or associated drainage details shall be in accordance with plans and specifications certified by a suitably qualified practicing Engineer to the satisfaction of the Council.

20. All stormwater drainage shall be designed in accordance with the document entitled "Australian Rainfall and Runoff" 1987 (where amended) produced by the Institute of Engineers, Australia, and the design is to be certified by a suitably qualified practicing Engineer, to the satisfaction of the Council.

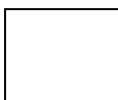
Conditions to be complied with prior to occupation

21. Landscaping is to be undertaken in the street verge adjacent to the Lot(s) in accordance with the approved plans and be established prior to the occupation of the building; and thereafter maintained to the Council's satisfaction.

22. All stormwater being contained and disposed of on-site to the satisfaction of the Council.

Special Conditions

23. The proposed exit ramp onto Coleville Crescent from the lower deck to be designed as shown on the amended plans dated 28 January 2003 (ie: 1:10 metres grading). The ramp to be constructed as part of Stage 1



development.

24. Further details of the deck elevations to be prepared at building licence stage and to reflect the amendments in red to the approved plans.
25. The petrol tanker access times to the site to be restricted to once a day prior to 7am, and the removable bollards to be removed only to provide for vehicular exit to the tanker and not at all for customers vehicles.
26. Provision of trees within large pots to be distributed throughout the deck parking . The quantity to be one pot plant per ten bays provided and to be shown at the building licence stage.
27. Parking signs with controls on peak periods being erected along Coleville Crescent abutting the site to the satisfaction of Council.
28. Two traffic control devices being constructed (ie. warts profile humps) along Coleville Crescent in the location specified and at a time determined by Council, following the completion and operation of the Petrol Filling Station and car parking deck and an assessment of traffic conditions.

Standard Footnotes

1. Where petrol, benzine or other inflammable or explosive substances or grease, oil or greasy/oily matter may be discharged, a sealed washdown area and a petrol/oil trap (gravity separator) must be installed and connected to the sewer, with the approval of the Water Corporation and Department of Environment, Water and Catchment Protection.
2. The development is to comply with the requirements of the Building Code of Australia.
3. Access and facilities for disabled persons is to be provided in accordance with the requirements of the Building Code of Australia.
4. The use of the premises must comply with the Department of Environmental Protection's Code of Practice.
5. The use of the premises must comply with the *Health (Food Hygiene) Regulations 1993* and Chapter 3 of the Australian New Zealand Food Standards Code (Australia

Only).

6. The operations should comply with all environmental standards as *specified* in any works approvals, licence, conditions of approval applied under the *Environmental Protection Act 1986*.
 7. Approval should be obtained from the Department of Minerals and Petroleum Resources before commencing or carrying on any development under this approval.
 8. Uncovered parking bays shall be a minimum of 5.5 x 2.5 metres, clearly marked on the ground and served by a 6 metre wide paved accessway.
 9. The Council takes no responsibility or liability in respect to maintenance and reinstatement of any verge area landscaped as a condition of approval.
- (2) issues a Schedule 9 Notice of Determination for Planning Approval which is also interpreted as a Form 2 Notice of Approval.

COUNCIL DECISION

MOVED Cllr L Humphreys SECONDED Cllr K Allen that Council:

- (1) refuse to grant its approval to the proposed petrol filling station and carpark deck – Phoenix Shopping Centre – Lot 63, 254 Rockingham Road, Spearwood for the following reasons:-
 1. The proposed development is inconsistent with orderly and proper planning.
 2. The proposed development has the potential to cause significant traffic conflicts on Rockingham Road and Coleville Crescent.
- (2) issue a MRS Form 2 Notice of Refusal and Schedule 9 – Notice of Determination on Application for Planning Approval.

MOTION LOST 3/6

MOVED Cllr A Edwards SECONDED Cllr M REEVE-FOWKES the recommendation be adopted.

CARRIED 6/3



Background

ZONING:	MRS:	Urban
	TPS3:	District Centre
LAND USE:	Volley Investments Pty Ltd	
APPLICANT:	Cameron Chisholm & Nicol Pty Ltd	
OWNER:	Petrol filling station and upper level carpark deck	
LOT SIZE:	5.7484 ha	
USE CLASS:	- Petrol Filling Station 'P' Permitted Use - Carparking Deck associated with Shopping Centre – Shop 'P' Permitted Use	

The Phoenix Park Shopping Centre has two main car parking areas, one to the north with 925 bays and one to the south with 252 bays. This application proposes to increase the number of bays within the southern car park.

The southern car parking area in percentage terms is more utilised than the northern car parking area, given its proximity to Rockingham Road and easy access. The Shopping Centre car parks are currently accessed from Coleville Crescent, two access points along Rockingham Road and through Burgundy Crescent off Lancaster Street. The two access points onto Rockingham Road are utilised in a different way, as the northern access between the Commonwealth Bank and McDonalds is not highly visible or convenient to the public along Rockingham Road. Therefore the preference is to utilise the other access point, the area the subject of this application.

The current car parking layout has been redesigned as a result of Council approving a Garden Centre extension to the Centre on 20 February 2002.

The existing banking facility is no longer operating and is proposed to be demolished as part of the development.

Submission

The City received an application dated 26 August 2002. The application is to construct a Petrol Filling Station and an upper level car parking deck containing 170 car parking bays in recognition of the high rate of usage of the car park.

The applicant in a letter dated 26 August 2002 has advised the following. *"The development is proposed to be constructed in a staged programme, with completion of the filling station by December 2003 and completion of the carpark deck by October 2004."*



As a result of a projection of increased traffic along Coleville Crescent and Rockingham Road, the applicant was requested by the City to provide a traffic impact study.

The traffic study attached to the Agenda dated 28 January 2003 is a revised study after the initial study was reviewed by Council Planning and Engineering Services. As a result of Council comments, further modifications to the plans were required to ensure compliance with Australian Road Standards AS2890 – Parking Facilities.

These modifications were addressed such as:

- the grading of the ramp from the lower parking area to Coleville Crescent was decreased,
- the access closer to the filling station into Rockingham Road was closed to the public by way of removable bollards which will be removed to provide access only to the fuel tankers.

As part of the conclusion of the Traffic Impact Statement the consultant recommended some design changes to exit grading levels, some traffic control measures along Coleville Crescent to reduce traffic speeds and control parking signs on the road parking during peak period on Coleville Crescent. These will be imposed as conditions of approval. The full report is attached as an appendix to the report. The conclusion states as follows:-

“The development of additional deck car parking and a ground level +Plus Petrol on the southern car park of the Phoenix Park Shopping Centre can be accommodated providing some minor amendments are made to proposed access places and traffic management measures implemented on Coleville Crescent between the Centre and Spearwood Avenue.

The addition of further parking will result in the redistribution of parking around the Centre and consequently a redistribution of traffic movements. This redistribution of movements along with the establishment of a new +Plus Petrol are unlikely to have any significant impact on traffic movements on the abutting roads during the peak hour.

The primary issues that require further attention are:

- *design of the proposed exit only access from the ground level car park to Coleville Crescent;*
- *the volume of traffic that will now use Coleville Crescent between the Shopping Centre and Spearwood Avenue.*

It is recommended that the proposed exit only access be designed to comply with Australian Standard 2890 and that all adjacent vegetation be maintained below 0.9m within the visibility splay onto Coleville



Crescent. Approval should be given to constructing a new exit only access onto Rockingham Road that can be used by both the departing fuel tanker and +Plus Petrol patrons. The design however should be such that normal Shopping Centre patrons are discouraged from using the access.

The increase in traffic on Coleville Crescent south of the Centre will be noticeable but will be within the physical capacity of the road. Traffic control measures involving the construction of a Watts profile speed hump at the southern end of Coleville Crescent and just north of Goffe Street should be implemented.

The volume of traffic will also be such that parking controls should be put in place along Coleville Crescent to discourage on road parking during the peak traffic periods. The requirements for the parking should be finalised after the proposed alterations have been completed and the traffic pattern established.

The findings of this Report should be discussed with the designers of the proposed development and with the City of Cockburn so that agreement can be reached on the traffic management intervention measures recommended.”

Report

Planning Considerations

The proposed “Petrol Filling Station” and car parking deck are permitted uses in the District Centre Zone in Town Planning Scheme No. 3. Accordingly there is no statutory requirement for the proposal to be advertised for public comment.

The proposal is situated within Clause 32 area Notice of Delegation 28/11/1998 under the Metropolitan Region Scheme where a referral was not required to the WAPC as there was no increased floor area proposed. The proposed development decreases the actual floor space of Phoenix Shopping Centre as it removes the bank facility with an approximate area of 370m² and includes the development of a 270m² petrol station (including bowsers area).

The proposal generally complies with the standard requirements of the Scheme with the exception of shade trees for car parking which can be addressed as conditions of approval. This will ensure that the top of the decked car parking area provides shade to cars and visually softens the deck with greenery.

As a result of discussions with the City the applicant has modified the proposal to improve the visual presentation of the deck to Rockingham Road. However further treatment details of the deck will be required to be provided at building licence stage.



Traffic Impact Considerations

Council has specific requirements which were required to be addressed on the submitted plans, such as standard exit vehicle grading ramps, bollards on a new exit point into Rockingham Road to restrict the access to the petrol tanker only at specific times (ie: prior to 7am) and the location of the petrol bowsers in relation to vehicular movements to be improved.

The applicant has agreed to most of the modifications requested by the City. However the amended plans illustrate an exit ramp grading from Coleville Crescent into the car parking area of 1 in 5 metres. This is not acceptable to Council as it is not in accordance with Australian Standards. The applicant also presented an option of the ramp with a 1:10 metres grade which is supported. The implication of extending the exit ramp with a 1 in 10 metres grading will reduce traffic circulation but this is preferable to a potential traffic congestion on a proposed exit ramp with a 1:5 metre grading.

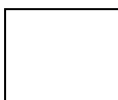
The proposed access of the upper deck onto Coleville Crescent had raised an issue with regard to vehicular sight when the bus is stopped at its bay. However the bus stop will be relocated to the opposite side of the road, thereby removing the potential conflict.

The plans also illustrated some required modifications to traffic islands along Rockingham Road to ensure tanker movements can be accommodated. These modifications are required to be undertaken by the applicant at its cost.

Furthermore, to ensure provisions of the Scheme are fully addressed such as safety and amenity to patrons, a traffic median along Rockingham Road will also need to be modified as part of the building licence. This is required as a result of the increased traffic volume at the exit point. The required modifications are illustrated on the plans.

Other Considerations

- The details of the fitout illustrated the provision for food items, (ie drinks, chips etc). Therefore it is the intention of the proprietor to include these items for sale as application for a food licence permit is required.
- A separate application for a Sign Licence is also required.
- The staged construction of the development is acceptable to the Council on a condition that the exit ramp from the lower deck onto Coleville Crescent is included as part of works of Stage 1 (ie: same time as petrol filling station development) to ensure the vehicular movements of the site are appropriate to the new development.



- The applicant's consultant engineer has also recommended some design changes to Coleville Crescent such as control parking signs for peak period, and the construction of two speed humps at the southern end of Coleville Crescent and just north of Goffe Street to reduce traffic speeds. These requirements could be imposed as special conditions.
- The proposal also complies with Council Policy APD36 Shopping Centres and Service Stations.

Given the above it is recommended that the proposal be approved subject to conditions.

Strategic Plan/Policy Implications

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

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*

The planning policies which apply to this item are:-

APD17	Standard Development Conditions and Footnotes
APD36	Shopping Centres and Service Stations

Budget/Financial Implications

N/A

Legal Implications

Nil.

Community Consultation

Under Council's Scheme there is no requirement to advertise a development proposal. It should be noted, however, that an informal submission has been made to Council, and because Council decisions are made on technical grounds, community consultation is not warranted.

It should be noted that a submission dated 18 November 2002 was received from a business owner objecting to the proposal on the grounds that the proposal will increase traffic congestion on



Rockingham Road. A Traffic Impact Statement was prepared as part of the consideration of the application by Council which has satisfactorily addressed this matter.

A copy of the letter of objection from the business owner, Palermo Nominees Pty Ltd which has interests in service stations and retail outlets on Rockingham Road is attached for Council's consideration.

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

Nil.

14.10 (MINUTE NO 1922) (OCM 18/02/2003) - COOGEE BEACH - ESTABLISHMENT OF CAFE/KIOSK - RESERVE 46664 (3319158) (KJS/SMH/RWB) (ATTACH)

RECOMMENDATION

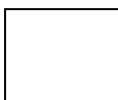
That Council:

- (1) receive the Economic Modelling and Financial Feasibility Report on the Coogee Beach Café/Kiosk dated January 2003, prepared by McGees Property Consultants; and
- (2) not proceed to establish a Café/Kiosk at Coogee Beach because it appears to be a high risk venture, based on the conclusions and recommendations contained in the McGees Property Consultants Report.

COUNCIL DECISION

MOVED Cllr K Allen SECONDED Mayor S Lee that Council:-

- (1) receive the report;
- (2) proceed with the proposal to design and construct a Café/Kiosk at Coogee Beach within the Powell Road Reserve, subject to the following:
 1. adopt the schematic drawings that have already been prepared by Hoffman Architects for the proposed Café/Kiosk at Coogee Beach and these be used as the basis for an environmental assessment by a suitably qualified and experienced coastal engineer and for submitting a formal application for approval to commence development to the Western Australian Planning Commission (WAPC); and
 2. call for tenders from suitably qualified and experienced coastal engineers to assess the environmental impacts of



developing a Café/Kiosk in the Powell Road Reserve in accordance with the schematic plans prepared by Hoffman Architects;

3. authorise the Chief Executive Officer to:-

- a. assess the tenders and appoint a suitably qualified and experienced coastal engineer to undertake the assessment and prepare a report on the proposed Café/Kiosk to support the planning application to be lodged with the WAPC;
- b. submit the MRS Form 1, Application for Approval to Commence Development which has been signed by DOLA, together with the necessary plans and reports for the consideration and determination of the WAPC; and
- c. negotiate any aspects of the application with CALM, DEWCP, DOLA and the DPI as required;

(3) following receipt of the determination by the WAPC the matter be referred back to the Council for consideration and a decision to proceed with the proposed Café/Kiosk; and

(4) simultaneously re-advertise for Expressions of Interest (EOI) from private organisations and individuals to take up a ground lease of 1320m² to build and operate a Café/Kiosk at Coogee Beach on the basis of:-

1. a lease period of 20 years with an option for a further 20 years, subject to the approval of DOLA; and
2. Council gaining all the necessary development approvals and installing the required utility services to the lease area.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 8/1

Explanation

Since the Council advertised for Expressions of Interest (EOI), the report prepared by McGees has varied the assumptions by extending the period for the ground lease and suggested that the Council be responsible for installing the services for the proposed Coogee Café/Kiosk.

The provision of a Café/Kiosk is an important community facility and Council should pursue its provision further. The approach provides the opportunity for Council to progress the proposal without a final commitment to build the facility.



Background

Council at its meeting held on 16 April 2002 resolved to:-

- “(1) pursue the possibility of constructing, owning and leasing out a café/kiosk at Coogee Beach based on the same lines which was foreshadowed in the proposal considered by Council on 15 May 2001;*
- (2) write to the Department of Planning and Infrastructure, Department of Environmental Protection and Conservation and Land Management, advising of the proposal and seeking a preliminary response as to the level of support that such a proposal is likely to receive should a formal application be lodged;*
- (3) subject to supportive responses being received from (2) above, the Chief Executive Officer is to commission a suitably qualified financial consultant to provide advice on the economic viability and risk in proceeding with the construction of a café/kiosk at Coogee Beach; and*
- (4) upon receipt of the advice from the financial consultant, determine if a business plan is to be prepared to progress the matter further.”*

In response to the Council’s decision, the Council’s Land Officer wrote to the DPI, DEWCP, CALM and DOLA between May and July 2002 to determine their reaction to the proposal being contemplated by the Council.

The responses were:-

- DPI On the 5 August 202, the Department advised the need to submit an MRS Form 1 and identified the issues to be addressed. The letter stated that *“it should not be inferred from the above that the Department or the WAPC will support the proposal.”*

On 21 August 2002, the Department advised that the proposed development was consistent with the purpose of the reservation. The location of the Café/Kiosk in the foredune was of concern to the WAPC and will need to be addressed. It was suggested that the Café/Kiosk be located closer to Cockburn Road and behind the dunes if possible.

- DEWCP On 2 October 2002, the Department advised it would require an appropriate coastal impact assessment by a suitably qualified coastal engineer. If the proposal was to lead to significant



impacts it will need to be referred to the EPA under Section 38 of the Act. The proposal would also need to comply with DPI policies.

- CALM On 22 May 2002, the Department advised that it considered the proposal to be appropriate given the site's existing recreational character, and is therefore generally supportive of the proposal. The advice provided some direction in regard to matters to consider if the proposal was to proceed.
- DOLA On 25 June 2002, the Department advised that it was not opposed to the proposed Café/Kiosk, however, it was a substantial project that was clearly outside the current use of the reserve. DOLA would approve the proposal subject to conditions, one of which was to enter a cost sharing arrangement in respect to the lease. The Department signed the MRS Form 1 subject to "no undertaking intended".

On 4 November 2002, the Department issued the Management Order for the reserve in favour of the City of Cockburn.

It can be seen that there is no outright objection from any of the State agencies asked to respond to the proposal for a Café/Kiosk at Coogee Beach.

However, except for CALM and DOLA, DPI and DEWCP have not given any clear indication that the project is likely to be approved. The DPI and DEWCP have outlined the matters to be addressed in order for the proposal to be considered.

Given this, there is the possibility that the project as presented may not be approved either as proposed and/or in the location contemplated.

Based on the Departmental responses the CEO approached McGees National Property Consultants in November 2002 to prepare a proposal to undertake a feasibility study for the Café/Kiosk proposal.

Previously, pursuant to a Council decision, the Department of Housing and Works was engaged in July 2001, to invite submissions and select a preferred proponent to construct and operate the Café/Kiosk from the site, but by the close of the submission period no conforming expressions of interest were received. This approach is the same as Scenario 1 discussed in the McGees report.

The lack of response lead to the Council resolution dated 16 October 2002, to pursue the possibility of constructing, owning and leasing out the Café/Kiosk which is reflected in Scenario 2 in the McGees report.

McGees completed their report in January 2003, and contained conclusions and recommendations for the Council's consideration.



Submission

The McGees report evaluated two (2) scenarios.

Scenario 1: The creation of a ground lease area of approximately 1320m² and offering the land for the development of a Café/Kiosk on a ground lease basis. The Council to provide all the services to the lot.

Scenario 2: For the City of Cockburn to construct a Café/Kiosk on the land within the ground lease area of 1320m².

The results of the analysis for scenario 1 was*"that it is unlikely the present value of a ground lease will ever be less than zero. In other words cc (City of Cockburn) is not likely to make a loss in this scenario."*

However, scenario 1 has already been tested in the market place and there were no conforming expressions of interest. Given this scenario 1 is not worth pursuing further.

The results of the analysis for scenario 2 were different from that for scenario 1 which included statements such as*"probability the City of Cockburn will not achieve the target rate of return of 9.0%."*

"Therefore, although there is an opportunity to show a superior present value through design and construct the probability that one would actually achieve these figures is very low relative to the probability of failure."

Because of this, two further variations to scenario 2 were assessed based on reducing the area of the proposed Café/Kiosk by 25% and 35% respectively. This demonstrated that reducing the cost of the development did not greatly affect the present value which remained low. Certain criterion were adopted, based on consensus, interviews of restaurateurs and from this *"there appears to be only a 40.0% to 45.0% chance of success if this criterion was adopted."*

The synopsis of results from the report are briefly summarised as follows:-

1. There is sufficient capacity in the City of Cockburn catchment to generate sufficient gross revenue to support a small Café/Kiosk.
2. Return on capital is not likely to meet market expectations.
3. Primary influence on potential Gross Revenue for the café is primarily influenced by the number of café meal purchases made by households in a monthly period.



4. Imputed/implied success of the existing facility suggests it may be prudent to maintain the current Deli line in portion of the new Café/Kiosk. This factor was not included in the assessment.
5. The conceptual drawings provide for too large a café to accommodate estimated levels of demand.
6. The City of Cockburn is better off in present value terms offering a ground lease to a building envelope rather than committing capital to the design and construction of the proposed improvements.
7. Reducing the proposed size of café by 25% to 35% to equal estimated levels of demand does not improve the PV for scenario 2 sufficiently to surpass that achieved for scenario 1.
8. Port Coogee is identified as providing strong (PMR) competition in the future. This factor has not been modelled due to the mediocre results achieved in the first run calculations.
9. An interesting observation is that PV in scenario 2 equates to \$0 at a discount rate of 7% (static).

The comparison of distribution suggests that scenario 1 is a “sure thing” with relatively low levels of risk whilst there remains substantial uncertainty with scenario 2, particularly when one considers the level of capital commitment.

The conclusions contained in the report are:-

- “(1) In its present format, the design and construct option for the proposed Café/Kiosk would not appear viable at market levels of return on capital and expected profitability for said café. The Ground Lease option is far superior, but has its own risks that could eventuate in market stigma should a subsequent operator fail.*
- (2) City of Cockburn may decide the public amenity provided by the facility warrants adoption of discount rates below market level thus improving viability of scenario 2.*
- (3) Gross Revenue estimates suggest smaller Café/Kiosk than that proposed may succeed.*
- (4) Should City of Cockburn wish to further evaluate Café/Kiosk prospects, it should offer the opportunity to the market via Expression of Interest.*



- (5) *A Ground Lease only option for the purpose of developing said Café/Kiosk presents the least risk to City of Cockburn but does not guarantee success.*
- (6) *Permitted uses should allow Deli lines to accommodate Caravan Park and transient customers.*
- (7) *Design and space decision will be critical in café profitability and success; City of Cockburn should maintain an open mind to prospective operators concepts and limit (to an extent) Council imposed constraints on size and design.*
- (8) *Not all restaurateurs want to be property investors; hence joint venture opportunities subject to financial testing should be considered.*
- (9) *The marginal results of this assessment should be conveyed to DOLA in ground lease negotiations in order to realise a peppercorn rental. This will allow greater flexibility in lease negotiations with operator, particularly in early years.*
- (10) *The ground lease option creates a profit rental situation adding value to the Lessee's interest in the longer term, improving marketability of concept.*
- (11) *A properly structured EOI process will enable a consultative process with prospective Lessees, stimulating innovation.*
- (12) *Rental structure should be linked to gross revenue that is, turnover rental with base rate. This will allow City of Cockburn to provide a discounted rental in early years with fixed escalation clauses whilst sharing success when café revenue increases beyond an agreed level."*

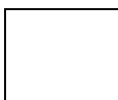
The consultants recommendations are:-

"In its present format, the design and construct option for the proposed Café/Kiosk would not appear viable at market levels of return on capital and expected profitability for said café. The Ground Lease option is far superior but has its own risks that could eventuate in market stigma should a subsequent operator fail.

Gross Revenue estimates may support a smaller concept, particularly if one makes provision for Deli lines, as is presently the case.

The most obvious factors requiring further consideration that will create a more favourable outcome for both options, but more importantly, for scenario 2, are:-

1. *Benchmark Rate of Return (Discount Rate) to City of Cockburn,*



2. Requirement to share ground rental with DOLA,
3. Café concept and size,
4. Consultative Lease negotiation and rental format.

Item 2 has been tested disclosing a marginal improvement for the design and construct option.

Notwithstanding the above observations, should City of Cockburn wish to continue the evaluation further, then we would make the following recommendation;

City of Cockburn should seek Expressions of Interest (EOI) for Café/Kiosk development on either a Ground Lease or Design and Construct basis. City of Cockburn should not commit to a course of action but seek input from the market. The input should detail the preferred leasehold interest sought and request conceptual designs with forecast base cost and revenue figures.

This will allow the market to innovate whilst testing the markets' perception of the sites viability. City of Cockburn should acknowledge its interest in possible JV; cost sharing to support viability of a proposed concept subject to an adequate return on capital being achieved.

Additionally, structured rentals (Lease) with linked turnover percentages to accommodate early patronage establishment should be considered.

This process should embrace a range of broad parameters for lease negotiation and offer flexible lease/development options whilst recognising opportunities for profit share, reduced rental for capital trade off, the provision of assistance through the planning, design and approval process.

This process will test the markets' perception and expectations of the site whilst not committing coc to any specific course of action.

Furthermore, we consider the gross revenue figures for the existing shop must be ratified in accordance with the existing lease. This will provide further guidance in establishing gross revenue for the café/kiosk."

A copy of McGees National Property Consultant's Report has been circulated to Elected Members as a confidential document.

Report

It is clear from the consultants report that both the ground lease leasing and the design and construction scenarios for the proposed Café/Kiosk are at best marginal.



The report assumes that the Council would provide cash funds to design and construct the development, estimated to be in the order of \$1,000,000 from say reserve funds.

Discussions with the consultants confirmed that they did not allow for the Council needing to borrow around \$1,000,000 to service, design and construct the proposed development. To borrow funds would mean that the project would not be viable.

The consultant confirmed that from a public authority point of view, scenario 1 is the preferred approach because all the risk is taken by the operator.

Should the venture fail, under either Scenario 1 or Scenario 2, then the Council risks the loss of income from the site and the possibility of being responsible for the vacant building.

Scenario 1 has been tested in the market place and there was no private sector interest.

Scenario 2 would require the funds to be raised from a reserve account or be borrowed by the Council.

To borrow \$1,000,000 at 5.9% over 20 years would require an annual repayment of \$86,000.

The consultants estimate that the annual lease repayment for a tenanted Council owned Café/Kiosk building would be in the order of \$72,000. This is a shortfall of around \$14,000 per annum to meet the loan repayments.

However, this loss is likely to be substantially increased because it is expected, based on the advice of the consultant, that the landowner, DOLA, will seek 50% of the income derived from the lease. This would mean that the Council's share of the lease would be only \$36,000 per annum, leaving a shortfall of \$50,000 per annum to meet the loan repayments. Over the 20 year period of the loan it would amount to a subsidy of \$1,000,000.

If the money is raised from Council reserves it is expected that the annual lease would be in the order of \$72,000. This represents a return on investment of around 7.2%. However, if 50% of the income is shared with DOLA, this would reduce the return to 3.6%.

The assessment undertaken by the consultants did not have regard for the development of a Life Saving and Surf Club at Coogee Beach, and only had superficial assessment of the impact that Port Coogee may have when the marina facilities and highway commercial is developed within 300 to 400m of the proposed Café/Kiosk site.



In relation to the proposed Surf Club, the Council has been advised at a recent presentation by the Club, that they proposed to build a 3,500 sq.m. Club building which will include provision of a canteen to serve the needs of its members. This factor has not been considered as part of the Report and could have an impact on the viability of the Café/Kiosk.

The other major difficulty with the development of the proposed site in addition to gaining all the necessary approvals, is the fact that the development, whether it be by the private sector under scenario 1 or by the Council under scenario 2, will be on land owned by DOLA, even though the reserve is vested in the local government.

The report emphasises the need to retain a “deli” type store within the reserve to serve the caravan park and passing trade. A kiosk as planned, is unlikely to hold the range of items found in a deli.

Given this, one suggestion is for the existing Coogee Shop to be upgraded so that the deli/kiosk is retained and a café, alfresco style, be added to it. This option has not been investigated.

Within this locality it is expected that there will be a number of cafes, fast foods and restaurants associated with the Port Coogee marina which will provide the type of service that the Council is envisaging for Coogee Beach. Given that at this stage it is not clear as to the extent and type of food outlets provided in the marina, it may be premature to contemplate a facility of this type at Coogee Beach at this time in any event.

In the circumstances the recommendation must be that the proposed Café/Kiosk not be proceeded with as it would put ratepayers funds at an unacceptable risk, based on the McGees report.

However, should the Council decide to not accept the officer’s recommendation and proceed with the Café/Kiosk instead, then the following optional recommendations could be considered:-

OPTION 1

“RECOMMENDATION

That Council:-

- (1) *receive the report;*
- (2) *invite a representative of the McGees National Property Consultants to present the findings of the report to Council;*
- (3) *following the McGees presentation, reconsider the proposal to develop a Café/Kiosk at Coogee Beach.”*



OR

OPTION 2

“RECOMMENDATION

That Council:-

- (1) *receive the report;*
- (2) *proceed with the proposal to design and construct a Café/Kiosk at Coogee Beach within the Powell Road Reserve;*
- (3) *adopt the schematic drawings that have already been prepared by Hoffman Architects for the proposed Café/Kiosk at Coogee Beach and these be used as the basis for an environmental assessment by a suitably qualified and experienced coastal engineer and for submitting a formal application for approval to commence development to the Western Australian Planning Commission (WAPC);*
- (4) *call for tenders from suitably qualified and experienced coastal engineers to assess the environmental impacts of developing a Café/Kiosk in the Powell Road Reserve in accordance with the schematic plans prepared by Hoffman Architects;*
- (5) *authorise the Chief Executive Officer to:-*
 1. *assess the tenders and appoint a suitably qualified and experienced coastal engineer to undertake the assessment and prepare a report on the proposed Café/Kiosk to support the planning application to be lodged with the WAPC;*
 2. *submit the MRS Form 1, Application for Approval to Commence Development which has been signed by DOLA, together with the necessary plans and reports for the consideration and determination of the WAPC;*
 3. *negotiate any aspects of the application with CALM, DEWCP, DOLA and the DPI as required;*
- (6) *following receipt of the determination by the WAPC the matter be referred back to the Council for consideration and a decision to proceed with the proposed Café/Restaurant.”*

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

A copy of the Hoffman Architects' Schematic Plan is attached to the Agenda. This plan has been presented to Council previously.



The Council needs to consider the WAPC determination which could be a refusal or an approval which contain conditions unacceptable to the Council. A right of appeal would exist.

In the event that the WAPC approves the proposed development with conditions acceptable to the Council, the Council could proceed as follows:-

- call tenders for the appointment of a project manager,
- call tenders for an architect, engineer and quantity surveyor to design, and cost the project,
- following the design and costing of the project to the satisfaction of the Council, call tenders from potential operators of the Café/Kiosk;
- subject to completing the foregoing steps in the process to the Council's satisfaction, proceed with the preparation of the Business Plan as required under the Local Government Act.

It is considered necessary to achieve the required approvals prior to expending funds on the detailed design of the Café/Kiosk.

When the approvals are in place the Council can proceed with confidence to detailed design, costing and the identification of a potential operator.

The information about the design, the costs, the funding, the potential income, risks and liabilities will form the basis to the Business Plan which will need to be advertised for public comment before the project can proceed to construction.

Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost effective without compromising quality."*
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*

4. Facilitating the needs of Your Community
 - *"To facilitate and provide an optimum range of community services."*
 - *"To identify current community needs, aspirations, expectations and priorities of the services provided by the Council."*



5. Maintaining Your Community Facilities
- *"To construct and maintain community buildings which are owned or managed by the Council, to meet community needs."*

Budget/Financial Implications

An amount of \$151,000 was allocated in the 2001/02 budget for architect fees and site works for the Coogee Beach Kiosk Shop.

Fees paid to the Architect Consulting Engineer and Valuer amounted to \$8,095 in 2001/02. The funds were carried over to the 2002/03 Budget. The account balance is \$142,795 less \$6,985 which remains outstanding towards payment for McGees Financial Analysis Report.

The initial estimated cost of a Kiosk/shop was in the order of \$350,000.

Servicing of the facility was initially estimated to be around \$43,000.

The DOLA MRS Form 1, application for the Café/Kiosk contained an estimated cost of \$400,000.

The study undertaken by McGees, based on the Council brief provided for the following development costs.

▪ Building	\$510,000
▪ Alfresco	\$ 65,000
▪ Walkways	<u>\$ 15,750</u>
	\$590,750
▪ Professional fees	\$ 88,613
▪ Contingency (10%)	<u>\$ 67,936</u>
	\$747,299
GST (10%)	<u>\$ 74,730</u>
	\$822,029
Say	<u>\$820,000</u>
▪ Servicing Works	\$ 70,000
▪ External Works	\$ 70,000
▪ DOLA/Survey Fees	<u>\$ 25,000</u>
	\$985,000
Say	\$1,000,000

If the Council was to borrow \$1,000,000 capital and interest repayments would be \$86,244 per annum.



Based on the report the likely lease repayment under scenario 2 would be in the order of \$72,000 per annum. It is expected that DOLA, as the owner of the land, will require 50% of the estimated income, leaving the Council around \$36,000 per annum to repay \$86,000 in loan repayments, a shortfall of \$50,000 per annum.

On a borrowing of \$1,000,000 over 20 years at 5.9% to design and construct the Café/Kiosk under scenario 2, the following would apply:-

■ Interest payments (\$86,000 per annum)	\$ 720,000
■ Depreciation (\$14,000 per annum)	\$ 290,000
■ Lease shortfall (\$50,000 per annum)	<u>\$1,000,000</u>
	\$2,010,000(loss)

If the Council raises the \$1,000,000 from reserve funds with a return on investment of \$72,000, this is 7.2% per annum, 1.8% less than the commercial target rate of 9.0% required for a project of this type.

Moreover, the 7.2% return would be further reduced because of the 50% paid to DOLA, leaving a return of only 3.6%, some 5.4% less than the commercial target rate of 9% for a Café/Kiosk business.

Currently the rate on return for the Council on \$1,000,000, is 4.8%. This means that the Café/Kiosk would produce a rate of return of 1.2% less than would be paid by a financial institution.

For comparison purposes if scenario 2 is funded by using reserve funds over 20 years, to design and construct the Café/Kiosk, at a lost opportunity cost of 4.8% the following would apply:-

Income (\$72,000/annum)	=	\$1,440,000
50% income share to DOLA		- <u>\$ 720,000</u>
Balance	+ \$	720,000
Less opportunity cost (4.8% / annum)	- \$	960,000
Less depreciation (\$14,000 / annum)	- \$	<u>290,000</u>
		\$ 530,000 (loss)

At the end of 20 years the depreciated value of the \$590,000 building and associated facilities at 2.5% per annum, would leave a residue value of around \$300,000.

These figures exclude any operating costs that the Council may incur in respect to repairs and maintenance of the facility.

Legal Implications

Section 3.59 of the Local Government Act, 1995, and Regulations 9 and 10 of the Local Government (Functions and General) Regulations, 1996, "Commercial Enterprises by Local Governments" refer.



The proposal is within the meaning of a “major trading undertaking” as defined under the legislation as it is likely to involve Council expenditure of greater than \$250,000, should Council resolve to proceed. Accordingly, it will be necessary for a Business Plan to be prepared, in accordance with the Act and Regulations, requiring full financial details of the proposal to be disclosed, including details of the proponents.

Community Consultation

According to the Council files, to date there has been no community consultation regarding the proposed development of a Café/Kiosk at Coogee Beach.

Should the Council proceed with the project as planned then the procedure for the adoption of a Business Plan will require a public comment period.

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

The proposed Café/Kiosk is a development that could be undertaken by the private sector, and therefore, represents a duplication of services that could be provided by others.

Scenario 1, is acceptable because the local government is only providing the land and receives a lease, and the liability and risk is taken by the developer/owner of the building, and the operator.

Scenario 2, in essence represents the subsidisation of a private business, the Café/Kiosk operator, from ratepayer funds.

Local government involvement in business ventures is dealt with in the “Hilmer” report.

14.11 (MINUTE NO 1923) (OCM 18/02/2003) - PROSECUTION OF MARIO'S FAMILY MEATS - LEGAL FOOD SAMPLING - 18 SIMMS ROAD, HAMILTON HILL (2204986) (CW) (ATTACH)

RECOMMENDATION

That Council authorise the Principal Environmental Health Officer to instigate a prosecution against Mario's Family Meats for non compliance with the Health Act 1911 (as amended), namely selling food that is adulterated and does not comply with the prescribed standard.



COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Edwards that the recommendation be adopted.

CARRIED 9/0

Background

On 25 November 2002, Officers from the City's Health Service conducted legal sampling at Mario's Family Meats located at 18 Simms Road, Hamilton Hill after analysis of samples taken on a number of previous occasions found several food products which did not comply with the prescribed standard.

This constitutes an offence under Section 246O of the Health Act 1911 (as amended). Furthermore this raises doubts over the skills and knowledge of the proprietor, which is required by Chapter 3 of the Australia New Zealand Food Standards Code.

Submission

Copy of Analyst Report is attached to the Agenda.

Report

The City's Environmental Health trainee conducts monthly non-legal food sampling of food products which are sold from food premises within the City of Cockburn. The purpose of the sampling is two fold, to assist the manufacturers/vendors of food to ensure that the food which they sell is compliant with the prescribed standard and to ensure that where the standard is not being met, the manufacturer is informed to enable modifications to their practices.

Non legal food sampling of meat products from Mario's Family Meats was conducted on 3 April 2002, 2 July 2002 and 7 October 2002, each result indicating the presence of excess Sulphur dioxide in the food product, or the presence of Sulphur dioxide in foods which were not permitted to contain the preservative. In each case the proprietor was formally advised of the non-compliance with the Code and warned that further non-compliance could result in legal action being taken. As the samples were not taken by an Environmental Health Officer using the methodology prescribed in the Health Act 1911 (as amended), legal action could not be taken using these results.

Sulphur dioxide is a substance used as a preservative to prevent food spoilage. It is used in many foods including cordials, dried fruits, fruit juices, soft drinks, sausages and wines. Sulphur dioxide, at the levels permitted in food, will not affect most people. However, certain groups,



particularly asthmatics, may be sensitive to this preservative. Persons who are sensitive to Sulphur dioxide usually get a burning sensation in the throat, tight chest, wheezing and sometimes respiratory distress.

The Australia New Zealand Food Standards Code (the Code), Standard 1.3.1 permits a maximum concentration of 500mg/kg of Sulphur dioxide in sausage meat and products which contain sausage meat. In previous samples more than double the prescribed amount (1160mg/kg) has been found. The analysts report indicated the presence of 810mg/kg of Sulphur dioxide in the sausage hamburger sampled on 25 November 2002.

Section 246L of the Health Act 1911 (as amended) states:-

*“A person who sells food that is —
(a) unfit for consumption by man;
(b) adulterated; or
(c) damaged, deteriorated or perished,
commits an offence.”*

Food is deemed to be adulterated when it contains a substance prescribed as prohibited generally or in relation to food of that class or description;

Furthermore, Section 246O(2) of the Health Act 1911 (as amended) states:-

“A person who sells food that does not comply with the standard prescribed for the food demanded by the purchaser commits an offence.”

The maximum penalty for a breach of Section 246L is \$2500, with the minimum penalty for a first offence being \$250. The maximum penalty for a breach of Section 246O(2) is \$2000, with the minimum penalty for a first offence being \$200.

Food Safety Standard 3.2.2.3 requires persons undertaking or supervising food handling operations have:-

- a) skills in food handling and food hygiene matters; and
- b) knowledge of food safety and food hygiene matters,

commensurate to their work activities. The continual breaches of the Code, after being advised of the legislative requirements for sausage products on three separate occasions, indicates that if the proprietor has not intentionally breached the required Sulphur dioxide content for the product, then he may well not have the skills necessary to prepare a product which complies with the Code.

Since the proprietor of the premises has been warned previously, and this is a clear breach of the Code, the City's Health Service recommends that prosecution action be taken.



Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
 - *"To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way."*
 - *"To maintain a professional and well trained workforce that is responsive to the community's needs."*

Budget/Financial Implications

Legal expenses are available in Account No:- GL200-8080

Legal Implications

Council's Environmental Health Officers will liaise with the Council's Lawyers to ensure that the appropriate documentation and statements required by the Court are provided.

Community Consultation

N/A

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

Nil.

14.12 **(MINUTE NO 1924)** (OCM 18/02/2003) - AMENDMENTS TO POLICY APD8 - STRATA TITLES (9003) (VM) (ATTACH)

RECOMMENDATION

That Council:

- (1) adopt the amended version of the Administrative Policy APD8 – "Strata Titles" as attached to the Agenda, for inclusion in the Council's Policy Manual; and
- (2) adopt the amended Delegated Authority APD8 – "Strata Titles", as attached to the Agenda, for inclusion in the Council's Delegated Authority Register.



COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Mayor S Lee that Council refer this item to the Delegated Authorities, Policies and Position Statements Committee for consideration.

CARRIED 9/0

Explanation

Council has established the Delegated Authorities, Policies and Position Statements Committee to act as a recommendatory body to Council on amending delegated authorities, policies and position statements. It is considered this proposed amendment should therefore, be referred to the committee for review, prior to recommendation to Council.

Background

Council at its Ordinary Meeting on 19 August 1992 resolved to adopt the Administrative Policy APD8 – “Strata Titles” and Delegated Authority APD8 – “Strata Titles Act”, for inclusion in the Council’s Delegated Authority Register. The Policy was further reviewed by Council at its meeting on 15 October 2002.

Submission

The proposed amendments to the policy are outlined below:

- 1) Modify the Residential Survey Stratas section 2. of the policy to read as follows (amendments in bold type):

“2. Residential Survey Stratas

The minimum site area requirements of the proposed strata lots or subdivision lots to comply with Table 1 of the Residential Design Codes and the Scheme Map (R-Code), *in particular the strata lot area to comply with the minimum site area per dwelling of the respective Code (ie: R20 – strata lot to be a minimum lot area of 440m²).*

In the case of strata developments with common property the common property area is to be divided between the strata lots and the respective portion allocated to the strata lots and to be included on the minimum specific strata lot requirement.

The variation to these minimum site area requirements will apply pursuant to the Town Planning Scheme.



Notwithstanding the Codes, in Residential zones coded R20 the Council may vary the minimum site area per dwelling and the minimum lot area/ rear battleaxe requirements in Columns 3 and 4 of Table 1 of the Codes by permitting 2 grouped dwellings on any lot with an area of 900m² or greater as provided for under Clause 5.4 of Town Planning Scheme No. 3, but in all other respects the development shall conform with the requirements of the R20 code."

Report

Since the gazettal of the new Residential Design Codes and Town Planning Scheme No. 3, staff have had the opportunity to apply Policy APD8. After working with the policy it was realised there were changes that are needed to bring the policy into line with Town Planning Scheme No. 3 – Codes variation clause.

Town Planning Scheme No. 3 under Clause 5.4 – Special Application of Residential Design Codes, permits Council to vary the minimum site area per dwelling and the minimum lot area/rear battleaxe requirements in columns 3 and 4 of Table 1 of the Design Codes.

With the introduction of the clause in the Scheme it was found that Policy APD8 did not specify a minimum strata lot size. Proponents could subdivide lots into sizes much smaller than the prevailing lot size for the area and the minimum lot size in the Codes. This could result in housing designs not appropriate for the density of the area (ie. large dwellings on smaller lots would resemble higher density).

This policy reiterates the Scheme requirements where the battleaxe requirements of column 4 can be waived, however, the minimum strata lot size also has to comply with the minimum site area for the density code as specified in Table 1 column 3 of the Design Codes.

Strategic Plan/Policy Implications

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

2. Planning Your City
 - "To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."
 - "To ensure that the development will enhance the levels of amenity currently enjoyed by the community."
 - "To foster a sense of community within the district generally and neighbourhoods in particular."
3. Conserving and Improving Your Environment



- *"To conserve the character and historic value of the human and built environment."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

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

Nil.

14.13 (MINUTE NO 1925) (OCM 18/02/2003) - PROSECUTION OF PAVLOVICH'S DELI - SALE OF NON-COMPLIANT FOODS - 639 ROCKINGHAM ROAD, MUNSTER - OWNER: MR, B & EL PAVLOVICH (3309950) (CW) (ATTACH)

RECOMMENDATION

That Council authorise the Principal Environmental Health Officer to instigate a prosecution against Pavlovich's Deli for non compliance with the Health Act 1911 (as amended), namely selling food that does not comply with the prescribed standard.

COUNCIL DECISION

MOVED Clr L Humphreys SECONDED Clr M Reeve-Fowkes that the recommendation be adopted.

CARRIED 9/0

Background

On 23 January 2003, the Council's A/Principal Environmental Health Officer and Environmental Health Officer assessed "Pavlovich's Deli" located at 639 Rockingham Road, Munster for compliance with the Health (Food Hygiene) Regulations 1993 and associated legislation. The Council's Environmental Health Officer had attended the premises on the previous afternoon but had been forcefully removed from the building.



Prior to leaving the deli, it was observed that several food items were past their "use-by date". As of 20 December 2002, the Australian New Zealand Food Standards Code (the Code) was amended, prohibiting the sale of foods which were past their use-by-date. As such the offending items were seized by the A/Principal Environmental Health Officer, to be kept as evidence for breach of the Health Act 1911 (as amended).

Submission

A list of foods seized is attached to the Agenda.

Report

On Wednesday 22 January 2003, the Council's Environmental Health Officer attended Pavlovich's Deli to conduct a routine food premises assessment to determine compliance with the Health (Food Hygiene) Regulations 1993 and Chapter 3 of the Australia New Zealand Food Standards Code. Upon entry into the premises, the officer identified herself as a City of Cockburn Environmental Health Officer to the proprietor and commenced her assessment. The officer was part way through her assessment when she was forcefully removed from the premises by a person understood to be the owners daughter. Prior to leaving the premises, it was noticed that there were several food items which appeared past their use-by-date.

On the morning of 23 January 2003, the A/Principal Environmental Health Officer and Environmental Health Officer attended the premises to advise the proprietor that hindering an Environmental Health Officer in the course of their duties was an offence under the Health Act 1911 (as amended) and to also confirm whether foods which were out of date coding were on display for sale. The Code was amended on 20 December 2002, including provisions relating to the labelling of food. Standard 1.2.5.3 states:-

"Food must not be sold past its use-by date"

Again the officers identified themselves and advised the proprietor the purpose of the assessment. After explaining the offence provisions of the Health Act 1911 (as amended) in regards to hindering an Environmental Health Officer, the Officers commenced their assessment of the displayed food products within the premises to determine how many items had an expired "use-by-date". The officers also confirmed whether the Proprietor was aware of the change in legislation and had received the promotional information pertaining to this from the City of Cockburn. They re-iterated that it was now an offence to sell food or have food products on display which had an expired use-by date.



Previously the Code did permit foods to be sold out of date code, however the food was required to be of the nature, substance and quality demanded by the purchaser. It must not have deteriorated, perished or have any taste, texture or smell different to that normally associated with the product.

The prior assessment of the premises on 1 August 2002 found many food products which were out of date coding. The Environmental Health Officer at that time verbally advised the proprietor of the premises that amendments to the Code would be occurring on 20 December 2002 and that after this date it would be illegal to sell food products which were past their use-by date. Previous assessments of the premises, going back to 1997, have indicated issues with the display for sale of food products which were out of date coding. The proprietor being requested in each case to remove from sale those products with expired use-by dates.

The Officers seized a total of 78 food items which had either an expired use-by date (ranging from 17 December 2002 to 25 September 1989) or had deteriorated (ie insect damage to packaging, "blown cans" etc). The proprietor was advised that many of the remaining items had expired "best before" dates and should be removed from the shelves, however it is not an offence to sell food which has an expired best before date.

The Council's Health Service proposes to take action against the proprietor for the display for sale of those products which had an expired use-by date only, food products which have deteriorated will not be subject to this action. On the advice of the Council's lawyers, the seized food items have been kept as evidence.

Section 246O(2) of the Health Act 1911 (as amended) states:-

"A person who sells food that does not comply with the standard prescribed for the food demanded by the purchaser commits an offence."

The maximum penalty for a breach of Section 246O(2) is \$2000, with the minimum penalty for a first offence being \$200. The Council's Lawyers have advised that it would be possible to classify each offending food product (40 products in total) as a breach of the Act.

Food Safety Standard 3.2.2.3 requires persons undertaking or supervising food handling operations have:-

- c) skills in food handling and food hygiene matters; and
- d) knowledge of food safety and food hygiene matters,



commensurate to their work activities. The continual breaches of the Code indicates a lack of knowledge of the Code by the Proprietor and a lack of skills in regard to stock rotation and disposal.

Since the proprietor of the premises has been warned previously, and this is a clear breach of the Code, the Council's Health Service recommends that prosecution action be taken.

Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
 - *"To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way."*
 - *"To maintain a professional and well trained workforce that is responsive to the community's needs."*

Budget/Financial Implications

Legal expenses are available in Account No:- GL200-8080

Legal Implications

Council's Environmental Health Officers will liaise with the Council's Lawyers to ensure that the appropriate documentation and statements required by the Court are provided.

Community Consultation

N/A

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

Nil.

14.14 (MINUTE NO 1926) (OCM 18/02/2003) - SCHEME AMENDMENT INITIATION - LOTS 3 AND 4 LYON ROAD, BANJUP - OWNER: WATER CORPORATION - APPLICANT: ROBERTS DAY GROUP (93004) (SM) (ATTACH)

RECOMMENDATION

That Council:



- (1) adopt the following amendment:-
- TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED)
RESOLUTION DECIDING TO AMEND CITY OF COCKBURN TOWN PLANNING SCHEME – TOWN PLANNING SCHEME NO. 3
- AMENDMENT NO. 4
- Resolved that Council, in pursuance of section 7 of the Town Planning and Development Act 1928 amend the above Town Planning Scheme by:-
1. rezoning Lots 3 & 4 Lyon Road, Banjup from “Public Purposes” to “Development” and amend the Scheme Map accordingly;
- (2) following the receipt of formal advice from the Environmental Protection Authority that the Scheme Amendment should not be assessed under Section 48A of the Environmental Protection Act, advertise the Amendment under Town Planning Regulation 25 without reference to the Western Australian Planning Commission;
- (3) notwithstanding (2) above, the Director of Planning and Development may refer a Scheme or Scheme Amendment to the Council for its consideration following formal advice from the Environmental Protection Authority that the Scheme Amendment should not be assessed under Section 48A of the Environmental Protection Act, as to whether the Council should proceed or not proceed with the Amendment;
- (4) advise the applicant of the Council’s decision.

COUNCIL DECISION

MOVED Clr L Humphreys SECONDED Clr M Reeve-Fowkes that the recommendation be adopted.

CARRIED 9/0

Background

N/A



Submission

Roberts Day Group, acting on behalf of Landcorp is seeking to rezone two bore sites at Lots 3 and 4 Lyon Road, Banjup located in the 'Harvest Lakes' residential estate from "Public Purposes" to "Development".

Report

The bore sites are located on the eastern side of Lyon Road, Banjup and lie within the Atwell South/Harvest Lakes Structure Plan area, which forms part of 'Development Area 20 – Atwell South' (see attached location plan). The production bores form part of the Jandakot Groundwater Extraction infrastructure operated by the Water Corporation. The Water Corporation is currently rationalising its bore sites along Lyon Road and has determined that the 2 bore sites are surplus to requirements.

The bore sites lie within the Atwell South/Harvest Lakes Structure Plan, which was adopted by Council on 16 April 2002 to guide subdivision and development in the area. The bore sites were incorporated into the Structure Plan as residential areas in the knowledge that they were surplus to the Water Corporation's requirements and could potentially be developed for residential purposes.

Rezoning the 2 sites to "Development" is required for the implementation of the Structure Plan and subdivision proposals and will allow what is currently unutilised land to be developed for residential purposes as per the adopted 'Atwell South/Harvest Lakes' Structure Plan.

Accordingly, it is recommended that Council initiate an amendment to Scheme 3 to rezone the bore sites at Lots 3 & 4 Lyon Road, Banjup from "Public Purposes" to "Development".

Strategic Plan/Policy Implications

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

2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
 - *"To foster a sense of community within the district generally and neighbourhoods in particular."*
3. Conserving and Improving Your Environment



- *"To ensure that the development of the district is undertaken in such a way that the balance between the natural and human environment is maintained."*

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

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

Nil.

14.15 (MINUTE NO 1927) (OCM 18/02/2003) - CHANGE OF USE - APARTMENT DEVELOPMENT AND CONSERVATION WORKS - HERITAGE BUILDING - NEWMARKET HOTEL - LOT 301 (1) ROCKINGHAM ROAD, HAMILTON HILL - OWNER: KEE VEE PROPERTIES PTY LTD - APPLICANT: THOMPSON ONG & ASSOCIATES (2212274) (CP) (ATTACH)

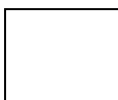
RECOMMENDATION

That Council:

- (1) Approve the application to develop 7 residential apartment units and conservation works on a heritage listed building at Lot 301 Rockingham Road, Hamilton Hill subject to the following conditions:-

STANDARD CONDITIONS

1. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
2. No person shall install or cause or permit the installation of outdoor lighting otherwise than in accordance with the requirements of Australian Standard AS 4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting".
3. Retaining wall(s) being constructed in accordance with a suitably qualified Structural Engineer's design and a building licence being obtained prior to construction.



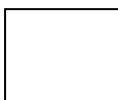
4. The premises shall be kept in a neat and tidy condition at all times by the owner/occupier to the satisfaction of the Council.
5. A landscape plan must be submitted to the Council and approved, prior to applying for building licence and shall include the following:-
 - (1) the location, number and type of existing and proposed trees and shrubs, including calculations for the landscaping areas being in conformity with the City of Cockburn Greening Plan;
 - (2) lawn areas to be established;
 - (3) shade tree and amenity plantings around/ throughout the carpark;
 - (4) areas to be reticulated or irrigated; and
 - (5) verge treatments where appropriate.
6. Landscaping and tree planting to be undertaken in accordance with the approved plan prior to the occupation of the site.
7. No wall, fence or landscaping greater than 0.75 metres in height measured from the natural ground level at the boundary, shall be constructed within 2.0 metres of a vehicular accessway unless the wall, fence or landscaping is constructed with a 3 metre truncation.
8. Earthworks over the site and batters must be stabilised to prevent sand or dust blowing, and appropriate measures shall be implemented within the time and in the manner directed by the Council in the event that sand or dust is blown from the site.
9. All earthworks and/or associated drainage details shall be in accordance with plans and specifications certified by a suitably qualified practicing Engineer to the satisfaction of the Council.
10. All stormwater drainage shall be designed in accordance with the document entitled "Australian Rainfall and Runoff" 1987 (where amended) produced by the Institute of Engineers, Australia, and the design is to be certified by a suitably qualified practicing Engineer, to the satisfaction of the Council.
11. All stormwater being contained and disposed of on-site to the satisfaction of the Council.



12. The parking bay/s, driveway/s and points of ingress and egress to be designed in accordance with the Australian Standard for Offstreet Carparking (AS2890) unless otherwise specified by this approval and are to be constructed, drained and marked in accordance with the design and specifications certified by a suitably qualified practicing Engineer and are to be completed prior to the development being occupied and thereafter maintained to the satisfaction of the Council.
13. Carbay grades are not to exceed 6% and disabled carbays are to have a maximum grade 2.5%.
14. The applicant engaging a suitably qualified practicing Engineer to certify that the whole of the lot is suitable for the approved development to the satisfaction of the Council prior to applying for a Building Licence, and before the commencement or carrying out of any work or use authorised by this approval.
15. Refuse bins shall be provided adequate to service the development and the bins are to be screened from view to the satisfaction of the Council before the development is occupied or used.
16. All road widenings, rights-of-way and truncations, must be surrendered or granted free of cost to the Council prior to the issue of a Certificate of Classification, or before the development is occupied or used.

SPECIAL CONDITIONS

17. The conservation works outlined in the letter from Thompson Ong and Associates dated 24 October 2002 shall be completed to the satisfaction of the City, subject to the requirements of the Heritage Council of Western Australia outlined in their letter dated 11 December 2002.
18. The developer entering into a new legal Heritage Agreement to supersede an earlier heritage agreement with Council in order to ensure the requirements of Condition 17 is completed within 2 years of the date of this approval. The deed shall be in the format of a caveat interest registered on the title (at the cost of the developer).
19. The low brick wall being constructed along the street frontage beneath the veranda shall be no higher than the ground level window sills.



20. The proposed garages shall be in the same materials, colour and design as the heritage hotel building to the satisfaction of the Council.
21. All paths from the carpark to the building entrances shall be wheel chair accessible and developed to the satisfaction of the Council.
22. Units B, C, F & G shall be provided with clothes dryers at the expense of the developer.
23. No laundry shall be permitted to be visible from any public place from any units at any time.
24. The windows in the Unit F bedroom and the Unit A upstairs landing that overlook the living courts of the ground floor units shall be glazed in obscure glass to the satisfaction of the Council.
25. A plan shall be submitted detailing a location for the collection of garbage bins in a convenient, but screened location to the satisfaction of the Council.
26. Enclosed outdoor storage areas no less than 4m² each shall be erected in the living courts for Units A, D and E prior to occupying the building.
27. The living courts for Units A, D and E shall be screen fenced to the satisfaction of the Council prior to occupation of the building.
28. All windows to habitable rooms facing Rockingham and Cockburn Roads shall be acoustically designed and installed to the satisfaction of the Council.
29. The lounge bar extension to the hotel shall be demolished.

STANDARD FOOTNOTES

1. Under the provisions of the Metropolitan Region Scheme, approval to commence development should be obtained from the Western Australian Planning Commission and therefore your application has been forwarded to the Department for Planning and Infrastructure for determination. Development should not be commenced until approval under the Metropolitan Region Scheme has been given.
2. Until the Council has issued a Certificate of Classification



- under Regulation 20 of the Building Regulations 1989, there shall be no approval to use the building for the purposes of the development herein conditionally approved and the land shall not be used for any such purpose.
3. The development is to comply with the requirements of the Building Code of Australia.
 4. The development is to comply with the *Environmental Protection Act 1986* which contains penalties where noise limits exceed the prescribed by the *Environmental Protection (Noise) Regulations 1997*.
 5. The development site should be connected to the reticulated sewerage system of the Water Corporation before commencement of any use.
 6. Uncovered parking bays shall be a minimum of 5.5 x 2.5 metres, clearly marked on the ground and served by a 6 metre wide paved accessway.
- (2) issue a Schedule 9 valid for 24 months to the applicant.

COUNCIL DECISION
 MOVED Cllr L Humphreys SECONDED Cllr M Reeve-Fowkes that the recommendation be adopted.

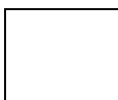
CARRIED 9/0

Background

ZONING:	MRS:	Urban
	DZS:	Local Centre
LAND USE:	Existing heritage hotel building and bottle shop	
LOT SIZE:	3865m ²	
USE CLASS:	Permitted "P" use.	

The Newmarket Hotel is recorded in the City of Cockburn Municipal Heritage Inventory as a "Category A" building. This means the building has the highest level of protection under the inventory, which recommends that Council provide maximum encouragement to the owner to conserve the building under the town planning scheme.

The property is currently being subdivided to rationalise the land holding; separating the hotel building from the bottle shop.



Use of the building has reduced over the years to the point where only the lounge bar remained operating in 2002. Due to lack of maintenance, the building has deteriorated to the point where Council issued a Dangerous Building Notice in October 2002, closing down the lounge bar and classifying the hotel unfit for habitation.

Submission

It is proposed to convert the Newmarket Hotel building into 7 residential apartments, with associated car parking and vehicle access that is shared with adjoining land. The former lounge bar part of the building, which is an extension that is out of character with the rest of the hotel, will be demolished.

Inherent with this proposal is the intention to undertake conservation works to the building to conserve its heritage character. A conservation plan has been submitted which has been assessed by, and now has the support of the Heritage Council of WA. The schedule of the works proposed, floor plans and letter of support from the Heritage Council of WA are contained in the agenda attachments.

Report

Because the site is not zoned residential in Town Planning Scheme No.3 ("TPS 3"), the application has been assessed using the "Mixed Use Development" standards of the Residential Design Codes of WA ("R-Codes") as a guide. The proposal largely complies with these criteria, in particular relating to:

- Building setbacks;
- Car parking;
- Open space;
- Outdoor living areas.

Density of development is such that 6.2 units would be permissible under an R-60 rating for the site, but approval is sought for 7. Given that the proposal involves refurbishing an existing "Category A" heritage building, it is appropriate to grant conditional approval for the 7 units as requested, as an incentive.

There is sufficient reciprocal car parking on the subject land to accommodate the demand generated by the current proposal, in addition to the parking demands attributable to developments occurring on adjoining land.

Central to the favourable recommendation of this application is the need to ensure the conservation works are completed to a high standard and within a certain time frame. To this extent, a Heritage Agreement is recommended in the event of approving the application, pursuant to Clause 7.3 of TPS 3.



Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices."*
2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*
 - *"To ensure that the development will enhance the levels of amenity currently enjoyed by the community."*
3. Conserving and Improving Your Environment
 - *"To conserve the quality, extent and uniqueness of the natural environment that exists within the district."*
 - *"To conserve the character and historic value of the human and built environment."*

The Planning Policies which apply to this item are:-

APD1 Clause 32 Approvals
APD17 Standard Development Conditions and Footnotes

Budget/Financial Implications

N/A

Legal Implications

N/A

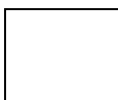
Community Consultation

N/A

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

Nil.

14.16 (MINUTE NO 1928) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR THE KEEPING OF ONE HORSE AND FIVE SHEEP - LOT 18 NO. (4) HARPER ROAD (CNR TAPPER ROAD), BANJUP (5513626) (MR) (ATTACH)



RECOMMENDATION

That Council:-

- (1) reaffirm the decision by delegated authority to issue an MRS Form 2 refusal for the proposed keeping of horses, in accordance with the application dated 4 July 2002 for the following reasons:-
1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 5ha per horse. Therefore the keeping of one horse and 5 sheep is inappropriate.
 2. The concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore the keeping of one horse and 5 sheep is inappropriate.
 3. The proposal is inconsistent with the objectives of the Statement of Planning Policy No. 6

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas.
- (b) The owner has up to 12 months from the date of this refusal to permanently remove the one horse and 5 sheep from the subject land.
- (c) The owner has up to 12 months from the date of this refusal to demolish or remove the horse stall or stables which have been constructed on the lot without the prior building approval of Council;
- (d) Statement of Planning Policy No 6 was adopted under



Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.

COUNCIL DECISION

MOVED Clr A Tilbury SECONDED Clr I Whitfield that Council:

- (1) receive the report;
- (2) write to the applicant suggesting that the existing application submitted to the Council to keep one horse and five sheep on the lot, be withdrawn and that a fresh application be made accompanied with commitments to manage the one horse and five sheep in order to reduce the risk of ground water pollution on the lot;
- (3) waive the planning fee in this particular case;
- (4) upon receipt of the written request to withdraw the current application and the receipt of the fresh application, refer the fresh application to Department of Environment, Water and Catchment Protection (DEWCP) for advice under the provisions of the Statement of Planning Policy No. 6;
- (5) reconsider the application following the advice of DEWCP; and
- (6) request DEWCP to prepare an information sheet for distribution to landowners who currently own or intend to own animals on land located in the Rural Water Protection Zone, advising ways acceptable to DEWCP of minimising the sources of nitrogen pollution that could adversely affect the Jandakot underground water mound.

CARRIED 9/0

Explanation

The applicant should be given the opportunity to have a fresh application considered by DEWCP to keep animals within the Rural Water Protection Zone on the basis of additional information about the management methods to be applied by the landowner to minimise potential pollution of the Jandakot underground water mound.



Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Herbert & Patricia Chambers	
OWNER:	'as above'	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable 'AA'	

Council has the discretion after having due regard for the advice from the Department of Environment and Water Catchment Protection (“DEWCP”), to permit the keeping of horses. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3 but not in this instance. The procedure for dealing with discretionary uses is for the Council to refer development applications within the Resource Zone to the DEWCP for advice, before making a determination. The Council is required to incorporate the DEWCP recommendations into its decision on the application.

If the Council is not prepared to accept the advice of the DEWCP’s then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP’s recommendation.

The refusal decision for one horse and 5 sheep was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days.

The land was included in Special Rural Zone No 1 in Town Planning Scheme – District Zoning Scheme No 1 (gazetted on 12 June 1974). Appendix 8 in Scheme 1 contains former Special Rural Zone provisions that apply to the subject land where a rural pursuit and stabling of horses was only permitted if special consent was given by Council and the Council is advised by the then Metropolitan Water Authority that a licence would be issued for the use of groundwater in the amounts necessary for the development. Accordingly planning consent was required when the owner initially purchased the property.

The land was included in Special Rural Zone No 4 in District Zoning Scheme No 2 (gazetted in December 1992). The planning approval requirements in the Council’s Scheme No 2 – Sixth Schedule Special Rural Zone relating to the keeping of 1 horse and 5 sheep were clearly specified as follows:-

“4.2.2 The Council shall not give Planning Consent for a Nursery, Private Recreation, Hobby Farm or Stables unless the Water Authority



of Western Australia has formally advised that it would issue a licence for a water bore to extract the quantity of ground water necessary for the development.

4.2.3 The Council shall not give Planning Consent for the agistment or the stabling of horses on any lot unless the Department of Agriculture has formally advised that it is satisfied that the soil conditions and type of vegetation existing within the area defined in clause 6.1 of this Schedule or a particular lot within the area so defined is capable of supporting such a use."

The use of a Stable in Scheme 2 meant that land in that zone could not be used for the purpose indicated unless the Council has in its discretion granted Planning Consent after notice of the application has been given in accordance with Clause 6.2. Accordingly there is no question at law as to whether or not a planning approval was required.

Submission

The applicant has sought reconsideration of a refusal decision to keep a pony and has raised the following additional points in support of their submission:-

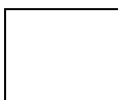
- *"We have kept livestock here for the past 21 years and prior to that our property formed part of a farm and market garden which operated for many years. Most of the native vegetation was cleared from our land prior to our purchasing it and we have spent considerable time and money planting many varieties of native trees and bushes; and*
- *We trust the Council will consider our amended application."*

Because there was no substantial change to the proposal, the reconsideration was not referred to the DEWCP for further advice.

Report

The State Government's objective in relation to land uses over the Jandakot water mound is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth's groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. The City's planning scheme was amended to reflect the water protection policies and by-laws developed by the Water Authority (now Water Corporation and the DEWCP).

Land use and development controls in the Resource Zone are contained within the City's Town Planning Scheme No 3 ("TPS3") and Statement of Planning Policy No 6 ("SPP6") – Jandakot Groundwater Protection Policy (gazetted June 1998). The Western Australian



Planning Commission are responsible for establishing the land use controls that are applied by Council in TPS No 3.

The proposal while not specifically defined is generally included within the Stable land use class in SPP6 which is a discretionary use and is defined as follows:-

“..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;”

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the Water and Rivers Commission. The reasons for refusing the proposal were based on the recommendations of the DEWCP. The DEWCP consider that the proposal was not acceptable based on the concentration of nitrogen recharging the groundwater. The entire property is also situated within a 200 metres buffer to an Environmental Protection Policy Wetland, where the keeping of horses is not environmentally acceptable.

Position Statement (PSPD13) of Council states *“Where retrospective development applications for the keeping of horses have been considered by the WRC to not comply with the Draft Environmental Guidelines for Horse Activities (October 2001) or other relevant guidelines and advice to that effect is received by the Council, then the applications concerned will be refused”.*

Although the proposal is not supported on technical grounds, it is open for the Council to support the proposal if it considers that it is appropriate in this instance. Council cannot legally approve the proposal and must refer the application to the Western Australian Planning Commission for its determination.

The options available to the Council in respect to this application are:-

Option One – adopt the officer’s recommendation, consistent with the DEWCP advice.

Option Two – reject the officer’s recommendation and the DEWCP advice and resolve as follows:-

“That Council:-

- (1) *receive the report;*
- (2) *is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*



- (3) *forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*
- (4) *advise the applicant and Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

From a planning viewpoint however the proposal cannot be supported due to the initial recommendations provided by the DEWCP, which have been used as the basis for refusal. It is recommended that the initial refusal be reaffirmed.

Strategic Plan/Policy Implications

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

2. Planning Your City
"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."

Budget/Financial Implications

Council's decision is appealable. Legal representation will be required if an appeal is lodged with the Tribunal.

Legal Implications

N/A

Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.

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

Nil.

14.17 (MINUTE NO 1929) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR THE KEEPING OF ONE EXISTING HORSE - LOT 41 (NO. 14) GLENDALE CRESCENT, JANDAKOT (5513719) (MR) (ATTACH)



RECOMMENDATION

That Council:

- (1) reaffirm the decision by delegated authority to issue an MRS Form 2 refusal for the proposed keeping of one horse, in accordance with the application dated 26 June 2002 for the following reasons:-
1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 5ha per horse. Therefore the keeping of one horse is inappropriate.
 2. The concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore the keeping of one horse is inappropriate.
 3. The proposal is inconsistent with the objectives of the Statement of Planning Policy No. 6.

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas.
- (b) The owner has up to 12 months from the date of this refusal to permanently remove the horse from the subject land.
- (c) Statement of Planning Policy No 6 was adopted under Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.



COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Cllr A Tilbury that Council:

- (1) receive the report;
- (2) write to the applicant suggesting that the existing application submitted to the Council to keep one horse on the lot be withdrawn and that a fresh application be made accompanied with commitments to manage the one horse in order to reduce the risk of ground water pollution on the lot;
- (3) waive the planning fee in this particular case;
- (4) upon receipt of the written request to withdraw the current application and the receipt of the fresh application, refer the fresh application to Department of Environment, Water and Catchment Protection (DEWCP) for advice under the provisions of the Statement of Planning Policy No. 6; and
- (5) reconsider the application following the advice of DEWCP.

CARRIED 9/0

Explanation

The applicant should be given the opportunity to have a fresh application considered by DEWCP to keep animals within the Rural Water Protection Zone on the basis of additional information about the management methods to be applied by the landowner to minimise potential pollution of the Jandakot underground water mound.

Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Meredith Woolcock	
OWNER:	'as above'	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable 'AA'	

Council has the discretion after having due regard for the advice from the Department of Environment, Water and Catchment Protection ("DEWCP") to permit the keeping of horses. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3. The procedure for dealing with discretionary uses is for the Council to refer development applications within the



Resource Zone to the DEWCP for advice, before making a determination. The Council is required to incorporate the DEWCP recommendations into its decision on the application.

If the Council is not prepared to accept the advice of the DEWCP then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP recommendation.

The refusal decision for one horse was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days

It is recognised that historically the land was included in Special Rural Zone No 1 in Town Planning Scheme – District Zoning Scheme No 1 (gazetted on 12 June 1974). Appendix 8 in Scheme 1 contains former Special Rural Zone provisions that apply to the subject land. Clause 25 states:-

“(25) No person shall keep or permit to be kept more than one horse on any lot in the Jandakot/Solomon Roads subdivisions and more particularly described in column (a) of this Appendix.

The keeping of one horse was therefore permitted at the time the applicant owned the property under District Zoning Scheme 1, however the keeping of a horse still required a planning consent pursuant to clause 23 of Scheme 1 as follows:-

“23. Any person who desires to commence development of land for any purpose other than the construction or alteration of a private dwelling in a Residential Zone shall make application to the Council for Planning Consent etc...”

There is no record of a planning approval being granted for the keeping of a horse on the property.

Submission

The applicant has sought reconsideration of a refusal decision to keep a horse and has raised the following additional points in support of their submission:-

“I am very concerned about the refusal decision for the following reasons:

- *We have owned and resided at 14 Glendale Crescent for 20 years and have kept a horse on the property for that length of time;*
- *The horse I currently own has lived on this property for the past 15 years and is now 24 years old – it would be extremely stressful for*



her and our family to have to move her at this stage – she is a much loved family pet;

- *We restrict her access to the natural flora & fauna on the property (which constitutes the major part of the acreage) and totally hand feed her;*
- *When we purchased the property, it was on the understanding that we could keep one horse – any more needed to have permission granted;*
- *I do understand the Waters & Rivers Commission's concerns in regard to the underground water supplies in the Jandakot area, however I do feel that perhaps there are other avenues to be explored, such as providing guidelines for manure control etc, which could allow special rural residents to maintain the lifestyle they are seeking which in many cases includes ponies and horses, whilst still protecting the environment."*

Because there was no substantial change to the proposal, the reconsideration was not referred to the DEWCP for further advice.

Report

The State Government's objective in relation to land uses over the Jandakot water mound is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth's groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. The City's planning scheme was amended to reflect the water protection policies and by-laws developed by the Water Authority (now Water Corporation and the DEWCP).

Land use and development controls in the Resource Zone are contained within the City's Town Planning Scheme No 3 ("TPS3") and Statement of Planning Policy No 6 ("SPP6") – Jandakot Groundwater Protection Policy (gazetted June 1998). The Western Australian Planning Commission are responsible for establishing the land use controls that are applied by Council in TPS No 3.

The proposal while not specifically defined is generally included within the Stable land use class in SPP6 which is a discretionary use and is defined as follows:-

"..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;"

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the DEWCP. The reasons for refusing the proposal were based on the recommendations of the DEWCP, that the proposal was not



acceptable based on the concentration of nitrogen recharging the groundwater.

Position Statement (PSPD13) of Council states *“Where retrospective development applications for the keeping of horses have been considered by the WRC to not comply with the Draft Environmental Guidelines for Horse Activities (October 2001) or other relevant guidelines and advice to that effect is received by the Council, then the applications concerned will be refused”.*

District Zoning Scheme 1 allowed the keeping of not more than one horse on the property, but this was always subject to a planning consent being sought and obtained from Council. If an application had been lodged under Scheme 1 it is likely that the Council would have approved it, since it was a permitted use at the time. Nevertheless this was not the case.

Despite that this proposal was refused and is still not supported based on current environmental standards. It is open for the Council to support the proposal, if it believes that it is appropriate in this instance. Council cannot legally approve the proposal and must refer the application to the Western Australian Planning Commission for its determination.

If the Council, however, accept the more recent advice from DEWCP which contradicts its original advice, then presumably an amended decision can be issued by the Council which conforms to the latest DEWCP advice without the need to refer the matter to the WAPC.

The options available to the Council in respect to this application are:-

Option One – adopt the officer’s recommendation, consistent with the DEWCP advice.

Option Two – reject the officer’s recommendation and the DEWCP advice and resolve as follows:-

“That Council:-

- (1) receive the report;*
- (2) is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*
- (3) forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*



- (4) *advise the applicant and Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

From a planning viewpoint however the proposal cannot be supported due to the initial recommendations provided by the DEWCP, which have been used as the basis for refusal. It is recommended that the application be refused.

Strategic Plan/Policy Implications

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

2. Planning Your City
- *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*

Budget/Financial Implications

Council's decision is appealable. Legal representation may be required if an appeal is lodged with the Tribunal. The DEWCP would be requested to defend its recommendations and provide legal representation.

Legal Implications

N/A

Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.

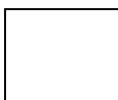
Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.18 (MINUTE NO 1930) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR THE KEEPING OF 1 EXISTING PONY - LOT 2 (NO. 9) GUTTERIDGE ROAD, BANJUP (5513725) (MR) (ATTACH)

RECOMMENDATION

That Council:



(1) reaffirm the decision by delegated authority to issue a form 2 refusal for the proposed Pony, in accordance with the application dated 1 July 2002 for the following reasons:-

1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 1.7ha per horse which would support the keeping of one pony. However the second assessment criteria measures the likely concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property. The amount for this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore the keeping of one pony is inappropriate.
2. The proposal is inconsistent with the objectives of the Statement of Planning Policy No. 6

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas.
 - (b) The owner has up to 12 months from the date of this refusal to permanently remove the pony from the subject land.
 - (c) Statement of Planning Policy No 6 was adopted under Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.
- (2) advise the owner that the keeping of livestock such as sheep must be included in a separate application for planning approval or alternatively be removed off-site within 12 months.

COUNCIL DECISION

MOVED Cllr A Tilbury SECONDED Cllr I Whitfield that Council:-



- (1) receive the report;
- (2) write to the applicant suggesting that the existing application submitted to the Council to keep one pony on the lot be withdrawn and that a fresh application be made accompanied with commitments to manage the one pony in order to reduce the risk of ground water pollution on the lot;
- (3) waive the planning fee in this particular case;
- (4) upon receipt of the written request to withdraw the current application and the receipt of the fresh application, refer the fresh application to Department of Environment, Water and Catchment Protection (DEWCP) for advice under the provisions of the Statement of Planning Policy No. 6; and
- (5) reconsider the application following the advice of DEWCP.

CARRIED 9/0

Explanation

The applicant should be given the opportunity to have a fresh application considered by DEWCP to keep animals within the Rural Water Protection Zone on the basis of additional information about the management methods to be applied by the landowner to minimise potential pollution of the Jandakot underground water mound.

Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Rosemary & Robert Sheehy	
OWNER:	'as above'	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable 'AA'	

Council has the discretion after having due regard for the advice from the Department of Environment, Water and Catchment Protection (“DEWCP”), to permit the keeping of one pony. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3 but not in this instance. The procedure for dealing with discretionary uses is for the Council to refer development applications within the Resource Zone to the DEWCP for comment, before making a determination. The Council is required to incorporate the DEWCP’s recommendations into its decision on the application.



If the Council is not prepared to accept the recommendation of the DEWCP then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP recommendation.

The refusal decision for a pony was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days.

It is recognised that historically the land was included in Special Rural Zone No 4 in District Zoning Scheme No 2 (gazetted in December 1992). The planning approval requirements in the Council's Scheme No 2 – Sixth Schedule Special Rural Zone relating to the keeping of horses were clearly specified as follows:-

“4.2.2 The Council shall not give Planning Consent for a Nursery, Private Recreation, Hobby Farm or Stables unless the Water Authority of Western Australia has formally advised that it would issue a licence for a water bore to extract the quantity of ground water necessary for the development.

4.2.3 The Council shall not give Planning Consent for the agistment or the stabling of horses on any lot unless the Department of Agriculture has formally advised that it is satisfied that the soil conditions and type of vegetation existing within the area defined in clause 6.1 of this Schedule or a particular lot within the area so defined is capable of supporting such a use.”

The use of a Stable in Scheme 2 meant that land in that zone could not be used for the purpose indicated unless the Council has in its discretion granted Planning Consent after notice of the application has been given in accordance with Clause 6.2. Accordingly there is no question at law as to whether or not a planning approval was required.

There is no record of a planning approval being granted for the keeping of horses on the property.

The Cockburn City Herald (Feb 1, 2003) contains a front page article regarding the application to keep a pony from the Sheehy family. Mr Sheehy was reported as also having a dozen sheep on the property which was not the subject of this application. The keeping of sheep should have been included in the application to Council, together with the pony. The keeping of livestock such as sheep would have been a relevant consideration in assessing the total nutrient loading into the ground water mound. This matter was not referred to the Department of Environment, Water and Catchment Protection, because it wasn't included in the application. The number of sheep held on this property



will be determined, and if necessary a fresh application required for consideration by the DEWCP.

It was also noted in previous discussions with Mr Sheehy in May 2002 that the pony would be removed from the property and Council officers were invited to check that this had occurred, as it was understood that it was "too much trouble" to apply for an approval. Nevertheless the Sheehy family subsequently decided to proceed with lodging the planning application to keep the pony.

Submission

The applicant has sought reconsideration of a refusal decision to keep a pony and has raised the following additional points in support of their submission:-

- Our original proposal was very comprehensive and undertook to collect the pony refuse and place it in covered plastic drums for off-site disposal;
- In Atwell just across from Tapper Road nearby there are many more houses on land pouring a lot more fertiliser into the ground than one small pony would ever do;
- This subdivision into 2.0ha size lots was originally a dairy farm for many years and we think it is a little bit late now to worry about ground water pollution;
- We believe we are being made the scapegoats for incompetent town planning (ie Atwell which is on the groundwater mound);
- The ruling by Council is impinging on the rural lifestyle;
- When the property was purchased several years ago it was on the understanding that it was Special Rural and that we could keep two horses;
- Planted hundreds of native trees over six years which will replace any nutrients leached from the ground by one pony;
- A great percentage of our rural property is peat which retains nutrients and thus nullifies any damage done by one small pony;
- We also drink the groundwater from our property, which is filtered through limestone. We believe we have the most to loose and not put our health at risk even if we thought there would be a problem from leaching nutrients.

Report

The State Government's objective in relation to land uses over the Jandakot water mound is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth's groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. The City's planning scheme was amended



to reflect the water protection policies and by-laws developed by the Water Authority (now Water Corporation and the Department of Environment and Water Catchment Protection DEWCP).

Land use and development controls in the Resource Zone are contained within the City's Town Planning Scheme No 3 ("TPS3") and Statement of Planning Policy No 6 ("SPP6") – Jandakot Groundwater Protection Policy (gazetted June 1998). The Western Australian Planning Commission are responsible for establishing the land use controls that are applied by Council in TPS No 3.

The proposal while not specifically defined is generally included within the Stable land use class in SPP6 which is a discretionary use and is defined as follows:-

"..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;"

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the DEWCP. The reasons for refusing the proposal were based on the recommendations of the DEWCP. The DEWCP consider that the proposal was not acceptable based on the concentration of nitrogen recharging the groundwater.

Position Statement (PSPD13) of Council states *"Where retrospective development applications for the keeping of horses have been considered by the WRC to not comply with the Draft Environmental Guidelines for Horse Activities (October 2001) or other relevant guidelines and advice to that effect is received by the Council, then the applications concerned will be refused"*.

Notwithstanding the above, the applicant has retained a substantial area of remnant vegetation on the property and managed to "fit the development into the landscape" rather than substantially modifying the environment to suit the development. Despite that this proposal is not supported on technical grounds, it is open for the Council to support the proposal if it considers that it is appropriate in this instance. Council cannot legally approve the proposal but it can refer the application to the Western Australian Planning Commission for its determination.

The options available to the Council in respect to this application are:-

Option One – adopt the officer's recommendation, consistent with the DEWCP advice.

Option Two – reject the officer's recommendation and the DEWCP advice and resolve as follows:-



"That Council:-

- (1) receive the report;*
- (2) is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*
- (3) forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*
- (4) advise the applicant and Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

The proposal is not supported due to the recommendations provided by the DEWCP, which have been used to outline reasons for refusal. It is recommended that the previous refusal be reaffirmed.

Strategic Plan/Policy Implications

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

2. Planning Your City
"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."

Budget/Financial Implications

Council's decision is appealable. Legal representation may be required if an appeal is lodged with the Tribunal. The DEWCP would be requested to defend its recommendations and provide legal representation.

Legal Implications

N/A

Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.



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

Nil.

14.19 (MINUTE NO 1931) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR THE KEEPING OF TWO EXISTING HORSES - LOT 12 (NO. 95) GUTTERIDGE ROAD, BANJUP (5513735) (MR) (ATTACH)**RECOMMENDATION**

That Council:

- (1) reaffirm the decision by delegated authority to issue an MRS Form 2 refusal for the proposed keeping of horses, in accordance with the application dated 30 June 2002 for the following reasons:-
1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 1.7ha per horse. Therefore the keeping of two (or three) horses is inappropriate.
 2. The concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore the keeping of two horses is inappropriate.
 3. The proposal is inconsistent with the objectives of the Statement of Planning Policy No. 6

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas.



- (b) The owner has up to 12 months from the date of this refusal to permanently remove the horses from the subject land.
- (c) Statement of Planning Policy No 6 was adopted under Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.

COUNCIL DECISION

MOVED Cllr A Tilbury SECONDED Cllr I Whitfield that Council:

- (1) receive the report;
- (2) write to the applicant suggesting that the existing application submitted to the Council to keep two horses on the lot be withdrawn and that a fresh application be made accompanied with commitments to manage the two horses in order to reduce the risk of ground water pollution on the lot;
- (3) waive the planning fee in this particular case;
- (4) upon receipt of the written request to withdraw the current application and the receipt of the fresh application, refer the fresh application to Department of Environment, Water and Catchment Protection (DEWCP) for advice under the provisions of the Statement of Planning Policy No. 6; and
- (5) reconsider the application following the advice of DEWCP.

CARRIED 9/0

Explanation

The applicant should be given the opportunity to have a fresh application considered by DEWCP to keep animals within the Rural Water Protection Zone on the basis of additional information about the management methods to be applied by the landowner to minimise potential pollution of the Jandakot underground water mound.



Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Malcolm & Anita Wanstall	
OWNER:	'as above'	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable 'AA'	

Council has the discretion after having due regard for the advice from the Department of Environment and Water Catchment Protection (“DEWCP”), to permit the keeping of horses. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3. The procedure for dealing with discretionary uses is for the Council to refer development applications within the Resource Zone to the DEWCP for advice, before making a determination. The Council is required to incorporate the DEWCP’s recommendations into its decision on the application.

If the Council is not prepared to accept the advice of the DEWCP then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP recommendation.

The refusal decision for two horses was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days

It is recognised that historically the land was included in Special Rural Zone No 4 in District Zoning Scheme No 2 (gazetted in December 1992). The planning approval requirements in the Council’s Scheme No 2 – Sixth Schedule Special Rural Zone relating to the keeping of horses were clearly specified as follows:-

“4.2.2 The Council shall not give Planning Consent for a Nursery, Private Recreation, Hobby Farm or Stables unless the Water Authority of Western Australia has formally advised that it would issue a licence for a water bore to extract the quantity of ground water necessary for the development.”

4.2.3 The Council shall not give Planning Consent for the agistment or the stabling of horses on any lot unless the Department of Agriculture has formally advised that it is satisfied that the soil conditions and type of vegetation existing within the area defined in clause 6.1 of this Schedule or a particular lot within the area so defined is capable of supporting such a use.”



The use of a Stable in Scheme 2 (ie keeping of horses) meant that land in that zone could not be used for the purpose indicated unless the Council has in its discretion granted Planning Consent after notice of the application has been given in accordance with Clause 6.2. Accordingly there is no question at law as to whether or not a planning approval was required.

There is no record of a planning approval being granted for the keeping of a horse on the property.

Submission

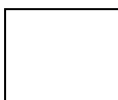
The applicant has sought reconsideration of a refusal decision to keep 2 horses and has raised the following additional points in support of their submission:-

- *“Application to keep 2 horses of which is in her 19th year too old to sell and too young to be destroyed. The other in her 18th year owned since a baby and been broken in and trained by us;*
- *They are part of our family and we couldn't bear to part with them. We ride them regularly and have been looking forward to riding them more in our imminent retirement;*
- *Our horses are in their back yards at night for their safety and have access to their shelter if they wish ie. They are not locked in;*
- *Their shelters have a limestone base which is covered with a layer of sawdust to absorb any urine. The yards are filed with a thickness of imported white sand and both yards and shelters are lined regularly to neutralise the acid;*
- *While we agree with the protection of the ground water these changes were made 18 yrs after we bought the property. Every effort is being made to manage the property and horses in a responsible manner; and*
- *Any changes to our management of this property and horses which all enable us to keep these 2 horses could be adopted I'm sure. Therefore we would ask you to please reconsider this application.”*

Because there was no substantial change to the proposal, the reconsideration was not referred to the DEWCP for further advice.

Report

The State Government's objective in relation to land uses over the Jandakot water mound is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth's groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. The City's planning scheme was amended



to reflect the water protection policies and by-laws developed by the Water Authority (now Water Corporation and the DEWCP).

Land use and development controls in the Resource Zone are contained within the City's Town Planning Scheme No 3 ("TPS3") and Statement of Planning Policy No 6 ("SPP6") – Jandakot Groundwater Protection Policy (gazetted June 1998). The Western Australian Planning Commission are responsible for establishing the land use controls that are applied by Council in TPS No 3.

The proposal while not specifically defined is generally included within the Stable land use class in SPP6 which is a discretionary use and is defined as follows:-

"..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;"

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the DEWCP. The reasons for refusing the proposal were based on the recommendations of the department. The DEWCP consider that the proposal was not acceptable based on the concentration of nitrogen recharging the groundwater. The City has also noted that the property is entirely within a 200 metre buffer to an adjoining sumpland wetland which is reserved at the rear of the property.

Position Statement (PSPD13) of Council states *"Where retrospective development applications for the keeping of horses have been considered by the WRC to not comply with the Draft Environmental Guidelines for Horse Activities (October 2001) or other relevant guidelines and advice to that effect is received by the Council, then the applications concerned will be refused"*.

Notwithstanding the above, the applicant reputedly has a long history of keeping horses and has retained remnant vegetation on the property. Although the proposal is not supported on technical grounds, it is open for the Council to support the proposal if it considers that it is appropriate in this instance. Council cannot legally approve the proposal and must refer the application to the Western Australian Planning Commission for its determination.

The options available to the Council in respect to this application are:-

Option One – adopt the officer's recommendation, consistent with the DEWCP advice.

Option Two – reject the officer's recommendation and the DEWCP advice and resolve as follows:-

"That Council:-



- (1) *receive the report;*
- (2) *is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*
- (3) *forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*
- (4) *advise the applicant and Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

From a planning viewpoint however the proposal cannot be supported due to the initial recommendations provided by the DEWCP, which have been used as the basis for refusal. It is recommended that the initial refusal be reaffirmed.

Strategic Plan/Policy Implications

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

2. Planning Your City
"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."

Budget/Financial Implications

Council's decision is appealable. Legal representation may be required if an appeal is lodged with the Tribunal. The DEWCP would be requested to defend its recommendations and provide legal representation.

Legal Implications

N/A

Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.



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

Nil.

14.20 (MINUTE NO 1932) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR 2 EXISTING STABLES, HAY AND FLOAT SHELTER AND 2 HORSES - LOT 23 (NO.6) WILGA COURT, BANJUP (5500139) (MR) (ATTACH)**RECOMMENDATION**

That Council:

(1) reaffirm the decision by delegated authority to issue an MRS Form 2 refusal for the proposed 2 Stables, Hay & Float Shelter & 3 Horses, in accordance with the application dated 1 July 2002 for the following reasons:-

1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 5ha per horse. Therefore the keeping of three horses is inappropriate.
2. The concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore, the keeping of three horses is inappropriate.
3. The proposal is inconsistent with the objectives of the Statement of Planning Policy No 6.

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas.
- (b) The owner has up to 12 months from the date of this refusal to permanently remove the horses from the



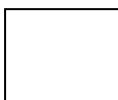
subject land.

- (c) The owner has up to 12 months from the date of this refusal to demolish or remove the horse stall or stables which have been constructed on the lot without the prior building approval of Council.
- (d) Statement of Planning Policy No. 6 was adopted under Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.
- (e) This refusal does not affect the keeping of poultry on the property, in the numbers indicated by the applicant on the submitted plans.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr A Tilbury that Council:

- (1) receive the report;
- (2) accepts the amended recommendation on the application by Department of Environment, Water and Catchment Protection dated 31 January 2003 in relation to the application;
- (3) sets aside the officer's refusal of the application made under delegated authority as provided for under Council Policy SC17 – *Request for Reconsideration of Refused Applications*;
- (4) approve the application subject to the following conditions:-
 - 1. A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.(DEWCP recommendation)
 - 2. Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities). (DEWCP recommendation)
 - 3. Collect manure daily then contain and cover for removal off-site or for composting. (DEWCP recommendation)
 - 4. Nothing in the approval or these conditions shall excuse



compliance with all relevant written laws in the commencement and carrying out of the development.

5. This approval is limited to the keeping of 2 horses, 2 existing stables and float shelter only.
6. The stabling and agistment of the horses shall be in accordance with the Department of Environment, Water and Catchment Protection Best Management Practice “Environmental Management Guidelines for Horse Facilities and Activities” September 2002.
7. Existing remnant vegetation being retained and conserved by the installation of fencing where appropriate.
8. The keeping of horses (2) must not cause a dust or odour nuisance to adjoining owners.
9. The stable floor being constructed with a concrete impervious floor.
10. No part of the dressage area shall be located any less than 10 metres from any lot boundary and shall be screened from the adjoining property by vegetation to minimise dust impacts on adjoining properties.
11. Compliance with the City of Cockburn Local Laws 2000 – relating to Stables.

Footnotes

1. Conditions 1,2 and 3 are the recommendations made by Department of Environment, Water and Catchment Protection as provided for under Clause 11 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy and have been included as conditions as required under Clause 13.
2. The City of Cockburn is not responsible for the imposition of Conditions 1, 2 and 3, and therefore the Department of Environment, Water and Catchment Protection is deemed the responsible authority in respect to ensuring compliance and enforcement of these conditions.
3. Structural certification is required if a building licence has not been granted for the construction of the stables.
4. In accordance with the Council’s Local Laws 2000 – Standards for Stables:



<p>“(3) any paddock or yard used for the keeping of any horse shall have a fence or railing at a distance of not less than 15 metres from any dwelling house.</p> <p>Manure Receptacle “The owner or occupier of premises shall:</p> <p>(a) provide in a convenient position, an impervious receptacle with a tight fitting lid, for the storage of manure and offensive litter;</p> <p>(b) keep the lid of the receptacle closed except when manure is being deposited or removed;</p> <p>(c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects.”</p> <p>(5) issue the approval for a period valid for 2 years and if the development is not substantially commenced within this period, a fresh application is required to be made;</p> <p>(6) issue a Schedule 9 and an MRS Form 2 setting out the Council decision;</p> <p>(7) advise the applicant and the Department of Environment, Water and Catchment Protection of the Council’s decision accordingly.</p> <p style="text-align: right;"><u>CARRIED 9/0</u></p>

Explanation

The applicant's amended proposal from 3 horses to 2 horses has been approved by DEWCP. The management techniques being applied to the stabling of the 2 horses is based on a practical approach to minimising the impact on the ground water. The applicants have been responsible landowners who have retained a substantial area of remnant bushland on their block. The recommendation from DEWCP is therefore acceptable to Council.

Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Patrick Taaffe	
OWNER:	Patrick Taaffe	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable ‘AA’	



The Council may, at its discretion, after having due regard for the advice from the Department of Environment, Water and Catchment Protection (“DEWCP”), permit the use. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3. The procedure for dealing with discretionary uses is for the Council to refer development applications within the Resource Zone to the DEWCP for advice, before making a determination. The Council is required to incorporate the DEWCP’s recommendations into its decision on the application.

If the Council is not prepared to accept the advice of the DEWCP then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP recommendation.

The refusal decision for 2 Stables, Hay & Float Shelter & 3 Horses was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days.

It is recognised historically the land was included in Special Rural Zone for the area “south of Forrest Road” (now Armadale Road) in Town Planning Scheme – District Zoning Scheme No. 1 (gazetted on 12 June 1974). Appendix 8 Schedule 1 contains former Special Rural Zone provisions that apply to the subject land. Clause (25) states:-

“(25) The keeping of only one (1) horse per lot may be permitted on the land described in paragraph (3) of column (g).”

The keeping of one horse was therefore permitted at the time the applicant owned the property under District Zoning Scheme No. 1, however, the keeping of one horse still required a planning consent as a rural pursuit pursuant to Clause 23 of Scheme No. 1.

The land was included in Special Rural Zone No 7 in District Zoning Scheme No 2 (gazetted in December 1992). The planning approval requirements in the Council’s Scheme No 2 relating to the keeping of horses were clearly specified as follows:-

“7.2.3 The Council shall not give Planning Consent for the agistment or the stabling of horses on any lot unless the Department of Agriculture has formally advised that it is satisfied that the soil conditions and type of vegetation existing within the area defined in clause 7.1 of this Schedule or a particular lot within the area so defined is capable of supporting such a use.”



The use of a Stable in Scheme 2 meant that land in that zone could not be used for the purpose indicated unless the Council has in its discretion granted Planning Consent after notice of the application has been given in accordance with Clause 6.2. Accordingly there is no question as to whether or not a planning approval was required.

There is no record of a planning consent for the keeping of horses on the property.

Submission

The applicant has sought reconsideration of a refusal decision for 2 Stables, Hay & Float Shelter & 3 Horses and raised the following additional points in support of their submission:-

- We have lived at 6 Wilga Court for nearly 13 years and find the refusal decision very disappointing with its affect on our way of life;
- The selling agent advised that it was acceptable to have 2 to 3 horses as long as the land was looked after. No notification was given for a requirement to have a permit to keep a horse/stable;
- The Jandakot Trotting Track is close by yet horses have been refused on our property?;
- Since applying to Council one horse has been sold and so there will only be two horses on the property now. We are willing to concrete or limestone the floors of our two stables to minimise the concentration of nitrogen recharging into the groundwater;
- The horses are stabled from 6pm to 8am ever day;
- All manure is cleared every morning and night using trailers which are covered and cleared once a week for use as manure on gardens in the metropolitan area;
- The land is well vegetated and several native trees have been planted over the years that provide good visual screening;
- A letter from the Department of Environment, Water and Catchment Protection has allowed a neighbour close by to have 3 horses and this property has the same Priority 2 soil we have.

Because additional information was provided by the applicant as part of the request for reconsideration, the additional information was sent to DEWCP for consideration, prior to preparing the report to Council. The re-assessment by DEWCP resulted in there being no objection to the proposal subject to the following conditions to minimise nitrogen contribution to the Jandakot Underground Water Pollution Control Area:-

- *“A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.*
- *Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal*



times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities).

- *Collect manure daily then contain and cover for removal off-site or for composting.”*

The first recommendation is totally irrelevant to the application and the other two are not enforceable. These are incompatible recommendations, which the Council should not take responsibility for.

The Statutory Planning Service received the revised position of DEWCP. Changes in the position by the referral authority is unacceptable and puts into doubt the reliability of the advice being provided.

Report

The objective in relation to land uses over public groundwater is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth's groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. It was for this reason that the City's planning scheme was amended to reflect the water protection policies and By-laws developed by the Water Authority (now Water Corporation and the Department of Environment, Water and Catchment Protection).

Land use and development controls in the Resource Zone are in City's Town Planning Scheme No 3 ("TPS3") and Statement of Planning Policy No 6 ("SPP6") – Jandakot Groundwater Protection Policy (gazetted June 1998). The Council's land use control's have been prepared by the Western Australian Planning Commission and are applied by the Council as statute since SPP No 6 is incorporated by reference in TPS No 3.

The proposal falls within the Stable land use class in SPP6 being a discretionary use and which means:-

"..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;"

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the DEWCP. The reasons for refusing the proposal were based on the recommendations of the DEWCP. The DEWCP consider that the proposal was not acceptable based on the stocking rate proposed and the concentration of nitrogen recharging the groundwater.



The applicant has amended the proposal by reducing the number of horses from 3 to 2. It was on this basis that the amended proposal was referred to the DEWCP who now support the proposal subject to conditions relating to the containment of domestic effluent, reduced fertiliser application and the collection of manure. This amended advice is impossible and impractical to apply. The DEWCP were contacted in this regard and since neither the Council nor the DEWCP would check these conditions for compliance it wasn't considered appropriate to recommend approving the proposal. Accordingly the initial reasons for refusal are still appropriate.

Notwithstanding the above, the applicant has retained a substantial area of remnant vegetation on the property and managed to "fit the development into the landscape" rather than substantially modifying the environment to suit the development. The management techniques to be applied together with the stabling of horses also appear to be based on a practical approach to minimise the impact on the groundwater. It is therefore open for the Council to support the proposal if it considers that it is appropriate to do so in this instance. If this is accepted as an alternative option the Council cannot approve the proposal and must refer the application to the Western Australian Planning Commission for determination, where it does not accept the advice of the DEWCP.

If the Council, however, accept the more recent advice from DEWCP which contradicts its original advice, then presumably an amended decision can be issued by the Council which conforms to the latest DEWCP advice without the need to refer the matter to the WAPC.

The options available to the Council in respect to this application are:-

Option One – adopt the officer's recommendation, consistent with the DEWCP advice.

Option Two – reject the officer's recommendation and the DEWCP advice and resolve as follows:-

"That Council:-

- (1) receive the report;*
- (2) is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*
- (3) forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*



- (4) *advise the applicant and Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

Option 3 – reject the officer's recommendation and support the amended Department of Environment, Water and Catchment Protection advice and resolve as follows:-

"That Council:-

- (1) *receive the report;*
- (2) *accepts the amended recommendation on the application by Department of Environment, Water and Catchment Protection dated 31 January 2003 in relation to the application;*
- (3) *sets aside the officer's refusal of the application made under delegated authority as provided for under Council Policy SC17 – Request for Reconsideration of Refused Applications;*
- (4) *approve the application subject to the following conditions:-*
 1. *A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.(DEWCP recommendation)*
 2. *Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities). (DEWCP recommendation)*
 3. *Collect manure daily then contain and cover for removal off-site or for composting. (DEWCP recommendation)*
 4. *Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.*
 5. *This approval is limited to the keeping of 2 horses, 2 existing stables and float shelter only.*
 6. *The stabling and agistment of the horses shall be in accordance with the Department of Environment, Water*



and Catchment Protection Best Management Practice “Environmental Management Guidelines for Horse Facilities and Activities” September 2002.

7. *Existing remnant vegetation being retained and conserved by the installation of fencing where appropriate.*
8. *The keeping of horses (2) must not cause a dust or odour nuisance to adjoining owners.*
9. *The stable floor being constructed with a concrete impervious floor.*
10. *No part of the dressage area shall be located any less than 10 metres from any lot boundary and shall be screened from the adjoining property by vegetation to minimise dust impacts on adjoining properties.*
11. *Compliance with the City of Cockburn Local Laws 2000 – relating to Stables.*

Footnotes

1. *Conditions 1,2 and 3 are the recommendations made by Department of Environment, Water and Catchment Protection as provided for under Clause 11 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy and have been included as conditions as required under Clause 13.*
2. *The City of Cockburn is not responsible for the imposition of Conditions 1, 2 and 3, and therefore the Department of Environment, Water and Catchment Protection is deemed the responsible authority in respect to ensuring compliance and enforcement of these conditions.*
3. *Structural certification is required if a building licence has not been granted for the construction of the stables.*
4. *In accordance with the Council’s Local Laws 2000 – Standards for Stables:*
“(3) any paddock or yard used for the keeping of any horse shall have a fence or railing at a distance of not less than 15 metres from any dwelling house.

Manure Receptacle

“The owner or occupier of premises shall:

- (a) provide in a convenient position, an impervious receptacle with a tight fitting lid,*



- for the storage of manure and offensive litter;*
- (b) keep the lid of the receptacle closed except when manure is being deposited or removed;*
 - (c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects."*
- (5) *issue the approval for a period valid for 2 years and if the development is not substantially commenced within this period, a fresh application is required to be made;*
- (6) *issue a Schedule 9 and an MRS Form 2 setting out the Council decision;*
- (7) *advise the applicant and the Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 3 it will need to provide an explanation supporting its decision.

From a planning viewpoint however the proposal cannot be supported due to the initial recommendations provided by the DEWCP, which have been used as the basis for refusal. It is recommended that the initial refusal be reaffirmed.

Strategic Plan/Policy Implications

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

- 2. Planning Your City
 - *"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."*

Budget/Financial Implications

Council's decision is appealable. Legal representation may be required if an appeal is lodged with the Tribunal. The DEWCP would be requested to defend its recommendations and provide legal representation.

Legal Implications

N/A



Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.

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

Nil.

14.21 (MINUTE NO 1933) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR THE KEEPING OF TWO EXISTING HORSES - LOT 7 (NO. 61) GUTTERIDGE ROAD, BANJUP (5513730) (MR) (ATTACH)

RECOMMENDATION

That Council:

(1) reaffirm the decision by delegated authority to issue an MRS Form 2 refusal for the two horses, in accordance with the application dated 18 June 2002 for the following reasons:-

1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 1.7ha per horse. Therefore the keeping of two horses is inappropriate.
2. The concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore the keeping of two horses is inappropriate.
3. The proposal is inconsistent with the objectives of the Statement of Planning Policy No. 6.

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these



areas.

- (b) The owner has up to 12 months from the date of this refusal to permanently remove the pony from the subject land.
- (c) Statement of Planning Policy No 6 was adopted under Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.

COUNCIL DECISION

MOVED Clr A Tilbury SECONDED Clr I Whitfield that Council:

- (1) receive the report;
- (2) accepts the amended recommendation on the application by Department of Environment, Water and Catchment Protection dated 31 January 2003 in relation to the application;
- (3) sets aside the officer's refusal of the application made under delegated authority as provided for under Council Policy SC17 – *Request for Reconsideration of Refused Applications*;
- (4) approve the application subject to the following conditions:-
 - 1. A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.(DEWCP recommendation)
 - 2. Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities). (DEWCP recommendation)
 - 3. Collect manure daily then contain and cover for removal off-site or for composting. (DEWCP recommendation)
 - 4. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
 - 5. This approval is limited to the keeping of 2 horses, 2 existing stables and float shelter only.

6. The stabling and agistment of the horses shall be in accordance with the Department of Environment, Water and Catchment Protection Best Management Practice “Environmental Management Guidelines for Horse Facilities and Activities” September 2002.
7. Existing remnant vegetation being retained and conserved by the installation of fencing where appropriate.
8. The keeping of horses (2) must not cause a dust or odour nuisance to adjoining owners.
9. The stable floor being constructed with a concrete impervious floor.
10. No part of the dressage area shall be located any less than 10 metres from any lot boundary and shall be screened from the adjoining property by vegetation to minimise dust impacts on adjoining properties.
11. Compliance with the City of Cockburn Local Laws 2000 – relating to Stables.

Footnotes

1. Conditions 1,2 and 3 are the recommendations made by Department of Environment, Water and Catchment Protection as provided for under Clause 11 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy and have been included as conditions as required under Clause 13.
2. The City of Cockburn is not responsible for the imposition of Conditions 1, 2 and 3, and therefore the Department of Environment, Water and Catchment Protection is deemed the responsible authority in respect to ensuring compliance and enforcement of these conditions.
3. Structural certification is required if a building licence has not been granted for the construction of the stables.
4. In accordance with the Council’s Local Laws 2000 – Standards for Stables:
“(3) any paddock or yard used for the keeping of any horse shall have a fence or railing at a distance of not less than 15 metres from any dwelling house.

Manure Receptacle



<p>“The owner or occupier of premises shall:</p> <p>(a) provide in a convenient position, an impervious receptacle with a tight fitting lid, for the storage of manure and offensive litter;</p> <p>(b) keep the lid of the receptacle closed except when manure is being deposited or removed;</p> <p>(c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects.”</p> <p>(5) issue the approval for a period valid for 2 years and if the development is not substantially commenced within this period, a fresh application is required to be made;</p> <p>(6) issue a Schedule 9 and an MRS Form 2 setting out the Council decision;</p> <p>(7) advise the applicant and the Department of Environment, Water and Catchment Protection of the Council’s decision accordingly.</p> <p style="text-align: right;"><u>CARRIED 9/0</u></p>
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Explanation

The applicants sought reconsideration from DEWCP. Consequently DEWCP now support the proposal subject to the containment of domestic effluent, reduced fertilizer use and the collection of manure and other conditions. The recommendation is therefore acceptable to Council.

Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Lynne Turner	
OWNER:	‘as above’	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable ‘AA’	

Council has the discretion after having due regard for the advice from the Department of Environment, Water and Catchment Protection (“DEWCP”), to permit the keeping of two horses. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3 but not in this instance. The procedure for dealing with discretionary uses is for the Council to refer development applications within the Resource Zone to the DEWCP for advice,



before making a determination. The Council is required to incorporate the DEWCP's recommendations into its decision on the application.

If the Council is not prepared to accept the advice of the DEWCP then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP's recommendation.

The refusal decision for two horses was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days.

It is recognised that historically the land was included in Special Rural Zone No 4 in District Zoning Scheme No 2 (gazetted in December 1992). The planning approval requirements in the Council's Scheme No 2 – Sixth Schedule Special Rural Zone relating to the keeping of horses were clearly specified as follows:-

“4.2.2 The Council shall not give Planning Consent for a Nursery, Private Recreation, Hobby Farm or Stables unless the Water Authority of Western Australia has formally advised that it would issue a licence for a water bore to extract the quantity of ground water necessary for the development.

4.2.3 The Council shall not give Planning Consent for the agistment or the stabling of horses on any lot unless the Department of Agriculture has formally advised that it is satisfied that the soil conditions and type of vegetation existing within the area defined in clause 6.1 of this Schedule or a particular lot within the area so defined is capable of supporting such a use.”

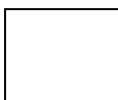
The use of a Stable in Scheme 2 meant that land in that zone could not be used for the purpose indicated unless the Council has in its discretion granted Planning Consent after notice of the application has been given in accordance with Clause 6.2. Accordingly there is no question at law as to whether or not a planning approval was required.

There is no record of a planning approval being granted for the keeping of horses on the property.

Submission

The applicant has sought reconsideration of a refusal decision to keep a pony and has raised the following additional points in support of their submission:-

- The thoroughbred mare is used for breeding and therefore is not always present throughout the year. Once the mare gives birth the



foal is separated and agisted elsewhere. There is only one horse on the property at one time with the exception of the foal at foot for about 5 months.

- The Water and Rivers Commission now advise that the stocking rate is 5ha per horse as opposed to 1.7ha per horse outlined in the Council's letter of refusal. The Commission changed the rules after our application was made to Council;
- If the stocking rate is 5 hectares per horse why does the Council allow the subdivision of land into 2 hectare lots which are useless;
- The Jandakot Underground water pollution control area has a series of bores in an area of Priority 3, with Atwell, Atwell Waters a section of Thompson Lake and Harvest Lake. This Priority 3 area also contains a piggery and several market gardens in Lydon Road etc. Nitrogen discharge from one mare and a foal needs to be put into context with the tonnes of fertiliser from these built up areas;
- We don't have the same level of services that exist in residential areas and rely on the groundwater for our only water supply;
- We maintain good farming practices by rotating the paddocks that the animal grazes in and collect manure on a daily basis and remove it from our property and minimise the amount of fertiliser that we apply to our garden;
- We chose to live in this area because it offered excellent facilities for our intended lifestyle, close to vet hospital, good schools, shopping, sporting facilities;
- If the government were serious about protecting the valuable underground water resource why don't they connect us to the sewerage system then we could abolish the septic tanks and have our horse at home and all live happily ever after.

Because additional information was provided by the applicant as part of the request for reconsideration, the additional information was sent to DEWCP for consideration, prior to preparing the report to Council. The re-assessment by DEWCP resulted in there being no objection to the proposal subject to the following conditions to minimise nitrogen contribution to the Jandakot Underground Water Pollution Control Area:-

- *"A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.*
- *Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities).*
- *Collect manure daily then contain and cover for removal off-site or for composting."*



The first recommendation is totally irrelevant to the application and the other two are not enforceable. These are incompatible recommendations, which the Council should not take responsibility for.

The Statutory Planning Service received the revised position of DEWCP. Changes in the position by the referral authority is unacceptable and puts into doubt the reliability of the advice being provided.

Report

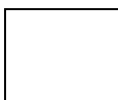
The State Government's objective in relation to land uses over the Jandakot water mound is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth's groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. The City's planning scheme was amended to reflect the water protection policies and by-laws developed by the Water Authority (now Water Corporation and the Department of Environment and Water Catchment Protection DEWCP).

Land use and development controls in the Resource Zone are contained within the City's Town Planning Scheme No 3 ("TPS3") and Statement of Planning Policy No 6 ("SPP6") – Jandakot Groundwater Protection Policy (gazetted June 1998). The Western Australian Planning Commission are responsible for establishing the land use controls that are applied by Council in TPS No 3.

The proposal while not specifically defined is generally included within the Stable land use class in SPP6 which is a discretionary use and is defined as follows:-

"..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;"

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the DEWCP. The reasons for refusing the proposal were based on the recommendations of the DEWCP. The DEWCP had considered that the proposal was not acceptable based on the concentration of nitrogen recharging the groundwater. The additional information from the applicant was referred to the DEWCP who now support the proposal subject to conditions relating to the containment of domestic effluent, reduced fertiliser application and the collection of manure. This amended advice and conditions are impossible and impracticable to administer. The DEWCP were contacted in this regard and since neither the City nor the DEWCP would check these conditions for compliance it wasn't considered appropriate to recommend approving



the proposal. Accordingly the initial reasons for refusal are still applicable.

Notwithstanding the above, the applicant has retained a substantial area of remnant vegetation on the property and managed to “fit the development into the landscape” rather than substantially modifying the environment to suit the development. Despite that this proposal is not supported on technical grounds, it is open for the Council to support the proposal if it considers that it is appropriate in this instance. Council cannot legally approve the proposal but must refer the application to the Western Australian Planning Commission for its determination.

If the Council, however, accept the more recent advice from DEWCP which contradicts its original advice, then presumably an amended decision can be issued by the Council which conforms to the latest DEWCP advice without the need to refer the matter to the WAPC.

The options available to the Council in respect to this application are:-

Option One – adopt the officer’s recommendation, consistent with the DEWCP advice.

Option Two – reject the officer’s recommendation and the DEWCP advice and resolve as follows:-

“*That Council:-*

- (1) *receive the report;*
- (2) *is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*
- (3) *forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*
- (4) *advise the applicant and Department of Environment, Water and Catchment Protection of the Council’s decision accordingly.”*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

Option 3 – reject the officer’s recommendation and support the amended Department of Environment, Water and Catchment Protection advice and resolve as follows:-



“That Council:-

- (1) receive the report;*
- (2) accepts the amended recommendation on the application by Department of Environment, Water and Catchment Protection dated 31 January 2003 in relation to the application;*
- (3) sets aside the officer’s refusal of the application made under delegated authority as provided for under Council Policy SC17 – Request for Reconsideration of Refused Applications;*
- (4) approve the application subject to the following conditions:-*
 - 1. A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.(DEWCP recommendation)*
 - 2. Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities). (DEWCP recommendation)*
 - 3. Collect manure daily then contain and cover for removal off-site or for composting. (DEWCP recommendation)*
 - 4. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.*
 - 5. This approval is limited to the keeping of 2 horses only.*
 - 6. The agistment of the horses shall be in accordance with the Department of Environment, Water and Catchment Protection Best Management Practice “Environmental Management Guidelines for Horse Facilities and Activities” September 2002.*
 - 7. Existing remnant vegetation being retained and conserved by the installation of fencing where appropriate.*
 - 8. The keeping of horses (2) must not cause a dust or odour nuisance to adjoining owners.*



Footnotes

1. *Conditions 1,2 and 3 are the recommendations made by Department of Environment, Water and Catchment Protection as provided for under Clause 11 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy and have been included as conditions as required under Clause 13.*
2. *The City of Cockburn is not responsible for the imposition of Conditions 1, 2 and 3, and therefore the Department of Environment, Water and Catchment Protection is deemed the responsible authority in respect to ensuring compliance and enforcement of these conditions.*
3. *In accordance with the Council's Local Laws 2000 – Standards for Stables:*
 - “(3) any paddock or yard used for the keeping of any horse shall have a fence or railing at a distance of not less than 15 metres from any dwelling house.*

*Manure Receptacle**“The owner or occupier of premises shall:*

- (a) provide in a convenient position, an impervious receptacle with a tight fitting lid, for the storage of manure and offensive litter;*
 - (b) keep the lid of the receptacle closed except when manure is being deposited or removed;*
 - (c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects.”*
- (5) issue the approval for a period valid for 2 years and if the development is not substantially commenced within this period, a fresh application is required to be made;*
 - (6) issue a Schedule 9 and an MRS Form 2 setting out the Council decision;*
 - (7) advise the applicant and the Department of Environment, Water and Catchment Protection of the Council's decision accordingly.”*

Should Council adopt Option 3 it will need to provide an explanation supporting its decision.



The proposal is not supported due to the recommendations provided by the DEWCP, which have been used as the basis for refusal. It is recommended that the initial refusal be reaffirmed.

Strategic Plan/Policy Implications

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

2. Planning Your City
"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."

Budget/Financial Implications

Council's decision is appealable. Legal representation may be required if an appeal is lodged with the Tribunal. The DEWCP would be requested to defend its recommendations and provide legal representation.

Legal Implications

N/A

Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.

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

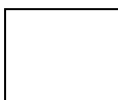
Nil

14.22 (MINUTE NO 1934) (OCM 18/02/2003) - RECONSIDERATION OF REFUSAL FOR 2 EXISTING DONKEYS - LOT 19 (NO. 29) BORONIA ROAD, BANJUP (5500115) (MR) (ATTACH)

RECOMMENDATION

That Council:

- (1) reaffirm the decision by delegated authority to issue an MRS Form 2 refusal for the proposed 2 Donkeys, in accordance with the application dated 17 July 2002 for the following reasons:-
 1. The land the subject of this proposal is located within the Jandakot Underground Water Pollution Control Area (UWPCA), which has been declared for Priority 2 (P2) source protection. Stables are a conditional land use in



P2 areas according to the Water Quality Protection Notes on Land Use Compatibility in Public Drinking Water Source Areas. On the basis of the soil type at this property, an acceptable stocking rate is 5ha per horse. Therefore the keeping of two donkeys is inappropriate.

2. The concentration of nitrogen recharging into the groundwater for P2 Jandakot UWPCA from this property exceeds the recommended concentration of the National Health and Medical Research Council's guidelines according to the Draft Environmental Guidelines for Horse Activities. Therefore, the keeping of two donkeys is inappropriate.
3. The proposal is inconsistent with the objectives of the Statement of Planning Policy No 6.

Footnotes:

- (a) P2 source protection areas are defined to ensure that there is no increased risk of pollution to the water source. P2 areas are declared over land where low intensity development (such as rural) already exists. Protection of public water supply sources is a high priority in these areas.
- (b) The owner has up to 12 months from the date of this refusal to permanently remove the donkeys from the subject land.
- (c) Statement of Planning Policy No 6 was adopted under Section 5AA of the Town Planning and Development Act and gazetted on 12 June 1998.

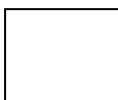
COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Cllr A Tilbury that Council:

- (1) receive the report;
- (2) accepts the amended recommendation on the application by Department of Environment, Water and Catchment Protection dated 31 January 2003 in relation to the application;
- (3) sets aside the officer's refusal of the application made under delegated authority as provided for under Council Policy SC17 – *Request for Reconsideration of Refused Applications*;



- (4) approve the application subject to the following conditions:-
1. A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.(DEWCP recommendation)
 2. Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities). (DEWCP recommendation)
 3. Collect manure daily then contain and cover for removal off-site or for composting. (DEWCP recommendation)
 4. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
 5. This approval is limited to the keeping of 2 donkeys, 2 existing stables and float shelter only.
 6. The stabling and agistment of the horses shall be in accordance with the Department of Environment, Water and Catchment Protection Best Management Practice “Environmental Management Guidelines for Horse Facilities and Activities” September 2002.
 7. Existing remnant vegetation being retained and conserved by the installation of fencing where appropriate.
 8. The keeping of horses (2) must not cause a dust or odour nuisance to adjoining owners.
 9. The stable floor being constructed with a concrete impervious floor.
 10. No part of the dressage area shall be located any less than 10 metres from any lot boundary and shall be screened from the adjoining property by vegetation to minimise dust impacts on adjoining properties.
 11. Compliance with the City of Cockburn Local Laws 2000 – relating to Stables.



Footnotes

1. Conditions 1,2 and 3 are the recommendations made by Department of Environment, Water and Catchment Protection as provided for under Clause 11 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy and have been included as conditions as required under Clause 13.
2. The City of Cockburn is not responsible for the imposition of Conditions 1, 2 and 3, and therefore the Department of Environment, Water and Catchment Protection is deemed the responsible authority in respect to ensuring compliance and enforcement of these conditions.
3. Structural certification is required if a building licence has not been granted for the construction of the stables.
4. In accordance with the Council's Local Laws 2000 – Standards for Stables:
 “(3) any paddock or yard used for the keeping of any horse shall have a fence or railing at a distance of not less than 15 metres from any dwelling house.

Manure Receptacle

“The owner or occupier of premises shall:

- (a) provide in a convenient position, an impervious receptacle with a tight fitting lid, for the storage of manure and offensive litter;
 - (b) keep the lid of the receptacle closed except when manure is being deposited or removed;
 - (c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects.”
- (5) issue the approval for a period valid for 2 years and if the development is not substantially commenced within this period, a fresh application is required to be made;
 - (6) issue a Schedule 9 and an MRS Form 2 setting out the Council decision; and
 - (7) advise the applicant and the Department of Environment, Water and Catchment Protection of the Council's decision accordingly.

CARRIED 9/0



Explanation

The applicants sought reconsideration from DEWCP adding specific management guidelines. Consequently DEWCP now support the proposal subject to conditions relating to the containment of domestic effluent, reduced fertilizer use and the collection of donkey manure.

Background

ZONING:	MRS:	Rural – Water Protection
	DZS2:	Resource
LAND USE:	Existing Dwelling	
APPLICANT:	Peter Truphet	
OWNER:	'as above'	
LOT SIZE:	2.0ha	
USE CLASS:	SPP No 6 – Stable 'AA'	

The Council may, at its discretion, after having due regard for the advice from the Department of Environment, Water and Catchment Protection (“DEWCP”), permit the keeping of two donkeys. Generally the responsibility for determination of development and use of land rests with the Council based on the Resource Zone provisions in Town Planning Scheme No 3. The procedure for dealing with discretionary uses is for the Council to refer development applications within the Resource Zone to the DEWCP for advice, before making a determination. The Council is required to incorporate the DEWCP’s recommendations into its decision on the application.

If the Council is not prepared to accept the advice of the DEWCP then the development application must be forwarded to the Western Australian Planning Commission for determination, together with the DEWCP’s recommendation.

The refusal decision for 2 donkeys was issued under delegated authority of Council. Pursuant to Policy SC17 *Requests for Reconsideration of Refused Applications* the opportunity was given to applicants to request their application be forwarded to the Council for determination upon a request in writing being lodged within 14 days.

It is recognised that historically the land was included in Special Rural Zone No 6 in District Zoning Scheme No 2 (gazetted in December 1992). The planning approval requirements in the Council’s Scheme No 2 – Sixth Schedule Special Rural Zone relating to the keeping of horses were clearly specified as follows:-

“6.2.3 The Council shall not give Planning Consent for the agistment or the stabling of horses on any lot unless the Department of Agriculture has formally advised that it is satisfied that the soil conditions and type of vegetation existing within the area defined in clause 6.1 of this



Schedule or a particular lot within the area so defined is capable of supporting such a use."

The use of a Stable in Scheme 2 meant that land in that zone could not be used for the purpose indicated unless the Council has in its discretion granted Planning Consent after notice of the application has been given in accordance with Clause 6.2. Accordingly there is no question at law as to whether or not a planning approval was required, despite that the applicant seems to have asked the City earlier about the keeping of animals. Planning approval has and continues to be required under the City's Town Planning Scheme No 3.

There is no record of a planning approval being granted for the keeping of horses on the property.

Submission

The applicant has sought reconsideration of a refusal decision for 2 donkeys and raised the following additional points in support of their submission:-

- The property was purchased on the understanding that the keeping of two donkeys was permissible;
- The City of Cockburn advised upfront that the keeping of one pony was the equivalent to half of a horse in stock rating terms;
- Prior to purchasing the property it already had a paddock and the previous owners kept horses for many years without issue. This gave an assurance there wouldn't be any problems;
- The property deed states the land is agricultural;
- The immediate properties are 5 acre lots granted for up to 7 horses, land poorly managed and grazed out, agistments and riding schools, all on the water mound;
- The mother donkey is fully grown and with a foal. Their waste is collected and disposed of;
- Attended "heavenly hectares" land and paddock management courses to facilitate the correct hygiene and land management techniques;
- It would be ridiculous for the Council not to consider the application but will allow these animals to be kept on another property 4 blocks away;
- There is also the surrounding horticultural properties and pollution caused by new land releases such as Harvest Lakes, which should be put into context with the keeping of 2 small animals; and
- Selling our animals is not an option and would cause too much heartache since the move to Banjup was made for the country lifestyle;

Because additional information was provided by the applicant as part of the request for reconsideration, the additional information was sent to DEWCP for consideration, prior to preparing the report to Council. The re-assessment by DEWCP resulted in there being no objection to the



proposal subject to the following conditions to minimise nitrogen contribution to the Jandakot Underground Water Pollution Control Area:-

- *“A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.*
- *Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities).*
- *Collect manure daily then contain and cover for removal off-site or for composting.”*

The first recommendation is totally irrelevant to the application and the other two are not enforceable. These are incompatible recommendations, which the Council should not take responsibility for.

The Statutory Planning Service received the revised position of DEWCP. Changes in the position by the referral authority is unacceptable and puts into doubt the reliability of the advice being provided.

Report

The State Government’s objective in relation to land uses over the Jandakot water mound is to control and manage future land uses to achieve acceptable levels of risk for contamination. A Parliamentary Select Committee on Metropolitan Development and Groundwater Supplies in 1993 indicated that Perth’s groundwater systems constitute a significant regional resource of fresh water, which meets approximately 60 percent of combined domestic, irrigation, and industrial supply demands. It is believed for this reason the City’s planning scheme was amended to reflect the water protection policies and by-laws developed by the Water Authority (now Water Corporation and the Department of Environment and Water Catchment Protection DEWCP).

Land use and development controls in the Resource Zone are contained within the City’s Town Planning Scheme No 3 (“TPS3”) and Statement of Planning Policy No 6 (“SPP6”) – Jandakot Groundwater Protection Policy (gazetted June 1998). The Western Australian Planning Commission are responsible for establishing the land use controls that are applied by Council in TPS No 3.

The proposal while not specifically defined is generally included within the Stable land use class in SPP6 which is a discretionary use and is defined as follows:-



“..any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities;”

The proposal was assessed for conformity with Statement of Planning Policy No 6 – Jandakot Groundwater Protection Policy and the advice of the DEWCP. The initial reasons for refusing the proposal were based on the recommendations of the DEWCP. The DEWCP consider that the proposal was not acceptable based on the stocking rate proposed and the concentration of nitrogen recharging the groundwater.

The additional advice from the applicant was referred to the DEWCP who now support the proposal subject to conditions relating to the containment of domestic effluent, reduced fertiliser application and the collection of manure. This amended advice and conditions are impossible and impractical to apply. The DEWCP were contacted in this regard and since neither the Council nor the DEWCP would check these conditions for compliance it wasn't considered appropriate to recommend approving the proposal. Accordingly the initial reasons for refusal are still appropriate.

Notwithstanding the above, the applicant has retained a substantial area of remnant vegetation on the property and managed to “fit the development into the landscape” rather than substantially modifying the environment to suit the development. Despite that this proposal is not supported on technical grounds, it is open for the Council to support the proposal if it considers that it is appropriate in this instance. Council cannot legally approve the proposal and must refer the application to the Western Australian Planning Commission for its determination.

The options available to the Council in respect to this application are:-

Option One – adopt the officer's recommendation, consistent with the DEWCP advice.

Option Two – reject the officer's recommendation and the DEWCP advice and resolve as follows:-

“That Council:-

- (1) *receive the report;*
- (2) *is not prepared to accept the recommendation of Department of Environment, Water and Catchment Protection as provided for under Clause 13 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy;*



- (3) *forward the application to the Western Australian Planning Commission for determination, together with the Department of Environment, Water and Catchment Protection recommendation;*
- (4) *advise the applicant and Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 2 it will need to provide an explanation supporting its decision.

Option 3 – reject the officer's recommendation and support the amended Department of Environment, Water and Catchment Protection advice and resolve as follows:-

"That Council:-

- (1) *receive the report;*
- (2) *accepts the amended recommendation on the application by Department of Environment, Water and Catchment Protection dated 31 January 2003 in relation to the application;*
- (3) *sets aside the officer's refusal of the application made under delegated authority as provided for under Council Policy SC17 – Request for Reconsideration of Refused Applications;*
- (4) *approve the application subject to the following conditions:-*
 1. *A containment household effluent system where the effluent is periodically removed to a licensed waste treatment facility off-site. A septic system contributes an estimated 18kg of nitrogen / household / year for an average household of four people.(DEWCP recommendation)*
 2. *Reduce fertiliser application to pasture and garden, and use some composted horse manure for pasture improvement during optimal times, rather than artificial fertiliser (refer to Draft Environmental Management Guidelines for Horse Facilities and Activities). (DEWCP recommendation)*
 3. *Collect manure daily then contain and cover for removal off-site or for composting. (DEWCP recommendation)*
 4. *Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.*



5. *This approval is limited to the keeping of 2 donkeys only.*
6. *The agistment of the donkeys shall be in accordance with the Department of Environment, Water and Catchment Protection Best Management Practice “Environmental Management Guidelines for Horse Facilities and Activities” September 2002.*
7. *Existing remnant vegetation being retained and conserved by the installation of fencing where appropriate.*
8. *The keeping of donkeys (2) must not cause a dust or odour nuisance to adjoining owners.*

Footnotes

1. *Conditions 1,2 and 3 are the recommendations made by Department of Environment, Water and Catchment Protection as provided for under Clause 11 of the Statement of Planning Policy No. 6 – Jandakot Groundwater Protection Policy and have been included as conditions as required under Clause 13.*
2. *The City of Cockburn is not responsible for the imposition of Conditions 1, 2 and 3, and therefore the Department of Environment, Water and Catchment Protection is deemed the responsible authority in respect to ensuring compliance and enforcement of these conditions.*
3. *In accordance with the Council’s Local Laws 2000 – Standards for Stables:*
“(3) any paddock or yard used for the keeping of any horse shall have a fence or railing at a distance of not less than 15 metres from any dwelling house.

Manure Receptacle

“The owner or occupier of premises shall:

- (a) provide in a convenient position, an impervious receptacle with a tight fitting lid, for the storage of manure and offensive litter;*
- (b) keep the lid of the receptacle closed except when manure is being deposited or removed;*
- (c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects.”*



- (5) *issue the approval for a period valid for 2 years and if the development is not substantially commenced within this period, a fresh application is required to be made;*
- (6) *issue a Schedule 9 and an MRS Form 2 setting out the Council decision;*
- (7) *advise the applicant and the Department of Environment, Water and Catchment Protection of the Council's decision accordingly."*

Should Council adopt Option 3 it will need to provide an explanation supporting its decision.

From a planning viewpoint the social implications of relocating the 2 donkeys does not outweigh the environmental implications. The proposal therefore is not supported due to the recommendations provided by the DEWCP, which have been used to outline reasons for refusal. It is recommended that the previous refusal be reaffirmed.

Strategic Plan/Policy Implications

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

2. Planning Your City
"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."

Budget/Financial Implications

Council's decision is appealable. Legal representation may be required if an appeal is lodged with the Tribunal. The DEWCP would be requested to defend its recommendations and provide legal representation.

Legal Implications

N/A

Community Consultation

This application has been processed in accordance with Council Policy which was the subject of community consultation.

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

Nil.



(MINUTE NO 1935) (OCM 18/02/2003) - EXTENSION OF TIME**COUNCIL DECISION**

MOVED Deputy Mayor R Graham SECONDED Cllr L Humphreys that the meeting time be extended to 10.00pm or as necessary.

CARRIED 9/0

14.23 (MINUTE NO 1936) (OCM 18/02/2003) - PROPOSED AMENDMENT TO TOWN PLANNING SCHEME NO. 3 LOCAL RESERVE - LOCAL ROAD TO RESIDENTIAL (93005) (MR) (ATTACH)

RECOMMENDATION

That Council:-

- (1) adopt the following amendment:-

TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED) RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME CITY OF COCKBURN - TOWN ZONING SCHEME NO. 3

AMENDMENT NO. 5

Resolved that Council, in pursuance of section 7 of the Town Planning and Development Act 1928 (as amended) to amend the above Town Planning Scheme by:-

1. Reclassifying a portion of Prout Way from Local Reserve – ‘Local Road, ROW, PAW’ to Residential R25 and R20 and Local Reserve - Parks and Recreation.
 2. Reclassifying portion of Prout Way from Residential R25 to Local Reserve – Local Road, ROW, PAW; and
 3. Amending the scheme maps accordingly.
- (2) sign the amending documents, and forward a copy to the Environmental Protection Authority in accordance with Section 7A(1) of the Act.
- (3) subject to the advice of the Environmental Protection Authority under Section 48A of the Environmental Protection Act that the amendment not be assessed, advertise the amendment in accordance with the Town Planning Regulations for not less



than 42 days; and

- (4) the applicant must acquire the surplus land and be responsible for relocating services such as reticulated water, reticulated sewer and power etc. into the reduced road reserve.

COUNCIL DECISION

MOVED Cllr I Whitfield SECONDED Cllr V Oliver that the recommendation be adopted.

CARRIED 9/0

Background

Council at its Ordinary Meeting on 8 December 1998 resolved to initiate an amendment to District Zoning Scheme No 2 in accordance with the recommendation. The amendment documents were never submitted by the applicant and the amendment itself didn't proceed. Peet & Co were under the impression that the amendment was to be incorporated into Town Planning Scheme No 3 and expressed concern when they discovered that this was not the case. There has been no further correspondence on record since the amendment was initiated to the DZS No. 2, three years ago. It was agreed to reconsider this proposal as an amendment under Town Planning Scheme No 3 to be considered by the Council.

Prout Way previously formed part of 'Important Regional Roads' reservation for North Lake Road until North Lake Road's realignment to the south.

Amendment 137 to District Zoning Scheme No 2 zoned a surplus portion of Prout Way to Residential R25 a zone consistent with the adjacent residential subdivision.

Consultants on behalf of the developer (Peet & Co) of the adjacent subdivision have requested a further reduction in the reserve of Prout Way to allow for additional land to be included in the adjacent subdivision. The reserve would be a minimum width of 20 metres.

Incidental is a proposal on the northern side of Prout Way to include surplus road reserve in Mears Park and in a residential lot.

Submission

The amendment proposal is as follows:-



1. Reclassifying a portion of Prout Way from Local Reserve – ‘Local Road, ROW, PAW’ to Residential R25 and R20 and Local Reserve - Parks and Recreation.
2. Reclassifying portion of Prout Way from Residential R25 to Local Reserve – Local Road, ROW, PAW; and
3. Amending the scheme maps accordingly

Report

The use of surplus road reserve of Prout Way (former Forrest Road alignment) is consistent with orderly and proper planning and the new reserve is appropriate to Prout Way’s function as a local road.

The applicant has requested Council to initiate a road closure for the portion of Prout Way to be reclassified.

The applicant must acquire the surplus land and will be responsible for relocating services ie. Water and power into the reduced road reserve.

The main issue for Council is to ensure the drainage function of Prout Way is accommodated within the reduced road reserve.

Strategic Plan/Policy Implications

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

2. Planning Your City
"To ensure that the planning of the City is based on an approach which has the potential to achieve high levels of convenience for its citizens."

Budget/Financial Implications

The Scheme Amendment documents will be prepared by Statutory Planning Services where costs incurred relate to the administration. The applicant has agreed to pay for advertising of the documents.

Legal Implications

N/A

Community Consultation

N/A



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

Nil.

14.24 (MINUTE NO 1937) (OCM 18/02/2003) - STRATEGIC POLICY - POLICY SC17 'REQUEST FOR RECONSIDERATION OF REFUSED APPLICATIONS' (9000) (SMH) (ATTACH)

RECOMMENDATION

That Council:

- (1) receive the report; and
- (2) rescind Policy SC17 – “Request for Reconsideration of Refused Applications” and delete the Policy from the Council’s Policy Manual.

COUNCIL DECISION

MOVED Deputy Mayor R Graham SECONDED Mayor S Lee that Council refer this item to the Delegated Authorities, Policies and Position Statements Committee for consideration.

CARRIED 8/1

Explanation

Council has established the Delegated Authorities, Policies and Position Statements Committee to act as a recommendatory body to Council on delegated authorities, policies and position statements. It is considered this proposed deletion should therefore, be referred to the committee for review, prior to recommendation to Council.

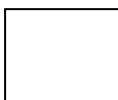
Background

Deputy Mayor Richard Graham, brought administration’s attention to the fact that the Council’s Strategic Policy – Policy SC17 – “Request for Reconsideration of Refused Applications” was not being conveyed to applicants.

This has been rectified and now the advice is a standard inclusion in letters where a notice of refusal is issued.

It is important to point out that few refusals are issued, every attempt is made to conditionally approve applications where possible.

The issue of not applying Policy SC17 primarily came to the attention of Deputy Mayor Graham when letters were sent out to landowners in



the Resource Zone who had applied to keep stock on their land, but had been refused following advice from DEWCP.

The landowners received letters of refusal advising that they had a right of appeal, but were not advised that they could request reconsideration by Council of a refusal issued under delegated authority.

Submission

There is no submission.

A copy of Policy SC17 "Request for Reconsideration of Refused Applications" is attached to the Agenda.

However, the Council's Statutory Planning Service has received formal requests for Council to reconsider refusals recently issued in relation to the keeping of horses on land in the Resource Zone.

The submissions for reconsideration are dealt with separately in the Agenda.

Of the eleven (11) Notices of Refusal sent out by Council officers under delegated authority in accordance with Council Position Statement PSPD13, adopted by Council on 20 August 2002, nine (9) applicants have sought reconsideration of the application.

The reconsideration creates additional work by Council officers, it is inefficient and time consuming, which is not in the best interests of ratepayers, and is also contrary to the principle of implementing delegated decisions. If this trend was to become representative, then the administrative consequences would be unacceptable.

Despite the fact that Strategic Policy SC17 was adopted on 15 April 1997 and reviewed and re-adopted on 17 September 2002, the Policy needs to be reconsidered in the context of its purpose and appropriateness to the issuance of delegated decisions.

Report

Since Deputy Mayor Graham brought this matter to the attention of the Director of Planning and Development, the policy has been reviewed and is considered to be an inappropriate policy.

The policy is inappropriate because Council officers are given the delegated authority to approve and refuse applications, all types of applications not just development applications, under a variety of policies, relevant to the Planning and Development Division. The Division includes Planning, Building, Environmental Health, Strategic Planning, Environmental Management and Land Administration.



Because the Policy applies to the Division, it means that septic tank refusals, building licence refusals or stallholders licence refusals will have the fourteen(14) day reconsideration period attached to them. Some of these applicants may request reconsideration. However, some of the delegated refusals may not be able to be approved in any event.

All delegation is prescribed by the Council, and is the basis upon which officers make decisions as if they were the Council.

The purpose of delegated authority is simply to achieve two things, namely:-

- to reduce the Council workload associated with Council Agendas; and
- to expedite decisions in response to applications made.

The reason why Policy SC17 is inappropriate is because in relation to delegated refusals, the decision made on behalf of Council is in effect being delayed for 14 days after the decision has been issued, because this period allows dissatisfied applicants to formally request the Council to reconsider the matter.

There is nothing illegal about this process, except to say that the Policy SC17 minimises the purpose of approving the delegation in the first place. Policy SC17 is quite unusual and does not reflect accepted practice.

The purpose of Policy SC17 is not clear, except that it provides a pseudo appeal to the Council against a delegated refusal made by an officer in accordance with Council Policy. So is the concern:-

- lack of confidence in the Council Policies; or
- lack of confidence in the Council officers.

The reasons for Council having adopted Policy SC17 can only be because of one or both of the above concerns.

The point is that most application processes have a formal right of appeal available to applicants where applications are refused or approvals have unacceptable conditions attached to them.

There is no difference in effect between a decision made by the Council and a decision made under delegated authority. They are the same. Despite this, it is unlikely that the Council would accept that where it refused an application, where a Council decision was also subject to a 14 day challenge. A delegated decision, is in essence the



implementation of a predetermined decision made by the Council, in accordance with Policy.

Given this, it is recommended that the Council consider rescinding Policy SC17 from the Policy Manual, and that any aggrieved applicant pursue the matter through an appeal.

If Policy SC17 is retained, then it would be in the best interests of the applicant, officers and the Council for applications that can be refused under delegated authority to be referred to Council for determination.

In the event that such applications are referred to the Council, then the Council will have to have due regard for its Policy in the same way as would the officers.

If the Council decides to make a decision not in accordance with its policy, then the policy should be reviewed.

Council is reminded that delegation is not an obligation, officers can refer any application to Council for its consideration regardless of whether or not the application can be processed under delegated authority.

Strategic Plan/Policy Implications

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

1. Managing Your City
 - *"To deliver services and to manage resources in a way that is cost effective without compromising quality."*
 - *"To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way."*

Budget/Financial Implications

N/A.

Legal Implications

Delegation of Council decision making powers to Council officers is made and implemented in accordance with the law.

The delegated powers of Council officers are contained in "The Register of Delegations" and is a public document.

Delegations are applied in accordance with Council Policy.

All delegated decisions are recorded.



Community Consultation

However, any applicant aggrieved by a discretionary decision made by the Council or Council officers under delegated authority is made within a statutory process that provides for appeals.

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

Nil.

15. FINANCE AND CORPORATE SERVICES DIVISION ISSUES

15.1 (MINUTE NO 1938) (OCM 18/02/2003) - LIST OF CREDITORS PAID (5605) (KL) (ATTACH)

RECOMMENDATION

That Council receive the List of Creditors Paid for January 2003, as attached to the Agenda.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr V Oliver that the recommendation be adopted.

CARRIED 9/0

Background

It is a requirement of the Local Government (Financial Management) Regulations 1996, that a List of Creditors be compiled each month and provided to Council.

Submission

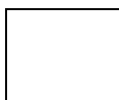
N/A

Report

N/A

Strategic Plan/Policy Implications

N/A



Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

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

Nil.

15.2 (MINUTE NO 1939) (OCM 18/02/2003) - SPEARWOOD DALMATINAC CLUB - WRITE OFF OF DEBT (2202281; 8026) (KL)**RECOMMENDATION**

That Council advise the Spearwood Dalmatinac Club that it is not prepared to write off the outstanding debt of \$3,882.90 and requests payment of the debt within fourteen(14) days.

COUNCIL DECISION

MOVED Clr M Reeve-Fowkes SECONDED Clr V Oliver that the recommendation be adopted.

CARRIED 9/0**Background**

In November 2001 emergency repairs were carried out to the bore pump at the Club grounds in Lucius Park, Spearwood. This was done to ensure that the turf grass on the Club's Soccer Pitch and Bowling Grounds were not lost due to the failure of the pump.

At the time representatives of the Club on site contacted Parks officers at the City advising them that the pump had failed and appealing for the officers to arrange repairs as the Club was not in a position to do so. Club officials were concerned that if the pump was not immediately repaired there would be extensive disruption to the Club's Bowling and Soccer activities and that the Club would incur severe future costs to re-establish the Bowling Greens and Soccer Pitch/Turf.



Recognising the urgency of the matter and acting in good faith the City of Cockburn staff not only arranged for the pump to be repaired but also arranged for a temporary pipe to be laid and connected to the Club's irrigation system from the Manning Park Bore. This kept the grass alive whilst repairs were being carried out to the Club's bore.

An invoice for \$3,882.90 was sent to the Club in June 2002 for the cost of the repairs.

Submission

At a meeting which took place in December 2002 with the Mayor, Cllr Allen and the Chief Executive Officer, the Club's representatives were advised that the Club debt was due and payable and upon payment, the Club could seek a grant under the Council's Community Grant Scheme which would be assessed along with other applications.

Correspondence has been received from the Spearwood Dalmatinac Club (Inc.) regarding the outstanding debt of \$3,882.90.

The Club mentions that a number of Committee Members attended the Council Chambers in December 2002 to discuss the issue. They advised that it would be necessary to correspond with Council in seeking relief of the debt.

The Club states that they acknowledge that they are legally liable for the payment of the debt for the bore repairs, but it is difficult for Clubs to make ends meet, given that operating costs are always on the increase, and revenues are limited.

Report

The Spearwood Dalmatinac Club operates lawn bowling, netball and soccer facilities on the corner of Hamilton and Azelia Roads, Spearwood. The Club owns the land and buildings on which their Club rooms are situated.

The Soccer Pitch, Bowling Greens and Netball Courts are on land leased from the City of Cockburn.

The Club pays normal Council rates on the building and pays Council \$100.00 p.a. for the leased areas. The lease on the grounds commenced in 1977 and is due to expire in 2007.

The Club also reimburses Council \$484.00 per quarter which represents development costs for the Soccer Pitch works. This agreement expires in 2007 as well. The total cost of this development was \$58,200. No interest was applied to this project.



Council has an agreement with the Spearwood Dalmatinac Club (Inc.) to maintain the Soccer Pitch at a cost of \$1,000.00 per month. The current agreement has been in place since 1999. Prior to this agreement, Council had an arrangement to mow the Club's turfs, when required.

The agreement is limited to the turf area that constitutes the Soccer Pitch and its immediate surrounds only. Expressly excluded from the agreement is:

1. major irrigation repairs
2. garden bed or hedge maintenance
3. litter control

The agreement shall conclude at the agreed time or at the time that payment for service is more than sixty(60) days in arrears from receipt of an invoice.

Strategic Plan/Policy Implications

1. Managing Your City
Managing the City in a competitive open and accountable manner

Budget/Financial Implications

Outstanding debt to Council of \$3,883.00

Legal Implications

Debts which are non recoverable require Council's Authorisation under the provisions of the Local Government Act Section 6.12(1)(c).

Community Consultation

Representatives of the Club met with the Mayor, Chief Executive Officer and Clr Allen in December 2002.

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

Nil.

16. ENGINEERING AND WORKS DIVISION ISSUES

Nil

17. COMMUNITY SERVICES DIVISION ISSUES



Nil

18. EXECUTIVE DIVISION ISSUES

18.1 (MINUTE NO 1940) (OCM 18/02/2003) - MINUTES OF THE DELEGATED AUTHORITIES, POLICIES AND POSITION STATEMENTS COMMITTEE MEETING - 28 JANUARY, 2003 (1054) (DMG) (ATTACH)

RECOMMENDATION

That the Minutes of the Delegated Authorities, Policies and Position Statements Committee Meeting conducted on 28 January, 2003, be received and the recommendation contained therein be adopted.

COUNCIL DECISION

MOVED Cllr M Reeve-Fowkes SECONDED Cllr V Oliver that the recommendation be adopted.

CARRIED 9/0

Background

At the November, 2002, Meeting of Council it was resolved that the Delegated Authorities, Policy and Positions Statements Committee be authorised to convene meetings at any time throughout the year to review Council Policy or Delegated Authority. This replaced the previously established Council position that the Committee meet only for the purpose of conducting an annual review of Council's Policy and Position Statements Manuals and Delegated Authorities Register.

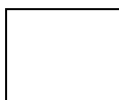
Submission

To receive the Minutes of a Committee Meeting conducted in January, 2003 and adopt its recommendations.

Report

The process involved in reviewing Council Policy / Positions Statements Manual and Delegated Authorities (DA) Register in the past two years involved:-

- (1) Council establishing a Committee pursuant to Section 5.10 of the Local Government Act, 1995, to conduct the review;
- (2) The Committee meeting as necessary to review the documents in detail. This process usually involved conducting 3 or 4



Committee Meetings during which period the review was conducted; and

- (3) Once the review was completed, providing all Committee Meeting Minutes to Council as the background information to the Draft Manuals and DA Register, which were submitted with individual Reports to Council for consideration, with a recommendation from the Committee that they be adopted.

The Committee's work was then considered complete, until the following year's review was due.

However, to allow greater flexibility for the Committee to meet on a more regular basis, Council resolved to enable the Committee to be convened on an as needs basis to conduct reviews on a less onerous scale.

As a result, the Committee will now meet as necessary to review and recommend changes to the Manuals and D.A. Register.

At the January, 28, 2003, Meeting, the Committee resolved to recommend that all proposals to amend these documents be initially referred to the Committee for its consideration and subsequent recommendation to Council. This will effectively require a regular meeting cycle to be established by the Committee to integrate with the monthly meeting timeframes of Council. Officer reports will then need to be considered by the Committee prior to being presented to the relevant Council Meeting.

In all other aspects, the Committee will continue to operate as it has in the past, with only recommendations requiring Council endorsement to be independently presented to Council.

Strategic Plan/Policy Implications

Key Result Area "Managing Your City" refers.

Proposed amendments to relevant Policies highlighted in attached Minutes.

Budget/Financial Implications

Increased expenditure as the result of changes to some Policies should be contained within the relevant sections of Council's Governance Budget.

Legal Implications

Proposed amendments conform with the requirements of the relevant sections of the Local Government Act, 1995.



Community Consultation

Not considered necessary for proposed amendments.

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

Nil.

19. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

20. NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING

Nil

21. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY COUNCILLORS OR OFFICERS

Nil

22. MATTERS TO BE NOTED FOR INVESTIGATION, WITHOUT DEBATE

22.1 (OCM 18/02/2003) - Cllr A Tilbury requested that a report be provided that addresses the legality, cost and practicality of rehabilitating Lot 14 Progress Drive, Bibra Lake.

22.2 (OCM 18/02/2003) - Cllr A Tilbury requested that an options paper be provided for upgrading and/or redeveloping the precinct consisting of South Lake Reserve and South Lake Shopping Centre. The paper should include short, medium and long-term options and should canvass the provision of improved lighting; a general cleanup; improved playground equipment; jetty/boardwalk; extra benches; additional trees and improved landscaping; and extra bins. Longer term options the paper should canvass include the provision of toilets and barbecue facilities.

23. CONFIDENTIAL BUSINESS

Nil



24. (MINUTE NO 1941) (OCM 18/02/2003) - RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)

RECOMMENDATION

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (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.

COUNCIL DECISION

MOVED Clr L Humphreys SECONDED Clr M Reeve-Fowkes that the recommendation be adopted.

CARRIED 9/0

25. CLOSURE OF MEETING

MEETING CLOSED AT 9.35 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:/...../.....

