

CITY OF COCKBURN

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CITY OF COCKBURN

MINUTES OF ORDINARY COUNCIL MEETING HELD ON TUESDAY, 28 SEPTEMBER 1999 AT 7:30 P.M.

PRESENT:

COUNCIL MEMBERS

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

IN ATTENDANCE

Mr R W Brown - Chief Executive Officer
Mr D M Green - Director Community Services
Mr A T Crothers - Director, Finance & Corporate Services
Mr S Ryan - Acting Director, Planning & Development
Mr B K Greay - Director, Engineering & Works
Mrs B Pinto - Secretary to Director, Finance & Corporate Services

240. (AG Item 1) DECLARATION OF OPENING

The Presiding Member declared the meeting open at 7.30 pm.

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

Nil

242. (AG Item 3) DISCLAIMER

The Presiding Member read aloud the following disclaimer:

Members of the public who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.



243. (OCM2_9_1999) - APOLOGIES & LEAVE OF ABSENCE

Mr S Hiller

Leave of Absence

244. (OCM2_9_1999) - PUBLIC QUESTION TIME

Stephen Lee, a ratepayer and suspended Councillor spoke with regard to Item 13.8 - Final Adoption of Amendment No.202 - Jandakot Groundwater, which deals with declaring the area of the water mound a resource zone. He asked Council whether this matter could be deferred, so that there could be some community consultation. He is aware that the report had been out for a long time, but was not aware that this area was going to be declared a resource zone. He feels it would be a good idea if we had some public consultation, and from that meeting a committee be formed, who could represent the community in this area. He suggested that this Committee should deal with issues such as preparing policies and provide further guidance on the keeping of horses and animals etc. He felt there were many issues which are yet to be addressed, and therefore Council should not be rushed into making a decision. He again requested if Council could defer the item and have a public meeting, so that interested persons can attend and have some input. Cmr Donaldson replied that he was not sure what the timeframe of the Commission was and asked the question of Acting Director, Planning and Development as to whether he was aware of a timeframe? Acting Director, Planning and Development replied that the standard requirement is 42 days for close of submissions, but Council can seek the Minister's approval for an extension.

Cmr Smithson confirmed with the Acting Director, Planning and Development that the Amendment was for final approval, and that the formal advertising period had been completed. Also the MRS has already been changed to require a resource protection, being a water resource which is a requirement and the Council is simply following the requirements of the State Government's and Council's Schemes conforming to the MRS. She felt if we had a public meeting it would be giving a false impression to people that in fact they are going to change the MRS back again and she did not believe that changing both policies will give us a realistic outcome. She said she would query what outcome could be of benefit to the people of Cockburn, rather than raising false expectations. Stephen Lee replied that he fully understands that it is practically impossible for the State Government to change its mind. As it is so big an issue, he did not think it would be a problem to form a committee with community representation on it to deal with these issues in the future.

Stephen Lee asked whether the State Planning Policy SP6 was law or just a policy? Acting Director, Planning and Development replied that it has been gazetted as a State Planning Policy, so it is a policy from the



Commission that establishes the uses that can be permitted within the MRS in the groundwater zone in which local amendments must have close correlation with and therefore it is law with which local authorities have to follow.

Cmr Smithson asked Stephen Lee what is the basis of his main area of concern? Is it the keeping of horses and animals, is it of some specific detail or a whole zoning question of what the resource zone is proposing? Stephen Lee replied that there were two issues, first it is the keeping of horses and animals, and secondly ancillary or auxiliary accommodation which is also embedded in the State Planning Policy SP 6.

Stephen Lee also queried the Jervoise Bay development. He said there has been a lot of contention in the Press whether it is actually going to go ahead, as the City has to prepare amendments to allow it to happen. Both the present Council and previous (suspended) Council were opposed as to where they wanted to put it and Council did the amendments as instructed by the State Government. He asked whether Council has had any communication with the Planning Department or the Department of Commerce and Trade or the responsible body that it may not be necessary now to change an "A" Class reserve to general industrial. Cmr Donaldson replied that there is nothing official that has come through. On this basis, Stephen Lee replied that he does not fully understand the processes of changing an "A" Class reserve to general industrial and therefore would not understand the process to change general industrial back to "A" Class reserve, if it was necessary, but realises how extremely complicated it could be, if that was the case. He requested Council to be proactive, if Council could put on hold its amendments and approach the WAPC or the Department of Commerce and Trade to have a moratorium on the issue until it is decided.

Cmr Donaldson replied that it was his understanding that the evaluation is going to be done on the basis that if it is cheaper to move it further south, the cheaper it will be at a net rate, in comparison to what is already being spent as to where it is to be located. As far as he knew the matter is still under consideration. He said whether or not Council can start changing things back again, he suspected it would be difficult to ask, but one which he thought the community would respond to positively and quite often this is the outcome they want. He did not think anything would happen until the evaluation is complete. Stephen Lee requested Council to pursue the matter.

Stephen Lee thanked the Strategic Planning Department, the Planning Department and the Environmental Department for the work they did on the buffer zone. He believes that what has been done was



objective and complimented the officers for what they did. He said he would challenge the State Government to prove this Council wrong in its approach to the submissions that this City has made.

Cmr Donaldson thanked Stephen Lee for the matters raised.

Val Oliver, a ratepayer from Coolbellup spoke with regard to Minute No.234 - Offer to Lease Reserve 31607 Spearwood Avenue, Bibra Lake - Bunnings Building Supplies - 14 September 1999 meeting of Council. She said further to her meeting with the Commissioners on the afternoon of 28 September 1999, she had a look at the block and felt it was a rather big block. She still feels the actual annual rent being paid on it is really not enough. It works out at only \$130 a week from a big firm like Bunnings? This is not going to help the ratepayers of Cockburn at all.

Cmr Donaldson thanked Mrs Oliver for her comments and stated that points made at the meeting earlier in the afternoon remain unchanged and that in relation to the overall size of the car lot and land area which Bunnings occupies, the site in question is relatively small. The Commissioners felt that they had to take into consideration the recommendation from a qualified valuer who provides the expert opinion on which they have to base their decision, however he acknowledged the point made.

245. (AG Item 8.1) (OCM2_9_1999) - ORDINARY MEETING OF COUNCIL - 14/9/99

MOVED Cmr Jorgensen SECONDED Cmr Smithson that the Minutes of the Ordinary Council Meeting held on Tuesday, 14 September 1999 be confirmed as a true and accurate record.

CARRIED 3/0

246. (AG Item 12.1) (OCM2_9_1999) - LEGAL REPRESENTATION - HAMMOND WORTHINGTON FOR MR J. GRLJUSICH - INQUIRY INTO THE CITY OF COCKBURN (1335) (RWB)

RECOMMENDATION

That Council:

- (1) receive the letters dated 7th September and 16th September 1999 from Hammond Worthington - Lawyers; and
- (2) consider the request.



COUNCIL DECISION

MOVED Cmr Jorgensen SECONDED Cmr Smithson that Council:

- (1) receive the letters dated 7 September and 16 September 1999 from Hammond Worthington - Lawyers;
- (2) reaffirm to Hammond Worthington that Council's support for the payment of legal costs is conditional upon Mr J Grljusich's written confirmation of the appointment of Hammond Worthington as his legal representatives for the Douglas Inquiry and his signing of Council's Policy A1.18;
- (3) advise Hammond Worthington that after due consideration of the letter dated 16 September 1999 which details the nature and extent of the legal services required in accordance with Policy A1.18 and having given due consideration to the fact that Mr. Grljusich is a central figure in the Inquiry and additionally, was the Mayor of the City at the time of the suspension of Councillors, Council is prepared to contribute in total up to a maximum amount of \$40,000 by way of reimbursement of legal expenses on production of an itemised statement of costs following the outcome of the Inquiry subject to Policy A1.18, which provides for the payment to be made if a person has not acted illegally or dishonestly against the interests of the City or otherwise in bad faith;
- (4) advise Hammond Worthington that the general thrust of the Inquiry is to examine if Councillors and Staff have provided good governance for the City and should any adverse findings relating to any issue, be made against Mr. Grljusich by the Inquirer, Mr. Douglas, relating to good governance, then Council will not make any contribution towards legal expenses;
- (5) advise Hammond Worthington that this decision supersedes Council's previous decision in respect to Items (3) 2. and (3) 3 of the 13 July 1999; and

CARRIED 3/0

NOTE: The Chief Executive Officer informed the Meeting that the 8th paragraph of the Report should read as follows:

Uncommitted funds of \$81,000 are available. It is not known if further requests will be received.

The Chief Executive Officer also advised that to date \$9,000 has been committed on legal costs for three staff members.



Explanation

At the time when the Agenda Papers were prepared, Council had received no correspondence to substantiate the legal costs requested by Mr. J. Grljusich. Prior to the Meeting correspondence was received from Hammond Worthington and Council felt it would be appropriate to favourably consider the request, subject to the terms as outlined above. Council felt that this would provide a safety measure for Mr. Grljusich if he has not acted inappropriately.

Background

As a result of the Minister for Local Government's determining that an Inquiry into the City of Cockburn would be held under Section 8.16 Part 8 - Division 2 of the Local Government Act 1995, an Inquiry known as the "Douglas Inquiry" is presently underway.

As a result of requests from suspended and ex Councillors, for the City to pay for their legal representation during the course of the Douglas Inquiry and previous Martin-Vicary investigation, Council adopted Policy A1.18 - Legal Representation which gives clear guidelines to applicants and the Chief Executive Officer, acting under delegated authority, in regards to claims for reimbursement of legal expenses.

Council, at its meeting of the 13th July 1999, considered a request for financial assistance for Mr John Grljusich. Council determined :-

That Council:

- (1) receive the letter dated 2 July 1999 from Hammond Worthington - Lawyers;*
- (2) advise Hammond Worthington that Council is not prepared to provide financial assistance for legal costs incurred for Part 8 Division 1 Inquiry; and*
- (3) subject to written confirmation from Mr J. Grljusich that he has engaged Hammond Worthington to represent him at the "Douglas Inquiry", Council:*
 - 1. advise Hammond Worthington that it will be inappropriate for Council's Solicitor to represent Mr Grljusich and therefore, Council will recognise the appointment of Hammond Worthington by Mr Grljusich for the purposes of legal representation for the "Douglas Inquiry" subject to the provisions contained in Council's Policy A1.18 and specific decisions of Council relating to Mr Grljusich's request for financial assistance.*



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

Submission

In a letter dated 7th September 1999, Hammond Worthington requested that Council immediately review the terms of Council Policy A1.18 - Legal Representation, and agree to provide funding of \$40,000 for their client's legal expenses. The view was expressed that the Policy was ultra vires and questioned Council's motive in establishing the policy - a copy of the letter is attached to the Agenda Paper.

This letter was responded to and a further letter from Hammond Worthington dated 16th September 1999 received. The letter states:-

"I refer to your letter of 15 September 1999.

My request for the sum of \$40,000.00 is calculated as follows:

1. *there will be at least 20 days of hearing before the Inquiry into the City of Cockburn. In fact, it is quite likely that the hearing days will exceed 20 in number;*
2. *in the event that funding is granted I will be required to attend the Inquiry on each of those days for the purpose of:*
 - a. *adducing evidence from Mr Grljusich;*
 - b. *cross-examining witnesses called by Counsel assisting the Inquiry;*



- c. *cross-examining witnesses that may be called by other parties that appear before the Inquiry;*
- d. *making submissions of law; and*
- e. *making submissions generally at the conclusion of the evidence heard by the Inquiry.*
3. *considerable time will also be devoted to examining the many documents which affect my client. In relation to the first line of Inquiry, the awarding and extending of the cleaning contracts, there are numerous documents to be considered and taken into account if I am to properly represent Mr Grljusich;*
4. *daily meetings with Mr Grljusich in relation to the evidence that is called, and in particular, to discuss how that evidence impacts upon Mr Grljusich's position;*
5. *meeting with witnesses that may be, or are, called to the Inquiry on behalf of Mr Grljusich;*
6. *all investigative and research work undertaken by myself and/or employees of my firm;*
7. *a junior solicitor and/or articled clerk would be involved in assisting me prepare Mr Grljusich's case;*
8. *reading at least 3 lever arch files of documents which have been provided to me by Mr Grljusich;*
9. *reading a further 2 lever arch files which comprise a summary of events and facts prepared by Mr Grljusich;*
10. *liaising, as I have done already, with Counsel assisting the Inquiry and officers attached to the Inquiry generally in relation to Mr Grljusich's attendance at the Inquiry;*
11. *the examination of all correspondence received from the Inquiry; and*
12. *advising Mr Grljusich in relation to the Inquiry generally and in relation to specific matters that arise from evidence presented to the Inquiry.*

Put simply I have estimated that approximately 30 full days of work will be required at a daily rate of \$1,500.00 (inclusive of the time of a junior solicitor and/or articled clerk).



You will be able to ascertain from your own solicitors that the rate proposed is modest bearing in mind the extent of the legal representation required.

I would request that the City of Cockburn treat this request as urgent bearing in mind that Mr Grljusich is currently unrepresented before the Inquiry and urgently requires legal assistance."

Report

To date, Council's request of 13 July 1999 for Mr Grljusich to officially advise of his appointment of Hammond Worthington to represent him at the Inquiry and for Mr Grljusich to sign Policy A1.18, have not occurred.

Therefore Council's previous decision to contribute \$6,000 pursuant to the terms of the policy will not be actioned until the appropriate advice has been received.

Any decision of Council to increase the level of assistance should reaffirm the request for formal advice of appointment of Hammond Worthington and the signing of the Policy by Mr Grljusich.

The officer's recommendation to Council on 13 July 1999 for a \$6,000 contribution, took cognizance of the original power of delegation of \$3,000 to the CEO and the budgeted amount of \$100,000 for the cost of the Inquiry. To be drawn from this amount will be the costs of Council's legal advice together with assistance for present and past Councillors and staff.

To date, the following funds are committed: -

Mr Grljusich	\$6,000
Mr Pecotic	\$6,000
Mr Ostojich	\$3,000
McLeod & Co	\$4,000 (approx.)

The submission from Hammond Worthington, details the nature and extent of the legal services required in accordance with the Policy.

It is open for Council to reconsider its decision of 13 July 1999.

Uncommitted funds of \$71,000 are available. It is not known if further requests will be received.

It is to be noted that any sum in excess of \$3,000 per request, will only be paid if the Inquiry has not found "that a person has acted illegally, dishonestly, against the interests of the City or otherwise in bad faith in connection with the matter for which the person was granted financial support or given contingent authority;...."



Given the budget constraints, the delegated authority to the CEO to determine applications to a limit of \$3,000 and the Council decision of 13 July, this matter is placed before Council without an officer recommendation other than the issue be considered by Council.

Council should note that at its meeting of 13 July 1999, it considered a similar request from Mossensons, reportedly representing Mr Pecotic, for \$35,000. Based on the information contained in the request, Council's decision was to limit its contribution to \$6,000.

Strategic Plan/Policy Implications

Council's Policy A1.18 adopted by Council on the 13th July 1999 relating to Legal Representation applies.

Budget/Financial Implications

The draft budget provides for \$100,000 for the cost of the Inquiry legal expenses. To date, total estimated costs committed \$19,000.

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

Nil

247. (AG Item 12.2) (OCM2_9_1999) - COCKBURN SOUND CATCHMENT MANAGEMENT AUTHORITY STRATEGY - SOUTH WEST GROUPS (1320)(RWB)(ATTACH)

RECOMMENDATION

That Council:

- (1) note and support the initiative of the South West Group to pursue the establishment of a Catchment Management Authority for Cockburn Sound; and
- (2) advise the South West Group that it would be prepared to make a financial contribution towards the cost of a Conference to pursue the establishment of a Catchment Management Authority for Cockburn Sound.

COUNCIL DECISION

MOVED Cmr Jorgensen SECONDED Cmr Smithson that Council:

- (1) note and support the initiative of the South West Group to



pursue the establishment of a Catchment Management Authority for Cockburn Sound; and

- (2) advise the South West Group that it would be prepared to offer expertise and make a financial contribution towards the cost of a Conference to pursue the establishment of a Catchment Management Authority for Cockburn Sound.

CARRIED 3/0

Explanation

It was considered that the Council Staff expertise should also be made available to the Group on this issue.

Background

The South West Group has continued to lobby for the establishment of a Catchment Management Authority for Cockburn Sound. During 1998, representatives of the Group met with Deputy Premier - Hendy Cowan, Minister for Planning - Graham Kierath and Minister for Environment - Cheryl Edwardes.

At that discussion, it was stated that the State Government would pursue the concept of establishing a Management Authority for Cockburn Sound.

Submission

N/A

Report

The Board of Management of the South West Group met on the 22nd September 1999. The meeting considered a report from the Acting Director, proposing the endorsement of a strategy document.

The South West Group resolved to:

- a) Endorse the South West Group Strategy Document as a means of promoting Local Government involvement in the establishment and operation of a Catchment Management Authority for Cockburn Sound;
- b) Fully investigate all management options and agree on a preferred model so a unified South West Group position can be pursued and presented to the Government; and



- c) That the South West Group identify all regional stakeholders and host a special conference to allow key stakeholders to participate and promote models and methodologies for Catchment Management.

The recent arsenic leak into Cockburn Sound has again highlighted the need for a responsible body to be established.

The proposed conference will endeavour to explore various management models and again bring into the political/public arena, the need for a pro-active approach for the establishment of an authority.

Funds may be required from the Councils directly associated with Cockburn Sound for the conference.

It is therefore appropriate at this stage, for Council to support the initiative and preparedness to consider funds should they be required.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Council may be requested to contribute towards the cost of the conference when more details are available.

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

Nil

248. (AG Item 13.1) (OCM2_9_1999) - AMENDMENT NO 209 TO DISTRICT ZONING SCHEME NO. 2 - CSL 4252 MURDOCH DRIVE AND PORTION LOCATION 4253 (RESERVE 4253) FARRINGTON ROAD, NORTH LAKE - OWNER: HEALTH DEPARTMENT - APPLICANT: RICHARD PAWLUK & ASSOCIATES (92209) (CC) (EAST) (MAP 12)

RECOMMENDATION

That Council:

- (1) rescind its resolution of 22 June 1999 (14.3) to adopt Amendment 209;
- (2) adopt the following modified Amendment 209:-



TOWN PLANNING AND DEVELOPMENT ACT, 1928 (AS AMENDED) RESOLUTION DECIDING TO AMEND A TOWN PLANNING - CITY OF COCKBURN DISTRICT ZONING SCHEME NO. 2.

AMENDMENT NO. 209

Resolved that Council in pursuance of section 7 of the Town Planning and Development Act, 1928 (as amended) amend the above town planning scheme by:

- 1) zoning CSL 4252 Murdoch Drive and portion of Reserve 44544 (Location 4253) Farrington Road, North Lake to Mixed Business-Restricted Use;
- 2) Adding to the Third Schedule-Restricted Use of the Scheme under the headings the following:

Street	Particulars of Land	Restricted Use
Murdoch Drive	CSL 4252 and Portion of Reserve 44544 (Loc.4253)	Those uses which may be permitted within the Mixed Business zone as set out in the First Schedule (Zoning Table) excluding Garden Centre, Motor Vehicle and Marine Sales, Motor Vehicle Hire Station, Nursery, Industry Cottage and Industry Service.

- 3) Amending the Scheme Text and Map Accordingly.

Dated thisday of..... 1999
 Chief Executive Officer

- (3) refer Amendment 209 to the Environmental Protection Authority for assessment under section 7 A(2) of Town Planning and Development Act;
- (4) refer Amendment 209 to the Western Australian Planning Commission in accordance with Planning Bulletin No.29 requesting consent to advertise be granted following receipt of written advice from the Environmental Protection Authority that the Scheme Amendment is not required to be assessed under section 48A of the Environmental Protection Act; and
- (5) advise the applicant of the Council's resolution.

TO BE PASSED BY ABSOLUTE MAJORITY OF COUNCIL



COUNCIL DECISION

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

CARRIED 3/0

Background

ZONING:	MRS:	PUBLIC PURPOSE - HOSPITALS
	DZS:	PUBLIC PURPOSE - HOSPITALS
LAND USE:	HOSPITAL LAUNDRY	
LOT SIZE:	APPROXIMATELY 3.5HA	
AREA:	N/A	
USE CLASS:	N/A	

Council at its meeting of 22 June 1999 resolved to adopt Amendment 209 to zone CSL 4252 Murdoch Drive and Portion of Reserve 44544 (Location 4253) Farrington Road, North Lake to Mixed Business. See *Agenda Attachments for previous report*.

Amendment 209 has not been referred to the Environmental Protection Authority or proceeded to advertising as yet.

Submission

The following modified amendment proposal is put before Council for adoption.

- 1) zoning CSL 4252 Murdoch Drive and portion of Reserve 44544 (Location 4253) Farrington Road, North Lake to Mixed Business-Restricted Use;
- 2) Adding to the Third Schedule-Restricted Use of the Scheme under the headings the following:

Street	Particulars of Land	Restricted Use
Murdoch Drive and Farrington Rd	CSL 4252 and Portion of Reserve 44544 (Loc.4253)	Those uses which may be permitted within the Mixed Business zone as set out in the First Schedule (Zoning Table) excluding Garden Centre, Motor Vehicle and Marine Sales, Motor Vehicle Hire Station, Nursery, Industry Cottage and Industry Service.

- 3) Amending the Scheme Text and Map Accordingly.



Report

The Amendment has been modified for the following reasons.

The report to Council of June 1999 failed to incorporate the understanding between the City's Planning Department and applicant, that the uses of Garden Centre, Motor Vehicle and Marine Sales, Nursery, Industry Cottage and Industry Service of the Mixed Business Zone in the First Schedule of the Scheme would be excluded from the Amendment.

The applicant is seeking inclusion of the use 'Laundries' on Reserve 44544 (Loc. 4253) as confirmation of the existing laundry facility. The use of 'Laundries' however, is an Offensive Trade under the Health Act 1911 and is classified as a Noxious Industry under TPS No. 2. It is also not consistent with the proposed MRS 'Urban' zoning. The proposal to include Laundries as an additional/permissible use is therefore not supported. The laundry may continue as a non-conforming use.

The Ministry for Planning has advised that the Metropolitan Region Scheme Omnibus Amendment, which seeks to rezone the subject land from Public Purpose to Urban in the MRS, may not be finalised until next year.

The applicant requests Council to request the WAPC to allow the Amendment to be advertised prior to finalisation of the Metropolitan Region Scheme Amendment so that Amendment 209 may be dealt with promptly once the MRS amendment is finalised.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

Nil



249. (AG Item 13.2) (OCM2_9_1999) - AMENDMENT NO. 215 - REZONING A 'LOCAL RESERVE - LAKES AND DRAINAGE' TO 'GENERAL INDUSTRY' - LOT 200; 5 EGMONT ROAD, HENDERSON - OWNER/APPLICANT: CITY OF COCKBURN (92215) (MT) (MAP 10)

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 DISTRICT ZONING SCHEME NO. 2

AMENDMENT NO. 215

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

Amending the Scheme Map by:-

Rezoning portion of Lot 200 Egmont Road, Henderson from 'Local Reserves – Lakes and Drainage' to 'General Industry';

Dated this.....day of.....1999

Chief Executive Officer

- (2) sign the amending documents and advise the WAPC of Council's decision;
- (3) refer Amendment No.215 to the Environmental Protection Authority for assessment under Section 7 A(2) of Town Planning and Development Act;
- (4) refer Amendment No.215 to the Western Australian Planning Commission Planning in accordance with Planning Bulletin No.29 requesting consent to advertise be granted following receipt of written advice from the Environmental Protection Authority that the Scheme Amendment is not required to be assessed under Section 48A of the Environmental Protection Act.



COUNCIL DECISION

MOVED Cmr Smithson SECONDED Cmr Jorgensen 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 DISTRICT ZONING SCHEME NO. 2

AMENDMENT NO. 215

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

Amending the Scheme Map by:-

Rezoning portion of Lot 200 Egmont Road, Henderson from 'Local Reserves – Lakes and Drainage' to 'General Industry';

Dated this.....day of.....1999

Chief Executive Officer

- (2) sign the amending documents and advise the WAPC of Council's decision;
- (3) refer Amendment No.215 to the Environmental Protection Authority for assessment under Section 7 A(2) of Town Planning and Development Act;
- (4) advertise Amendment No.215 in accordance with Planning Bulletin No.29 following receipt of written advice from the Environmental Protection Authority that the Scheme Amendment is not required to be assessed under Section 48A of the Environmental Protection Act.

CARRIED 3/0

Explanation

It was necessary to amend Item (4) to reflect the revised advertising procedures specified in the WAPC Bulletin No.29.



Background

ZONING:	MRS:	INDUSTRY
	DZS:	LOCAL RESERVE – LAKES AND DRAINAGE
LAND USE:	VACANT LAND	
LOT SIZE:	1899m ²	
AREA:	1040m ²	
USE CLASS:	N/A	

At its meeting held on 19 May 1998 Council resolved to sell a portion of Lot 152 Sparks Road, Henderson to Phillips Engineering. An amalgamation (107666) of the portion with Phillips Engineering’s adjoining Lot 1011 Egmont Road was approved by the WAPC on 14 October 1998. The portion is now part of the newly amalgamated Lot 200 Egmont Road.

Report

The portion of the lot the subject of this amendment was part of a drainage sump that was surplus to Council requirements. The land has been sold by Council and as such it is no longer a Council Reserve. The amendment seeks to reflect this change in Council’s Scheme. The subject land is currently still classified as a ‘Local Reserve – Lakes and Drainage’. The rest of Lot 200 and surrounding land is zoned ‘General Industry’. It is proposed that this remaining portion of Lot 200 be zoned ‘General Industry’ in line with the predominant zoning of the lot and the area.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

Nil



250. (AG Item 13.3) (OCM2_9_1999) - PROPOSED HYDROPONICS SHED - LOT 77 WATTLEUP ROAD, WATTLEUP - OWNER: V T NGUYEN - APPLICANT: GABLE CONSTRUCTION (4411233) (MT) (SOUTH) (MAP 17)

RECOMMENDATION

That Council:

- (1) approve the application for three sheds on Lot 77 Wattleup Road, Wattleup subject to the following conditions:

Standard Conditions

1. Standard conditions contained in Council Policy PD17 as determined appropriate to this application by the delegated officer under clause 7.6 of Council's District Zoning Scheme N^o 2;
- (2) advise the applicant of Council's resolution accordingly.

COUNCIL DECISION

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

CARRIED 3/0

Background

ZONING:	MRS:	RURAL
	DZS:	RURAL
LAND USE:	SHEDS / MARKET GARDENING	
LOT SIZE:	2.676 ha	
AREA:	3840m ²	
USE CLASS:	N/A	

Submission

Application is made for sheds in which to grow vegetables hydroponically. Three sheds are proposed, each 80 metres long, 16 metres wide and 4.5 metres high. The structures will be of steel construction with steel sheeting on the roof and sides. They are to be setback 60 metres from the front of the property and at least 5 metres from the side boundaries. A copy of the site plan and elevations are attached to this agenda.



Report

The rear 90 metres of the subject lot is within Planning Control Area No. 39 - Rowley Road. Applications for development within the Control Area must be referred to the WAPC for determination. The proposed development is setback 150 metres from the Planning Control Area and will have no impact on the future Rowley Road. Council can therefore determine this application.

The sheds meet all of the Scheme and Policy requirements. They are of a scale similar to many existing sheds and greenhouses in this market gardening area and as such should not detrimentally affect amenity.

Strategic Plan/Policy Implications

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

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

Budget/Financial Implications

N/A

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

Nil

251. (AG Item 13.4) (OCM2_9_1999) - NORTH COOGEE MASTER PLAN REVIEW STUDY - COUNCIL'S CLAUSE 32 RECOMMENDATION TO WESTERN AUSTRALIAN PLANNING COMMISSION (9523) (SMH) (WEST)

RECOMMENDATION

That Council:

- (1) receive the recommendations of the Western Australian Planning Commission in respect to the approvals issued under Clause 32 for Lot 11 Bennett Avenue and Lot 12 Garston Way, Hamilton Hill dated 15 September 1999 and the advice that the subdivision approval for the Robb Jetty Industrial Estate on Cockburn Road, Hamilton Hill was re-issued on 14 September 1999;



- (2) no longer recommend deferral for applications referred to the WAPC under the Clause 32 applying to the North Coogee Area in accordance with its resolution dated 27 July 1999;
- (3) continue to refer applications to the WAPC in accordance with the Clause 32 applying to the North Coogee Area without recommendation, for the Commission's determination;
- (4) upon receiving the advice of the Commission's determination, assess the application under its scheme, consistent with the Commission's decision;
- (5) have any applications received within the Clause 32 North Coogee Area determined by delegated authority under Delegated Authority DA - PD3, provided that, where an application which has been determined by the Commission, and in the opinion of the Director of Planning and Development, the application should not be determined consistent with the decision of the Commission, the application shall be referred to the Council for its consideration.

COUNCIL DECISION

MOVED Cmr Smithson SECONDED Cmr Jorgensen that Council:

- (1) receive the recommendations of the Western Australian Planning Commission in respect to the approvals issued under Clause 32 for Lot 11 Bennett Avenue and Lot 12 Garston Way, Hamilton Hill dated 15 September 1999 and the advice that the subdivision approval for the Robb Jetty Industrial Estate on Cockburn Road, Hamilton Hill was re-issued on 14 September 1999;
- (2) no longer recommend deferral for applications referred to the WAPC under the Clause 32 applying to the North Coogee Area in accordance with its resolution dated 27 July 1999;
- (3) continue to refer applications to the WAPC in accordance with the Clause 32 applying to the North Coogee Area without recommendation, for the Commission's determination, unless in the opinion of the Director, Planning and Development a recommendation should first be made by Council;
- (4) upon receiving the advice of the Commission's determination, assess the application under its scheme, consistent with the Commission's decision;
- (5) have any applications received within the Clause 32 North

Coogee Area determined by delegated authority under Delegated Authority DA - PD3, provided that, where an application which has been determined by the Commission, and in the opinion of the Director of Planning and Development, the application should not be determined consistent with the decision of the Commission, the application shall be referred to the Council for its consideration.

CARRIED 3/0

Explanation

It was felt that it would be appropriate for the Commission to incorporate Council's decision, if required, prior to the Commission making a decision and therefore a minor addition was made to sub-recommendation (3) to reflect that.

Background

Council at its meeting held on 27 July 1999 resolved:-

"(1) recommend to the Western Australian Planning Commission in regard to any development application received for any land included in the North Coogee Master Plan Review Study - Clause 32 Resolution Area, that determination of the application be deferred until the completion of the North Coogee Master Plan Review Study."

Since this decision any applications received have been forwarded to the Commission with the recommendation that the applications be deferred.

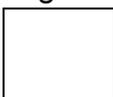
Submission

On 16 September 1999, the Council received advice that the Commission had:-

- (1) approved the development of a "seafood processing plant" on Lot 115 Emplacement Crescent.
- (2) approved the development of a "seafood processing plant" on Lot 116 Emplacement Crescent.
- (3) approved the re-issue of the subdivision approval for the Robb Jetty Industrial Estate, subject to conditions.

Report

Despite the fact that the North Coogee Master Plan Review has not been completed, approvals have been issued for these developments together with the re-approval of the subdivision in North Coogee. Given



that the Council sought the deferral of all applications until the outcome of the study is known, there appears to be little point in the Council maintaining its current position.

Under a Clause 32, the Council is still required to issue its decision in respect to each of the applications received in the North Coogee Area. In other words, two approvals are required by the applicant before development can be commenced.

This is disappointing, however, at least the Council can be satisfied in the knowledge that it attempted to do what it believed to be the right thing in the interests of the future planning and development of this unique coastal area.

As the Council would be aware, the land is zoned industry under the MRS and Special Industry 'A' under the local scheme, where most industrial uses are 'P' permitted. The Council, therefore, has little choice but to issue a conditional approval for most industrial uses proposed for this area.

It is a pity that the statutory planning system does not provide the "breathing space" to facilitate strategic planning initiatives which have the potential to produce better and more appropriate planning outcomes.

Strategic Plan/Policy Implications

Policy PD29 applies.

Budget/Financial Implications

Council has made a financial contribution towards the North Coogee Plan Review Study.

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

Nil.

- 252. (AG Item 13.5) (OCM2_9_1999) - PROPOSED SWIMMING POOL COMPLEX - LOT 5 HAMMOND ROAD, SUCCESS - OWNER: N L HAMMOND - APPLICANT: R DUNN (5513234) (MT) (EAST) (MAP 15)**

RECOMMENDATION

That Council:

- (1) approve the application for a swimming pool centre on Lot 5 Hammond Road, Success subject to the following conditions:



Standard Conditions

1. Standard conditions contained in Council Policy PD 17 as determined appropriate to this application by the delegated officer under clause 7.6 of Council's District Zoning Scheme N^o 2;

Special Conditions

1. The southern crossover being deleted and the car park being setback 25 metres from the southern boundary.
2. A total of 54 carbays being provided for the development.
3. A minimum of 15 trees being planted and maintained between the car parking and the southern boundary, to Council's satisfaction.
4. Fencing to Council's specification being erected along the southern boundary to a distance of 35 metres from the front of the lot.
5. All machinery associated with air and water filters being enclosed and located to Council's satisfaction.
6. The hours of operation being restricted to 7am to 9pm daily.

Special Footnotes

1. The applicant is advised approval from the Department of Minerals and Energy may be required for the storage of chlorine and other chemicals.
 2. An application for the construction of the swimming pool is to be made to the Executive Director, Public Health.
 3. Application must be made to Council's Health Services prior to the establishment of a public swimming pool.
- (2) issue a Form 2 Approval to Commence Development to the applicant;
- (3) advise those who made a submission of Council's decision accordingly.



COUNCIL DECISION

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

MOTION WITHDRAWN WITH PERMISSION OF COUNCIL 3/0

MOVED Cmr Smithson SECONDED Cmr Jorgensen that Council:

- (1) approve the application for a swimming pool centre on Lot 5 Hammond Road, Success subject to the following conditions:

Standard Conditions

1. Standard conditions contained in Council Policy PD 17 as determined appropriate to this application by the delegated officer under clause 7.6 of Council's District Zoning Scheme N^o 2;

Special Conditions

1. Satisfactory arrangements being made with Council to make a pro rata contribution to the widening of the reserve and construction of an additional carriageway and associated earthworks, dual use path, drainage facilities and costs for that section of Hammond Road between Beelias Drive and Bartram Road.
2. A landscaped sand bund to a height of 1.5 metres being constructed parallel to the southern boundary to prevent noise from the development impacting on the neighbouring dwelling. The bund must be setback at least 5 metres from the boundary.
3. Screening landscaping being planted and maintained between the car parking and the southern boundary to prevent light spillage from the carpark reaching the neighbouring dwelling.
4. All machinery associated with air and water filters being enclosed and located to Council's satisfaction.
5. The hours of operation being restricted to 7 am to 9 pm daily.

Special Footnotes

1. The applicant is advised approval from the Department of Minerals and Energy may be required for the storage of chlorine and other chemicals.



2. An application for the construction of the swimming pool is to be made to the Executive Director, Public Health.
 3. Application must be made to Council's Health Services prior to the establishment of a public swimming pool.
 4. With regard to Condition 1, the applicant is advised the contribution required at this stage is only for the area of the lot used for this development. The contribution required is to a maximum of \$22 000 with a timeframe and actual amount of that payment being made to Council's satisfaction.
- (2) issue a Form 2 Approval to Commence Development to the applicant;
- (3) advise those who made a submission of Council's decision accordingly.

CARRIED 3/0

Explanation

In terms of new Condition 1 and Special Footnote 4 it was a requirement the officers became aware of following preparation of the report.

All other changes were a result of negotiations with the applicant as to the arrangements on the southern boundary of the site.

Background

ZONING:	MRS:	URBAN DEFERRED
	DZS:	RURAL
LAND USE:	HOUSE & SHED	
LOT SIZE:	2 ha	
AREA:	1435m ²	
USE CLASS:	"SA"	

Submission

The proposal is for pool complex for the exclusive use of Waterbabies Australia. It will incorporate 2 pools; one a 16 metre long hydrotherapy pool, the other a 20 metre lap pool. The complex includes toilets and change rooms, a seminar room, offices, and a family waiting area.

Classes for children aged 1 to 8 years will run in the centre from 7.30am to 5pm. Evening prenatal and postnatal classes will run until 9pm.



A site plan, floor plan and elevation were provided and are attached to this agenda. The building is setback 25 metres from the front and 27 metres from the southern side boundary and 22 metres from the north. 54 car bays have been provided for the complex, based on the peak number of people expected to attend the centre at any one time. Two crossovers to Hammond Road are to be provided.

The application was referred to surrounding landowners for comment. The period for comments was not complete at the time of writing this report. One submission had been received and a summary is attached to this agenda. Any further submissions received will be provided for consideration prior to the meeting.

The subject lot abuts Hammond Road, an "Other Regional Road" under the Metropolitan Region Scheme and was therefore referred to the Ministry for Planning for their comments. A summary of their submission is attached to this agenda.

Report

The neighbour's submission raises some issues that must be examined and addressed. The suitability of a pool complex in the proposed location is of primary importance. The lot is currently zoned Rural under Council's Scheme, but is zoned Urban Deferred in the Metropolitan Region Scheme. This recognises the land will have an urban form in the future. At present no structure planning has been undertaken on the land west of Hammond Road. The rear 140 metres of the lot remain unaffected by this development and could be incorporated into any future residential or other urban subdivision.

Hammond Road is a regional road and will increasingly carry greater volumes of traffic as residential land is released to the south and east of the subject lot. The location of a pool complex on this regional road is considered appropriate and any traffic generated by the swimming pool will be insignificant when compared with passing traffic.

On the other side of Hammond Road is a childcare centre and the Jandakot Primary School. The pool centre will service the same age group as these existing land uses. On the northern side of the lot is a nursery with which the proposed use will integrate well. It is only on the southern side that there is a residence in close proximity to the development. It is the occupants of this dwelling that have objected to the proposal.

Noise Impacts

The neighbour has identified some legitimate effects of the complex on their property. Their dwelling is setback 1 metre from the boundary with Lot 5 and their bedroom window faces the lot. The primary issue relates



to noise from the development. The building is 35 metres from the dwelling on Lot 4 at its closest point. There should be no noise reaching the house from the centre itself. However, the current site plan shows the car park and one crossover only 10 metres from the boundary with Lot 4. In its current arrangement it is likely cars entering the site will create noise, impacting on the neighbours. It is proposed that a condition of approval be that the crossover near the southern boundary is deleted and the parking be setback 25 metres from that boundary. Fencing and plantings of trees and shrubs in the southern setback should ensure the impact on the neighbouring property is further minimised. This will also stop headlights shining through the neighbour's window at night. The 9 affected parking bays could be relocated to the northern side of the centre, maintaining a total of 54 bays for the development.

A further possible noise concern emanates from the water and air filters for the pool and buildings. The applicant has not indicated at this stage where they are to be located. It is proposed a condition of the approval be that all external filters are enclosed in a shed and that it is located to the north or west of the main building. This should ensure there is no noise impact from the filters on the neighbouring dwelling.

Health / Flora & Fauna

Council's Health Services is satisfied the health criteria can be met for the swimming pool complex. Septic systems will be incorporated to deal effectively with the high volumes of wastewater generated from the development. The Western Australian Sewerage Policy guidelines can met on the lot. There will be no odour escaping from the enclosed pools. Dust should not present itself as a problem during operation of the centre because the carparks will be bitumen. Dust during construction must be managed as with all other developments.

There is currently some remnant flora on the property. The flora to the rear of the property is of a higher quality than that at the front where the clearing will occur. The flora at the front of the lot is not so significant as to warrant its protection. The applicant has undertaken to maintain existing trees where they are not required for the building or car parking. A landscaping plan must be submitted to Council before development can proceed. The retention of existing vegetation where possible will be guaranteed through this process.

Scheme parking requirements

The proposed use is classified as a Health Studio in Council's Scheme. The Scheme requires 1 bay per 15 metres gross floor area for a Health Studio. For this development that is a total of 96 car bays. This would appear to be excessive in this case. The applicant has proposed 54 car bays and this should more than cater for the needs of the centre.



Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

Nil

- 253. (AG Item 13.6) (OCM2_9_1999) - PROPOSED AMENDMENT NO. 214 - LOT 12 ROCKINGHAM ROAD, SPEARWOOD - OWNER: SEPAROVICH - APPLICANT: GREG ROWE & ASSOCIATES (92214) (SR) (COASTAL)**

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 DISTRICT ZONING SCHEME NO. 2.

AMENDMENT NO. 214

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

Rezoning Lot 12 Rockingham Road from "Rural" and "Local Reserve: Public Purpose - Primary School" to "Residential R30".

Dated this 28th day of September 1999
Chief Executive Officer

- (2) refer the Amendment No.214 to the Environmental Protection Authority for assessment under Section 7A2 of the Town Planning and Development Act;
- (3) refer Amendment No.214 to the Western Australian Planning Commission in accordance with Planning Bulletin No.29 requesting consent to advertise be granted following receipt of written advice from the Environmental Protection Authority that



the Scheme Amendment is not required to be assessed under Section 48A of the Environmental Protection Act.

COUNCIL DECISION

MOVED Cmr Smithson SECONDED Cmr Jorgensen 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 DISTRICT ZONING SCHEME NO. 2.

AMENDMENT NO. 214

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

Rezoning Lot 12 Rockingham Road from "Rural" and "Local Reserve: Public Purpose - Primary School" to "Residential R30".

Dated this 28th day of September 1999
Chief Executive Officer

(2) refer the Amendment No.214 to the Environmental Protection Authority for assessment under Section 7A2 of the Town Planning and Development Act;

(3) advertise Amendment No.214 in accordance with Planning Bulletin No.29 following receipt of written advice from the Environmental Protection Authority that the Scheme Amendment is not required to be assessed under Section 48A of the Environmental Protection Act.

CARRIED 3/0

Explanation

It was necessary to amend Item (3) to reflect the revised advertising procedures specified in the WAPC Bulletin No.29.

Background

ZONING:	MRS:	Urban
	DZS:	Rural / Local Reserve - Public Purposes - Primary School



LAND USE:	Rural (with Residence)
LOT SIZE:	2.0264 Ha
AREA:	N/A
USE CLASS:	N/A

The Eastern portion of the subject site is presently zoned "Rural" whilst the balance of the site is zoned "Local Reserve: Public Purpose - Primary School".

The land identified for the Primary School in the western portion of the subject site is no longer required by the Education Department.

Submission

The applicant's request for rezoning is summarised as follows:

"The proposed zoning of the subject site is consistent with the zoning under the Metropolitan Region Scheme (Urban) and the zoning and existing development in the Packham Urban Development Area.

The Concept Subdivision Plan and the Concept Structure Plan are consistent with the intention and objectives of the superseded Packham Structure Plan and planning for the area. The concept designs provide for interconnection with the existing and future development on surrounding lots.

In short, it has been demonstrated that the subject site is no longer required for the purpose of a Primary School, that the "Rural" zoning is no longer applicable in the predominantly urban area, that the subject site is outside of the area affected by the Watsons' Buffer issues. It is therefore considered that the rezoning is justified, and is consistent with the orderly and proper planning for the Packham Urban Development Area."

The applicant has requested a deputation in order to present additional information in support of their application.

A preliminary "Structure Plan" and subdivision plan for the land and adjacent properties currently affected by the Watsons' Odour Buffer is attached.

Report

Section 35A of the Metropolitan Region Town Planning Scheme Act (1959) requires Council's Town Planning Scheme to be in conformity with the Metropolitan Region Scheme.

The subject land is just outside the interim 500 metre Watsons' Odour Buffer currently prescribed by the Environmental Protection Authority.



The Watsons' Odour Buffer is to be redefined in the year 2000. (See attached advice from DEP 22.12.98)

It is preferable that the subdivision of the subject land be co-ordinated with adjoining land currently affected by the Watsons' Odour Buffer. This will require a Structure Plan to be approved following finalisation of the rezoning process, at which stage technical studies to define the revised Watsons' Odour Buffer will be further advanced.

Strategic Plan/Policy Implications

Policy PD23 states that:

"The City of Cockburn requires that where a proposal for a change in landuse conflicts with an existing buffer zone, then the onus is on the buffer beneficiary to show that the buffer is current, has been scientifically determined and is based on the use of best practicable management practices for minimising emissions. Unless this can be clearly demonstrated by the buffer beneficiary, then Council will fully support the proponent of the proposed landuse change providing that other planning and environmental considerations are properly met."

Budget/Financial Implications

N/A

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

Nil.

- 254. (AG Item 13.7)13.7 (OCM2_9_1999) - BEELIAR DRIVE ROAD RESERVE - LAND PURCHASE (92210) (450953) (SR) (COASTAL / SOUTH)**

RECOMMENDATION

That Council make an offer to the owners to purchase the seven (7) part lots for the Beelias Drive road reserve in accordance with the valuation report, as attached to the Agenda.

COUNCIL DECISION

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

CARRIED 3/0



The Chief Executive Officer advised that there was a typographical error in Item (4) of the "Background", where it mentions "Point 4 above", which actually read as "Point 3) above".

Background

Council at its meeting on 15 December 1998 resolved as follows:

- "(1) *commence negotiations with Urban Focus, as the representative of the owners of Lots 12 and 26 Birchley Road and 34, 57 and 58 Tindal Avenue, to enable the construction of Beeliar Drive within the approved subdivision known as Cells 9 and 10 Yangebup;*
- (2) *ensure that the negotiations in Point (1) above result in the owners of properties affected by the MRS road reserve having equity with the other owners in Cells 9 and 10, in terms of their contribution of land value and road construction costs for Beeliar Drive;*
- (3) *contribute twenty percent (20%) of the total cost of the project as a community benefit proportion, with the remaining eighty percent (80%) being contributed by the subdividers of Cells 9 and 10, in proportion to their land holdings; and*
- (4) *advise the owners and their representatives, Urban Focus, that the total cost of the project in Point 4 above takes into account the value of the road reserve, including the acquisition of Lot 76 Birchley Road."*

In regard to points (2) and (3) of Council's 15 December 1998 resolution, Council initiated Amendment No. 210 at its meeting on 25 May 1999. This Amendment establishes a pro-rata formula and schedule applying to all subdividers within Cells 6, 3 9 and 10 for the purpose of acquiring land for the road reserve for Beeliar Drive and funding its initial stage of construction.

Submission

A formal request for Council to purchase portion of seven (7) properties required for the Beeliar Drive road reserve has been received from Urban Focus (see attachment). In regard to (3) above of Council's resolution, further correspondence from Urban Focus is attached.

This firstly objects to the proposed 80 percent subdivider contribution but, secondly, accepts that some subdivider contribution is to be made, with the percentage to be resolved via the Town Planning Appeals Tribunal.



Report

A detailed report which summarises the background and current situation regarding land purchase, future road construction costs, proposed subdivider contributions and Council's regional road funding commitments is attached.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

Financial implications are discussed in the attached report.

Funds for land purchase are available from an existing Budget Allocation of \$400,000, subdivider contributions and Regional Road Reserve funds.

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

Nil.

255. (AG Item 13.8)13.8 (OCM2_9_1999) - AMENDMENT NO. 202 - JANDAKOT GROUNDWATER - FINAL ADOPTION (92202) (SOS) (EAST) (MAP 18-24)

RECOMMENDATION

That Council:

- (1) adopt the Schedule of Submissions as contained in the Agenda Attachments.
- (2) adopt Amendment No.202 for final approval, the Amendment generally comprising:
 1. Introducing a new zone into the TPS to be known as the "Resource Zone".
 2. Rezoning all land affected by the MR Rural-Water Protection Zone to the TPS Resource Zone.
 3. Deleting reference in the TPS to the Special Rural Zone; and
 4. Introducing land use provisions in accordance with WAPC Statement of Planning Policy No.6.



- (3) seek the Hon. Minister's final approval, subject to the following modifications:
1. correct the Amendment Map to accurately reflect the Metropolitan Region Scheme Rural-Water Protection zoning along Lyon Road (Lots 19 - Pt 23);
 2. correct the Amendment Map to accurately show the extent of existing additional uses as provided for in the Second Schedule;
 3. amend Clause 5.5.2 (k) of the Amendment Text by replacing the number "15" with the number "19" and reordering the table accordingly;
 4. delete Clause 5.5.1 (2)(b) from the Amendment Text;
 5. adding to the Amendment Text after Point 1 (d) the words "deleting the Sixth Schedule from the Scheme Text".
 6. adding to Clause 5.5.1 (5)(d) after the words "specified trees" the words ", specified areas of bushland".
 7. amend (m) of the Amendment Text by inserting the words "in excess" between the words "weight" and "of".
- (4) upon an indication being received from the Western Australian Planning Commission that Amendment No.202 will be gazetted, require;
1. The Planning Department, in consultation with the Water and Rivers Commission, prepare a Policy and/or further guidance on the keeping of horses and other animals in the Resource zone;
 2. A leaflet or similar note be prepared containing advice and guidance on the new land use provisions applicable to the Resource zone;
 3. The Planning Department prepare a Policy concerning Building Envelopes and Landscape Protection Areas, in substitution for the plans and associated provisions to be removed from the Sixth Schedule as part of Amendment No.202.
- (5) advise those persons who made a submission of Council's decision.
- (6) in anticipation of the Hon Minister's advice that final approval will be granted, the modified documents be signed, sealed and



forwarded to the Western Australian Planning Commission.

COUNCIL DECISION

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

CARRIED 3/0

Background

The State Government's initiatives to protect groundwater resources in the Jandakot region have been documented in various reports to Council over the past three years.

With regard to changes to planning controls, the two most significant events have been:

- The promulgation in April 1998 of Amendment No.981/33 to the Metropolitan Region Scheme (MRS), with land in the eastern sector of Cockburn included in either the Water Catchment Reservation or the Rural-Water Protection zone.
- The gazettal in June 1998 of the Statement of Planning Policy No.6 – Jandakot Groundwater Protection Policy (SPP No.6), prepared under Section 5AA of the Town Planning and Development Act. The Policy introduced measures to control and manage land uses in the Jandakot water mound area.

The Local Authority is required to ensure its Town Planning Scheme (TPS) is both consistent with the provisions of the Metropolitan Region Scheme and has regard for relevant Section 5AA Policies. Council initiated Amendment No.188 to its Scheme in July 1998 in an effort to satisfy these obligations, but in December 1998 resolved not to proceed with the Amendment principally due to concerns regarding the extent of modifications to the form of the Amendment required by the Ministry for Planning.

Following further liaison with the Ministry for Planning and Water and Rivers Commission, the proposed Amendment text was reworked. A fresh Amendment (No.202) was initiated by Council at its meeting held on 16 March 1999.

Submission

The key features of Amendment No.202 are as follows:



- Introducing a new zone into the TPS to be known as the “Resource” zone.
- Rezoning all land affected by the MRS Rural-Water Protection zone to the TPS Resource zone.
- Deleting reference in the TPS to the Special Rural zone and transferring a number of the existing land use provisions to apply to land in the Resource zone.
- Including reference in the TPS to the SPP No.6. In effect, the land use table included in the SPP No.6 becomes the zoning table in the TPS for the Resource zone.

Council, when initiating Amendment No.202, resolved to forward the proposal to the Environmental Protection Authority (EPA) for assessment and subject to the EPA’s advice, advertise the Amendment for public comment in accordance with Town Planning Regulations and the WAPC Planning Bulletin No.29.

Advice was received from the EPA in May 1999 that the Amendment required no formal environmental assessment. As a result, advertising of the proposal commenced on 30 June and concluded on 11 August 1999. Public consultation took the form of letters to all landowners in the proposed Resource zone, signage in the locality, an advertisement in the “West Australian” and a reference in the Cockburn website. The Water and Rivers Commission, Water Corporation, Western Power, and Alinta Gas were also invited to make a submission.

A total of 25 submissions were made on the Amendment proposal. Submissions are summarised in a schedule included in the Agenda Attachments.

Report

The key issues to emanate from the submissions are as follows:

Definition/Determination of Groundwater zone

Many of the submissions were critical of the approach to determine the extent of the Resource zone and the result the zoning has on the use and potential development of their land. There was particularly criticism about the land that was excluded from the Resource zone (that is, Urban and Urban Deferred land to the west of the Resource Zone) and the fact that much of this land is in government ownership.

Quite simply, the extent of land included in the proposed Resource zone matches that defined by the extent of the MRS Rural – Water Protection zone. As a result, the arguments the Western Australian Planning Commission (WAPC) used to defend MRS Amendment 981/33 and the definition of the Water Protection zone are applicable.



The WAPC argued that the proposed capture zone boundary was based on best available scientifically sound methodology and accurately defines the area requiring protection for water supply purposes. It acknowledged that the boundary for the protection zone was based on determined capture zones, but with a few anomalies such as the exclusion of the Urban and Urban Deferred zones in the north-west part of the Jandakot Underground Water Pollution Control Area (JUWPCA).

The WAPC indicated that where areas had been classified as Priority 2 in the JUWPCA and urban development or future urban zones existed within, the Priority 2 classification would be changed to Priority 3 so as to remove any inconsistency with the objectives of Priority 2. Thus Urban and Urban Deferred areas (in addition to much of Jandakot Airport and Jandakot Industrial Area) were excluded from the protection zone so as not to allow encroachment of urban uses into the Priority 2 area and thus create a precedent. It also has put measures into place to help minimise the impact of existing developments within Priority 3 areas.

Council has expressed concerns regarding the approach to determining the extent of the MRS groundwater zone previously. Despite this, Council is obliged to reflect MRS zonings with appropriate complementary local Scheme zonings.

Value of Groundwater Protection

Another issue common to many submissions was the questioning of the value of protecting Jandakot's groundwater resources and whether urban development is actually detrimental to the water mound.

The WAPC submitted in its response on Amendment 938/33 that the value of maintaining a groundwater resource in good condition was greater than the economic values for developing the land overlaying the groundwater resource. The WAPC maintains that urban development, particularly when commercial uses are included, will cause contamination of the groundwater resource and is not compatible with groundwater protection. There is much evidence to support the argument that urban development poses a significant and proven risk of pollution to underlying groundwater.

Restrictions on future Development

Many of the submissions object to the land use restrictions the Amendment will pose. Most make their comments in very general terms, however some are more specific.

- No Urban Development

Landowners have objected to the loss of the potential for their properties to be developed for urban purposes and thus a loss in value, particularly



those very close to urban development on the periphery of the Water Protection/Resource zone (see submissions 6, 7, 8, 17,18, 21, 23). Some have suggested they may seek compensation for the loss of land values due to the rezoning.

Again, it is the MRS that has determined the extent of land that may be developed for urban purposes. Amendment No.202 is simply reflecting the MRS and any departure from a land zoning that is compatible with the MRS would not be supported by the WAPC. In any event, the presumption that these landowners may have been able to develop for urban was based on their own aspirations and speculation, and not based upon any clear strategy or commitment that urban development would be supported.

The suggestion that legal action may be taken to compensate for reduced land value is not considered to represent any threat to Council.

- Subdivision and minimum lot size.

Submission 3 made on behalf of the owners of Lot 41 Armadale Road objects to the amendment on the basis that under the current Scheme provisions affecting the land (see Sixth Schedule – Clause 4.0 – Tapper Road Special Rural zone), a minimum lot size of two hectares is prescribed and the amendment will result in this “right” being removed.

The land houses a poultry farm, which the owners are seeking to relocate. However to fund the relocation, subdivision of the property into a series of two hectare allotments is required.

The submission argues that whilst the SPP No.6 sets a minimum lot size of two hectares for land within the MRS Groundwater Protection zone, it adds other requirements which may affect lot size considerations. It objects to the fact that the amendment will remove the two hectare minimum lot size requirement currently in the Scheme and thus remove the landowners’ certainty in regard to potential for the land to be subdivided into lots of at least two hectares in area.

The submission states that should the amendment proceed as proposed and a subdivision proposal for two hectare lots fails to gain approval, the landowners will seek compensation from Council for injurious affection.

Whilst the current Scheme provision sets a minimum lot size of two hectares, it does not automate approval for such subdivision as of right. The onus is still on the applicant to demonstrate the land’s capability to sustain such subdivision. The WAPC’s discretion to approve subdivision is not fettered by the provisions of the TPS, and notwithstanding that there is currently a minimum two hectare provision in TPS, it does not infer that the land is capable of subdivision down to two hectares.



Even though the two-hectare minimum subdivision provision is to be removed from the TPS, the existence of similar control in the SPP No.6 is considered appropriate. This change neither enhances nor removes the possibility of a two hectare subdivision. Accordingly it is recommended that the submission is dismissed.

- Additional Uses

Three submissions questioned whether current Additional use rights afforded to their land by TPS No.2 would continue under Amendment 202.

In the Amendment area, two Additional use rights exist:

1. Portion of Lot 77 Jandakot Road – allowing for Mineral Processing;
2. Lot 500 Rowley Road – allowing for development of a rural store, hardware and tourist facilities; and

- an additional use right is to be added to allow the continuation of the Hybrid Court kennel/cattery area.

Despite a minor drafting error on the advertised amendment plan, current additional use rights will remain unchanged.

Keeping of Horses and other animals – need for Policy

Many enquiries have been made with the City, in addition to it being raised in submissions, regarding restrictions on the keeping of horses and other animals in the groundwater area. At the present time, there are no Scheme restrictions for the keeping of animals on land zoned Rural (with the exception of intensive uses such as poultry farms, dog kennels and catteries). Council by-laws are also relevant to these animals, in addition to restrictions on keeping of pigs. On Special Rural zoned land, of which there are 16 different “estates” in Cockburn, restrictions vary from no restrictions in the older estates to a total prohibition of any horses or other stock in newer estates.

The SPP No.6 contains the following definitions relevant to horses and other stock:

Animal establishment – means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal establishment-intensive or veterinary care.

Equestrian activity – means any land or buildings used for the showing, competition or training of horses and includes a riding school.



Hobby farm – means any land or building used for the keeping of farm animals or the growing of vegetables, fruit and flowers for non-commercial purposes or sale.

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

Animal establishments, equestrian activities and stables are classified as “AA” uses in the SPP No.6 land use table, though they are restricted activities in the JUWPCA Priority 2 areas and approval will depend on nutrient loadings, land area and site conditions. Hobby farms are classified as “P” uses.

No acceptable numerical limit or ratio for animals is prescribed in the SPP No.6.

The most common query received concerns how many horses, if any, can be kept on a two-hectare lot in the Resource zone. Other common queries include the keeping of other farm animals such as poultry, sheep and goats.

From the above definitions the critical criteria is the distinction between domestic and commercial operations. It is quite reasonable for owners of rural-living type lots to be able to keep animals as pets, though there is little guidance from the Water and Rivers Commission on acceptable animal numbers. Determining where the distinction of domestic ends and commercial begins is also difficult. There is also little guidance from Council by-laws in regard to acceptable animals numbers. From an administrative context it is not desirable for the landowners wishing to keep domestic animals to have apply for planning approval and there should be scope for certain “as of right” uses.

It is clear there is a need for clearer guidance. It is recommended that Council develop some guidance clarifying acceptable animal numbers for the domestic keeping of pets, horses and farm animals. Such guidance will need to be produced in consultation with the Water and Rivers Commission and may need to take the form of a Council policy.

Water and Rivers Commission comments

The Water and Rivers Commission generally supports the Amendment, but has made specific comment on certain aspects. Responses to the Commission’s comments are included in the schedule of submissions, though the following matters require additional comment:

Single zone to cover Water Protection zone



The Water and Rivers Commission understands the basis for proposing a single zone, but is concerned the environmental value of current Special Rural zone provisions could be lost. The Commission advises that it is likely to oppose development applications for some of the "AA" uses listed in the zoning table of the SPP No.6 on lots less than 4 hectares (ie most Special Rural lots) and recommends that if the TPS is to have a single zone, Council should either refine the zoning table accordingly, include more detail in its policy manual, or produce guidance notes for landowners regarding the permitted land uses.

Amendment No. 202 incorporates the SPP No.6 zoning table directly into the Scheme. The fact that there are problems with the interpretation of the SPP No.6 is a fault with the drafting of the SPP and not Amendment No.202. Council has quite deliberately not sought to adulterate the provisions of the SPP No.6 through the incorporation of it into the TPS.

Most of the existing Special Rural provisions of the Scheme are essentially transferred unchanged to now apply to the Resource zone. The only change is the substitution of the current zoning tables for each Special Rural "estate" with the SPP No.6 zoning table. This approach is considered to adequately and equitably continue the current land use restrictions (such as vegetation protection and effluent disposal) in the new zone, as well as applying the new requirements of the SPP No.6 consistently across the Rural – Water Protection/Resource zone.

A guidance note is considered the most appropriate way to advise landowners of the new land use restrictions to replace existing guidance notes for Special Rural zoned land.

Other Issues for Council's consideration

Modifications to Amendment

Should Council adopt Amendment No.202 for final approval, the following modifications are required:

Plan errors and anomalies

1. Soon after the commencement of the Amendment's advertising period, it was discovered that several lots fronting Lyon Road (Lots 19 - Pt 23) were inadvertently left out of the proposed Resource zone even though they are included in the MRS Rural – Water Protection zone. Affected landowners were sent a follow up letter with a corrected Amendment map.
2. The Additional Use provision affecting Lot 500 Rowley Road was not shown on the Amendment map. Whilst this does not delete the Additional Use right, other lots with Additional Use rights were shown



on the Amendment map. For consistency, the Amendment map should be modified to accurately reflect the continued Additional Use right afforded to the land.

3. The Additional Use right to be added to the Scheme for the kennel and cattery area requires renumbering. Amendment No.158 has recently been gazetted and has added an Additional use to the Third Schedule (No.15 - Waters Avenue, Atwell). As a result, Clause 5.5.2 (k) needs minor adjustment to avoid “doubling up” on the number 15.
4. A subdivision guide plan of each Special Rural zone “estate” is currently included in the Sixth Schedule of the Scheme. These guide plans are to be deleted under Amendment 202. Many of the plans illustrate those lots with building envelopes or areas of landscape protection. In view of the removal of the plans from the Sixth Schedule, some alternative for defining these areas needs to be adopted. It is recommended that a Plan be produced illustrating lots in the Resource zone with building envelopes and landscape protection areas and included in the Policy Manual.

Modifications to Amendment text

1. Proposed Clause 5.5.1(2)(b) requires that “when considering an application for Planning Consent, the Council may either refuse or conditionally approve any application for any Building it considers to have more than one story.” This Clause currently exists for land zoned Special Rural, but under the Amendment would apply to land in the Resource and Rural zone. Not only is this Clause superfluous and perhaps onerous, but it is also outdated as Planning Consent is not required for the construction of a single dwelling. It is recommended that this Clause is deleted.
2. Notation in the Amendment text needs to be added clearly indicating the removal of the Sixth Schedule.
3. Add to Clause 5.5.1 (5) (d) – Clearing of flora – a reference to protection of specified areas of bushland in accordance with the advice of the Department of Environmental Protection.
4. Modify the proposed amended definition of "commercial vehicle" to read:

"Commercial Vehicle means any vehicle used or intended to be used in a business or trade which has a tare weight **in excess of 3.5 tonnes.**

rather than -



"Commercial Vehicle means any vehicle used or intended to be used in a business or trade which has a tare weight of 3.5 tonnes."

as advertised.

Need for guidance note

The production of a guidance note outlining the land use and development requirements pertaining to the Resource zone will be required to help disseminate information for affected landowners.

Strategic Plan/Policy Implications

The creation of the Resource zone is consistent with Council's Ultimate District Strategic Plan, which shows the area as Water Resource Protection Area.

Some Policy additions will be required concerning building envelopes, landscape protection areas and keeping of animals.

Budget/Financial Implications

Nil

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

Nil

256. (AG Item 14.1) (OCM2_9_1999) - LIST OF CREDITORS PAID (5605) (KL)

RECOMMENDATION

That Council receive the List of Creditors Paid for August 1999, as attached to the Agenda.

COUNCIL DECISION

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

CARRIED 3/0



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

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

N/A

257. (AG Item 14.2) (OCM2_9_1999) - INCREASED MAINTENANCE LEVY - RESERVE 32870 (CNR PACKHAM ROAD AND BLACKWOOD AVENUE, HAMILTON HILL) - WATER CORPORATION (2210341) (KJS)

RECOMMENDATION

That Council:

- (1) accept \$3,000 as a one off payment to assist in the management and enhancement of Reserve 32870; and
- (2) advise the Department of Land Administration that the City has no objection to the creation of an easement, in favour of Water Corporation over portion of Reserve 32870.

COUNCIL DECISION

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

CARRIED 3/0



Background

The Water Corporation has written seeking an easement over portion of the reserve to protect its interests, being a sewer pump station and overflow facilities to be constructed as part of an infill sewerage project.

Submission

A facsimile was received from the Water Corporation making an offer of a once off payment of \$3,000.

Report

Reserve 32870 is a reserve for public recreation. A portion of this reserve is occupied by a fenced drainage sump. Water Corporation has located a proposed pump station next to the drainage sump, such that in the event of a prolonged power cut sewer overflow could be directed into the drainage sump. Water Corporation has undertaken to clean the sump should this situation arise.

The pump station is buried and is only visible from the surface as a concrete slab. The concrete slab does increase costs as the concrete slab protrudes approximately 150mm above the ground. The once off payment of \$3,000 is considered acceptable in this instance.

Strategic Plan/Policy Implications

N/A

Budget/Financial Implications

N/A

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

N/A

258. (AG Item 14.3) (OCM2_9_1999) - BUDGET AMENDMENT - PROVISION FOR REDUNDANCY PAYMENTS (5402; 5403) (ATC)

RECOMMENDATION

That Council amend the 1999/00 Budget by providing a new expenditure account "Redundancy Payments" and a new income account "Transfer from Leave Liability Reserve", both accounts to be for \$50,000.

TO BE PASSED BY ABSOLUTE MAJORITY OF COUNCIL



COUNCIL DECISION

MOVED Cmr Jorgensen SECONDED Cmr Smithson that Council:

- (1) amend the 1999/00 Budget by providing a new expenditure account "Redundancy Payments" and a new income account "Transfer from Leave Liability Reserve", both accounts to be for \$50,000; and
- (2) give delegated authority to the Chief Executive Officer to use funds from the above account in accordance with the Enterprise Bargaining Agreements.

CARRIED 3/0

Explanation

It was felt that the Chief Executive Officer should be given delegated authority to use the funds appropriately.

Background

The Chief Executive Officer has the authority to deal with all staff matters. Instances can occur where redundancies are appropriate and while the Chief Executive Officer can approve redundancies there are no funds available in the current budget for payments to be made in accordance with Council's Enterprise Bargaining Agreement with staff.

Submission

N/A

Report

The Chief Executive Officer has the authority to deal with redundancies that occur but currently has no funds available in the budget to make any payments required under Council's Enterprise Bargaining Agreement with staff. If funds are required then the Chief Executive Officer must seek a budget amendment on each occasion with consequent delays occurring in finalising any redundancies. It is considered to be more appropriate for the Chief Executive Officer to have a source of funds to draw on to expedite the process. The need to reimburse the Leave Liability Reserve Fund in respect of any funds used will be examined as part of the annual budget process.

Strategic Plan/Policy Implications

N/A



Budget/Financial Implications

A budget amendment is required. While there will be no overall effect on the budget the Leave Liability Reserve Fund will need to be examined each year as part of the budget process.

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

N/A

259. (AG Item 23.1) (OCM2_9_1999) - RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)

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

- (a) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (b) not duplicated, to an extent Council considers inappropriate, services or facilities as provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (c) managed efficiently and effectively.

CARRIED 3/0

MEETING CLOSED 8.20 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:/...../.....

