

CITY OF COCKBURN

SUMMARY OF MINUTES OF SPECIAL COUNCIL MEETING HELD ON THURSDAY, 25 FEBRUARY 2010 AT 7:00 PM

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CITY OF COCKBURN

MINUTES OF SPECIAL COUNCIL MEETING HELD ON THURSDAY, 25 FEBRUARY 2010 AT 7:00 PM

PRESENT:

ELECTED MEMBERS

Mr L Howlett	-	Mayor	
Mr K Allen	-	Deputy Mayor	(Left at 7.54pm)
Ms L Smith	-	Councillor	
Ms H Attrill	-	Councillor	
Mr I Whitfield	-	Councillor	
Mrs C Reeve-Fowkes	-	Councillor	
Mr T Romano	-	Councillor	
Mrs S Limbert	-	Councillor	
Mrs V Oliver	-	Councillor	
Mrs R O'Brien	-	Councillor	(Left at 8.32pm)

IN ATTENDANCE

Mr S. Cain	-	Chief Executive Officer
Mr S. Downing	-	Director, Finance & Corporate Services
Mr M. Littleton	-	Director, Engineering & Works
Mr D. Arndt	-	Director, Planning & Development
Ms S. Seymour-Eyles	-	Media Liaison Officer
Ms V. Viljoen	-	Personal Assistant to CEO

1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 7.07pm.

The Presiding Member made the following statement:

In relation to tonight's second item on the Agenda, I wish to advise that on 16 November 2009 Australand lodged an application for review, an Appeal, to the State Administrative Tribunal (SAT) on the basis that Council had not made a determination in relation to their revised Port Coogee Local Structure Plan and related matters within the specified timeframe under the scheme.



Council held an Ordinary Council Meeting on 13 August 2009 and a Special Council Meeting on 17 September 2009, and on both those occasions opted to defer the matter for various reasons.

Since the lodgement of the Appeal by Australand, mediation has occurred under the direction of SAT and in accordance with the SAT regulations; and subsequently the matter is back with Council for its consideration. The SAT regulations preclude Council from providing any information in relation to matters that have been discussed during the mediation process. The outcome of tonight's deliberations will be provided to SAT in accordance with the Notice of Mediation to be held on Tuesday, 2 March 2010.

In its deliberations tonight Council will be cognisant of previous Council decisions on this matter, previous determinations by SAT, the outcomes of the recent SAT mediation process, the proponent's application and the feedback we have received from the community. As mentioned previously, the outcomes of the mediated solution cannot be made public until such time as SAT has handed down its determination, in accordance with SAT regulations.

2. APPOINTMENT OF PRESIDING MEMBER (If required)

N/A

3. DISCLAIMER (To be 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 (SCM 25/02/2010) - ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (BY PRESIDING MEMBER)

The Presiding Member advised the meeting that he had received a Declaration of Conflict of Interest from Deputy Mayor Allen in Item 9.2, which would be read at the appropriate time.

5 (SCM 25/02/2010) - APOLOGIES & LEAVE OF ABSENCE

Nil.



6 (SCM 25/02/2010) - PUBLIC QUESTION TIME**Murray O'Brien, Munster
Item 9.2**

- Q1 At the September 2009 Council meeting, Council said they would have a public consultation in regard to Port Coogee. When will this take place if you are deciding on this now?
- A1 CEO – The matters that were before Council at that time have been overtaken somewhat by events. As you are aware, Council was called in to compulsory mediation by SAT on this matter as a result of the application by Australand. It is up to Council, once it has considered this matter, to continue to still have that public consultation but at the moment it is required to make a determination in accordance with the direction by SAT. At this stage, we cannot give a specific date on which Council will hold the information campaign but, as previously stated, Council is required at this stage to make a determination in accordance with the SAT ruling.
- Q2 You said the SAT requested you make a decision, is that correct?
- A2 CEO - There have been three (or four) mediated discussions and yes, that is correct. As a result, Council has received a direction from SAT that Council is to give SAT a decision by 2 March 2010 on the mediated settlement that was put before it during those hearings.
- Q3 Just to clarify, SAT have requested you make a decision regardless of the fact that Council, in September 2009, said they would have a public consultation period and they have not done that, and now SAT are requesting Council put that aside and make a decision on the direction of SAT – is that what is going on? It seems awfully strange as to whether the ratepayers are considered here or not.
- A3 CEO - Yes, Council has a direction from SAT. Council is required to give a decision to SAT. Council can make any decision tonight – it could, for instance, say that it wishes further time to consider this matter; or that it wishes to continue with its requirement to do public consultation – that is a matter that is open before Council tonight. However, Council is required to give a decision of some form back to SAT.
- Q4 Is Council going to let the ratepayers know as to whether they are going to honour the decision back in September 2009 with regards to having a public consultation before this is made?
- A5 Mayor - That will be a decision for this Council to make.



Jim Mayhew, Coogee
Item 9.2

Q1 In this piece of structural candy, there was a supermarket destined for the southern end of the development. Although that is not there any more, it helped us to support the project. It seems to have finished now with the idea of putting up some more buildings, double story, and I understand some people are worried about views, etc. Would it not be possible to resurrect the supermarket idea? You could make it a one story building after you remove those few metres of soil that have been put in and roof it over and put a garden of trees, etc., on top. That would save the views and people who were worried about the depreciation of their properties. It would also, perhaps, give some of the people at the very bottom of Kiesey Street a kind of recompense for what I consider to be a very destructive result, if not intentional. That could perhaps be raised instead of the present mediation plans. Property values are also certain to go up shortly and Australand should make an increase on present property values, and people come and increase the population. My question is why can't we do that; resurrect the idea of the supermarket which will benefit the entire development?

A1 Mayor - Bear in mind Council will be considering all options on matters relating to this item.

Director Planning & Development – During the consultation, Australand have proposed a change to the Structural Plan. Part of that change is the relocation of a shopping centre on that southern most portion into the actual marina village itself. That proposal was advertised for public comment and it was considered by Council at its meeting in August 2009 and at a Special Meeting of Council in September 2009.

Fred Henderson, Coogee
Item 9.2

Q1 Is anyone from Australand here tonight?

A1 Mayor – no, we are not aware of anyone being here tonight.

Q2 What I cannot understand is what they are doing seems to be against Council policy to raise the land like they have done. I have read they have raised the height of the land at the southern end which is against Council's wishes. Someone got to speak with Australand and they said they won't do that, "take my word for it". Obviously, that did not work.

A2 Director Planning & Development – The lot in question is what is now known as Lot 749, which has not actually been created. Within the



Local Structure Plan which was the Plan that was endorsed by Council in 2006, it shows that up to 2 metres of fill can be placed on that site. There has been a question raised as to whether more than 2 metres of fill has been placed on the site and that matter is currently under investigation. If it is found there is excessive fill on the site, obviously Council will be taking action with Australand to ensure that issue is rectified.

Q3 Will they remove that raised part that is illegal?

A3 Mayor – As previously stated, the City will liaise with Australand in terms of the fill on that site and where it is over and above what is allowed, Australand will be requested to remove it.

Jim Stephenson, Coogee
Item 9.2

Q1 When we were made aware of the 2006 Structural Plan, we understood there was a 9 metre maximum height for the shopping centre. We now understand there is to be a 14 metre high residential dwelling there. Could you please advise what sort of monster we are dealing with?

A1 Director Planning & Development – The current approved Structure Plan shows a Height Guide Plan which proposed on the southern portion of Lot 749 a maximum height of 13.6 metres. In the current Structure Plan that was advertised to the public, it was proposed to replace that Guide Plan with a formal Height Plan and the height designated on that plan was exactly the same as the Height Guide Plan, being 13.6 metres.

Q2 It would seem that the Council, in its deliberations, has failed to give an answer back in the designated time and therefore it has forced this mediation which has put it under a fair bit of public scrutiny. I wonder if, by sitting on their hands and not making a decision, Council has put itself in this position and therefore is keeping the public completely in the dark about what the mediation is about and where we stand in relation to the heights down there.

A2 Mayor – As stated earlier, Council considered this matter on two occasions in August and September 2009 and on both occasions, for different reasons, Council decided to defer the matter which provided the proponent, Australand, with the opportunity to have the matter placed with SAT on Appeal.

Q3 From our point of view if you had made a decision it would have stayed in the public arena. Now it is conveniently not in the public arena and that is what we feel and that is my point – we would have liked the Council to act and make a decision instead of putting us in this position of darkness at the moment.



A3 Mayor – We appreciate your comments.

Robyn Scherr, Coogee
Item 9.2

Q1 Who were the people who participated in the SAT mediation process on behalf of Council?

A1 Mayor – Deputy Mayor Kevin Allen, Cllr Carol Reeve-Fowkes, myself and the Director Planning & Development, plus a planning consultant.

Q2 Did they report to the other councillors on the content and progress of the mediation?

A2 Mayor – There was some discussion between Elected Members in regard to the matter. There was a detailed briefing provided by the Director Planning & Development.

Q3 When was the briefing and how many Councillors were present?

A3 CEO – The most substantial briefing given to the Councillors at the end of the mediation process with the mediated solution, which is currently before Council tonight, was presented to all the Elected Members last Monday (of this week) and was a full briefing.

Q4 How can we have confidence in this Council on this matter whilst Kevin Allen and the residue of the team Australand groomed, promoted and sponsored for the 2005 election ...

Mayor – please ask the question.

I am asking how can we have confidence in the Council, that is the question. Whether they profess their ignorance of Australand's involvement is irrelevant. What matters is that Australand believe they were their team, with their interests at heart, didn't they? Why else would they ... How can this Council negotiate or mediate on behalf of the citizens of Cockburn when they are so compromised. I ask Council to stand up to the bullies that Australand are and send them back to the SAT. The SAT may have credibility and independent decision making. Council cannot demonstrate any credibility.

Mayor – please ask your question.

I have asked my question. I ask that you give nothing to this mob and that you demand Australand make a formal apology to the people of Cockburn for their interference in and the corruption of our Council and community. I also would ask is there anyone from Australand in the gallery this evening? Do you remember Chris Lewis ...



Mayor – please ask your question.

I am asking if you remember Chris Lewis of Australand being a regular attendee at these Council meetings, handing out bottles of champagne? Is anyone from Local Government in the gallery tonight? Mr Castrilli promised he would keep a close eye on this Council – where is he?

Dan Scherr, Coogee
Item 9.2

Q1 I would like to ask each and every member of Council this question – in order to find a reasonable decision in your deliberations this evening, do you think you have had enough consultation with the public, do you think you have had enough information about what is going on here, do you think that the information you were provided was timely and useful to you and if any of the answers to that question is “no” then why do you think you should try to make any kind of decision tonight? Can we start with Mr Whitfield?

A1 Mayor – the Elected Members are not required to answer such questions.

Q2 Who is supposed to answer? Do you want to answer for them? Are you going to pass this back to Stephen Cain or Daniel Arndt who is the brunt of everything here? I want an answer to the question, will anybody volunteer whether or not they are able to or permitted to answer a simple question like that? Does anyone have any guts on the Council? I think the answer is ‘no’ all round – the silence is deafening.

A2 Mayor – Elected Members sitting at this table have had access to information over a period of time and they have to deliberate on the matter this evening.

(Interjection from Clr Robyn O’Brien)

Clr O’Brien - Point of Order.

Mayor - There is no Point of Order

Clr O’Brien - There is under Standing Orders. If a member of the public asks a question of Councillors, which includes me, why can’t I answer it?

CEO - The Presiding Member controls the business of Council. The Presiding Member determines if he wishes an individual to make a statement and in this case the Presiding Member has decided he does not.



Clr O'Brien - I would like to register my protest.

Mayor - Thank you.

Arie Hall, South Lake

Item 9.2

Q1 Given the non-existent public consultation which could have taken place in the last five months, how can this Council represent the best interests of its ratepayers, electors and the citizens of Cockburn if they have not carried out this public consultation? Why are we always being gagged? What is really going on here? Australand came up with a marvellous plan to desecrate our coastline and they got in with simple offerings that they knew everyone would accept and now they are moving the goalposts. Why does this Council cave in? You all took an oath, every one of you. Why are you not representing the best interest of the ratepayers, citizens and everyone in Cockburn, not just today, not just last month, but for the next 20 years? You have laid the groundwork for corruption. Self serving.

A1 Mayor – Elected Members around the table have been provided with the information, they are required to look at that information, form an opinion and a debate on this matter will be conducted at the meeting tonight, and Elected Members will be required to vote. Elected Members are free to put forward whatever they wish to in terms of alternative recommendations, amendments, etc., for consideration by the Council and to vote on it accordingly.

Martin Reeve-Fowkes, Coogee

Item 9.2

Q1 At the SAT hearings I understand you said you had three Councillors, plus one Director plus a Planning Consultant. Why did you not have a legal representative? I am sure Australand would have taken legal advice and would have been represented at SAT with legal representation. Whose decision was it not to have Council represented with legal advice?

A1 CEO – The mediation process through the SAT was intended to try to reach a consensus position without recourse to legal representation. In other words, you are not seeking to get a judgement or determination. If you were, then you would move to formal arbitration. So the expertise that Council called upon during that process were an independent expert planner who had knowledge of the Port Coogee development during the early stages of development and subsequently, during the process, they sought an independent economic analyst to look at the issues to do with the allocation of the commercial space. Had the matter gone from mediation to arbitration, then Council would have been obliged to bring in a lawyer; but if



Council takes a lawyer into mediation then it takes on a legal bias. Council is not simply seeking to try to reach something where lawyers are going to bat; they are trying to reach an agreement by consensus.

Q2 My question was, who decided not to bring in a lawyer? Was it you, or the Mayor or the Council, who decided that?

A2 CEO – The appointment of independent experts is up to the CEO to appoint at Councillors' specific request. In this case, through the process, the Elected Members asked specifically for an independent planner and at a subsequent stage they asked for an expert on the economic analysis. At no stage has there been a request for a lawyer. (Interjection from Clr O'Brien – "I asked for a lawyer.") At no stage has there been a formal request of me by the people who were elected by Council as a collective, for a legal representative.

Robyn Scherr, Coogee

Item 9.2

Q1 My question relates to declared interest on this matter tonight. I noticed that Clr Romano has announced that he has teamed up with Nick Martino in his business relationship through a real estate firm. Nick Martino was a committee member of Port Coogee Now

(Clr Romano interjected – "He is no longer a member.")

He was a committee member of Port Coogee Now, whether that organisation still exists, Mr Romano, is irrelevant. You would know of his association that they have a clear association with Australand and I do not think you should be voting tonight.

(Clr Romano interjected – "I am actually working for De Freitas & Ryan.")

Dan Scherr, Coogee

Item 9.2

Q1 Could I have an answer to my wife's question?

A1 Mayor – All Elected Members are requested to consider whether they have any obligation to declare an interest, whether it be financial or other, to declare that before the matter is heard, and to give a written statement to the CEO so that it can be read at the appropriate time of the meeting.

Q2 And if it is found that such an interest was necessary to be declared, what is the recourse there?

A2 CEO – The interest provisions are clear. If subsequently a member was found to have needed to make a declaration and failed to make that declaration, I would be required to make a note of it and report it



to the Department for investigation. If that report was found to be an inadvertent, such as can happen if, say, your cousin lives in an area and you did not know as they had just moved in, then the Department would simply say that is a minor matter and there is no particular recourse. But if a Member fails to make a declaration that is of a more substantive and serious nature, then the ramifications are covered under the Local Government Rules of Conduct and there are provisions that relate to those Rules of Conduct.

Item 9.1

Q1 Why is there such a rush to get this indemnification through? Where does this all fall in the Coogee Beach Structural Plan and why hasn't Coogee Beach Surf Life Saving Club even been thought of as possibly providing indemnification for this whole process?

A1 CEO – The indemnification relates to land which is currently the ownership of the DEC, but transferred during the process of land consolidation to the City of Cockburn. As you are probably aware, Council has already made a determination on the contract to commence this works. We cannot take possession of the site until we get the DEC an indemnification. You are probably aware that Council received \$2.0M from the Federal Government for Stage 1. As part of the economic stimulus requirements, that donation or grant comes with very stringent requirements for us to spend the money in a timely manner consistent with creating stimulus. We cannot put it in the bank and hold it for a rainy day. We have to provide the indemnification to be able to get the contractors on site, they are ready to commence; already the City has had to write twice to the Federal Government to seek an extension of time on the spending of this money and, frankly, the Commonwealth does not want to see us delay any further.

Q2 What is the relativity of the beneficiary in the indemnity application process?

A2 CEO – The beneficiary is the City of Cockburn.

Q3 But the beneficiary is the Coogee Beach Surf Life Saving Club. You are giving them all this land, you are giving them all this stuff, you are giving them all this money – what is their role in the indemnification process?

A3 CEO - The Coogee Beach Surf Life Saving Club have no role. I point out to you that we are not giving them more money, the facilities to be constructed on the City of Cockburn site will belong to the City of Cockburn. They are Council buildings on Council land and therefore the indemnification has to come from the City of Cockburn. The Coogee Beach Surf Life saving Club will effectively become a tenant in those buildings and operate them on behalf of the City consistent



with the way other sporting clubs operate buildings that Council provide.

Q4 How much rent will they pay as a tenant?

A4 The Coogee Beach Surf Life Saving Club, as part of the Memorandum of Understanding, will be responsible for all outgoing operating costs for the facility.

Debra Allen, Coogee
Item 9.2

Q1 As there has been no public consultation in regard to the change to the Structural Plan for Port Coogee, is it possible to defer your decision until after there has been public consultation – is that a possibility?

A1 Mayor – That is a possibility. As I have said earlier, it is open to Elected Members around the table here tonight to look at all options that are available to them in terms of coming to the determination and voting on it so, yes, that option is available.

Murray O'Brien, Munster
Item 9.2

Q1 The options available with regard to SAT, I think Stephen Cain mentioned earlier, are that they made a direction that you had to make a decision tonight – is that correct?

A1 CEO – There is a written direction – it is an order on the Application before the particular Member, that the parties progress the matter - the matter to be considered at a Special council Meeting on or before the last meeting of February 2010 and that, subsequent to that, we are required to provide a report back to the SAT.

Q2 So they said you must give it consideration?

A2 Mayor - Yes, both parties were to consider the matter.

Q3 You said last Monday, that was the time, so from the Councillors' point of view when have they had a chance to look at this whole process? There have been no other briefings at all apart from last Monday.

A3 Mayor – I say again, this matter came before Council in August 2009, it was considered by Council, it was then referred to a Special Council Meeting where the matter was further considered. Following that and subsequent events the matter was referred to SAT by Australand, the proponent, and mediated arrangements were put in place. From that basis we have come to having the matter considered by Council tonight. Documents were issued to Council last week and a briefing



provided on Monday night. Opportunities existed for Elected Members to ask questions of Officers then or since then, and at any time before that going right back to August last year, to ask questions of Officers to clarify any matters with which they had concerns.

Q4 The point being that mediation has been taken out of most of the Councillors hands until last Monday, from what you have been saying, so whatever they have said or you guys have discussed previously has gone back to SAT and you guys have made a determination as to what outcome you want to have at this stage from last Monday and you have informed the rest of the Councillors.

My other question is how many Councillors are declaring an interest with regard to Port Coogee?

A4 Mayor – As I have said earlier; again, each Elected Member is required to consider the matters before council and if, in their opinion, there is a requirement to declare an interest then that is what they are required to do under the Act.

Q5 From the community's point of view, I am sure you have had a briefing meeting beforehand Logan where somebody would have told you whether they are going to declare an interest tonight. Are you aware of those people or how many they are?

A5 Mayor – In actual fact, I made a statement earlier that there has been one declaration provided and that was from Deputy Mayor Allen which will be read out at the appropriate time of tonight's meeting. There have been no other declarations provided at this point in time, although I understand Elected Members can provide a declaration prior to the matter being discussed and advise Council accordingly.

Q6 Will that be done in front of us or behind closed doors?

A6 Mayor – We only have the one declaration.

Q7 Those others who may be able to declare – will that happen out in public?

A7 Mayor - At this stage, there are no other declarations that we are aware of and if there were we would consider the matter at the time. At this point in time there are no other declarations made by an Elected Member.

Q8 So, if a person made a declaration will they be able to have input into the discussion?

A8 Mayor – If a declaration is made by an Elected Member, they are required to bring that to the attention of Council and they are then required to leave the Chamber.



- Q9 Why then would Deputy Mayor Allen be at mediation if he had a declaration of interest?
- A9 CEO – The issue of mediation does not require formal decision making on behalf of Council. During the normal course of events it is possible to determine in part that as a result of changes to plans, that you might not have had an interest before but as a result of those changes you do now. In this particular case, the issue relates to a component of the development of a proposal for further change that only became known at the time and Deputy Mayor Allen then stepped outside of that process. He has made a declaration to me today that, as a result of the change that is being proposed now, that was reviewed at the very last mediated settlement, he now has an interest where he had not had an interest at the start of the process.
- Q11 There were three Council members there and that is 33% of the decision making process has already been done and he was there so he has had input in the whole process.
- A11 Mayor – there has been no decision made by Elected Members at that SAT mediation process. There has been dialogue between the parties; there has been no decision made by Elected Members. Elected Members have no authority to make decisions.
- Q12 Didn't you say to me when you got back last Monday and put to the Elected Members what was going to happen or what was a possibility for them to discuss or to happen? You mediated with Port Coogee Now and you have come up with some sort of idea of what you want to pass or don't pass, so that is a decision you have actually come up with between the three people in mediation.
- A12 Mayor – We mediated with Australand on this matter and that is now back before this Council to consider tonight. There has been no decision made.

Jim Stephenson, Coogee

Item 9.2

- Q1 Considering the amount of obvious public concern about this issue, is the Council prepared to put it back for public consultation to get a real idea of what the people want?
- A1 Mayor – As I said earlier, this matter will be discussed and any Elected Member has the opportunity to raise the matter as an alternative recommendation or amend any recommendation that is before Council.



7. DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS

Nil

8 (SCM 25/02/2010) - PURPOSE OF MEETING

The purpose of the meeting is to consider:

1. Indemnification to Department of Environment and Conservation for site works at Poore Grove, Coogee (*open to the public*); and
2. Results of mediated negotiations with Australand on Port Coogee Structure Plan (*a confidential matter which will not be open to the public*).

9. COUNCIL MATTERS

9.1 (MINUTE NO 4176) (SCM 25/02/2010) - AUTHORITY FOR CEO TO ISSUE INDEMNIFICATION FOR COUNCIL PROJECTS ON NON COUNCIL CONTROLLED LAND (8004) (K SIM) (ATTACH)

RECOMMENDATION

That Council:

- (1) indemnify the Department of Environment and Conservation against all suits, claims, demands, costs and losses associated with the development of facilities on Reserve 49220, Poore Grove, Coogee; and;
- (2) adopt the instrument of Delegated Authority to the Chief Executive Officer, as contained in the attachment to the Agenda.

TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

COUNCIL DECISION

MOVED Cllr S Limbert SECONDED Cllr V Oliver that the recommendation be adopted.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 10/0



Background

Council at its meeting held on 12 July 2007 resolved to enter into a Memorandum of Understanding with the Coogee Beach Surf Life Saving Club to develop a Regional Surf Life Saving and Multipurpose Community Facility at Poore Grove, Coogee. The development site occupies portion of Reserve 24306 which is managed by the City, and Reserve 49220 which is currently managed by the Conservation Commission of Western Australia (Department of Environment and Conservation being the relevant State Government department).

Submission

The Department of Environment and Conservation ("DEC") has written to the City requesting that the City indemnify the DEC against all suits, claims, demands, costs and losses prior to the City commencing civil works on the site. This is due to portion of these works being within Reserve 49220, which is currently in the process of being adjusted to place the entire facility within an enlarged Reserve 24306 which is under the City's control.

Report

DEC, as the management agency for the Conservation Commission of WA, has agreed to amend the common boundary between the two reserves such that the proposed facility will be entirely within the City's Reserve 24306. The transfer will take some time to complete however, as the matter has to be attached to a future Reserves Bill and considered by both Houses of Parliament as per the legislative requirements concerning A Class reserves.

In the interim period DEC have consented to the project commencing subject to the Chief Executive Officer of the City providing an indemnity to DEC against all proceedings, actions, suits, claims, demands, costs and losses as a result of the City's involvement on the site. It is considered prudent to make the delegated authority applicable to this and future projects that may require similar forms of indemnity. All indemnities provided will be in a form that protects the City's interest and will not be issued until the particular project has been accepted by the City's insurer as being covered by the City's insurance policy.

It is proposed that Council provides the authority for the Chief Executive Officer to approve similar indemnities in the future, in order to avoid potential delays in Council projects while Council permission is sought.

Strategic Plan/Policy Implications Infrastructure Development

- To construct and maintain community facilities that meet community needs.



Governance Excellence

- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

Budget/Financial Implications

Nil

Legal Implications

Section 9 .49A (1) (4) of the *Local Government Act 1995* refers.

Community Consultation

N/A

Attachment(s)

1. Delegated Authority LGAES 11 “Execution of Documents”
2. Copy of correspondence from Department of Environment and Conservation
3. Plan of Proposed Common Boundary Reserves 24306 & 49220.

Advice to Proponent(s)/Submissioners

N/A

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

Nil

DECLARATION OF INTEREST

The Presiding Member read a Declaration of a Conflict of Interest in the following item, the nature of his interest being that any adjustments to building heights on Lot 749 could impact the sight-lines from his property at 4 Christine Crescent, Coogee which could lead to the perception of his capacity to remain impartial in any consideration of this matter.

DEPUTY MAYOR ALLEN LEFT THE MEETING AT THIS POINT, THE TIME BEING 7.54PM.

NOTE: DEPUTY MAYOR ALLEN DID NOT RETURN TO THE MEETING.



(MINUTE NO 4177) (SCM 25/02/2010) - MEETING TO GO BEHIND CLOSED DOORS

COUNCIL DECISION

MOVED Clr S Limbert SECONDED Clr V Oliver that, pursuant to Section 5.23(2)(a) of the Local Government Act 1995, Council proceeds behind closed doors to consider Item 9.2.

CARRIED 8/1

Reason for Decision

Item 9.2 is a confidential matter.

NOTE: MEETING WENT BEHIND CLOSED DOORS, THE TIME BEING 7.58PM.

(MINUTE NO 4178) (SCM 25/02/2010) - SUSPENSION OF STANDING ORDERS

COUNCIL DECISION

MOVED Clr C Reeve-Fowkes SECONDED Clr S Limbert that Council suspend Standing Orders.

CARRIED 8/1

Reason for Decision

Suspension of Standing Orders will allow for detailed questions to be answered prior to debate on this confidential item.

NOTE: STANDING ORDERS SUSPENDED AT 7.59PM.

NOTE: FOLLOWING SOME DISCUSSION, CLR O'BRIEN ADVISED THAT SHE WAS WITHDRAWING FROM THE MEETING, THE TIME BEING 8.32PM.

NOTE: CLR O'BRIEN DID NOT RETURN TO THE MEETING.



(MINUTE NO 4179) (SCM 25/02/2010) - RESUMPTION OF STANDING ORDERS

COUNCIL DECISION

MOVED Clr H Attrill SECONDED Clr T Romano that Council resume Standing Orders.

CARRIED 8/0

Reason for Decision

Resumption of Standing Orders will allow the business of Council to proceed.

(MINUTE NO 4180) (SCM 25/02/2010) - EXTENSION OF TIME

COUNCIL DECISION

MOVED Clr T Romano SECONDED Clr I Whitfield that the time being 8.55pm Council extend the meeting for a period of one hour, in accordance with Clause 4.14 of Council's Standing Orders Local Laws.

CARRIED 8/0

Reason for Decision

Suspending Standing Order 4.14 will allow Council sufficient time to conclude the business of Council.

(MINUTE NO 4181) (SCM 25/02/2010) - EXTENSION OF TIME

COUNCIL DECISION

MOVED Clr C Reeve-Fowkes SECONDED Clr S Limbert that the time being 9.55pm Council extend the meeting for a period of 15 minutes, in accordance with Clause 4.14 of Council's Standing Orders Local Laws.

CARRIED 8/0

Reason for Decision

Suspending Standing Order 4.14 will allow Council sufficient time to conclude the business of Council.



9.2 (MINUTE NO 4182) (SCM 25/02/2010) - STATE ADMINISTRATIVE TRIBUNAL MEDIATION - REVISED PORT COOGEE LOCAL STRUCTURE PLAN - OWNER: AUSTRALAND HOLDINGS PTY LTD - APPLICANT: TAYLOR BURRELL BARNETT (9662) (D ARNDT) (ATTACH)

RECOMMENDATION

That Council advise the State Administrative Tribunal that it is prepared to approve the revised Port Coogee Local Structure Plan, the Marina Village Masterplan and Port Coogee Transport Report, in accordance with the Grounds for Settlement, as provided under separate, confidential cover.

COUNCIL DECISION

MOVED Clr L Smith SECONDED Clr I Whitfield that Council advise the State Administrative Tribunal that it is prepared to approve the revised Port Coogee Local Structure Plan, the Marina Village Masterplan and Port Coogee Transport Report, in accordance with the revised Grounds for Settlement, as provided under separate, confidential cover (i.e. to include additional Clauses (27) to (31)).

AMENDMENT

MOVED Clr C Reeve-Fowkes SECONDED Clr V Oliver that Council advise the State Administrative Tribunal that it is prepared to approve the revised Port Coogee Local Structure Plan, the Marina Village Masterplan and Port Coogee Transport Report, in accordance with the revised Grounds for Settlement, as provided under separate, confidential cover (i.e. to include amendments to Clauses (5), (9) and (10) and additional Clauses (27) to (34)).

VOTE TIED 4/4
MOTION LOST BY CASTING VOTE OF PRESIDING MEMBER

AMENDMENT

MOVED Clr I Whitfield SECONDED Clr L Smith that Council advise the State Administrative Tribunal that it is prepared to approve the revised Port Coogee Local Structure Plan, the Marina Village Masterplan and Port Coogee Transport Report, in accordance with the revised Grounds for Settlement, as provided under separate, confidential cover (i.e. to include amendments to Clauses (5) and (10) and additional Clauses (27) to (34)).

AMENDMENT CARRIED 6/2

CLRS SMITH AND REEVE-FOWKES REQUESTED THEIR VOTE AGAINST THE MOTION BE RECORDED.



Reason for Decision

There is a need for the area dedicated to a local community purpose site to be located in a prime location in the heart of the Port Coogee Marina. In order to maximise the integration of the community purpose site it is recommended that the Local Structure Plan be amended to show a number of alternative sites, with the ultimate location to be determined by both Australand and the City.

It is also recommended that the wording be amended to reflect the fact that the community purpose site will require a ground floor component to allow activation of the facility at street level. In the early stages of the development of the Marina Village precinct this may be in the form of an integrated convenience store/café together with a small scale visitor/tourist information centre, as well as a library outreach centre. This could then be expanded to include a youth space, community meeting rooms and gallery/cultural centre within the first floor component. The type of uses and their location within the community purpose site would be determined by the City.

It is recommended that once a final determination has been made in respect to building heights within Port Coogee then these changes should be disseminated to all residents who are or consider that they would be potentially impacted by the changes by Australand. The information should be provided in such a format that the residents can understand what the changes are and what impacts they will have.

Council believe the height, at the Southern End of the Port Coogee Development on Lot 749 must be in keeping with the amenity of the district and minimise impact on existing residents. A nine metre height limit on the Southern portion of Lot 749 will ensure that development does not adversely compromise the residents of Old Coogee. The other options of 13.6m height in the middle section and 10m height, provide a compromise position as discussed in option 2 at SAT mediation. Retail space at the Southern end enhances connectivity between Coogee Beach and Port Coogee, whilst providing convenience retail for local residents and tourists

Economic conditions change frequently, as seen by the Taylor Burrell Barnett letters from several years ago which have now got a complete 180 degree about turn in their previous position. As such, economic viability must be considered by this Council. To put impediments in the way of Councils existing position of maintaining retail along the Marina, and Councils vision for a tourism destination within Port Coogee is a retrospective step for Cockburn. It is imperative to the long term viability of the Marina as a Tourism Precinct that the Ground Floor remains available for Retail/ Food Beverage etc. This development will not all be built at the same time and as such, opportunities must always be made available to new businesses to locate into the heart of the



Waterfront development. This position to uphold the Water Front retail was endorsed by SAT during the 2006/07 appeal process. Residential land uses are acceptable for all other ground floor frontages within the Marina Village, except facing the waterfront. Robust design is required to accommodate a potential transition to Commercial Retail and Mixed Business over time for all ground floor frontages.

Council wishes to ensure more appropriate height controls over the development and that position is compromised if these blocks included in the recommendation are incorporated into the Marina Village as increase heights are automatically approved by endorsing these areas as "Marina Village". This amendment will ensure that compliance with DA22 can be effectively upheld and that Public Consultation regarding heights of other blocks which aren't included in the Marina Village, can only have additional height approved if it has community support.

The landmark site at the western most point of the southern peninsula should be a restaurant facility with apartments above, as this will ensure a smooth transition along the waterfront in maintaining retail food and beverage and a tourism precinct whilst enhancing the amenity of the Marina Village.

These additions provide certainty to both Council and the Community.

The northern section is better suited to initial residential area while the southern section should be commercial.

Background

On 16 October 2009 Australand lodged an Application for Review (Appeal) with the State Administrative Tribunal on the basis that the Structure Plan was deemed refused, as the City had not made a determination within the specified timeframe under the Scheme.

Submission

To receive the Officer's Report and adopt its recommendation.

Report

The City's Director of Planning & Development Services and three Elected Members have attended numerous mediation meetings with Australand and their consultants. Following extensive negotiations, this matter appears to be the subject of general agreement and is now referred to Council for its consideration. If Council accepts the mediation outcomes, the State Administrative Tribunal will issue Minute



Consent Orders and the Appeal will have deemed to have been settled by agreement.

Section 54(6) of the State Administrative Tribunal Act 2004 requires mediation to be held in private, unless the Mediator directs otherwise. Accordingly, the Grounds for Settlement remain confidential.

Strategic Plan/Policy Implications

Employment and Economic Development

- To plan and promote economic development that encourages business opportunities within the City.

Natural Environmental Management

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

Budget/Financial Implications

Costs of \$32,867 have been billed to 01 February 2010. This includes a briefing to Council by Council's solicitors in October 2009, an independent planning consultant who has been engaged to assist in the preparation of respondent statements, attendance at mediation, site meetings and drafting of conditions and an independent economic analysis of the retail study. These costs are covered within the 2009/10 budget.

Legal Implications

Planning and Development Act 2005
State Administrative Tribunal Regulations 2004

Community Consultation

N/A

Confidential Attachment(s)

- (1) Officer's Report and Recommendations.
- (2) Revised Structure Plan.

Advice to Proponent(s)/Submissioners

Australand Holdings Pty Ltd has been advised that this matter is to be referred to a Special Meeting of Council on 25 February 2010.

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

Nil.



(MINUTE NO 4183) (SCM 25/02/2010) - REVOCATION MOTION - COUNCIL DECISION OF 25 FEBRUARY 2010 - STATE ADMINISTRATIVE TRIBUNAL MEDIATION - REVISED PORT COOGEE LOCAL STRUCTURE PLAN (9662) (D ARNDT)

COUNCIL DECISION

MOVED Clr H Attrill SECONDED Clr C Reeve-Fowkes that Council revoke the previous decision of Council carried on 25 February 2010, Minute No. 4182, pursuant to Regulation 10 of the Local Government (Administration) Regulations 1996.

CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 7/1

Reason for Decision

This will allow an amendment to that motion to be considered by Council.

(MINUTE NO 4184) (SCM 25/02/2010) - STATE ADMINISTRATIVE TRIBUNAL MEDIATION - REVISED PORT COOGEE LOCAL STRUCTURE PLAN - OWNER: AUSTRALAND HOLDINGS PTY LTD - APPLICATION: TAYLOR BURRELL BARNETT (9662) (D ARNDT)

COUNCIL DECISION

MOVED Clr H Attrill SECONDED Clr V Oliver that Council advise the State Administrative Tribunal that it is prepared to approve the revised Port Coogee Local Structure Plan, the Marina Village Masterplan and Port Coogee Transport Report, in accordance with the revised Grounds for Settlement, as provided under separate, confidential cover (i.e. to include amendments to Clauses (5) and (10) and additional Clauses (27) to (35).

CARRIED 5/3

NOTE: CLRS SMITH, ROMANO AND LIMBERT REQUESTED THEIR VOTE AGAINST THE MOTION BE RECORDED.

Reason for Decision

This clause is in the best interests of Council and the ratepayers.



(MINUTE NO 4185) (SCM 25/02/2010) - OPEN MEETING TO THE PUBLIC

COUNCIL DECISION

MOVED Clr H Attrill SECONDED Clr V Oliver that Council open the meeting to the public.

CARRIED 8/0

AT THIS POINT THE MEETING WAS OPEN TO THE PUBLIC THE TIME BEING 10.10 PM.

THE PRESIDING MEMBER ADVISED THE MEETING OF THE DECISION OF COUNCIL WHILST BEHIND CLOSED DOORS.

10. (MINUTE NO 4186) (SCM 25/02/2010) - 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:-

- (1) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (2) 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
- (3) managed efficiently and effectively.

COUNCIL DECISION

MOVED Clr I Whitfield SECONDED Clr S Limbert that the recommendation be adopted.

CARRIED 8/0



11 (SCM 25/02/2010) - CLOSURE OF MEETING

MEETING CLOSED AT 10.13PM.

CONFIRMATION OF MINUTES

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

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

